

CHAPTER 97-102

Senate Bill No. 438

An act relating to the Florida Statutes; amending ss. 607.0120(6)(a), (7), 607.0129, 607.0130(1), 607.01401(9), 607.0302(16), 607.0501(3), 607.0504(2), 607.0620(5), 607.0622(4), 607.0630(2)(b), 607.0705(1), (5), 607.0707(2), 607.0720(2), (3), (5), 607.0721(5), (6), (7), (8)(a), 607.0722(2), (4), (7), (9), 607.0728(2), 607.0730(1), 607.0731(3), 607.07401(7), 607.0805(5), 607.0807(1), 607.0808(2), (3), 607.0820(3), 607.0824(4), 607.0825(4), 607.0830, 607.0831(1), 607.0832(1), 607.0834(1), 607.0850(1), (2), (3), (4), (6), (7), (10), (11)(g), (12), 607.1302(1), (2), (3), (5), 607.1320(1), (2), (3), (4), (6), (7), 607.1406(5), 607.1421(4), 607.1432(3)(a), (5), 607.1436(2), 607.14401, 607.1507(2), 607.1508(2), 607.1509(1), 607.1530(5), 607.1602(1), (2), (3), (4), (6), (8), 607.1603(1), (4), 607.1604(3), 607.1620(2), (3), 607.1904, 608.404(10), 608.407(1)(d), 608.416(2), (3), 608.4211(3), (5), 608.4225, 608.426(3), 608.427(1), (2), (4), 608.428, 608.432(1)(d), 608.433(2), (3), (4), 608.434, 608.4362(1), 608.4363(1), (2), (3), (4), (6), (7), (10)(g), (11), 608.4421(5), 608.4481(4), 608.4492(3)(a), (5), 608.4494, 608.463(1)(b), 608.508(2), 608.509(1), 608.512(6), 609.02, 609.08(8), 610.021(2), 610.041(1), 610.061(2), 610.081(1), 616.121, 616.21(2)(a), 617.01201(6)(a), (7), 617.0129, 617.01301(1), 617.0501(3), 617.0504(2), 617.0701(3), 617.0721(2), (3), (4), 617.0806, 617.0807(1), 617.0808(7), (8), 617.0809(2), 617.0820(3), 617.0824(4), 617.0825(4), 617.0830, 617.0832(1), 617.0834(1), 617.1421(4), 617.1432(3)(a), (5), 617.1440, 617.1507(2), 617.1508(2), 617.1509(1), 617.1530(5), 617.1602(1), (2), (3), (5), (6), 617.1603(1), (4), 617.1604(2), 617.1807, 617.1904, 617.2003, 617.2006, 617.31(1), (2), 618.09(8), (9), 618.12(2), 618.14, 618.15(1), (2), 618.18(1), 618.25(1), 619.06(3), (4), (5), 619.07(1), (6), 620.102(2), 620.1051(2), (3), 620.116(1), 620.117(1), 620.124(4)(c), (d), (e), (f), (6), 620.126, 620.129(1), (3), (4), 620.132(1), 620.136(2), (4), 620.139, 620.142, 620.144, 620.145, 620.146, 620.148, 620.152(1)(d), 620.153, 620.154(2), (3), 620.155, 620.159(1), 620.164, 620.172(2), 620.1835(1), 620.57(1), (2)(b), 620.59(4), 620.60(1), 620.605(1), (2), 620.61, 620.615, 620.62, 620.625(1), 620.635, 620.64, 620.645(1), (2), (3), (4), (6), 620.66(1), 620.665(1), 620.675, 620.68(1), (2)(a), (d), (e), 620.685, 620.69, 620.695(1), (3), 620.715(1)(a), (b), (d), 620.725, 620.73(1)(b), (2)(b), (3)(c), (4), 620.735(2), (4), 620.74, 620.745(1), (2)(b), (c), 620.75(1), (2), 620.755(6), (9), 620.76(1), (3), (8), 620.765, 620.77, 620.78(3), 620.7885(3), 621.06, 621.11(1), 623.03(2), 623.04, 623.06, 623.12(1)(b), 624.155(1)(b), (2)(b), 624.305(1)(b), (3), 624.315(1), 624.317(3), 624.318(3), 624.321(1), (2), 624.322, 624.4211(2), 624.422(1), 624.423(1), (2), 624.424(8)(c), 624.425(3), 624.470(2)(b), 624.472(2), 624.474(4), 624.489(1), 624.501(22), 624.505(1), (2), 624.506(1), (3), 624.509(4), 624.5092(2)(a), (b), 624.510(3), 624.516(2), 624.523(1)(l), (n), 624.610(9), 625.75, 625.77, 625.78, 626.022(1)(c), 626.041(2)(b), (c), (d), 626.0428(1), 626.051(2)(b), 626.062(2)(b), 626.071(2), 626.091(3), 626.112(1), (2), (3), (4), (5), (6), (7), (8)(b), 626.171(2)(a), (b), (c), (e),

(f), 626.172(1)(b), 626.181, 626.191, 626.201, 626.211(2), 626.221(2)(e), (g), 626.231, 626.251(1), 626.311(1), (4), 626.321(1)(d), (h), (i), 626.322, 626.331(1), (2), 626.341(2), 626.342(2), 626.431(2), (3), 626.451(2), (3), 626.471(1), (4), 626.541(1), 626.551, 626.561(1), (3), 626.572(1), 626.581, 626.592(1), (4), (5), 626.611(6), (11), 626.621(4), (6), 626.6215(5)(f), 626.730(1), (2), (3), 626.731(1)(b), (c), 626.732, 626.734, 626.7351(2), (5), 626.7352, 626.7353(2), 626.7354, 626.736, 626.738, 626.739(1)(a), 626.741(1), (2), (4), 626.742(1), (2), (4), (5), 626.7451(10)(c), 626.7454(3), 626.748, 626.749(1), (2), 626.7492(8)(c), 626.752(1)(a), (2), 626.753(1)(a), 626.754(1), 626.784(1), (2), 626.785(2), 626.7851, 626.790(1), 626.791(1)(a), 626.792(6), (7), 626.793(1), 626.795, 626.798, 626.829(2), 626.830(1), (2), 626.831(2), 626.8311, 626.835(6), (7), 626.837(1), 626.8373(1), 626.839, 626.8421, 626.8427(1)(a), (3), 626.844(5), 626.8463(1), (3), 626.8467, 626.857, 626.858(2), 626.862(1), 626.863(2), 626.865(1)(c), (d), (2), 626.866(3), (4), 626.867(3), (4), 626.869(1), (3), (5), 626.8695(1), (3), (4), 626.872(1)(c), (4), 626.873(1), (4), 626.8805(1), 626.894(2), 626.906, 626.907(1), 626.908(1)(d), 626.909(4), 626.912(4), 626.918(3), (5), 626.919(3), 626.922(2), 626.924, 626.927(7), 626.9271(1)(a), 626.9295, 626.930(1), (3), 626.931(1), 626.932(1), 626.935(1)(b), (d), 626.937(3), 626.942, 626.945(1)(k), (l), 626.9541(1)(o), (v), 627.041(3), 627.066(11)(a), 627.072(4)(c), 627.162(4), 627.215(12)(a), 627.291(2), 627.311(3)(e), (4)(a), (o), 627.371(1), 627.406(2), (4), 627.407, 627.410(7)(c), 627.4132, 627.4137(1), 627.4143(2)(d), 627.418(1), 627.4237, 627.553(3), 627.555(2)(b), 627.560, 627.561, 627.562, 627.566, 627.567, 627.568, 627.571(1), 627.6044(2), 627.619, 627.621, 627.624(1), 627.6401, 627.646(1), 627.6486(2)(b), 627.6488(2)(a), (b), 627.6516(2)(b), 627.657(1)(a), 627.664(1), 627.6645(2), 627.6675, 627.679(1)(c), 627.681(3), 627.6841(1), 627.6843(1)(a), 627.702(1), 627.727(1), (9)(b), (c), (d), (e), 627.7275(2)(a), 627.7286, 627.732(4), 627.733(5), (7)(a), 627.737(1), (2), 627.832(2), 627.835, 627.836(1), 627.839(3)(a), 627.840(3)(b), 627.841(3), 627.842(3), 627.843, 627.844(3), 627.845, 627.944(1)(c), 627.948(2), 627.952(1)(b), (3), 627.971(1)(b), 627.983(1), 627.985(1)(a), 628.152(2), 628.221(2)(a), 628.255(2), (4), 628.421(1)(a), 628.441(2)(c), (e), (g), 628.491(4), 628.501(2), 628.6013(7), (8), 628.6017(1)(d), 629.121(1), (2), 629.211(2), 629.221(2), 629.231(2), (4), 629.241, 629.291(3), 629.301(2), 629.401(2), (6)(b), 631.051(4), 631.112, 631.154(1), 631.171(2), 631.181(1)(b), (d), (2)(a), 631.191(2)(a), 631.261(1), 631.263(2)(b), 631.271(1)(b), 631.281(2)(a), 631.321(1), 631.331(2), (4), 631.371(3), 631.391(1)(b), 631.57(1)(a), 631.60(1), 631.61, 631.717(8)(a), 631.816(4), 631.93(2), 631.935(1)(c), 631.98(1), 632.608(2), (3), 632.634(2), 633.02, 633.052(1)(b), 633.061(3)(b), (c), (d), (4)(b), (6), 633.081, 633.085(1)(a), (2), 633.101(1), (2), (3), 633.13, 633.14, 633.151, 633.162(2), 633.167, 633.18, 633.31(3), 633.32(1), (2), 633.35(2), 633.351(2), 633.352, 633.382(2)(a), 633.47, 633.511(1), (2)(a), (3), 633.514(1), 633.517(2), 633.521(2)(a), (e), (3), (4), (6), 633.527(1), 633.531, 633.534(1), (2), (3)(a), (b), 633.537(1), (2), 633.547(2)(c), (3), 633.551(3), 633.702(3)(c), 633.72(1)(a), 634.011(13), 634.044(2)(i), 634.095, 634.101(1), 634.111(4),

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905.08, 905.095, 905.13, 905.15, 905.16, 905.185, 905.19, 905.195(1), 905.22, 905.25, 905.27(2), (3), 905.33(1), 905.35, 905.36, 905.37(1), (3), (4), 907.04, 907.045, 910.005(1), 910.006(3)(e), 910.02, 910.03(1), 910.035, 910.04, 910.10, 910.11(1), 910.13, 910.14, 913.03(2), (3), (8), (10), 913.13, 914.04, 914.05, 914.12, 914.13, 914.15, 916.106(4)(c), (8), 916.11(1)(d), 916.12, 916.13(1), (2)(b), 916.14, 916.145, 916.15(1), (3), 916.17(1), 916.19, 918.03, 918.04, 918.05, 918.07, 918.12, 921.001(2)(a), (b), (3)(a), (10), 921.005(1)(b), (2)(a), (c), 921.15(1), (2), 921.161, 921.18, 921.20, 921.21, 921.231(1)(a), (e), (g), (j), (l), (m), 922.04, 922.111, 923.01, 923.02, 923.03(1), 924.071(2), 924.16, 924.18, 924.22, 924.34, 925.035(1), (5), 925.036(1), 925.08(2), (4), (5), 925.09, 932.49, 932.50, 932.61(1), (2), (4), 932.62, 932.64, 932.65, 932.66, 933.07, 933.09, 933.11, 933.14(1), (2), (4), 933.15, 933.17, 933.18, 933.20, 933.23, 933.24, 933.25, 934.02(4)(a), 934.03(2)(a), (b), 934.08(2), 934.09(1)(b), (7)(a), (e), (8), (9)(a), 934.15(1), 934.24(6)(a), 934.41(1), 936.003(1), (2), 939.05, 939.06, 939.07, 939.11, 939.12, 939.13, 940.05, 941.03, 941.04, 941.05(1), 941.07, 941.08, 941.10(1), 941.11, 941.12, 941.13, 941.14, 941.15, 941.16, 941.17, 941.18, 941.19, 941.20, 941.21, 941.22, 941.23, 941.25, 941.26(1), (3), 941.28, 941.31, 941.32, 941.38(1), (2)(b), 941.39(1), 941.40(1), (2), 941.45, 941.56, 942.02, 942.03, 942.04, 943.11(1)(c), (d), (2), 943.13(5), 943.131(1)(a), (c), 943.133(2), (3), (6), 943.135(1)(a), 943.139(2), 943.16(2), 943.17(1)(b), 943.19(1), 943.25(4), (6)(c), (7)(b), 943.253, 943.2563(1), (2), 943.355(1), (2), (3), 943.37(2), 944.012(3), 944.0231(1), 944.096(4)(a), 944.291(1), 944.292(2), 944.33, 944.37, 944.38(1), (3), 944.405(2), 944.46, 944.485(1)(b), 944.512(1), (3), 944.516, 944.596, 944.597(1), 944.602, 944.611(1), (2)(a), 944.612(1)(a), 944.613(2), 944.719(5)(b), 945.047(2), 945.12(5), 945.6035(2), (3), (7), 945.73(5), 946.513(1), 947.002(2), (3), (4), (5), 947.06, as amended by s. 16, ch. 90-211, Laws of Florida, 947.06, as amended by s. 22, ch. 90-337, Laws of Florida, 947.10, 947.135(2)(a), (b), (3)(a), 947.149(1), (5)(a), 947.16(1), (2)(h), (3), (4)(b), (d), (e), (f), (g), 947.172(2), 947.174(4), 947.1745(1), 947.181(1)(b), 947.19(3), 947.20, 947.21, 947.22, 947.23(1), (2), (3), (4)(a), (d), (e), (5), (6)(a), (b), (7), 948.011, 948.015(1), (5), (7), (10), (12), (13), 948.034(1)(a), (b), (c), (2)(a), (b), (c), (d), (e), 948.04(2), 948.06(1), (2), (3), (4), (6), 948.08(2), (4), (7), as amended by s. 9, ch. 91-225, Laws of Florida, 948.08(2), as amended by s. 6, ch. 91-280, Laws of Florida, 948.10(2), 949.07(1), (3), 950.03, 950.04, 950.09, 951.04, 951.062(9), 951.08, 951.14, 951.15, 951.21(2), (4), 951.231(1)(a), (b), 951.24(2)(a), (3)(a), (b), (c), (4), (5), 958.045(4), 958.07, 958.09(1), 958.12(1), 958.13(2), 958.14, 960.002(2)(c), 960.05(2)(k), 960.065(1)(d), 960.07(1), and 960.17(1), Florida Statutes, and ss. 607.0502(2), (3), 616.252(1)(a), 617.0502(2), (3), 617.2103(3), 617.306(6), (7), 624.310(1)(a), (4)(f), 624.311(4)(b), 624.319(5), 624.91(4)(a), 626.2815(3)(j), (5), (6)(c), 626.521(4), 626.601(2), (5), 626.9571(3), 626.9581(1), 626.988(5), (6), 626.989(1), (4)(b), 626.99(1), (5)(b), 627.351(6)(c), as amended by s. 2, ch. 96-377, Laws of Florida, 627.351(2)(b), (3)(a), (4)(c), (i), (5)(b), (6)(c), as amended by s. 8, ch. 96-194, Laws of Florida, 627.4147(1)(b), (2), 627.6692(5)(b), 627.6699(5)(h), (11)(b), (g), 627.701(1)(c), 627.728(1)(c), (4)(a), (6), 627.736(1)(a), (b), (2)(b), (3),

(4)(d), (5), (6)(b), (c), (7)(b), 627.848(1)(a), (c), (d), 628.461(6)(b), (8), 628.4615(7)(b), (9), 633.111, 633.161(1), 633.175(2), (7), 633.445(5)(d), (e), (7)(d), (e), (9), 634.031(1), 634.201(1), (2), 634.338(3), 634.339(1), 634.438(3), 634.439(1), 641.31(10), 641.386(1)(b), (3), 641.3907(3), 641.445(3), 648.36, 648.44(1)(a), (d), 655.037(6)(a), 658.295(2)(e), 658.33(4), 697.04(1)(b), 705.18(1), 713.05, 713.06(1), (2)(a), (b), (c), (3)(c), (d), (f), (g), 713.08(1), (2), (3), 713.13(1)(a), (b), (d), (g), 713.16(1), (2), (3), (4), 713.18(1)(b), 713.20(1), (3), 717.101(14), 717.117(3), (5), 717.124(5)(a), 718.112(2)(d), 718.501(1)(d), 719.106(1)(d), (f), 719.501(1)(d), 721.071(4), 723.031(8), 741.01(1), 744.102(8), 744.309(1)(b), (2), (3), 744.3215(1)(b), (f), (h), (j), (3)(e), (g), (4)(b), 744.331(1), (2)(a), (3)(a), (d), (5)(b), (6)(a), (c), 744.334(1), 744.351(1), 744.3675(1)(a), (c), 744.454, 744.474(1), (2), (3), (4), (8), 744.703(5), 744.704(4), (5), (8), 744.708(4), 760.29(1), 760.34(1), (2), (3), 760.35(3)(b), 760.40(3), 760.50(3)(b), 765.202(3), 766.101(5), 766.105(3)(b), (c), (d), (f), 766.106(2), (9), (10), 766.207(7)(b), 766.21(1), (3), 766.304, 766.305(1)(a), 766.309(2), 766.312(1), 766.314(9)(d), 766.315(3), (4)(k), 768.28(1), (6)(a), (9)(a), (b), (19), 775.083(1), 775.0877(1), (4), 775.15(3), 787.01(1), 787.02(1), 787.04(5), 790.065(1), (2)(c), (3), 790.22(2), (3), (8), 810.09(2)(c), 812.014(4), 812.015(1)(c), (f), 832.07(1)(a), 832.08(1), (4), (5), 837.011(2), 838.014(1), (3), (4), (6), 849.0935(4)(e), 893.035(2), (4), (5), (6)(b), (7)(a), 893.13(6)(a), 893.135(5), 893.138(2), 901.15(2), (3), (7), (8), (9), (10)(a), (11), 905.17(1), 907.041(4)(b), (i), (j), 916.107(3), (4), (5)(c), (6), (8), (9)(b), (11), 921.0014(1), 921.142(2), (7)(e), (g), 922.052(1), 922.07(1), (2), (3), (4), 922.08(1), 922.11(1), 924.051(6)(a), 925.037(3)(a), (6), 940.03, 943.0515(1)(b), (2)(b), 943.054(1)(b), 943.0585(1)(b), 943.059(1)(b), 943.06(2), (3), 943.1395(2), (4), (6)(c), (8)(c), (d), 943.14(1), (8), 944.09(1)(o), 944.275(4), (c), 944.28(1), (2)(b), (c), as amended by s. 6, ch. 89-531, Laws of Florida, 944.28(1), as reenacted by s. 2, ch. 91-280, Laws of Florida, 944.31, 945.091(1), (4), 945.215(1)(f), 945.42(3), (4), (5), (12), (13), 945.43(1), (2)(b), (c), (3), 945.44, 945.45(1), (2), 945.47, 945.48(1), (2), 945.602(1), (2), 946.002(1)(a), (4), 946.006(3)(h), (j), 946.504(5)(b), 947.02(2), (3), 947.03(1), (3), 947.04(1), (2), (5), 947.1405(5), 947.146(1), (2), 947.173(1), (2), 947.18, 948.01(2), 948.03(1)(b), (e), (g), (k), (8)(b), 948.09(3)(a), (d), (4), 951.061, 951.23(8), 951.26(1)(a), 958.11(3)(b), (6), 960.001(1)(d), (e), (i), 960.003(5)(a), (6), 960.13(7), (9)(b), Florida Statutes (1996 Supplement), pursuant to the directive in s. 1, ch. 93-199, Laws of Florida; removing gender-specific references applicable to human beings from volume 4 of the Florida Statutes without substantive changes in legal effect.

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

Section 1. Paragraph (a) of subsection (6) and subsection (7) of section 607.0120, Florida Statutes, are amended to read:

607.0120 Filing requirements.—

(6) The document must be executed:

(a) By the chair ~~chairman~~ or any vice chair ~~chairman~~ of the board of directors of a domestic or foreign corporation, or by its president or by another of its officers;

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

- (a) The corporate seal,
- (b) An attestation by the secretary or an assistant secretary,
- (c) An acknowledgment, verification, or proof.

Section 2. Section 607.0129, Florida Statutes, is amended to read:

607.0129 Penalty for signing false document.—A person who signs a document she or he knows is false in any material respect with intent that the document be delivered to the Department of State for filing is personally liable to any person who to her or his detriment reasonably relied on the document or information contained therein and is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 3. Subsection (1) of section 607.0130, Florida Statutes, is amended to read:

607.0130 Powers of Department of State.—

(1) The Department of State may propound to any corporation subject to the provisions of this act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable it to ascertain whether the corporation has complied with all applicable provisions of this act. Such interrogatories must be answered within 30 days after mailing or within such additional time as fixed by the department. Answers to interrogatories must be full and complete, in writing, and under oath. Interrogatories directed to an individual must be answered by the individual ~~him~~, and interrogatories directed to a corporation must be answered by the president, vice president, secretary, or assistant secretary.

Section 4. Subsection (9) of section 607.01401, Florida Statutes, is amended to read:

607.01401 Definitions.—As used in this act, unless the context otherwise requires, the term:

(9) “Employee” includes an officer but not a director. A director may accept duties that make him or her also an employee.

Section 5. Subsection (16) of section 607.0302, Florida Statutes, is amended to read:

607.0302 General powers.—Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its

corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

(16) To provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any shareholder for the purpose of acquiring at his or her death shares of its stock owned by the shareholder or by the spouse or children of the shareholder; and

Section 6. Subsection (3) of section 607.0501, Florida Statutes, is amended to read:

607.0501 Registered office and registered agent.—

(3) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 607.0502 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

Section 7. Subsection (2) of section 607.0504, Florida Statutes, is amended to read:

607.0504 Service of process, notice, or demand on a corporation.—

(2) Any notice to or demand on a corporation under this act may be made to the chair ~~chairman~~ of the board, the president, any vice president, the secretary, or the treasurer; to the registered agent of the corporation at the registered office of the corporation in this state; or to any other address in this state that is in fact the principal office of the corporation in this state.

Section 8. Subsection (5) of section 607.0620, Florida Statutes, is amended to read:

607.0620 Subscriptions for shares.—

(5) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his or her last post-office address known to the corporation, with first-class postage thereon prepaid. The defaulting subscriber or his or her legal representative shall be entitled to be paid the excess of the sale proceeds over the sum of the amount due and unpaid on the subscription and the reasonable expenses incurred in selling the shares, but in no event shall the defaulting subscriber or his or her legal representative be entitled to be

paid an amount greater than the amount paid by the subscriber on the subscription.

Section 9. Subsection (4) of section 607.0622, Florida Statutes, is amended to read:

607.0622 Liability for shares issued before payment.—

(4) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, receiver, or other fiduciary shall not be personally liable to the corporation as a holder of, or subscriber to, shares of a corporation, but the estate and funds in her or his hands shall be so liable.

Section 10. Paragraph (b) of subsection (2) of section 607.0630, Florida Statutes, is amended to read:

607.0630 Shareholders' preemptive rights.—

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(b) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

Section 11. Subsections (1) and (5) of section 607.0705, Florida Statutes, are amended to read:

607.0705 Notice of meeting.—

(1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. Unless this act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting. Notice shall be given in the manner provided in s. 607.0141, by or at the direction of the president, the secretary, or the officer or persons calling the meeting. If the notice is mailed at least 30 days before the date of the meeting, it may be done by a class of United States mail other than first class. Notwithstanding s. 607.0141, if mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at her or his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

(5) Notwithstanding the foregoing, no notice of a shareholders' meeting need be given to a shareholder if:

(a) An annual report and proxy statements for two consecutive annual meetings of shareholders or

(b) All, and at least two checks in payment of dividends or interest on securities during a 12-month period,

have been sent by first-class United States mail, addressed to the shareholder at her or his address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of a shareholders' meeting to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

Section 12. Subsection (2) of section 607.0707, Florida Statutes, is amended to read:

607.0707 Record date.—

(2) If not otherwise provided by or pursuant to the bylaws, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder delivers his or her demand to the corporation.

Section 13. Subsections (2), (3), and (5) of section 607.0720, Florida Statutes, are amended to read:

607.0720 Shareholders' list for meeting.—

(2) The shareholders' list must be available for inspection by any shareholder for a period of 10 days prior to the meeting or such shorter time as exists between the record date and the meeting and continuing through the meeting at the corporation's principal office, at a place identified in the meeting notice in the city where the meeting will be held, or at the office of the corporation's transfer agent or registrar. A shareholder or the shareholder's his agent or attorney is entitled on written demand to inspect the list (subject to the requirements of s. 607.1602(3)), during regular business hours and at his or her expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or the shareholder's his agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(5) If the requirements of this section have not been substantially complied with or if the corporation refuses to allow a shareholder or the shareholder's his agent or attorney to inspect the shareholders' list before or at the meeting, the meeting shall be adjourned until such requirements are complied with on the demand of any shareholder in person or by proxy who failed to get such access, or, if not adjourned upon such demand and such requirements are not complied with, the circuit court of the county where a corporation's principal office (or, if none in this state, its registered office) is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

Section 14. Subsections (5), (6), and (7) and paragraph (a) of subsection (8) of section 607.0721, Florida Statutes, are amended to read:

607.0721 Voting entitlement of shares.—

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of the corporate shareholder may prescribe or, in the absence of any applicable provision, by such person as the board of directors of the corporate shareholder may designate. In the absence of any such designation or in case of conflicting designation by the corporate shareholder, the ~~chair~~ chairman of the board, the president, any vice president, the secretary, and the treasurer of the corporate shareholder, in that order, shall be presumed to be fully authorized to vote such shares.

(6) Shares held by an administrator, executor, guardian, personal representative, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his or her name or the name of his or her nominee.

(7) Shares held by or under the control of a receiver, a trustee in bankruptcy proceedings, or an assignee for the benefit of creditors may be voted by him or her without the transfer thereof into his or her name.

(8) If a share or shares stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, then acts with respect to voting have the following effect:

(a) If only one votes, in person or by proxy, his or her act binds all;

Section 15. Subsections (2), (4), (7), and (9) of section 607.0722, Florida Statutes, are amended to read:

607.0722 Proxies.—

(2) A shareholder may appoint a proxy to vote or otherwise act for him or her by signing an appointment form, either personally or by his or her attorney in fact. An executed telegram or cablegram appearing to have been transmitted by such person, or a photographic, photostatic, or equivalent reproduction of an appointment form, is a sufficient appointment form.

(4) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee ~~he~~ did not know of its exist-

ence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(9) If an appointment form expressly provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

Section 16. Subsection (2) of section 607.0728, Florida Statutes, is amended to read:

607.0728 Voting for directors; cumulative voting.—

(2) Each shareholder who is entitled to vote at an election of directors has the right to vote the number of shares owned by him or her for as many persons as there are directors to be elected and for whose election the shareholder he has a right to vote. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

Section 17. Subsection (1) of section 607.0730, Florida Statutes, is amended to read:

607.0730 Voting trusts.—

(1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for him or her or for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office. After filing a copy of the list and agreement in the corporation's principal office, such copy shall be open to inspection by any shareholder of the corporation (subject to the requirements of s. 607.1602(3)) or any beneficiary of the trust under the agreement during business hours.

Section 18. Subsection (3) of section 607.0731, Florida Statutes, is amended to read:

607.0731 Shareholders' agreements.—

(3) A transferee of shares in a corporation the shareholders of which have entered into an agreement authorized by subsection (1) shall be bound by such agreement if the transferee ~~he~~ takes shares subject to such agreement with notice thereof. A transferee shall be deemed to have notice of any such agreement or any such renewal if the existence thereof is noted on the face or back of the certificate or certificates representing such shares.

Section 19. Subsection (7) of section 607.07401, Florida Statutes, is amended to read:

607.07401 Shareholders' derivative actions.—

(7) For purposes of this section, “shareholder” includes a beneficial owner whose shares are held in a voting trust or held by a nominee on his or her behalf.

Section 20. Subsection (5) of section 607.0805, Florida Statutes, is amended to read:

607.0805 Terms of directors generally.—

(5) Despite the expiration of a director’s term, the director ~~he~~ continues to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

Section 21. Subsection (1) of section 607.0807, Florida Statutes, is amended to read:

607.0807 Resignation of directors.—

(1) A director may resign at any time by delivering written notice to the board of directors or its chair ~~chairman~~ or to the corporation.

Section 22. Subsections (2) and (3) of section 607.0808, Florida Statutes, are amended to read:

607.0808 Removal of directors by shareholders.—

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director ~~him~~ under cumulative voting is voted against his or her removal. If cumulate voting is not authorized, a director may be removed only if the number of votes cast to remove the director ~~him~~ exceeds the number of votes cast not to remove him or her.

Section 23. Subsection (3) of section 607.0820, Florida Statutes, is amended to read:

607.0820 Meetings.—

(3) Meetings of the board of directors may be called by the chair ~~chairman~~ of the board or by the president unless otherwise provided in the articles of incorporation or the bylaws.

Section 24. Subsection (4) of section 607.0824, Florida Statutes, is amended to read:

607.0824 Quorum and voting.—

(4) A director of a corporation who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless the director:

(a) He Objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting specified business at the meeting; or

(b) He Votes against or abstains from the action taken.

Section 25. Subsection (4) of section 607.0825, Florida Statutes, is amended to read:

607.0825 Committees.—

(4) Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors not a member of the committee in question with his or her responsibility to act in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

Section 26. Section 607.0830, Florida Statutes, is amended to read:

607.0830 General standards for directors.—

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) In discharging his or her duties, a director may consider such factors as the director deems relevant, including the long-term prospects and interests of the corporation and its shareholders, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the

corporation or its subsidiaries operate, and the economy of the state and the nation.

(4) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(5) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Section 27. Subsection (1) of section 607.0831, Florida Statutes, is amended to read:

607.0831 Liability of directors.—

(1) A director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless:

(a) The director breached or failed to perform his or her duties as a director; and

(b) The director's breach of, or failure to perform, those duties constitutes:

1. A violation of the criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against a director in any criminal proceeding for a violation of the criminal law estops that director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

2. A transaction from which the director derived an improper personal benefit, either directly or indirectly;

3. A circumstance under which the liability provisions of s. 607.0834 are applicable;

4. In a proceeding by or in the right of the corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the corporation, or willful misconduct; or

5. In a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 28. Subsection (1) of section 607.0832, Florida Statutes, is amended to read:

607.0832 Director conflicts of interest.—

(1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the shareholders.

Section 29. Subsection (1) of section 607.0834, Florida Statutes, is amended to read:

607.0834 Liability for unlawful distributions.—

(1) A director who votes for or assents to a distribution made in violation of s. 607.06401 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating s. 607.06401 or the articles of incorporation if it is established that the director ~~he~~ did not perform his or her duties in compliance with s. 607.0830. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

Section 30. Subsections (1), (2), (3), (4), (6), (7), and (10), paragraph (g) of subsection (11), and subsection (12) of section 607.0850, Florida Statutes, are amended to read:

607.0850 Indemnification of officers, directors, employees, and agents.—

(1) A corporation shall have power to indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to

believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(2) A corporation shall have power to indemnify any person, who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.

(4) Any indemnification under subsection (1) or subsection (2), unless pursuant to a determination by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsection (1) or subsection (2). Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;

(b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the board of directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

(c) By independent legal counsel:

1. Selected by the board of directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or

2. If a quorum of the directors cannot be obtained for paragraph (a) and the committee cannot be designated under paragraph (b), selected by majority vote of the full board of directors (in which directors who are parties may participate); or

(d) By the shareholders by a majority vote of a quorum consisting of shareholders who were not parties to such proceeding or, if no such quorum is obtainable, by a majority vote of shareholders who were not parties to such proceeding.

(6) Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or she is ultimately found not to be entitled to indemnification by the corporation pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the board of directors deems appropriate.

(7) The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and a corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

(a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful;

(b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit;

(c) In the case of a director, a circumstance under which the liability provisions of s. 607.0834 are applicable; or

(d) Willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

(10) For purposes of this section, the term "corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer, employee, or agent of a constituent corporation, or is or was serving at the request of a constituent

corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, is in the same position under this section with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

(11) For purposes of this section:

(g) The term “not opposed to the best interest of the corporation” describes the actions of a person who acts in good faith and in a manner he or she reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

(12) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person him and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify the person him against such liability under the provisions of this section.

Section 31. Subsections (1), (2), (3), and (5) of section 607.1302, Florida Statutes, are amended to read:

607.1302 Right of shareholders to dissent.—

(1) Any shareholder of a corporation has the right to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party:

1. If the shareholder is entitled to vote on the merger, or
2. If the corporation is a subsidiary that is merged with its parent under s. 607.1104, and the shareholders would have been entitled to vote on action taken, except for the applicability of s. 607.1104;

(b) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation, other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange pursuant to s. 607.1202, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(c) As provided in s. 607.0902(11), the approval of a control-share acquisition;

(d) Consummation of a plan of share exchange to which the corporation is a party as the corporation the shares of which will be acquired, if the shareholder is entitled to vote on the plan;

(e) Any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his or her shares;

2. Altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or reclassification of any of his or her shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's ~~his~~ voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's ~~his~~ redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's ~~his~~ preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's ~~his~~ preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's ~~his~~ preferred shares upon voluntary or involuntary liquidation; or

(f) Any corporate action taken, to the extent the articles of incorporation provide that a voting or nonvoting shareholder is entitled to dissent and obtain payment for his or her shares.

(2) A shareholder dissenting from any amendment specified in paragraph (1)(e) has the right to dissent only as to those of his or her shares which are adversely affected by the amendment.

(3) A shareholder may dissent as to less than all the shares registered in his or her name. In that event, the shareholder's ~~his~~ rights shall be determined as if the shares as to which he or she has dissented and his or her other shares were registered in the names of different shareholders.

(5) A shareholder entitled to dissent and obtain payment for his or her shares under this section may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

Section 32. Subsections (1), (2), (3), (4), (6), and (7) of section 607.1320, Florida Statutes, are amended to read:

607.1320 Procedure for exercise of dissenters' rights.—

(1)(a) If a proposed corporate action creating dissenters' rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, the meeting notice shall state that shareholders are or may be entitled to assert dissenters' rights and be accompanied by a copy of ss. 607.1301, 607.1302, and 607.1320. A shareholder who wishes to assert dissenters' rights shall:

1. Deliver to the corporation before the vote is taken written notice of the shareholder's ~~his~~ intent to demand payment for his or her shares if the proposed action is effectuated, and

2. Not vote his or her shares in favor of the proposed action. A proxy or vote against the proposed action does not constitute such a notice of intent to demand payment.

(b) If proposed corporate action creating dissenters' rights under s. 607.1302 is effectuated by written consent without a meeting, the corporation shall deliver a copy of ss. 607.1301, 607.1302, and 607.1320 to each shareholder simultaneously with any request for the shareholder's ~~his~~ written consent or, if such a request is not made, within 10 days after the date the corporation received written consents without a meeting from the requisite number of shareholders necessary to authorize the action.

(2) Within 10 days after the shareholders' authorization date, the corporation shall give written notice of such authorization or consent or adoption of the plan of merger, as the case may be, to each shareholder who filed a notice of intent to demand payment for his or her shares pursuant to paragraph (1)(a) or, in the case of action authorized by written consent, to each shareholder, excepting any who voted for, or consented in writing to, the proposed action.

(3) Within 20 days after the giving of notice to him or her, any shareholder who elects to dissent shall file with the corporation a notice of such election, stating the shareholder's ~~his~~ name and address, the number, classes, and series of shares as to which he or she dissents, and a demand for payment of the fair value of his or her shares. Any shareholder failing to file such election to dissent within the period set forth shall be bound by the terms of the proposed corporate action. Any shareholder filing an election to dissent shall deposit his or her certificates for certificated shares with the corporation simultaneously with the filing of the election to dissent. The corporation may restrict the transfer of uncertificated shares from the date the shareholder's election to dissent is filed with the corporation.

(4) Upon filing a notice of election to dissent, the shareholder shall thereafter be entitled only to payment as provided in this section and shall not be entitled to vote or to exercise any other rights of a shareholder. A notice of election may be withdrawn in writing by the shareholder at any time before an offer is made by the corporation, as provided in subsection (5), to pay for his or her shares. After such offer, no such notice of election may be withdrawn unless the corporation consents thereto. However, the right of such shareholder to be paid the fair value of his or her shares shall cease, and the shareholder ~~he~~ shall be reinstated to have all his or her rights as

a shareholder as of the filing of his or her notice of election, including any intervening preemptive rights and the right to payment of any intervening dividend or other distribution or, if any such rights have expired or any such dividend or distribution other than in cash has been completed, in lieu thereof, at the election of the corporation, the fair value thereof in cash as determined by the board as of the time of such expiration or completion, but without prejudice otherwise to any corporate proceedings that may have been taken in the interim, if:

- (a) Such demand is withdrawn as provided in this section;
 - (b) The proposed corporate action is abandoned or rescinded or the shareholders revoke the authority to effect such action;
 - (c) No demand or petition for the determination of fair value by a court has been made or filed within the time provided in this section; or
 - (d) A court of competent jurisdiction determines that such shareholder is not entitled to the relief provided by this section.
- (6) If within 30 days after the making of such offer any shareholder accepts the same, payment for his or her shares shall be made within 90 days after the making of such offer or the consummation of the proposed action, whichever is later. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares.
- (7) If the corporation fails to make such offer within the period specified therefor in subsection (5) or if it makes the offer and any dissenting shareholder or shareholders fail to accept the same within the period of 30 days thereafter, then the corporation, within 30 days after receipt of written demand from any dissenting shareholder given within 60 days after the date on which such corporate action was effected, shall, or at its election at any time within such period of 60 days may, file an action in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located requesting that the fair value of such shares be determined. The court shall also determine whether each dissenting shareholder, as to whom the corporation requests the court to make such determination, is entitled to receive payment for his or her shares. If the corporation fails to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders (whether or not residents of this state), other than shareholders who have agreed with the corporation as to the value of their shares, shall be made parties to the proceeding as an action against their shares. The corporation shall serve a copy of the initial pleading in such proceeding upon each dissenting shareholder who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each nonresident dissenting shareholder either by registered or certified mail and publication or in such other manner as is permitted by law. The jurisdiction of the court is plenary and exclusive. All shareholders who are proper parties to the proceeding are entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power

and authority as is specified in the order of their appointment or an amendment thereof. The corporation shall pay each dissenting shareholder the amount found to be due him or her within 10 days after final determination of the proceedings. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

Section 33. Subsection (5) of section 607.1406, Florida Statutes, is amended to read:

607.1406 Claims against dissolved corporation.—

(5) A dissolved corporation or successor entity shall offer any claimant whose claim is contingent, conditional, or unmaturing such security as the corporation or such entity determines is sufficient to provide compensation to the claimant if the claim matures. The dissolved corporation or successor entity shall deliver such offer to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. If the claimant offered such security does not deliver in writing to the dissolved corporation or successor entity a notice rejecting the offer within 120 days after receipt of such offer for security, the claimant is deemed to have accepted such security as the sole source from which to satisfy his or her claim against the corporation.

Section 34. Subsection (4) of section 607.1421, Florida Statutes, is amended to read:

607.1421 Procedure for and effect of administrative dissolution.—

(4) A director, officer, or agent of a corporation dissolved pursuant to this section, purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and liabilities of the corporation arising from such action and incurred subsequent to the corporation's administrative dissolution only if he or she has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the corporation's board of directors or shareholders subsequent to the reinstatement of the corporation under ss. 607.1401-607.14401.

Section 35. Paragraph (a) of subsection (3) and subsection (5) of section 607.1432, Florida Statutes, are amended to read:

607.1432 Receivership or custodianship.—

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

1. May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

2. May sue and defend in his or her own name as receiver of the corporation in all courts of this state.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

Section 36. Subsection (2) of section 607.1436, Florida Statutes, is amended to read:

607.1436 Election to purchase instead of dissolution.—

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under s. 607.1430(2) or (3) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under s. 607.1430(2) or (3) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

Section 37. Section 607.14401, Florida Statutes, is amended to read:

607.14401 Deposit with Department of Banking and Finance.—Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be deposited, within 6 months from the date fixed for the payment of the final liquidating distribution, with the Department of Banking and Finance, where such assets shall be held as abandoned property. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount or assets deposited, the Department of Banking and Finance shall pay the creditor, claimant, or shareholder ~~him~~ or his or her representative that amount or those assets.

Section 38. Subsection (2) of section 607.1507, Florida Statutes, is amended to read:

607.1507 Registered office and registered agent of foreign corporation.—

(2) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 607.1508 on whom process may

be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

Section 39. Subsection (2) of section 607.1508, Florida Statutes, is amended to read:

607.1508 Change of registered office and registered agent of foreign corporation.—

(2) If a registered agent changes the street address of her or his business office, she or he may change the street address of the registered office of any foreign corporation for which she or he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Department of State for filing a statement of change that complies with the requirements of paragraphs (1)(a) through (f) and recites that the corporation has been notified of the change.

Section 40. Subsection (1) of section 607.1509, Florida Statutes, is amended to read:

607.1509 Resignation of registered agent of foreign corporation.—

(1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Department of State for filing a statement of resignation and mailing a copy of such statement to the corporation at the corporation's principal office address shown in its most recent annual report or, if none, shown in its application for a certificate of authority or other most recently filed document. The statement of resignation must state that a copy of such statement has been mailed to the corporation at the address so stated. The statement of resignation may include a statement that the registered office is also discontinued.

Section 41. Subsection (5) of section 607.1530, Florida Statutes, is amended to read:

607.1530 Grounds for revocation of authority to transact business.—The Department of State may commence a proceeding under s. 607.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document she or he knew was false in any material respect with intent that the document be delivered to the Department of State for filing.

Section 42. Subsections (1), (2), (3), (4), (6), and (8) of section 607.1602, Florida Statutes, are amended to read:

607.1602 Inspection of records by shareholders.—

(1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in s. 607.1601(5) if the shareholder ~~he~~ gives the corporation written notice of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation written notice of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1);

(b) Accounting records of the corporation;

(c) The record of shareholders; and

(d) Any other books and records.

(3) A shareholder may inspect and copy the records described in subsection (2) only if:

(a) The shareholder's ~~His~~ demand is made in good faith and for a proper purpose;

(b) The shareholder ~~He~~ describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(c) The records are directly connected with the shareholder's ~~his~~ purpose.

(4) A shareholder of a Florida corporation, or a shareholder of a foreign corporation authorized to transact business in this state who resides in this state, is entitled to inspect and copy, during regular business hours at a reasonable location in this state specified by the corporation, a copy of the records of the corporation described in s. 607.1601(5)(b) and (f), if the shareholder ~~he~~ gives the corporation written notice of his or her demand at least 15 business days before the date on which he or she wishes to inspect and copy.

(6) A corporation may deny any demand for inspection made pursuant to subsection (2) if the demand was made for an improper purpose, or if the demanding shareholder has within 2 years preceding his or her demand sold or offered for sale any list of shareholders of the corporation or any other corporation, has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the records of the corporation or any other corporation.

(8) For purposes of this section, the term “shareholder” includes a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

Section 43. Subsections (1) and (4) of section 607.1603, Florida Statutes, are amended to read:

607.1603 Scope of inspection right.—

(1) A shareholder’s agent or attorney has the same inspection and copying rights as the shareholder he or she represents.

(4) If requested by a shareholder, the corporation shall comply with a shareholder’s demand to inspect the records of shareholders under s. 607.1602(2)(c) by providing him or her with a list of its shareholders of the nature described in s. 607.1601(3). Such a list must be compiled as of the last record date for which it has been compiled or as of a subsequent date if specified by the shareholder.

Section 44. Subsection (3) of section 607.1604, Florida Statutes, is amended to read:

607.1604 Court-ordered inspection.—

(3) If the court orders inspection or copying of the records demanded, it shall also order the corporation to pay the shareholder’s costs, including reasonable attorney’s fees, reasonably incurred to obtain the order and enforce its rights under this section unless the corporation, or the officer, director, or agent, as the case may be, proves that it or she or he refused inspection in good faith because it or she or he had a reasonable basis for doubt about the right of the shareholder to inspect or copy the records demanded.

Section 45. Subsections (2) and (3) of section 607.1620, Florida Statutes, are amended to read:

607.1620 Financial statements for shareholders.—

(2) If the annual financial statements are reported upon by a public accountant, his or her report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation’s accounting records:

(a) Stating his or her reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(3) A corporation shall mail the annual financial statements to each shareholder within 120 days after the close of each fiscal year or within such

additional time thereafter as is reasonably necessary to enable the corporation to prepare its financial statements if, for reasons beyond the corporation's control, it is unable to prepare its financial statements within the prescribed period. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him or her the latest annual financial statements.

Section 46. Section 607.1904, Florida Statutes, is amended to read:

607.1904 Estoppel.—No body of persons acting as a corporation shall be permitted to set up the lack of legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with the corporation or sued for an injury to its property or a wrong done to its interests be permitted to set up the lack of such legal organization in his or her defense.

Section 47. Subsection (10) of section 608.404, Florida Statutes, is amended to read:

608.404 Powers.—Unless its articles of organization or regulations provide otherwise, each limited liability company organized and existing under this chapter shall have the same powers as an individual to do all things necessary to carry out its business and affairs, including, without limitation, the power to:

(10) Indemnify a member or manager or any other person as provided in this chapter against expenses actually and reasonably incurred by him or her or it in connection with the defense of an action, suit, or proceeding, whether civil or criminal, in which he or she or it is made a party.

Section 48. Paragraph (d) of subsection (1) of section 608.407, Florida Statutes, is amended to read:

608.407 Articles of organization.—

(1) In order to form a limited liability company, articles of organization of a limited liability company shall be executed and filed with the Department of State. The articles shall set forth:

(d) The name and street address of its initial registered agent in the state together with a statement in writing in such form and manner as shall be prescribed by the Department of State accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

Section 49. Subsections (2) and (3) of section 608.416, Florida Statutes, are amended to read:

608.416 Change of registered office or registered agent.—

(2) Any registered agent may resign his or her agency appointment by signing and delivering for filing with the Department of State a statement of resignation and mailing a copy of such statement to the limited liability

company at its principal office address shown in its most recently filed document. The agency is terminated and the registered office discontinued, if so provided, on the 31st day after the date on which the statement was filed.

(3) A registered agent may change the address of the registered office of any limited liability company for which his or hers is the registered agency by notifying the limited liability company in writing of the change, signing, either manually or in facsimile, and delivering to the Department of State for filing a statement that complies with the requirements of paragraphs (1)(a)-(d), and reciting that the limited liability company has been notified of the change.

Section 50. Subsections (3) and (5) of section 608.4211, Florida Statutes, are amended to read:

608.4211 Contributions to capital and liability for contribution.—

(3) Except as provided in the regulations, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he or she is unable to perform because of his or her death or disability or any other reason. If a member does not make the required contribution of property or services, he or she is obligated, at the option of the limited liability company, to contribute cash equal to that portion of the value, as stated in the records of the limited liability company required to be kept pursuant to this chapter, of the stated contribution that has not been made.

(5) The regulations of a limited liability company may provide that the interest of any member who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalties or consequences may take the form of reducing the defaulting member's proportionate interest in the limited liability company, subordinating his or her interest in the limited liability company to that of the nondefaulting members, a forced sale of the defaulting member's ~~his~~ limited liability company interest, the forfeiture of the defaulting member's ~~his~~ limited liability company interest, the lending by other members of the amount necessary to meet his or her commitment, a fixing of the value of the defaulting member's ~~his~~ limited liability company interest by appraisal or by formula and redemption or sale of the defaulting member's ~~his~~ limited liability company interest at such value, or other penalties or consequences.

Section 51. Section 608.4225, Florida Statutes, is amended to read:

608.4225 General standards for managers and managing members.—

(1) A manager or managing member shall discharge his or her duties as a manager or managing member, including his or her duties as a member of a committee:

(a) In good faith.

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In a manner he or she reasonably believes to be in the best interests of the limited liability company.

(2) In discharging his or her duties, a manager or managing member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more members or employees of the limited liability company whom the manager or managing member reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the manager or managing member reasonably believes are within the persons' professional or expert competence; or

(c) A committee of managers or managing members of which he or she is not a member if the manager or managing member reasonably believes the committee merits confidence.

(3) In discharging his or her duties, a manager or managing member may consider such factors as he or she deems relevant, including the long-term prospects and interests of the limited liability company and its members, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the limited liability company, the communities and society in which the limited liability company operates, and the economy of the state and the nation.

(4) A manager or managing member is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(5) A manager or managing member is not liable for any action taken as a manager or managing member, or any failure to take any action, if he or she performed the duties of his or her position in compliance with this section.

Section 52. Subsection (3) of section 608.426, Florida Statutes, is amended to read:

608.426 Distribution of property; impairment of capital.—

(3) A manager or managing member who votes for or assents to a distribution made in violation of this section, the articles of incorporation, or the regulations, is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without such violation if it is established that he or she did not perform his or her duties in compliance with s. 608.4225. In any proceeding commenced under this section, a manager or managing member has all of the defenses ordinarily available to a manager or managing member.

Section 53. Subsections (1), (2), and (4) of section 608.427, Florida Statutes, are amended to read:

608.427 Withdrawal or reduction of members' contributions to capital.—

(1) A member may withdraw from a limited liability company at the time or upon the happening of an event specified in the articles of organization or the regulations. If the articles of organization and regulations do not specify the time or the events upon the happening of which a member may withdraw or a definite time for the dissolution and the winding up of the limited liability company, a member may withdraw upon not less than 6 months' prior written notice to each nonwithdrawing member at his or her address as set forth in the records that are required to be kept under s. 608.4101.

(2) Except as provided in subsection (3), upon withdrawal, a withdrawing member is entitled to receive any distribution to which he or she is entitled under the articles of organization or regulations, and, if not otherwise provided in the articles of organization and regulations, he or she is entitled to receive, within a reasonable time after withdrawal, the balance of his or her capital account.

(4) In the absence of a statement in the articles of organization or the regulations to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of his or her or its contribution, has only the right to demand and receive cash in return for his or her or its contribution to capital.

Section 54. Section 608.428, Florida Statutes, is amended to read:

608.428 Liability upon return of contribution.—

(1)(a) If a member receives the return of any part of his or her contribution without violation of the articles of organization, the regulations, or this chapter, he or she is liable to the limited liability company for a period of 1 year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited liability company's liabilities to creditors who extended credit to the limited liability company during the period the contribution was held by the limited liability company.

(b) If a member receives the return of any part of his or her contribution in violation of the articles of organization, the regulations, or this chapter, he or she is liable to the limited liability company for a period of 6 years thereafter for the amount of the contribution wrongfully returned.

(2) A member receives a return of his or her contribution to the extent that a distribution to the member ~~him~~ reduces his or her share of the fair value of the net assets of the limited liability company below the value, as set forth in the records that the limited liability company is required to keep pursuant to s. 608.4101, of the member's ~~his~~ contribution which has not been distributed to him or her.

Section 55. Paragraph (d) of subsection (1) of section 608.432, Florida Statutes, is amended to read:

608.432 Transferability of member's interest.—

(1) Unless otherwise provided in the articles of organization or the regulations:

(d) A member ceases to be a member and ceases to have the power to exercise any rights or powers of a member upon assignment of his or her entire interest in the limited liability company.

Section 56. Subsections (2), (3), and (4) of section 608.433, Florida Statutes, are amended to read:

608.433 Right of assignee to become member.—

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, the regulations, and this chapter. An assignee who becomes a member also is liable for the obligations of his or her assignor to make and return contributions as provided in ss. 608.4211 and 608.428. However, the assignee is not obligated for liabilities which are unknown to the assignee at the time he or she became a member and which could not be ascertained from the regulations.

(3) If an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability to the limited liability company under ss. 608.4211, 608.426, and 608.4362.

(4) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to his or her limited liability company interest.

Section 57. Section 608.434, Florida Statutes, is amended to read:

608.434 Power of estate of deceased or incompetent member.—If a member who is an individual dies or if a court of competent jurisdiction adjudges a member who is an individual to be incompetent to manage his or her person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all the member's rights for the purpose of settling his or her estate or administering his or her property, including any power the member had to give an assignee the right to become a member. If a member is a corporation, limited liability company, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

Section 58. Subsection (1) of section 608.4362, Florida Statutes, is amended to read:

608.4362 Liability of managers and managing members.—

(1) A manager or a managing member shall not be personally liable for monetary damages to the limited liability company or any other person for any statement, vote, decision, or failure to act, regarding management or policy decisions, by a manager or a managing member, unless:

(a) The manager or managing member breached or failed to perform his or her duties as a manager or managing member; and

(b) The manager or managing member's breach of, or failure to perform, those duties constitutes any of the following:

1. A violation of the criminal law, unless the manager or managing member had a reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against a manager or managing member in any criminal proceeding for a violation of the criminal law estops that manager or managing member from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the manager or managing member from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful.

2. A transaction from which the manager or managing member derived an improper personal benefit, either directly or indirectly.

3. A distribution in violation of s. 608.426.

4. In a proceeding by or in the right of the limited liability company to procure a judgment in its favor or by or in the right of a member, conscious disregard of the best interest of the limited liability company, or willful misconduct.

5. In a proceeding by or in the right of someone other than the limited liability company or a member, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 59. Subsections (1), (2), (3), (4), (6), and (7), paragraph (g) of subsection (10), and subsection (11) of section 608.4363, Florida Statutes, are amended to read:

608.4363 Indemnification of managing members, managers, officers, employees, and agents.—

(1) A limited liability company shall have power to indemnify any person who was or is a party to any proceeding by reason of the fact that he or she is or was a manager or a managing member of the limited liability company or is or was serving at the request of the limited liability company as a manager, managing member, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests

of the limited liability company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the limited liability company, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(2) A limited liability company shall have power to indemnify any person, who was or is a party to any proceeding by or in the right of the limited liability company to procure a judgment in its favor by reason of the fact that he or she is or was a manager, managing member, officer, employee, or agent of the limited liability company or is or was serving at the request of the limited liability company as a manager, managing member, director, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of a majority of the members, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the limited liability company, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that any manager, managing member, officer, employee, or agent of a limited liability company has been successful on the merits or otherwise in defense of any proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.

(4) Any indemnification under subsection (1) or subsection (2), unless pursuant to a determination by a court, shall be made by the limited liability company only as authorized in the specific case upon a determination that indemnification of the manager, managing member, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsection (1) or subsection (2). Such determination shall be made in one of the following manners:

(a) By the members by a majority vote.

(b) By majority vote of a committee duly designated by the members, in which members who are parties may participate, consisting solely of two or more members not at the time parties to the proceeding.

(c) By independent legal counsel selected by the members prescribed in paragraph (a) or the committee prescribed in paragraph (b).

(6) Expenses incurred by a manager, managing member, officer, or member, in defending a civil or criminal proceeding may be paid by the limited liability company in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such manager, managing member, officer, or member, to repay such amount if he or she is ultimately found not to be entitled to indemnification by the limited liability company pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the members or managers deem appropriate.

(7) The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and a limited liability company may make any other expenditure for further indemnification or advancement of expenses of any of its managing members, managers, officers, employees, or agents, under the articles of organization or the regulations, vote of members, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any manager, managing member, officer, employee, or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute any of the following:

(a) A violation of the criminal law, unless the managing member, manager, officer, employee, or agent had no reasonable cause to believe his or her conduct was unlawful.

(b) A transaction from which the managing member, manager, officer, employee, or agent derived an improper personal benefit.

(c) In the case of a manager or managing member, a circumstance under which the liability provisions of s. 608.426 are applicable.

(d) Willful misconduct or a conscious disregard for the best interests of the limited liability company in a proceeding by or in the right of the limited liability company to procure a judgment in its favor or in a proceeding by or in the right of a member.

(10) For the purposes of this section:

(g) The term “not opposed to the best interest of the limited liability company” describes the actions of a person who acts in good faith and in a manner he or she reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

(11) A limited liability company shall have power to purchase and maintain insurance on behalf of any person who is or was a managing member, manager, officer, employee, or agent of the limited liability company or is or was serving at the request of the limited liability company as a manager, managing member, director, officer, employee, or agent of another limited

liability company, corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person ~~him~~ and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the limited liability company would have the power to indemnify the person ~~him~~ against such liability under the provisions of this section.

Section 60. Subsection (5) of section 608.4421, Florida Statutes, is amended to read:

608.4421 Claims against dissolved limited liability company.—

(5) A dissolved limited liability company shall offer any claimant whose claim is contingent, conditional, or unmaturing such security as the limited liability company determines is sufficient to provide compensation to the claimant if the claim matures. The dissolved limited liability company shall deliver such offer to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. If the claimant offered such security does not deliver in writing to the dissolved limited liability company a notice rejecting the offer within 120 days after receipt of such offer for security, the claimant is deemed to have accepted such security as the sole source from which to satisfy his or her claim against the limited liability company.

Section 61. Subsection (4) of section 608.4481, Florida Statutes, is amended to read:

608.4481 Procedure for and effect of administrative dissolution.—

(4) A manager or member of a limited liability company dissolved pursuant to this section, purporting to act on behalf of the limited liability company, is personally liable for the debts, obligations, and liabilities of the limited liability company arising from such action and incurred subsequent to the limited liability company's administrative dissolution only if he or she has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the limited liability company's members subsequent to the reinstatement of the limited liability company under s. 608.4482.

Section 62. Paragraph (a) of subsection (3) and subsection (5) of section 608.4492, Florida Statutes, are amended to read:

608.4492 Receivership or custodianship.—

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

1. May dispose of all or any part of the assets of the limited liability company wherever located, at a public or private sale, if authorized by the court.

2. May sue and defend in his or her own name as receiver of the limited liability company in all courts of this state.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the limited liability company or proceeds from the sale of assets.

Section 63. Section 608.4494, Florida Statutes, is amended to read:

608.4494 Deposit with Department of Banking and Finance.—Assets of a dissolved limited liability company that should be transferred to a creditor, claimant, or member of the limited liability company who cannot be found or who is not competent to receive them shall be deposited, within 6 months from the date fixed for the payment of the final liquidating distribution, with the Department of Banking and Finance, where such assets shall be held as abandoned property. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount or assets deposited, the Department of Banking and Finance shall pay him or her or his or her representative that amount or those assets.

Section 64. Paragraph (b) of subsection (1) of section 608.463, Florida Statutes, is amended to read:

608.463 Service of process.—

(1) Process against a limited liability company may be served:

(b) Upon the registered agent at his or her business address.

Section 65. Subsection (2) of section 608.508, Florida Statutes, is amended to read:

608.508 Change of registered office and registered agent of foreign limited liability company.—

(2) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign limited liability company for which he or she is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Department of State for filing a statement of change that complies with the requirements of paragraphs (1)(a)-(f) and recites that the limited liability company has been notified of the change.

Section 66. Subsection (1) of section 608.509, Florida Statutes, is amended to read:

608.509 Resignation of registered agent or foreign limited liability company.—

(1) The registered agent of a foreign limited liability company may resign his or her agency appointment by signing and delivering to the Department of State for filing the original statement of resignation and mailing a copy

of such statement to the limited liability company at the limited liability company's principal office address shown in its most recent annual report or, if none, shown in its certificate of authority or most recently filed document. This statement of resignation shall state that a copy of such statement has been mailed to the limited liability company at the address so stated. The statement of resignation may include a statement that the registered office is also discontinued.

Section 67. Subsection (6) of section 608.512, Florida Statutes, is amended to read:

608.512 Grounds for revocation of authority to transact business.—The Department of State may commence a proceeding under s. 608.513 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(6) A member, manager, or agent of the foreign limited liability company signed a document he or she knew was false in any material respect with intent that the document be delivered to the Department of State for filing.

Section 68. Section 609.02, Florida Statutes, is amended to read:

609.02 Filing a declaration of trust.—Every such organization organized for the purpose of transacting business in this state, or organized in this state for the purpose of transacting business elsewhere, which intends to sell or offer for sale any units, shares, contracts, notes, bonds, mortgages, oil or mineral leases or other security of such association shall, prior to transacting any such business, file with the Department of State a true and correct copy of the declaration of trust under which the association proposes to conduct its business, which copy shall be sworn to, as being a true and correct copy, by the ~~chair~~ chairman of the board of trustees named in such declaration of trust. When such copy shall have been filed with the Department of State it shall constitute public notice as to the purposes and manner of the business to be engaged in by such association. The Department of State, prior to the issuance of the certificate by it, shall collect from the said association a filing fee of \$350, which fee shall be paid by it into the general fund of the state.

Section 69. Subsection (8) of section 609.08, Florida Statutes, is amended to read:

609.08 Merger of association into wholly owned subsidiary corporation; dissenters' rights of appraisal.—

(8) Upon such approval pursuant to subsection (6), articles of merger shall be executed by the association by the ~~chair~~ chairman of the board of trustees and acknowledged by him or her in such capacity, and shall set forth:

(a) The name of the association and the name of the corporation, designating the corporation as the surviving corporation.

(b) The plan of merger.

(c) The dates of adoption of the plan of merger by the shareholders of the association and by the board of directors of the surviving corporation.

Section 70. Subsection (2) of section 610.021, Florida Statutes, is amended to read:

610.021 Definitions.—In this act, unless the context otherwise requires:

(2) “Claim of beneficial interest” includes a claim of any interest by a decedent’s legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his or her behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

Section 71. Subsection (1) of section 610.041, Florida Statutes, is amended to read:

610.041 Assignment by a fiduciary.—Except as otherwise provided in this act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) May assume without inquiry that the assignment, even though to the fiduciary himself or herself or to the fiduciary’s his nominee, is within his or her authority and capacity and is not in breach of his or her fiduciary duties;

Section 72. Subsection (2) of section 610.061, Florida Statutes, is amended to read:

610.061 Adverse claims.—

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him or her. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

Section 73. Subsection (1) of section 610.081, Florida Statutes, is amended to read:

610.081 Nonliability of third persons.—

(1) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he or she acted with actual knowledge that the proceeds of the transaction were being or were to

be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

Section 74. Section 616.121, Florida Statutes, is amended to read:

616.121 Making false application.—Any person who makes or causes to be made any false statement in an application for a permit to hold a public fair or exposition or in an application for distribution of the amount paid for license taxes under the provisions of this chapter, with fraudulent intent of obtaining that permit or amount, and by that false statement obtains that permit or any part of that amount for himself or herself or for any firm or corporation in which that person has a financial interest, or for whom that person is acting, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 75. Paragraph (a) of subsection (2) of section 616.21, Florida Statutes, is amended to read:

616.21 Agricultural and livestock exhibit buildings; conditions for expenditures; Agricultural and Livestock Fair Council.—

(2)(a) There is created in the department the Agricultural and Livestock Fair Council, which shall be composed of five members, one of whom shall be appointed chair annually by the commissioner, as follows: the administrator of the Agriculture Section in the Division of Applied Technology and Adult Education of the Department of Education; a representative of the department designated by the Commissioner of Agriculture; the Dean for Extension, Institute of Food and Agricultural Sciences of the University of Florida; the president of the Florida Federation of Fairs and Livestock Shows; and the president of the Florida Farm Bureau Federation or his or her representative. A representative of the department shall serve as secretary to the council and shall keep a complete record of all its proceedings, which record shall show the names of the members present at each meeting and any action taken by the council.

Section 76. Paragraph (a) of subsection (6) and subsection (7) of section 617.01201, Florida Statutes, are amended to read:

617.01201 Filing requirements.—

(6) The document must be executed:

(a) By the ~~chair chairman~~ or any vice ~~chair chairman~~ of the board of directors of a domestic or foreign corporation, or by its president or by another of its officers;

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(a) The corporate seal,

(b) An attestation by the secretary or an assistant secretary,

(c) An acknowledgment, verification, or proof.

Section 77. Section 617.0129, Florida Statutes, is amended to read:

617.0129 Penalty for signing false document.—A person who signs a document he or she knows is false in any material respect with intent that the document be delivered to the Department of State for filing is personally liable to any person who to his or her detriment reasonably relied on the document or information contained therein and is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 78. Subsection (1) of section 617.01301, Florida Statutes, is amended to read:

617.01301 Powers of Department of State.—

(1) The Department of State may propound to any corporation subject to the provisions of this act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable it to ascertain whether the corporation has complied with all applicable filing provisions of this act. Such interrogatories must be answered within 30 days after mailing or within such additional time as fixed by the department. Answers to interrogatories must be full and complete, in writing, and under oath. Interrogatories directed to an individual must be answered by him or her, and interrogatories directed to a corporation must be answered by the president, vice president, secretary, or assistant secretary.

Section 79. Subsection (3) of section 617.0501, Florida Statutes, is amended to read:

617.0501 Registered office and registered agent.—

(3) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 617.0502 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

Section 80. Subsection (2) of section 617.0504, Florida Statutes, is amended to read:

617.0504 Service of process, notice, or demand on a corporation.—

(2) Any notice to or demand on a corporation made pursuant to this act may be made to the chair ~~chairman~~ of the board, the president, any vice president, the secretary, the treasurer, the registered agent of the corporation at the registered office of the corporation in this state, or any address in this state that is in fact the principal office of the corporation in this state.

Section 81. Subsection (3) of section 617.0701, Florida Statutes, is amended to read:

617.0701 Meetings of members, generally; failure to hold annual meeting; special meeting; consent to corporate actions without meetings; waiver of notice of meetings.—

(3) Special meetings of the members may be called by the president, the ~~chair~~ chairman of the board of directors, the board of directors, or such other officers or persons as are provided for in the articles of incorporation or the bylaws.

Section 82. Subsections (2), (3), and (4) of section 617.0721, Florida Statutes, are amended to read:

617.0721 Voting by members.—

(2) A member who is entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his or her duly authorized attorney in fact. An appointment of a proxy is not valid after 11 months following the date of its execution unless otherwise provided in the proxy. If directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(3) If any corporation, whether for profit or not for profit, is a member of a corporation organized under this act, the ~~chair~~ chairman of the board, president, any vice president, the secretary, or the treasurer of the member corporation, and any such officer or cashier or trust officer of a banking or trust corporation holding such membership, and any like officer of a foreign corporation whether for profit or not for profit, holding membership in a domestic corporation, shall be deemed by the corporation in which membership is held to have the authority to vote on behalf of the member corporation and to execute proxies and written waivers and consents in relation thereto, unless, before a vote is taken or a waiver or consent is acted upon, it is made to appear by a certified copy of the bylaws or resolution of the board of directors or executive committee of the member corporation that such authority does not exist or is vested in some other officer or person. In the absence of such certification, a person executing any such proxies, waivers, or consents or presenting himself or herself at a meeting as one of such officers of a corporate member shall be, for the purposes of this section, conclusively deemed to be duly elected, qualified, and acting as such officer and to be fully authorized. In the case of conflicting representation, the corporate member shall be deemed to be represented by its senior officer, in the order first stated in this subsection.

(4) The articles of incorporation or the bylaws may provide that, in all elections for directors, every member entitled to vote has the right to cumulate his or her votes and to give one candidate a number of votes equal to the number of votes he or she could give if one director were being elected multiplied by the number of directors to be elected or to distribute such votes on the same principles among any number of such candidates. A corporation may not have cumulative voting unless such voting is expressly authorized in the articles of incorporation.

Section 83. Section 617.0806, Florida Statutes, is amended to read:

617.0806 Staggered terms for directors.—Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term to which he or she is elected or appointed and until his or her successor has been elected or appointed and qualified or until his or her earlier resignation, removal from office, or death.

Section 84. Subsection (1) of section 617.0807, Florida Statutes, is amended to read:

617.0807 Resignation of directors.—

(1) A director may resign at any time by delivering written notice to the board of directors or its chair ~~chairman~~ or to the corporation.

Section 85. Subsections (7) and (8) of section 617.0808, Florida Statutes, are amended to read:

617.0808 Removal of directors.—A director may be removed from office pursuant to procedures provided in the articles of incorporation or the by-laws, which shall provide the following, and if they do not do so, shall be deemed to include the following:

(7) Any director removed from office shall turn over to the board of directors within 72 hours any and all records of the corporation in his or her possession.

(8) If a director who is removed shall not relinquish his or her office or turn over records as required under this section, the circuit court in the county where the corporation's principal office is located may summarily order the director to relinquish his or her office and turn over corporate records upon application of any member.

Section 86. Subsection (2) of section 617.0809, Florida Statutes, is amended to read:

617.0809 Vacancy on board.—

(2) A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for a term of office continuing until the next election of directors by the members or, if the corporation has no members or no members having the right to vote thereon, for such term of office as is provided in the articles of incorporation or the bylaws.

Section 87. Subsection (3) of section 617.0820, Florida Statutes, is amended to read:

617.0820 Meetings.—

(3) Meetings of the board of directors may be called by the chair ~~chairman~~ of the board or by the president unless otherwise provided in the articles of incorporation or the bylaws.

Section 88. Subsection (4) of section 617.0824, Florida Statutes, is amended to read:

617.0824 Quorum and voting.—

(4) A director of a corporation who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(a) The director ~~He~~ objects, at the beginning of the meeting or promptly upon his or her arrival, to holding the meeting or transacting specified affairs at the meeting; or

(b) The director ~~He~~ votes against or abstains from the action taken.

Section 89. Subsection (4) of section 617.0825, Florida Statutes, is amended to read:

617.0825 Committees.—

(4) Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors not a member of the committee in question with his or her responsibility to act in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

Section 90. Section 617.0830, Florida Statutes, is amended to read:

617.0830 General standards for directors.—

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Section 91. Subsection (1) of section 617.0832, Florida Statutes, is amended to read:

617.0832 Director conflicts of interest.—

(1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(b) The fact of such relationship or interest is disclosed or known to the members entitled to vote on such contract or transaction, if any, and they authorize, approve, or ratify it by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.

Section 92. Subsection (1) of section 617.0834, Florida Statutes, is amended to read:

617.0834 Officers and directors of certain corporations and associations not for profit; immunity from civil liability.—

(1) An officer or director of a nonprofit organization recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, or of an agricultural or a horticultural organization recognized under s. 501(c)(5), of the Internal Revenue Code of 1986, as amended, is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

(a) The officer or director breached or failed to perform his or her duties as an officer or director; and

(b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:

1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against an officer or director in any criminal proceeding for violation of the criminal law estops that officer or director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the officer or director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

2. A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or

3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 93. Subsection (4) of section 617.1421, Florida Statutes, is amended to read:

617.1421 Procedure for and effect of administrative dissolution.—

(4) A director, officer, or agent of a corporation dissolved pursuant to this section, purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and liabilities of the corporation arising from such action and incurred subsequent to the corporation's administrative dissolution only if he or she has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the corporation's board of directors or members subsequent to the reinstatement of the corporation.

Section 94. Paragraph (a) of subsection (3) and subsection (5) of section 617.1432, Florida Statutes, are amended to read:

617.1432 Receivership or custodianship.—

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

1. May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

2. May sue and defend in his or her own name as receiver of the corporation in all courts of this state.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimburse-

ments made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

Section 95. Section 617.1440, Florida Statutes, is amended to read:

617.1440 Deposit with Department of Banking and Finance.—Assets of a dissolved corporation that should be transferred to a creditor, claimant, member of the corporation, or other person who cannot be found or who is not competent to receive them shall be deposited, within 6 months after the date fixed for the payment of the final liquidating distribution, with the Department of Banking and Finance, where such assets shall be held as abandoned property. When the creditor, claimant, member, or other person furnishes satisfactory proof of entitlement to the amount or assets deposited, the Department of Banking and Finance shall pay him or her or his or her representative that amount or those assets.

Section 96. Subsection (2) of section 617.1507, Florida Statutes, is amended to read:

617.1507 Registered office and registered agent of foreign corporation.—

(2) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 617.1508 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

Section 97. Subsection (2) of section 617.1508, Florida Statutes, is amended to read:

617.1508 Change of registered office and registered agent of foreign corporation.—

(2) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Department of State for filing a statement of change that complies with the requirements of paragraphs (1)(a)-(f) and recites that the corporation has been notified of the change.

Section 98. Subsection (1) of section 617.1509, Florida Statutes, is amended to read:

617.1509 Resignation of registered agent of foreign corporation.—

(1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Department of State for filing a statement of resignation and mailing a copy of such statement to the corporation at the corporation's principal office address shown in its

most recent annual report or, if none, shown in its application for a certificate of authority or other most recently filed document. The statement of resignation must state that a copy of such statement has been mailed to the corporation at the address so stated. The statement of resignation may include a statement that the registered office is also discontinued.

Section 99. Subsection (5) of section 617.1530, Florida Statutes, is amended to read:

617.1530 Grounds for revocation of authority to conduct affairs.—The Department of State may commence a proceeding under s. 617.1531 to revoke the certificate of authority of a foreign corporation authorized to conduct its affairs in this state if:

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Department of State for filing.

Section 100. Subsections (1), (2), (3), (5), and (6) of section 617.1602, Florida Statutes, are amended to read:

617.1602 Inspection of records by members.—

(1) A member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in s. 617.1601(5), if the member ~~he~~ gives the corporation written notice of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy.

(2) A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation written notice of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection (1).

(b) Accounting records of the corporation.

(c) The record of members.

(d) Any other books and records.

(3) A member may inspect and copy the records described in subsection (2) only if:

(a) The member's ~~His~~ demand is made in good faith and for a proper purpose;

(b) The member ~~He~~ describes with reasonable particularity his or her purpose and the records he or she desires to inspect;

(c) The records are directly connected with the member's ~~his~~ purpose.

(5) A corporation may deny any demand for inspection made pursuant to subsection (2) if the demand was made for an improper purpose, or if the demanding member has within 2 years preceding his or her demand sold or offered for sale any list of members of the corporation or any other corporation, has aided or abetted any person in procuring any list of members for any such purpose, or has improperly used any information secured through any prior examination of the records of the corporation or any other corporation.

(6) For purposes of this section, the term "member" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

Section 101. Subsections (1) and (4) of section 617.1603, Florida Statutes, are amended to read:

617.1603 Scope of inspection right.—

(1) A member's agent or attorney has the same inspection and copying rights as the member he or she represents.

(4) If requested by a member, the corporation shall comply with a member's demand to inspect the records of members under s. 617.1602(2)(c) by providing him or her with a list of its members of the nature described in s. 617.1601(3). Such a list shall be compiled as of the last record date for which it has been compiled or as of a subsequent date if specified by the member.

Section 102. Subsection (2) of section 617.1604, Florida Statutes, is amended to read:

617.1604 Court-ordered inspection.—

(2) If the court orders inspection or copying of the records demanded, it shall also order the corporation and the custodian of the particular records demanded to pay the member's costs, including reasonable attorney's fees, reasonably incurred to obtain the order and enforce its rights under this section unless the corporation, or the officer, director, or agent, as the case may be, provides that it or he or she refused inspection in good faith because it or he or she had a reasonable basis for doubt about the right of the member to inspect or copy the records demanded.

Section 103. Section 617.1807, Florida Statutes, is amended to read:

617.1807 Conversion to corporation not for profit; authority of circuit judge.—If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, he or she shall approve the articles of incorporation and endorse his or her approval thereon; such approval shall provide that all of

the property of the petitioning corporation shall become the property of the successor corporation not for profit, subject to all indebtedness and liabilities of the petitioning corporation. The articles of incorporation with such endorsements thereupon shall be sent to the Department of State, which shall, upon receipt thereof and upon payment of all taxes due the state by the petitioning corporation, if any, issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of the filing fees specified in s. 617.0122, the Department of State shall file the articles of incorporation, and from thenceforth the petitioning corporation shall become a corporation not for profit under the name adopted in the articles of incorporation and subject to all the rights, powers, immunities, duties, and liabilities of corporations not for profit under state law, and its rights, powers, immunities, duties, and liabilities as a corporation for profit shall cease and determine.

Section 104. Section 617.1904, Florida Statutes, is amended to read:

617.1904 Estoppel.—No body of persons acting as a corporation shall be permitted to set up the lack of legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with the corporation or sued for an injury to its property or a wrong done to its interests be permitted to set up the lack of such legal organization in his or her defense.

Section 105. Section 617.2003, Florida Statutes, is amended to read:

617.2003 Proceedings to revoke articles of incorporation or charter or prevent its use.—If any member or citizen complains to the Department of Legal Affairs that any corporation organized under this act was organized or is being used as a cover to evade any of the laws against crime, or for purposes inconsistent with those stated in its articles of incorporation or charter, or that an officer or director of a corporation has participated in a sale or transaction that is affected by a conflict of interest or from which he or she derived an improper personal benefit, either directly or indirectly, and shall submit prima facie evidence to sustain such charge, together with sufficient money to cover court costs and expenses, the department shall institute and in due course prosecute to final judgment such legal or equitable proceedings as may be considered advisable either to revoke the articles of incorporation or charter, to prevent its improper use, or to recover on behalf of the corporation or its unknown beneficiaries any profits improperly received by the corporation or its officers or directors.

Section 106. Section 617.2006, Florida Statutes, is amended to read:

617.2006 Incorporation of labor unions or bodies.—Any group or combination of groups of ~~workers working men~~ or wage earners, bearing the name labor, organized labor, federation of labor, brotherhood of labor, union labor, union labor committee, trade union, trades union, union labor council, building trades council, building trades union, allied trades union, central labor body, central labor union, federated trades council, local union, state union, national union, international union, district labor council, district labor union, American Federation of Labor, Florida Federation of Labor, or any

component parts or significant words of such terms, whether the same be used in juxtaposition or with interspace, may be incorporated under this act.

(1) In addition to the requirements of ss. 617.02011 and 617.0202, the articles of incorporation for a labor union or body shall set forth the necessity for the incorporation, shall be subscribed to by not less than five persons, and shall be acknowledged by all of the subscribers, who shall also make and subscribe to an oath, to be endorsed on the articles of incorporation, that it is intended in good faith to carry out the purposes and objects set forth in the articles of incorporation. The articles of incorporation shall be filed in the office of the clerk of the circuit court of the county in which the labor union or body is organized, and the approval of the judge of the circuit court shall be obtained.

(2) The subscribers of the articles of incorporation shall give notice of their intention to obtain approval thereof by the circuit judge. Such notice shall state the name of the judge, the date the articles of incorporation will be presented, and the general nature and necessity of the articles of incorporation. Notice shall be published in a newspaper of general circulation in the county in which the labor union or body is organized at least once, or posted at the courthouse door in counties having no newspapers, at least 10 days prior to the date the articles of incorporation will be presented to the judge.

(3) When presented to the judge, the articles of incorporation shall be accompanied by a petition, signed and sworn to by the subscribers, stating fully the aims and purposes of such organization and the necessity therefor.

(4) Upon the filing of the articles of incorporation and the petition, and the giving of such notice, the circuit judge to whom such petition may be addressed shall, upon the date stated in such notice, take testimony and inquire into the admissions and purposes of such organization and the necessity therefor, and upon such hearing, if the circuit judge shall be satisfied that the allegations set forth in the petition and articles of incorporation have been substantiated, and shall find that such organization will not be harmful to the community in which it proposes to operate, or to the state, and that it is intended in good faith to carry out the purposes and objects set forth in the articles of incorporation, and that there is a necessity therefor, the judge shall approve the articles of incorporation and endorse his or her approval thereon. Upon the filing of the articles of incorporation with its endorsements thereupon with the Department of State and payment of the filing fees specified in s. 617.0122, the subscribers and their associates and successors shall be a corporation by the name given.

(5) Any person may intervene by filing an answer to the petition stating his or her reasons, if any, and be heard thereon, why the circuit judge shall not approve the articles of incorporation.

(6) The existence, amendment of the articles of incorporation, and dissolution of any such corporation shall be in accordance with this act.

Section 107. Subsections (1) and (2) of section 617.31, Florida Statutes, are amended to read:

617.31 Recreational leaseholds; right to acquire; escalation clauses.—

(1) Any lease of recreational or other commonly used facilities serving a community, which lease is entered into by the association or its members before control of the homeowners' association is turned over to the members other than the developer, must provide as follows:

(a) That the facilities may not be offered for sale unless the homeowners' association has the option to purchase the facilities, provided the homeowners' association meets the price and terms and conditions of the facility owner by executing a contract with the facility owner within 90 days, unless agreed to otherwise, from the date of mailing of the notice by the facility owner to the homeowners' association. If the facility owner offers the facilities for sale, he or she shall notify the homeowners' association in writing stating the price and the terms and conditions of sale.

(b) If a contract between the facility owner and the association is not executed within such 90-day period, unless extended by mutual agreement, then, unless the facility owner thereafter elects to offer the facilities at a price lower than the price specified in his or her notice to the homeowners' association, he or she has no further obligations under this subsection, and his or her only obligation shall be as set forth in subsection (2).

(c) If the facility owner thereafter elects to offer the facilities at a price lower than the price specified in his or her notice to the homeowners' association, the homeowners' association will have an additional 10 days to meet the price and terms and condition of the facility owner by executing a contract.

(2) If a facility owner receives a bona fide offer to purchase the facilities that he or she intends to consider or make a counteroffer to, his or her only obligations shall be to notify the homeowners' association that he or she has received an offer, to disclose the price and material terms and conditions upon which he or she would consider selling the facilities, and to consider any offer made by the homeowners' association. The facility owner shall be under no obligation to sell to the homeowners' association or to interrupt or delay other negotiations, and he or she shall be free at any time to execute a contract for the sale of the facilities to a party or parties other than the homeowners' association.

Section 108. Subsections (8) and (9) of section 618.09, Florida Statutes, are amended to read:

618.09 Bylaws.—Each association incorporated under this chapter shall adopt for its government and management, a code of bylaws not inconsistent with the powers granted by this chapter. A majority vote of a quorum of the members or stockholders attending a meeting, of which notice of the proposed bylaws shall have been given, is sufficient to adopt or amend the bylaws. Each association, under its bylaws, may provide for any or all of the following matters:

(8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the

association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him or her and the time of payment and the manner of collection; and the form of marketing contract between the association and its members or stockholders, which marketing contract shall be binding upon every member or stockholder, unless otherwise agreed upon in writing.

(9) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the condition upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he or she ceases to be eligible to membership in the association; the mode, manner, and effect of the expulsion of a member; whether a member upon withdrawal, death, or expulsion shall have any interest in the property of the association, if organized without capital stock; the manner of determining the value of the property interest or the shares of common stock of retiring or expelled members, which interest or stock may be conclusively appraised by the board of directors of the association and purchased by the association at such value within 1 year after the date of such retirement or expulsion.

Section 109. Subsection (2) of section 618.12, Florida Statutes, is amended to read:

618.12 Directors; election.—

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in the service and for the service of the members of its executive committee. No director, during the term of her or his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or others, or differing from terms generally current in that district.

Section 110. Section 618.14, Florida Statutes, is amended to read:

618.14 Removal of officers and directors.—

(1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10 percent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person bringing the charges against him or her shall have the same opportunity.

(2) In case the bylaws provide for election of directors by districts with primary elections in each district then the petition for removal of a director must be signed by 20 percent of the members residing in the district from which he or she was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

Section 111. Subsections (1) and (2) of section 618.15, Florida Statutes, are amended to read:

618.15 Capital stock and membership.—

(1) When a member of an association organized without capital stock has paid his or her membership fee in full the member ~~he~~ shall receive a certificate of membership. An association may issue its shares of stock having no par value from time to time for such consideration as may be fixed by the board of directors. No association shall issue stock until it has been fully paid for. Promissory notes may be accepted by the association as full or partial payment for such stock. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the right of any stockholder to vote unless such notes are past due.

(2) No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or ~~his~~ subscription to capital stock, including any unpaid balance on any promissory notes given in payment thereof.

Section 112. Subsection (1) of section 618.18, Florida Statutes, is amended to read:

618.18 Remedies for breach of marketing contract.—

(1) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder of the association upon the breach by her or him of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state.

Section 113. Subsection (1) of section 618.25, Florida Statutes, is amended to read:

618.25 Dissolution.—

(1) Any association incorporated under or adopting the provisions of this chapter may be dissolved and its affairs wound up voluntarily by a petition signed by two-thirds of the members or by the holders of two-thirds of the common stock, either in person or by their agent, which petition shall be presented to the circuit judge, who shall direct notice thereof to be published for such time as he or she may judge expedient. After the expiration of the

time of such notice, the circuit judge may decree a dissolution and make all necessary orders and decrees for the winding up of its affairs, including the application of its assets toward the satisfaction of the claims of creditors so far as may be and the distribution of any moneys then remaining among its members in proportion to their respective property interests.

Section 114. Subsections (3), (4), and (5) of section 619.06, Florida Statutes, are amended to read:

619.06 Bylaws.—Each association incorporated under this chapter must, within 30 days after its incorporation, adopt a code of bylaws for its government and management not inconsistent with the provisions of this law. A majority vote of the members or the written assent of members representing a majority of the votes, is necessary to adopt such bylaws. The provisions of the general laws of this state not inconsistent with the provisions of this chapter shall apply to the bylaws of the corporations provided for in this chapter. Each association may also, by its bylaws adopted as aforesaid, provide for the following matters:

(3) The conditions upon which, and the time when, membership of any member in the association shall cease; the mode, manner and effect of expulsion of a member, subject to the right of the expelled member to have the board of directors (equitably) appraise the expelled member's ~~his~~ property interests in the association and to affix the amount thereof in money, and to have the money paid to him or her within 60 days after such expulsion.

(4) The amount of membership fee, if any, and the amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the association, and also the compensation, if any, to be paid by each member for any services rendered by the association to him or her, and the time of payment and the manner of collecting the same, and for forfeiture of the interest of the member in the association for nonpayment of the same.

(5) The number and qualification of members of the association and the conditions precedent to membership, and the method, time and manner of permitting members to withdraw, and providing for the assignment and transfer of the interest of the member, and the manner of determining the value of such interest, and providing for the purchase of such interest by the association upon the death, withdrawal or expulsion of a member or upon the forfeiture of his or her membership, at the option of the association.

Section 115. Subsections (1) and (6) of section 619.07, Florida Statutes, are amended to read:

619.07 Special powers; marketing contracts; voluntary dissolution.—Each association incorporated under this chapter shall have the powers granted by the provisions of this law and other laws of Florida relating to private corporations, and shall also have the following powers:

(1) To appoint such agents and officers as its business may require, and such appointed agents may be either persons or corporations; to admit per-

sons to membership in the association, and to expel any member pursuant to the provisions of its bylaws; to forfeit the membership of any member for violation of any agreement between the member him and the association, or for his or her violation of its bylaws.

(6) Either the bylaws or the marketing contracts, or both the said bylaws and marketing contracts may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach by the member him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association and any such provisions shall be valid and enforceable in the courts of this state.

Section 116. Subsection (2) of section 620.102, Florida Statutes, is amended to read:

620.102 Definitions.—As used in this act, unless the context otherwise requires, the term:

(2) “Contribution” means any cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in her or his capacity as a partner.

Section 117. Subsections (2) and (3) of section 620.1051, Florida Statutes, are amended to read:

620.1051 Change of registered office or registered agent; change of address.—

(2) Any registered agent may resign her or his agency appointment by signing and delivering for filing with the Department of State a statement of resignation and mailing a copy of such statement to the limited partnership at its principal office address shown in its most recent annual report or, if none, at the principal office address filed in its certificate of limited partnership or other most recently filed document. The agency is terminated and the registered office discontinued, if so provided, on the thirty-first day after the date on which the statement was filed.

(3) A registered agent may change her or his business address, and the address of the registered office of any limited partnership for which she or he is the registered agent by:

- (a) Notifying the limited partnership in writing of the change;
- (b) Signing, either manually or in facsimile, and delivering to the Department of State for filing a statement that complies with subsection (1); and
- (c) Reciting that the limited partnership has been notified of the change.

Section 118. Subsection (1) of section 620.116, Florida Statutes, is amended to read:

620.116 Filing with Department of State.—

(1) One signed copy of the certificate of limited partnership, any certificate of amendment or cancellation or any court order of amendment or cancellation, and any restated certificate must be delivered to the Department of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his or her authority as a prerequisite to filing.

Section 119. Subsection (1) of section 620.117, Florida Statutes, is amended to read:

620.117 Liability for false statement in certificate.—If a certificate of limited partnership or certificate of amendment or cancellation contains a false statement, a person who suffers loss by reasonable reliance on that statement may recover damages for the loss from:

(1) Any person who executed the certificate or caused another to execute it on his or her behalf and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

Section 120. Paragraphs (c), (d), (e), and (f) of subsection (4) and subsection (6) of section 620.124, Florida Statutes, are amended to read:

620.124 Events of withdrawal of general partner.—Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(4) Unless otherwise provided in writing in the partnership agreement, when the general partner:

(c) Is adjudged a bankrupt or insolvent or has entered against her or him an order for any relief in any bankruptcy or insolvency proceeding;

(d) Files a petition or answer seeking for herself or himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(e) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against her or him in any proceeding of this nature; or

(f) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of her or his properties.

(6) In the case of a general partner who is a natural person, her or his death or the entry of an order by a court of competent jurisdiction adjudicating her or him incompetent to manage her or his person or his property.

Section 121. Section 620.126, Florida Statutes, is amended to read:

620.126 Contributions by general partner.—A general partner of a limited partnership may make contributions to the limited partnership and

share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of her or his participation in the partnership as a limited partner.

Section 122. Subsections (1), (3), and (4) of section 620.129, Florida Statutes, are amended to read:

620.129 Liability of limited partner to third parties.—

(1) Except as provided in subsection (4), a limited partner is not liable for the obligations of a limited partnership unless the limited partner ~~he~~ is also a general partner or, in addition to the exercise of his or her rights and powers as a limited partner, ~~he or she~~ participates in the control of the business. However, if the limited partner participates in the control of the business, ~~he or she~~ is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(3) The enumeration in subsection (2) does not mean that the possession or exercise by a limited partner of any power other than a power enumerated in that subsection constitutes participation by him or her in the business of the limited partnership.

(4) A limited partner who knowingly permits his or her name to be used in the name of the limited partnership, except under a circumstance permitted by s. 620.103(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Section 123. Subsection (1) of section 620.132, Florida Statutes, is amended to read:

620.132 Liability of person erroneously believing herself or himself to be a limited partner.—

(1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~she or he~~ has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, within a reasonable time after ascertaining the mistake, the person ~~he~~:

(a) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) Withdraws from future equity participation in the enterprise by executing and filing with the Department of State a certificate declaring withdrawal under this section.

Section 124. Subsections (2) and (4) of section 620.136, Florida Statutes, are amended to read:

620.136 Liability for contribution.—

(2) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if the partner ~~he~~ is unable to perform because of his or her death or disability or any other reason. If a partner does not make the required contribution of property or services, he or she is obligated, at the option of the limited partnership, to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to s. 620.106, of the stated contribution that has not been made.

(4) A partnership agreement may provide that the interest of any partner who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing the defaulting partner's proportionate interest in the limited partnership, subordinating his or her partnership interests to that of nondefaulting partners, a forced sale of his or her partnership interest, the forfeiture of his or her partnership interest, the lending by other partners of the amount necessary to meet his or her commitment, a fixing of the value of his or her partnership interest by appraisal or by formula and redemption or sale of his or her partnership interest at such value, or other penalty or consequence.

Section 125. Section 620.139, Florida Statutes, is amended to read:

620.139 Interim distributions.—Except as provided in s. 620.147, a partner is entitled to receive distributions from a limited partnership before her or ~~his~~ withdrawal from the limited partnership and before the dissolution and the winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

Section 126. Section 620.142, Florida Statutes, is amended to read:

620.142 Withdrawal of general partner.—A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him or her.

Section 127. Section 620.144, Florida Statutes, is amended to read:

620.144 Distribution upon withdrawal.—Except as provided in s. 620.147, upon withdrawal, a withdrawing partner is entitled to receive any distribution to which he or she is entitled under the partnership agreement; and, if not otherwise provided in the agreement, the withdrawing partner ~~he~~ is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her interest in the limited partnership as of the date of withdrawal based upon his or her right to share in distributions from the limited partnership.

Section 128. Section 620.145, Florida Statutes, is amended to read:

620.145 Distribution in kind.—Except as provided in writing in the partnership agreement:

(1) A partner, regardless of the nature of her or his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash.

(2) A partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner ~~him~~ exceeds a percentage of that asset which is equal to the percentage in which she or he shares in distributions from the limited partnership.

Section 129. Section 620.146, Florida Statutes, is amended to read:

620.146 Right to distribution.—At the time a partner becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

Section 130. Section 620.148, Florida Statutes, is amended to read:

620.148 Liability upon return of contribution.—

(1)(a) If a partner receives the return of any part of his or her contribution without violation of the partnership agreement or this act, the partner ~~he~~ is liable to the limited partnership for a period of 1 year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner receives the return of any part of his or her contribution in violation of the partnership agreement or this act, the partner ~~he~~ is liable to the limited partnership for a period of 6 years thereafter for the amount of the contribution wrongfully returned.

(2) A partner receives a return of his or her contribution to the extent that a distribution to the partner ~~him~~ reduces his or her share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to s. 620.106, of the partner's ~~his~~ contribution which has not been distributed to him or her.

Section 131. Paragraph (d) of subsection (1) of section 620.152, Florida Statutes, is amended to read:

620.152 Assignment of partnership interest.—

(1) Unless otherwise provided in the partnership agreement:

(d) A partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of his or her partnership interests.

Section 132. Section 620.153, Florida Statutes, is amended to read:

620.153 Rights of judgment creditor of partner.—On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This act does not deprive any partner of the benefit of any exemption laws applicable to his or her partnership interest.

Section 133. Subsections (2) and (3) of section 620.154, Florida Statutes, are amended to read:

620.154 Right of assignee to become limited partner.—

(2) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this act. An assignee who becomes a limited partner also is liable for the obligations of her or his assignor to make and return contributions as provided in ss. 620.136 and 620.148. However, the assignee is not obligated for liabilities which are unknown to the assignee at the time she or he became a limited partner and which could not be ascertained from the partnership agreement.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from her or his liability to the limited partnership under ss. 620.117 and 620.136.

Section 134. Section 620.155, Florida Statutes, is amended to read:

620.155 Power of estate of deceased or incompetent partner.—If a partner who is an individual dies or a court of competent jurisdiction adjudges a partner who is an individual to be incompetent to manage his or her person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling the partner's his estate or administering his or her property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

Section 135. Subsection (1) of section 620.159, Florida Statutes, is amended to read:

620.159 Winding up affairs of limited partnership.—

(1) Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership, or, if

none, the limited partners, may wind up the limited partnership's affairs; but the circuit court, upon cause shown, may wind up the limited partnership's affairs upon application of any partner or her or his legal representative or assignee, and in connection therewith may appoint a liquidating trustee.

Section 136. Section 620.164, Florida Statutes, is amended to read:

620.164 Derivative action; proper plaintiff.—In a derivative action:

(1) The plaintiff must be a partner at the time of bringing the action and at the time of the transaction of which she or he complains; or

(2) The plaintiff must be a partner at the time of bringing the action and the plaintiff's ~~his~~ status as a partner must have devolved upon her or him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

Section 137. Subsection (2) of section 620.172, Florida Statutes, is amended to read:

620.172 Issuance of certificate of authority to transact business to foreign limited partnership.—

(2) The department may return a copy of the application similarly endorsed, to the person who filed the application or his or her representative. The application so endorsed constitutes proof of a certificate of authority to transact business.

Section 138. Subsection (1) of section 620.1835, Florida Statutes, is amended to read:

620.1835 Powers of Department of State; interrogatories.—

(1) The Department of State may propound to any limited partnership, and to any general partner thereof, such interrogatories as may be reasonable, necessary, and proper to enable it to ascertain whether the limited partnership has complied with all applicable provisions of this act. Such interrogatories must be answered within 30 days after mailing or within such additional time as fixed by the department. Answers to interrogatories must be full and complete, in writing, and under oath. Interrogatories directed to an individual must be answered by the individual ~~him~~, and interrogatories directed to a limited partnership must be answered by a general partner.

Section 139. Subsection (1) and paragraph (b) of subsection (2) of section 620.57, Florida Statutes, are amended to read:

620.57 Interpretation of knowledge and notice.—In this part:

(1) A person has knowledge of a fact not only when the person ~~he~~ has actual knowledge of it, but also when he or she has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has notice of a fact when another person claiming the benefit of the notice:

(b) Delivers through the mail or by other means of communication a written statement of the fact to the person or to the person's ~~his~~ agent at his or her place of business or residence.

Section 140. Subsection (4) of section 620.59, Florida Statutes, is amended to read:

620.59 Rules for determining the existence of a partnership.—In determining whether a partnership exists, these rules shall apply:

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that the person ~~he~~ is a partner in the business, but no such inference shall be drawn if the profits were received in payment:

(a) Of a debt by installments or otherwise;

(b) As wages of an employee or rent to a landlord;

(c) As an annuity to a surviving spouse ~~widow~~ or representative of a deceased partner;

(d) As interest on a loan, though the amount of payment varies with the profits of the business; or

(e) As the consideration for the sale of goodwill of a business or other property by installments or otherwise.

Section 141. Subsection (1) of section 620.60, Florida Statutes, is amended to read:

620.60 Partner agent of partnership.—

(1) Every partner is an agent of the partnership for the purpose of its business. The act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he or she is a member, binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom the partner ~~he~~ is dealing has knowledge of the fact that he or she has no authority.

Section 142. Subsections (1) and (2) of section 620.605, Florida Statutes, are amended to read:

620.605 Conveyance of real property of the partnership.—

(1) When title to real property is in the partnership name, any partner may convey title to the property by a conveyance executed in the partnership name; but the partnership may recover the property unless the partner's act binds the partnership under the provisions of s. 620.60(1), or unless the purchaser or the purchaser's ~~his~~ assignee is a holder for value without

knowledge that the partner has exceeded his or her authority in making the conveyance. When title is held in the partnership name and it is necessary to identify the partners at the time of a conveyance, encumbrance, or other instrument affecting partnership real property, one of the partners may execute an affidavit stating the names of the partners and that they are the partners then existing. The affidavit shall be conclusive as to the facts therein stated as to purchasers without notice.

(2) When title to real property is in the name of one or more, but not all, of the partners, and the public records do not disclose the right of the partnership, the partners in whose name the title stands may convey title to the property, but the partnership may recover the property if the partners' act does not bind the partnership under the provisions of s. 620.60(1) unless the purchaser or the purchaser's ~~his~~ assignee is a holder for value without knowledge that the partners have exceeded their authority in making the conveyance.

Section 143. Section 620.61, Florida Statutes, is amended to read:

620.61 Partnership bound by admission of partner.—An admission or representation made by any partner concerning partnership affairs within the scope of his or her authority is evidence against the partnership.

Section 144. Section 620.615, Florida Statutes, is amended to read:

620.615 Partnership charged with knowledge of or notice.—Notice to any partner of a matter concerning partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to her or his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Section 145. Section 620.62, Florida Statutes, is amended to read:

620.62 Partnership bound by partner's wrongful act.—When loss or injury is caused to a person, not a partner in the partnership, or any penalty is incurred by a wrongful act or omission of a partner acting in the ordinary course of the business of the partnership or with the authority of his or her copartners, the partnership is liable for it to the same extent as the partner so acting or omitting to act.

Section 146. Subsection (1) of section 620.625, Florida Statutes, is amended to read:

620.625 Partnership bound by partner's breach of trust.—The partnership is bound to make good the loss:

(1) When one partner acting within the scope of her or his apparent authority receives money or property of a third person and misapplies it; and

Section 147. Section 620.635, Florida Statutes, is amended to read:

620.635 Partner by estoppel.—

(1) When a person represents himself or herself, or consents to another representing him or her, to anyone as a partner in an existing partnership or with one or more persons not actual partners by words spoken or written or by conduct, he or she is liable to any person to whom the representation has been made who has given credit on the faith of the representation to the actual or apparent partnership, and if he or she has made the representation or consented to its being made in a public manner, he or she is liable to the person, whether the representation has or has not been made or communicated to the person giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he or she is liable as though he or she were an actual member of the partnership.

(b) When no partnership liability results, he or she is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability; otherwise he or she is liable separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he or she is an agent of the persons consenting to the representation to bind them to the same extent and in the same manner as though he or she were a partner with respect to persons who rely upon the representation. When all members of the existing partnership consent to the representation, a partnership act or obligation results; but otherwise it is the joint act or obligation of the person acting and the persons consenting to the representation.

Section 148. Section 620.64, Florida Statutes, is amended to read:

620.64 Liability of incoming partner.—A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his or her admission as though he or she had been a partner when the obligations were incurred, except that this liability shall be satisfied only out of partnership property.

Section 149. Subsections (1), (2), (3), (4), and (6) of section 620.645, Florida Statutes, are amended to read:

620.645 Rules determining rights and duties of partners.—The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid her or his contributions, whether by way of capital or advances, to the partnership property, and shall share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to her or his share in the profits.

(2) The partnership must indemnify every partner for payments made and personal liabilities reasonably incurred by the partner ~~him~~ in the ordi-

nary and proper conduct of its business or for the preservation of its business or property.

(3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital that she or he agreed to contribute shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by her or him from the date when repayment should be made.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for her or his services in winding up the partnership affairs.

Section 150. Subsection (1) of section 620.66, Florida Statutes, is amended to read:

620.66 Partner accountable as a fiduciary.—

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits, derived by him or her without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by the partner ~~him~~ of its property.

Section 151. Subsection (1) of section 620.665, Florida Statutes, is amended to read:

620.665 Right to an account.—Any partner shall have the right to a formal account of partnership affairs:

(1) If the partner ~~he~~ is wrongfully excluded from the partnership business or possession of its property by his or her copartners.

Section 152. Section 620.675, Florida Statutes, is amended to read:

620.675 Extent of property rights of a partner.—The property rights of a partner are:

- (1) His or her rights in specific partnership property;
- (2) His or her interest in the partnership; and
- (3) His or her right to participate in the management.

Section 153. Subsection (1) and paragraphs (a), (d), and (e) of subsection (2) of section 620.68, Florida Statutes, are amended to read:

620.68 Nature of a partner's right in specific partnership property.—

(1) A partner is coowner with her or his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) Subject to the provisions of this part and to any agreement between the partners, a partner has an equal right with her or his partners to possess specific partnership property for partnership purposes; but she or he has no right to possess the property for any other purpose without the consent of her or his partners.

(d) On the death of a partner her or his right in specific partnership property vests in the surviving partner or partners, except when the deceased was the last surviving partner, her or his right in the property vests in her or his legal representative. The surviving partner or partners or the legal representative of the last surviving partner has no right to possess the partnership property except for a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to surviving spouses widows, heirs, or next of kin.

Section 154. Section 620.685, Florida Statutes, is amended to read:

620.685 Nature of partner's interest in the partnership.—A partner's interest in the partnership is his or her share of the profits and surplus. It is personal property.

Section 155. Section 620.69, Florida Statutes, is amended to read:

620.69 Assignment of partner's interest.—

(1) A conveyance by a partner of her or his interest in the partnership of itself does not dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee to interfere in the management or administration of the partnership business or affairs, to require any information or account of partnership transactions, or to inspect the partnership books during the continuance of the partnership. It entitles the assignee to receive the profits to which the assigning partner would otherwise be entitled in accordance with her or his contract.

(2) If the partnership is dissolved, the assignee is entitled to receive her or his assignor's interest and may require an account from the date of the last account agreed to by all the partners.

Section 156. Subsections (1) and (3) of section 620.695, Florida Statutes, are amended to read:

620.695 Partner's interest subject to charging order.—

(1) On application to a court having jurisdiction by any judgment creditor of a partner, the court may charge the interest of the debtor partner with payment of the unsatisfied amount of the judgment with interest, and may then or later appoint a receiver of his or her share of the profits and of any other money due or to become due to him or her from the partnership, and make all other orders to take the actions that the debtor partner might have made or that the circumstances of the case may require.

(3) Nothing in this part shall deprive a partner of any right under the exemption laws covering his or her interest in the partnership.

Section 157. Paragraphs (a), (b), and (d) of subsection (1) of section 620.715, Florida Statutes, are amended to read:

620.715 Dissolution by decree of court.—The court shall adjudge a dissolution:

(1) On application by or for a partner when:

(a) A partner has been adjudicated mentally incompetent or is shown to be of unsound mind. For the purpose of this paragraph, a “mentally incompetent person” is one who because of mental illness, mental retardation, senility, excessive use of drugs or alcohol, or other mental incapacity, is incapable of either managing her or his property or caring for herself or himself, or both.

(b) A partner becomes in any other way incapable of performing her or his part of the partnership contract.

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts herself or himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with her or him.

Section 158. Section 620.725, Florida Statutes, is amended to read:

620.725 Right of partner to contribution from copartners after dissolution.—When the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to the ~~his~~ copartners for his or her share of any liability created by a partner acting for the partnership as if the partnership had not been dissolved unless:

(1) The dissolution being by act of a partner, the partner acting for the partnership had knowledge of the dissolution, or

(2) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

Section 159. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), paragraph (c) of subsection (3), and subsection (4) of section 620.73, Florida Statutes, are amended to read:

620.73 Power of partner to bind partnership to third persons after dissolution.—

(1) After dissolution a partner can bind the partnership except as provided in subsection (3):

(b) By a transaction that would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

1. Had extended credit to the partnership before dissolution and had no knowledge or notice of the dissolution; or

2. Though he or she had not extended credit, had nevertheless known of the partnership before dissolution and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place or in each place, if more than one, at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1)(b) shall be satisfied out of partnership assets alone when before dissolution that partner had been:

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his or her connection with it.

(3) The partnership is in no case bound by an act of a partner after dissolution:

(c) When the partner has no authority to wind up partnership affairs; except by a transaction with one who:

1. Had extended credit to the partnership before dissolution and had no knowledge or notice of his or her want of authority; or

2. Had not extended credit to the partnership before dissolution, and, having no knowledge or notice of his or her want of authority, the fact of his or her want of authority had not been advertised in the manner provided for advertising the fact of dissolution in subparagraph (1)(b)2.

(4) Nothing in this section shall affect the liability of a person under s. 620.635 who after dissolution represents himself or herself or consents to another representing him or her as a partner in a partnership engaged in carrying on business.

Section 160. Subsections (2) and (4) of section 620.735, Florida Statutes, are amended to read:

620.735 Effect of dissolution on partner's existing liability.—

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between herself or himself, the partnership creditor and the person or partnership continuing the business. The agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while she or he was a partner but subject to the prior payment of her or his separate debts.

Section 161. Section 620.74, Florida Statutes, is amended to read:

620.74 Right to wind up.—Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of

the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; but any partner, the partner's ~~his~~ legal representative or his or her assignee may obtain winding up by the court.

Section 162. Subsection (1) and paragraphs (b) and (c) of subsection (2) of section 620.745, Florida Statutes, are amended to read:

620.745 Rights of partners to application of partnership property.—

(1) When dissolution is caused in any way except in contravention of the partnership agreement, each partner as against his or her copartners and all persons claiming through them, unless otherwise agreed, may have the partnership property applied to discharge its liabilities and the surplus applied to pay in cash the net amount owing to the respective partners. If dissolution is caused by the bona fide expulsion of a partner under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under s. 620.735(2), the expelled partner ~~he~~ shall receive in cash only the net amount due him or her from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement, the rights of the partners shall be as follows:

(b) If all the partners who have not caused the dissolution wrongfully desire to continue the business in the same name, either by themselves or jointly with others, they do so during the agreed term for the partnership and for that purpose may possess the partnership property, if they secure the payment by bond approved by the court or pay the value of his or her interest in the partnership at the dissolution to a partner who has caused the dissolution wrongfully, less any damages recoverable under subparagraph (a)2., and in like manner indemnify him or her against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

1. If the business is not continued under the provisions of paragraph (b), all the rights of a partner under subsection (1), subject to subparagraph (a)2.

2. If the business is continued under paragraph (b), the right, as against his or her copartners and all claiming through them in respect of their interests in the partnership, to have the value of his or her interest in the partnership, less any damages caused to his or her copartners by the dissolution, ascertained and paid to him or her in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest, the value of the good will of the business shall not be considered.

Section 163. Subsections (1) and (2) of section 620.75, Florida Statutes, are amended to read:

620.75 Rights when partnership is dissolved for fraud or misrepresentation.—When a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties to it, the party entitled to rescind is, without prejudice to any other right, entitled:

(1) To a lien on, or a right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by her or him for the purchase of an interest in the partnership and for capital or advances contributed by her or him; and

(2) After all liabilities to third persons have been satisfied to stand in the place of the creditors of the partnership for payments made by her or him for partnership liabilities; and

Section 164. Subsections (6) and (9) of section 620.755, Florida Statutes, are amended to read:

620.755 Rules for distribution.—In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(6) Any partner or her or his legal representative may enforce the contributions specified in subsection (4) to the extent of the amount that the partner ~~he~~ has paid in excess of her or his share of the liability.

(9) When a partner has become bankrupt or the partner's ~~his~~ estate is insolvent, the claims against her or his separate property shall rank in the following order:

- (a) Those owing to separate creditors,
- (b) Those owing to partnership creditors,
- (c) Those owing to partners by way of contribution.

Section 165. Subsections (1), (3), and (8) of section 620.76, Florida Statutes, are amended to read:

620.76 Liability of persons continuing the business in certain cases.—

(1) When a new partner is admitted into an existing partnership, or a partner retires and assigns, or the representative of the deceased partner assigns, his or her rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, and the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (1) and (2) with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his or her right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be the same as if the assignment had been made.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased

partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for the interest or for his or her right in partnership property.

Section 166. Section 620.765, Florida Statutes, is amended to read:

620.765 Rights of retiring partner or estate of deceased partner when the business is continued.—When a partner retires or dies and the business is continued under any of the conditions set forth in s. 620.76(1), (2), (3), (5), or (6) or s. 620.745(2)(b), without any settlement of accounts between the partner him or his or her estate and the person or partnership continuing the business, unless otherwise agreed, the partner he or his or her legal representative, as against the persons or partnership, may have the value of his or her interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his or her interest in the dissolved partnership with interest or, at his or her option or that of his or her legal representative, instead of interest, the profits attributable to the use of his or her right in the property of the dissolved partnership; but the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by s. 620.76(8).

Section 167. Section 620.77, Florida Statutes, is amended to read:

620.77 Accrual of actions.—The right to an account of her or his interest shall accrue to any partner or the partner's his legal representative as against the winding up partners or the surviving partners or the person or partnership continuing the business at the date of dissolution in the absence of any agreement to the contrary.

Section 168. Subsection (3) of section 620.78, Florida Statutes, is amended to read:

620.78 Registered limited liability partnerships.—

(3) A statement of registration or statement of renewal of registration must include a fee of \$100 for each partner in the partnership on the date of the registration who, if a natural person, has her or his principal residence in this state or, if any other person, is incorporated, organized, or exists under the laws of this state. The fee payable for any 1 year for a registered limited liability partnership may not exceed \$10,000.

Section 169. Subsection (3) of section 620.7885, Florida Statutes, is amended to read:

620.7885 Foreign registered limited liability partnership.—

(3) The statement of registration, or statement of renewal of registration, as a foreign registered limited liability partnership must be accompanied by a fee of \$100 for each partner in the partnership as of the date of the

registration who, in the case of a natural person, has her or his principal residence in Florida, or in the case of any other person, is incorporated or otherwise organized or existing under the laws of this state, but in no event may the fee payable for any year with respect to the foreign registered limited liability partnership under this section exceed \$10,000 or be less than \$100.

Section 170. Section 621.06, Florida Statutes, is amended to read:

621.06 Rendition of professional services, limitations.—No corporation or limited liability company organized under this act may render professional services except through its members, officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services within this state; provided, however, this provision shall not be interpreted to include in the term “employee,” as used herein, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required; and provided further, that nothing contained in this act shall be interpreted to require that the right of an individual to be a shareholder of a corporation or a member of a limited liability company organized under this act, or to organize such a corporation or limited liability company, is dependent upon the present or future existence of an employment relationship between him or her and such corporation or limited liability company, or his or her present or future active participation in any capacity in the production of the income of such corporation or limited liability company or in the performance of the services rendered by such corporation or limited liability company.

Section 171. Subsection (1) of section 621.11, Florida Statutes, is amended to read:

621.11 Alienation of shares and ownership interests; restrictions.—

(1) No shareholder of a corporation organized under this act may sell or transfer her or his shares in such corporation except to another professional corporation, professional limited liability company, or individual, each of which must be eligible to be a shareholder of such corporation.

Section 172. Subsection (2) of section 623.03, Florida Statutes, is amended to read:

623.03 Charter; submission to and approval by circuit court; recordation.—

(2) The circuit judge to whom the proposed charter is presented, finding the same to be in proper form and for the objective and purpose authorized by this act, and in accordance with the provisions and limitations of this act shall approve the charter and endorse her or his approval thereon. The charter shall then be recorded in the office of the clerk of such circuit court and from thenceforth the subscribers and their associates and successors shall be a nonprofit eleemosynary corporation by the name given.

Section 173. Section 623.04, Florida Statutes, is amended to read:

623.04 Charter; amendment.—The charter of any corporation incorporated under this act may be amended as follows: When the members of the corporation at a regular or special meeting held in accordance with its bylaws shall approve a resolution providing an amendment to the charter, a copy of such resolution certified by the president and secretary shall be presented to the judge of the circuit court of the county and if she or he finds the amendment to be proper in form and substance she or he shall endorse her or his approval thereon and it shall be recorded by the clerk of the circuit court and the amendment shall be effective from the date of record.

Section 174. Section 623.06, Florida Statutes, is amended to read:

623.06 Dissolution of corporation.—Any such corporation may be dissolved upon its petition to the circuit judge who shall order notice thereof to be published for such period of time as she or he may deem expedient and upon proof of such publication the circuit judge ~~he~~ may decree dissolution and make all necessary orders and decrees for the settlement of the affairs of such corporation, taking care that the claims of creditors be satisfied to the extent of the assets of the corporation.

Section 175. Paragraph (b) of subsection (1) of section 623.12, Florida Statutes, is amended to read:

623.12 Board of directors.—

(1) The control of such corporation shall be vested in a board consisting of not fewer than five directors. The number of directors, whether five or more, shall be specified by the charter or bylaws of the corporation. The term of service of the directors shall be established by the charter or bylaws, and the directors shall be elected by a majority vote of the members present at a meeting of the membership, whether annual, special, or otherwise. The board of directors, from and by its membership and by majority vote thereof, shall elect, for a term of office as established by the charter or bylaws, the following officers, whose duties shall include the following:

(b) A vice president who in the absence or inability of the president to perform her or his duties shall act as president for the duration of such absence or inability and who shall perform such other duties as may be prescribed by the bylaws or directed by the board of directors.

Section 176. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 624.155, Florida Statutes, are amended to read:

624.155 Civil remedy.—

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

(b) By the commission of any of the following acts by the insurer:

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

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

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

Notwithstanding the provisions of the above to the contrary, a person pursuing a remedy under this section need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(2)

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

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

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

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

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

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

Section 177. Paragraph (b) of subsection (1) and subsection (3) of section 624.305, Florida Statutes, are amended to read:

624.305 Prohibited interests, rewards.—

(1) No employee of the department, including the Insurance Commissioner and Treasurer shall:

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

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

Section 178. Subsection (1) of section 624.315, Florida Statutes, is amended to read:

624.315 Department; annual report.—

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

(a) Names of the authorized insurers transacting insurance in this state, with abstracts of their financial statements including assets, liabilities, and net worth.

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

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

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

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

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

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

Section 179. Subsection (3) of section 624.317, Florida Statutes, is amended to read:

624.317 Investigation of agents, adjusters, administrators, service companies, and others.—If it has reason to believe that any person has violated or is violating any provision of this code, or upon the written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such investigation as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of any:

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

Section 180. Subsection (3) of section 624.318, Florida Statutes, is amended to read:

624.318 Conduct of examination or investigation; access to records; correction of accounts; appraisals.—

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

Section 181. Subsections (1) and (2) of section 624.321, Florida Statutes, are amended to read:

624.321 Witnesses and evidence.—

(1) As to any examination, investigation, or hearing being conducted under this code, the Insurance Commissioner and Treasurer or her or his designee:

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

(b) Shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which is relevant to the inquiry.

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

Section 182. Section 624.322, Florida Statutes, is amended to read:

624.322 Testimony compelled; immunity from prosecution.—

(1) If any natural person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the department or its examiner, on the ground that the testimony or evidence required of her or him may tend to incriminate the person him or subject her or him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, the person he must, if so directed by the department and the Department of Legal Affairs, nonetheless comply with such direction; but she or he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which she or he may have so testified or produced evidence; and no testimony so given or evidence produced shall be received against the person him upon any criminal action, investigation, or proceeding. However, no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by her or him in such testimony, and the testimony or evidence so given or produced shall be admissible against her or him upon any criminal action, investigation, or proceeding concerning such perjury. No license or permit

conferred or to be conferred to such person shall be refused, suspended, or revoked based upon the use of such testimony.

(2) Any such individual may execute, acknowledge, and file in the office of the Department of Insurance a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement; and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and, if so received or produced, such individual shall not be entitled to any immunity or privileges on account of any testimony she or he may so give or evidence so produced.

Section 183. Subsection (2) of section 624.4211, Florida Statutes, is amended to read:

624.4211 Administrative fine in lieu of suspension or revocation.—

(2) With respect to any nonwillful violation, such fine shall not exceed \$2,500 per violation. In no event shall such fine exceed an aggregate amount of \$10,000 for all nonwillful violations arising out of the same action. When an insurer discovers a nonwillful violation, the insurer shall correct the violation and, if restitution is due, make restitution to all affected persons. Such restitution shall include interest at 12 percent per year from either the date of the violation or the date of inception of the affected person's policy, at the insurer's option. The restitution may be a credit against future premiums due provided that the interest shall accumulate until the premiums are due. If the amount of restitution due to any person is \$50 or more and the insurer wishes to credit it against future premiums, it shall notify such person that she or he may receive a check instead of a credit. If the credit is on a policy which is not renewed, the insurer shall pay the restitution to the person to whom it is due.

Section 184. Subsection (1) of section 624.422, Florida Statutes, is amended to read:

624.422 Service of process; appointment of Insurance Commissioner and Treasurer as process agent.—

(1) Each licensed insurer, whether domestic, foreign, or alien, shall be deemed to have appointed the Insurance Commissioner and Treasurer and her or his successors in office as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state; and process so served shall be valid and binding upon the insurer.

Section 185. Subsections (1) and (2) of section 624.423, Florida Statutes, are amended to read:

624.423 Serving process.—

(1) Service of process upon the Insurance Commissioner and Treasurer as process agent of the insurer (under s. 624.422) shall be made by serving copies in triplicate of the process upon the Insurance Commissioner and

Treasurer or upon her or his assistant, deputy, or other person in charge of her or his office. Upon receiving such service, the Insurance Commissioner and Treasurer shall file one copy in her or his office, return one copy with her or his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the insurer to receive the same, as provided under s. 624.422(2).

(2) Where process is served upon the Insurance Commissioner and Treasurer as an insurer's process agent, the insurer shall not be required to answer or plead except within 20 days after the date upon which the Insurance Commissioner and Treasurer mailed a copy of the process served upon her or him as required by subsection (1).

Section 186. Paragraph (c) of subsection (8) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(8)

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

Section 187. Subsection (3) of section 624.425, Florida Statutes, is amended to read:

624.425 Resident agent and countersignature required, property, casualty, surety insurance.—

(3) An agent shall not sign or countersign in blank any policy to be issued outside her or his office, or countersign in blank any countersignature endorsement therefor, or certificate issued thereunder. An agent may give a written power of attorney to the issuing insurance company to countersign such documents by imprinting her or his name, or the name of the agency or other entity with which the agent ~~he~~ may be sharing commission pursuant to s. 626.753(1)(a) and (2), thereon in lieu of manually countersigning such documents; but an agent shall not give a power of attorney to any other person to countersign any such document in her or his name unless the person so authorized is directly employed by the agent and by no other person, and is so employed in the office of the agent.

Section 188. Paragraph (b) of subsection (2) of section 624.470, Florida Statutes, is amended to read:

624.470 Annual reports.—

(2) Every fund shall, annually within 6 months of the end of the fiscal year, file a report with the department verified by the oath of a member of the board of trustees or by an administrative executive appointed by the board, containing the following information:

(b) A report prepared by an actuary who is a member of the American Academy of Actuaries as to the actuarial soundness of the fund. The report shall consist of, but shall not be limited to, the following:

1. Adequacy of premiums or contributions in paying claims and changes, if any, needed in the contribution rates to achieve or preserve a level of funding deemed adequate, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of the plan and the extent of any unfunded accrued liabilities.

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

3. A description and explanation of actuarial assumptions.

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

5. A comparative review illustrating the level of funds available to the commercial self-insurance fund from rates, investment income, and other sources realized over the period covered by the report, indicating the assumptions used.

6. A projection of the following year's plan of operation, including additional number of members, gross premiums to be written, and projected liabilities.

7. A statement by the actuary that the report is complete and accurate and that in her or his opinion the techniques and assumptions used are reasonable and meet the requirements of this subsection.

8. Other factors or statements as may be reasonably required by the department in order to determine the actuarial soundness of the plan.

Section 189. Subsection (2) of section 624.472, Florida Statutes, is amended to read:

624.472 Member's liability.—

(2) Subject to the limitations of subsection (1), each member shall have a contingent assessment liability for payment of actual losses and expenses incurred while her or his policy was in force.

Section 190. Subsection (4) of section 624.474, Florida Statutes, is amended to read:

624.474 Assessments.—

(4) No member shall have an offset against any assessment for which she or he is liable on account of any claim for unearned premium or losses payable.

Section 191. Subsection (1) of section 624.489, Florida Statutes, is amended to read:

624.489 Liability of trustees of self-insurance trust fund and directors of self-insurance funds operating as corporations.—

(1) A trustee of any self-insurance trust fund organized under the laws of this state is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policy of the fund, by a trustee, unless:

(a) The trustee breached or failed to perform her or his duties as a trustee; and

(b) The trustee's breach of, or failure to perform, her or his duties constitutes:

1. A violation of the criminal law, unless the trustee had reasonable cause to believe her or his conduct was lawful or had no reasonable cause to believe her or his conduct was unlawful. A judgment or other final adjudication against a trustee in any criminal proceeding for violation of the criminal law estops that trustee from contesting the fact that her or his breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the trustee from establishing that she or he had reasonable cause to believe that her or his conduct was lawful or had no reasonable cause to believe that her or his conduct was unlawful;

2. A transaction from which the trustee derived an improper personal benefit, either directly or indirectly; or

3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 192. Subsection (22) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(22) Limited surety agent, professional bail ~~bond agent~~ bondsman, or runner as defined in s. 648.25, each agent and each insurer represented. Original appointment and biennial renewal or continuation thereof, each agent or insurer, whichever is applicable:

Appointment fee	\$44.00
State tax	24.00

County tax	12.00
Total	\$80.00

Section 193. Subsections (1) and (2) of section 624.505, Florida Statutes, are amended to read:

624.505 County tax; determination; additional offices; nonresident agents.—

(1) The county tax provided for under s. 624.501 as to an agent shall be paid by each insurer for each agent only for the county where the agent resides, or if such agent's place of business is located in a county other than that of her or his residence, then for the county wherein is located such place of business. If an agent maintains an office or place of business in more than one county, the tax shall be paid for her or him by each such insurer for each county wherein the agent represents such insurer and has a place of business. When under this subsection an insurer is required to pay county tax for an agent for a county or counties other than the agent's county of residence, the insurer shall designate the county or counties for which the taxes are paid.

(2) The county tax provided for under s. 624.501 as to a solicitor shall be paid only for the county wherein is located the office or place of business of the agent by whom the solicitor is employed and out of which she or he works as her or his permanent place of business. When under this subsection an agent is required to pay a county tax for a solicitor for a county other than the solicitor's county of residence, the agent shall designate the county for which the tax is paid.

Section 194. Subsections (1) and (3) of section 624.506, Florida Statutes, are amended to read:

624.506 County tax; deposit and remittance.—

(1) The Insurance Commissioner and Treasurer shall deposit in the Agents and Solicitors County Tax Trust Fund all moneys accepted as county tax under this part. She or he shall keep a separate account for all moneys so collected for each county and, after deducting therefrom the service charges provided for in s. 215.20, shall remit the balance to the counties.

(3) The Comptroller shall annually, as of January 1 following the date of collection, and thereafter at such other times as the Insurance Commissioner and Treasurer may elect, draw her or his warrants on the State Treasury payable to the respective counties entitled to receive the same for the full net amount of such taxes to each county.

Section 195. Subsection (4) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.—

(4) The intangible tax imposed under chapter 199, the income tax imposed under chapter 220, and the emergency excise tax imposed under

chapter 221 which are paid by any insurer shall be credited against, and to the extent thereof shall discharge, the liability for tax imposed by this section for the annual period in which such tax payments are made. As to any insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines, the tax imposed by this section, as intended and contemplated by this subsection, shall be construed to mean the net amount of such tax remaining after there has been credited thereon such gross premium receipts tax as may be payable by such insurer in pursuance of the imposition of such tax by any incorporated cities or towns in the state for firefighters' firemen's relief and pension funds and police officers' policemen's retirement funds maintained in such cities or towns, as provided in and by relevant provisions of the Florida Statutes. For purposes of this subsection, payments of estimated income tax under chapter 220 and of estimated emergency excise tax under chapter 221 shall be deemed paid either at the time the insurer actually files its annual returns under chapter 220 or at the time such returns are required to be filed, whichever first occurs, and not at such earlier time as such payments of estimated tax are actually made.

Section 196. Paragraphs (a) and (b) of subsection (2) of section 624.5092, Florida Statutes, are amended to read:

624.5092 Administration of taxes; payments.—

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

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

Section 197. Subsection (3) of section 624.510, Florida Statutes, is amended to read:

624.510 Tax on wet marine and transportation insurance.—

(3) The income tax imposed under chapter 220 which is paid by any insurer shall be credited against, and to the extent thereof shall discharge,

the liability for tax imposed by this section for the annual period in which such income tax payment is made. The aggregate income tax credit for any insurer under this subsection and s. 624.509(4) shall not exceed the amount of tax paid under chapter 220 in any calendar year. As to any insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines, the tax imposed by this section, as intended and contemplated by this subsection, shall be construed to mean the net amount of such tax remaining after there has been credited thereon such gross premium receipts tax as may be payable by such insurer in pursuance of the imposition of such tax by any incorporated cities or towns in the state for firefighters' firemen's relief and pension funds and police officers' police-~~men's~~ retirement funds maintained in such cities or towns, as provided in and by relevant provisions of Florida Statutes. For purposes of this subsection, payments of estimated income tax under chapter 220 shall be deemed paid either at the time the insurer actually files its annual return under chapter 220 or at the time such return is required to be filed, whichever first occurs, and not at such earlier time as such payments of estimated tax are actually made.

Section 198. Subsection (2) of section 624.516, Florida Statutes, is amended to read:

624.516 State Fire Marshal regulatory assessment and surcharge; deposit and use of funds.—

(2) The moneys so received and deposited in the funds, as provided in subsection (1), are hereby appropriated for use by the State Treasurer as ex officio State Fire Marshal, hereinafter referred to as “State Fire Marshal,” to defray the expenses of the State Fire Marshal in the discharge of her or his administrative and regulatory powers and duties as prescribed by law, including the maintaining of offices and necessary supplies therefor, essential equipment and other materials, salaries and expenses of required personnel, and all other legitimate expenses relating to the discharge of the administrative and regulatory powers and duties imposed in and charged to her or him under such laws.

Section 199. Paragraphs (l) and (n) of subsection (1) of section 624.523, Florida Statutes, are amended to read:

624.523 Insurance Commissioner's Regulatory Trust Fund.—

(1) There is created in the State Treasury a trust fund designated “Insurance Commissioner's Regulatory Trust Fund” to which shall be credited all payments received on account of the following items:

(l) All sums received under s. 648.27(6) (bail bond agent bondsman, limited surety agent or runner, continuation fee), the “appointment fee” portion of any license or permit provided for under s. 648.31, and the application fees provided for under ss. 648.34(3) and 648.37(3).

(n) All sums received by the Insurance Commissioner and Treasurer as fees for her or his services as service-of-process agent.

Section 200. Subsection (9) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(9) Any authorized insurer ceding directly written risks of loss under this section shall within 30 days of receipt of a cover note or similar confirmation of coverage, or in no event no later than 6 months after the effective date of the reinsurance treaty, file with the department one copy of a summary statement containing the following information about each treaty:

- (a) The contract period;
- (b) The nature of the reinsured's business;
- (c) An indication as to whether the treaty is proportional, nonproportional, coinsurance, modified coinsurance, or indemnity, as applicable;
- (d) The ceding company's loss retention per risk;
- (e) The reinsured limits;
- (f) Any special contract restrictions;
- (g) A schedule of reinsurers assuming the risks of loss;
- (h) An indication as to whether payments to the assuming insurer are based on written premiums or earned premiums;
- (i) Identification of any intermediary or broker used in obtaining the reinsurance and the commission paid them if known; and
- (j) Ceding commissions and allowances.

The summary statement shall be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the Insurance Commissioner may require the filing of any supporting information relating to the ceding of such risks as she or he deems necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the department that the relevant reinsurance treaty or treaties complies with the accounting requirements contained in any rule promulgated by the department pursuant to subsection (10) or subsection (12). If such certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate shall state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty. This subsection applies to cessions of directly written risk of loss. This subsection does not apply to contracts of facultative reinsurance or to any ceding insurer with surplus as to policyholder that

exceeds \$100 million as of the immediately preceding December 31. Additionally, any ceding insurer otherwise subject to this section with less than \$500,000 in direct premiums written in this state during the preceding calendar year or with less than 1,000 policyholders at the end of the preceding calendar year is exempt from the requirements of this subsection. However, any ceding insurer otherwise subject to this section with more than \$250,000 in direct premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection. The Insurance Commissioner may, upon a showing of good cause, waive the requirements of this subsection.

Section 201. Section 625.75, Florida Statutes, is amended to read:

625.75 Certain persons and directors and officers of domestic stock insurer to file statements.—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a domestic stock insurer, or who is a director or an officer of a domestic stock insurer, shall file in the office of the department within 10 days after ~~becoming~~ he becomes such beneficial owner, director, or officer a statement, in such form as the department may prescribe, of the amount of all equity securities of such insurer of which he or she is the beneficial owner; within 10 days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, he or she shall file in the office of the department a statement, in such form as the department may prescribe, indicating his or her ownership of such equity securities at the close of the calendar month and such changes in his or her ownership of such equity securities as have occurred during such calendar month.

Section 202. Section 625.77, Florida Statutes, is amended to read:

625.77 Unlawful to sell equity security not owned; delayed delivery.—

(1) It is unlawful for any person reporting securities under s. 625.75 to sell, directly or indirectly, any equity security of a company named in such report if the person ~~he~~ or the person's ~~his~~ principal:

- (a) Does not own the security sold;
- (b) If owning the security, does not deliver it against such sale within 20 days thereafter; or
- (c) Does not within 5 days after such sale deposit it in the mails or other usual channels of transportation.

(2) No person shall be deemed to have violated this section if he or she proves that, notwithstanding the exercise of good faith, he or she was unable to make such delivery or deposit within such time.

Section 203. Section 625.78, Florida Statutes, is amended to read:

625.78 Certain sale and purchase exempted; investment account.—The provisions of s. 625.76 do not apply to any purchase and sale, or sale and purchase, and the provisions of s. 625.77 do not apply to any sale, of an

equity security of a domestic stock insurer not then or theretofore held by a person required to report under s. 625.75 in an investment account, which transaction is by a dealer in the ordinary course of ~~his~~ his business and incident to the establishment or maintenance by him or her of a primary or secondary market, other than on an exchange as defined in the Securities Exchange Act of 1934, for such security. The department may, by such rules as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

Section 204. Paragraph (c) of subsection (1) of section 626.022, Florida Statutes, is amended to read:

626.022 Scope of part.—

(1) This part applies as to insurance agents, solicitors, service representatives, adjusters, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers, except that:

(c) It does not apply to a bail bond agent ~~bondsman~~, as defined in s. 648.25, except as provided in chapter 648 or chapter 903.

Section 205. Paragraphs (b), (c), and (d) of subsection (2) of section 626.041, Florida Statutes, are amended to read:

626.041 “General lines agent” defined.—

(2) With respect to any such insurances, no person shall, unless licensed as an agent:

(b) In this state receive or receipt for any money on account of or for any insurer, or receive or receipt for money from other persons to be transmitted to any insurer for a policy, contract, or certificate of insurance or any renewal thereof, although such policy, certificate, or contract is not signed by him or her as agent or representative of the insurer;

(c) Directly or indirectly represent himself or herself to be an agent of any insurer or as an agent, to collect or forward any insurance premium, or to solicit, negotiate, effect, procure, receive, deliver, or forward, directly or indirectly, any insurance contract or renewal thereof or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state;

(d) In this state engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions (other than as a licensed attorney at law) relative to insurance or insurance contracts, for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his or her employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer;

Section 206. Subsection (1) of section 626.0428, Florida Statutes, is amended to read:

626.0428 Agency personnel powers, duties, and limitations.—

(1) An individual employed by an agent or agency on salary who devotes full time to clerical work, with incidental taking of insurance applications or quoting or receiving premiums on incoming inquiries in the office of the agent or agency, is not deemed to be an agent, customer representative, or solicitor if his or her compensation does not include in whole or in part any commissions on such business and is not related to the production of applications, insurance, or premiums.

Section 207. Paragraph (b) of subsection (2) of section 626.051, Florida Statutes, is amended to read:

626.051 “Life agent” defined.—

(2) Except as provided in s. 626.112(7), with respect to any such insurances or contracts, no person shall, unless licensed as an agent:

(b) In this state engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts other than:

1. As a consulting actuary advising an insurer; or

2. As to the counseling and advising of labor unions, associations, trustees, employers or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

Section 208. Paragraph (b) of subsection (2) of section 626.062, Florida Statutes, is amended to read:

626.062 “Health agent” defined.—

(2) Except as provided in s. 626.112(7), with respect to such insurance, no person shall, unless licensed as an agent:

(b) In this state engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance contracts other than:

1. As a consulting actuary advising insurers; or

2. As to the counseling and advising of labor unions, associations, trustees, employers or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

Section 209. Subsection (2) of section 626.071, Florida Statutes, is amended to read:

626.071 "Solicitor" defined.—

(2) No person without being duly licensed and conforming to this code shall directly or indirectly represent himself or herself to be the solicitor for any agent or agency, or as solicitor, to collect or forward any insurance premium, or to solicit, negotiate, effect, procure, receive, deliver, or forward, directly or indirectly, any insurance contract or renewal thereof or any endorsement relating to an insurance contract.

Section 210. Subsection (3) of section 626.091, Florida Statutes, is amended to read:

626.091 "Managing general agent" defined.—

(3) No insurer shall enter into an agreement with any person, except as provided in subsection (1), to manage the business written in this state by the general lines agents appointed by the insurer or appointed by the managing general agent on behalf of the insurer unless the person is properly licensed and appointed as a managing general agent in this state. An insurer shall be responsible for the acts of its managing general agent when the agent acts within the scope of his or her authority.

Section 211. Subsections (1), (2), (3), (4), (5), (6), and (7) and paragraph (b) of subsection (8) of section 626.112, Florida Statutes, are amended to read:

626.112 License and appointment required; agents, customer representatives, solicitors, adjusters, insurance agencies, service representatives, managing general agents, claims investigators.—

(1) No person shall be, act as, or advertise or hold himself or herself out to be an insurance agent, customer representative, solicitor, or adjuster unless he or she is currently licensed and appointed.

(2) No agent, customer representative, or solicitor shall solicit or otherwise transact as agent, customer representative, or solicitor, or represent or hold himself or herself out to be an agent, customer representative, or solicitor as to, any kind or kinds of insurance as to which he or she is not then licensed and appointed.

(3) No person shall act as an adjuster as to any class of business for which he or she is not then licensed and appointed.

(4) No person shall be, act as, or represent or hold himself or herself out to be a service representative unless he or she then holds a currently effective service representative license and appointment. This subsection does not apply as to similar representatives or employees of casualty insurers whose duties are restricted to health insurance.

(5) No person shall be, act as, or represent or hold himself or herself out to be a managing general agent unless he or she then holds a currently effective managing general agent license and appointment.

(6) No person shall be, act as, or represent or hold himself or herself out to be a claims investigator, or perform any of the functions of a claims investigator, unless he or she then holds a currently effective claims investigator license and appointment.

(7) An individual employed by a life or health insurer as an officer or other salaried representative may solicit and effect contracts of life insurance or annuities or of health insurance, without being licensed as an agent, when and only when he or she is accompanied by and solicits for and on the behalf of a licensed agent.

(8)

(b) An insurance agency shall, as a condition precedent to continuing business, obtain an insurance agency license if the department finds that, with respect to any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, any person has, subsequent to the effective date of this act:

1. Been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases.

2. Employed any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department. An insurance agency may request, on forms prescribed by the department, verification of any person's license status. If a request is mailed within 5 working days after an employee is hired, and the employee's license is currently suspended or revoked, the agency shall not be required to obtain a license, if the unlicensed person's employment is immediately terminated.

3. Operated the agency or permitted the agency to be operated in violation of s. 626.747.

4. With such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:

a. Solicited or handled controlled business. This subparagraph shall not prohibit the licensing of any lending or financing institution or creditor, with respect to insurance only, under credit life or disability insurance policies of borrowers from the institutions, which policies are subject to part IX of chapter 627.

b. Misappropriated, converted, or unlawfully withheld moneys belonging to insurers, insureds, beneficiaries, or others and received in the conduct of business under the license.

c. Unlawfully rebated, attempted to unlawfully rebate, or unlawfully divided or offered to divide commissions with another.

d. Misrepresented any insurance policy or annuity contract, or used deception with regard to any policy or contract, done either in person or by any form of dissemination of information or advertising.

e. Violated any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license.

f. Violated any lawful order or rule of the department.

g. Failed or refused, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.

h. Violated the provision against twisting as defined in s. 626.9541(1)(l).

i. In the conduct of business, engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part X of this chapter.

j. Willfully overinsured any property insurance risk.

k. Engaged in fraudulent or dishonest practices in the conduct of business arising out of activities related to insurance or the insurance agency.

l. Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance or the insurance agency.

m. Authorized or knowingly allowed individuals to transact insurance who were not then licensed as required by this code.

5. Knowingly employed any person who within the preceding 3 years has had his or her relationship with an agency terminated in accordance with paragraph (d).

6. Willfully circumvented the requirements or prohibitions of this code.

Section 212. Paragraphs (a), (b), (c), (e), and (f) of subsection (2) of section 626.171, Florida Statutes, are amended to read:

626.171 Application for license.—

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

(a) His or her full name, age, residence, place of business, and occupation for the 5-year period preceding the date of application.

(b) His or her qualifications for the license, as follows:

1. What efforts he or she has made or intends to make to become familiar ~~familiarize himself~~ with the insurance laws of this state and with the provisions of the contracts to be negotiated.

2. What insurance experience he or she has had, if any.

3. What insurance instruction he or she has had or expects to receive.

4. What approved insurance courses he or she has completed or is in the process of completing which may be used to meet any educational requirements.

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

(e) Whether the applicant ~~he~~ will devote all or part of his or her efforts to acting as an insurance representative and, if part only, how much time ~~he~~ will be devoted ~~devote~~ to such work and in what other business or businesses he or she is engaged or employed.

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

Section 213. Paragraph (b) of subsection (1) of section 626.172, Florida Statutes, is amended to read:

626.172 Application for insurance agency license.—

(1) If any majority owner, partner, officer, or director of an insurance agency:

(b) Has been denied a license relating to the business of insurance, or has had his or her license to practice or conduct any regulated profession, business, or vocation relating to the business of insurance revoked or suspended, by this or any other state, any nation, any possession or district of the United States, or any court, or any lawful agency thereof;

the insurance agency and any subsidiary or branch thereof shall obtain a license from the department pursuant to this section.

Section 214. Section 626.181, Florida Statutes, is amended to read:

626.181 Number of applications for licensure required.—After a license as agent, solicitor, or adjuster has been issued to an individual, the same individual shall not be required to take another examination for a similar license, regardless, in the case of an agent, of the number of insurers to be represented by him or her as agent, unless:

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

(2) During any period of 24 months since the filing of the original license application, such individual was not appointed as an agent, solicitor, or adjuster, unless the failure to be so appointed was due to military service, in which event the period within which a new application is not required may, in the discretion of the department, be extended to 12 months following the date of discharge from military service if the military service does not exceed 3 years, but in no event to extend under this clause for a period of more than 4 years from the date of filing of the original application for license.

Section 215. Section 626.191, Florida Statutes, is amended to read:

626.191 Repeated applications.—The failure of an applicant to secure a license upon an application shall not preclude him or her from applying again as many times as ~~desired he may desire~~, but the department shall not give consideration to or accept any further application by the same individual for a similar license dated or filed within 30 days subsequent to the date the department denied the last application, except as provided in s. 626.281.

Section 216. Section 626.201, Florida Statutes, is amended to read:

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

Section 217. Subsection (2) of section 626.211, Florida Statutes, is amended to read:

626.211 Approval, disapproval of application.—

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

Section 218. Paragraphs (e) and (g) of subsection (2) of section 626.221, Florida Statutes, are amended to read:

626.221 Examination requirement; exemptions.—

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

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

(g) A person who has been licensed by the department as an adjuster for motor vehicle, property and casualty, workers' compensation, and health insurance may be licensed as such an adjuster without additional written

examination if his or her application for appointment is filed with the department within 24 months after cancellation or expiration of the prior license.

Section 219. Section 626.231, Florida Statutes, is amended to read:

626.231 Eligibility for examination.—No person shall be permitted to take an examination for license until his or her application for the license has been approved and the required fees have been received by the department or a person designated by the department to administer the examination.

Section 220. Subsection (1) of section 626.251, Florida Statutes, is amended to read:

626.251 Time and place of examination; notice.—

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

Section 221. Subsections (1) and (4) of section 626.311, Florida Statutes, are amended to read:

626.311 Scope of license.—

(1) Except as to limited licenses, the applicant for license as a general lines agent or solicitor shall qualify for all property, marine, casualty, and surety lines except bail bonds which require a separate license under chapter 648. The license of a general lines agent may also cover health insurance if health insurance is included in the agent's appointment by an insurer as to which the licensee is also appointed as agent for property or casualty or surety insurance. The license of a solicitor shall provide, in substance, that it covers all of such classes of insurance that his or her appointing general lines agent or agency is currently so authorized to transact under the general lines agent's license and appointments. No such license shall be issued limited to particular classes of insurance except for bail bonds which require a separate license under chapter 648.

(4) No agent licensee shall transact or attempt to transact under his or her license any line of insurance for which he or she does not have currently in force of record with the department an appointment by an authorized insurer.

Section 222. Paragraphs (d), (h), and (i) of subsection (1) of section 626.321, Florida Statutes, are amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified individual, or a qualified individual or entity under paragraphs (d) and (e), a license as agent authorized to transact a limited class of business in any of the following categories:

(d) Baggage and motor vehicle excess liability insurance.—

1. License covering only insurance of personal effects except as provided in subparagraph 2. The license may be issued only:

a. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in the sale or handling of transportation of baggage and personal effects of travelers, and may authorize the sale of such insurance only in connection with such transportation; or

b. To the full-time salaried employee of a licensed general lines agent, a full-time salaried employee of a business which offers motor vehicles for rent or lease, or to a business office of a business which offers motor vehicles for rent or lease if insurance sales activities authorized by the license are limited to full-time salaried employees.

The purchaser of baggage insurance shall be provided written information disclosing that the insured's homeowner's policy may provide coverage for loss of personal effects and that the purchase of such insurance is not required in connection with the purchase of tickets or in connection with the lease or rental of a motor vehicle.

2. A business office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may include lessees under a master contract providing coverage to the lessor or may transact excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in its lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle, provided that the lease or rental agreement is for not more than 30 days; that the lessee is not provided coverage for more than 30 consecutive days per lease period, and, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days; that the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide additional excess coverage; and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. The excess liability insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. A business office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may, as an agent of an insurer, transact insurance that provides coverage for the liability of the lessee to the lessor for damage to the leased or rented motor vehicle if:

a. The lease or rental agreement is for not more than 30 days; or the lessee is not provided coverage for more than 30 consecutive days per lease period, but, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days;

b. The lessee is given written notice that his or her personal insurance policy that provides coverage on an owned motor vehicle may provide such coverage with or without a deductible; and

c. The purchase of the insurance is not required in connection with the lease or rental of a motor vehicle.

(h) Crop hail and multiple-peril crop insurance.—License covering only crop hail and multiple-peril crop insurance. Notwithstanding any other provision of law, the limited license may be issued to a bona fide salaried employee of an association chartered under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq., who satisfactorily completes the examination prescribed by the department pursuant to s. 626.241(5). The limited agent must be appointed by, and his or her limited license requested by, a licensed general lines agent. All business transacted by the limited agent shall be in behalf of, in the name of, and countersigned by the agent by whom he or she is appointed. Sections 626.561 and 626.748, relating to records, apply to all business written pursuant to this section. The limited licensee may be appointed by and licensed for only one general lines agent or agency.

(i) In-transit and storage personal property insurance.—A license covering only the insurance of personal property not held for resale, covering the risks of transportation or storage in rented or leased motor vehicles, trailers, or self-service storage facilities, as the latter are defined in s. 83.803, may be issued, without examination, only to employees or authorized representatives of lessors who rent or lease motor vehicles, trailers, or self-service storage facilities and who are authorized by an insurer to issue certificates or other evidences of insurance to lessees of such motor vehicles, trailers, or self-service storage facilities under an insurance policy issued to the lessor. A person licensed under this paragraph shall give a prospective purchaser of in-transit or storage personal property insurance written notice that his or her homeowner's policy may provide coverage for the loss of personal property and that the purchase of such insurance is not required under the lease terms.

Section 223. Section 626.322, Florida Statutes, is amended to read:

626.322 License, appointment; certain military installations.—A natural person, not a resident of this state, may be licensed and appointed to represent an authorized life insurer domiciled in this state or an authorized foreign life insurer which maintains a regional home office in this state, provided such person represents such insurer exclusively at a United States military installation located in a foreign country. The department may, upon request of the applicant and the insurer on application forms furnished by the department and upon payment of fees as prescribed in s. 624.501, issue a license and appointment to such person. The insurer shall certify to the department that the applicant has the necessary training to hold himself or herself out as a life insurance representative, and the insurer shall further

certify that it is willing to be bound by the acts of such applicant within the scope of his or her employment. Appointments shall be continued as prescribed in s. 626.381 and upon payment of a fee as prescribed in s. 624.501, unless sooner terminated. Such fees received shall be credited to the Insurance Commissioner's Regulatory Trust Fund as provided for in s. 624.523.

Section 224. Subsections (1) and (2) of section 626.331, Florida Statutes, are amended to read:

626.331 Number of appointments permitted or required.—

(1) Except as otherwise expressly provided in this code, the same individual may at any one time hold any and all categories of appointments as to which he or she has qualified and been licensed under this code.

(2) An agent shall be required to have a separate appointment as to each insurer by whom he or she is appointed as an agent.

Section 225. Subsection (2) of section 626.341, Florida Statutes, is amended to read:

626.341 Additional appointments; general lines, life, and health agents.—

(2) A life or health agent with an appointment in force may solicit applications for policies of insurance on behalf of an insurer with respect to which he or she is not an appointed life or health agent, unless otherwise provided by contract, if such agent simultaneously with the submission to such insurer of the application for insurance solicited by him or her requests the insurer to appoint him or her as agent. However, no commissions shall be paid by such insurer to the agent until such time as an additional appointment with respect to such insurer has been received by the department pursuant to the provisions of subsection (1).

Section 226. Subsection (2) of section 626.342, Florida Statutes, is amended to read:

626.342 Furnishing supplies to unlicensed life, health, or general lines agent prohibited; civil liability and penalty.—

(2) Any insurer, general agent, or agent who furnishes any of the supplies specified in subsection (1) to any agent or prospective agent not appointed to represent the insurer and who accepts from or writes any insurance business for such agent or agency shall be subject to civil liability to any insured of such insurer to the same extent and in the same manner as if such agent or prospective agent had been appointed or authorized by the insurer or such agent to act in its or his or her behalf. The provisions of this subsection do not apply to insurance risk apportionment plans under s. 627.351.

Section 227. Subsections (2) and (3) of section 626.431, Florida Statutes, are amended to read:

626.431 Effect of expiration of license and appointment.—

(2) When a licensee's last appointment for a particular class of insurance has been terminated or not renewed, the department must notify the licensee that his or her eligibility for appointment as such an appointee will expire unless he or she is appointed prior to expiration of the 24-month period referred to in subsection (3).

(3) An individual who fails to maintain an appointment with an appointing entity writing the class of business listed on his or her license during any 24-month period shall not be granted an appointment for that class of insurance until he or she qualifies as a first-time applicant.

Section 228. Subsections (2) and (3) of section 626.451, Florida Statutes, are amended to read:

626.451 Appointment of agent or other representative.—

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

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

Section 229. Subsections (1) and (4) of section 626.471, Florida Statutes, are amended to read:

626.471 Termination of appointment.—

(1) Subject to an appointee's contract rights, an appointing entity may terminate its appointment of any appointee at any time. Except when termination is upon a ground which would subject the appointee to suspension or revocation of his or her license and appointment under s. 626.611 or s. 626.621, and except as provided by contract between the appointing entity and the appointee, the appointing entity shall give at least 60 days' advance written notice of its intention to terminate such appointment to the appointee, either by delivery thereof to the appointee in person or by mailing it, postage prepaid, addressed to the appointee at his or her last address of record with the appointing entity. Notice so mailed shall be deemed to have been given when deposited in a United States Postal Service mail depository.

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

Section 230. Subsection (1) of section 626.541, Florida Statutes, is amended to read:

626.541 Firm, corporate, and business names; officers; associates; notice of changes.—

(1) Any licensed agent or adjuster doing business under a firm or corporate name or under any business name other than his or her own individual name shall annually on or before January 1 file with the department, on forms furnished by it, a written statement of the firm, corporate, or business name being so used, the address of any office or offices or places of business making use of such name, and the name and social security number of each director and the president of the corporation and of each individual associated in such firm or corporation as to the insurance transactions thereof or in the use of such business name.

Section 231. Section 626.551, Florida Statutes, is amended to read:

626.551 Notice of change of address, name.—Every licensee shall notify the department in writing within 30 days after a change of his name, his residence address, his principal business street address, or mailing address. Any licensed agent who has moved his or her residence from this state shall have his or her license and all appointments immediately terminated by the department.

Section 232. Subsections (1) and (3) of section 626.561, Florida Statutes, are amended to read:

626.561 Reporting and accounting for funds.—

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

(3) Any agent, solicitor, or adjuster who, not being lawfully entitled thereto, either temporarily or permanently diverts or appropriates such funds or any portion thereof to his or her own use or deprives the other person of a benefit therefrom commits the offense specified below:

(a) If the funds diverted or appropriated to his or her own use are \$300 or less, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the funds diverted or appropriated to his or her own use are more than \$300, but less than \$20,000, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the funds diverted or appropriated to his or her own use are \$20,000 or more, but less than \$100,000, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the funds diverted or appropriated to his or her own use are \$100,000 or more, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 233. Subsection (1) of section 626.572, Florida Statutes, is amended to read:

626.572 Rebating; when allowed.—

(1) No agent shall rebate any portion of his or her commission except as follows:

(a) The rebate shall be available to all insureds in the same actuarial class.

(b) The rebate shall be in accordance with a rebating schedule filed by the agent with the insurer issuing the policy to which the rebate applies.

(c) The rebating schedule shall be uniformly applied in that all insureds who purchase the same policy through the agent for the same amount of insurance receive the same percentage rebate.

(d) Rebates shall not be given to an insured with respect to a policy purchased from an insurer that prohibits its agents from rebating commissions.

(e) The rebate schedule is prominently displayed in public view in the agent's place of doing business and a copy is available to insureds on request at no charge.

(f) The age, sex, place of residence, race, nationality, ethnic origin, marital status, or occupation of the insured or location of the risk is not utilized in determining the percentage of the rebate or whether a rebate is available.

Section 234. Section 626.581, Florida Statutes, is amended to read:

626.581 Commissions contingent upon adjustment savings; prohibition.—

(1) It is unlawful for any insurer to enter into any agreement or understanding with its general or state agent or for any insurer, either directly or through its general or state agent, to enter into any agreement or understanding with any local resident agent of such insurer in this state, the effect of which is to make the net amount of any such agent's commissions on policies of insurance negotiated and issued by such insurer in this state contingent upon savings effected in the adjustment, settlement, and payment of losses covered by such insurer's policies, and in pursuance of which agreement or understanding the agent acts as adjuster for claims under such policies and pays claims incurred by such insurer under the policies from a stated percentage of the premiums collected or remitted to the agent

thereon and retained by the agent him; and any such agreements and understandings now existing are declared unlawful and shall be terminated immediately.

(2) Nothing in this section shall be construed to apply to or affect any contingent commissions agreement under which the general or state agent or local resident agent does not pay claims arising under policies of the insurer he or she represents from a stated percentage of premiums collected by him or her or remitted to such agent and retained by him or her.

Section 235. Subsections (1), (4), and (5) of section 626.592, Florida Statutes, are amended to read:

626.592 Primary agents.—

(1) On or before January 1, 1990, and annually thereafter, each person operating an insurance agency and each location of a multiple location agency shall designate a primary agent for each insurance agency location and shall file the name of the person so designated, and the address of the insurance agency location where he or she is primary agent, with the Department of Insurance, on a form approved by the department. The designation of the primary agent may be changed at the option of the agency and any change shall be effective upon notification to the department.

(4) The department may suspend or revoke the license of the primary agent if an insurance agency employs any person who has had a license denied or any person whose license is currently suspended or revoked. However, when a person has been denied a license for failure to pass a required examination, he or she may be employed to perform clerical or administrative functions for which licensure is not required.

(5) The primary agent in an unincorporated agency, or the primary agent in an incorporated agency in which no officer, director, or stockholder is an agent, shall be responsible and accountable for the acts of salaried employees under his or her direct supervision and control, while acting on behalf of the agency. Nothing in this section shall be construed to render any person criminally liable or subject to any disciplinary proceedings for any act unless such person personally committed or knew or should have known of such act and of the facts constituting a violation of this chapter.

Section 236. Subsections (6) and (11) of section 626.611, Florida Statutes, are amended to read:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, solicitor's, adjuster's, customer representative's, service representative's, managing general agent's, or claims investigator's license or appointment.—The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, solicitor, adjuster, customer representative, service representative, managing general agent, or claims investigator, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

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

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

Section 237. Subsections (4) and (6) of section 626.621, Florida Statutes, are amended to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, solicitor's, adjuster's, customer representative's, service representative's, managing general agent's, or claims investigator's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, solicitor, adjuster, customer representative, service representative, managing general agent, or claims investigator, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

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

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

Section 238. Paragraph (f) of subsection (5) of section 626.6215, Florida Statutes, is amended to read:

626.6215 Grounds for discretionary refusal, suspension, or revocation of insurance agency license.—The department may, in its discretion, deny, suspend, revoke, or refuse to continue the license of any insurance agency if it finds, as to any insurance agency or as to any majority owner, partner, manager, director, officer, or other person who manages or controls such insurance agency, that any one or more of the following applicable grounds exist:

(5) Committing any of the following acts with such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:

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

Section 239. Subsections (1), (2), and (3) of section 626.730, Florida Statutes, are amended to read:

626.730 Purpose of license.—

(1) The purpose of a license issued under this code to a general lines agent or solicitor is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent or solicitor with respect to the general public and to facilitate the public supervision of such activities in the public interest, and not for the purpose of enabling the licensee to receive a rebate of premium in the form of commission or other compensation as an agent or solicitor or enabling the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through him or her upon his or her own interests or those of other persons with whom he or she is closely associated in capacities other than that of insurance agent or solicitor.

(2) The department shall not grant, renew, continue, or permit to exist any license or appointment as such agent or solicitor as to any applicant therefor or licensee or appointee thereunder if it finds that the license or appointment has been, is being, or will probably be used by the applicant or licensee or appointee for the purpose of securing rebates or commissions on “controlled business,” that is, on insurance written on his or her own interests or those of his or her family or of any firm, corporation, or association with which he or she is associated, directly or indirectly, or in which he or she has an interest other than as to the insurance thereof.

(3) A violation of this section shall be deemed to exist or be probable (as to an applicant for appointment) if the department finds that during any 12-month period aggregate commissions or other compensation accruing in favor of the applicant or licensee or appointee based upon the insurance procured or to be procured (in the case of an applicant for appointment) by or through the licensee or appointee with respect to insurance of his or her own interests or those of his or her family or of any firm, corporation, or association with which he or she is associated or in which he or she is interested, as referred to in subsection (2), have exceeded or will exceed 50 percent of the aggregate amount of commissions and compensation accruing or to accrue in his or her favor during the same period as to all insurance coverages procured or to be procured by or through him or her. Except, any general lines agent who, on July 1, 1959, had aggregate commissions or other compensation on controlled business as defined in this section in excess of the aforesaid 50 percent shall be permitted to continue writing such insurance for the same insured or insureds, so long as the agent continues to hold a general lines agent’s license and appointment in good standing to transact the same kinds of insurance so written, until the termination of such license or appointment by failure to renew or continue, suspension, or revocation.

Section 240. Paragraphs (b) and (c) of subsection (1) of section 626.731, Florida Statutes, are amended to read:

626.731 Qualifications for general lines agent’s license.—

(1) The department shall not grant or issue a license as general lines agent to any individual found by it to be untrustworthy or incompetent or who does not meet each of the following qualifications:

(b) The applicant is a bona fide resident of this state. An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence at the time of application for license of a license in his or her name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the ~~his~~ resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

(c) The applicant's ~~His~~ place of business will be located in this state and he or she will be actively engaged in the business of insurance and will maintain a place of business, the location of which is identifiable by and accessible to the public.

Section 241. Section 626.732, Florida Statutes, is amended to read:

626.732 Requirement as to knowledge, experience, or instruction.—

(1) Except as provided in subsection (3), no applicant for a license as a general lines agent, except for a chartered property and casualty underwriter (CPCU), other than as to a limited license as to baggage and motor vehicle excess liability insurance, credit property insurance, credit insurance, or in-transit and storage personal property insurance, shall be qualified or licensed unless within the 4 years immediately preceding the date the ~~his~~ application for license is filed with the department the applicant ~~he~~ has:

(a) Taught or successfully completed classroom courses in insurance satisfactory to the department at a school, college, or extension division thereof, approved by the department;

(b) Completed a correspondence course in insurance satisfactory to the department and regularly offered by accredited institutions of higher learning in this state and, except if he or she is applying for a limited license under s. 626.321, has had at least 6 months of responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance set forth in s. 626.041(1); or

(c) Completed at least 1 year in responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance, exclusive of aviation and wet marine and transportation insurances but not exclusive of boats of less than 36 feet in length or aircraft not held out for hire, as set forth in s. 626.041(1), without the education requirement mentioned in paragraph (a) or paragraph (b).

(2) Where an applicant's qualifications as required in paragraph (1)(b) or paragraph (1)(c) are based in part upon the periods of employment at responsible insurance duties prescribed therein, the applicant shall submit with the ~~his~~ application for license, on a form prescribed by the department, the affidavit of his or her employer setting forth the period of such employment,

that the same was substantially full-time, and giving a brief abstract of the nature of the duties performed by the applicant.

(3) An individual who was or became qualified to sit for an agent's or adjuster's examination at or during the time he or she was employed by the department and who while so employed was employed in responsible insurance duties as a full-time bona fide employee shall be permitted to take an examination if application for such examination is made within 90 days after the date of termination of his or her employment with the department.

Section 242. Section 626.734, Florida Statutes, is amended to read:

626.734 Corporations, liability of agent.—Any general lines insurance agent who is an officer, director, or stockholder of an incorporated general lines insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his or her direct supervision and control while acting on behalf of the corporation. Nothing in this section shall be construed to render any person criminally liable or subject to any disciplinary proceedings for any act unless such person personally committed or knew or should have known of such act and of the facts constituting a violation of this chapter.

Section 243. Subsections (2) and (5) of section 626.7351, Florida Statutes, are amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(2) The applicant is a bona fide resident of this state and will actually reside in the state at least 6 months out of the year. An individual who is a bona fide resident of this state shall be deemed to meet the residence requirements of this subsection, notwithstanding the existence at the time of application for license of a license in his or her name on the records of another state as a resident licensee of the other state, if the applicant furnishes a letter of clearance satisfactory to the department that the his resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

(5) The applicant will be employed by only one agent or agency and the agency will appoint one designated agent within the agency who will supervise the work of the applicant and his or her conduct in the insurance business, and the applicant will spend all of his or her business time in the employment of the agent or agency and will be domiciled in the office of the appointing agent or agency as provided in s. 626.7352.

Section 244. Section 626.7352, Florida Statutes, is amended to read:

626.7352 Customer representative's office.—A customer representative shall be housed wholly and completely within the actual confines of the office of the agent or agency whom he or she represents, together with any such

furniture, books, records, equipment, and paraphernalia necessary for the conduct of such insurance business. The customer representative shall not maintain any such office or furniture, books, records, equipment, or paraphernalia at any other address or location, nor shall he or she maintain or make use of any other quarters, space, or address, for the purpose of the conduct of such business. No advertising, letterhead, or telephone listing of the customer representative shall indicate any business address other than that of the agent or agency by whom he or she is employed. No customer representative may be employed from any location except where an agent licensed to write such lines spends his or her full time in charge of such location.

Section 245. Subsection (2) of section 626.7353, Florida Statutes, is amended to read:

626.7353 Appointment of customer representatives.—

(2) The same individual shall not be appointed as customer representative as to more than one appointing agent or agency at any one time, and the general lines agent designated pursuant to s. 626.7351(5) to supervise the work of the customer representative shall sign the appointment form, obligating himself or herself to supervise the customer representative's conduct and business.

Section 246. Section 626.7354, Florida Statutes, is amended to read:

626.7354 Customer representative's powers; agent's or agency's responsibility.—

(1) A customer representative's license shall not cover life insurance or any kind of insurance for which the agent or agency by which he or she is appointed is not then licensed.

(2) A customer representative may engage in transacting insurance with customers who have been solicited by any agent, solicitor, or customer representative in the same agency, and may engage in transacting insurance with customers who have not been so solicited to the extent and under conditions that are otherwise consistent with this part and with the insurer's contract with the agent appointing him or her.

(3) A customer representative shall be a salaried employee of the agent or agency. His or her compensation shall not include commissions and shall not be primarily based on the production of applications, insurance, or premiums.

(4) A customer representative shall not engage in transacting insurance outside of the office of his or her agent or agency.

(5) All business transacted by a customer representative under his or her license shall be in the name of the agent or agency by which he or she is appointed, and the agent or agency shall be responsible and accountable for all acts of the customer representative within the scope of such appointment.

Section 247. Section 626.736, Florida Statutes, is amended to read:

626.736 Solicitor's office.—A solicitor shall be housed wholly and completely within the actual confines of the office of the agent whom he or she represents, together with any such furniture, books, records, equipment, and paraphernalia necessary for the conduct of such insurance business. The solicitor shall not maintain any such office or furniture, books, records, equipment, or paraphernalia at any other address or location, nor shall he or she maintain or make use of any other quarters, space, or address, for the purpose of the conduct of such business. No advertising, letterhead, or telephone listing of the solicitor shall indicate any business address other than that of the agent by whom he or she is employed. No solicitor may be employed from any location except when an agent licensed to write such lines spends his or her full time in charge of such location.

Section 248. Section 626.738, Florida Statutes, is amended to read:

626.738 Solicitor's powers; agent's or agency's responsibility.—

(1) A solicitor's license and appointment shall not cover any kind of insurance for which the agent or agency by whom he or she is appointed is not then licensed and appointed.

(2) A solicitor, as such, shall not have power to bind an insurer upon or with reference to any risk or insurance contract or to countersign his or her name to insurance contracts.

(3) All business transacted by a solicitor under his or her license and appointment shall be in the name of the agent or agency by whom he or she is appointed, and the agent or agency shall be responsible for all acts of the solicitor within the scope of such appointment.

Section 249. Paragraph (a) of subsection (1) of section 626.739, Florida Statutes, is amended to read:

626.739 Temporary license; death, disability, absence of agent.—

(1) The department may, in its discretion, issue a temporary license as agent to a licensed agent's employee, family member, business associate, or personal representative for the purpose of continuing or winding up the business affairs of the agent or agency, all subject to the following conditions:

(a) The agent so being replaced must have become deceased or unable to perform his or her duties as agent because of military service or illness or other physical or mental disability.

Section 250. Subsections (1), (2), and (4) of section 626.741, Florida Statutes, are amended to read:

626.741 Nonresident agents; licensing and restrictions.—

(1) The department may, upon written application and the payment of the fees as specified in s. 624.501, issue a license as a general lines agent

to an individual who is otherwise qualified therefor, but who is not a resident of this state, if by the laws of the state of the individual's his residence, residents of this state may be licensed in like manner as a nonresident agent of his or her state.

(2) The department shall not, however, issue any license and appointment to any nonresident who has an office or place of business in this state, or who has any direct or indirect pecuniary interest in any insurance agent, insurance agency, or in any solicitor licensed as a resident of this state; nor to any individual who does not, at the time of issuance and throughout the existence of the Florida license, hold a license as agent or broker issued by the state of his or her residence; nor to any individual who is employed by any insurer as a service representative or who is a managing general agent in any state, whether or not also licensed in another state as an agent or broker. The department shall have discretion to refuse to issue any license or appointment to a nonresident when it has reason to believe that the applicant by ruse or subterfuge is attempting to avoid the intent and prohibitions contained in this subsection or to believe that any of the grounds exist as for suspension or revocation of license as set forth in ss. 626.611 and 626.621.

(4)(a) All insurance policies as defined in s. 627.402, written under the nonresident agent's license, including those written or issued pursuant to the Surplus Lines Law, part VIII, on risks or property located in this state must be countersigned by a local agent resident of this state; and it shall be the duty and responsibility of the nonresident agent, and, if called upon to do so by the countersigning agent, of the insurer likewise, to assure that such resident local agent receives the same commission as allowed by the state of residence of the nonresident agent, but in no event shall the resident local agent receive, accept, or retain less than 50 percent of the usual Florida local agent's commission or 50 percent of the nonresident agent's commission, whichever is less, on policies of insurance covering property as defined in s. 624.604 and insurance covering in whole or in part real property and tangible personal property, including property floater policies. On all other policies of insurance, including insurance covering motor vehicles, plate glass, burglary, robbery, theft, larceny, boiler and machinery, workers' compensation, fidelity and surety, bodily injury liability, and property damage liability, in no event shall he or she receive, accept, or retain less than 25 percent of the usual Florida local agent's commission or 25 percent of the nonresident agent's commission, whichever is less.

(b) The provisions of this subsection, with respect to resident agent countersignature commission, shall not be applicable to any contracts of insurance purchased by a person whose premiums for insurance in the preceding year of such purchase exceeded \$250,000 in the aggregate. Nothing herein is intended to preclude the negotiation and payment of a commission to the countersigning agent to compensate him or her for services performed or to be performed.

Section 251. Subsections (1), (2), (4), and (5) of section 626.742, Florida Statutes, are amended to read:

626.742 Nonresident agents; service of process.—

(1) Each licensed nonresident agent shall appoint the Insurance Commissioner and Treasurer as his or her attorney to receive service of legal process issued against the agent in this state, upon causes of action arising within this state out of transactions under the agent's ~~his~~ license and appointment. Service upon the Insurance Commissioner and Treasurer as attorney shall constitute effective legal service upon the agent.

(2) The appointment of the Insurance Commissioner and Treasurer for service of process shall be irrevocable for as long as there could be any cause of action against the agent arising out of his or her insurance transactions in this state.

(4) Upon receiving such service, the Insurance Commissioner and Treasurer shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent at his or her last address of record with the department.

(5) The Insurance Commissioner and Treasurer shall keep a record of the day and hour of service upon him or her of all such legal process.

Section 252. Paragraph (c) of subsection (10) of section 626.7451, Florida Statutes, is amended to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies the division of responsibilities, and contains the following minimum provisions:

(10) The managing general agent shall not:

(c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he or she is appointed.

For the purposes of this section and ss. 626.7453 and 626.7454, the term “controlling person” or “controlling” has the meaning set forth in s. 625.012(5)(b)1., and the term “controlled person” or “controlled” has the meaning set forth in s. 625.012(5)(b)2.

Section 253. Subsection (3) of section 626.7454, Florida Statutes, is amended to read:

626.7454 Managing general agents; duties of insurers.—

(3) The insurer shall, at least annually, conduct an onsite review of the underwriting and claims processing operations of the managing general agent; however, the insurer shall conduct an onsite review of the underwriting and claims processing operations of a newly engaged managing general agent within 6 months after he or she is engaged.

Subsections (1), (3), and (4) do not apply to a managing general agent that is a controlled or controlling person.

Section 254. Section 626.748, Florida Statutes, is amended to read:

626.748 Agent's records.—Every agent transacting any insurance policy must maintain in his or her office, or have readily accessible by electronic or photographic means, such records of policies transacted by him or her as to enable the policyholders and department to obtain all necessary information, including daily reports, applications, change endorsements, or documents signed or initialed by the insured concerning such policies.

Section 255. Subsections (1) and (2) of section 626.749, Florida Statutes, are amended to read:

626.749 Place of business in residence.—No requirement of this part that an agent maintain within this state a place of business which is accessible to the public shall be deemed to prohibit the maintenance of such a place of business in connection with the place of residence of either the agent or of other persons, if:

(1) A separate room is set aside by the agent for, and is actually used as, the his office or place of business;

(2) Such room is easily accessible to the public and is in fact in the usual course of his business used by the agent in his or her dealings with the public; and

Section 256. Paragraph (c) of subsection (8) of section 626.7492, Florida Statutes, is amended to read:

626.7492 Reinsurance intermediaries.—

(8) PROHIBITED ACTS.—The reinsurance intermediary manager shall not:

(c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he or she is appointed.

Section 257. Paragraph (a) of subsection (1) and subsection (2) of section 626.752, Florida Statutes, are amended to read:

626.752 Exchange of business.—

(1) As used in this section:

(a) "Brokering agent" means an originating general lines agent placing business with a company with which he or she is not appointed.

(2) Subject to the provisions of subsection (3), an agent may place with an insurer for which he or she is not an appointed agent only such business for which he or she is appointed and which the insurer by which he or she is appointed is authorized to write.

Section 258. Paragraph (a) of subsection (1) of section 626.753, Florida Statutes, is amended to read:

626.753 Sharing commissions; penalty.—

(1)(a) An agent may divide or share in commissions only with his or her own employed solicitors and with other agents appointed and licensed to write the same kind or kinds of insurance.

Section 259. Subsection (1) of section 626.754, Florida Statutes, is amended to read:

626.754 Rights of agent following termination of appointment.—

(1) Following the termination of his or her agency appointment as to an insurer, the agent may for the period herein provided continue to service, and receive from the insurer commissions or other compensation relative to, policies written by him or her for the insurer during the existence of the appointment. The agent ~~He~~ may countersign all certificates or endorsements necessary to continue such policies to the expiration date thereof, including renewal option periods, and collect and remit premiums due thereon, but shall not otherwise, except with the consent of the insurer, change or modify the policy in any way nor increase the hazards insured against therein.

Section 260. Subsections (1) and (2) of section 626.784, Florida Statutes, are amended to read:

626.784 Purpose of license.—

(1) The purpose of a license issued under this code to a life agent is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent with respect to the general public and to facilitate the public supervision of such activities in the public interest, and not for the purpose of enabling the licensee to receive an unlawful rebate of premium in the form of commission or other compensation as an agent or enabling the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through the licensee ~~him~~ upon his or her own interests or upon those of other persons with whom he or she is closely associated in capacities other than as an insurance agent.

(2) The department shall not grant, renew, continue, or permit to exist any license or appointment of a life agent if it finds that such licensee or appointee obtained, or attempted to obtain, such license or appointment not for the purpose of holding himself or herself out to the general public as a life insurance agent but principally for the purpose of soliciting, negotiating, or procuring controlled business. As used in this section, “controlled business” means life insurance or annuity contracts covering himself or herself or family members of his family; officers, directors, stockholders, partners, or employees of a business in which he or she or a family member of his family is engaged; or the debtors of a firm, association, or corporation of which he or she is an officer, director, stockholder, partner, or employee.

Section 261. Subsection (2) of section 626.785, Florida Statutes, is amended to read:

626.785 Qualifications for license.—

(2) An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of paragraph (1)(b), notwithstanding the existence at the time of application for license of a license in his or her name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the ~~his~~ resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

Section 262. Section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.—No applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall be qualified or licensed unless within the 4 years immediately preceding the date the ~~his~~ application for a license is filed with the department he or she has:

(1) Successfully completed 40 hours of classroom courses in insurance satisfactory to the department at a school or college, or extension division thereof, or other authorized course of study, approved by the department;

(2) Successfully completed a correspondence course in insurance satisfactory to the department and regularly offered by accredited institutions of higher learning in this state, approved by the department;

(3) Held an active license in life, or life and health, insurance in another state. This provision may not be utilized unless the other state grants reciprocal treatment to licensees formerly licensed in Florida; or

(4) Been employed by the department for at least 1 year, full time in life or life and health insurance regulatory matters and who was not terminated for cause, and application for examination is made within 90 days after the date of termination of his or her employment with the department.

Section 263. Subsection (1) of section 626.790, Florida Statutes, is amended to read:

626.790 Temporary license; pending examination.—

(1) Each applicant for a life agent's license to represent an insurer of the industrial or ordinary-combination class may, upon payment of the required license and appointment fees, have issued to him or her a temporary license for a period not exceeding 6 months. The department shall not issue a temporary license as to an ordinary class agent, except as provided in s. 626.791.

Section 264. Paragraph (a) of subsection (1) of section 626.791, Florida Statutes, is amended to read:

626.791 Temporary license; executors, administrators, next of kin.—

(1) The department, if it is satisfied with the honesty and trustworthiness of the applicant, and upon the payment of the required license and appointment fees, may issue a temporary license authorizing appointment as a life agent without requiring the applicant to pass a written examination, as follows:

(a) To the executor or administrator of the estate of a deceased person who at the time of ~~his~~ death was a licensed and appointed life agent.

Section 265. Subsections (6) and (7) of section 626.792, Florida Statutes, are amended to read:

626.792 Nonresident agents.—

(6) The licensee shall, throughout the existence of ~~the his~~ Florida nonresident life license and appointment, hold a license as a resident life agent in his or her state of residence.

(7) Upon becoming a resident of this state, an individual who holds a Florida nonresident agent's license is no longer eligible for licensure as a nonresident agent and his or her license and any appointments shall be canceled immediately. He or she may apply for a resident license pursuant to s. 626.785.

Section 266. Subsection (1) of section 626.793, Florida Statutes, is amended to read:

626.793 Excess or rejected business.—

(1) A licensed life agent may place excess or rejected risks within the class of business for which he or she is licensed and appointed, and which the insurer appointing him or her is authorized to transact, with any other authorized insurer without being required to secure an appointment as to such other insurer.

Section 267. Section 626.795, Florida Statutes, is amended to read:

626.795 Corporations, liability of agent.—Any life insurance agent who is an officer, director, or stockholder of an incorporated life insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his or her direct supervision and control while acting on behalf of the corporation. Nothing in this section shall be construed to render any person criminally liable or subject to any disciplinary proceedings for any act unless such person personally committed or knew or should have known of such act and of the facts constituting a violation of this chapter.

Section 268. Section 626.798, Florida Statutes, is amended to read:

626.798 Life agent as beneficiary; prohibition.—No life agent shall, with respect to the placement of life insurance coverage with a life insurer cover-

ing the life of a person who is not a family member of the agent, handle in his or her capacity as a life agent the placement of such coverage when the agent placing the coverage receives a commission therefor and is the named beneficiary under the life insurance policy, unless the life agent has an insurable interest in the life of such person. For the purposes of this section, the phrase “not a family member,” with respect to a life agent, means an individual who is not related to the life agent as father, mother, son, daughter, brother, sister, grandfather, grandmother, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. For the purposes of this section, the term “insurable interest” means that the life agent has an actual, lawful, and substantial economic interest in the safety and preservation of the life of the insured or a reasonable expectation of benefit or advantage from the continued life of the insured.

Section 269. Subsection (2) of section 626.829, Florida Statutes, is amended to read:

626.829 “Health agent” defined.—

(2) Any person who acts for an insurer, or on behalf of a licensed representative of an insurer, to solicit applications for or to negotiate and effectuate health insurance contracts, whether or not he or she is appointed as an agent, subagent, solicitor, or canvasser or by any other title, shall be deemed to be a health agent and shall be qualified, licensed, and appointed as a health agent.

Section 270. Subsections (1) and (2) of section 626.830, Florida Statutes, are amended to read:

626.830 Purpose of license.—

(1) The purpose of a license issued under this code to a health agent is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent with respect to the general public and to facilitate the public supervision of such activities in the public interest, and not for the purpose of enabling the licensee to receive an unlawful rebate of premium in the form of commission or other compensation as an agent or enabling the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through the licensee ~~him~~ upon his or her own interests or upon those of other persons with whom he or she is closely associated in capacities other than as an insurance agent.

(2) The department shall not grant, renew, continue, or permit to exist any license or appointment as a health agent as to any applicant therefor or licensee or appointee thereunder if it finds that the license or appointment has been or is being or will be used by the applicant, licensee, or appointee not for the purpose of holding himself or herself out to the general public as a health agent, but principally for the purpose of soliciting, negotiating, handling or procuring “controlled business,” that is, health insurance covering himself or herself or family members of his family; the officers, directors, stockholders, partners, employees, or debtors of a partnership,

association, or corporation of which he or she or a family member ~~of his family~~ is an officer, director, stockholder, partner, or employee; or members of an association of which he or she is a director, officer, or employee.

Section 271. Subsection (2) of section 626.831, Florida Statutes, is amended to read:

626.831 Qualifications for license.—

(2) An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of paragraph (1)(b), notwithstanding the existence at the time of application for license of a license in his or her name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the his resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

Section 272. Section 626.8311, Florida Statutes, is amended to read:

626.8311 Requirement as to knowledge, experience, or instruction.—No applicant for a license as a health agent, except for a chartered life underwriter (CLU), shall be qualified or licensed unless within the 4 years immediately preceding the date the his application for license is filed with the department he or she has:

(1) Successfully completed 40 hours of classroom courses in insurance satisfactory to the department at a school or college, or extension division thereof, or other authorized course of study, approved by the department;

(2) Successfully completed a correspondence course in insurance satisfactory to the department and regularly offered by accredited institutions of higher learning in this state, approved by the department;

(3) Held an active license in health, or life and health, insurance in another state. This provision may not be utilized unless the other state grants reciprocal treatment to licensees formerly licensed in Florida; or

(4) Been employed by the department for at least 1 year, full time in health insurance regulatory matters and who was not terminated for cause, and application for examination is made within 90 days after the date of termination of his or her employment with the department.

Section 273. Subsections (6) and (7) of section 626.835, Florida Statutes, are amended to read:

626.835 Nonresident agents.—

(6) The licensee shall, throughout the existence of his or her Florida nonresident health license and appointment, hold a license as a resident health agent in his or her state of residence.

(7) Upon becoming a resident of this state, an individual who holds a Florida nonresident agent's license is no longer eligible for licensure as a nonresident agent and his or her license and any appointments shall be

canceled immediately. The individual He may apply for a resident license pursuant to s. 626.831.

Section 274. Subsection (1) of section 626.837, Florida Statutes, is amended to read:

626.837 Excess or rejected business.—

(1) A licensed health agent may place excess or rejected risks within the class of business for which he or she is licensed and appointed, and which the insurer appointing the agent ~~him~~ is authorized to transact, with any other authorized insurer without being required to secure an appointment as to such other insurer, but subject to the agent's agreement with the insurer licensing him or her.

Section 275. Subsection (1) of section 626.8373, Florida Statutes, is amended to read:

626.8373 Overinsurance of health insurance coverage.—

(1) With respect to the solicitation and sale of health insurance, continuing care contracts pursuant to chapter 651, health maintenance contracts pursuant to part II of chapter 641, or Medicare supplement insurance, an agent shall ask each person solicited whether he or she is currently covered under a health insurance policy, continuing care contract, health maintenance, or Medicare supplement insurance policy. The agent shall explain to each person the extent to which the proposed coverage will overlap or duplicate the existing coverage after considering any applicable coordination of benefits provisions under the existing or proposed health coverage if the person solicited has a copy of his or her current policy for the agent to review or if the person's current policy is with the same insurer as the proposed replacement policy.

Section 276. Section 626.839, Florida Statutes, is amended to read:

626.839 Corporations, liability of agent.—Any health insurance agent who is an officer, director, or stockholder of an incorporated health insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his or her direct supervision and control while acting on behalf of the corporation. Nothing in this section shall be construed to render any person criminally liable or subject to any disciplinary proceedings for any act unless such person personally committed or knew or should have known of such act and of the facts constituting a violation of this chapter.

Section 277. Section 626.8421, Florida Statutes, is amended to read:

626.8421 Number of appointments permitted or required.—A title agent shall be required to have a separate appointment as to each insurer by which he or she is appointed as agent. As a part of each appointment there shall be a certified statement or affidavit of an appropriate officer or official of the appointing insurer stating that to the best of the insurer's knowledge and

belief the applicant, or its principals in the case of a corporation or other legal entity, has met the requirements of s. 626.8417.

Section 278. Paragraph (a) of subsection (1) and subsection (3) of section 626.8427, Florida Statutes, are amended to read:

626.8427 Number of applications for licensure required; exemption; effect of expiration of license.—

(1) After a license as a title insurance agent has been issued to a title insurance agent, the agent is not required to file another license application for a similar license, irrespective of the number of insurers to be represented by the agent, unless:

(a) The agent ~~He~~ is specifically ordered by the department to complete a new application; or

(3) Upon the expiration or termination of a title insurance agent's appointment, the title insurance agent is without authority conferred by the license and shall not engage or attempt to engage in any activity requiring a title insurance agent's license and appointment. The agent shall not again be granted an appointment until he or she fully qualifies therefor as provided in this chapter. An application shall be required in all cases for qualification of a new title insurance agent's license when application is made after the expiration of 2 years from the date of the expiration or termination of the last appointment held by a licensee.

Section 279. Subsection (5) of section 626.844, Florida Statutes, is amended to read:

626.844 Grounds for discretionary refusal, suspension, or revocation of license or appointment.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that as to the applicant or licensee or appointee, or any principal thereof, any one or more of the following grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.8437:

(5) Engaging in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of business, as prohibited under part X of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public or to be detrimental to the public interest.

Section 280. Subsections (1) and (3) of section 626.8463, Florida Statutes, are amended to read:

626.8463 Witnesses and evidence.—

(1) As to the subject of any examination, investigation, or hearing being conducted by him or her under s. 624.5015, ss. 626.8417-626.847, or s. 627.791, an examiner appointed by the Department of Insurance may administer oaths, examine and cross-examine witnesses, and receive oral and

documentary evidence and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which the examiner ~~he~~ deems relevant to the inquiry.

(3) If a person refuses to comply with any such subpoena or to testify as to any matter concerning which the person ~~he~~ may be lawfully interrogated, the circuit court in and for Leon County, or the county in which such examination, investigation, or hearing is being conducted, or the county in which such person resides, upon application by the department, may issue an order requiring such person to comply with the subpoena and to testify. A person who fails to obey such an order of the court may be punished by the court for contempt.

Section 281. Section 626.8467, Florida Statutes, is amended to read:

626.8467 Testimony compelled; immunity from prosecution.—

(1) If a person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted under s. 624.5015, ss. 626.8417-626.847, or s. 627.791 by the department or its examiner on the ground that the testimony or evidence required of the person ~~him~~ may tend to incriminate him or her or subject him or her to a penalty or forfeiture and notwithstanding is directed to give such testimony or produce such evidence, the person ~~he~~ must, if so directed by the Department of Insurance and the Department of Legal Affairs, nonetheless comply with such direction, but he or she shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against the person ~~him~~ upon any criminal action, investigation, or proceeding. However, a person so testifying shall not be exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury; and such person shall not be exempt from the refusal, suspension, or revocation of any license or appointment, permission, or authority conferred or to be conferred pursuant to s. 624.5015, ss. 626.8417-626.847, or s. 627.791.

(2) Any such person may execute, acknowledge, and file in the office of the Department of Insurance a statement expressly waiving such immunity or privilege with respect to any transaction, matter, or thing specified in the statement, and thereupon the testimony of such person or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, or grand jury or otherwise and, if so received or produced, such person shall not be entitled to any immunity or privilege on account of any testimony he or she may so give or evidence so produced.

Section 282. Section 626.857, Florida Statutes, is amended to read:

626.857 “Claims investigator” defined.—A “claims investigator” is a person who is an employee of a currently licensed independent adjuster or adjusting firm or insurer and whose responsibilities shall be as defined in s. 626.855 or s. 626.856 as for an independent adjuster or company employee adjuster, and who will operate as a student or learner under the instruction and supervision of a licensed and appointed insurance adjuster; except that a claims investigator shall not be permitted by his or her employer to negotiate settlements with the insured or claimant for amounts in excess of \$20,000.

Section 283. Subsection (2) of section 626.858, Florida Statutes, is amended to read:

626.858 “Nonresident adjuster” defined.—A “nonresident adjuster” is a person who:

(2) Is a currently licensed or authorized adjuster in his or her home state for the type or kinds of insurance he or she intends to adjust claims for in this state;

Section 284. Subsection (1) of section 626.862, Florida Statutes, is amended to read:

626.862 Agents and solicitors; adjustments by.—

(1) A licensed and appointed insurance agent may, without being licensed as an adjuster, adjust losses for the insurer represented by him or her as agent if so authorized by the insurer. The license and appointment of the agent may be suspended or revoked for violation of or misconduct prohibited by s. 626.611(6).

Section 285. Subsection (2) of section 626.863, Florida Statutes, is amended to read:

626.863 Licensed independent adjusters required; insurers’ responsibility.—

(2) Before referring any claim or loss, the insurer shall ascertain from the department whether the proposed independent adjuster is currently licensed and appointed as such. Having once ascertained that a particular person is so licensed and appointed, the insurer may assume that he or she will continue to be so licensed and appointed until the insurer has knowledge, or receives information from the department, to the contrary.

Section 286. Paragraphs (c) and (d) of subsection (1) and subsection (2) of section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster’s qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster’s license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(c) Is trustworthy and has such business reputation as would reasonably assure that the applicant ~~he~~ will conduct his or her business as insurance adjuster fairly and in good faith and without detriment to the public.

(d) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts, and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom the applicant ~~he~~ may have business as a public adjuster.

(2) At the time of application for license as a public adjuster, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state, in the amount of \$5,000, conditioned for the faithful performance of his or her duties as a public adjuster under the license applied for. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as public adjuster. The aggregate liability of the surety for all such damages shall in no event exceed the amount of the bond. Such bond shall not be terminated unless at least 30 days' written notice is given to the licensee and filed with the department.

Section 287. Subsections (3) and (4) of section 626.866, Florida Statutes, are amended to read:

626.866 Independent adjuster's qualifications.—The department shall issue a license to an applicant for an independent adjuster's license upon determining that the applicable license fee specified in s. 624.501 has been paid and that the applicant possesses the following qualifications:

(3) Is trustworthy and has such business reputation as would reasonably assure that the applicant ~~he~~ will conduct his or her business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training, or instruction concerning the adjusting of damage or loss under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and the effects of the provisions of such types of contracts, and possesses adequate knowledge of the insurance laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have relations as an insurance adjuster and to adjust all claims in accordance with the policy or contract and the insurance laws of this state.

Section 288. Subsections (3) and (4) of section 626.867, Florida Statutes, are amended to read:

626.867 Company employee adjuster's qualifications.—The department shall issue a license to an applicant for a company employee adjuster's license upon determining that the applicable license fee specified in s.

624.501 has been paid and that the applicant possesses the following qualifications:

(3) Is trustworthy and has such business reputation as would reasonably assure that the applicant ~~he~~ will conduct his or her business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training, or instruction concerning the adjusting of damage or loss of risks described in his or her application, is sufficiently informed as to the terms and the effects of the provisions of insurance contracts covering such risks, and possesses adequate knowledge of the insurance laws of this state relating to such insurance contracts as to enable and qualify him or her to engage in such business as insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have relations as an insurance adjuster and to adjust all claims in accordance with the policy or contract and the insurance laws of this state.

Section 289. Subsections (1), (3), and (5) of section 626.869, Florida Statutes, are amended to read:

626.869 License, adjusters.—

(1) An applicant for a license as an adjuster may qualify and his or her license when issued may cover adjusting in any one of the following classes of insurance:

- (a) All lines of insurance except life and annuities.
- (b) Motor vehicle physical damage insurance.
- (c) Property and casualty insurance.
- (d) Workers' compensation insurance.
- (e) Health insurance.

(3) With the exception of a public adjuster limited to health insurance, a limited license set forth in subsection (1) as an independent or public adjuster may only be issued to and retained by an employee of an independent or public adjusting firm which is supervised by a duly appointed all-lines adjuster or an employee of an independent or public adjuster licensed and appointed in all lines of insurance other than life and annuity. The office of the limited lines adjuster shall be in the office of the licensed all-lines adjuster responsible for his or her supervision and instruction.

(5) Any person holding a license and appointment and who engages in adjusting workers' compensation insurance shall certify to the department every 2 years, at least 90 days prior to the renewal date of his or her appointment, the fact that the licensee has completed a course of instruction designed to inform the licensee as to the current workers' compensation laws of this state, so as to enable him or her to engage in such business as a workers' compensation insurance adjuster fairly and without injury to the public and to adjust all claims in accordance with the policy or contract and

the workers' compensation laws of this state. In order to qualify as an eligible course under this subsection, the course shall:

(a) Consist of 24 hours of classroom instruction in the workers' compensation laws and practices of this state, 2 hours of which shall relate to ethics, with the course outline approved by the department. It is not required that the 24 hours of classroom instruction take place in one course.

(b) Be taught at a school training facility or other location approved by the department.

(c) Be taught by instructors with at least 5 years of experience in the area of workers' compensation, general lines of insurance, or other persons approved by the department. However, a member of The Florida Bar shall be exempt from the 5 years' experience requirement.

(d) Furnish the attendee a certificate of completion. The sponsor of the course shall send a copy of the certificate of completion to the department.

Section 290. Subsections (1), (3), and (4) of section 626.8695, Florida Statutes, are amended to read:

626.8695 Primary adjuster.—

(1) On or before January 1, 1993, and annually thereafter, each person operating an adjusting firm and each location of a multiple location adjusting firm must designate a primary adjuster for each such firm or location and must file with the department the name of such primary adjuster and the address of the firm or location where he or she is the primary adjuster, on a form approved by the department. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department.

(3) The department may suspend or revoke the license of the primary adjuster if an adjusting firm employs any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed to perform clerical or administrative functions for which licensure is not required.

(4) The primary adjuster in an unincorporated adjusting firm, or the primary adjuster in an incorporated adjusting firm in which no officer, director, or stockholder is an adjuster, is responsible and accountable for the acts of salaried employees under his or her direct supervision and control while acting on behalf of the adjusting firm. Nothing in this section renders any person criminally liable or subject to any disciplinary proceedings for any act unless the person personally committed or knew or should have known of the act and of the facts constituting a violation of this code.

Section 291. Paragraph (c) of subsection (1) and subsection (4) of section 626.872, Florida Statutes, are amended to read:

626.872 Temporary license.—

(1) The department may, in its discretion, issue a temporary license as an independent adjuster or as a company employee adjuster, subject to the following conditions:

(c) The applicant must be a natural person of at least 18 years of age, must be a bona fide resident of this state, must be trustworthy, and must have such business reputation as would reasonably assure that the applicant ~~he~~ will conduct his or her business as an adjuster fairly and in good faith and without detriment to the public.

(4) Under the temporary license, the licensee shall have the authority to handle only such classes of business as his or her supervising adjuster is licensed to handle, except that the temporary licensee shall not be permitted by his or her employer to negotiate settlements with the insured or claimant for amounts in excess of \$20,000.

Section 292. Subsections (1) and (4) of section 626.873, Florida Statutes, are amended to read:

626.873 Nonresident adjusters.—The department shall, upon application therefor, issue a license to an applicant for a nonresident adjuster's license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(1) Is a currently licensed insurance adjuster in his or her home state, if such state requires a license.

(4) Has filed a certificate or letter of authorization from the insurance department of his or her home state, if such state requires an adjuster to be licensed, stating that he or she holds a current license or authorization to adjust insurance losses. Such certificate or authorization must be signed by the insurance commissioner, or his or her deputy, of the adjuster's home state and must reflect whether or not the adjuster has ever had his or her license or authorization in the adjuster's ~~his~~ home state suspended or ~~re~~voked and, if such is the case, the reason for such action.

Section 293. Subsection (1) of section 626.8805, Florida Statutes, is amended to read:

626.8805 Certificate of authority to act as administrator.—

(1) It is unlawful for any person to act as or hold himself or herself out to be an administrator in this state without a valid certificate of authority issued by the department pursuant to ss. 626.88-626.894. To qualify for and hold authority to act as an administrator in this state, an administrator must otherwise be in compliance with this code and with its organizational agreement. The failure of any person to hold such a certificate while acting as an administrator shall subject such person to a fine of not less than \$5,000 or more than \$10,000 for each violation.

Section 294. Subsection (2) of section 626.894, Florida Statutes, is amended to read:

626.894 Administrative fine in lieu of suspension or revocation.—

(2) With respect to any nonwillful violation, such fine may not exceed \$1,000 per violation. In no event may such fine exceed an aggregate amount of \$5,000 for all nonwillful violations arising out of the same action. When an administrator discovers a nonwillful violation, the administrator shall correct the violation and, if restitution is due, the restitution shall include interest at the rate of 12 percent per year from either the date of the violation or the date of inception of the policy of the affected person, at the option of the administrator. The restitution may be a credit against future premiums due, provided that the interest shall accumulate until the premiums are due. If the amount of restitution due to any person is \$50 or more, and the administrator wishes to credit it against future premiums, the administrator shall notify such person that he or she may receive a check instead of a credit. If the credit is on a policy which is not renewed, the administrator shall pay the restitution to the person to whom it is due.

Section 295. Section 626.906, Florida Statutes, is amended to read:

626.906 Acts constituting Insurance Commissioner and Treasurer as process agent.—Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign insurer, alien insurer, or person representing or aiding such an insurer is equivalent to and shall constitute an appointment by such insurer or person representing or aiding such insurer of the Insurance Commissioner and Treasurer, and his or her successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, arising out of any such contract of insurance; and any such act shall be signification of the insurer's or person's agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer or person representing or aiding such insurer:

- (1) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein;
- (2) The solicitation of applications for such contracts;
- (3) The collection of premiums, membership fees, assessments, or other considerations for such contracts; or
- (4) Any other transaction of insurance.

Section 296. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

626.907 Service of process; judgment by default.—

(1) Service of process upon an insurer or person representing or aiding such insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Insurance Commissioner and Treasurer or some person in apparent charge of his or her office two copies thereof. The Insurance Commissioner and Treasurer shall forthwith mail by registered mail one of the

copies of such process to the defendant at the defendant's ~~his~~ last known principal place of business and shall keep a record of all process so served upon him or her. The service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the defendant's ~~his~~ last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Section 297. Paragraph (d) of subsection (1) of section 626.908, Florida Statutes, is amended to read:

626.908 Defense of action by unauthorized insurer or person representing or aiding such insurer; damages and attorney fee.—

(1) Before an unauthorized insurer or person representing or aiding such insurer files or causes to be filed any pleading in any action or proceeding instituted against it under ss. 626.906 and 626.907, an unauthorized insurer or person representing or aiding such insurer shall:

(d) If the unauthorized insurer or person representing or aiding such insurer seeks to take discovery or de bene esse depositions of witnesses beyond the jurisdiction of the court in which the action is pending, upon seasonable application by the plaintiff, the court by appropriate order shall require the unauthorized insurer or person representing or aiding such insurer, before such depositions are taken, to make similar deposit as described in paragraph (b), in sufficient amount to pay the reasonable expenses of the plaintiff and his or her attorney in attending the taking of such depositions, including reasonable attorney's fees to be fixed by the court.

Section 298. Subsection (4) of section 626.909, Florida Statutes, is amended to read:

626.909 Jurisdiction of department; service of process on Secretary of State.—

(4) Transaction of business in this state, as so defined, by any unauthorized insurer or person representing or aiding such insurer shall be deemed consent by the insurer or person representing or aiding such insurer to the jurisdiction of the department in proceedings, examinations, and hearings before it as provided for in this code and shall constitute an irrevocable appointment by the insurer or person representing or aiding such insurer of the Secretary of State and his or her successor or successors in office as its true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding in any court by the department or by the state and upon whom may be served all notices and orders of the department arising out of any such transaction of business; and such transaction of business shall constitute the agreement of the insurer or person representing or aiding such insurer that any such process against it or any such notice

or order which is so served shall be of the same legal force and validity as if served personally within this state on the insurer or person representing or aiding such insurer. Service of process shall be in accordance with and in the same manner as now provided for service of process upon nonresidents under the provision of s. 48.161, and service of process shall also be valid if made as provided in s. 626.907(2).

Section 299. Subsection (4) of section 626.912, Florida Statutes, is amended to read:

626.912 Exemptions from ss. 626.904-626.911.—The provisions of ss. 626.904-626.911 do not apply to any action, suit, or proceeding against any unauthorized foreign insurer, alien insurer, or person representing or aiding such an insurer arising out of any contract of insurance:

(4) Issued under and in accordance with the Surplus Lines Law, when such insurer or person representing or aiding such insurer enters a general appearance or when such contract of insurance contains a provision designating the Insurance Commissioner and Treasurer and his or her successor or successors in office or designating a Florida resident agent to be the true and lawful attorney of such unauthorized insurer or person representing or aiding such insurer upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or person representing or aiding such insurer or beneficiary arising out of any such contract of insurance; and service of process effected on such Insurance Commissioner and Treasurer, his or her successor or successors in office, or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer or person representing or aiding such insurer in such action.

Section 300. Subsections (3) and (5) of section 626.918, Florida Statutes, are amended to read:

626.918 Eligible surplus lines insurers.—

(3) The department shall from time to time publish a list of all currently eligible surplus lines insurers and shall mail a copy thereof to each licensed surplus lines agent at his or her office of record with the department.

(5) When it appears that any particular insurance risk which is eligible for export, but on which insurance coverage, in whole or in part, is not procurable from the eligible surplus lines insurers, after a search of eligible surplus lines insurers, then the surplus lines agent may file a supplemental signed statement setting forth such facts and advising the department that such part of the risk as shall be unprocurable, as aforesaid, is being placed with named unauthorized insurers, in the amounts and percentages set forth in the statement. Such named unauthorized insurer shall, however, before accepting any risk in this state, deposit with the department cash or securities acceptable to the department of the market value of \$50,000 for each individual risk, contract, or certificate, which deposit shall be held by the department for the benefit of Florida policyholders only; and the surplus lines agent shall procure from such unauthorized insurer and file with the department a certified copy of its statement of condition as of the close of the

last calendar year. If such statement reveals, including both capital and surplus, net assets of at least that amount required for licensure of a domestic insurer, then the surplus lines agent may proceed to consummate such contract of insurance. Whenever any insurance risk, or any part thereof, is placed with an unauthorized insurer, as provided herein, the policy, binder, or cover note shall contain a statement signed by the insured and the agent with the following notation: "The insured is aware that certain insurers participating in this risk have not been approved to transact business in Florida nor have they been declared eligible as surplus lines insurers by the Department of Insurance of Florida. The placing of such insurance by a duly licensed surplus lines agent in Florida shall not be construed as approval of such insurer by the Department of Insurance of Florida. Consequently, the insured is aware that the insured has severely limited the assistance available under the insurance laws of Florida. The insured is further aware that he or she may be charged a reasonable per policy fee, as provided in s. 626.916(4), Florida Statutes, for each policy certified for export." All other provisions of this code shall apply to such placement the same as if such risks were placed with an eligible surplus lines insurer.

Section 301. Subsection (3) of section 626.919, Florida Statutes, is amended to read:

626.919 Withdrawal of eligibility; surplus lines insurer.—

(3) The department shall promptly mail notice of all such withdrawals of eligibility to each surplus lines agent at his or her address of record with the department.

Section 302. Subsection (2) of section 626.922, Florida Statutes, is amended to read:

626.922 Evidence of the insurance; changes; penalty.—

(2) No surplus lines agent shall issue any such document, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer, unless he or she has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

Section 303. Section 626.924, Florida Statutes, is amended to read:

626.924 Information required on contract.—Each surplus lines agent through whom a surplus lines coverage is procured shall write or print on the outside of the policy and on any certificate, cover note, or other confirmation of the insurance his or her name, address, and identification number and the name and address of the producing agent through whom the business originated and shall have stamped or written upon the first page of the policy or the certificate, cover note, or confirmation of insurance the words: THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO

NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

Section 304. Subsection (7) of section 626.927, Florida Statutes, is amended to read:

626.927 Licensing of surplus lines agent.—

(7) Any individual who has been licensed by the department as a surplus lines agent as provided in this section may be subsequently licensed without additional written examination if his or her application for license is filed with the department within 24 months next following the date of cancellation or expiration of the prior license. The department may, in its discretion, require any individual to take and successfully pass an examination as for original issuance of license as a condition precedent to the renewal or continuation of the licensee's current license.

Section 305. Paragraph (a) of subsection (1) of section 626.9271, Florida Statutes, is amended to read:

626.9271 Temporary license; death, disability, absence of surplus lines agent.—

(1) The department may, in its discretion, issue a temporary license as a surplus lines agent to a licensed surplus lines agent's employee, family member, business associate, or personal representative for the purpose of continuing or winding up the business affairs of the surplus lines agent or agent, all subject to the following conditions:

(a) The surplus lines agent being replaced must have become deceased or unable to perform his or her duties as agent because of military service or illness or other physical or mental disability.

Section 306. Section 626.9295, Florida Statutes, is amended to read:

626.9295 Corporations, liability of agent.—Any surplus lines insurance agent who is an officer, director, stockholder, or employee of an incorporated surplus lines insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his or her direct supervision and control while acting on behalf of the corporation.

Section 307. Subsections (1) and (3) of section 626.930, Florida Statutes, are amended to read:

626.930 Records of surplus lines agent.—

(1) Each surplus lines agent shall keep in his or her office in this state a full and true record for a period of 5 years of each surplus lines contract, including applications and all certificates, cover notes, and other forms of confirmation of insurance coverage and any substitutions thereof or endorsements thereto relative to said contract procured by the agent him and showing such of the following items as may be applicable:

- (a) Amount of the insurance and perils insured against;
- (b) Brief general description of property insured and where located;
- (c) Gross premium charged;
- (d) Return premium paid, if any;
- (e) Rate of premium charged upon the several items of property;
- (f) Effective date of the contract, and the terms thereof;
- (g) Name and post-office address of the insured;
- (h) Name and home-office address of the insurer;
- (i) Amount collected from the insured; and
- (j) Other information as may be required by the department.

(3) Each surplus lines agent shall maintain all surplus lines business records in his or her general lines agency office, if licensed as a general lines agent, or in his or her managing general agency office, if licensed as a managing general agent or the full-time salaried employee of such general agent.

Section 308. Subsection (1) of section 626.931, Florida Statutes, is amended to read:

626.931 Quarterly report.—

(1) Each surplus lines agent shall on or before the end of the month next following each calendar quarter file with the department a verified report of all surplus lines insurance transacted by him or her during such calendar quarter.

Section 309. Subsection (1) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(1) The premiums charged for surplus lines coverages are subject to a premium receipts tax of 5 percent of all gross premiums charged for such insurance. The surplus lines agent shall collect from the insured the amount of the tax at the time of the delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The surplus lines agent is prohibited from absorbing such tax or, as an inducement for insurance or for any other reason, rebating all or any part of such tax or of his or her commission.

Section 310. Paragraphs (b) and (d) of subsection (1) of section 626.935, Florida Statutes, are amended to read:

626.935 Suspension, revocation, or refusal of surplus lines agent's license.—

(1) The department shall suspend, revoke, or refuse to renew the license of a surplus lines agent and all other licenses held by the licensee under this code, upon any one or more of the following grounds:

(b) Removal of the accounts and records of his or her surplus lines business from this state during the period when such accounts and records are required to be maintained under s. 626.930.

(d) Failure to make and file his or her quarterly reports when due as required by s. 626.931.

Section 311. Subsection (3) of section 626.937, Florida Statutes, is amended to read:

626.937 Actions against insurer; service of process.—

(3) Each unauthorized insurer requesting eligibility pursuant to s. 626.918 shall file with the department its appointment of the Insurance Commissioner and Treasurer and his or her successors in office, on a form as furnished by the department, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

Section 312. Section 626.942, Florida Statutes, is amended to read:

626.942 Health Care Risk Manager Advisory Council.—The Insurance Commissioner may appoint a five-member advisory council to advise the department on matters pertaining to health care risk managers. The members of the council shall serve at the pleasure of the Insurance Commissioner. The council shall designate a chair ~~chairman~~. The council shall meet at the call of the Insurance Commissioner or at those times as may be required by rule of the department. The members of the advisory council shall receive no compensation for their services, but shall be reimbursed for travel expenses as provided in s. 112.061. The council shall consist of individuals representing the following areas:

(1) Two shall be active health care risk managers.

(2) One shall be an active hospital administrator.

(3) One shall be an employee of an insurer or self-insurer of medical malpractice coverage.

(4) One shall be a representative of the health-care-consuming public.

Section 313. Paragraphs (k) and (l) of subsection (1) of section 626.945, Florida Statutes, are amended to read:

626.945 Grounds for denial, suspension, or revocation of a health care risk manager's license; administrative fine.—

(1) The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license of any health care risk manager or applicant, if it finds that as to such applicant or licensee any one or more of the following grounds exist:

(k) Being unable to practice health care risk management with reasonable skill and safety to patients by reason of illness; drunkenness; or use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition. Any person affected under this paragraph shall have the opportunity, at reasonable intervals, to demonstrate that he or she can resume the competent practices of health care risk manager with reasonable skill and safety to patients.

(l) Willfully permitting unauthorized disclosure of information relating to a patient or a patient's ~~his~~ records.

Section 314. Paragraphs (o) and (v) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(o) Illegal dealings in premiums; excess or reduced charges for insurance.—

1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as permitted by this code.

2. Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the department, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this code to be so filed and approved, premiums and charges in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VIII of this chapter, of the amount of applicable state and federal taxes, or fees as authorized by s. 626.916(4), in addition to the premium required by the insurer or the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer. This subparagraph shall not be construed to prohibit collection of a premium for a universal life or a variable or indeterminate value insurance policy made in accordance with the terms of the contract.

3.a. Imposing or requesting an additional premium for a policy of motor vehicle liability, personal injury protection, medical payment, or collision insurance or any combination thereof or refusing to renew the policy solely because the insured was involved in a motor vehicle accident unless the insurer's file contains information from which the insurer in good faith determines that the insured was substantially at fault in the accident.

b. An insurer which imposes and collects such a surcharge or which refuses to renew such policy shall, in conjunction with the notice of premium due or notice of nonrenewal, notify the named insured that he or she is entitled to reimbursement of such amount or renewal of the policy under the conditions listed below and will subsequently reimburse him or her or renew the policy, if the named insured demonstrates that the operator involved in the accident was:

(I) Lawfully parked;

(II) Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;

(III) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident;

(IV) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident;

(V) Not convicted of a moving traffic violation in connection with the accident, but the operator of the other automobile involved in such accident was convicted of a moving traffic violation;

(VI) Finally adjudicated not to be liable by a court of competent jurisdiction;

(VII) In receipt of a traffic citation which was dismissed or nolle prossed; or

(VIII) Not at fault as evidenced by a written statement from the insured establishing facts demonstrating lack of fault which are not rebutted by information in the insurer's file from which the insurer in good faith determines that the insured was substantially at fault.

c. In addition to the other provisions of this subparagraph, an insurer may not fail to renew a policy if the insured has had only one accident in which he or she was at fault within the current 3-year period. However, an insurer may nonrenew a policy for reasons other than accidents in accordance with s. 627.728. This subparagraph does not prohibit nonrenewal of a policy under which the insured has had three or more accidents, regardless of fault, during the most recent 3-year period.

4. Imposing or requesting an additional premium for, or refusing to renew, a policy for motor vehicle insurance solely because the insured committed a noncriminal traffic infraction as described in s. 318.14 unless the infraction is:

- a. A second infraction committed within an 18-month period, or a third or subsequent infraction committed within a 36-month period.
 - b. A violation of s. 316.183, when such violation is a result of exceeding the lawful speed limit by more than 15 miles per hour.
 5. Upon the request of the insured, the insurer and licensed agent shall supply to the insured the complete proof of fault or other criteria which justifies the additional charge or cancellation.
 6. No insurer shall impose or request an additional premium for motor vehicle insurance, cancel or refuse to issue a policy, or refuse to renew a policy because the insured or the applicant is a handicapped or physically disabled person, so long as such handicap or physical disability does not substantially impair such person's mechanically assisted driving ability.
 7. No insurer may cancel or otherwise terminate any insurance contract or coverage, or require execution of a consent to rate endorsement, during the stated policy term for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured with the same exposure at a higher premium rate or continuing an existing contract or coverage with the same exposure at an increased premium.
 8. No insurer may issue a nonrenewal notice on any insurance contract or coverage, or require execution of a consent to rate endorsement, for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured at a higher premium rate or continuing an existing contract or coverage at an increased premium without meeting any applicable notice requirements.
 9. No insurer shall, with respect to premiums charged for motor vehicle insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement.
 10. Imposing or requesting an additional premium for motor vehicle comprehensive or uninsured motorist coverage solely because the insured was involved in a motor vehicle accident or was convicted of a moving traffic violation.
 11. No insurer shall cancel or issue a nonrenewal notice on any insurance policy or contract without complying with any applicable cancellation or nonrenewal provision required under the Florida Insurance Code.
 12. No insurer shall impose or request an additional premium, cancel a policy, or issue a nonrenewal notice on any insurance policy or contract because of any traffic infraction when adjudication has been withheld and no points have been assessed pursuant to s. 318.14(9) and (10). However, this subparagraph does not apply to traffic infractions involving accidents in which the insurer has incurred a loss due to the fault of the insured.
- (v) Proposal required.—If a person simultaneously holds a securities license and a life insurance license, he or she shall prepare and leave with each prospective buyer a written proposal, on or before delivery of any

investment plan. "Investment plan" means a mutual funds program, and the proposal shall consist of a prospectus describing the investment feature and a full illustration of any life insurance feature. The proposal shall be prepared in duplicate, dated, and signed by the licensee. The original shall be left with the prospect, the duplicate shall be retained by the licensee for a period of not less than 3 years, and a copy shall be furnished to the department upon its request. In lieu of a duplicate copy, a receipt for standardized proposals filed with the department may be obtained and held by the licensee.

Section 315. Subsection (3) of section 627.041, Florida Statutes, is amended to read:

627.041 Definitions.—As used in this part:

(3) "Rating organization" means every person, other than an authorized insurer, whether located within or outside this state, who has as his or her object or purpose the making of rates, rating plans, or rating systems. Two or more authorized insurers that act in concert for the purpose of making rates, rating plans, or rating systems, and that do not operate within the specific authorizations contained in ss. 627.311, 627.314(2), (4), and 627.351, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

Section 316. Paragraph (a) of subsection (11) of section 627.066, Florida Statutes, is amended to read:

627.066 Excessive profits for motor vehicle insurance prohibited.—

(11)(a) Refunds shall be completed in one of the following ways:

1. If the insurer group elects to make a cash refund, the refund shall be completed within 60 days of entry of a final order indicating that excessive profits have been realized.

2. If the insurer group elects to make refunds in the form of a credit to renewal policies, such credits shall be applied to policy renewal premium notices which are forwarded to insureds more than 60 calendar days after entry of a final order indicating that excessive profits have been realized. If an insurer group has made this election but an insured thereafter cancels his or her policy or otherwise allows the ~~his~~ policy to terminate, the insurer group shall make a cash refund not later than 60 days after termination of such coverage.

Section 317. Paragraph (c) of subsection (4) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(4)

(c) The Insurance Commissioner is directed to consider using the methodology specified in paragraph (a) prior to March 31, 1980; and, in the event the Insurance Commissioner ~~he~~ decides not to use this methodology, she or

he shall report such decision and the his reasons therefor to the committees of substance in the area of insurance in each house of the Legislature by March 31, 1980.

Section 318. Subsection (4) of section 627.162, Florida Statutes, is amended to read:

627.162 Requirements for premium installments; delinquency, collection, and check return charges; attorney's fees.—

(4) Notwithstanding other provisions of this section, an insurer may not take or receive from or charge an insured any collection fee or attorney's fee unless the insurer has mailed a notice of the default to the insured at his or her address as shown on the records of the insurer, giving the insured at least 5 days within which to make the payment in default. A notice of cancellation sent by the insurer to the insured in accordance with s. 440.42 is legally sufficient notice of the default for purposes of this section.

Section 319. Paragraph (a) of subsection (12) of section 627.215, Florida Statutes, is amended to read:

627.215 Excessive profits for workers' compensation, employer's liability, commercial property, and commercial casualty insurance prohibited.—

(12)(a) Refunds shall be completed in one of the following ways:

1. If the insurer group elects to make a cash refund, the refund shall be completed within 60 days of entry of a final order indicating that excessive profits have been realized.

2. If the insurer group elects to make refunds in the form of a credit to renewal policies, such credits shall be applied to policy renewal premium notices which are forwarded to insureds more than 60 calendar days after entry of a final order indicating that excessive profits have been realized. If an insurer group has made this election but an insured thereafter cancels her or his policy or otherwise allows the his policy to terminate, the insurer group shall make a cash refund not later than 60 days after termination of such coverage.

Section 320. Subsection (2) of section 627.291, Florida Statutes, is amended to read:

627.291 Information to be furnished insureds; appeal by insureds; workers' compensation and employer's liability insurances.—

(2) As to workers' compensation and employer's liability insurances, every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his or her authorized representative, on his or her written request to review the manner in which such rating system has been applied in connection with the insurance afforded him or her. If the rating organization or insurer fails to grant or rejects such request within 30 days after it is made, the applicant

may proceed in the same manner as if his or her application had been rejected. Any party affected by the action of such rating organization or insurer on such request may, within 30 days after written notice of such action, appeal to the department, which may affirm or reverse such action.

Section 321. Paragraph (e) of subsection (3) and paragraphs (a) and (o) of subsection (4) of section 627.311, Florida Statutes, are amended to read:

627.311 Joint underwriters and joint reinsurers.—

(3) The department may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the department which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the department shall be subject to the provisions of chapter 120. If adopted, the plan:

(e) Must provide that the joint underwriting association will operate subject to the supervision and approval of a board of governors consisting of 11 individuals, including 1 who will be elected as chair ~~chairman~~. Five members of the board must be appointed by the Insurance Commissioner. Two of the commissioner's appointees must be chosen from the insurance industry. Any board member appointed by the Insurance Commissioner may be removed and replaced by her or him at any time without cause. Six members of the board must be appointed by the participating insurers, two of whom must be from the insurance agents' associations. All board members, including the chair ~~chairman~~, must be appointed to serve for 2-year terms beginning annually on a date designated by the plan.

(4)(a) Effective upon this act becoming a law, the department shall, after consultation with insurers, approve a joint underwriting plan of insurers which shall operate as a nonprofit entity. For the purposes of this subsection, the term "insurer" includes group self-insurance funds authorized by s. 624.4621, commercial self-insurance funds authorized by s. 624.462, assessable mutual insurers authorized under s. 628.6011, and insurers licensed to write workers' compensation and employer's liability insurance in this state. The purpose of the plan is to provide workers' compensation and employer's liability insurance to applicants who are required by law to maintain workers' compensation and employer's liability insurance and who are in good faith entitled to but who are unable to purchase such insurance through the voluntary market. The joint underwriting plan shall issue policies beginning January 1, 1994. The plan must have actuarially sound rates that assure that the plan is self-supporting. The operation of the plan is subject to the supervision of a 13-member board of governors. The board of governors shall be comprised of 5 domestic insurers, 1 of whom shall be the assessable mutual insurer or other domestic insurer which has the largest

voluntary written premium for workers' compensation and employer's liability insurance as of December 31, 1993, 1 of whom shall be the commercial self-insurance fund which has the largest voluntary written premium for workers' compensation and employer's liability insurance, as of December 31, 1993, and 3 of whom shall be the three of the 5 group self-insurers' funds, authorized by s. 440.57, which have the largest voluntary written premium for workers' compensation and employer's liability insurance, as of December 31, 1993; and 5 of the 20 foreign insurers which are defined in s. 624.06(2) with the largest voluntary written premium in this state for workers' compensation and employer's liability insurance, for the latest year for which data are available, as selected by those 20 foreign insurers. If the assessable mutual insurer or the commercial self-insurance fund, described in this paragraph, decline to serve on, or resign from, the board of governors, such position on the board of governors shall be filled by appointment by a committee comprised of the 10 assessable mutual insurers, commercial self-insurance funds, and group self-insurers' funds, authorized by s. 440.57, which have the largest voluntary written premium for workers' compensation and employer's liability insurance, as of December 31, 1993. No board member shall be an insurer which provides service to the plan or which has an affiliate which provides services to the plan or which is serviced by a service company or third-party administrator which provides services to the plan or which has an affiliate which provides services to the plan. The board of governors shall have a ~~chair~~ chairman, who shall be named by the Insurance Commissioner. The board of governors shall include one representative appointed by the largest property and casualty insurance agents' association in this state. The consumer advocate appointed under s. 627.0613 shall be a member of the board of governors. The minutes, audits, and procedures of the board of governors are subject to chapter 119.

(o) Neither the plan nor any member of the board of governors is liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policies of the plan, unless:

1. The member breached or failed to perform her or his duties as a member; and

2. The member's breach of, or failure to perform, duties constitutes:

a. A violation of the criminal law, unless the member had reasonable cause to believe her or his conduct was unlawful. A judgment or other final adjudication against a member in any criminal proceeding for violation of the criminal law estops that member from contesting the fact that her or his breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the member from establishing that she or he had reasonable cause to believe that her or his conduct was lawful or had no reasonable cause to believe that her or his conduct was unlawful;

b. A transaction from which the member derived an improper personal benefit, either directly or indirectly; or

c. Recklessness or any act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful

disregard of human rights, safety, or property. For purposes of this subparagraph, the term “recklessness” means the acting, or omission to act, in conscious disregard of a risk:

(I) Known, or so obvious that it should have been known, to the member; and

(II) Known to the member, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such act or omission.

Section 322. Subsection (1) of section 627.371, Florida Statutes, is amended to read:

627.371 Hearings.—

(1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer, and any person aggrieved by any rating plan, rating system, or underwriting rule followed or adopted by a rating organization, may herself or himself or by her or his authorized representative make written request of the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded her or him. If the request is not granted within 30 days after it is made, the requester may treat it as rejected. Any person aggrieved by the refusal of an insurer or rating organization to grant the review requested, or by the failure or refusal to grant all or part of the relief requested, may file a written complaint with the department, specifying the grounds relied upon. If the department has already disposed of the issue as raised by a similar complaint or believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, it shall so notify the complainant. Otherwise, and if it also finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, it shall proceed as provided in subsection (2).

Section 323. Subsections (2) and (4) of section 627.406, Florida Statutes, are amended to read:

627.406 Power to contract; purchase of insurance by or for minor.—

(2) Any minor of the age of 15 years or more, as determined by the nearest birthday, may, notwithstanding his or her minority, contract for annuities or for insurance on his or her own life, body, health, property, liabilities, or other interests or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon his or her own life, body, or health or any contract such minor effected on his or her own property, liabilities, or other interests or on the person of another, as might be exercised by a person of full legal age. Such minor may at any time surrender his or her interest in any such contracts and give a valid discharge for any benefits accruing or money payable thereunder. Such a minor shall not, by reason of his or her minority, be entitled to rescind, avoid, or repudiate

the contract, nor to rescind, avoid, or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise, any premium on any such annuity or insurance contract.

(4) Any annuity contract or policy of life or health insurance procured by or for a minor under subsection (2) shall be made payable either to the minor or his or her estate or to a person having an insurable interest in the life of such minor.

Section 324. Section 627.407, Florida Statutes, is amended to read:

627.407 Alteration of application.—No alteration of any written application for any life or health insurance policy shall be made by any person other than the applicant without his or her written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

Section 325. Paragraph (c) of subsection (7) of section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(7)

(c) As used in this section, “actuary” means an individual who is a member of the Society of Actuaries or the American Academy of Actuaries. If an insurer does not employ or otherwise retain the services of an actuary, the insurer’s certification shall be prepared by insurer personnel or consultants with a minimum of 5 years’ experience in insurance ratemaking. The chief executive officer of the insurer shall review and sign the certification indicating his or her agreement with its conclusions.

Section 326. Section 627.4132, Florida Statutes, is amended to read:

627.4132 Stacking of coverages prohibited.—If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, personal injury protection, or other coverage, the policy shall provide that the insured or named insured is protected only to the extent of the coverage she or he has on the vehicle involved in the accident. However, if none of the insured’s or named insured’s vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles shall not be added to or stacked upon that coverage. This section does not apply:

(1) To uninsured motorist coverage which is separately governed by s. 627.727.

(2) To reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 327. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

(1) Each insurer which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made shall provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- (a) The name of the insurer.
- (b) The name of each insured.
- (c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.

- (e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.

Section 328. Paragraph (d) of subsection (2) of section 627.4143, Florida Statutes, is amended to read:

627.4143 Outline of coverage.—

- (2) The outline of coverage shall contain all of the following:

(d) A description of the credit or surcharge plan that is being applied. The description may display numerical or alphabetical codes on the declarations page or premium notice to enable the insured to determine the reason or reasons why her or his policy is being surcharged or is receiving a credit.

Section 329. Subsection (1) of section 627.418, Florida Statutes, is amended to read:

627.418 Validity of noncomplying contracts.—

(1) Any insurance policy, rider, or endorsement otherwise valid which contains any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. In the event an insurer issues or delivers any policy for an amount which exceeds any limitations otherwise provided in this code, such insurer shall be liable to the insured

or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed under this code.

Section 330. Section 627.4237, Florida Statutes, is amended to read:

627.4237 Sickness disability or disability due to sickness.—Notwithstanding any provision of law to the contrary, the term “sickness disability” or “disability due to sickness,” as used in individual or group disability insurance policies issued in this state on or after October 1, 1992, includes any restriction of a health care practitioner’s ability to perform her or his occupation because of action taken by the his state licensing board as a result of the practitioner’s his testing positive on a human immunodeficiency virus test. The provisions of this section do not require payment of disability income benefits under any policy without the insured experiencing an actual loss of income as may be required under the terms of the policy as a condition of receiving such benefits.

Section 331. Subsection (3) of section 627.553, Florida Statutes, is amended to read:

627.553 Debtor groups.—The lives of a group of individuals may be insured under a policy issued to a creditor or its parent holding company, or to a trustee or trustees or agent designated by two or more creditors, which creditor, holding company, affiliate, trustee or trustees, or agent shall be deemed the policyholder, to insure debtors of the creditor or creditors, subject to the following requirements:

(3) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by her or him which is repayable in installments to the creditor or \$50,000, whichever is less, except that loans not exceeding 1 year’s duration shall not be subject to such limits. However, on such loans not exceeding 1 year’s duration, the limit of coverage shall not exceed \$50,000 with any one insurer.

Section 332. Paragraph (b) of subsection (2) of section 627.555, Florida Statutes, is amended to read:

627.555 Trustee groups.—Subject to all of the requirements of this section, the lives of a group of individual employees of employers or members of labor unions may be insured, for the benefit of persons other than the employers or unions, under a policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which board of trustees is deemed to be the policyholder.

(2)

(b) Except as provided in paragraph (a) as to retired employees, an individual proprietor or partner is not eligible for insurance under the policy as an employee unless she or he is actively engaged in and devotes a substantial part of her or his time to the conduct of the business of the proprietor

or partnership. The policy may provide that the term “employees” includes the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

Section 333. Section 627.560, Florida Statutes, is amended to read:

627.560 Incontestability.—A group life insurance policy shall provide that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for 2 years from its date of issue. No statement made by any person insured under the policy relating to that person’s insurability shall be used in contesting the validity of the insurance with respect to which the statement was made after the insurance has been in force prior to the contest for a period of 2 years during that person’s lifetime nor unless it is contained in a written instrument signed by her or him.

Section 334. Section 627.561, Florida Statutes, is amended to read:

627.561 Application; statements deemed representations.—A group life insurance policy shall provide that a copy of the application, if any, of the policyholder be attached to the policy when issued, that all statements made by the policyholder or by the persons insured be deemed representations and not warranties, and that no statement made by any person insured be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to her or his beneficiary.

Section 335. Section 627.562, Florida Statutes, is amended to read:

627.562 Insurability.—A group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of her or his coverage.

Section 336. Section 627.566, Florida Statutes, is amended to read:

627.566 Conversion on termination of eligibility.—A group life insurance policy shall provide that, if the insurance, or any portion of it, on a person covered under the policy or on the dependent of a person covered ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person is entitled to have issued to her or him by the insurer, without evidence of insurability, an individual policy of life insurance without health or other supplementary benefits, provided application for the individual policy is made, and the first premium is paid, to the insurer within 31 days after such termination, and provided further that:

(1) The individual policy shall, at the option of such person, be on any one of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance;

(2) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less, in

the case of a person whose membership in the class or classes eligible for coverage terminates but who continues in employment in another class, the amount of any life insurance for which such person is or becomes eligible under any other group policy within 31 days after such termination, provided that any amount of insurance which has matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to such person's age attained on the effective date of the individual policy. A conversion privilege shall be available to a surviving dependent, if any, at the death of the employee or member, with respect to the coverage under the group policy which terminates by reason of such death, and to the dependent of the employee or member upon termination of coverage of the dependent, while the employee or member remains insured under the group policy, by reason of the dependent ceasing to be a qualified family member under the group policy.

Section 337. Section 627.567, Florida Statutes, is amended to read:

627.567 Conversion on termination of policy.—A group life insurance policy shall provide that, if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least 5 years prior to such termination date is entitled to have issued to her or him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by s. 627.566, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

(1) The amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which she or he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; or

(2) Ten thousand dollars.

Section 338. Section 627.568, Florida Statutes, is amended to read:

627.568 Death pending conversion.—A group life insurance policy shall provide that, if a person insured under the policy dies during the period within which she or he would have been entitled to have an individual policy issued in accordance with s. 627.566 or s. 627.567 and before such an individual policy has become effective, the amount of life insurance which she or he would have been entitled to have issued under the individual policy shall be payable as a claim under the group policy, whether or not applica-

tion for the individual policy or the payment of the first premium therefor has been made.

Section 339. Subsection (1) of section 627.571, Florida Statutes, is amended to read:

627.571 Assignment of incidents of ownership in group life insurance policies, including conversion privileges.—

(1) Nothing in this code or in any other law shall be construed to prohibit any person insured under a group life insurance policy from making an assignment of all or any part of her or his incidents of ownership under such policy, including, but not limited to, the privilege of having issued to the person ~~him~~ an individual policy of life insurance pursuant and subject to the provisions of ss. 627.566 and 627.567 and the right to name a beneficiary. Subject to the terms of the policy, agreement, or arrangement among the insured, the group policyholder, and the insurer, relating to assignment of incidents of ownership thereunder, such an assignment by an insured, whenever made, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue in accordance with ss. 627.566 and 627.567 prior to receipt of notice of the assignment.

Section 340. Subsection (2) of section 627.6044, Florida Statutes, is amended to read:

627.6044 Use of a specific methodology for payment of claims.—

(2) Each insurer issuing a policy that provides for payment of claims based on a specific methodology shall provide to an insured, upon her or his written request, an estimate of the amount the insurer will pay for a particular medical procedure or service. The estimate may be in the form of a range of payments or an average payment. The insurer may require the insured to provide detailed information regarding the procedure or service to be performed, including the procedure or service code number provided by the health care provider and the health care provider's estimated charge. An insurer that provides an insured with a good faith estimate is not bound by the estimate. However, a pattern of providing estimates that vary significantly from the ultimate insurance payment constitutes a violation of this code.

Section 341. Section 627.619, Florida Statutes, is amended to read:

627.619 Change of occupation.—There may be a provision as follows:

“Change of Occupation: If the insured is injured or contracts sickness after having changed his or her occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer

for such more hazardous occupation. If the insured changes his or her occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.”

Section 342. Section 627.621, Florida Statutes, is amended to read:

627.621 Other insurance with this insurer.—The contract may include the following provision:

“Other Insurance with This Insurer: If two or more health insurance policies, exclusive of guaranteed-issue policies, are issued by the insurer covering the same insured, the insurer shall pay the total benefits payable under all policies issued; provided that when guaranteed-issue policies are in force concurrently either with or without other health insurance policies, resulting in coverage in excess of covered claims, the excess insurance provided under such guaranteed-issue policies shall be void and all premiums paid for such excess shall be returned to the insured or to the insured's ~~his~~ estate; provided further that full payment of all covered claims is made.”

Section 343. Subsection (1) of section 627.624, Florida Statutes, is amended to read:

627.624 Relation of earnings to insurance.—

(1) The contract may include the following provision:

“Relation of Earnings to Insurance: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, exceeds the monthly earnings of the insured at the time disability commenced or his or her average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as exceeds the pro rata amount of the premiums for the benefits actually paid hereunder; but this provision shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$500 or the sum of the monthly

benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.”

Section 344. Section 627.6401, Florida Statutes, is amended to read:

627.6401 Refunds for persons age 64.—If an insured who has reached his or her 64th birthday but who is not yet 65 years of age pays an annual or semiannual premium that would otherwise pay for coverage beyond his or her 65th birthday, such person shall be entitled to an appropriate refund of unearned premium from the insurer in the event that coverage terminates or is reduced upon the insured’s attainment of age 65.

Section 345. Subsection (1) of section 627.646, Florida Statutes, is amended to read:

627.646 Conversion on termination of eligibility.—

(1) Every health insurance policy providing hospital or medical expense coverage hereafter delivered or issued for delivery in this state or under which benefits are altered, modified, or amended shall contain a provision that, if the insurance on a person covered under the policy ceases because of the termination of such person’s eligibility for coverage prior to his or her becoming eligible for Medicare or Medicaid benefits, then such person shall be entitled to have issued to him or her by the insurer, without evidence of insurability, a policy of health insurance, either individual or family, which-ever is appropriate, provided application for the policy is made and the first premium is paid to the insurer within 31 days after such termination, and provided further that:

(a) The coverage under the policy shall be in an amount equal to or, at the option of the insured, less than the amount of health insurance which ceases because of such termination.

(b) The premium on the policy shall be at the insurer’s then customary rate applicable to such policies, to the class of risk to which such person then belongs, and to his or her age attained on the effective date of the policy.

(c) The policy of health insurance will not result in overinsurance on the basis of the company underwriting standards at the time of issue.

(d) The policy of health insurance may be reduced by the amount of any benefits paid for the same injury or same sickness under the prior policy.

(e) The policy of health insurance may exclude any condition excluded by the prior policy.

Section 346. Paragraph (b) of subsection (2) of section 627.6486, Florida Statutes, is amended to read:

627.6486 Eligibility.—

(2)

(b) No person who is currently eligible for health care benefits under Florida’s Medicaid program is eligible for coverage under the plan unless:

1. He or she has an illness or disease which requires supplies or medication which are covered by the association but are not included in the benefits provided under Florida's Medicaid program in any form or manner; and

2. He or she is not receiving health care benefits or coverage under Florida's Medicaid program.

Section 347. Paragraphs (a) and (b) of subsection (2) of section 627.6488, Florida Statutes, are amended to read:

627.6488 Florida Comprehensive Health Association.—

(2)(a) The association shall operate subject to the supervision and approval of a three-member board of directors. The board of directors shall be appointed by the Insurance Commissioner as follows:

1. The ~~chair chairman~~ of the board shall be the Insurance Commissioner or his or her designee.

2. One representative of policyholders who is not associated with the medical profession, a hospital, or an insurer.

3. One representative of insurers.

The administrator or his or her affiliate shall not be a member of the board. Any board member appointed by the commissioner may be removed and replaced by him or her at any time without cause.

(b) All board members, including the ~~chair chairman~~, shall be appointed to serve for staggered 3-year terms beginning on a date as established in the plan of operation.

Section 348. Paragraph (b) of subsection (2) of section 627.6516, Florida Statutes, is amended to read:

627.6516 Trustee groups.—A group of employees of employers or members of labor unions may be insured for the benefit of persons other than the employers or unions under a policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees are deemed to be the policyholder, subject to the following requirements:

(2)

(b) Except as provided in paragraph (a) as to retired employees, an individual proprietor or partner is not eligible for insurance under the policy as an employee unless he or she is actively engaged in and devotes a substantial part of his or her time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" includes the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

Section 349. Paragraph (a) of subsection (1) of section 627.657, Florida Statutes, is amended to read:

627.657 Provisions of group health insurance policies.—

(1) Each group health insurance policy shall contain in substance the following provisions:

(a) A provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his or her beneficiary.

Section 350. Subsection (1) of section 627.664, Florida Statutes, is amended to read:

627.664 Assignment of incidents of ownership in group, blanket, or franchise health policies.—

(1) No provision of the insurance code or any other law shall be construed to prohibit an insured under any group, blanket, or franchise health insurance policy, or any other person who may be the owner of any incidents of ownership under such policy, from making an assignment of all or any part of his or her incidents of ownership under the policy, including specifically, but not by way of limitation, any right to designate a beneficiary and the right, if any, to have an individual policy issued in accordance with the terms thereof. Subject to the terms of the policy or any contract relating thereto, an assignment by an insured or by any other owner of rights under the policy is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all incidents of ownership so assigned, but without prejudice to the company on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment.

Section 351. Subsection (2) of section 627.6645, Florida Statutes, is amended to read:

627.6645 Notification of cancellation, expiration, nonrenewal, or change in rates.—

(2) If an insurer bills any certificateholder directly at his or her home address for collection of any premiums due, the notice required by subsection (1) shall be provided by the insurer directly to each such certificateholder covered under the policy.

Section 352. Section 627.6675, Florida Statutes, is amended to read:

627.6675 Conversion on termination of eligibility.—Subject to all of the provisions of this section, a group policy delivered or issued for delivery in this state by an insurer or nonprofit health care services plan that provides,

on an expense-incurred basis, hospital, surgical, or major medical expense insurance, or any combination of these coverages, shall provide that an employee or member whose insurance under the group policy has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and under any group policy providing similar benefits that the terminated group policy replaced, for at least 3 months immediately prior to termination, shall be entitled to have issued to him or her by the insurer a policy or certificate of health insurance, referred to in this section as a "converted policy." An employee or member shall not be entitled to a converted policy if termination of his or her insurance under the group policy occurred because he or she failed to pay any required contribution, or because any discontinued group coverage was replaced by similar group coverage within 31 days after discontinuance.

(1) **TIME LIMIT.**—Written application for the converted policy shall be made and the first premium must be paid to the insurer, not later than 31 days after termination of the group policy.

(2) **EVIDENCE OF INSURABILITY.**—The converted policy shall be issued without evidence of insurability.

(3) **CONVERSION PREMIUM; EFFECT ON PREMIUM RATES FOR GROUP COVERAGE.**—

(a) The premium for the converted policy shall be determined in accordance with premium rates applicable to the age and class of risk of each person to be covered under the converted policy and to the type and amount of insurance provided. However, the premium for the converted policy may not exceed 200 percent of the standard risk rate as established by the Florida Comprehensive Health Association, adjusted for differences in benefit levels and structure between the converted policy and the policy offered by the Florida Comprehensive Health Association.

(b) Actual or expected experience under converted policies may be combined with such experience under group policies for the purposes of determining premium and loss experience and establishing premium rate levels for group coverage.

(4) **EFFECTIVE DATE OF COVERAGE.**—The effective date of the converted policy shall be the day following the termination of insurance under the group policy.

(5) **SCOPE OF COVERAGE.**—The converted policy shall cover the employee or member and his or her dependents who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent.

(6) **OPTIONAL COVERAGE.**—The insurer shall not be required to issue a converted policy covering any person who is or could be covered by Medicare. The insurer shall not be required to issue a converted policy covering a person if paragraphs (a) and (b) apply to the person:

(a) If any of the following apply to the person:

1. The person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan, or by any other plan or program.

2. The person is eligible for similar benefits, whether or not actually provided coverage, under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis.

3. Similar benefits are provided for or are available to the person under any state or federal law.

(b) If the benefits provided under the sources referred to in subparagraph (a)1. or the benefits provided or available under the sources referred to in subparagraphs (a)2. and 3., together with the benefits provided by the converted policy, would result in overinsurance according to the insurer's standards. The insurer's standards must bear some reasonable relationship to actual health care costs in the area in which the insured lives at the time of conversion and must be filed with the department prior to their use in denying coverage.

(7) INFORMATION REQUESTED BY INSURER.—

(a) A converted policy may include a provision under which the insurer may request information, in advance of any premium due date, of any person covered thereunder as to whether:

1. The person ~~He~~ is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program.

2. The person ~~He~~ is covered for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis.

3. Similar benefits are provided for or are available to the person under any state or federal law.

(b) The converted policy may provide that the insurer may refuse to renew the policy or the coverage of any person only for one or more of the following reasons:

1. Either the benefits provided under the sources referred to in subparagraphs (a)1. and 2. for the person or the benefits provided or available under the sources referred to in subparagraph (a)3. for the person, together with the benefits provided by the converted policy, would result in overinsurance according to the insurer's standards on file with the department.

2. The converted policyholder fails to provide the information requested pursuant to paragraph (a).

3. Fraud or material misrepresentation in applying for any benefits under the converted policy.

4. Eligibility of the insured person for coverage under Medicare or under any other state or federal law providing for benefits similar to those provided by the converted policy.

5. Other reasons approved by the department.

(8) BENEFITS OFFERED.—

(a) An insurer shall not be required to issue a converted policy that provides benefits in excess of those provided under the group policy from which conversion is made.

(b) An insurer shall offer the benefits specified in s. 627.668 and the benefits specified in s. 627.669 if those benefits were provided in the group plan.

(c) An insurer shall offer maternity benefits and dental benefits if those benefits were provided in the group plan.

(9) PREEXISTING CONDITION PROVISION.—The converted policy shall not exclude a preexisting condition not excluded by the group policy. However, the converted policy may provide that any hospital, surgical, or medical benefits payable under the converted policy may be reduced by the amount of any such benefits payable under the group policy after the termination of covered under the group policy. The converted policy may also provide that during the first policy year the benefits payable under the converted policy, together with the benefits payable under the group policy, shall not exceed those that would have been payable had the individual's insurance under the group policy remained in force.

(10) REQUIRED OPTION FOR MAJOR MEDICAL COVERAGE.—Subject to the provisions and conditions of this part, the employee or member shall be entitled to obtain a converted policy providing major medical coverage under a plan meeting the following requirements:

(a) A maximum benefit equal to the lesser of the policy limit of the group policy from which the individual converted or \$500,000 per covered person for all covered medical expenses incurred during the covered person's lifetime.

(b) Payment of benefits at the rate of 80 percent of covered medical expenses which are in excess of the deductible, until 20 percent of such expenses in a benefit period reaches \$2,000, after which benefits will be paid at the rate of 90 percent during the remainder of the contract year unless the insured is in the insurer's case management program, in which case benefits shall be paid at the rate of 100 percent during the remainder of the contract year. For the purposes of this paragraph, "case management program" means the specific supervision and management of the medical care provided or prescribed for a specific individual, which may include the use of health care providers designated by the insurer. Payment of benefits for

outpatient treatment of mental illness, if provided in the converted policy, may be at a lesser rate but not less than 50 percent.

(c) A deductible for each calendar year that must be \$500, \$1,000, or \$2,000, at the option of the policyholder.

(d) The term "covered medical expenses," as used in this subsection, shall be consistent with those customarily offered by the insurer under group or individual health insurance policies but is not required to be identical to the covered medical expenses provided in the group policy from which the individual converted.

(11) ALTERNATIVE PLANS.—The insurer may, at its option, also offer alternative plans for group health conversion in addition to the one required by this section.

(12) RETIREMENT COVERAGE.—If coverage would be continued under the group policy on an employee following the employee's ~~his~~ retirement prior to the time he or she is or could be covered by Medicare, the employee he may elect, instead of such continuation of group insurance, to have the same conversion rights as would apply had his or her insurance terminated at retirement by reason or termination of employment or membership.

(13) REDUCTION OF COVERAGE DUE TO MEDICARE.—The converted policy may provide for reduction of coverage on any person upon his or her eligibility for coverage under Medicare or under any other state or federal law providing for benefits similar to those provided by the converted policy.

(14) CONVERSION PRIVILEGE ALLOWED.—The conversion privilege shall also be available to any of the following:

(a) The surviving spouse, if any, at the death of the employee or member, with respect to the spouse and the children whose coverages under the group policy terminate by reason of the death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or, if the group policy provides for continuation of dependents' coverages following the employee's or member's death, at the end of such continuation.

(b) The former spouse whose coverage would otherwise terminate because of annulment or dissolution of marriage, if the former spouse is dependent for financial support.

(c) The spouse of the employee or member upon termination of coverage of the spouse, while the employee or member remains insured under the group policy, by reason of ceasing to be a qualified family member under the group policy, with respect to the spouse and the children whose coverages under the group policy terminate at the same time.

(d) A child solely with respect to himself or herself upon termination of his or her coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided in this subsection with respect to such termination.

(15) **BENEFIT LEVELS.**—If the benefit levels required in subsection (10) exceed the benefit levels provided under the group policy, the conversion policy may offer benefits which are substantially similar to those provided under the group policy in lieu of those required in subsection (10).

(16) **GROUP COVERAGE INSTEAD OF INDIVIDUAL COVERAGE.**—The insurer may elect to provide group insurance coverage instead of issuing a converted individual policy.

(17) **NOTIFICATION.**—A notification of the conversion privilege shall be included in each certificate of coverage.

(18) **OUTSIDE CONVERSIONS.**—A converted policy that is delivered outside of this state must be on a form that could be delivered in the other jurisdiction as a converted policy had the group policy been issued in that jurisdiction.

(19) **APPLICABILITY.**—This section does not require conversion on termination of eligibility for a policy or contract that provides benefits for specified diseases, or for accidental injuries only, disability income, Medicare supplement, hospital indemnity, limited benefit, nonconventional, or excess policies.

(20) Nothing in this section or in the incorporation of it into insurance policies shall be construed to require insurers to provide benefits equal to those provided in the group policy from which the individual converted, provided, however, that comprehensive benefits are offered which shall be subject to approval by the Insurance Commissioner.

Section 353. Paragraph (c) of subsection (1) of section 627.679, Florida Statutes, is amended to read:

627.679 Amount of insurance; disclosure.—

(1)

(c) Before any credit life insurance may be sold, the creditor agent or agent shall obtain a separate written acknowledgment with respect to each of the following:

1. That the borrower understands that he or she has the option of assigning any other policy or policies the borrower owns or may procure for the purpose of covering such loan and that the policy need not be purchased from the creditor agent in order to obtain the loan.

2. That the borrower understands that the credit life coverage may be deferred if, at the time of application, the borrower is unable to engage in employment or unable to perform normal activities of a person of like age and sex, if the proposed credit life insurance policy contains this restriction.

3. That the borrower understands that the benefits under the policy will terminate when the borrower reaches a certain age and that the borrower's age is accurately represented on the application or policy.

Section 354. Subsection (3) of section 627.681, Florida Statutes, is amended to read:

627.681 Term and evidence of insurance.—

(3) All credit insurance sold shall be evidenced by a policy, certificate, or statement of insurance, which shall be delivered to the insured borrower or purchaser. Upon acceptance of the insurance by the insurer and within 60 days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificates of insurance to be delivered to the debtor. The policy, certificate, or statement of insurance shall set forth a description of the coverage, including any exceptions, limitations, or restrictions, and the amount of the premium in the case of individual or franchise insurance, or the amount of any identifiable charge in the case of group insurance, except that, in the case of group insurance, in lieu of setting forth the amount of identifiable charge in the certificate or statement of insurance, such identifiable charge may be set forth in an instrument in writing, which shall be delivered to the insured borrower or purchaser. The policy group certificate or statement of insurance shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, whenever the amount exceeds the unpaid indebtedness, any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor, or to his or her estate.

Section 355. Subsection (1) of section 627.6841, Florida Statutes, is amended to read:

627.6841 Credit insurance consolidations; general requirements.—An insurer may not participate in any consolidation unless it complies with all of the following requirements:

(1) The offer of new coverage must be made on a timely basis as follows:

(a) In a consolidation conducted in connection with a loan transfer, the offer of new coverage to the prospective insured must be made as soon as reasonably possible. If the offer of new coverage is not made within 30 days after the loan transfer, or at least 30 days before the proposed effective date of the new coverage, the insurer must notify the debtor, in writing, that he or she has the right to an unconditional refund of all premiums paid for the new coverage if he or she exercises that right, in writing, within 30 days after the date of the notification.

(b) In all other consolidations, the offer of new coverage must be made to the prospective insured at least 30 days prior to the proposed effective date of the new coverage. If the offer is not made at least 30 days in advance, the insurer must notify the debtor, in writing, that he or she has the right to an unconditional refund of all premiums paid for the new coverage if he or she exercises that right, in writing, within 30 days after the date of the notification.

Section 356. Paragraph (a) of subsection (1) of section 627.6843, Florida Statutes, is amended to read:

627.6843 Consolidation disclosure requirements.—

(1) In conjunction with any offer of new coverage made in any consolidation, the new insurer must disclose in writing to each prospective insured all of the following:

(a) That the insured debtor may have the right to continue or convert his or her old coverage by paying premiums directly to the old insurer.

Section 357. Subsection (1) of section 627.702, Florida Statutes, is amended to read:

627.702 Valued policy law.—

(1) In the event of the total loss of any building, structure, mobile home as defined in s. 320.01(2), or manufactured building as defined in s. 553.36(11), located in this state and insured by any insurer as to a covered peril, in the absence of any change increasing the risk without the insurer's consent and in the absence of fraudulent or criminal fault on the part of the insured or one acting in her or his behalf, the insurer's liability, if any, under the policy for such total loss shall be in the amount of money for which such property was so insured as specified in the policy and for which a premium has been charged and paid.

Section 358. Subsection (1) and paragraphs (b), (c), (d), and (e) of subsection (9) of section 627.727, Florida Statutes, are amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(1) No motor vehicle liability insurance policy which provides bodily injury liability coverage shall be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable when, or to the extent that, an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy. When a motor vehicle is leased for a period of 1 year or longer and the lessor of such vehicle, by the terms of the lease contract, provides liability coverage on the leased vehicle, the lessee of such vehicle shall have the sole privilege to reject uninsured motorist coverage or to select lower limits than the bodily injury liability limits, regardless of whether the lessor is qualified as a self-insurer pursuant to s. 324.171. Unless an insured, or lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage or requests higher uninsured motorist limits in writing, the coverage or such higher uninsured motorist limits need not be provided in or supplemental to any other policy which renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits when an insured or lessee had rejected the coverage. When an insured or lessee has initially selected limits

of uninsured motorist coverage lower than her or his bodily injury liability limits, higher limits of uninsured motorist coverage need not be provided in or supplemental to any other policy which renews, extends, changes, supercedes, or replaces an existing policy with the same bodily injury liability limits unless an insured requests higher uninsured motorist coverage in writing. The rejection or selection of lower limits shall be made on a form approved by the Insurance Commissioner. The form shall fully advise the applicant of the nature of the coverage and shall state that the coverage is equal to bodily injury liability limits unless lower limits are requested or the coverage is rejected. The heading of the form shall be in 12-point bold type and shall state: "You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds. The insurer shall notify the named insured at least annually of her or his options as to the coverage required by this section. Such notice shall be part of, and attached to, the notice of premium, shall provide for a means to allow the insured to request such coverage, and shall be given in a manner approved by the department. Receipt of this notice does not constitute an affirmative waiver of the insured's right to uninsured motorist coverage where the insured has not signed a selection or rejection form. The coverage described under this section shall be over and above, but shall not duplicate, the benefits available to an insured under any workers' compensation law, personal injury protection benefits, disability benefits law, or similar law; under any automobile medical expense coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident; and such coverage shall cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section. The amount of coverage available under this section shall not be reduced by a setoff against any coverage, including liability insurance. Such coverage shall not inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or similar law.

(9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the department, establishing that if the insured accepts this offer:

(b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to her or him is the coverage available as to that motor vehicle.

(c) If the injured person is occupying a motor vehicle which is not owned by her or him or by a family member residing with her or him, the injured person ~~he~~ is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which she or he is a named insured or

insured family member. Such coverage shall be excess over the coverage on the vehicle the injured person ~~he~~ is occupying.

(d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in her or his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

(e) If, at the time of the accident the injured person is not occupying a motor vehicle, she or he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under which she or he is insured as a named insured or as an insured resident of the named insured's household.

In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant, or lessee, on a form approved by the department, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations. When the named insured, applicant, or lessee has initially accepted such limitations, such acceptance shall apply to any policy which renews, extends, changes, supersedes, or replaces an existing policy unless the named insured requests deletion of such limitations and pays the appropriate premium for such coverage. Any insurer who provides coverage which includes the limitations provided in this subsection shall file revised premium rates with the department for such uninsured motorist coverage to take effect prior to initially providing such coverage. The revised rates shall reflect the anticipated reduction in loss costs attributable to such limitations but shall in any event reflect a reduction in the uninsured motorist coverage premium of at least 20 percent for policies with such limitations. Such filing shall not increase the rates for coverage which does not contain the limitations authorized by this subsection, and such rates shall remain in effect until the insurer demonstrates the need for a change in uninsured motorist rates pursuant to s. 627.0651.

Section 359. Paragraph (a) of subsection (2) of section 627.7275, Florida Statutes, is amended to read:

627.7275 Motor vehicle property damage liability.—

(2)(a) Insurers writing motor vehicle insurance in this state shall make available, subject to the insurers' usual underwriting restrictions, coverage under policies as described in subsection (1) of this section to any applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state when the driving privileges were revoked or suspended pursuant to s. 316.646 or s. 627.733 due to the failure of the applicant to maintain required security. The policy shall be issued for a period of at least 6 months and as to the minimum coverages required under this section shall not be cancelable by the insured for any reason or by the insurer after a period not to exceed 30 days during which the insurer must complete underwriting of the

policy. After the insurer has completed underwriting the policy within the 30-day period, the insurer shall notify the Department of Highway Safety and Motor Vehicles that the policy is in full force and effect and the policy shall not be cancelable for the remainder of the policy period. A premium shall be collected and coverage shall be in effect for the 30-day period during which the insurer is completing the underwriting of the policy whether or not the person's driver license, motor vehicle tag, and motor vehicle registration are in effect. Once the noncancelable provisions of the policy become effective, the coverage or risk shall not be changed during the policy period and the premium shall be fully earned. If during the pendency of the 2-year proof of insurance period required under s. 627.733(7) the insured obtains additional coverage or coverage for an additional risk, then she or he must obtain a new 6-month noncancelable policy in accordance with the provisions of this section.

Section 360. Section 627.7286, Florida Statutes, is amended to read:

627.7286 Renewal of policy and setting of rates; certain experience not a factor.—No insurer providing motor vehicle liability coverage shall refuse to renew any policy providing coverage for a personal motor vehicle of any person based solely on such person's experience while operating a vehicle as a part of her or his employment for any local transit system or as a part of her or his employment as a bus operator for any nonpublic sector bus company or as a law enforcement officer or firefighter; and no points assessed against such person under s. 322.27 in connection with such experience shall be considered as a factor in the setting of such person's personal motor vehicle liability insurance rates. The burden of demonstrating that such points were assessed in connection with such experience shall lie with the insured.

Section 361. Subsection (4) of section 627.732, Florida Statutes, is amended to read:

627.732 Definitions.—As used in ss. 627.730-627.7405:

(4) "Relative residing in the same household" means a relative of any degree by blood or by marriage who usually makes her or his home in the same family unit, whether or not temporarily living elsewhere.

Section 362. Subsection (5) and paragraph (a) of subsection (7) of section 627.733, Florida Statutes, are amended to read:

627.733 Required security.—

(5) In addition to other persons who are not required to provide required security as required under this section and s. 324.022, the owner or registrant of a motor vehicle is exempt from such requirements if she or he is a member of the United States Armed Forces and is called to or on active duty outside the United States in an emergency situation. The exemption provided by this subsection applies only as long as the member of the armed forces is on such active duty outside the United States and applies only while the vehicle covered by the security required by this section and s. 324.022 is not operated by any person. Upon receipt of a written request by the

insured to whom the exemption provided in this subsection applies, the insurer shall cancel the coverages and return any unearned premium or suspend the security required by this section and s. 324.022. Notwithstanding subsection (6), the Department of Highway Safety and Motor Vehicles may not suspend the registration or operator's license of any owner or registrant of a motor vehicle during the time she or he qualifies for an exemption under this subsection. Any owner or registrant of a motor vehicle who qualifies for an exemption under this subsection shall immediately notify the department prior to and at the end of the expiration of the exemption.

(7)(a) Any operator or owner whose driver's license or registration has been suspended pursuant to this section or s. 316.646 may effect its reinstatement upon compliance with the requirements of this section and upon payment to the Department of Highway Safety and Motor Vehicles of a nonrefundable reinstatement fee of \$150 for the first reinstatement. Such reinstatement fee shall be \$250 for the second reinstatement and \$500 for each subsequent reinstatement during the 3 years following the first reinstatement. Any person reinstating her or his insurance under this subsection must also secure noncancelable coverage as described in s. 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form promulgated by the Department of Highway Safety and Motor Vehicles, such proof to be maintained for 2 years. If the person does not have a second reinstatement within 3 years after her or his initial reinstatement, the reinstatement fee shall be \$150 for the first reinstatement after that 3-year period. In the event that a person's license and registration are suspended pursuant to this section or s. 316.646, only one reinstatement fee shall be paid to reinstate the license and the registration. All fees shall be collected by the Department of Highway Safety and Motor Vehicles at the time of reinstatement. The Department of Highway Safety and Motor Vehicles shall issue proper receipts for such fees and shall promptly deposit those fees in the Highway Safety Operating Trust Fund. One-third of the fee collected under this subsection shall be distributed from the Highway Safety Operating Trust Fund to the local government entity or state agency which employed the law enforcement officer or the recovery agent who seizes a license plate pursuant to s. 324.201 or to s. 324.202. Such funds may be used by the local government entity or state agency for any authorized purpose.

Section 363. Subsections (1) and (2) of section 627.737, Florida Statutes, are amended to read:

627.737 Tort exemption; limitation on right to damages; punitive damages.—

(1) Every owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.7405, and every person or organization legally responsible for her or his acts or omissions, is hereby exempted from tort liability for damages because of bodily injury, sickness, or disease arising out of the ownership, operation, maintenance, or use of such motor vehicle in this state to the extent that the benefits described in s. 627.736(1) are payable for such injury, or would be payable but for any exclusion authorized by ss. 627.730-627.7405, under any

insurance policy or other method of security complying with the requirements of s. 627.733, or by an owner personally liable under s. 627.733 for the payment of such benefits, unless a person is entitled to maintain an action for pain, suffering, mental anguish, and inconvenience for such injury under the provisions of subsection (2).

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.7405, or against any person or organization legally responsible for her or his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part of:

- (a) Significant and permanent loss of an important bodily function.
- (b) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- (c) Significant and permanent scarring or disfigurement.
- (d) Death.

Section 364. Subsection (2) of section 627.832, Florida Statutes, is amended to read:

627.832 Grounds for refusal, suspension, or revocation of license.—

(2) A licensee may surrender a license by delivering to the department written notice that she or he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

Section 365. Section 627.835, Florida Statutes, is amended to read:

627.835 Excessive premium finance charge; penalty.—Any person, premium finance company, or other legal entity who or which knowingly takes, receives, reserves, or charges a premium finance charge other than that authorized by this part shall thereby forfeit the entire premium finance charge to which such person, premium finance company, or legal entity would otherwise be entitled; and any person who has paid such unlawful finance charge may personally or by her or his legal or personal representative, by suit for recovery thereof, recover from such person, premium finance company, or legal entity twice the entire amount of the premium finance charge so paid.

Section 366. Subsection (1) of section 627.836, Florida Statutes, is amended to read:

627.836 Licensee's books and records; reports.—

(1) The licensee shall keep and use in her or his business such books, accounts, and records as will enable the department to determine whether

the licensee is complying with the provisions of this part and with the rules pertaining thereto. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least 3 years after making the final entry in respect to any premium finance agreement recorded therein; however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this requirement.

Section 367. Paragraph (a) of subsection (3) of section 627.839, Florida Statutes, is amended to read:

627.839 Form and content of premium finance agreements.—

(3) A premium finance agreement shall:

(a) Contain the name and place of business of the insurance agent negotiating the related insurance contract; the name and residence or place of business of the insured as specified by her or him; the name and place of business of the premium finance company to which installment or other payments are to be made; a description of the insurance contract, the premiums for which are advanced or to be advanced under the agreement; and the amounts of the premiums for such insurance contract; and

Section 368. Paragraph (b) of subsection (3) of section 627.840, Florida Statutes, is amended to read:

627.840 Limitation on service and other charges.—

(3)

(b) The service charge shall be a maximum of \$12 per \$100 per year plus an additional charge not exceeding \$20, which additional charge need not be refunded upon prepayment. Such additional charge may be charged only once in a 12-month period for any one customer unless that customer's policy has been canceled due to nonpayment within the immediately preceding 12-month period. However, any insured may prepay her or his premium finance agreement in full at any time before the due date of the final payment; and in such event the unearned service charge shall be refunded in accordance with the "Rule of 78ths," or any other method at least as beneficial to the insured and approved by the department, and shall represent at least as great a proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of payments in the agreement. When the amount of the refund is less than \$1, no refund need be made if the agreement so states.

Section 369. Subsection (3) of section 627.841, Florida Statutes, is amended to read:

627.841 Delinquency, collection, cancellation, and check return charges; attorney's fees.—

(3) Notwithstanding the provisions of this section, a premium finance company shall not take, receive from, or charge an insured any cancellation

charge or attorney's fees unless, within 10 days after default in the payment of any installment of a premium finance agreement, the premium finance company has mailed a notice of the default to the insured at her or his address as shown on the agreement and to any insurance agent named therein at her or his place of business as shown giving the insured at least 5 days within which to make the payment in default.

Section 370. Subsection (3) of section 627.842, Florida Statutes, is amended to read:

627.842 Restrictions on premium finance agreements.—No premium finance agreement or contract ancillary thereto shall contain any provision by which:

(3) The insured relieves the insurance agent or the premium finance company holding the agreement from liability for any legal rights or remedies which the insured may otherwise have against her or him.

Section 371. Section 627.843, Florida Statutes, is amended to read:

627.843 Delivery of copy of premium finance agreement.—Before the due date of the first installment payable under a premium finance agreement, the premium finance company holding the agreement or the insurance agent shall deliver to the insured, or mail to the insured ~~him~~ at her or his address as shown in the agreement, a copy thereof or, if the agreement contained any blank space when it was signed and such blank space was subsequently filled in, in accordance with s. 627.839(4), a copy of the agreement as so filled in.

Section 372. Subsection (3) of section 627.844, Florida Statutes, is amended to read:

627.844 Assignment of premium finance agreement.—

(3) Unless the insured has notice of an actual or intended assignment of a premium finance agreement, payment thereunder by the insured ~~him~~ to the last known holder of the agreement shall be binding upon all subsequent holders or assignees.

Section 373. Section 627.845, Florida Statutes, is amended to read:

627.845 Statement of account; receipts.—

(1) At any time after the execution of a premium finance agreement, but not later than 1 year after the last payment thereunder, the premium finance company holding the premium finance agreement shall, upon written request of the insured, give or mail to her or him a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. A statement shall be supplied once each year without charge; if any additional statement is requested, the premium finance company shall supply the statement at a charge not exceeding \$1 for each additional statement so supplied. An insured shall be given a receipt for a payment when made in cash.

(2) After the payment of all sums for which an insured is obligated under a premium finance agreement, and upon ~~the insured's~~ his written demand, the premium finance company holding the agreement shall deliver, or mail to the insured at her or his last known address, such one or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all interest in or rights to the insurance contracts, the premiums for which were advanced or are to be advanced under the agreement.

Section 374. Paragraph (c) of subsection (1) of section 627.944, Florida Statutes, is amended to read:

627.944 Risk retention groups not certificated in this state.—Risk retention groups certificated or licensed in states other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) NOTICE OF OPERATIONS AND DESIGNATION OF COMMISSIONER AS AGENT.—Before offering insurance in this state, a risk retention group shall submit to the department:

(c) A statement of registration which designates the Insurance Commissioner and Treasurer or her or his designee as its agent for the purpose of receiving service of legal documents of process.

Section 375. Subsection (2) of section 627.948, Florida Statutes, is amended to read:

627.948 Notice and registration requirements of purchasing groups.—

(2) The purchasing group shall register with and designate the Insurance Commissioner and Treasurer or her or his designee as its agent solely for the purpose of receiving service of legal documents or process. This requirement shall not apply in the case of a purchasing group:

(a) Which:

1. Was domiciled before April 1, 1986.
2. Is domiciled on and after October 27, 1986, in any state of the United States.

(b) Which:

1. Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state; and
2. Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state.

(c) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

(d) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

Section 376. Paragraph (b) of subsection (1) and subsection (3) of section 627.952, Florida Statutes, are amended to read:

627.952 Risk retention and purchasing group agents.—

(1) Any person offering, soliciting, selling, purchasing, administering, or otherwise servicing insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any resident of this state, either directly or indirectly, by the use of mail, advertising, or other means of communication, shall obtain a license and appointment to act as a resident general lines agent, if a resident of this state, or a nonresident general lines agent if not a resident. Any such person shall be subject to all requirements of the Florida Insurance Code.

(b) Any person required to be licensed and appointed by this subsection, in order to place business through Florida eligible surplus lines carriers, shall, if a resident of this state, be licensed and appointed as a surplus lines agent. Any such person, if not a resident of this state, shall be licensed and appointed as a surplus lines agent in her or his state of residence and shall file and thereafter maintain a fidelity bond in favor of the people of the State of Florida executed by a surety company admitted in this state and payable to the State of Florida; provided, however, any activities carried out by such nonresident pursuant to this part shall be limited to the provision of insurance for purchasing groups. The bond shall be continuous in form and maintained in the amount set out in s. 626.928. The bond shall remain in force and effect until the surety is released from liability by the department or until the bond is canceled by the surety. The surety may cancel the bond and be released from further liability thereunder upon 30 days' prior written notice to the department. The cancellation shall not affect any liability incurred or accrued thereunder before the termination of the 30-day period. Upon receipt of a notice of cancellation, the department shall immediately notify the agent.

(3) Any insurance agent who breaches a fiduciary duty; who solicits, offers, sells, transacts, or purchases insurance coverage from a risk retention group which is not in compliance with the applicable provisions of this part; or who violates any provision of the Florida Insurance Code shall be subject to fine and revocation or suspension of her or his license and appointment, in accordance with the procedures established under the Florida Insurance Code and may be held liable for civil damages to any person or group resulting from such violation or breach of a fiduciary duty.

Section 377. Paragraph (b) of subsection (1) of section 627.971, Florida Statutes, is amended to read:

627.971 Definitions.—As used in this part:

(1)

(b) However, “financial guaranty insurance” does not include:

1. Insurance of a loss resulting from an event described in paragraph (a), if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

- a. A fortuitous physical event;
 - b. A failure of or deficiency in the operation of equipment; or
 - c. An inability to extract or recover a natural resource;
2. An individual or schedule public official bond;
 3. A court bond required in connection with judicial, probate, bankruptcy, or equity proceedings, including a waiver, probate, open estate, or life tenant bond;
 4. A bond running to a federal, state, county, municipal government, or other political subdivision, as a condition precedent to the granting of a license to engage in a particular business or of a permit to exercise a particular privilege;
 5. A loss security bond or utility payment indemnity bond running to a governmental unit, railroad, or charitable organization;
 6. A lease, purchase and sale, or concessionaire surety bond;
 7. Credit unemployment insurance on a debtor in connection with a specific loan or other credit transaction, to provide payments to a creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed;
 8. Credit insurance indemnifying a manufacturer, merchant, or educational institution which extends credit against loss or damage resulting from nonpayment of debts owed to her or him for goods or services provided in the normal course of her or his business;
 9. Guaranteed investment contracts that are issued by life insurance companies and that provide that the life insurer will make specified payments in exchange for specific premiums or contributions;
 10. Mortgage guaranty insurance as defined in s. 635.011(1) or s. 635.021;
 11. Indemnity contracts or similar guaranties, to the extent that they are not otherwise limited or proscribed by this part, in which a life insurer guarantees:
 - a. Its obligations or indebtedness or the obligations or indebtedness of a subsidiary of which it owns more than 50 percent, other than a financial guaranty insurance corporation, if:
 - (I) For any such obligations or indebtedness that are backed by specific assets, such assets are at all times owned by the insurer or the subsidiary; and
 - (II) For the obligations or indebtedness of the subsidiary that are not backed by specific assets of the life insurer, the guaranty terminates once the subsidiary ceases to be a subsidiary; or

b. The obligations or indebtedness, including the obligation to substitute assets where appropriate, with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guarantees obligations or indebtedness acquired by its subsidiary, provided that the assets so acquired have been:

(I) Acquired by a special purpose entity where the sole purpose is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by such assets; or

(II) Sold to an independent third party; or

c. The obligations or indebtedness of an employee or agent of the life insurer;

12. Any form of surety insurance as defined in s. 624.606; or

13. Any other form of insurance covering risks which the department determines to be substantially similar to any of the foregoing.

Section 378. Subsection (1) of section 627.983, Florida Statutes, is amended to read:

627.983 General requirements.—No insurer shall participate in any consolidation unless it complies with the following requirements:

(1) The offer of new coverage shall be made on a timely basis as follows:

(a) In a consolidation conducted in connection with a loan transfer, the offer of new coverage to the prospective insured must be made as soon as reasonably possible. If the offer of new coverage is not made within 30 days after the loan transfer, or at least 30 days prior to the proposed effective date of the new coverage, the insurer shall notify the debtor, in writing, that she or he has the right to an unconditional refund of all premiums paid for the new coverage if she or he exercises that right, in writing, within 30 days after the date of the notification.

(b) In all other consolidations, the offer of new coverage shall be made to the prospective insured at least 30 days prior to the proposed effective date of the new coverage. If the offer is not made at least 30 days in advance, the insurer shall notify the debtor, in writing, that she or he has the right to an unconditional refund of all premiums paid for the new coverage provided she or he exercises that right, in writing, within 30 days from the date of the notification.

Section 379. Paragraph (a) of subsection (1) of section 627.985, Florida Statutes, is amended to read:

627.985 Disclosure requirements.—

(1) In conjunction with any offer of new coverage made in any consolidation, the new insurer shall disclose in writing to each prospective insured all of the following:

(a) That the insured debtor may have the right to continue or convert her or his old coverage by paying premiums directly to the old insurer.

Section 380. Subsection (2) of section 628.152, Florida Statutes, is amended to read:

628.152 Domestic stock insurers; proxies, consents, and authorizations with respect to any voting security.—

(2) No person and no domestic stock insurer or any director, officer, or employee of such insurer shall solicit or permit the use of his or her name to solicit, by mail or otherwise, any person to give any proxy, consent, or authorization with respect to any voting security in contravention of any such rule.

Section 381. Paragraph (a) of subsection (2) of section 628.221, Florida Statutes, is amended to read:

628.221 Bylaws of mutual insurer.—

(2) The bylaws shall provide:

(a) That each member is entitled to one vote upon each matter coming to a vote at meetings of members, or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, or upon the amount of the premiums paid by such member, or upon other reasonable factors. A member shall have the right to vote in person or by his or her written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time;

Section 382. Subsections (2) and (4) of section 628.255, Florida Statutes, are amended to read:

628.255 Person with effective control cannot receive commission unless contract approved; penalties.—

(2) This section shall not be deemed to require approval of the contract or to prohibit payment of commissions to such an officer or director with respect to business written by him or her as an agent of the insurer prior to becoming such an officer or director and vested under the agency contract which was in force at the time such business was originally written.

(4) Violation of this section shall subject the insurer to loss of its certificate of authority as provided in s. 624.418 and the agent to loss of his or her license as provided in s. 626.621. Willful violation of this section shall, in addition to the above prescribed penalties, constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 383. Paragraph (a) of subsection (1) of section 628.421, Florida Statutes, is amended to read:

628.421 Assessment of stockholders or members.—

(1) Any insurer receiving the notice of the department mentioned in s. 628.411(1):

(a) If a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its certificate of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him or her in person or by advertisement in such time and manner as approved by the department, the insurer may require the return of the original certificate of stock held by the stockholder and, in cancellation and in lieu thereof, issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the department to be remaining at the time of determination of the amount of impairment under s. 628.411, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or issue fractional shares under this subsection.

Section 384. Paragraphs (c), (e), and (g) of subsection (2) of section 628.441, Florida Statutes, are amended to read:

628.441 Converting mutual insurer.—

(2) The department shall not approve any such plan or procedure unless:

(c) The corporate equity of each policyholder in the insurer, other than as to unearned premiums, nonforfeiture rights, and benefit claims under his or her policy, is determinable under a fair formula approved by the department, which equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(e) The plan gives to each policyholder of the insurer as specified in paragraph (d) a preemptive right to acquire his or her proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his or her equity in the insurer as determined under paragraph (c);

(g) The plan provides for payment of cash to each policyholder not electing to apply his or her equity in the insurer toward the purchase price of stock to which he or she is preemptively entitled. The amount so paid shall be not less than 50 percent of the amount of the policyholder's ~~his~~ equity not so used for the purchase of stock. Such cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's corporate equity in such mutual insurer; and

Section 385. Subsection (4) of section 628.491, Florida Statutes, is amended to read:

628.491 Mergers and consolidations; mutual insurers; agreement of bulk reinsurance.—

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto, as upon conversion of such insurer pursuant to s. 628.441,

of his or her equity in the business reinsured as determined under a fair formula approved by the department, which equity shall be based upon such member's equity in the reserves, assets (whether or not admitted assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

Section 386. Subsection (2) of section 628.501, Florida Statutes, is amended to read:

628.501 Mutual member's share of assets on liquidation.—

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his or her membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the department.

Section 387. Subsections (7) and (8) of section 628.6013, Florida Statutes, are amended to read:

628.6013 Converted self-insurance fund; trade association; board of directors.—

(7) If the board of directors contracts with a management company, no person may serve as an officer of the assessable mutual insurer unless he or she is an officer or director of the management company.

(8) If the board of directors contracts with a management company, a member of the board of directors is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policy of the fund, by a director, unless:

(a) The director breached or failed to perform his or her duties as a director; and

(b) The director's breach of, or failure to perform, his or her duties constitutes:

1. A violation of the criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against a director in any criminal proceeding for violation of the criminal law estops that director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful.

2. A transaction from which the director derived an improper personal benefit, either directly or indirectly; or

3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. For purposes of this section, the term "recklessness" means the acting, or omission to act, in conscious disregard of a risk:

a. Known, or so obvious that it should have been known, to the director; and

b. Known to the director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

Section 388. Paragraph (d) of subsection (1) of section 628.6017, Florida Statutes, is amended to read:

628.6017 Converting assessable mutual insurer.—

(1) An assessable mutual insurer may become a stock insurer by filing an application which complies with s. 628.051 and by submitting a plan of conversion which is approved by the department. The department shall not approve any such plan unless the plan:

(d) Provides for the payment of consideration to each policyholder in return for his or her membership interests in the assessable mutual insurer.

When the plan of reorganization becomes effective, the assessable mutual insurer shall become a stock insurer and the stock insurer shall be deemed to be a continuation of the corporate existence of the assessable mutual insurer. The provisions of s. 628.441 do not apply to the conversion of an assessable mutual insurer into a stock insurer. The provisions of s. 628.441 shall not apply to the conversion of an assessable mutual insurer to a stock insurer.

Section 389. Subsections (1) and (2) of section 629.121, Florida Statutes, are amended to read:

629.121 Attorney's bond.—

(1) Concurrently with the filing of the declaration provided for in s. 629.081, the attorney of a domestic reciprocal insurer shall file with the department a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his or her bond as set forth in subsection (2). The bond shall be executed by the attorney and by an authorized corporate surety and shall be subject to the approval of the department.

(2) The bond shall be in the sum of \$100,000, aggregate in form, the bond conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his or her hands, and that he or she will not withdraw or appropriate to his or her own use from the funds of the insurer any moneys or property to which he or she is not entitled under the power of attorney.

Section 390. Subsection (2) of section 629.211, Florida Statutes, is amended to read:

629.211 Subscribers' liability.—

(2) Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his or her policy was in force.

Section 391. Subsection (2) of section 629.221, Florida Statutes, is amended to read:

629.221 Subscribers' liability; on judgment.—

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his or her interests may appear and in amount not exceeding his or her contingent liability, if any.

Section 392. Subsections (2) and (4) of section 629.231, Florida Statutes, are amended to read:

629.231 Assessments.—

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his or her aggregate contingent liability as computed in accordance with s. 629.251, shall be computed by applying, to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(4) No subscriber shall have an offset against any assessment for which he or she is liable, on account of any claim for unearned premium or losses payable.

Section 393. Section 629.241, Florida Statutes, is amended to read:

629.241 Time limit for assessments.—Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his or her share of, any assessment, as computed and limited in accordance with this chapter, if:

(1) While his or her policy is in force or within 4 years after its termination, the subscriber ~~he~~ is notified by either the attorney or the department of its intentions to levy such assessment; or

(2) An order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while the subscriber's ~~his~~ policy is in force or within 4 years after its termination.

Section 394. Subsection (3) of section 629.291, Florida Statutes, is amended to read:

629.291 Merger or conversion.—

(3) The department shall not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer, as determined in accordance with s. 629.281, and a reasonable length of time within which to exercise such right.

Section 395. Subsection (2) of section 629.301, Florida Statutes, is amended to read:

629.301 Impaired reciprocal insurers.—

(2) If the attorney fails to make up such deficiency or to make the assessment within 30 days after the department orders him or her to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

Section 396. Subsection (2) and paragraph (b) of subsection (6) of section 629.401, Florida Statutes, are amended to read:

629.401 Insurance exchange.—

(2) The operation of this subsection shall become effective with respect to any exchange only after a determination by the Insurance Commissioner and Treasurer that the exchange may operate in an economic and beneficial manner. A committee shall be appointed to write the constitution and bylaws of the proposed exchange, to make such other recommendations as may be necessary to assure maximum coordination of the operations of the exchange with existing insurance industry operations, and to assure maximum economic benefits to the state from the operations of the exchange. The committee shall consist of 13 members, 6 to be appointed by the Insurance Commissioner and Treasurer, 2 each to be appointed by the Speaker of the House of Representatives and the President of the Senate, 1 each to be appointed by the minority leader of the House of Representatives and the minority leader of the Senate, and 1 to be the Insurance Commissioner and Treasurer or his or her designated representative. The ~~chair~~ chairman shall be elected by a majority of the committee. The committee shall transmit such proposed constitution and bylaws and such other recommendations to the Insurance Commissioner and Treasurer and to the Legislature no later than 5 days prior to the adjournment of a regular annual legislative session or no later than 5 days prior to the commencement of any special or organizational legislative session. Subject to the disapproval of the constitution and bylaws by either house of the Legislature by resolution before the end of such legislative session, the exchange shall have full authority to function pursuant to its constitution and bylaws 60 days after the end of the session. The initial board of governors of the exchange shall consist of 14 members, 3 appointed by the Insurance Commissioner and Treasurer, 3 by the Speaker of the House of Representatives, 3 by the President of the Senate, 1 by the minority leader of the House of Representatives, 1 by the minority

leader of the Senate, and 3 by the Governor, to serve until the first election pursuant to the constitution or bylaws.

(6)

(b) In addition to the insurance laws specified in paragraph (a), the department shall regulate the exchange pursuant to the following powers, rights, and duties:

1. General examination powers.—The department shall examine the affairs, transactions, accounts, records, and assets of any security fund, exchange, members, and associate brokers as often as it deems advisable. The examination may be conducted by the accredited examiners of the department at the offices of the entity or person being examined. The department shall examine in like manner each prospective member or associate broker applying for membership in an exchange.

2. Departmental approval and applications of underwriting members.—No underwriting member shall commence operation without the approval of the department. Before commencing operation, an underwriting member shall provide a written application containing:

a. Name, type, and purpose of the underwriting member.

b. Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the underwriting member.

c. Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the underwriting member, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding.

d. Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive agency contracts.

3. Investigation of underwriting member applications.—In connection with any proposal to establish an underwriting member, the department shall make an investigation of:

a. The character, reputation, financial standing, and motives of the organizers, incorporators, or subscribers organizing the proposed underwriting member.

b. The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

c. The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, or owners.

4. Notice of management changes.—An underwriting member shall promptly give the department written notice of any change among the directors or principal officers of the underwriting member within 30 days after

such change. The department shall investigate the new directors or principal officers of the underwriting member. The department's investigation shall include an investigation of the character, financial responsibility, insurance experience, and business qualifications of any new directors or principal officers. As a result of the investigation, the department may require the underwriting member to replace any new directors or principal officers.

5. Alternate financial statement.—In lieu of any financial examination, the department may accept an audited financial statement.

6. Correction and reconstruction of records.—If the department finds any accounts or records to be inadequate, or inadequately kept or posted, it may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person or entity being examined if such person or entity has failed to maintain, complete, or correct such records or accounts after the department has given him or her or it notice and reasonable opportunity to do so.

7. Obstruction of examinations.—Any person or entity who or which willfully obstructs the department or its examiner in an examination is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

8. Filing of annual statement.—Each underwriting member shall file with the department a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed on or before March 1 of each year, or within such extension of time as the department for good cause grants, and shall be for the preceding calendar year. The statement shall contain information generally included in insurer financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the underwriting member. The form of the financial statements shall be the approved form of the National Association of Insurance Commissioners or its successor organization. The department may by rule require each insurer to submit any part of the information contained in the financial statement in a computer-readable form compatible with the department's electronic data processing system. In addition to information furnished in connection with its annual statement, an underwriting member must furnish to the department as soon as reasonably possible such information about its transactions or affairs as the department requests in writing. All information furnished pursuant to the department's request must be verified by the oath of two executive officers of the underwriting member.

9. Record maintenance.—Each underwriting member shall have and maintain its principal place of business in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of insurance transacted.

10. Examination of agents.—If the department has reason to believe that any agent, as defined in s. 626.041, s. 626.051, s. 626.062, or s. 626.914, has violated or is violating any provision of the insurance law, or upon receipt

of a written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such examination as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of such agent.

11. Written reports of department.—The department or its examiner shall make a full and true written report of any examination. The report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the person or entity examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The department shall furnish a copy of the report to the person or entity examined not less than 30 days prior to filing the report in its office. If such person or entity so requests in writing within such 30-day period, the department shall grant a hearing with respect to the report and shall not file the report until after the hearing and after such modifications have been made therein as the department deems proper.

12. Admissibility of reports.—The report of an examination when filed shall be admissible in evidence in any action or proceeding brought by the department against the person or entity examined, or against his or her or its officers, employees, or agents. The department or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the department.

13. Publication of reports.—After an examination report has been filed, the department may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

14. Consideration of examination reports by entity examined.—After the examination report of an underwriting member has been filed, an affidavit shall be filed with the department, not more than 30 days after the report has been filed, on a form furnished by the department and signed by the person or a representative of any entity examined, stating that the report has been read and that the recommendations made in the report will be considered within a reasonable time.

15. Examination costs.—Each person or entity examined by the department shall pay to the department the expenses incurred in such examination.

16. Exchange costs.—An exchange shall reimburse the department for any expenses incurred by it relating to the regulation of the exchange and its members, except as specified in subparagraph 15.

17. Powers of examiners.—Any examiner appointed by the department, as to the subject of any examination, investigation, or hearing being conducted by him or her, may administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and

require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which ~~the examiner~~ he deems relevant to the inquiry. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he or she may be lawfully interrogated, the Circuit Court of Leon County or the circuit court of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the department's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof. Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

18. False testimony.—Any person willfully testifying falsely under oath as to any matter material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

19. Self-incrimination.—

a. If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the department or its examiner, on the ground that the testimony or evidence required of the person ~~him~~ may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and the person notwithstanding is directed to give such testimony or produce such evidence, he or she shall, if so directed by the department and the Department of Legal Affairs, nonetheless comply with such direction; but the person ~~he~~ shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence so produced shall be received against him or her upon any criminal action, investigation, or proceeding; except that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury, nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law.

b. Any such individual may execute, acknowledge, and file in the office of the department a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and if such testimony or evidence is so received or produced, such individual shall not be entitled to any immunity or privileges on account of any testimony so given or evidence so produced.

20. Penalty for failure to testify.—Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any member, associate broker, or other person when subpoenaed and requested by the department to so testify, as provided in subparagraph 17., shall, in addition to the penalty provided in subparagraph 17., be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

21. Name selection.—No underwriting member shall be formed or authorized to transact insurance in this state under a name which is the same as that of any authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion or under a name which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using any name, the underwriting syndicate or proposed underwriting syndicate shall submit its name or proposed name to the department for the approval of the department.

22. Capitalization.—An underwriting member approved on or after July 2, 1987, shall provide an initial paid-in capital and surplus of \$3 million and thereafter shall maintain a minimum policyholder surplus of \$2 million in order to be permitted to write insurance. Underwriting members approved prior to July 2, 1987, shall maintain a minimum policyholder surplus of \$1 million. After June 29, 1988, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of \$1.5 million to write insurance. After June 29, 1989, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of \$1.75 million to write insurance. After December 30, 1989, all underwriting members, regardless of the date they were approved, must maintain a minimum policyholder surplus of \$2 million to write insurance. Except for that portion of the paid-in capital and surplus which shall be maintained in a security fund of an exchange, the paid-in capital and surplus shall be invested by an underwriting member in a manner consistent with ss. 625.301-625.340. The portion of the paid-in capital and surplus in any security fund of an exchange shall be invested in a manner limited to investments for life insurance companies under the Florida insurance laws.

23. Limitations on coverage written.—

a. Limit of risk.—No underwriting member shall expose itself to any loss on any one risk in an amount exceeding 10 percent of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in an assuming reinsurer authorized or approved to do such business in this state shall be deducted in determining the limitation of risk prescribed in this section.

b. Restrictions on premiums written.—If the department has reason to believe that the underwriting member's ratio of actual or projected annual gross written premiums to policyholder surplus exceeds 8 to 1 or the underwriting member's ratio of actual or projected annual net premiums to policyholder surplus exceeds 4 to 1, the department may establish maximum gross or net annual premiums to be written by the underwriting member consistent with maintaining the ratios specified in this sub-subparagraph.

(I) Projected annual net or gross premiums shall be based on the actual writings to date for the underwriting member's current calendar year, its writings for the previous calendar year, or both. Ratios shall be computed on an annualized basis.

(II) For purposes of this sub-subparagraph, the term "gross written premiums" means direct premiums written and reinsurance assumed.

c. Surplus as to policyholders.—For the purpose of determining the limitation on coverage written, surplus as to policyholders shall be deemed to include any voluntary reserves, or any part thereof, which are not required by or pursuant to law and shall be determined from the last sworn statement of such underwriting member with the department, or by the last report or examination filed by the department, whichever is more recent at the time of assumption of such risk.

24. Unearned premium reserves.—All unearned premium reserves for business written on the exchange shall be calculated on a monthly or more frequent basis or on such other basis as determined by the department; except that all premiums on any marine or transportation insurance trip risk shall be deemed unearned until the trip is terminated.

25. Loss reserves.—All underwriting members of an exchange shall maintain loss reserves, including a reserve for incurred but not reported claims. The reserves shall be subject to review by the department, and, if loss experience shows that an underwriting member's loss reserves are inadequate, the department shall require the underwriting member to maintain loss reserves in such additional amount as is needed to make them adequate.

26. Distribution of profits.—An underwriting member shall not distribute any profits in the form of cash or other assets to owners except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains. In any one year such payments to owners shall not exceed 30 percent of such surplus as of December 31 of the immediately preceding year, unless otherwise approved by the department. No distribution of profits shall be made that would render an underwriting member either impaired or insolvent.

27. Stock dividends.—A stock dividend may be paid by an underwriting member out of any available surplus funds in excess of the aggregate amount of surplus advanced to the underwriting member under subparagraph 29.

28. Dividends from earned surplus.—A dividend otherwise lawful may be payable out of an underwriting member's earned surplus even though the total surplus of the underwriting member is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

29. Borrowing of money by underwriting members.—

a. An underwriting member may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its

business, upon a written agreement that such money is required to be repaid only out of the underwriting member's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 15 percent simple interest per annum. The interest shall or shall not constitute a liability of the underwriting member as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan. The use of any surplus note and any repayments thereof shall be subject to the approval of the department.

b. Money so borrowed, together with any interest thereon if so stipulated in the agreement, shall not form a part of the underwriting member's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, nor be the basis of any setoff; but until repayment, financial statements filed or published by an underwriting member shall show as a footnote thereto the amount thereof then unpaid, together with any interest thereon accrued but unpaid.

30. Liquidation, rehabilitation, and restrictions.—The department, upon a showing that a member or associate broker of an exchange has met one or more of the grounds contained in part I of chapter 631, may restrict sales by type of risk, policy or contract limits, premium levels, or policy or contract provisions; increase surplus or capital requirements of underwriting members; issue cease and desist orders; suspend or restrict a member's or associate broker's right to transact business; place an underwriting member under conservatorship or rehabilitation; or seek an order of liquidation as authorized by part I of chapter 631.

31. Prohibited conduct.—The following acts by a member, associate broker, or affiliated person shall constitute prohibited conduct:

a. Fraud.

b. Fraudulent or dishonest acts committed by a member or associate broker prior to admission to an exchange, if the facts and circumstances were not disclosed to the department upon application to become a member or associate broker.

c. Conduct detrimental to the welfare of an exchange.

d. Unethical or improper practices or conduct, inconsistent with just and equitable principles of trade as set forth in, but not limited to, ss. 626.951-626.9641, 626.973, and 626.988.

e. Failure to use due diligence to ascertain the insurance needs of a client or a principal.

f. Misstatements made under oath or upon an application for membership on an exchange.

g. Failure to testify or produce documents when requested by the department.

h. Willful violation of any law of this state.

i. Failure of an officer or principal to testify under oath concerning a member, associate broker, or other person's affairs as they relate to the operation of an exchange.

j. Violation of the constitution and bylaws of the exchange.

32. Penalties for participating in prohibited conduct.—

a. The department may order the suspension of further transaction of business on the exchange of any member or associate broker found to have engaged in prohibited conduct. In addition, any member or associate broker found to have engaged in prohibited conduct may be subject to reprimand, censure, and/or a fine not exceeding \$25,000 imposed by the department.

b. Any member which has an affiliated person who is found to have engaged in prohibited conduct shall be subject to involuntary withdrawal or in addition thereto may be subject to suspension, reprimand, censure, and/or a fine not exceeding \$25,000.

33. Reduction of penalties.—Any suspension, reprimand, censure, or fine may be remitted or reduced by the department on such terms and conditions as are deemed fair and equitable.

34. Other offenses.—Any member or associate broker that is suspended shall be deprived, during the period of suspension, of all rights and privileges of a member or of an associate broker and may be proceeded against by the department for any offense committed either before or after the date of suspension.

35. Reinstatement.—Any member or associate broker that is suspended may be reinstated at any time on such terms and conditions as the department may specify.

36. Remittance of fines.—Fines imposed under this section shall be remitted to the department and shall be paid into the Insurance Commissioner's Regulatory Trust Fund.

37. Failure to pay fines.—When a member or associate broker has failed to pay a fine for 15 days after it becomes payable, such member or associate broker shall be suspended, unless the department has granted an extension of time to pay such fine.

38. Changes in ownership or assets.—In the event of a major change in the ownership or a major change in the assets of an underwriting member, the underwriting member shall report such change in writing to the department within 30 days of the effective date thereof. The report shall set forth the details of the change. Any change in ownership or assets of more than 5 percent shall be considered a major change.

39. Retaliation.—

a. When by or pursuant to the laws of any other state or foreign country any taxes, licenses, or other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon an exchange or upon the agents or representatives of such exchange which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of such fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar exchanges or upon the agents or representatives of such exchanges of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the department upon the exchanges, or upon the agents or representatives of such exchanges, of such other state or country doing business or seeking to do business in this state.

b. Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of a state, jurisdiction, or foreign country on an exchange, or on the agents or representatives on an exchange, shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of sub-subparagraph a.

40. Agents.—

a. Agents as defined in ss. 626.041, 626.051, 626.062, and 626.914 who are broker members or associate broker members of an exchange shall be allowed only to place on an exchange the same kind or kinds of business that the agent is licensed to place pursuant to Florida law. Direct Florida business as defined in s. 626.916 or s. 626.917 shall be written through a broker member who is a surplus lines agent as defined in s. 626.914. The activities of each broker member or associate broker with regard to an exchange shall be subject to all applicable provisions of the insurance laws of this state, and all such activities shall constitute transactions under his or her license as an insurance agent for purposes of the Florida insurance law.

b. Premium payments and other requirements.—If an underwriting member has assumed the risk as to a surplus lines coverage and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the underwriting member and the insured, the underwriting member shall be deemed to have received the premium due to it for such coverage; and the underwriting member shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the underwriting member with respect to such insurance or for any other cause.

41. Improperly issued contracts, riders, and endorsements.—

a. Any insurance policy, rider, or endorsement issued by an underwriting member and otherwise valid which contains any condition or provision not in compliance with the requirements of this section shall not be thereby

rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this section. In the event an underwriting member issues or delivers any policy for an amount which exceeds any limitations otherwise provided in this section, the underwriting member shall be liable to the insured or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed.

b. Any insurance contract delivered or issued for delivery in this state governing a subject or subjects of insurance resident, located, or to be performed in this state which, pursuant to the provisions of this section, the underwriting member may not lawfully insure under such a contract shall be cancelable at any time by the underwriting member, any provision of the contract to the contrary notwithstanding; and the underwriting member shall promptly cancel the contract in accordance with the request of the department therefor. No such illegality or cancellation shall be deemed to relieve the underwriting syndicate of any liability incurred by it under the contract while in force or to prohibit the underwriting syndicate from retaining the pro rata earned premium thereon. This provision does not relieve the underwriting syndicate from any penalty otherwise incurred by the underwriting syndicate.

42. Satisfaction of judgments.—

a. Every judgment or decree for the recovery of money heretofore or hereafter entered in any court of competent jurisdiction against any underwriting member shall be fully satisfied within 60 days from and after the entry thereof or, in the case of an appeal from such judgment or decree, within 60 days from and after the affirmance of the judgment or decree by the appellate court.

b. If the judgment or decree is not satisfied as required under sub-subparagraph a., and proof of such failure to satisfy is made by filing with the department a certified transcript of the docket of the judgment or the decree together with a certificate by the clerk of the court wherein the judgment or decree remains unsatisfied, in whole or in part, after the time provided in sub-subparagraph a., the department shall forthwith prohibit the underwriting member from transacting business. The department shall not permit such underwriting member to write any new business until the judgment or decree is wholly paid and satisfied and proof thereof is filed with the department under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the judgment or decree is satisfied of record, and until the expenses and fees incurred in the case are also paid by the underwriting syndicate.

43. Tender and exchange offers.—No person shall conclude a tender offer or an exchange offer or otherwise acquire 5 percent or more of the outstanding voting securities of an underwriting member or controlling company or purchase 5 percent or more of the ownership of an underwriting member or controlling company unless such person has filed with, and obtained the approval of, the department and sent to such underwriting member a statement setting forth:

a. The identity of, and background information on, each person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by or on behalf of a corporation, association, or trust, the identity of and background information on each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.

b. The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

c. Any plans or proposals which such person may have to liquidate such member, to sell its assets, or to merge or consolidate it.

d. The percentage of ownership which such person proposes to acquire and the terms of the offer or exchange, as the case may be.

e. Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such member or controlling company, including, but not limited to, information relating to the transfer of any securities, option arrangements, or puts or calls or the giving or withholding of proxies, naming the party with whom such contract, arrangements, or understandings have been entered and giving the details thereof.

f. The department may disapprove any acquisition subject to the provisions of this subparagraph by any person or any affiliated person of such person who:

(I) Willfully violates this subparagraph;

(II) In violation of an order of the department issued pursuant to subparagraph j., fails to divest himself or herself of any stock obtained in violation of this subparagraph, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(III) In violation of an order issued by the department pursuant to subparagraph j., acquires additional stock of the underwriting member or controlling company, or direct or indirect control of such stock, without complying with this subparagraph.

g. The person or persons filing the statement required by this subparagraph have the burden of proof. The department shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(I) Upon completion of the acquisition, the underwriting member will be able to satisfy the requirements for the approval to write the line or lines of insurance for which it is presently approved;

(II) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the underwriting member or prejudice the interests of its policyholders or the public;

(III) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

(A) To liquidate the insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

(B) To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the underwriting member

is fair and free of prejudice to the policyholders of the underwriting member or to the public;

(IV) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the underwriting member indicate that the acquisition is in the best interest of the policyholders of the underwriting member and in the public interest;

(V) The natural persons for whom background information is required to be furnished pursuant to this subparagraph have such backgrounds as to indicate that it is in the best interests of the policyholders of the underwriting member, and in the public interest, to permit such persons to exercise control over such underwriting member;

(VI) The officers and directors to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation;

(VII) The management of the underwriting member after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the underwriting member not hazardous to the insurance-buying public;

(VIII) The management of the underwriting member after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or underwriting member or otherwise acted in bad faith with respect thereto;

(IX) The acquisition is not likely to be hazardous or prejudicial to the underwriting member's policyholders or the public; and

(X) The effect of the acquisition of control would not substantially lessen competition in insurance in this state or would not tend to create a monopoly therein.

h. No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this subparagraph is valid. Any acquisition of any security contrary to the provisions of this subparagraph is void. Upon the petition of the underwriting member or controlling company, the circuit court for the county in which the principal office of such underwriting member is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this subparagraph. There shall be

a private right of action in favor of the underwriting member or controlling company to enforce the provisions of this subparagraph. No demand upon the department that it perform its functions shall be required as a prerequisite to any suit by the underwriting member or controlling company against any other person, and in no case shall the department be deemed a necessary party to any action by such underwriting member or controlling company to enforce the provisions of this subparagraph. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this subparagraph, or who files such a statement, shall be deemed to have thereby designated the Insurance Commissioner, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this subparagraph and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the department and to the jurisdiction of the circuit court.

i. Any approval by the department under this subparagraph does not constitute a recommendation by the department for an acquisition, tender offer, or exchange offer. It is unlawful for a person to represent that the department's approval constitutes a recommendation. A person who violates the provisions of this sub-subparagraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this sub-subparagraph is 5 years.

j. Upon notification to the department by the underwriting member or a controlling company that any person or any affiliated person of such person has acquired 5 percent or more of the outstanding voting securities of the underwriting member or controlling company without complying with the provisions of this subparagraph, the department shall order that the person and any affiliated person of such person cease acquisition of any further securities of the underwriting member or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 5 percent or more of the outstanding voting securities of an underwriting member or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this sub-subparagraph that the person or affiliated person has acquired voting securities of an underwriting member or controlling company in violation of this subparagraph, the department may order the person and affiliated person to divest themselves of any voting securities so acquired.

k.(I) The department shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any underwriting member or controlling company:

(A) The control of which is acquired in violation of this subparagraph;

(B) That is controlled, directly or indirectly, by any person or any affiliated person of such person who, in violation of this subparagraph, has obtained control of an underwriting member or controlling company; or

(C) That is controlled, directly or indirectly, by any person who, directly or indirectly, controls any other person who, in violation of this subparagraph, acquires control of an underwriting member or controlling company.

(II) If any underwriting member is subject to suspension or revocation pursuant to sub-sub-subparagraph (I), the underwriting member shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, or stockholders or to the public.

l.(I) For the purpose of this sub-sub-subparagraph, the term “affiliated person” of another person means:

(A) The spouse of such other person;

(B) The parents of such other person and their lineal descendants and the parents of such other person’s spouse and their lineal descendants;

(C) Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(D) Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(E) Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person; or any officer, director, partner, copartner, or employee of such other person;

(F) If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

(G) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(H) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of an underwriting member or controlling company.

(II) For the purposes of this section, the term “controlling company” means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more underwriting members.

m. The department is authorized to adopt, amend, or repeal rules that are necessary to implement the provisions of this subparagraph, pursuant to chapter 120.

44. Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to sub-subparagraph 43.a. shall include, but shall not be limited to:

a. Such person’s occupations, positions of employment, and offices held during the past 10 years.

b. The principal business and address of any business, corporation, or other organization in which each such office was held or in which such occupation or position of employment was carried on.

c. Whether, at any time during such 10-year period, such person was convicted of any crime other than a traffic violation.

d. Whether, during such 10-year period, such person has been the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

e. Whether, during such 10-year period, such person has been the subject of any proceeding under the federal Bankruptcy Act or whether, during such 10-year period, any corporation, partnership, firm, trust, or association in which such person was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner, or other official, or within 12 months thereafter.

f. Whether, during such 10-year period, such person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details of any such event.

45. Security fund.—All underwriting members shall be members of the security fund of any exchange.

46. Underwriting member defined.—Whenever the term “underwriting member” is used in this subsection, it shall be construed to mean “underwriting syndicate.”

47. Offsets.—Any action, requirement, or constraint imposed by the department shall reduce or offset similar actions, requirements, or constraints of any exchange.

48. Restriction on member ownership.—

a. Investments existing prior to July 2, 1987.—The investment in any member by brokers, agents, and intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall in each case be limited in the aggregate to less than 20 percent of the total investment in such member, broker, agent, or intermediary, as the case may be. After December 31, 1987, the aggregate percent of the total investment in such member by any broker, agent, or intermediary and the aggregate percent of the total investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall not exceed 15 percent. After June 30, 1988, such aggregate percent shall not exceed 10 percent and after December 31, 1988, such aggregate percent shall not exceed 5 percent.

b. Investments arising on or after July 2, 1987.—The investment in any underwriting member by brokers, agents, or intermediaries transacting

business on the exchange, and the investment in any such broker, agent, or intermediary by any underwriting member, directly or indirectly, shall in each case be limited in the aggregate to less than 5 percent of the total investment in such underwriting member, broker, agent, or intermediary.

49. “Underwriting manager” defined.—“Underwriting manager” as used in this subparagraph includes any person, partnership, corporation, or organization providing any of the following services to underwriting members of the exchange:

a. Office management and allied services, including correspondence and secretarial services.

b. Accounting services, including bookkeeping and financial report preparation.

c. Investment and banking consultations and services.

d. Underwriting functions and services including the acceptance, rejection, placement, and marketing of risk.

50. Prohibition of underwriting manager investment.—Any direct or indirect investment in any underwriting manager by a broker member or any affiliated person of a broker member or any direct or indirect investment in a broker member by an underwriting manager or any affiliated person of an underwriting manager is prohibited. “Affiliated person” for purposes of this subparagraph is defined in subparagraph 43. Any direct or indirect investment prohibited by this subparagraph which exists prior to July 2, 1987, shall be dissolved by June 30, 1988.

51. An underwriting member may not accept reinsurance on an assumed basis from an affiliate or a controlling company, nor may a broker member or management company place reinsurance from an affiliate or controlling company of theirs with an underwriting member. “Affiliate and controlling company” for purposes of this subparagraph is defined in subparagraph 43.

52. Premium defined.—“Premium” is the consideration for insurance, by whatever name called. Any “assessment” or any “membership,” “policy,” “survey,” “inspection,” “service” fee or charge or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

53. Rules.—The department shall promulgate rules necessary for or as an aid to the effectuation of any provision of this section.

Section 397. Subsection (4) of section 631.051, Florida Statutes, is amended to read:

631.051 Grounds for rehabilitation; domestic insurers.—The department may petition for an order directing it to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds, that the insurer:

(4) Has failed, or its parent corporation, subsidiary, or affiliated person controlled by either the insurer or the parent corporation has failed, to

submit its books, documents, accounts, records, and affairs pertaining to the insurer to the reasonable inspection or examination of the department or its authorized representative; or any individual exercising any executive authority in the affairs of the insurer, or parent corporation, or subsidiary, or affiliated person has refused to be examined under oath by the department or its authorized representative, whether within this state or otherwise, concerning the pertinent affairs of the insurer, or parent corporation or subsidiary or affiliated person; or if examined under oath refuses to divulge pertinent information reasonably known to her or him; or officers, directors, agents, employees, or other representatives of the insurer or parent corporation, subsidiary, or affiliated person have failed to comply promptly with the reasonable requests of the department or its authorized representative for the purposes of, and during the conduct of, any such examination;

Section 398. Section 631.112, Florida Statutes, is amended to read:

631.112 Subordination of claims for noncooperation.—If an ancillary receiver or another person performing the duties associated with an ancillary receiver in another state or foreign country fails to transfer to the domiciliary liquidator in this state any assets within her or his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be deemed class 8 claims as defined in s. 631.271(1)(h).

Section 399. Subsection (1) of section 631.154, Florida Statutes, is amended to read:

631.154 Funds or other property in the possession of third person.—

(1) If the receiver determines that funds or property in the possession of another person are rightfully the property of the estate, the receiver shall deliver to such person a written demand for immediate delivery of the funds or property to the receiver, referencing this section by number, referencing the court and docket number of the receivership action, and notifying the person that any claim of right to the funds or property by her or him must be presented to the receivership court within 20 days after the date of the written demand. Any person who holds funds or other property belonging to an entity subject to an order of conservation, rehabilitation, or liquidation under this chapter shall deliver the funds or other property to the receiver on demand. Should the person allege any right to retain the funds or other property pursuant to s. 631.155, s. 631.191, s. 631.261, s. 631.262, s. 631.263, or s. 631.281, a pleading setting out the right shall be filed with the court within 20 days of the receipt of the receiver's demand that the funds or property be delivered to the receiver. The person shall serve a copy of the pleading on the receiver. The pleading of the person shall inform the court as to the nature of the claim to the property, the alleged value of the property or amount of funds held, and what action has been taken by the person to preserve and protect the property or to preserve any funds pending determination of the dispute.

It is the intent of this section that a person found to be holding receivership assets fully reimburse the receiver for any and all efforts made to recover those assets.

Section 400. Subsection (2) of section 631.171, Florida Statutes, is amended to read:

631.171 Claims of residents against insurers domiciled in reciprocal states.—

(2) If a notice to file claims has been issued by the Florida receiver pursuant to s. 631.181(3), claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in the ancillary proceeding, if any, in this state. If a claimant elects to prove her or his claim in this state, the claimant ~~he~~ shall file her or his claim with the receiver in the manner provided in s. 631.181(1) and (2). The ancillary receiver shall make its recommendation to the court as under s. 631.182(2), shall arrange a date for hearing if necessary under s. 631.182(1), and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of her or his intention to contest the claim, she or he is entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

Section 401. Paragraphs (b) and (d) of subsection (1) and paragraph (a) of subsection (2) of section 631.181, Florida Statutes, are amended to read:

631.181 Filing and proof of claim.—

(1)

(b) The court may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant ~~he~~ were not late, to prevent manifest injustice to the extent that any such payment will not prejudice the orderly administration of the liquidation, under any of the following circumstances:

1. The existence of the claim was not known to the claimant and the claimant ~~he~~ filed her or his claim as promptly thereafter as reasonably possible after learning of it.

2. A transfer to the claimant was avoided under ss. 631.261 and 631.262.

3. The valuation under s. 631.191 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(d) The court may consider any claim filed late which is not covered by paragraph (b) and permit it to receive distributions which are subsequently declared on any claims of a lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on her or his claim as is then being paid to claimants of any lower priority. This payment of percentages shall continue until her or his claim has been paid in full.

(2)(a) Proof of a claim shall consist of a statement signed by the claimant that includes all of the following information which is applicable:

1. The particulars of the claim, including the consideration given for it.
2. The identity and amount of the security on the claim.
3. The payments made on the debt, if any.
4. A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.
5. Any right of priority of payment or other specific right asserted by the claimants.
6. A copy of the written instrument which is the foundation of the claim.
7. The name and address of the claimant and the attorney who represents her or him, if any.

Section 402. Paragraph (a) of subsection (2) of section 631.191, Florida Statutes, is amended to read:

631.191 Special deposit claims and secured claims.—

(2)(a) The owner of a secured claim against an insurer against which a liquidation order has been entered in this or any other state may surrender her or his security and file her or his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in a proceeding in which the domiciliary receiver has had notice and an opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

Section 403. Subsection (1) of section 631.261, Florida Statutes, is amended to read:

631.261 Voidable transfers.—

(1) Any transfer of, or lien upon, the property of an insurer or affiliate which is made or created within 4 months prior to the commencement of any delinquency proceeding under this chapter with the intent of giving to any creditor of the insurer a preference or of enabling the creditor ~~him~~ to obtain a greater percentage of her or his debt than any other creditor of the same class, and which is accepted by such creditor having reasonable cause to believe that such preference will occur, shall be voidable.

Section 404. Paragraph (b) of subsection (2) of section 631.263, Florida Statutes, is amended to read:

631.263 Transfers after petition.—

(2) After the original petition for a delinquency proceeding has been filed and before an order of conservation, rehabilitation, or liquidation is granted:

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon her or his order, with the same effect as if the petition were not pending.

Section 405. Paragraph (b) of subsection (1) of section 631.271, Florida Statutes, is amended to read:

631.271 Priority of claims.—

(1) The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this subsection. Every claim in each class shall be paid in full or adequate funds shall be retained for such payment before the members of the next class may receive any payment. No subclasses may be established within any class. The order of distribution of claims shall be:

(b) Class 2.—All claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which claims are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to her or his employee may be treated as a gratuity.

Section 406. Paragraph (a) of subsection (2) of section 631.281, Florida Statutes, is amended to read:

631.281 Offsets.—

(2) No offset shall be allowed in favor of any such person where:

(a) The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in s. 631.251, entitle her or him to share as a claimant in the assets of the insurer. Any such obligation must be fully vested and mature as of the date of the order of liquidation and in no way contingent upon any future event or condition precedent to allow an offset. In the case of a reinsurance agreement, the insurer's obligation must be incurred as of the date of the order of liquidation to allow an offset.

Section 407. Subsection (1) of section 631.321, Florida Statutes, is amended to read:

631.321 Order and levy of assessment.—

(1) Upon the filing and reading of the report and petition provided for in s. 631.311, the court, ex parte, may order the department to assess all members or subscribers of the insurer who may be subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceeding, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceeding in full. Any such order shall require the department to assess each such member or subscriber for her or his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the department and approved by the court.

Section 408. Subsections (2) and (4) of section 631.331, Florida Statutes, are amended to read:

631.331 Assessment prima facie correct; notice; payment; proceeding to collect.—

(2) Each member or subscriber shall be notified of the amount of assessment to be paid by her or him by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment.

(4) If the subscriber or member after due service of a copy of the order and petition referred to in subsection (3) is made upon her or him:

(a) Fails to appear at the time and place specified in the order, judgment shall be entered against her or him as prayed for in the petition; or

(b) Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision.

Section 409. Subsection (3) of section 631.371, Florida Statutes, is amended to read:

631.371 Seizure under order of the department.—

(3) Every law enforcement officer of this state authorized by law shall assist the department in making and enforcing any such seizure, and every such officer shall furnish it with such deputies, patrolmen, patrolwomen, or officers as are necessary to assist it in execution of its order.

Section 410. Paragraph (b) of subsection (1) of section 631.391, Florida Statutes, is amended to read:

631.391 Cooperation of officers and employees.—

(1) Any officer, director, manager, trustee, agent, adjuster, employee, or independent contractor of any insurer or affiliate and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of the insurer or affiliate shall fully cooperate with

the department in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding. An order of rehabilitation or liquidation which results in the discharge or suspension of any of the persons listed above does not operate to release such person from the duty to cooperate with the department as set out herein. To "cooperate" includes, but is not limited to, the following:

(b) Promptly to make available and deliver to the department any books, accounts, documents, other records, information, data processing software, or property of or pertaining to the insurer and in her or his possession, custody, or control; or

Section 411. Paragraph (a) of subsection (1) of section 631.57, Florida Statutes, is amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that:

a. The association shall pay the full amount of any covered claim arising out of a workers' compensation policy.

b. With respect to policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, the obligation shall include that amount of each covered property insurance claim which is less than \$100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

The foregoing notwithstanding, the association shall have no obligation to pay covered claims to be paid from the proceeds of bonds issued under s. 166.111(2). However, the association shall cause assessments to be made

under paragraph (3)(e) for such covered claims, and such assessments shall be assigned and pledged under paragraph (3)(e) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

Section 412. Subsection (1) of section 631.60, Florida Statutes, is amended to read:

631.60 Effect of paid claims.—

(1) Any person recovering under this part shall be deemed to have assigned her or his rights under the policy to the association to the extent of ~~the person's~~ his recovery from the association, regardless of whether such recovery is received directly from the association or through payments made from the proceeds of bonds issued under s. 166.111(2). Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

Section 413. Section 631.61, Florida Statutes, is amended to read:

631.61 Nonduplication of recovery.—

(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall not be required to exhaust first her or his rights under such a policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, the person ~~he~~ shall seek recovery first from the association of the location of the property, and if it is a workers' compensation plan, the person ~~he~~ shall seek recovery first from the association of the residence of the claimant. Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Section 414. Paragraph (a) of subsection (8) of section 631.717, Florida Statutes, is amended to read:

631.717 Powers and duties of the association.—

(8)(a) Any person receiving benefits under this part shall be deemed to have assigned her or his rights under the covered policy to the association

to the extent of the benefits received, whether the benefits are payments of contractual obligations or continuations of coverages. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon such person. The association shall have subrogation rights against the assets of any insolvent insurer.

Section 415. Subsection (4) of section 631.816, Florida Statutes, is amended to read:

631.816 Board of directors.—

(4) The board of directors shall elect one of its members as chair ~~chairman~~.

Section 416. Subsection (2) of section 631.93, Florida Statutes, is amended to read:

631.93 Board of directors.—

(2) Members of the board may be reimbursed from the assets of the association for actual and reasonable out-of-pocket expenses incurred by them as members of the board of directors, but a member of the board may not otherwise be compensated by the association for her or his services. The department may adopt rules that specify reasonable and allowable expenses, which rules are binding upon the association.

Section 417. Paragraph (c) of subsection (1) of section 631.935, Florida Statutes, is amended to read:

631.935 Powers and duties of the association.—

(1) The association is obligated to the extent of the full amount of the covered claims existing:

(c) Before the insured replaces the policy or causes its cancellation, if she ~~he~~ does so within 30 days after the determination.

The association is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent self-insurer's funds under the policy from which the claim arises.

Section 418. Subsection (1) of section 631.98, Florida Statutes, is amended to read:

631.98 Effect of paid claims.—

(1) Any person who recovers under this part is considered to have assigned her or his rights under the policy to the association to the extent of the person's ~~his~~ recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as the insured or claimant would have been required to cooperate with the insolvent self-insurance fund. The association has no cause of

action against the insured of the insolvent self-insurance fund for any sums it has paid out except such causes of action as the insolvent self-insurance fund would have had if the sums had been paid by the insolvent self-insurance fund.

Section 419. Subsections (2) and (3) of section 632.608, Florida Statutes, are amended to read:

632.608 No personal liability.—

(2)(a) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and for liabilities imposed upon, such person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that she or he is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization which she or he served in any capacity at the request of the society.

(b) A person shall not be so indemnified or reimbursed:

1. In relation to any matter in such action, suit, or proceeding as to which she or he shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society, or

2. In relation to any matter in such action, suit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement,

unless in either such case the person acted in good faith for a purpose the person reasonably believed to be in, or not opposed to, the best interests of the society and in addition, in a criminal action or proceeding, had no reasonable cause to believe that her or his conduct was unlawful.

(c) The determination as to whether the conduct of such person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in subparagraph (b)1. or subparagraph (b)2. may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to such action, suit, or proceeding or by a court of competent jurisdiction. The termination of any action, suit, or proceeding as to such person by judgment, order, settlement, or conviction, or upon a plea of no contest, shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of her or his heirs, executors, and administrator.

(3) A society shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization, against any liability asserted against such person and incurred by

her or him in any such capacity or arising out of her or his status as such, whether or not the society would have the power to indemnify the person against such liability under this section.

Section 420. Subsection (2) of section 632.634, Florida Statutes, is amended to read:

632.634 Licensing and appointment of agents.—

(2) No examination, license, or appointment shall be required of any regular salaried officer, employee, or member of a licensed society who devotes substantially all of her or his services to activities other than the solicitation of benefit contracts from the public and who receives no commission or other compensation directly dependent upon the amount of business obtained for the solicitation of such contracts.

Section 421. Section 633.02, Florida Statutes, is amended to read:

633.02 Agents; powers and duties; compensation.—The State Fire Marshal shall appoint such agents as may be necessary to carry out effectively the provisions of this chapter, who shall be reimbursed for travel expenses as provided in s. 112.061, in addition to their salary, when traveling or making investigations in the performance of their duties. Such agents shall be at all times under the direction and control of the fire marshal, who shall fix their compensation, and all orders shall be issued in the fire marshal's ~~his~~ name and by her or his authority.

Section 422. Paragraph (b) of subsection (1) of section 633.052, Florida Statutes, is amended to read:

633.052 Ordinances relating to firesafety; definitions; penalties.—

(1) As used in this section:

(b) "Citation" means a written notice, issued only after a written warning has been previously issued and a minimum time period of 45 days, except for major structural changes, which may be corrected within an extended adequate period of time, from the date of the issuance of the warning whereby the party warned may correct the alleged violation, issued to a person by a firesafety inspector, that the firesafety inspector has probable cause to believe that the person has committed a civil infraction in violation of a duly enacted ordinance and that the county court will hear the charge. The citation shall contain:

1. The date and time of issuance.
2. The name and address of the person.
3. The date and time the civil infraction was committed.
4. The facts constituting probable cause.
5. The ordinance violated.

6. The name and authority of the officer.
7. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
8. The applicable civil penalty if the person elects to contest the citation.
9. The applicable civil penalty if the person elects not to contest the citation.
10. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed or fails to appear in court to contest the citation, then she or he shall be deemed to have waived her or his right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

Section 423. Paragraphs (b), (c), and (d) of subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 633.061, Florida Statutes, are amended to read:

633.061 License or permit required of organizations and individuals servicing, recharging, repairing, testing, marking, inspecting, or installing fire extinguishers and preengineered systems.—

(3)

(b) The forms of such licenses and permits and applications therefor shall be prescribed by the State Fire Marshal; in addition to such other information and data as that officer determines is appropriate and required for such forms, there shall be included in such forms the following matters. Each such application shall be in such form as to provide that the data and other information set forth therein shall be sworn to by the applicant or, if a corporation, by an officer thereof. An application for a permit shall include the name of the licensee employing such permittee, and the permit issued in pursuance of such application shall also set forth the name of such licensee. A permit is valid solely for use by the holder thereof in his or her employment by the licensee named in the permit.

(c) A license of any class shall not be issued or renewed by the State Fire Marshal and a license of any class shall not remain operative unless:

1. The applicant has submitted to the State Fire Marshal evidence of registration as a Florida corporation or evidence of compliance with s. 865.09.

2. The State Fire Marshal or his or her designee has by inspection determined that the applicant possesses the equipment required for the class of license sought. The State Fire Marshal shall give an applicant a reasonable opportunity to correct any deficiencies discovered by inspection. A fee of \$50, payable to the State Fire Marshal, shall be required for any subsequent reinspection.

3. The applicant has submitted to the State Fire Marshal proof of insurance providing coverage for comprehensive general liability for bodily injury

and property damage, products liability, completed operations, and contractual liability. The State Fire Marshal shall adopt rules providing for the amounts of such coverage, but such amounts shall not be less than \$300,000 for Class A or Class D licenses, \$200,000 for Class B licenses, and \$100,000 for Class C licenses; and the total coverage for any class of license held in conjunction with a Class D license shall not be less than \$300,000. The State Fire Marshal may, at any time after the issuance of a license or its renewal, require upon demand, and in no event more than 30 days after notice of such demand, the licensee to provide proof of insurance, on a form provided by the State Fire Marshal, containing confirmation of insurance coverage as required by this chapter. Failure, for any length of time, to provide proof of insurance coverage as required shall result in the immediate suspension of the license until proof of proper insurance is provided to the State Fire Marshal. An insurer which provides such coverage shall notify the State Fire Marshal of any change in coverage or of any termination, cancellation, or nonrenewal of any coverage.

4. The applicant successfully completes a prescribed training course offered by the State Fire College or an equivalent course approved by the State Fire Marshal. This subparagraph does not apply to any holder of or applicant for a permit under paragraph (d) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

5. The applicant has passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and statutes regulating the activities authorized by the license and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination shall be developed and administered by the State Fire Marshal. An applicant shall pay a nonrefundable examination fee of \$50 for each examination or reexamination scheduled. No reexamination shall be scheduled sooner than 30 days after any administration of an examination to an applicant. No applicant shall be permitted to take an examination for any level of license more than a total of four times during 1 year, regardless of the number of applications submitted. As a prerequisite to taking the examination, the applicant:

- a. Must be at least 18 years of age.
- b. Must have 4 years of proven experience as a fire equipment permittee at a level equal to or greater than the level of license applied for or have a combination of education and experience determined to be equivalent thereto by the State Fire Marshal. Having held a permit at the appropriate level for the required period constitutes the required experience.

This subparagraph does not apply to any holder of or applicant for a permit under paragraph (d) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, and main-

taining fire extinguishers used and located on the premises of and owned by such organization or entity.

6. An applicant who fails the examination may take it three more times during the 1-year period after he or she originally filed an application for the examination. If the applicant fails the examination within 1 year after the application date and seeks to retake the examination, he or she must file a new application, pay the application and examination fees, and successfully complete a prescribed training course approved by the State Fire College or an equivalent course approved by the State Fire Marshal. An applicant may not submit a new application within 6 months after the date of his or her last reexamination.

(d) No permit of any class shall be issued or renewed to a person by the State Fire Marshal, and no permit of any class shall remain operative, unless the person has:

1. Submitted a nonrefundable examination fee in the amount of \$50;
2. Successfully completed a training course offered by the State Fire College or an equivalent course approved by the State Fire Marshal; and
3. Passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and statutes regulating the activities authorized by the permit and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination shall be developed and administered by the State Fire Marshal. An examination fee shall be paid for each examination scheduled. No reexamination shall be scheduled sooner than 30 days after any administration of an examination to an applicant. No applicant shall be permitted to take an examination for any level of permit more than four times during 1 year, regardless of the number of applications submitted. As a prerequisite to taking the permit examination, the applicant must be at least 16 years of age.

4. An applicant who fails the examination may take it three more times during the 1-year period after he or she originally filed an application for the examination. If the applicant fails the examination within 1 year after the application date and he or she seeks to retake the examination, he or she must file a new application, pay the application and examination fees, and successfully complete a prescribed training course offered by the State Fire College or an equivalent course approved by the State Fire Marshal. The applicant may not submit a new application within 6 months after the date of his or her last reexamination.

(4)

(b) No trainee shall perform work requiring a permit unless an individual possessing a valid and current fire equipment permit for the type work performed is physically present. The trainee's registration shall be valid for a 90-day period from the date of issuance and is nontransferable and nonrenewable. The trainee must:

1. Be 18 years of age.

2. Possess on his or her person at all times a valid Florida driver's license or a valid state identification card, issued by the Department of Highway Safety and Motor Vehicles. A trainee must produce identification to the State Fire Marshal or his or her designated representative upon demand.

3. Pay a fee for registration of \$10 per trainee for a 90-day period.

(6) Every permittee must have a valid and subsisting permit upon his or her person at all times while engaging in the servicing, recharging, repairing, testing, inspecting, or installing of fire extinguishers and preengineered systems, and every licensee or permittee must be able to produce such license or permit upon demand. In addition, every permittee shall at all times carry an identification card containing his or her photograph and other identifying information as prescribed by the State Fire Marshal, which shall be produced on demand. The State Fire Marshal shall supply this card at a fee which shall be related to the cost of producing the card.

Section 424. Section 633.081, Florida Statutes, is amended to read:

633.081 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents shall, at any reasonable hour, when the department has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule promulgated thereunder, or a minimum firesafety code adopted by a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules promulgated thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located within the premises of any such building or structure.

(1) Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. The firesafety inspector must conduct all firesafety inspections that are required by law. The governing body of a county, municipality, or special district that has firesafety enforcement responsibilities may provide a schedule of fees to pay only the costs of inspections conducted pursuant to this subsection and related administrative expenses. Two or more counties, municipalities, or special districts that have firesafety enforcement responsibilities may jointly employ or contract with a firesafety inspector.

(2) Every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal. Such person shall:

(a) Be a high school graduate or the equivalent as determined by the department;

(b) Not have been found guilty of, or having pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States, or of any state thereof, which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases;

(c) Have her or his fingerprints on file with the department or with an agency designated by the department;

(d) Have good moral character as determined by the department;

(e) Be a resident of Florida;

(f) Have satisfactorily completed the firesafety inspector certification examination as prescribed by the department; and

(g)1. Have satisfactorily completed, as determined by the department, a firesafety inspector training program of not less than 200 hours, as established by the department and administered by such agencies and institutions as approved by the department for the purpose of providing basic certification training for firesafety inspectors; or

2. Have received in another state training which is determined by the department to be at least equivalent to that required by the department for approved firesafety inspector education and training programs in this state.

(3) Each special state firesafety inspection which is required by law and is conducted by or on behalf of an agency of the state must be performed by an individual who has met the provision of subsection (2), except that the duration of the training program shall not exceed 120 hours of specific training for the type of property that such special state firesafety inspectors are assigned to inspect.

(4) A firefighter certified pursuant to s. 633.35 may conduct firesafety inspections, under the supervision of a certified firesafety inspector, while on duty as a member of a fire department company conducting inservice firesafety inspections without being certified as a firesafety inspector, if such firefighter has satisfactorily completed an inservice fire department company inspector training program of at least 24 hours' duration as provided by rule of the Department of Insurance.

(5) Every firesafety inspector or special state firesafety inspector certificate is valid for a period of 3 years from the date of issuance. Renewal of certification shall be subject to the affected person's completing proper application for renewal and meeting all of the requirements for renewal as established under this chapter or by rule promulgated thereunder, which shall include completion of at least 40 hours during the preceding 3-year period of continuing education as required by the rule of the department or, in lieu thereof, successful passage of an examination as established by the department.

(6) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firesafety inspector or special state firesafety inspector if it finds that any of the following grounds exist:

(a) Any cause for which issuance of a certificate could have been refused had it then existed and been known to the State Fire Marshal.

(b) Violation of any provision of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of records relating to the certificate.

(d) Having been found guilty of or having pleaded guilty or nolo contendere to a felony, whether or not a judgment of conviction has been entered.

(e) Failure to meet any of the renewal requirements.

(7) The Department of Insurance shall provide by rule for the certification of firesafety inspectors.

Section 425. Paragraph (a) of subsection (1) and subsection (2) of section 633.085, Florida Statutes, are amended to read:

633.085 Inspections of state buildings and premises; tests of firesafety equipment; building plans to be approved.—

(1)(a) It is the duty of the State Fire Marshal and her or his agents to inspect, or cause to be inspected, each state-owned or state-leased building on a recurring basis established by rule, and to ensure that high-hazard occupancies are inspected at least annually, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire or endanger life from fire and any violation of the firesafety standards for state-owned and state-leased buildings, the provisions of this chapter, or the rules or regulations adopted and promulgated pursuant hereto. The State Fire Marshal shall, within 7 days following an inspection, submit a report of such inspection to the head of the department of state government responsible for the building.

(2) The State Fire Marshal and her or his agents shall conduct performance tests on any electronic fire warning and smoke detection system, and any pressurized air-handling unit, in any state-owned or state-leased space on a recurring basis as provided in subsection (1). The State Fire Marshal and her or his agents shall also ensure that fire drills are conducted in all state-owned or state-leased high-hazard occupancies at least annually.

Section 426. Subsections (1), (2), and (3) of section 633.101, Florida Statutes, are amended to read:

633.101 Hearings; investigations; investigatory powers of State Fire Marshal; costs of service and witness fees.—

(1) The State Fire Marshal may in his or her discretion take or cause to be taken the testimony on oath of all persons whom he or she believes to be cognizant of any facts in relation to matters under investigation.

(2) If the State Fire Marshal he shall be of the opinion that there is sufficient evidence to charge any person with an offense, he or she shall cause the arrest of such person and shall furnish to the prosecuting officer of any court having jurisdiction of said offense all information obtained by him or her, including a copy of all pertinent and material testimony taken, together with the names and addresses of all witnesses. In the conduct of such investigations, the fire marshal may request such assistance as may reasonably be given by such prosecuting officers and other local officials.

(3) The fire marshal may summon and compel the attendance of witnesses before him or her to testify in relation to any manner which is, by the provisions of this chapter, a subject of inquiry and investigation, and he or she may require the production of any book, paper or document deemed pertinent thereto by him or her, and may seize furniture and other personal property to be held for evidence.

Section 427. Section 633.13, Florida Statutes, is amended to read:

633.13 State Fire Marshal; authority of agents.—The authority given the State Fire Marshal under this law may be exercised by his or her agents, either individually or in conjunction with any other state or local official charged with similar responsibilities.

Section 428. Section 633.14, Florida Statutes, is amended to read:

633.14 Agents; powers to make arrests, conduct searches and seizures, serve summonses, and carry firearms.—Agents of the State Fire Marshal shall have the same authority to serve summonses, make arrests, carry firearms and make searches and seizures, as the sheriff or her or his deputies, in the respective counties where such investigations, hearings or inspections may be held; and affidavits necessary to authorize any such arrests, searches or seizures may be made before any magistrate having authority under the law to issue appropriate processes.

Section 429. Section 633.151, Florida Statutes, is amended to read:

633.151 Impersonating State Fire Marshal, firefighters, or firesafety inspector; criminal penalties.—A person who falsely assumes or pretends to be the State Fire Marshal, an agent of the Division of State Fire Marshal, a firefighter as defined in s. 112.81, or a firesafety inspector and who acts as such to require a person to aid or assist him or her in any matter relating to the duties of the State Fire Marshal, an agent of the division, a firefighter, or a firesafety inspector is guilty of a felony of the third degree, punishable as provided in ss. 775.082 and 775.083 or, if the impersonation occurs during the commission of a separate felony by that person, is guilty of a felony of the first degree, punishable as provided in ss. 775.082 and 775.083.

Section 430. Subsection (2) of section 633.162, Florida Statutes, is amended to read:

633.162 Disciplinary action; fire extinguisher or preengineered systems; grounds for denial, nonrenewal, suspension, or revocation of license or permit.—

(2) In addition to the grounds set forth in subsection (1), it is cause for denial, nonrenewal, revocation, or suspension of a license or permit by the State Fire Marshal if she or he determines that the licensee or permittee has:

(a) Rendered inoperative a fire extinguisher or preengineered system required by statute or by rule, except during such time as the extinguisher or preengineered system is being inspected, serviced, repaired, or recharged, or except pursuant to court order.

(b) Falsified any record required to be maintained by this chapter or rules adopted pursuant hereto.

(c) Improperly serviced, recharged, repaired, tested, or inspected a fire extinguisher or preengineered system.

(d) While holding a permit or license, allowed another person to use the permit number or license number, or used a license number or permit number other than her or his valid license number or permit number.

(e) Failed to provide proof of insurance to the State Fire Marshal or failed to maintain in force the insurance coverage required by s. 633.061.

(f) Failed to obtain, retain, or maintain one or more of the qualifications for a license or permit as specified in this chapter.

(g) Made a material misstatement, misrepresentation, or committed a fraud in obtaining or attempting to obtain a license or permit.

(h) Failed to notify the State Fire Marshal, in writing, within 30 days after a change of residence, principal business address, or name.

Section 431. Section 633.167, Florida Statutes, is amended to read:

633.167 Probation.—

(1) If the State Fire Marshal finds that one or more grounds exist for the suspension, revocation, or refusal to issue, renew, or continue any license, certification, or permit issued under this chapter, the State Fire Marshal may, in her or his discretion, except when an administrative fine is not permissible under this chapter or when the suspension, revocation, or refusal is mandatory, in lieu of suspension, revocation, or refusal to issue, renew, or continue or, in connection with any administrative fine imposed, place the offending licensee, certificateholder, or permittee on probation for a period not to exceed 2 years, as specified by the State Fire Marshal in her or his order.

(2) As a condition to probation or in connection therewith, the State Fire Marshal may specify in her or his order reasonable terms and conditions to be fulfilled by the probationer during the probation period. If during the probation period the State Fire Marshal has good cause to believe that the probationer has violated any of the terms and conditions, she or he shall suspend, revoke, or refuse to issue, renew, or continue the license, certificate, or permit of the probationer, as upon the original ground or grounds referred to in subsection (1).

Section 432. Section 633.18, Florida Statutes, is amended to read:

633.18 State Fire Marshal; hearings and investigations; subpoena of witnesses; orders of circuit court.—Any agent designated by the State Fire Marshal for such purposes, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, memoranda or other evidence, as may be material for the

determination of any complaint or conducting any inquiry or investigation under this law. In case of disobedience to a subpoena, the State Fire Marshal or his or her agent may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and the production of accounts, records, memoranda or other evidence and any such court may in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the State Fire Marshal's agent or produce accounts, records, memoranda or other evidence, as so ordered, or to give evidence touching any matter pertinent to any complaint or the subject of any inquiry or investigation, and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

Section 433. Subsection (3) of section 633.31, Florida Statutes, is amended to read:

633.31 Firefighters Standards and Training Council.—

(3) The State Fire Marshal, in making her or his appointments, shall take into consideration representation by geography, population, and other relevant factors, in order that the membership on the council will be apportioned to give representation to the state at large rather than to a particular area.

Section 434. Subsections (1) and (2) of section 633.32, Florida Statutes, are amended to read:

633.32 Organization; meetings; quorum; compensation; seal.—

(1) The council shall elect to 1-year terms a chair ~~chairman~~ and a vice chair ~~chairman~~. No person shall serve more than two consecutive terms in either office.

(2) The council shall meet at the call of the chair ~~chairman~~, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules, and a majority of the council shall constitute a quorum.

Section 435. Subsection (2) of section 633.35, Florida Statutes, is amended to read:

633.35 Firefighter and forestry firefighter training and certification program.—

(2) The division shall issue a certificate of compliance to any person satisfactorily complying with the training program established in subsection (1), who has successfully passed an examination as prescribed by the division, and who possesses the qualifications for employment in s. 633.34, except s. 633.34(5). No person may be employed as a regular or permanent firefighter by the employing agency for a period of time in excess of 1 year from the date of initial employment until he or she has obtained such certificate of compliance.

Section 436. Subsection (2) of section 633.351, Florida Statutes, is amended to read:

633.351 Disciplinary action; firefighters; standards for revocation of certification.—

(2) The certification of a firefighter who is convicted of a felony, or who is convicted of a misdemeanor relating to misleading or false statements, or who pleads nolo contendere to any charge of a felony shall be revoked until the firefighter complies with s. 112.011(2)(b). However, if sentence upon such felony or such misdemeanor charge is suspended or adjudication is withheld, the firefighter's certification shall be revoked until she or he completes any probation.

Section 437. Section 633.352, Florida Statutes, is amended to read:

633.352 Retention of firefighter certification.—Any certified firefighter who has not been active as a firefighter, or as a volunteer firefighter with an organized fire department, for a period of 3 years shall be required to retake the practical portion of the minimum standards state examination specified in rule 4A-37.056(6)(b), Florida Administrative Code, in order to maintain her or his certification as a firefighter; however, this requirement does not apply to state-certified instructors, as determined by the division. The 3-year period begins on the date the certificate of compliance is issued or upon termination of service with an organized fire department.

Section 438. Paragraph (a) of subsection (2) of section 633.382, Florida Statutes, is amended to read:

633.382 Firefighters; supplemental compensation.—

(2) QUALIFICATIONS FOR SUPPLEMENTAL COMPENSATION.—

(a) In addition to the compensation now paid by an employing agency to any firefighter, every firefighter shall be paid supplemental compensation by the employing agency when such firefighter has complied with one of the following criteria:

1. Any firefighter who receives an associate degree from a college, which degree is applicable to fire department duties, as outlined in policy guidelines of the division, shall be additionally compensated as outlined in paragraph (3)(a).

2. Any firefighter, regardless of whether or not she or he earned an associate degree earlier, who receives from an accredited college or university a bachelor's degree, which bachelor's degree is applicable to fire department duties, as outlined in policy guidelines of the division, shall receive compensation as outlined in paragraph (3)(b).

Section 439. Section 633.47, Florida Statutes, is amended to read:

633.47 Procedure for making expenditures.—No moneys shall be spent for and on behalf of the Florida State Fire College except upon a written voucher drawn by the division, stating the nature of the expenditures and the person to whom the same shall be made payable, which voucher shall be submitted to the Comptroller and audited for approval by her or him;

upon such approval, the Comptroller shall draw a warrant upon the Treasurer for the payment thereof, filing the original voucher in her or his office.

Section 440. Subsection (1), paragraph (a) of subsection (2), and subsection (3) of section 633.511, Florida Statutes, are amended to read:

633.511 Florida Fire Safety Board; membership.—

(1) The Florida Fire Safety Board is created consisting of seven members who are citizens and residents of this state. One shall be the State Fire Marshal, or her or his designated appointee who shall be an administrative employee of the marshal; one shall be an administrative officer from a building department representing an incorporated municipality or a county; one shall be an administrative officer from a fire department representing an incorporated municipality or a county; two shall be contractors licensed pursuant to s. 633.521; and two shall be persons who hold valid licenses under s. 633.061.

(2)(a) To be eligible for appointment, each contractor shall personally hold a current certificate of competency and a current license issued by the State Fire Marshal, together with an unexpired occupational license to operate as a contractor issued by an incorporated municipality or a county; be actively engaged in such business and have been so engaged for a period of not less than 5 consecutive years before the date of her or his appointment; and be a citizen and resident of the state.

(3) Within 30 days after the effective date of this act, the Governor shall appoint the members of the board. The State Fire Marshal's term on the board, or that of her or his designated administrative employee, shall coincide with the State Fire Marshal's term of office. Of the other six members of the board, one member shall be appointed for a term of 1 year, one member for a term of 2 years, two members for terms of 3 years, and two members for terms of 4 years. All terms expire on June 30 of the last year of the term. As the term of each member expires, the Governor shall appoint a member to fill the vacancy for a term of 4 years. The Governor may remove any appointed member for cause. A vacancy in the membership of the board for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.

Section 441. Subsection (1) of section 633.514, Florida Statutes, is amended to read:

633.514 Board duties; meetings; officers; quorum; compensation; seal.—

(1) The board shall act in an advisory capacity to the State Fire Marshal and shall meet regularly as the need presents itself. The board shall have the authority to review complaints and disputed administrative action and make recommendations for disciplinary action to the division at the request of the licenseholder or certificateholder. The board will serve in an advisory capacity to the division regarding rules, codes, standards, interpretations, and training. As soon as practicable after the effective date of this act, the board shall meet to elect officers from its membership, whose terms shall expire on June 30 and annually thereafter. A majority of the board shall

constitute a quorum. No member of the advisory board shall be paid a salary as such member, but each shall receive necessary expenses while attending advisory board meetings and reimbursement, including travel in performance of his or her duties, as provided in s. 112.061.

Section 442. Subsection (2) of section 633.517, Florida Statutes, is amended to read:

633.517 Authority of State Fire Marshal to adopt rules, administer oaths, and take testimony.—

(2) The State Fire Marshal or her or his duly appointed hearing officer may administer oaths and take testimony about all matters within the jurisdiction of this act. Chapter 120 governs hearings conducted by or on behalf of the State Fire Marshal.

Section 443. Paragraphs (a) and (e) of subsection (2) and subsections (3), (4), and (6) of section 633.521, Florida Statutes, are amended to read:

633.521 Certificate application and issuance; examination and investigation of applicant.—

(2)(a) Examinations shall be administered by the State Fire Marshal and held at times and places within the state as the State Fire Marshal determines, but there shall be at least two examinations a year. Each applicant shall take and pass an objective, written examination of her or his fitness for a certificate in the class for which the application is requested. There shall be a type of examination for each of the classes of certificates defined in s. 633.021(5). The examination shall test the applicant's ability to lay out, fabricate, install, alter, repair, and inspect fire protection systems and their appurtenances and shall test the applicant's fitness in business and financial management. The test shall be based on applicable standards of the National Fire Protection Association and on relevant Florida and federal laws pertaining to the construction industry, safety standards, administrative procedures, and pertinent technical data.

(e) An applicant may not be examined more than four times during 1 year for certification as a contractor pursuant to this section unless the person is or has been certified and is taking the examination to change classifications. If an applicant does not pass one or more parts of the examination, she or he may take any part of the examination three more times during the 1-year period beginning upon the date she or he originally filed an application to take the examination. If the applicant ~~he~~ does not pass the examination within that 1-year period, she or he must file a new application and pay the application and examination fees in order to take the examination or a part of the examination again. However, the applicant ~~he~~ may not file a new application sooner than 6 months after the date of her or his last examination.

(3) As a prerequisite to taking the examination for certification as a Contractor I, Contractor II, or Contractor III, the applicant must be at least 18 years of age, be of good moral character, and shall possess 4 years' proven

experience in the employment of a fire protection system Contractor I, Contractor II, or Contractor III or a combination of equivalent education and experience. As a prerequisite to taking the examination for certification as a Contractor IV, the applicant shall be at least 18 years old, be of good moral character, and have at least 2 years' proven experience in the employment of a fire protection system Contractor I, Contractor II, Contractor III, or Contractor IV or combination of equivalent education and experience which combination need not include experience in the employment of a fire protection system contractor. As a prerequisite to taking the examination for certification as a Contractor V, the applicant shall be at least 18 years old, be of good moral character, and have been licensed as a certified underground utility and excavation contractor pursuant to chapter 489, have verification by an individual who is licensed as a certified utility contractor pursuant to chapter 489 that the applicant has 4 years' proven experience in the employ of a certified underground utility and excavation contractor, or have a combination of education and experience equivalent to 4 years' proven experience in the employ of a certified underground utility and excavation contractor. Within 30 days from the date of the examination, the State Fire Marshal shall inform the applicant in writing whether she or he has qualified or not and, if the applicant has qualified, that she or he is ready to issue a certificate of competency, subject to compliance with the requirements of subsection (4).

(4) As a prerequisite to issuance of a certificate, the State Fire Marshal shall require the applicant to submit satisfactory evidence that she or he has obtained insurance providing coverage for comprehensive general liability for bodily injury and property damages, products liability, completed operations, and contractual liability. The State Fire Marshal may adopt rules providing for the amount of insurance, but such amount shall not be less than \$500,000 for a Contractor I, Contractor II, Contractor III, or Contractor V and shall not be less than \$250,000 for a Contractor IV. An insurer which provides such coverage shall notify within 30 days the State Fire Marshal of any material change in coverage or any termination, cancellation, or nonrenewal of such coverage. An insurer which fails to so notify the State Fire Marshal's office shall be subject to the penalties provided under s. 624.4211.

(6) If an applicant for an original certificate, after having been notified to do so, does not appear for examination or does not pass the examination within 1 year from the date of filing her or his application, the fee paid by the applicant ~~him~~ shall be forfeited. New applications for a certificate shall be accompanied by another application fee fixed by this chapter.

Section 444. Subsection (1) of section 633.527, Florida Statutes, is amended to read:

633.527 Records concerning applicant; extent of confidentiality.—

(1) Test material is made confidential by s. 119.07(3)(a). An applicant may waive in writing the confidentiality of his or her examination answer sheet for the purpose of discussion with the State Fire Marshal or his or her staff.

Section 445. Section 633.531, Florida Statutes, is amended to read:

633.531 Certificate effective statewide; not transferable.—When a certificateholder desires to engage in contracting in any area of the state, as a prerequisite therefor she or he shall only be required to exhibit to the local building official, tax collector, or other person in charge of the issuance of licenses and building permits in the area, evidence of holding a current certificate, accompanied by the fee for the occupational license and building permit required of other persons. It is a violation of this chapter for a certificateholder to sell or otherwise transfer her or his certificate to another person.

Section 446. Subsections (1) and (2) and paragraphs (a) and (b) of subsection (3) of section 633.534, Florida Statutes, are amended to read:

633.534 Issuance of certificate to individuals and business organizations.—

(1) When an individual proposes to do business in her or his own name, certifications, when granted, shall be issued only to that individual.

(2) If the applicant proposing to engage in contracting is a business organization, such as a partnership, corporation, business trust, or other legal entity, the application shall state the name of the partnership and its partners, the name of the corporation and its officers and directors, the name of the business trust and its trustees, or the name of such other legal entity and its members and shall furnish evidence of statutory compliance if a fictitious name is used. Such application shall also show that the person applying for the examination is an employee of and is legally qualified to act for the business organization in all matters connected with its contracting business and that she or he has authority to supervise and will supervise any construction undertaken by such business organization. The certification, when issued upon application of a business organization, shall be in the name of such business organization, and the name of the qualifying individual or individuals shall be noted thereon.

(3)(a) At least one member or supervising employee of the business organization as designated to the State Fire Marshal by such organization shall be certified under this chapter in order for the business organization to hold a current certificate as a contractor. If any individual so certified on behalf of such business organization ceases to be affiliated with such business organization, she or he shall inform the State Fire Marshal as provided in paragraph (b). A certified individual who is the sole contractor on behalf of a business organization may not affiliate simultaneously with another business organization. In addition, if such individual was the only certified individual affiliated with the business organization, the business organization shall immediately notify the State Fire Marshal of the individual's termination and shall have a grace period of 60 days from the date of termination in which to certify another person under the provisions of this chapter, failing which the certification of the business organization shall expire without further operation of law.

(b) The certified individual shall also inform the State Fire Marshal in writing when she or he proposes to engage in contracting in her or his own name or to affiliate with another business organization, and she or he or such new business organization shall supply the same information to the State Fire Marshal as is required of applicants under this chapter. Each certified individual must pay to the department an amount equal to the original fee for certification of a new business entity.

Section 447. Subsections (1) and (2) of section 633.537, Florida Statutes, are amended to read:

633.537 Certificate; expiration; renewal; inactive certificate; continuing education.—

(1) Certificates shall expire annually at midnight on June 30. The failure to renew a certificate during June shall cause the certificate to become inoperative, and it is unlawful thereafter for any person to engage, offer to engage, or hold herself or himself out as engaging in contracting under the certificate unless the certificate is restored or reissued. A certificate which is inoperative because of failure to renew shall be restored on payment of the proper renewal fee if the application for restoration is made within 90 days after June 30. If the application for restoration is not made within the 90-day period, the fee for restoration shall be equal to the original application fee, and, in addition, the State Fire Marshal shall require examination or reexamination of the applicant.

(2) A person who holds a valid certificate may maintain such certificate in an inactive status during which time she or he may not engage in contracting. An inactive status certificate shall be void after a 3-year period. The annual renewal fee for an inactive status certificate shall be \$75. An inactive status certificate may be reactivated upon application to the State Fire Marshal and payment of the initial application fee.

Section 448. Paragraph (c) of subsection (2) and subsection (3) of section 633.547, Florida Statutes, are amended to read:

633.547 Disciplinary action; fire protection system contractors; grounds for denial, nonrenewal, suspension, or revocation of certificate.—

(2) The following acts constitute cause for disciplinary action:

(c) Diversion of funds or property received for prosecution or completion of a specified construction project or operation when, as a result of the diversion, the contractor is, or will be, unable to fulfill the terms of her or his obligation or contract.

(3) The State Fire Marshal is authorized to take the following disciplinary action:

(a) She or he may suspend the certificateholder for a period not to exceed 2 years from all operations as a contractor during the period fixed by the State Fire Marshal, but she or he may permit the certificateholder to complete any contracts then incomplete.

(b) She or he may revoke a certificate for a period not to exceed 5 years.

Section 449. Subsection (3) of section 633.551, Florida Statutes, is amended to read:

633.551 County and municipal powers; effect of ch. 75-240.—

(3) Any official authorized to issue building or other related permits shall ascertain that the applicant contractor is duly certified before issuing the permit. The evidence shall consist only of the exhibition to him or her of current evidence of certification.

Section 450. Paragraph (c) of subsection (3) of section 633.702, Florida Statutes, is amended to read:

633.702 Prohibited acts regarding alarm system contractors or certified unlimited electrical contractors; penalties.—

(3) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any fire alarm system contractor or certified unlimited electrical contractor to intentionally or willfully:

(c) Knowingly combining or conspiring with any person by allowing one's certificate to be used by any uncertified person with intent to evade the provisions of this act. When a licensee allows his or her license to be used by one or more companies without having any active participation in the operation or management of said companies, such act constitutes prima facie evidence of any intent to evade the provisions of this act.

Section 451. Paragraph (a) of subsection (1) of section 633.72, Florida Statutes, is amended to read:

633.72 Florida Fire Code Advisory Council.—

(1) There is created within the department the Florida Fire Code Advisory Council with seven members appointed by the State Fire Marshal. The council shall advise and recommend to the State Fire Marshal and, where appropriate, for further recommendation to the Legislature changes in fire-safety codes that are adopted pursuant to ss. 633.022 and 633.025. The members of the council shall represent the following groups and professions:

(a) One member shall be the State Fire Marshal, or his or her designated appointee who shall be an administrative employee of the marshal;

Section 452. Subsection (13) of section 634.011, Florida Statutes, is amended to read:

634.011 Definitions.—As used in this part, the term:

(13) "Salesperson ~~Salesman~~" means any dealership, corporation, partnership, or sole proprietorship employed or otherwise retained by an insurer or motor vehicle service agreement company for the purpose of selling or issuing motor vehicle service agreements.

Section 453. Paragraph (i) of subsection (2) of section 634.044, Florida Statutes, is amended to read:

634.044 Assets and liabilities.—

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets expressly shall not be allowed as assets in any determination of the financial condition of a service agreement company:

(i) Any note, account receivable, advance, or other evidence of indebtedness, or investment in:

1. The parent of the service agreement company;
2. Any entity directly or indirectly controlled by the service agreement company parent;
3. An affiliate of the parent or the service agreement company; however, receivables from the parent or affiliated companies shall be considered an admitted asset of the company when the department is satisfied that the repayment of receivables, loans, and advances from the parent or the affiliated company are guaranteed by an organization in accordance with s. 634.045; or
4. Officers, directors, shareholders, employees, or salespersons ~~salesmen~~ of the service agreement company; however, premium receivables under 45 days old may be considered an admitted asset.

The department may, however, allow all or a portion of such asset, at values to be determined by the department, if deemed by the department to be available for the payment of losses and claims.

Section 454. Section 634.095, Florida Statutes, is amended to read:

634.095 Prohibited acts.—Any service agreement company or salesperson ~~salesman~~ that engages in one or more of the following acts is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(1) No salesperson ~~salesman~~ or agent who participates in or influences the processing, administration, or adjustment of claims shall enter into any agreement or understanding in which the effect is to make the amount of any salesperson's ~~salesman's~~ or agent's commission contingent upon savings effected in the adjustment, settlement, and payment of losses covered by the service agreement company's or insurer's service agreement. Any agreement or understanding now existing is declared unlawful and shall be terminated immediately.

(2) Offering or attempting to offer the service agreement holder a return of all or a portion of the premium paid if the service agreement holder does not file any claims or files a limited number of claims or files claims the dollar amount of which does not exceed a set amount or percentage.

(3) Issuing or causing to be issued any advertisement which:

(a) Does not fully disclose in boldfaced type the name, address, and license number of the service agreement company.

(b) In any respect is in violation of or does not comply with this part, applicable provisions of the Florida Insurance Code, or applicable rule of the department.

(c) Is ambiguous, misleading, or deceptive.

(4) Denying claims for lack of service or maintenance on component parts that do not require servicing or routine maintenance or are unrelated to servicing.

(5) Requiring that the purchaser or insured agree to purchase noninsurance services, commodities, or other insurance including automobile services as specified in s. 624.124 or exempt motor vehicle service agreements specified in s. 624.125.

(6) The practice, known as sliding, by any person whereby the person:

(a) Represents to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of a service agreement, when in fact the specific ancillary coverage or product is not required;

(b) Represents to the applicant that a specific ancillary coverage or product is included in the service agreement applied for without an additional charge, when in fact an additional charge is applied; or

(c) Charges an applicant for a specific ancillary coverage or product, over and above the cost of the service coverage applied for, without the informed consent of the applicant.

Section 455. Subsection (1) of section 634.101, Florida Statutes, is amended to read:

634.101 Order, notice of suspension or revocation of license; effect; publication.—

(1) Suspension or revocation of the license of a company shall be by the order of the department mailed to the company by registered or certified mail. The department shall promptly also give notice of such suspension or revocation to the salespersons ~~salesmen~~ of the company in this state of record in the office of the department. The company shall not solicit or write any new service agreements in this state during the period of any such suspension or revocation, nor after such revocation renew any business previously written.

Section 456. Subsection (4) of section 634.111, Florida Statutes, is amended to read:

634.111 Duration of suspension; obligations of company during suspension period; reinstatement.—

(4) Upon reinstatement of the license of a company or reinstatement of the certificate of authority of an insurer following suspension, the authority of its salespersons ~~salesmen~~ in this state to represent the company or insurer shall likewise be reinstated. The department shall promptly notify the company or insurer and its salespersons ~~salesmen~~ of record in this state of such reinstatement.

Section 457. Subsections (3), (4), (5), and (6) of section 634.121, Florida Statutes, are amended to read:

634.121 Filing of forms, required procedures, provisions.—

(3) Before the sale of any service agreement, written notice must be given to the prospective purchaser by the service agreement company or its agent or salesperson ~~salesman~~, on a department-approved form, that purchase of the service agreement is not required in order to purchase or obtain financing for a motor vehicle.

(4) All motor vehicle service agreements are assignable in a consumer transaction and must contain a statement in conspicuous, boldfaced type, informing the purchaser of the service agreement of her or his right to assign it, before the expiration date, to a subsequent retail purchaser of the motor vehicle covered by the service agreement. The service agreement company may charge an assignment fee not to exceed \$40.

(5)(a) Each service agreement must contain a cancellation provision. Any service agreement is cancelable by the purchaser within 60 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged not to exceed 5 percent of the gross premium paid by the agreement holder.

(b) After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1. There has been a material misrepresentation or fraud at the time of sale of the service agreement;

2. The agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;

3. The odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or

4. For nonpayment of premium by the agreement holder, in which case the service agreement company shall provide the agreement holder notice of cancellation by certified mail.

If the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium. If, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company shall return directly to the agreement holder not less than

90 percent of the unearned pro rata premium. The service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson ~~salesman~~ and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson ~~salesman~~ or agent.

(6) If the service agreement is canceled, pursuant to an order of liquidation, the salesperson ~~salesman~~ or agent is responsible for refunding, and must refund, to the receiver the unearned pro rata commission.

Section 458. Subsections (2) and (4) of section 634.136, Florida Statutes, are amended to read:

634.136 Office records required.—Each licensed motor vehicle service contract company, as a minimum requirement for permanent office records, shall maintain:

(2) Memorandum journals showing the blank service agreement forms issued to the company salespersons ~~salesmen~~ and recording the delivery of the forms to the dealer.

(4) A detailed service agreement register, in numerical order by service agreement number, of agreements in force, which register shall include the following information: service agreement number, date of issue, issuing dealer, name of agreement holder, description of motor vehicle, service agreement period and mileage, gross premium, commission to salespersons ~~salesmen~~, commission to dealer, and net premium.

Section 459. Subsection (1) of section 634.151, Florida Statutes, is amended to read:

634.151 Service of process; appointment of commissioner as process agent.—

(1) Each company applying for authority to transact business in this state, whether domestic or foreign, shall file with the department its appointment of the Insurance Commissioner and Treasurer and her or ~~her~~ his successors in office, on a form as furnished by the department, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state and agreeing that process so served shall be valid and binding upon the company. The appointment shall be irrevocable, shall bind the company and any successor in interest as to the assets or liabilities of the company, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the company resulting from its service agreement transactions therein.

Section 460. Subsection (1) of section 634.161, Florida Statutes, is amended to read:

634.161 Service of process; method.—

(1) Service of process upon the Insurance Commissioner and Treasurer as process agent of the company shall be made by serving copies in triplicate

of the process upon the Insurance Commissioner and Treasurer or upon her or his assistant, deputy, or other person in charge of her or his office. Upon receiving such service, the Insurance Commissioner and Treasurer shall file one copy with the department, return one copy with her or his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the company to receive the same, as provided under s. 634.151.

Section 461. Section 634.171, Florida Statutes, is amended to read:

634.171 Salesperson ~~Salesman~~ to be licensed and appointed.—~~Salespersons~~ Salesmen for motor vehicle service agreement companies and insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general. However, they shall be exempt from all other provisions of chapter 626 including fingerprinting, photo identification, education, and examination provisions. License, appointment, and other fees shall be those prescribed in s. 624.501. A licensed and appointed salesperson ~~salesman~~ shall be directly responsible and accountable for all acts of her or his employees and other representatives. Each service agreement company or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. No employee or salesperson ~~salesman~~ of a motor vehicle service agreement company or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent or solicitor, unless so qualified, licensed, and appointed therefor under the Florida Insurance Code.

Section 462. Section 634.181, Florida Statutes, is amended to read:

634.181 Grounds for compulsory refusal, suspension, or revocation of license or appointment of salespersons ~~salesmen~~.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any such salesperson ~~salesman~~ if it finds that as to the salesperson ~~salesman~~ any one or more of the following applicable grounds exist:

(1) Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the license or appointment.

(2) If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part, any applicable provision of the Florida Insurance Code, or rule of the department.

(3) Willful misrepresentation of any service agreement or willful deception with regard to any agreement, done either in person or by any form of dissemination of information or advertising.

(4) If in the adjustment of claims arising out of service agreements, she or he has materially misrepresented to a service agreement holder or other interested party the terms and coverage of a service agreement with intent and for the purpose of effecting settlement of the claim on less favorable terms than those provided in and contemplated by the service agreement.

(5) For demonstrated lack of fitness or trustworthiness to engage in the service agreement business.

(6) For demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(7) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(8) Misappropriation, conversion, or unlawful withholding of moneys belonging to a service agreement company, insurer, or service agreement holder or to others and received in the conduct of business under the license or appointment.

(9) For unlawfully rebating, or attempt thereat, or for unlawfully dividing or offering to divide her or his commission with another.

(10) Willful failure to comply with, or willful violation of any proper order of the department, or willful violation of any provision of this part, or of any applicable provision of the insurance code, or applicable rule of the department.

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

(12) Failure to refund unearned pro rata commission to the agreement holder or the service agreement company, if the service agreement company is making a full unearned pro rata refund to the agreement holder.

Section 463. Section 634.191, Florida Statutes, is amended to read:

634.191 Grounds for discretionary refusal, suspension, or revocation of license or appointment of salespersons ~~salesmen~~.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any salesperson ~~salesman~~ if it finds that as to the salesperson ~~salesman~~ any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.181:

(1) For any cause for which granting of the license or appointment could have been refused had it then existed and been known to the department.

(2) Violation of any provision of this part or of any other law applicable to the business of service agreements in the course of dealings under the license or appointment.

(3) Has violated any lawful order or rule of the department.

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

(5) If, in the conduct of business under the license or appointment, the salesperson he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under part X of chapter 626, or has otherwise shown herself or himself to be a source of injury or loss to the public or detrimental to the public interest.

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

Section 464. Section 634.242, Florida Statutes, is amended to read:

634.242 Injunctive proceedings.—In addition to the penalties and other enforcement provisions of this part, if any person violates s. 634.031 or s. 634.171 or any rule adopted pursuant thereto, the department may resort to a proceeding for injunction in the circuit court of the county where such person resides or has her or his or its principal place of business, and therein apply for such temporary and permanent orders as the department may deem necessary to restrain such person from engaging in any such activity, until such person has complied with such provision or rule.

Section 465. Section 634.261, Florida Statutes, is amended to read:

634.261 Voluntary compliance in lieu of suspension or revocation.—The department may terminate an investigation or an action upon acceptance of the written assurance of a company or salesperson ~~salesman~~ of voluntary compliance with this part. An acceptance of assurance may be conditioned on a commitment to reimburse agreement purchasers or to take other appropriate corrective action. An assurance is not evidence of a prior violation of this part. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, the subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this part. No such assurance shall act as a limitation upon any action or remedy available to a person aggrieved by a violation of this part.

Section 466. Subsection (1) of section 634.271, Florida Statutes, is amended to read:

634.271 Civil remedy.—

(1) Any person damaged by a violation of the provisions of this part may bring a civil action against a person who violated such provisions, in the circuit court of the county in which the alleged violator resides or has her or his principal place of business or in the county wherein the alleged violation occurred. Upon an adverse adjudication, the defendant shall be liable for actual damages or \$500, whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff.

Section 467. Section 634.281, Florida Statutes, is amended to read:

634.281 Unfair trade practices.—Service agreement companies and their salespersons ~~salesmen~~ shall be subject to the provisions of part X of chapter 626.

Section 468. Subsection (3) of section 634.3077, Florida Statutes, is amended to read:

634.3077 Financial requirements.—

(3) In computing the net asset requirement, goodwill; franchises; customer lists; patents or trademarks; receivables from or advances to officers, directors, employees, salespersons ~~salesmen~~, or affiliated companies; and assets deposited outside the United States shall be deducted from the net assets of the association.

Section 469. Section 634.318, Florida Statutes, is amended to read:

634.318 License and appointment of sales representatives.—Sales representatives for home warranty associations and insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated in the same manner as prescribed in chapter 626 for insurance representatives in general, except they shall be exempt from the fingerprinting, photo identification card, education, and examination provisions. License, appointment, and other fees shall be those as prescribed in s. 624.501. No employee or sales representative of a home warranty association or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent or solicitor, unless so qualified, licensed, and appointed therefor under the insurance code.

Section 470. Section 634.319, Florida Statutes, is amended to read:

634.319 Reporting and accounting for funds.—

(1) All funds belonging to insurers, home warranty associations, or others received by a sales representative in transactions under her or his license and appointment are trust funds so received by the sales representative in a fiduciary capacity; and the sales representative, in the applicable regular course of business, shall account for and pay such funds to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to her or his own use is, upon conviction, guilty of theft, punishable as provided in s. 812.014.

Section 471. Subsection (9) of section 634.320, Florida Statutes, is amended to read:

634.320 Grounds for compulsory refusal, suspension, or revocation of license or appointment of sales representatives.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist:

(9) Unlawfully rebating, or attempting to unlawfully rebate, or unlawfully dividing, or offering to divide, her or his commission with another.

Section 472. Subsections (4) and (5) of section 634.321, Florida Statutes, are amended to read:

634.321 Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.320:

(4) Failure or refusal to pay over, upon demand, to any home warranty association or insurer the sales representative ~~he~~ represents or has represented any money coming into her or his hands which belongs to the association or insurer.

(5) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under this part, or otherwise showing herself or himself to be a source of injury or loss to the public or detriment to the public interest.

Section 473. Subsection (1) of section 634.3284, Florida Statutes, is amended to read:

634.3284 Civil remedy.—

(1) Any person damaged by a violation of the provisions of this part may bring a civil action against a person violating such provisions in the circuit court of the county in which the alleged violator resides or has her or his principal place of business or in the county in which the alleged violation occurred. Upon adverse adjudication, the defendant will be liable for actual damages or \$500, whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff.

Section 474. Section 634.342, Florida Statutes, is amended to read:

634.342 Injunctive proceedings.—In addition to the penalties and other enforcement provisions of this part, in the event any person violates s. 634.303 or s. 634.318 or any rule adopted or promulgated pursuant thereto, the department is authorized to resort to a proceeding for injunction in the circuit court of the county where such person resides or has her or his principal place of business, and therein apply for such temporary and permanent orders as the department may deem necessary to restrain such person from engaging in any such activities, until such person has complied with such provision or rule.

Section 475. Paragraph (e) of subsection (3) of section 634.406, Florida Statutes, is amended to read:

634.406 Financial requirements.—

(3) An association will not be required to establish an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the department that 100 percent of its claim exposure is covered by such policy. The contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state or from an insurer approved by the department as financially capable of meeting the obligations incurred pursuant to the policy. For the purposes of this subsection, the contractual liability policy shall contain the following provisions:

(e) In the event the issuer of the contractual liability policy is fulfilling the service warranty covered by policy and in the event the service warranty holder cancels the service warranty, it is the responsibility of the contractual liability policy issuer to effectuate a full refund of unearned premium to the consumer. This refund shall be subject to the cancellation fee provisions of s. 634.414(3). The salesperson ~~salesman~~ or agent shall refund to the contractual liability policy issuer the unearned pro rata commission.

Section 476. Paragraph (i) of subsection (2) of section 634.4061, Florida Statutes, is amended to read:

634.4061 Assets and liabilities.—

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets expressly shall not be allowed as assets in any determination of the financial condition of a service warranty association:

(i) Any note, account receivable, advance, or other evidence of indebtedness, or investment in:

1. The parent of the service warranty association;
2. Any entity directly or indirectly controlled by the service warranty association parent; or
3. An affiliate of the parent or the service warranty association; however, receivables from the parent or affiliated companies shall be considered an admitted asset of the company when the department is satisfied that the repayment of receivables, loans, and advances from the parent or the affiliated company are guaranteed by an organization in accordance with s. 634.4065.
4. Officers, directors, shareholders, employees, or salespersons ~~salesmen~~ of the association. However, premium receivables under 45 days old may be considered an admitted asset.

The department may, however, allow all or a portion of such asset, at values to be determined by the department, if deemed by the department to be available for the payment losses and claims.

Section 477. Section 634.420, Florida Statutes, is amended to read:

634.420 License and appointment of sales representatives.—Sales representatives for service warranty associations or insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated in accordance with procedures as prescribed in chapter 626 for insurance representatives in general. However, they shall be exempt from all other provisions of chapter 626, including fingerprinting, photo identification, education, and examination. License, appointment, and other fees shall be those prescribed in s. 624.501. A licensed and appointed sales representative shall be directly responsible and accountable for all acts of her or his employees or other representatives. Each service warranty association or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. No employee or sales representative of a service warranty association or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent or solicitor, unless so qualified, licensed, and appointed therefor under the insurance code.

Section 478. Section 634.421, Florida Statutes, is amended to read:

634.421 Reporting and accounting for funds.—

(1) All funds belonging to insurers, service warranty associations, or others received by a sales representative in transactions under her or his license or appointment are trust funds so received by the sales representative or agent in a fiduciary capacity; and the sales representative or agent, in the applicable regular course of business, shall account for and pay such funds to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any sales representative who, not being entitled thereto, diverts or appropriates funds or any portion thereof to her or his own use commits theft as provided in s. 812.014.

Section 479. Subsection (9) of section 634.422, Florida Statutes, is amended to read:

634.422 Grounds for compulsory refusal, suspension, or revocation of license or appointment of sales representatives.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist:

(9) Unlawfully rebating, or attempting to unlawfully rebate, or unlawfully dividing, or offering to divide, her or his commission with another.

Section 480. Subsections (4) and (5) of section 634.423, Florida Statutes, are amended to read:

634.423 Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.—The department may deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the

following grounds applicable to the sales representative exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.422:

(4) Failure or refusal to pay over, upon demand, to any service warranty association or insurer the sales representative ~~he~~ represents or has represented any money coming into her or his hands which belongs to the association or insurer.

(5) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under this part, or otherwise showing herself or himself to be a source of injury or loss to the public or detriment to the public interest.

Section 481. Subsection (1) of section 634.433, Florida Statutes, is amended to read:

634.433 Civil remedy.—

(1) Any person damaged by a violation of the provisions of this part may bring a civil action against a person violating such provisions in the circuit court of the county in which the alleged violator resides or has her or his principal place of business or in the county in which the alleged violation occurred. Upon adverse adjudication, the defendant will be liable for actual damages or \$500, whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff.

Section 482. Section 634.442, Florida Statutes, is amended to read:

634.442 Injunctive proceedings.—In addition to the penalties and other enforcement provisions of this part, if any person violates s. 634.403 or s. 634.420 or any rule adopted pursuant thereto, the department may resort to a proceeding for injunction in the circuit court of the county where such person resides or has her or his or its principal place of business, and therein apply for such temporary and permanent orders as the department may deem necessary to restrain such person from engaging in any such activities, until such person has complied with such provision or rule.

Section 483. Paragraph (a) of subsection (1) of section 635.051, Florida Statutes, is amended to read:

635.051 Licensing and appointment of mortgage guaranty insurance agents.—

(1) Agents of mortgage guaranty insurers shall be licensed and appointed and shall be subject to the same qualifications and requirements applicable to general lines agents under the laws of this state, except that:

(a) Particular preliminary specialized education or training is not required of an applicant for such an agent's license, and continuing education is not required for renewal of the agent's appointment if, as part of the application for license and appointment, the insurer guarantees that the

applicant will receive the necessary training to enable him or her properly to hold himself or herself out to the public as a mortgage guaranty insurance agent and if the department, in its discretion, accepts such guaranty;

Section 484. Subsection (12) of section 636.008, Florida Statutes, is amended to read:

636.008 Application for certificate of authority.—Before any entity may operate a prepaid limited health service organization, it must obtain a certificate of authority from the department. An application for a certificate of authority to operate a prepaid limited health service organization must be filed with the department on a form prescribed by the department. Such application must be sworn to by an officer or authorized representative of the applicant and be accompanied by the following:

(12) A schedule of rates and charges for each contract to be used which contains an opinion from a qualified independent actuary or a qualified employee that the rates are not inadequate, excessive, or discriminatory.

If a prepaid limited health service organization does not employ or otherwise retain the services of an independent actuary, the chief executive officer of the prepaid limited health service organization must review and sign the certification indicating her or his agreement with its conclusions. If the department determines that, based upon documents filed with the department, the qualified employee is not qualified, the organization shall retain the services of a qualified independent actuary.

The department shall issue a certificate of authority which shall expire on June 1 each year and which the department shall renew if the applicant pays the license fees provided in s. 636.057 and if the department is satisfied that the organization is in compliance with this act.

Section 485. Subsection (6) of section 636.016, Florida Statutes, is amended to read:

636.016 Prepaid limited health service contracts.—For any entity licensed prior to October 1, 1993, all subscriber contracts in force at such time shall be in compliance with this section upon renewal of such contract.

(6) No alteration of any written application for any prepaid limited health services contract may be made by any person other than the applicant without his or her written consent, except that insertions may be made by the prepaid limited health service organization for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

Section 486. Paragraph (b) of subsection (1) of section 636.018, Florida Statutes, is amended to read:

636.018 Changes in rates and benefits; material modifications; addition of limited health services.—

(1)

(b) The prepaid limited health service organization's certification must be prepared by an independent actuary or a qualified employee. The chief executive officer of the prepaid limited health service organization must review and sign the certification indicating her or his agreement with its conclusions. Following receipt of notice of any disapproval or withdrawal of approval, no prepaid limited health service organization may issue or use any form disapproved by the department or as to which the department has withdrawn approval.

Section 487. Subsection (1) of section 636.025, Florida Statutes, is amended to read:

636.025 Validity of noncomplying contracts.—

(1) Any prepaid limited health services contract rider, endorsement, attachment, or addendum otherwise valid which contains any condition or provision not in compliance with the requirements of this act is not thereby rendered invalid, but must be construed and applied in accordance with such conditions and provisions as they would have applied had such contract, rider, endorsement, attachment, or addendum been in full compliance with this act. If an organization issues or delivers any contract for an amount which exceeds any limitations otherwise provided in this act, such organization is liable to the subscriber or his or her beneficiary for the full amount stated in the contract in addition to any other penalties that may be imposed under this act.

Section 488. Paragraph (b) of subsection (1) and subsection (3) of section 636.044, Florida Statutes, are amended to read:

636.044 Agent licensing.—

(1) With respect to a prepaid limited health services contract, a person may not, unless licensed and appointed as a health insurance agent in accordance with the applicable provisions of the insurance code:

(b) Engage or hold herself or himself out as engaging in the business of analyzing or abstracting prepaid limited health services contracts or of counseling or advising or giving opinions to persons relative to such contracts other than as a consulting actuary advising a prepaid limited health service organization or as a salaried bona fide full-time employee so counseling and advising her or his employer relative to coverage for the employer and her or his employees.

(3) Examination, licensure, or appointment is not required of any regular salaried officer or employee of a prepaid limited health service organization who devotes substantially all of her or his services to activities other than the solicitation of prepaid limited health service organization contracts from the public and who receives no commission or other compensation directly dependent upon the solicitation of such contracts.

Section 489. Subsection (1) of section 641.3105, Florida Statutes, is amended to read:

641.3105 Validity of noncomplying contracts.—

(1) Any health maintenance contract, rider, endorsement, attachment, or addendum otherwise valid which contains any condition or provision not in compliance with the requirements of this part shall not be thereby rendered invalid, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such contract, rider, endorsement, attachment, or addendum been in full compliance with this part. In the event an organization issues or delivers any contract for an amount which exceeds any limitations otherwise provided in this part, such organization shall be liable to the subscriber or her or his beneficiary for the full amount stated in the contract in addition to any other penalties that may be imposed under this part.

Section 490. Section 641.3921, Florida Statutes, is amended to read:

641.3921 Conversion on termination of eligibility.—A group health maintenance contract delivered or issued for delivery in this state by a health maintenance organization shall provide that a subscriber or covered dependent whose coverage under the group health maintenance contract has been terminated for any reason, including discontinuance of the group health maintenance contract in its entirety or with respect to a covered class, and who has been continuously covered under the group health maintenance contract, and under any group health maintenance contract providing similar benefits which it replaces, for at least 3 months immediately prior to termination, shall be entitled to have issued to him or her by the health maintenance organization a health maintenance contract, hereafter referred to as a “converted contract.” A subscriber or covered dependent shall not be entitled to have a converted contract issued to him or her if termination of his or her coverage under the group health maintenance contract occurred for any of the following reasons:

- (1) Failure to pay any required premium or contribution;
- (2) Replacement of any discontinued group coverage by similar group coverage within 31 days;
- (3) Fraud or material misrepresentation in applying for any benefits under the health maintenance contract;
- (4) Disenrollment for cause. When the requirements of paragraphs (a), (b), and (c) have been met, a health maintenance organization may disenroll a subscriber for cause if the subscriber’s behavior is disruptive, unruly, abusive, or uncooperative to the extent that his or her continuing membership in the organization seriously impairs the organization’s ability to furnish services to either the subscriber or other subscribers.

(a) Effort to resolve the problem. The organization must make a serious effort to resolve the problem presented by the subscriber, including the use or attempted use of subscriber grievance procedures.

(b) Consideration of extenuating circumstances. The organization must ascertain that the subscriber’s behavior does not directly result from an existing medical condition.

(c) Documentation. The organization must document the problems, efforts, and medical conditions as described in this subsection;

(5) Willful and knowing misuse of the health maintenance organization identification membership card by the subscriber;

(6) Willful and knowing furnishing to the organization by the subscriber of incorrect or incomplete information for the purpose of fraudulently obtaining coverage or benefits from the organization; or

(7) The subscriber has left the geographic area of the health maintenance organization with the intent to relocate or establish a new residence outside the organization's geographic area.

Section 491. Paragraph (b) of subsection (6), subsection (11), and paragraph (d) of subsection (12) of section 641.3922, Florida Statutes, are amended to read:

641.3922 Conversion contracts; conditions.—Issuance of a converted contract shall be subject to the following conditions:

(6) OPTIONAL COVERAGE.—The health maintenance organization shall not be required to issue a converted contract covering any person if such person is or could be covered by Medicare, Title XVIII of the Social Security Act, as added by the Social Security Amendments of 1965, or as later amended or superseded. Furthermore, the health maintenance organization shall not be required to issue a converted health maintenance contract covering any person if:

(b) A converted health maintenance contract may include a provision whereby the health maintenance organization may request information, in advance of any premium due date of a health maintenance contract, of any person covered thereunder as to whether:

1. She or he is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program;

2. She or he is covered for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis; or

3. Similar benefits are provided for or are available to the person pursuant to or in accordance with the requirements of any state or federal law.

(11) RETIREMENT COVERAGE.—In the event that coverage would be continued under the group health maintenance contract on an employee following the employee's ~~his~~ retirement prior to the time she or ~~he~~ is or could be covered by Medicare, the employee ~~he~~ may elect, in lieu of such continuation of group coverage, to have the same conversion rights as would apply had her or ~~his~~ coverage terminated at retirement by reason of termination of employment or membership.

(12) **CONVERSION PRIVILEGE ALLOWED.**—Subject to the conditions set forth above, the conversion privilege shall also be available:

(d) To a child solely with respect to herself or himself upon termination of the child's ~~his~~ coverage by reason of ceasing to be a qualified family member under the group health maintenance contract or under any converted contract, if a conversion privilege is not otherwise provided above with respect to such termination.

Section 492. Subsection (2) of section 641.423, Florida Statutes, is amended to read:

641.423 Execution of contracts.—

(2) A facsimile signature of any such individual executing the contract on behalf of the clinic may be used in lieu of his or her original signature.

Section 493. Subsection (1) of section 641.424, Florida Statutes, is amended to read:

641.424 Validity of noncomplying contracts.—

(1) Any prepaid health clinic contract, or contract rider, endorsement, attachment, or addendum, that contains any condition or provision not in compliance with the requirements of this part but is otherwise valid shall not be rendered invalid by such condition or provision, except as provided in s. 641.421, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such contract, rider, endorsement, attachment, or addendum been in full compliance with this contract. In the event a clinic issues or delivers any contract for an amount which exceeds any limitation otherwise provided for in this part, such clinic is liable to the subscriber or his or her beneficiary for the full amount stated in the contract in addition to any other penalties that may be imposed under this part.

Section 494. Section 641.444, Florida Statutes, is amended to read:

641.444 Injunction.—In addition to the penalties and other enforcement provisions of this part, if a person, entity, or prepaid health clinic has engaged in any activity prohibited by this part or any rule adopted pursuant to this part, the department may resort to a proceeding for injunction in the circuit court of the county where such person, entity, or prepaid health clinic is located or has her or his or its principal place of business; and the department may apply in such court for such temporary and permanent orders as the department may deem necessary to restrain the person, entity, or prepaid health clinic from engaging in any such activity, until the person, entity, or prepaid health clinic complies with the provisions and rules.

Section 495. Paragraph (g) of subsection (3) of section 642.025, Florida Statutes, is amended to read:

642.025 Policy and certificate forms.—

(3) The department shall not approve any policy or certificate form which does not meet the following requirements:

(g) Policies shall contain a statement that the individual beneficiary has the right to retain, at his or her own expense, except when the policy provides otherwise, any attorney authorized to practice law in this state.

Section 496. Subsection (1) of section 642.036, Florida Statutes, is amended to read:

642.036 Sales representatives to be licensed and appointed.—

(1) Sales representatives of legal expense insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general, and shall pay the license and appointment fees prescribed in s. 624.501. No employee or sales representative of an insurer may directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent or solicitor, unless so qualified, licensed, and appointed therefor under the insurance code.

Section 497. Section 642.038, Florida Statutes, is amended to read:

642.038 Reporting and accounting for funds.—

(1) All funds belonging to an insurer or other person received by a sales representative in transactions under his or her license and appointment shall be trust funds so received by such representative in a fiduciary capacity; and the representative, in the applicable regular course of business, shall account for and pay the same to the insurer or other person entitled thereto.

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his or her own use commits theft as provided in s. 812.014.

Section 498. Subsection (9) of section 642.041, Florida Statutes, is amended to read:

642.041 Grounds for compulsory refusal, suspension, or revocation of license or appointment of contracting sales representatives.—The department shall, pursuant to the insurance code, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative or the license or appointment of any general lines agent or solicitor if it finds that, as to the sales representative, general lines agent, or solicitor, any one or more of the following applicable grounds exist:

(9) Unlawfully rebating, or attempting to unlawfully rebate, or unlawfully dividing, or offering to divide, his or her commission with another.

Section 499. Subsections (4) and (5) of section 642.043, Florida Statutes, are amended to read:

642.043 Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it finds that, as to the representative, any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 642.041:

(4) Failure or refusal to pay over, upon demand, to any insurer he or she represents, or has represented, any money which belongs to the insurer.

(5) In the conduct of business under the license or appointment, having engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are defined under part X of chapter 626, or having otherwise shown himself or herself to be a source of injury or loss to the public or detrimental to the public interest.

Section 500. Subsection (1) of section 642.0475, Florida Statutes, is amended to read:

642.0475 Civil remedy.—

(1) Any person damaged by a violation of the provisions of this chapter may bring a civil action against a person violating such provisions in the circuit court of the county in which the alleged violator resides, or has his or her principal place of business, or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or \$500, whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff.

Section 501. Subsections (1) and (3) of section 648.295, Florida Statutes, are amended to read:

648.295 Reporting and accounting of funds.—

(1) All premiums, return premiums, or other funds belonging to insurers or others received by a person licensed pursuant to this chapter in transactions under her or his license are trust funds received by the licensee in a fiduciary capacity, and the licensee must account for and pay the same to the insurer, insured, or other person entitled to such funds.

(3) Any licensee who unlawfully diverts or appropriates such funds or any portion thereof to her or his own use commits larceny by embezzlement, punishable as provided by law.

Section 502. Section 648.58, Florida Statutes, is amended to read:

648.58 Injunctive proceedings.—In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule adopted pursuant to this chapter, the department may initiate a proceeding for injunction in the circuit court of the county where such person resides or has his or her principal place of business, and may apply for such temporary and permanent orders as the department deems necessary to restrain such person from committing such violation.

Section 503. Paragraph (c) of subsection (2) of section 650.02, Florida Statutes, is amended to read:

650.02 Definitions.—For the purpose of this chapter:

(2) The term “employment” means any services performed by an employee in the employ of the state, or any political subdivision thereof, including hospital or drainage taxing districts, for such employer, except:

(c) At the option of the employer, and when so provided in its agreement, any one or more of the following:

1. Service in any class or classes of elective positions.
2. Service in any class or classes of part-time positions.
3. Service in any class or classes of positions the compensation for which is on a fee basis.
4. Service performed by individuals as members of a coverage group (as defined in s. 218(b) of the Social Security Act, as amended) in positions covered by a retirement system on the date the federal-state agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement.
5. Agricultural labor, as defined in s. 210 of the Social Security Act, as amended.
6. Service performed by a student for the school in which the student ~~he~~ is enrolled.

Section 504. Paragraph (f) of subsection (1) and subsections (3) and (4) of section 650.03, Florida Statutes, are amended to read:

650.03 Federal-state agreement; interstate instrumentalities.—

(1) The state agency with the approval of the Governor, is hereby authorized to enter on behalf of the state into an agreement with the Federal Security Administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the Federal Old-age and Survivors Insurance System to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitutes “employment” as defined in s. 650.02. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and the Secretary of Health, Education and Welfare shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(f) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals to whom s. 218(c)(3)(C) of the Social Security Act is applicable, and shall provide for election by the employer as to whether the service of any such individual shall continue to be covered by the agreement in case she or he thereafter becomes eligible to be a member of a retirement system.

(3) Where a retirement system established by the state or any political subdivision thereof covers positions of police officers ~~police~~ or firefighters ~~firemen~~, or both, and whether or not other positions are covered by such system, there shall, for the purposes of this chapter, be deemed to be a separate retirement system with respect to the positions of police officers ~~police~~ and a separate retirement system with respect to the positions of firefighters ~~firemen~~.

(4) For the purposes of this chapter any retirement system established by the state or any political subdivision thereof, which, on, before, or after the date of enactment of this subsection is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this chapter and the other of which is composed of positions of members of such system who do not desire such coverage, shall, upon the Governor's authorization of a referendum for either division or part, be deemed to be a separate retirement system with respect to each such division or part. The positions of individuals who become members of such system after such coverage is extended shall be included in such division or part composed of members desiring such coverage. The position of any individual which is covered by any retirement system to which the preceding two sentences are applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of this subsection or, if later, the day she or he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under this chapter.

Section 505. Subsection (1) of section 650.04, Florida Statutes, is amended to read:

650.04 Contributions by state employees.—

(1) Every employee of the state whose services are covered by an agreement entered into under s. 650.03 shall be required to pay for the period of such coverage, into the Social Security Contribution Trust Fund established by s. 650.06, contributions, with respect to wages as defined in s. 650.02, equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or the employee's ~~his~~ entry upon such service, after the enactment of this chapter.

Section 506. Paragraph (b) of subsection (3) of section 650.05, Florida Statutes, is amended to read:

650.05 Plans for coverage of employees of political subdivisions.—

(3)

(b) Each political subdivision required to make payments under paragraph (a) is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this chapter, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his or her wages as defined in s. 650.02 not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his or her wages as and when paid. Contributions so collected shall be paid into the Social Security Contribution Trust Fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (a). Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

Section 507. Section 650.10, Florida Statutes, is amended to read:

650.10 Referenda and certification.—

(1) The Governor, or an official of the state designated by the Governor ~~him~~ for the purpose, is empowered to authorize and supervise the conduct of employee referenda prescribed by s. 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by s. 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(2) Upon receiving evidence satisfactory to her or him that with respect to any such referendum the conditions specified in s. 218(d)(3) of the Social Security Act have been met, the Governor, or an official of the state designated by the Governor ~~him~~ for the purpose, shall so certify to the Secretary of Health, Education and Welfare.

Section 508. Paragraph (c) of subsection (1) of section 651.023, Florida Statutes, is amended to read:

651.023 Certificate of authority; application; renewal.—

(1) After issuance of a provisional certificate of authority, the department shall issue to the holder of such provisional certificate of authority a certificate of authority; provided, however, that no certificate of authority shall be issued until the holder of such provisional certificate of authority provides the department with the following information:

(c) Subject to the requirements of subsection (2), a provider may submit an application for a certificate of authority and any required exhibits upon submission of proof that the project has a minimum of 30 percent of the units reserved for which the provider is charging an entrance fee; however, this provision shall not apply to an application for a certificate of authority for the acquisition of a facility for which a certificate of authority was issued prior to October 1, 1983, to a provider who subsequently becomes a debtor in a case under the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for which the department has been appointed receiver pursuant to the provisions of part II of chapter 631. In order for a unit to be considered reserved under this section, the provider must collect a minimum deposit of 10 percent of the then current entrance fee for that unit, and must assess a forfeiture penalty of 2 percent of the entrance fee due to termination of the reservation after 30 days for any reason other than the death or serious illness of the prospective resident, the failure of the provider to meet its obligations under the reservation agreement, or other circumstances beyond the control of the prospective resident that equitably entitle the prospective resident to a refund of his or her deposit. The reservation agreement shall state the cancellation policy and the terms of the continuing care agreement to be entered into. The department may require the holder of such certificate to disclose to the prospective resident on forms prescribed by the department such additional financial information as the department may deem necessary. The provisions of this paragraph shall not be construed to alter the provisions of s. 651.055.

Section 509. Subsection (4) of section 651.026, Florida Statutes, is amended to read:

651.026 Annual reports.—

(4) If the provider is an individual, the annual statement shall be sworn to by him or her; if a limited partnership, by the general partner; if a partnership other than a limited partnership, by all the partners; if any other unincorporated association, by all its members or officers and directors; if a trust, by all its trustees and officers; and, if a corporation, by the president and secretary thereof.

Section 510. Paragraph (b) of subsection (2) of section 651.033, Florida Statutes, is amended to read:

651.033 Escrow accounts.—

(2) In addition, when funds are required to be deposited in an escrow account pursuant to s. 651.035:

(b) The escrow agent or another person designated to act in the escrow agent's his place and the provider shall notify the department in writing 10 days before the withdrawal of any portion of any funds required to be escrowed under the provisions of s. 651.035. However, in the event of an emergency and upon petition by the provider, the department may waive the 10-day notification period and allow a withdrawal of up to 10 percent of the required minimum liquid reserve. The department shall have 3 working days to deny the petition for the emergency 10-percent withdrawal. If the

department fails to deny the petition within 3 working days, the petition shall be deemed to have been granted by the department. For the purpose of this section, "working day" means each day that is not a Saturday, Sunday, or legal holiday as defined by Florida law. Also for the purpose of this section, the day the petition is received by the department shall not be counted as one of the 3 days. However, funds may be withdrawn without departmental approval upon prior notification to the department and provided the amount withdrawn does not exceed the amount required for the facility to bring current the past due portion of an indebtedness created by a lien on the facility pursuant to a trust indenture or mortgage.

Section 511. Paragraph (g) of subsection (1) and subsections (5) and (6) of section 651.055, Florida Statutes, are amended to read:

651.055 Agreements; right to rescind.—

(1) In addition to other provisions considered proper to effectuate any continuing care agreement, each agreement shall:

(g) Provide that the agreement may be canceled upon the giving of written notice of cancellation of at least 30 days by the provider, the resident, or the person who provided the transfer of property or funds for the care of such resident; however, if an agreement is canceled because there has been a good faith determination that a resident is a danger to himself or herself or others, only such notice as is reasonable under the circumstances shall be required. The agreement shall further provide in clear and understandable language, in print no smaller than the largest type used in the body of the agreement, the terms governing the refund of any portion of the entrance fee, which terms shall include a provision that all refunds be made within 120 days after notification. For a resident whose agreement with the facility provides that the resident does not receive a transferable membership or ownership right in the facility, and who has occupied his or her unit, the refund shall be calculated on a pro rata basis with the facility retaining no more than 2 percent per month of occupancy by the resident and no more than a 4-percent fee for processing. Such refund shall be paid no later than 120 days after the giving of notice of intention to cancel. Alternatively, if the contract provides for the facility to retain no more than 1 percent per month of occupancy by the resident, it may provide that such refund will be paid from the proceeds of the next entrance fees received by the provider for units for which there are no prior claims by any resident until paid in full or, if the provider has discontinued marketing continuing care contracts, within 200 days after the date of notice. Unless the provisions of subsection (5) apply, for any prospective resident, regardless of whether or not such a resident receives a transferable membership or ownership right in the facility, who cancels the agreement prior to occupancy of the unit, the refund shall be the entire amount paid toward the entrance fee, less a processing fee not to exceed 4 percent of the entire entrance fee, but in no event shall such processing fee exceed the amount paid by the prospective resident. Such refund shall be paid no later than 60 days after the giving of notice of intention to cancel. For a resident who has occupied his or her unit and who has received a transferable membership or ownership right in the facility, the foregoing refund provisions shall not apply but shall be deemed satisfied

by the acquisition or receipt of a transferable membership or an ownership right in the facility. The provider shall not charge any fee for the transfer of membership or sale of an ownership right.

(5) If a resident dies before occupying the facility or, through illness, injury, or incapacity, is precluded from becoming a resident under the terms of the continuing care agreement, the agreement is automatically canceled, and the resident or the resident's ~~his~~ legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties, to the agreement.

(6) In order to comply with this section, a provider may furnish information not contained in his or her continuing care agreement through an addendum.

Section 512. Section 651.061, Florida Statutes, is amended to read:

651.061 Dismissal or discharge of resident; refund.—

(1) No agreement for care shall permit dismissal or discharge of the resident from the facility providing care before the expiration of the agreement, without just cause for such a removal. If a facility terminates a resident for just cause, the facility shall pay to the resident any refund due in the same manner as if the resident had provided notice pursuant to s. 651.055(1)(g). The term “just cause” includes, but is not limited to, a good faith determination that a resident is a danger to herself or himself or others while remaining in the facility.

(2) It shall not be deemed just cause if the resident is unable to pay monthly maintenance fees until the entire unearned entrance fee, plus, when applicable, any Medicare benefits under Title XVIII of the Social Security Act and/or third-party insurance benefits received, is earned by the facility. For this purpose, the unearned portion shall be the difference between all amounts paid in by the resident and the cost of caring for the resident based upon the per capita cost to the facility. In any case where a consideration greater than the minimum charge has been paid for accommodations which are above-standard, the facility may include an additional amount in the resident's cost of care based upon the ratio of the amount paid to the minimum consideration for standard accommodations times the current per capita cost and applied to the period the aged person was in residence. Should these entrance fees be exhausted within 90 days of the date of failure to pay, the facility may not require the resident to leave before 90 days from the date of failure to pay, during which time the resident shall continue to pay the facility a reduced fee based on her or his current income.

Section 513. Section 651.091, Florida Statutes, is amended to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(1) Each continuing care facility shall maintain as public information, available upon request, records of all cost and inspection reports pertaining

to that facility that have been filed with or issued by any governmental agency. A copy of each such report shall be retained in such records for not less than 5 years from the date the report is filed or issued. Each facility shall also maintain as public information, available upon request, all annual statements that have been filed with the department.

(2) Every continuing care facility shall:

(a) Display the certificate of authority in a conspicuous place inside the facility.

(b) Post in a prominent position in the facility so as to be accessible to all residents and to the general public a concise summary of the last examination report issued by the department, with references to the page numbers of the full report noting any deficiencies found by the department, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.

(c) Post in a prominent position in the facility so as to be accessible to all residents and to the general public a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services shall also be posted.

(d) Distribute a copy of the full annual statement to the president or ~~chair~~ chairman of the residents' council within 30 days after the filing of the annual report with the department, and designate a staff person to provide explanation thereof.

(e) Notify the residents' council of any plans filed with the department to obtain new financing, additional financing, or refinancing for the facility and of any applications to the department for any expansion of the facility.

(3) Before entering into an agreement to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies to the prospective resident or his or her legal representative, of the following information relative to the undertaking:

(a) The agreement to furnish continuing care.

(b) The summary listed in paragraph (2)(b).

(c) All ownership interests and lease agreements, including information specified in s. 651.022(2)(b)8.

(d) Any plans adopted by the governing body of the provider for expansion or phased development during the next 3 years, or, if a master plan for development has been adopted by the governing body, the longer period of time appropriate to such master plan.

(e) Copies of the rules and regulations of the facility and an explanation of the responsibilities of the resident.

(f) The policy of the facility with respect to admission to and discharge from the various levels of health care offered by the facility.

(g) The amount and location of any reserve funds required by this chapter, and the name of the person or entity having a claim to such funds in the event of a bankruptcy, foreclosure, or rehabilitation proceeding.

The prospective resident or his or her legal representative shall be permitted to inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the department pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

Section 514. Subsection (4) of section 651.095, Florida Statutes, is amended to read:

651.095 Advertisements; requirements; penalties.—

(4) This chapter does not impose liability, civil or criminal, upon a person or publisher who is regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station and who, acting solely in her or his official capacity, publishes an advertisement in good faith and without knowledge that the advertisement or publication constitutes a violation of this chapter.

Section 515. Subsections (1) and (2) of section 651.114, Florida Statutes, are amended to read:

651.114 Delinquency proceedings; remedial rights.—

(1) Upon determination by the department that a provider is not in compliance with this chapter, the department may notify the chair ~~chairman~~ of the advisory council, who may assist the department in formulating a plan to require the provider to come into compliance.

(2) Upon notification by an escrow agent or another person designated to act in his or her place, or by the provider, that a portion of any funds required to be escrowed under the provisions of this chapter have been or are proposed to be released, and before invoking its powers under part I of chapter 631, the department shall notify the chair ~~chairman~~ of the advisory council of the release of the funds required to be escrowed under the provisions of this chapter.

Section 516. Section 651.116, Florida Statutes, is amended to read:

651.116 Delinquency proceedings; additional provisions.—Whenever the department has been appointed pursuant to the provisions of part I of chapter 631 as receiver of a provider, the circuit court in which the receivership proceeding is pending is authorized, upon a petition of the receiver and a showing of good cause by the receiver, to enjoin a secured creditor from seeking to dispose of collateral securing her or his mortgage, debt, or other

security instrument. The court shall grant the petition upon a showing by the receiver that the collateral should be retained in order to protect the life, health, safety, or welfare of the residents of the facility or to provide sufficient time for the relocation of the residents. Notwithstanding any other provision of law, no bond shall be required of the receiver as a prerequisite for the issuance of any injunction pursuant to this section. No injunction issued under this section shall exceed 12 months in duration.

Section 517. Subsection (2) and paragraphs (a) and (b) of subsection (5) of section 651.121, Florida Statutes, are amended to read:

651.121 Advisory council.—

(2) The term of office for each member shall be 3 years, or until the member's ~~his~~ successor has been appointed and qualifies.

(5) The council shall:

(a) Meet at least once a year and, at such annual meeting, elect a chair ~~chairman~~ from their number and elect or appoint a secretary, each of whom shall hold office for 1 year and thereafter until a ~~his~~ successor is elected and qualified.

(b) Hold other meetings at such times and places as the department or the chair ~~chairman~~ of the council may direct.

Section 518. Subsection (1) of section 651.131, Florida Statutes, is amended to read:

651.131 Actions under prior law.—

(1) With respect to any proceedings hereafter instituted by any person believing himself or herself to be aggrieved by a violation of any of the provisions of former s. 651.01, s. 651.02, s. 651.03, s. 651.04, s. 651.05, s. 651.06, s. 651.07, s. 651.072, s. 651.074, s. 651.076, s. 651.08, s. 651.09, s. 651.10, s. 651.11, s. 651.115, or s. 651.12, any resulting judgment shall be limited to the actual monetary loss suffered by such person plus reasonable attorney's fees.

Section 519. Paragraphs (f) and (n) of subsection (1) of section 655.005, Florida Statutes, are amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(f) "Executive officer" means an individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the financial institution; the term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination

of major policies of the financial institution and whose decisions are limited by policy standards established by officers other than such individual, whether or not such policy standards have been adopted by the board of directors. The ~~chair chairman~~ of the board, the president, and every executive vice president of a financial institution, and the senior trust officer of a trust company, are presumed to be executive officers unless any such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein.

(n) "Officer" of a financial institution means any individual duly elected or appointed to, or otherwise performing the duties and functions appropriate to, any position or office having the designation or title of ~~chair chairman~~ of the board of directors, vice ~~chair chairman~~ of the board of directors, ~~chair chairman~~ of the executive committee, president, vice president, assistant vice president, cashier or assistant cashier, comptroller, assistant comptroller, trust officer, assistant trust officer, secretary or assistant secretary (of a trust company), or any other office or officer designated in, or as provided by, the articles of incorporation or bylaws.

Section 520. Paragraph (c) of subsection (3) of section 655.032, Florida Statutes, is amended to read:

655.032 Investigations, subpoenas, hearings, and witnesses.—

(3)

(c) At any hearing on any such petition, the person subpoenaed, or any person whose interests will be substantially affected by the investigation, examination, or subpoena, may appear and object to the subpoena and to the granting of the petition. The court may make any order which justice requires to protect a party or other person and his or her personal and property rights, including, but not limited to, protection from annoyance, embarrassment, oppression, or undue burden or expense.

Section 521. Paragraphs (a) and (e) of subsection (3) of section 655.0322, Florida Statutes, are amended to read:

655.0322 Prohibited acts and practices; criminal penalties.—

(3) It is unlawful for any financial institution-affiliated party to:

(a) Knowingly receive or possess himself or herself of any of its property otherwise than in payment of a just demand, and, with intent to deceive or defraud, to omit to make or cause to be made a full and true entry thereof in its books and accounts, or concur in omitting to make any material entry thereof;

(e) Deliver or disclose to the department or any of its employees any examination report, report of condition, report of income and dividends, internal audit, account, statement, or document known by him or her to be fraudulent or false as to any material matter.

Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 522. Subsection (1) of section 655.0386, Florida Statutes, is amended to read:

655.0386 Transactions with financial institution-affiliated parties.—

(1) CONFLICT OF INTEREST.—A financial institution-affiliated party may not engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the state financial institution, subsidiary, or service corporation which would result in a conflict of the party's his own personal interests with those of the state financial institution, subsidiary, or service corporation with which he or she is affiliated, unless:

(a) Such business or transactions are conducted in good faith and are honest, fair, and reasonable to the state financial institution, subsidiary, or service corporation and are on terms no more favorable than would be offered to a disinterested third party;

(b) A full disclosure of such business or transaction and the nature of the financial institution-affiliated party's interest is made to the board of directors;

(c) Such business or transactions are approved in good faith by the board of directors, any interested director abstaining, and such approval is recorded in the minutes;

(d) Any profits inuring to the financial institution-affiliated party are not at the expense of the state financial institution, subsidiary, or service corporation and do not prejudice the best interests of the state financial institution, subsidiary, or service corporation in any way; and

(e) Such business or transactions do not represent a breach of the financial institution-affiliated party's fiduciary duty and are not fraudulent, illegal, or ultra vires.

Section 523. Paragraph (a) of subsection (2) of section 655.045, Florida Statutes, is amended to read:

655.045 Examinations, reports, and internal audits; penalty.—

(2)(a) The department shall require each state financial institution, subsidiary, or service corporation to submit a report, at least four times each calendar year, as of such dates as the department may determine. Each such report must contain a declaration by the chief executive officer or any other officer authorized by the board of directors to make such declaration that the report is true and correct to the best of his or her knowledge and belief. Such report must include such information as the department by rule requires for that type of institution.

Section 524. Paragraphs (a) and (b) of subsection (2) of section 655.059, Florida Statutes, are amended to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(2)(a) Each depositor, borrower, member, or stockholder has the right to inspect such books and records of a financial institution as pertain to her or his loans or accounts or the determination of her or his voting rights.

(b) The books and records pertaining to the deposit accounts and loans of depositors, borrowers, members, and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and shall not be released except upon express authorization of the account holder as to her or his own accounts, loans, or voting rights. However, information relating to any loan made by a financial institution may be released without the borrower's authorization in a manner prescribed by the board of directors for the purpose of meeting the needs of commerce and for fair and accurate credit information. Information may also be released, without the authorization of a member or depositor but in a manner prescribed by the board of directors, to verify or corroborate the existence or amount of a customer's or member's account when such information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. In addition, a financial institution and its subsidiaries, and any holding company of the financial institution or subsidiary of such holding company, may furnish to one another information relating to their customers or members, subject to the requirement that each corporation receiving information that is confidential maintain the confidentiality of such information and not provide or disclose such information to any unaffiliated person or entity.

Section 525. Subsection (3) of section 655.417, Florida Statutes, is amended to read:

655.417 Effect of merger, consolidation, conversion, or acquisition.—From and after the effective date of a merger, consolidation, conversion, or acquisition, the resulting financial entity may conduct business in accordance with the terms of the plan as approved; provided that:

(3) CREDITORS' RIGHTS.—The resulting financial entity in a merger, consolidation, conversion, or acquisition is liable for all obligations of the participating or converting financial entity which existed prior to such action; and the action taken does not prejudice the right of a creditor of the participating or converting financial entity to have his or her debts paid out of the assets thereof, nor may such creditor be deprived of, or prejudiced in, any action against the officers, directors, members, or other persons participating in the conduct of the affairs of a participating or converting financial entity for any neglect or misconduct.

Section 526. Section 655.77, Florida Statutes, is amended to read:

655.77 Deposits by minors.—Deposits made by a minor, or made in the minor's ~~his~~ name by other than a court-appointed guardian, may be withdrawn by the minor in the absence of an agreement to the contrary made between the institution and the depositor at the time the account is opened. In case of any such agreement, such moneys, until the minor's disabilities

are removed, may be withdrawn by the person or persons designated in such agreement.

Section 527. Subsection (2) of section 655.78, Florida Statutes, is amended to read:

655.78 Deposit accounts in two or more names.—

(2) In the case of a credit union, a member may designate any person or persons to hold deposits with the member in joint tenancy with the right of survivorship; but a joint tenant, unless he or she is a member in his or her own right, may not be permitted to vote, obtain a loan, or hold office or be required to pay an entrance or membership fee.

Section 528. Section 655.81, Florida Statutes, is amended to read:

655.81 Deposits in trust.—

(1) When a deposit is made by any person describing herself or himself as, and making such deposit as, trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description has been given in writing to the institution, the deposit or any part thereof, together with the dividends or interest thereon, may, in the event of the death of the person so described as trustee, be paid to the person for whom the deposit was thus stated to have been made.

(2) In the case of a credit union, deposits may be held in the name of a member in trust for a beneficiary, including a minor; but a beneficiary, unless she or he is a member in her or his own right, may not be permitted to vote, obtain an extension of credit, or hold office or be required to pay an entrance or membership fee.

Section 529. Subsection (8) of section 655.82, Florida Statutes, is amended to read:

655.82 Pay-on-death accounts.—

(8) A beneficiary in an account at a credit union having a pay-on-death designation, unless the beneficiary he is a member in her or his own right, may not be permitted to vote, obtain an extension of credit, or hold office or be required to pay an entrance or membership fee.

Section 530. Subsection (2) of section 655.90, Florida Statutes, is amended to read:

655.90 Closing during emergencies and other special days.—

(2) POWERS OF COMMISSIONER.—Whenever the commissioner is of the opinion that an emergency exists, or is impending, in this state or in any part of this state, he or she may, by proclamation, authorize state and nationally or federally chartered institutions, if not inconsistent with, and if it does not infringe upon, paramount federal law, located in the affected area or areas to close or to close any or all the departments, sections, functions, offices, or facilities thereof. In addition, if the commissioner is of the

opinion that an emergency exists, or is impending, which affects, or may affect, a particular institution or institutions, or one or more particular departments, sections, functions, offices, or facilities thereof, but not institutions located in the area generally, he or she may authorize the particular institution or institutions to close or to close one or more of the departments, sections, functions, offices, or facilities thereof. The institution or institutions affected by any such proclamation or authorization may close in accordance therewith. Such institutions and such of the departments, sections, functions, offices, or facilities thereof so closed may remain closed until the commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the institution determine that the institution or any of its departments, sections, functions, offices, or facilities, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.

Section 531. Subsections (1) and (2) of section 655.936, Florida Statutes, are amended to read:

655.936 Delivery of safe-deposit box contents or property held in safekeeping to personal representative.—

(1) The lessor shall immediately deliver to a resident personal representative, upon presentation of a certified copy of his or her letters of authority, all property deposited with it by the decedent for safekeeping, and shall grant the resident personal representative ~~him~~ access to any safe-deposit box in the decedent's name and permit him or her to remove from such box any part or all of the contents thereof.

(2) If a foreign personal representative of a deceased lessee has been appointed by a court of any other state, a lessor may, at its discretion, after 3 months from the issuance to such foreign personal representative of his or her letters of authority, deliver to such foreign personal representative all properties deposited with it for safekeeping and the contents of any safe-deposit box in the name of the decedent if at such time the lessor has not received written notice of the appointment of a personal representative in this state, and such delivery is a valid discharge of the lessor for all property or contents so delivered. Such foreign personal representative shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his or her letters of authority. A lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such foreign personal representative which itemizes in detail all property so delivered.

Section 532. Paragraph (a) of subsection (2) of section 655.948, Florida Statutes, is amended to read:

655.948 Significant events; notice required.—

(2) Events for which disclosure forms must be filed and the filing schedule for each are as follows:

(a) To be disclosed within 30 days of the occurrence of the event:

1. The addition, resignation, or termination of a director, executive officer, independent internal auditor, or independent credit review officer;
2. The acquisition or divestiture of an asset or assets the value of which exceeds 20 percent of capital as of the date of the most recent call report. Any assets listed in s. 657.042(1) or s. 658.67(1) are excluded from such disclosure requirements;
3. Any change in general counsel or outside auditors who are used to certify financial statements;
4. Any interruption of fidelity insurance coverage;
5. Any credit extension to an executive officer and his or her related interests that, when aggregated with the amount of all other extensions of credit to that executive officer and his or her related interests, exceeds 15 percent of the capital accounts of the financial institution;
6. The failure to meet the minimum daily liquidity required of s. 658.68;
7. Any suspected criminal act perpetrated against a financial institution, subsidiary, or service corporation. However, no liability shall be incurred by any financial institution, subsidiary, service corporation, or financial institution-affiliated party as a result of making a good faith effort to fulfill this disclosure requirement; or
8. The acquisition or divestiture of a wholly owned or majority owned subsidiary or service corporation.

Section 533. Subsection (3) and paragraph (c) of subsection (9) of section 657.021, Florida Statutes, are amended to read:

657.021 Board of directors; executive committee.—

(3) Each director, upon assuming office, shall acknowledge that he or she is familiar with his or her responsibilities as a director and that he or she will diligently and honestly administer the affairs of such credit union and will not knowingly violate, or willfully permit to be violated, any of the provisions of the financial institution's codes or pertinent rules of the department. The signed copy of such oath shall be filed with the department within 30 days after election.

(9) The board of directors has authority, which may not be delegated, to:

(c) Suspend and remove any member of any of its committees for failure to perform his or her duties or for other just cause.

Section 534. Subsection (1) of section 657.022, Florida Statutes, is amended to read:

657.022 Executive officers.—

(1) At the organizational meeting and within 7 days following each annual meeting of the members, the directors shall hold the annual meeting of the board of directors and elect from their own number a presiding officer, who may be designated as chair ~~chairman~~ of the board or president; one or more vice chairs ~~chairmen~~ or one or more vice presidents, as the case may be; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected shall be the executive officers of the organization.

Section 535. Subsection (1) of section 657.0265, Florida Statutes, is amended to read:

657.0265 Liability of credit union directors, supervisory committee members, or audit committee members.—

(1) A director of a credit union organized under state or federal law, or a member of the supervisory or audit committee of such credit union, is not personally liable for monetary damages to the credit union, its members, or any other persons for any statement, vote, decision, or failure to act, regarding the management or policy of the credit union, unless:

(a) The director or the member of the supervisory or audit committee breached or failed to perform her or his duties as a director or as a member of the supervisory or audit committee; and

(b) The breach or failure to perform by the director or the member of the supervisory or audit committee constitutes:

1. A violation of the criminal law, unless the director or the member of the supervisory or audit committee had reasonable cause to believe her or his conduct was lawful or had no reasonable cause to believe her or his conduct was unlawful. A judgment or other final adjudication against a director or a member of a supervisory or audit committee in any criminal proceeding for a violation of the criminal law estops that director or member of the supervisory or audit committee from contesting the fact that her or his breach or failure to perform constitutes a violation of the criminal law, but does not estop the director or member of the supervisory or audit committee from establishing that she or he had reasonable cause to believe that her or his conduct was lawful or had no reasonable cause to believe that her or his conduct was unlawful;

2. A transaction from which the director or the member of the supervisory or audit committee derived an improper personal benefit, either directly or indirectly; or

3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 536. Subsections (1), (2), (3), (4), and (5) of section 657.028, Florida Statutes, are amended to read:

657.028 Activities of directors, officers, committee members, employees, and agents.—

(1) An individual may not disburse funds of the credit union for any extension of credit approved by her or him.

(2) An elected officer or director or any committee member, other than the treasurer or the chief executive officer serving in the capacity of treasurer, may not be compensated for her or his service as such.

(3) A person may not serve as an officer, director, or committee member of a credit union if she or he:

(a) Has been convicted of a felony or of an offense involving dishonesty, a breach of trust, a violation of this chapter, or fraud, except with the prior approval of the department upon a showing of rehabilitation;

(b) Has been adjudicated bankrupt within the previous 7 years;

(c) Has been removed by any regulatory agency as a director, officer, committee member, or employee of any financial institution, except with the prior approval of the department upon a showing of rehabilitation and upon showing of ability to be bondable;

(d) Has performed acts of fraud or dishonesty, or has failed to perform duties, resulting in a loss which was subject to a paid claim under a fidelity bond, except with the prior approval of the department upon a showing of rehabilitation and upon showing of ability to be bondable; or

(e) Has been found guilty of a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(4) A person may not serve as a director of a credit union if she or he is an employee of the credit union other than the chief executive officer of the credit union.

(5) A director, committee member, officer, agent, or employee of the credit union may not in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting her or his pecuniary interest or the pecuniary interest of any corporation, partnership, or association, other than the credit union, in which she or he or a member of her or his immediate family is directly or indirectly interested.

Section 537. Subsection (4) of section 657.038, Florida Statutes, is amended to read:

657.038 Loan powers.—

(4) A member may receive credit in installments or in one sum and may pay the whole or any part of his or her indebtedness on any day on which the office of the credit union is open for business.

Section 538. Subsection (3) of section 657.068, Florida Statutes, is amended to read:

657.068 Central credit unions.—

(3) Each credit union or other organization becoming a member of a central credit union may designate one person to be its voting representative in any membership meeting. That person shall be designated by the board of directors of the member credit union or other organization. Such voting representatives shall be eligible to hold office in the central credit union as if such person were himself or herself a member of the central credit union.

Section 539. Subsection (1) of section 657.261, Florida Statutes, is amended to read:

657.261 Effect of paid claims.—

(1) Any claimant recovering under this part shall be deemed to have assigned all of his or her rights or interest in his or her shares or deposits with the insolvent member credit union to the corporation, to the extent of the claimant's ~~his~~ recovery from the corporation. Every claimant seeking the protection of this act shall fully cooperate with the corporation and the receiver or liquidator to the same extent as such person would have been required to cooperate with the insolvent credit union. The corporation shall have the same cause of action as the insolvent credit union would have had if such sums had been paid by the insolvent credit union.

Section 540. Subsection (2) of section 658.235, Florida Statutes, is amended to read:

658.235 Subscriptions for stock; approval of major shareholders.—

(2) The directors shall also provide such detailed financial, business, and biographical information as the department may reasonably require for each person who, together with related interests, subscribes to 10 percent or more of the voting stock or nonvoting stock which is convertible into voting stock of the proposed bank or trust company. The department shall make an investigation of the character, financial responsibility, and financial standing of each such person in order to determine whether he or she is likely to control the bank or trust company in a manner which would jeopardize the interests of the depositors and creditors of the bank or trust company, the other stockholders, or the general public. This investigation shall include a determination of whether any such person has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

Section 541. Section 658.79, Florida Statutes, is amended to read:

658.79 Taking possession of insolvent state banks or trust companies.— Whenever the department has reason to conclude, based upon the reports furnished to it by a state bank or trust company examiner or upon other satisfactory evidence, that any state bank or trust company:

(1) Is insolvent or imminently insolvent; or

(2) Is transacting its business in an unsound, unsafe, or unauthorized manner such that it is threatened with imminent insolvency,

the department may, in its discretion, forthwith designate and appoint a liquidator or receiver to take charge of the assets and affairs of such bank or trust company and require of him or her such bond and security as the department deems proper, not exceeding double the amount that may come into his or her hands. The department may enlist the services of any state or local law enforcement agency in taking possession and securing the assets of the bank or trust company.

Section 542. Section 658.81, Florida Statutes, is amended to read:

658.81 Department action; notice and court confirmation.—The department, immediately upon appointing such liquidator or receiver, shall serve notice upon any other person having the charge or management of any such bank or trust company, informing him or her of its action in appointing such liquidator or receiver and notifying him or her that the department will apply on a date named therein, not to exceed 10 days from the date of service of such notice, to a circuit judge in the court circuit in which the principal office of such bank or trust company is located for an order confirming its action. A copy of such application together with a notice of hearing thereon shall be served on the person receiving the above notice prior to the time set for such hearing. Such proceedings shall be given precedence over other cases pending in such court and shall in every way be expedited. Upon the department's showing at the hearing on such application that such bank or trust company is insolvent or threatened with imminent insolvency, the court shall enter an order confirming the action of the department and the appointment of such liquidator or receiver; otherwise, the court shall enter an order dismissing the liquidator or receiver, and such liquidator or receiver shall relinquish his or her control over the assets and affairs of such bank or trust company.

Section 543. Subsection (3) of section 658.82, Florida Statutes, is amended to read:

658.82 Receiver; powers and duties.—

(3) Within 30 days of her or his appointment, the receiver shall file a statement of condition of the bank or trust company with the department, in addition to such other interim reports as the department may require. Upon receipt of the report of condition, the department may:

(a) Upon a finding that the bank or trust company is in a safe, sound, and solvent condition, surrender possession of such bank or trust company bank to its directors for the purpose of permitting the bank or trust company to resume business on such terms and conditions as the department shall prescribe;

(b) Appoint a liquidator to immediately liquidate the assets of the bank or trust company and wind up its affairs;

(c) Grant a further period of time to the receiver to rehabilitate the affairs of the bank or trust company; or

(d) Appoint a new receiver.

Section 544. Subsection (3) of section 658.83, Florida Statutes, is amended to read:

658.83 Liquidator; powers and duties.—

(3) Such liquidator shall pay all moneys received to the Treasurer to be held as a special deposit for the use and benefit of the creditors subject to the order of the department and also shall make reports quarterly, or when called upon, to the department of all her or his acts and proceedings.

Section 545. Subsection (3) of section 660.27, Florida Statutes, is amended to read:

660.27 Deposit of securities with Treasurer.—

(3) Any security of any kind which has been deposited or pledged as provided in this section may at any time, by or upon the direction of such bank, association, or trust company which deposited or pledged such security, be withdrawn and released from such pledge provided that simultaneously therewith satisfactory security as provided in this section, in such amount, if any, as may be necessary in order to comply with the requirements of this section, is substituted for the security so withdrawn and released. With respect to the deposit or pledge of securities as provided in this section, the Treasurer may accept a safekeeping receipt, in a form he or she prescribes, issued by another bank, trust company, or savings association located within or without the state.

Section 546. Paragraph (c) of subsection (4) of section 660.33, Florida Statutes, is amended to read:

660.33 Trust service offices.—

(4)

(c)1. Anything in this section or any other law to the contrary notwithstanding and subject to compliance with this subsection, an affiliated trust company or an affiliated bank's trust department, if authorized to exercise trust powers in this state, shall be deemed substituted as fiduciary without further authorization where the successor has an established trust service office in the predecessor's principal place of business or any branch of the predecessor located in this state. The successor may conduct therein any trust business incidental thereto that it is otherwise permitted to conduct in this state, but it may not accept deposits at the offices of the predecessor bank except as incidental to the trust business.

2. To effect the substitution referred to in subparagraph 1., a predecessor shall enter into an agreement with the successor that sets forth the fiduciary powers, rights, privileges, duties, and liabilities of the parties and, more specifically, those to which the successor will succeed, including, but not

limited to, those described in subparagraph 7. The agreement will be approved by the boards of directors of the predecessor, successor, and parent corporations. The agreement shall then be filed with the department. The effective date of the agreement shall be the date on which the department approves the agreement under subparagraph 6. unless another, later date is specified in the agreement, which other date shall be no later than 75 days after the date on which the agreement is filed with the department under this subparagraph; however, no such agreement may take effect without approval by the department.

3.a. Not sooner than 30 days before or later than 30 days after the date on which the agreement is filed with the department under subparagraph 2., the predecessor and successor shall cause notice of the filing of such agreement with the department, along with the procedure for objection thereto as hereinafter provided, to be published in a newspaper of general circulation in the county in which the predecessor's principal place of business is located and file a copy of such written notice in any applicable court-administered fiduciary proceeding, including, but not limited to, probate and guardianship proceedings, and additionally, they shall serve written notice upon the following:

- (I) Each cofiduciary that serves with the predecessor;
- (II) Each surviving grantor of a revocable trust;
- (III) Each person who alone or in conjunction with others has the power to remove the predecessor;
- (IV) Each principal for whom the predecessor serves as agent or custodian;
- (V) Each guardian of the person for whom the predecessor serves as guardian of the property for their ward;
- (VI) Each beneficiary or the beneficiary's ~~his~~ legal or natural guardian, when applicable, currently receiving or entitled as a matter of right to receive a current mandatory or discretionary distribution, as opposed to a remainder distribution, of principal or income from a trust, estate, or other fund with respect to which a substitution of fiduciary under this subsection is to be effected. However, when applicable and in lieu thereof, such service will be made upon the sole holder or a majority of the coholders of a general or limited power of appointment, including one in the form of a power of amendment, or revocation, in which case they shall be deemed to act for any beneficiary who may take by virtue of the exercise or failure to exercise the power;
- (VII) Upon any other person or entity required by the court in any referenced court-administered fiduciary proceeding; and
- (VIII) In the case of a trust described in the Internal Revenue Code of 1986 s. 401(a) as it may from time to time hereafter be amended, upon the employer or employee organization or both responsible for the maintenance of such trust.

b. Service of such written notice will not be required upon the persons or entities listed in sub-subparagraph a. when the documents or other writings that created the fiduciary relationship permit a substitution of fiduciaries.

c. Service of written notice shall be made upon the persons or entities listed in sub-subparagraph a. in the manner provided for the service of formal notice under the applicable Florida Probate Rules. Service of written notice by mail shall be completed upon receipt or refusal of the notice by the persons or entities listed in sub-subparagraph a. If such written notice is made by mail or delivery, proof of mailing or delivery shall be by verified statement of the person mailing or delivering the written notice, and there shall be attached to the verified statement the signed receipt, appropriate affidavit of delivery by the person effecting such delivery, or other evidence satisfactory to the department or to a court of competent jurisdiction that notice was given properly to or refused by the addressee or agent of the addressee. The original of such proof shall be filed with the department with copies to the file or the account maintained by the predecessor or successor and to the court in any court-administered fiduciary administration.

4. Within 60 days after the date on which newspaper notice is published under subparagraph 3., after any date of a signed or refused receipt pertaining to the written notice by mail under subparagraph 3., after any date of delivery as set forth in the affidavit referenced in subparagraph 3., or after the date on which service is otherwise accomplished, the latest date being operative, but not thereafter, the persons or entities listed in subparagraph 3. or the court in a court-administered fiduciary proceeding on its own motion may object to such substitution of fiduciaries by serving written notice, executed by the persons, entities, or court, upon the predecessor, successor, and department. Such notice shall be served in the same manner as provided for service of the original notice upon interested persons or entities in subparagraph 3. Execution of such notice shall be in the same manner as is required for the execution and recordation of deeds to real property in this state except that notice by a court may be signed by the judge. If such notice of objection is executed by all of the cofiduciaries that serve with the predecessor, by each surviving grantor of a revocable trust, by all of the persons that have the power to remove the predecessor as fiduciary, by all of the principals for whom the predecessor serves as agent or custodian, by the guardian of the person for whom the predecessor serves as guardian of the property for their ward, by all of the beneficiaries currently receiving or entitled as a matter of right to receive a current mandatory or discretionary distribution, as opposed to a remainder distribution, of principal or income, or by the sole holder or a majority of the coholders of a general or limited power of appointment including one in the form of a power of amendment or revocation, the successor will not be substituted for the predecessor and the predecessor will remain or be reinstated as fiduciary but only as to the fiduciary relationship that is the subject of such objection. Reinstatement shall take effect immediately upon receipt of such notice by the predecessor, successor, and department. If the notice of objection is executed by less than all of the persons or entities of any category specified in this subparagraph, or if entered by the court of a court-administered fiduciary proceeding on its own motion, then, with regard to the fiduciary

relationship that is the subject of such notice of objection, the predecessor and successor may elect to do either of the following:

a. File a subsequent agreement with the department, with copies of such agreement to be mailed to all of the specified persons or entities, which states that the successor will not be substituted for the predecessor as to that fiduciary relationship, and such agreement shall cause the predecessor to remain or be reinstated, instantaneously, as fiduciary in that fiduciary relationship. The filing of such subsequent agreement with the department does not prejudice the predecessor or the successor from filing another agreement that affects such fiduciary relationship under subparagraph 2.; or

b. File a petition with the court having jurisdiction of any court-administered fiduciary proceeding or commence a civil action in a court of competent jurisdiction as to any other applicable fiduciary relationship. The court shall then determine whether such substitution is appropriate and whether it is in the best interest of those specifically interested in the premises. The court shall then enter judgment accordingly and specify the party to serve thereafter as the fiduciary. The predecessor, the successor, the department, and those for whom the fiduciary relationship is the subject of the civil action and upon whom service of written notice was required under subparagraph 3. shall be necessary parties in any civil action that concerns an objection to the substitution. Any such petition or separate civil action must be filed within 60 days after service of the notice of objection. Failure to do so will be deemed to be an agreement pursuant to sub-subparagraph a., and the alternative provided in sub-subparagraph a. will be deemed to have been selected automatically.

5. At any time while a civil action is pending pursuant to sub-subparagraph 4.b., the predecessor and successor may file a subsequent agreement with the department in the same manner set forth under alternative sub-subparagraph 4.a. and file a copy of the same along with a withdrawal of the petition or a voluntary dismissal with the court in which the petition was filed or the civil action is pending. Such filing will have the same force and effect as set forth under sub-subparagraph 4.a.; however, it shall be without prejudice to the right of the predecessor or successor to file another agreement that affects such fiduciary relationship under subparagraph 2.

6. Within 30 days after the date on which a fiduciary agreement is filed with the department under subparagraph 2., the department shall approve the agreement if it finds both that the successor is:

a. Legally authorized to exercise trust powers in this state; and

b. Has otherwise met the requirements for the establishment of a trust service office at the predecessor's principal place of business or branch.

7. Upon the effective date of an agreement filed under subparagraph 2. and regardless of any petition filed or any civil action pending pursuant to subparagraph 4., the successor will be deemed substituted for the predecessor as fiduciary without further authorization of any kind such that the successor shall succeed to and be substituted for the predecessor as to all

fiduciary powers, rights, privileges, duties, and liabilities of the predecessor in its capacity as fiduciary for all estate, trust, guardianship, agency, and custodial accounts and any other fiduciary relationship for which the predecessor is then, or but for such agreement would be, serving as fiduciary, except as may be otherwise specified in such agreement and in any subsequent agreement filed with the department under subparagraph 4. or subparagraph 5. The successor shall also be deemed the fiduciary in all writings, including, but not limited to, wills, trusts, deeds, policies of insurance, stock certificates, court orders, and similar documents and instruments which name or have named the predecessor as fiduciary and which were signed before or after the effective date of such agreement except as may be otherwise specified in such agreement and any subsequent agreement filed with the department under subparagraph 4. or subparagraph 5. This section does not absolve or discharge any predecessor exercising trust powers from liability arising out of any breach of its fiduciary duties or obligations which occurred before the effective date of such agreement.

8. As used herein:

a. Trust companies, banks, or associations are “affiliated” if they are connected through stock ownership with a common parent corporation that is a registered multibank or multiassociation holding company and such parent owns directly stock that possesses at least 80 percent of the total voting power of the stock of such trust company, bank, or association and has a value equal to at least 80 percent of the total value of the stock of such trust company, bank, or association.

b. The term “predecessor” refers to an affiliated trust company or affiliated bank’s or affiliated association’s trust department for the position of which in its trust relations the successor is substituted.

c. The term “successor” refers to an affiliated trust company or affiliated bank’s or affiliated association’s trust department which is substituted for a predecessor in the predecessor’s trust relationships including all powers, duties, and responsibilities associated therewith.

Section 547. Section 660.35, Florida Statutes, is amended to read:

660.35 Oaths, affidavits, and acknowledgments.—In any case in which a trust company or the trust department of a bank or association is required to make an oath, affirmation, affidavit, or acknowledgment in connection with any fiduciary capacity in which it is acting or is preparing to act, the chair ~~chairman~~ of the board of directors, the president, any vice president, any trust officer or assistant trust officer, the cashier or secretary, or any other officer expressly authorized by action of the board of directors of such trust company, association, or bank shall make, and shall subscribe if required, any such oath, affirmation, affidavit, or acknowledgment for and on behalf of such trust company, association, or bank.

Section 548. Subsection (8) of section 660.46, Florida Statutes, is amended to read:

660.46 Substitution of fiduciaries.—

(8) Within 30 days after the effective date of an order for substitution entered hereunder, the original fiduciary shall file a final account with the court and shall send a copy thereof to each interested person who does not file a waiver or consent, together with a notice of the filing of the final account. The trust company or trust department substituted for the original fiduciary by the court order for substitution shall be deemed to be an interested party for the purposes of this subsection. Objections to a final account may be filed by any interested party who has not filed a waiver or consent, and, to be considered by the court, any such objections must be filed with the court and served on the original fiduciary within 60 days after a copy of the final account and notice of the filing of the final account have been sent to such interested person. Objections shall be tried and determined by the court upon the application of the original fiduciary or any interested person who has not filed a waiver or consent. Upon expiration of the time for filing objections if no objections have been timely filed, or at such earlier time as waivers or consents have been filed by all interested persons, or, if objections have been timely filed by an interested person entitled to do so, then upon the hearing on any such objections, the court shall enter an appropriate order on such final account and on all unapproved annual or other accounts previously filed. If consents to a final account are filed with the court by all interested persons to whom a copy of the final account is required hereunder to be sent, the court shall enter an order approving such account and all unapproved annual or other accounts previously filed. Unless previously or otherwise barred by adjudication, waiver, consent, limitation, or the foregoing provisions of this subsection, an action for breach of trust or breach of fiduciary duties or responsibilities against an original fiduciary in whose place and stead another trust company or trust department has been substituted pursuant to the provisions of this section is barred for any beneficiary who has received a final, annual or periodic account or other statement fully disclosing the matter unless a proceeding to assert the claim is commenced within 6 months after receipt of the final, annual or periodic account or statement. In any event, and notwithstanding lack of full disclosure, all claims against such original fiduciary which has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his or her examination are barred as provided in chapter 95. A beneficiary has received a final account or statement if, when the beneficiary ~~he~~ is an adult, it is received by him or her or if, when the beneficiary ~~he~~ is a minor or a disabled person, it is received by his or her representative as described in s. 731.303.

Section 549. Paragraphs (a) and (d) of subsection (1) of section 665.033, Florida Statutes, are amended to read:

665.033 Conversion of state or federal mutual association to capital stock association.—

(1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.—Any state or federal mutual association may apply to the department for permission to convert itself into an association operated under the provisions of this chapter in accordance with the following procedures:

(a) The board of directors shall approve a plan of conversion by resolution adopted by a majority vote of all the directors. The plan shall include, among other terms:

1. Financial statements of the association as of the last day of the month preceding adoption of the plan.
2. Such financial data as may be required to determine compliance with applicable regulatory requirements respecting financial condition.
3. A provision that each savings account holder of the mutual association will receive a withdrawable account in the capital stock association equal in amount to his or her withdrawable account in the mutual association.
4. A provision that each member of record will be entitled to receive rights to purchase voting common stock.
5. Pro forma financial statements of the association as a capital stock association, which shall include data required to determine compliance with applicable regulatory requirements respecting financial condition.
6. With particularity, the business purpose to be accomplished by the conversion.
7. Such other information as the department may, by rule, require.

(d) If the department approves the plan of conversion, the question of such conversion may be submitted to the members at a meeting of voting members called to consider such action. A vote of 51 percent or more of the total number of votes eligible to be cast, unless federal law permits a lesser percentage of votes for a federal mutual association to convert, in which case that percentage shall control, shall be required for approval. Notice of the meeting, giving the time, place, and purpose thereof, together with a proxy statement and proxy form covering all matters to be brought before the meeting, shall be mailed at least 30 days prior thereto to the department for review and to each voting member at his or her last address as shown on the books of the association.

Section 550. Subsection (8) of section 665.0501, Florida Statutes, is amended to read:

665.0501 Powers of association generally.—Every association incorporated pursuant to or operating under the provisions of the financial institutions codes shall have all the powers enumerated, authorized, and permitted by this chapter and such other rights, privileges, and powers as may be incidental to or reasonably necessary or appropriate for the accomplishment of the objectives and purposes of the association. Among others, and except as otherwise limited by the provisions of the financial institutions codes, every association shall have the following powers:

(8) PAYROLL SAVINGS.—To contract with any employer with respect to the solicitation, collection, and receipt of savings by payroll deduction to be credited to a designated account or accounts of his or her or its employee

or employees who voluntarily may participate or with respect to the direct deposit of wages or salary paid by such employer to the account of the employee in a financial depository institution by electronic or other medium upon authorization in writing by the employee and his or her designation of the association or other financial depository institution as the recipient of such deposits.

Section 551. Paragraph (b) of subsection (5) of section 671.102, Florida Statutes, is amended to read:

671.102 Purposes; rules of construction; variation by agreement.—

(5) In this code unless the context otherwise requires:

(b) Gender-specific language includes the other gender and neuter ~~Words of the masculine gender include the feminine and the neuter,~~ and when the sense so indicates words of the neuter gender may refer to any gender.

Section 552. Subsections (9), (23), (25), (26), (27), and (44) of section 671.201, Florida Statutes, are amended to read:

671.201 General definitions.—Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(9) “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(23) A person is “insolvent” who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Law.

(25) A person has “notice” of a fact when

(a) He or she has actual knowledge of it; or

(b) He or she has received a notice or notification of it; or

(c) From all the facts and circumstances known to the person ~~him~~ at the time in question he or she has reason to know that it exists.

A person “knows” or has “knowledge” of a fact when he or she has actual knowledge of it. “Discover” or “learn” or a word or phrase of similar import

refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person “notifies” or “gives” a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person “receives” a notice or notification when

(a) It comes to his or her attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by the person ~~him~~ as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless the individual ~~he~~ has reason to know of the transaction and that the transaction would be materially affected by the information.

(44) “Value.” Except as otherwise provided with respect to negotiable instruments and bank collections (ss. 673.3031, 674.2101, and 674.2111), a person gives value for rights if he or she acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(b) As security for or in total or partial satisfaction of a preexisting claim;

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

Section 553. Subsection (6) of section 671.205, Florida Statutes, is amended to read:

671.205 Course of dealing and usage of trade.—

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he or she has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

Section 554. Subsection (1) of section 671.206, Florida Statutes, is amended to read:

671.206 Statute of frauds for kinds of personal property not otherwise covered.—

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by her or his authorized agent.

Section 555. Section 671.208, Florida Statutes, is amended to read:

671.208 Option to accelerate at will.—A term providing that one party or the party's ~~his~~ successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when she or he deems herself or himself insecure” or in words of similar import shall be construed to mean that she or he shall have power to do so only if she or he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

Section 556. Subsection (1) of section 672.104, Florida Statutes, is amended to read:

672.104 Definitions: “merchant”; “between merchants”; “financing agency.”—

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his occupation holds himself or herself out as having such knowledge or skill.

Section 557. Subsection (1) and paragraph (b) of subsection (3) of section 672.201, Florida Statutes, are amended to read:

672.201 Formal requirements; statute of frauds.—

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(b) If the party against whom enforcement is sought admits in his or her pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

Section 558. Subsections (1), (2), (4), and (5) of section 672.210, Florida Statutes, are amended to read:

672.210 Delegation of performance; assignment of rights.—

(1) A party may perform her or his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having her or his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on her or him by her or his contract, or impair materially her or his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of her or his entire obligation can be assigned despite agreement otherwise.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by her or him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to her or his rights against the assignor demand assurances from the assignee (s. 672.609).

Section 559. Subsection (1) of section 672.304, Florida Statutes, is amended to read:

672.304 Price payable in money, goods, realty, or otherwise.—

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he or she is to transfer.

Section 560. Subsections (2) and (3) of section 672.305, Florida Statutes, are amended to read:

672.305 Open price term.—

(2) A price to be fixed by the seller or by the buyer means a price for her or him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at her or his option treat the contract as canceled or herself or himself fix a reasonable price.

Section 561. Subsection (1) of section 672.308, Florida Statutes, is amended to read:

672.308 Absence of specified place for delivery.—Unless otherwise agreed:

(1) The place for delivery of goods is the seller's place of business or if the seller ~~he~~ has none his or her residence; but

Section 562. Subsection (2) of section 672.310, Florida Statutes, is amended to read:

672.310 Open time for payment or running of credit; authority to ship under reservation.—Unless otherwise agreed:

(2) If the seller is authorized to send the goods she or he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (s. 672.513); and

Section 563. Subsection (3) of section 672.311, Florida Statutes, is amended to read:

672.311 Options and cooperation respecting performance.—

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) Is excused for any resulting delay in his or her own performance; and

(b) May also either proceed to perform in any reasonable manner or after the time for a material part of his or her own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

Section 564. Subsection (2) of section 672.312, Florida Statutes, is amended to read:

672.312 Warranty of title and against infringement; buyer's obligation against infringement.—

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in herself or himself or that the seller ~~he~~ is purporting to sell only such right or title as she or he or a third person may have.

Section 565. Subsection (2) of section 672.313, Florida Statutes, is amended to read:

672.313 Express warranties by affirmation, promise, description, sample.—

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that the seller ~~he~~ have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

Section 566. Paragraph (b) of subsection (3) of section 672.316, Florida Statutes, is amended to read:

672.316 Exclusion or modification of warranties.—

(3) Notwithstanding subsection (2):

(b) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he or she desired or has refused to examine the goods, there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him or her; and

Section 567. Section 672.318, Florida Statutes, is amended to read:

672.318 Third-party beneficiaries of warranties express or implied.—A seller’s warranty whether express or implied extends to any natural person who is in the family or household of his or her buyer, who is a guest in his or her home or who is an employee, servant or agent of his or her buyer if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude nor limit the operation of this section.

Section 568. Paragraphs (b) and (c) of subsection (1), paragraph (a) of subsection (2), and subsection (3) of section 672.319, Florida Statutes, are amended to read:

672.319 “F.O.B.” and “F.A.S.” terms.—

(1) Unless otherwise agreed the term “F.O.B.” (which means “free on board”) at a named place, even though used only in connection with the stated price, is a delivery term under which:

(b) When the term is “F.O.B. the place of destination,” the seller must at her or his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (s. 672.503);

(c) When under either (a) or (b) the term is also “F.O.B. vessel, car or other vehicle,” the seller must in addition at her or his own expense and risk load the goods on board. If the term is “F.O.B. vessel” the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (s. 672.323).

(2) Unless otherwise agreed the term “F.A.S. vessel” (which means “free alongside”) at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) At her or his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is “F.A.S.” or “F.O.B. the loading berth of the vessel” and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (s. 672.311). The seller He may also at her or his option move the goods in any reasonable manner preparatory to delivery or shipment.

Section 569. Subsection (2) of section 672.320, Florida Statutes, is amended to read:

672.320 “C.I.F.” and “C. & F.” terms.—

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his or her own expense and risk to:

(a) Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) Obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) Forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

Section 570. Subsection (1) of section 672.324, Florida Statutes, is amended to read:

672.324 “No arrival, no sale” term.—Under a term “no arrival, no sale” or terms of like meaning, unless otherwise agreed:

(1) The seller must properly ship conforming goods and if they arrive by any means the seller he must tender them on arrival but she or he assumes

no obligation that the goods will arrive unless she or he has caused the nonarrival; and

Section 571. Subsection (2) of section 672.325, Florida Statutes, is amended to read:

672.325 “Letter of credit” term; “confirmed credit.”—

(2) The delivery to seller of a proper letter of credit suspends the buyer’s obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him or her.

Section 572. Subsection (3) of section 672.326, Florida Statutes, is amended to read:

672.326 Sale on approval and sale or return; consignment sales and rights of creditors.—

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which she or he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as “on consignment” or “on memorandum.” However, this subsection is not applicable if the person making delivery:

(a) Complies with an applicable law providing for a consignor’s interest or the like to be evidenced by a sign, or

(b) Establishes that the person conducting the business is generally known by her or his creditors to be substantially engaged in selling the goods of others, or

(c) Complies with the filing provisions of the chapter on secured transactions (chapter 679).

Section 573. Subsections (2), (3), and (4) of section 672.328, Florida Statutes, are amended to read:

672.328 Sale by auction.—

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his or her discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he or she announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article

or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his or her bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his or her option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

Section 574. Subsection (2) and paragraph (a) of subsection (3) of section 672.401, Florida Statutes, are amended to read:

672.401 Passing of title; reservation for security; limited application of this section.—Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes her or his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller ~~him~~ to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) If the seller is to deliver a document of title, title passes at the time when and the place where the seller ~~he~~ delivers such documents; or

Section 575. Subsection (2) of section 672.402, Florida Statutes, is amended to read:

672.402 Rights of seller's creditors against sold goods.—

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him or her a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

Section 576. Subsections (1) and (2) of section 672.403, Florida Statutes, are amended to read:

672.403 Power to transfer; good faith purchase of goods; “entrusting.”—

(1) A purchaser of goods acquires all title which her or his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

- (a) The transferor was deceived as to the identity of the purchaser, or
- (b) The delivery was in exchange for a check which is later dishonored, or
- (c) It was agreed that the transaction was to be a “cash sale,” or
- (d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant ~~him~~ power to transfer all rights of the entruster to a buyer in ordinary course of business.

Section 577. Subsections (1) and (2) of section 672.501, Florida Statutes, are amended to read:

672.501 Insurable interest in goods; manner of identification of goods.—

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and the buyer ~~he~~ has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

- (a) When the contract is made if it is for the sale of goods already existing and identified;
- (b) If the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;
- (c) When the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him or her and where the identification is by the seller alone he or she may until default or insolvency

or notification to the buyer that the identification is final substitute other goods for those identified.

Section 578. Section 672.502, Florida Statutes, is amended to read:

672.502 Buyer's right to goods on seller's insolvency.—

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which she or he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating her or his special property has been made by the buyer she or he acquires the right to recover the goods only if they conform to the contract for sale.

Section 579. Subsections (1) and (3) and paragraph (a) of subsection (5) of section 672.503, Florida Statutes, are amended to read:

672.503 Manner of seller's tender of delivery.—

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him or her to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(3) Where the seller is required to deliver at a particular destination tender requires that he or she comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(5) Where the contract requires the seller to deliver documents:

(a) He or she must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (s. 672.323(2)); and

Section 580. Section 672.504, Florida Statutes, is amended to read:

672.504 Shipment by seller.—Where the seller is required or authorized to send the goods to the buyer and the contract does not require her or him to deliver them at a particular destination, then unless otherwise agreed the seller ~~he~~ must:

(1) Put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(2) Obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(3) Promptly notify the buyer of the shipment.

Failure to notify the buyer under subsection (3) or to make a proper contract under subsection (1) is a ground for rejection only if material delay or loss ensues.

Section 581. Subsection (1) of section 672.505, Florida Statutes, is amended to read:

672.505 Seller's shipment under reservation.—

(1) Where the seller has identified goods to the contract by or before shipment:

(a) The seller's ~~His~~ procurement of a negotiable bill of lading to his or her own order or otherwise reserves in the seller ~~him~~ a security interest in the goods. ~~His or her~~ procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or herself or his or her nominee reserves possession of the goods as security but except in a case of conditional delivery (s. 672.507(2)) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

Section 582. Section 672.507, Florida Statutes, is amended to read:

672.507 Effect of seller's tender; delivery on condition.—

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to the buyer's ~~his~~ duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, the buyer's ~~his~~ right as against the seller to retain or dispose of them is conditional upon her or his making the payment due.

Section 583. Section 672.508, Florida Statutes, is amended to read:

672.508 Cure by seller of improper tender or delivery; replacement.—

(1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may

seasonably notify the buyer of his or her intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he or she seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Section 584. Subsection (1), paragraphs (a) and (c) of subsection (2), and subsection (3) of section 672.509, Florida Statutes, are amended to read:

672.509 Risk of loss in the absence of breach.—

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) If it does not require her or him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (s. 672.505); but

(b) If it does require her or him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) On her or his receipt of a negotiable document of title covering the goods; or

(c) After her or his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in s. 672.503(4)(b).

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on her or his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

Section 585. Subsections (2) and (3) of section 672.510, Florida Statutes, are amended to read:

672.510 Effect of breach on risk of loss.—

(2) Where the buyer rightfully revokes acceptance he or she may to the extent of any deficiency in his or her effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him or her, the seller may to the extent of any deficiency in his or her effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

Section 586. Subsection (2) of section 672.512, Florida Statutes, is amended to read:

672.512 Payment by buyer before inspection.—

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of her or his remedies.

Section 587. Paragraph (b) of subsection (2) of section 672.602, Florida Statutes, is amended to read:

672.602 Manner and effect of rightful rejection.—

(2) Subject to the provisions of the two following sections on rejected goods (ss. 672.603 and 672.604):

(b) If the buyer has before rejection taken physical possession of goods in which he or she does not have a security interest under the provisions of this chapter (s. 672.711(3)), the buyer ~~he~~ is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

Section 588. Subsections (1) and (2) of section 672.603, Florida Statutes, are amended to read:

672.603 Merchant buyer's duties as to rightfully rejected goods.—

(1) Subject to any security interest in the buyer (s. 672.711(3)) when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in her or his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), she or he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10 percent on the gross proceeds.

Section 589. Section 672.604, Florida Statutes, is amended to read:

672.604 Buyer's options as to salvage of rightfully rejected goods.—Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or her or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Section 590. Subsection (1) of section 672.605, Florida Statutes, is amended to read:

672.605 Waiver of buyer's objections by failure to particularize.—

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes the buyer ~~him~~ from relying on the unstated defect to justify rejection or to establish breach:

(a) Where the seller could have cured it if stated seasonably; or

(b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

Section 591. Paragraphs (a) and (c) of subsection (1) of section 672.606, Florida Statutes, are amended to read:

672.606 What constitutes acceptance of goods.—

(1) Acceptance of goods occurs when the buyer:

(a) After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer ~~he~~ will take or retain them in spite of their nonconformity; or

(c) Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by her ~~or him~~.

Section 592. Subsections (3) and (5) of section 672.607, Florida Statutes, are amended to read:

672.607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.—

(3) Where a tender has been accepted:

(a) The buyer must within a reasonable time after he or she discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) If the claim is one for infringement or the like (s. 672.312(3)) and the buyer is sued as a result of such a breach he or she must so notify the seller within a reasonable time after he or she receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his or her seller is answerable over:

(a) The buyer ~~He~~ may give his or her seller written notice of the litigation. If the notice states that the seller may come in and defend and that if

the seller does not do so he or she will be bound in any action against him or her by his or her buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he or she is so bound.

(b) If the claim is one for infringement or the like (s. 672.312(3)) the original seller may demand in writing that his or her buyer turn over to him or her control of the litigation including settlement or else be barred from any remedy over and if he or she also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

Section 593. Subsections (1) and (3) of section 672.608, Florida Statutes, are amended to read:

672.608 Revocation of acceptance in whole or in part.—

(1) The buyer may revoke her or his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to her or him if she or he has accepted it:

(a) On the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of such nonconformity if her or his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if she or he had rejected them.

Section 594. Subsection (1) of section 672.609, Florida Statutes, is amended to read:

672.609 Right to adequate assurance of performance.—

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he or she receives such assurance may if commercially reasonable suspend any performance for which he or she has not already received the agreed return.

Section 595. Subsections (2) and (3) of section 672.610, Florida Statutes, are amended to read:

672.610 Anticipatory repudiation.—When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(2) Resort to any remedy for breach (s. 672.703 or s. 672.711), even though the aggrieved party he has notified the repudiating party that she or he would await the latter's performance and has urged retraction; and

(3) In either case suspend her or his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (s. 672.704).

Section 596. Subsection (1) of section 672.611, Florida Statutes, is amended to read:

672.611 Retraction of anticipatory repudiation.—

(1) Until the repudiating party's next performance is due he or she can retract his or her repudiation unless the aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he or she considers the repudiation final.

Section 597. Subsection (3) of section 672.612, Florida Statutes, is amended to read:

672.612 "Installment contract"; breach.—

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if she or he accepts a nonconforming installment without seasonably notifying of cancellation or if she or he brings an action with respect only to past installments or demands performance as to future installments.

Section 598. Subsection (2) of section 672.613, Florida Statutes, is amended to read:

672.613 Casualty to identified goods.—Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (s. 672.324) then:

(2) If the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his or her option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

Section 599. Subsections (1) and (2) of section 672.615, Florida Statutes, are amended to read:

672.615 Excuse by failure of presupposed conditions.—Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(1) Delay in delivery or nondelivery in whole or in part by a seller who complies with subsections (2) and (3) is not a breach of her or his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith

with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(2) Where the causes mentioned in subsection (1) affect only a part of the seller's capacity to perform, the seller ~~he~~ must allocate production and deliveries among her or his customers but may at her or his option include regular customers not then under contract as well as the seller's ~~his~~ own requirements for further manufacture. The seller ~~He~~ may so allocate in any manner which is fair and reasonable.

Section 600. Subsection (1) of section 672.616, Florida Statutes, is amended to read:

672.616 Procedure on notice claiming excuse.—

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section ~~he or she~~ may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (s. 672.612), then also as to the whole:

(a) Terminate and thereby discharge any unexecuted portion of the contract; or

(b) Modify the contract by agreeing to take his or her available quota in substitution.

Section 601. Subsections (1) and (2) of section 672.702, Florida Statutes, are amended to read:

672.702 Seller's remedies on discovery of buyer's insolvency.—

(1) Where the seller discovers the buyer to be insolvent the seller ~~he~~ may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (s. 672.705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent the seller ~~he~~ may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

Section 602. Paragraph (a) of subsection (1) of section 672.704, Florida Statutes, is amended to read:

672.704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.—

(1) An aggrieved seller under the preceding section may:

(a) Identify to the contract conforming goods not already identified if at the time the seller ~~he~~ learned of the breach they are in her or his possession or control;

Section 603. Subsection (1) of section 672.705, Florida Statutes, is amended to read:

672.705 Seller's stoppage of delivery in transit or otherwise.—

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he or she discovers the buyer to be insolvent (s. 672.702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

Section 604. Subsections (3) and (6) of section 672.706, Florida Statutes, are amended to read:

672.706 Seller's resale including contract for resale.—

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of her or his intention to resell.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (s. 672.707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of her or his security interest, as hereinafter defined (s. 672.711(3)).

Section 605. Subsection (1) of section 672.707, Florida Statutes, is amended to read:

672.707 "Person in the position of a seller."—

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his or her principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

Section 606. Subsection (2) of section 672.709, Florida Statutes, is amended to read:

672.709 Action for the price.—

(2) Where the seller sues for the price she or he must hold for the buyer any goods which have been identified to the contract and are still in her or his control except that if resale becomes possible the seller ~~he~~ may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles her or him to any goods not resold.

Section 607. Subsections (1) and (3) of section 672.711, Florida Statutes, are amended to read:

672.711 Buyer's remedies in general; buyer's security interest in rejected goods.—

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (s. 672.612), the buyer may cancel and whether or not he or she has done so may in addition to recovering so much of the price as has been paid:

(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) Recover damages for nondelivery as provided in this chapter (s. 672.713).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his or her possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (s. 672.706).

Section 608. Subsection (3) of section 672.712, Florida Statutes, is amended to read:

672.712 "Cover"; buyer's procurement of substitute goods.—

(3) Failure of the buyer to effect cover within this section does not bar her or him from any other remedy.

Section 609. Subsection (1) of section 672.714, Florida Statutes, is amended to read:

672.714 Buyer's damages for breach in regard to accepted goods.—

(1) Where the buyer has accepted goods and given notification (s. 672.607(3)) he or she may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

Section 610. Subsection (3) of section 672.716, Florida Statutes, is amended to read:

672.716 Buyer's right to specific performance or replevin.—

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort she or he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

Section 611. Section 672.717, Florida Statutes, is amended to read:

672.717 Deduction of damages from the price.—The buyer on notifying the seller of her or his intention to do so may deduct all or any part of the

damages resulting from any breach of the contract from any part of the price still due under the same contract.

Section 612. Subsections (2) and (4) of section 672.718, Florida Statutes, are amended to read:

672.718 Liquidation or limitation of damages; deposits.—

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) In the absence of such terms, 20 percent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his or her resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (s. 672.706).

Section 613. Subsection (2) of section 672.722, Florida Statutes, is amended to read:

672.722 Who can sue third parties for injury to goods.—Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, her or his suit or settlement is, subject to her or his own interest, as a fiduciary for the other party to the contact;

Section 614. Subsection (3) of section 672.723, Florida Statutes, is amended to read:

672.723 Proof of market price; time and place.—

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he or she has given the other party such notice as the court finds sufficient to prevent unfair surprise.

Section 615. Subsections (1) and (2) of section 675.106, Florida Statutes, are amended to read:

675.106 Time and effect of establishment of credit.—

(1) Unless otherwise agreed a credit is established:

(a) As regards the customer as soon as a letter of credit is sent to him or her or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) As regards the beneficiary when he or she receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his or her consent.

Section 616. Paragraph (a) of subsection (2) of section 675.108, Florida Statutes, is amended to read:

675.108 “Notation credit”; exhaustion of credit.—

(2) Under a notation credit:

(a) A person paying the beneficiary or purchasing a draft or demand for payment from him or her acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

Section 617. Subsection (2) of section 675.112, Florida Statutes, is amended to read:

675.112 Time allowed for honor or rejection; withholding honor or rejection by consent; “presenter.”—

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending the presenter ~~him~~ an advice to that effect.

Section 618. Paragraph (b) of subsection (2) of section 675.113, Florida Statutes, is amended to read:

675.113 Indemnities.—

(2) An indemnity agreement inducing honor, negotiation or reimbursement:

(b) Unless a longer time is explicitly agreed expires at the end of 10 business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he or she received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

Section 619. Subsection (2) of section 675.115, Florida Statutes, is amended to read:

675.115 Remedy for improper dishonor or anticipatory repudiation.—

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under s. 672.610 if the beneficiary ~~he~~ learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

Section 620. Subsections (2) and (3) of section 675.116, Florida Statutes, are amended to read:

675.116 Transfer and assignment.—

(2) Even though the credit specifically states that it is nontransferable or nonassignable, the beneficiary may before performance of the conditions of the credit assign his or her right to proceeds. Such an assignment is an assignment of an account under chapter 679 on secured transactions and is governed by that chapter except that:

(a) The assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under chapter 679; and

(b) The issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) After what reasonably appears to be such a notification has been received, the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his or her right to draw or his or her right to proceeds, nothing in this section limits the beneficiary's ~~his~~ right to transfer or negotiate drafts or demands drawn under the credit.

Section 621. Paragraph (g) of subsection (1) of section 677.102, Florida Statutes, is amended to read:

677.102 Definitions and index of definitions.—

(1) In this chapter, unless the context otherwise requires:

(g) “Issuer” means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his or her instructions.

Section 622. Paragraphs (d), (g), and (i) of subsection (2) and subsection (3) of section 677.202, Florida Statutes, are amended to read:

677.202 Form of warehouse receipt; essential terms; optional terms.—

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his or her order;

(g) The signature of the warehouseman, which may be made by his or her authorized agent;

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (s. 677.209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his or her agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his or her receipt any other terms which are not contrary to the provisions of this code and do not impair his or her obligation of delivery (s. 677.403) or his or her duty of care (s. 677.204). Any contrary provisions shall be ineffective.

Section 623. Subsections (1) and (2) of section 677.204, Florida Statutes, are amended to read:

677.204 Duty of care; contractual limitation of warehouseman's liability.—

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his or her failure to exercise such care in regard to them as a reasonably careful ~~person~~ man would exercise under like circumstances but unless otherwise agreed he or she is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his or her own use.

Section 624. Subsections (2), (3), and (5) of section 677.206, Florida Statutes, are amended to read:

677.206 Termination of storage at warehouseman's option.—

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his or her lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he or she may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(5) The warehouseman may satisfy his or her lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he or she would have been bound to deliver the goods.

Section 625. Subsections (1), (3), and (4) of section 677.209, Florida Statutes, are amended to read:

677.209 Lien of warehouseman.—

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his or her possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him or her for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him or her to a good faith purchaser for value would have been

valid but is not effective against a person as to whom the document confers no right in the goods covered by it under s. 677.503.

(4) A warehouseman loses his or her lien on any goods which he or she voluntarily delivers or which he or she unjustifiably refuses to deliver.

Section 626. Subsections (1), (2), (6), (7), and (8) of section 677.210, Florida Statutes, are amended to read:

677.210 Enforcement of warehouseman's lien.—

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he or she sells at the price current in such market at the time of his or her sale, or if he or she has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he or she has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his or her business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the

person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than 6 conspicuous places in the neighborhood of the proposed sale.

(6) The warehouseman may satisfy his or her lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he or she would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his or her debtor.

(8) Where a lien is on goods stored by a merchant in the course of his or her business the lien may be enforced in accordance with either subsection (1) or subsection (2).

Section 627. Subsection (5) of section 677.301, Florida Statutes, is amended to read:

677.301 Liability for nonreceipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.—

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him or her; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his or her responsibility and liability under the contract of carriage to any person other than the shipper.

Section 628. Subsection (2) of section 677.302, Florida Statutes, is amended to read:

677.302 Through bills of lading and similar documents.—

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he or she is subject with respect to his or her own performance while the goods are in his or her possession to the obligation of the issuer. His or her obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

Section 629. Paragraph (d) of subsection (1) of section 677.303, Florida Statutes, is amended to read:

677.303 Diversion; reconsignment; change of instructions.—

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(d) The consignee on a nonnegotiable bill if he or she is entitled as against the consignor to dispose of them.

Section 630. Subsection (3) of section 677.304, Florida Statutes, is amended to read:

677.304 Bills of lading in a set.—

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his or her part.

Section 631. Subsection (3) of section 677.307, Florida Statutes, is amended to read:

677.307 Lien of carrier.—

(3) A carrier loses his or her lien on any goods which the carrier ~~he~~ voluntarily delivers or which he or she unjustifiably refuses to deliver.

Section 632. Subsections (1), (5), and (6) of section 677.308, Florida Statutes, are amended to read:

677.308 Enforcement of carrier's lien.—

(1) A carrier's lien may be enforced by public or private sale of the goods, in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he or she sells at the price current in such market at the time of his or her sale or if the carrier ~~he~~ has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he or she has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(5) The carrier may satisfy his or her lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom the carrier ~~he~~ would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his or her debtor.

Section 633. Subsections (1) and (2) of section 677.309, Florida Statutes, are amended to read:

677.309 Duty of care; contractual limitation of carrier's liability.—

(1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful person ~~man~~ would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he or she is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

Section 634. Subsection (2) of section 677.401, Florida Statutes, is amended to read:

677.401 Irregularities in issue of receipt or bill or conduct of issuer.—The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

(2) The issuer may have violated laws regulating the conduct of his or her business; or

Section 635. Section 677.402, Florida Statutes, is amended to read:

677.402 Duplicate receipt or bill; overissue.—Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his or her overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

Section 636. Paragraph (d) of subsection (1) and subsection (3) of section 677.403, Florida Statutes, are amended to read:

677.403 Obligation of warehouseman or carrier to deliver; excuse.—

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(d) The exercise by a seller of his or her right to stop delivery pursuant to the provisions of the chapter on sales (s. 672.705);

(3) Unless the person claiming is one against whom the document confers no right under s. 677.503(1), he or she must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering

the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

Section 637. Section 677.404, Florida Statutes, is amended to read:

677.404 No liability for good faith delivery pursuant to receipt or bill.— A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he or she received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he or she delivered the goods had no authority to receive them.

Section 638. Subsection (1) and paragraph (b) of subsection (2) of section 677.501, Florida Statutes, are amended to read:

677.501 Form of negotiation and requirements of “Due negotiation.”—

(1) A negotiable document of title running to the order of a named person is negotiated by the named person's ~~his~~ indorsement and delivery. After his or her indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2)

(b) When a document running to the order of a named person is delivered to him or her the effect is the same as if the document had been negotiated.

Section 639. Paragraph (d) of subsection (1) of section 677.502, Florida Statutes, is amended to read:

677.502 Rights acquired by due negotiation.—

(1) Subject to the following section and to the provisions of s. 677.205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him or her except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

Section 640. Subsection (1) of section 677.503, Florida Statutes, is amended to read:

677.503 Document of title to goods defeated in certain cases.—

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) Delivered or entrusted them or any document of title covering them to the bailor or ~~the bailor's his~~ nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (s. 677.403) or with power of disposition under this code (ss. 672.403 and 679.307) or other statute or rule of law; nor

(b) Acquiesced in the procurement by the bailor or ~~the bailor's his~~ nominee of any document of title.

Section 641. Subsection (1) and paragraph (b) of subsection (2) of section 677.504, Florida Statutes, are amended to read:

677.504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.—

(1) A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his or her transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(b) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his or her rights; or

Section 642. Section 677.506, Florida Statutes, is amended to read:

677.506 Delivery without indorsement; right to compel indorsement.—The transferee of a negotiable document of title has a specifically enforceable right to have his or her transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Section 643. Section 677.507, Florida Statutes, is amended to read:

677.507 Warranties on negotiation or transfer of receipt or bill.—Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed the person he warrants to his or her immediate purchaser only in addition to any warranty made in selling the goods:

(1) That the document is genuine; and

(2) That he or she has no knowledge of any fact which would impair its validity or worth; and

(3) That his or her negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

Section 644. Section 677.602, Florida Statutes, is amended to read:

677.602 Attachment of goods covered by a negotiable document.—Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or her or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Section 645. Section 677.603, Florida Statutes, is amended to read:

677.603 Conflicting claims; interpleader.—If more than one person claims title or possession of the goods, the bailee is excused from delivery until he or she has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

Section 646. Subsection (2) of section 678.103, Florida Statutes, is amended to read:

678.103 Issuer's lien.—A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(2) The security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if her or his interest is transferred to her or him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

Section 647. Subsection (1) of section 678.104, Florida Statutes, is amended to read:

678.104 Effect of overissue; "overissue."—

(1) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but if:

(a) An identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for her or him and either to deliver a certificated security or to register the transfer of an uncertificated security to her or him, against surrender of any certificated security she or he holds; or

(b) A security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price she or he or the last purchaser for value paid for it with interest from the date of her or his demand.

Section 648. Paragraph (e) of subsection (3) of section 678.105, Florida Statutes, is amended to read:

678.105 Certificated securities negotiable; statements and instructions not negotiable; presumptions.—

(3) In any action on a security:

(e) After it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or she or some person under whom the plaintiff he claims is a person against whom the defense or defect is ineffective (s. 678.202).

Section 649. Subsection (1) of section 678.107, Florida Statutes, is amended to read:

678.107 Securities transferable; action for price.—

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to him or her or in blank, or he or she may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

Section 650. Section 678.108, Florida Statutes, is amended to read:

678.108 Registration of pledge and release of uncertificated securities.— A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him or her. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this chapter are terminated by the registration of release.

Section 651. Paragraphs (a), (b), and (c) of subsection (1) and subsection (2) of section 678.201, Florida Statutes, are amended to read:

678.201 “Issuer.”—

(1) With respect to obligations on or defenses to a security, “issuer” includes a person who:

(a) Places or authorizes the placing of her or his name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in the person's ~~his~~ property or in an enterprise, or to evidence her or his duty to perform an obligation represented by the certificated security;

(b) Creates shares, participations, or other interests in her or his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(c) Directly or indirectly creates fractional interests in her or his rights or property, which fractional interests are represented by certificated securities; or

(2) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of her or his guaranty, whether or not her or his obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to s. 678.408.

Section 652. Paragraph (b) of subsection (1) and subsection (2) of section 678.202, Florida Statutes, are amended to read:

678.202 Issuer's responsibility and defenses; notice of defect or defense.—

(1) Even against a purchaser for value and without notice, the terms of a security include:

(b) If the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or if the purchaser's ~~his~~ interest is transferred to him or her other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if he or she is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

Section 653. Subsection (1) of section 678.203, Florida Statutes, is amended to read:

678.203 Staleness as notice of defects or defenses.—

(1) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

(a) The act or event is one requiring the payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities, or any of these on presentation or surrender of the certificated security,

the funds or securities are available on the date set for payment or exchange, and the purchaser ~~he~~ takes the security more than 1 year after that date; and

(b) The act or event is not covered by paragraph (a) and the purchaser ~~he~~ takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

Section 654. Subsection (2) of section 678.204, Florida Statutes, is amended to read:

678.204 Effect of issuer's restrictions on transfer.—A restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective against any person without actual knowledge of it unless:

(2) The security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if the person's ~~his~~ interest is transferred to her or ~~him~~ other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

Section 655. Paragraph (b) of subsection (3) of section 678.206, Florida Statutes, is amended to read:

678.206 Completion or alteration of certificated security or initial transaction statement.—

(3) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:

(b) Even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if she or ~~he~~ purchased the security referred to therein for value and without notice of the incorrectness.

Section 656. Section 678.208, Florida Statutes, is amended to read:

678.208 Effect of signature of authenticating trustee, registrar, or transfer agent.—

(1) A person placing her or ~~his~~ signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect, that:

(a) The certificated security or initial transaction statement is genuine;

(b) The person's ~~His~~ own participation in the issue or registration of the transfer, pledge, or release of the security is within her or ~~his~~ capacity and within the scope of the authority received by her or ~~him~~ from the issuer; and

(c) The person ~~He~~ has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing her or his signature does not assume responsibility for the validity of the security in other respects.

Section 657. Subsection (1) of section 678.301, Florida Statutes, is amended to read:

678.301 Rights acquired by purchaser.—

(1) Upon transfer of a security to a purchaser (s. 678.313), the purchaser acquires the rights in the security which his or her transferor had or had actual authority to convey unless the purchaser's rights are limited by s. 678.302(4).

Section 658. Paragraph (a) of subsection (1) and subsections (3) and (4) of section 678.302, Florida Statutes, are amended to read:

678.302 “Bona fide purchaser”; “adverse claim”; title acquired by bona fide purchaser.—

(1) A “bona fide purchaser” is a purchaser for value in good faith and without notice of any adverse claim:

(a) Who takes delivery of a certificated security in bearer form or in registered form, issued or indorsed to her or him or in blank;

(3) A bona fide purchaser in addition to acquiring the rights of a purchaser (s. 678.301) also acquires her or his interest in the security free of any adverse claim.

(4) Notwithstanding s. 678.301(1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve her or his position by taking from a bona fide purchaser.

Section 659. Section 678.303, Florida Statutes, is amended to read:

678.303 “Broker.”—“Broker” means a person engaged for all or part of her or his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to, a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.

Section 660. Subsection (2) of section 678.304, Florida Statutes, is amended to read:

678.304 Notice to purchaser of adverse claims.—

(2) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under s. 678.403(4) at the time of registration

and which are noted in the initial transaction statement sent to the purchaser or, if her or his interest is transferred to her or him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

Section 661. Subsection (1), paragraphs (a) and (c) of subsection (2), subsections (3), (5), and (6), paragraph (a) of subsection (7), subsection (8), paragraph (a) of subsection (9), and subsection (10) of section 678.306, Florida Statutes, are amended to read:

678.306 Warranties on presentment and transfer of certificated securities; warranties of originators of instructions.—

(1) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he or she is entitled to the registration, payment, or exchange. But, a purchaser for value and without notice of adverse claims who receives a new, reissued, or reregistered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him or her warrants only that he or she has no knowledge of any unauthorized signature (s. 678.311) in a necessary indorsement.

(2) A person by transferring a certificated security to a purchaser for value warrants only that:

(a) His or her transfer is effective and rightful;

(c) He or she knows of no fact which might impair the validity of the security.

(3) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his or her own good faith and authority, even though he or she has purchased or made advances against the claim to be collected against the delivery.

(5) A person who originates an instruction warrants to the issuer that:

(a) He or she is an appropriate person to originate the instruction; and

(b) At the time the instruction is presented to the issuer he or she will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing his or her signature (s. 678.312(3)) that:

(a) He or she is an appropriate person to originate the instruction; and

(b) At the time the instruction is presented to the issuer:

1. He or she will be entitled to the registration of transfer, pledge, or release; and

2. The transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (s. 678.312(6)) that:

(a) He or she is an appropriate person to originate the instruction;

(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he or she is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraph (7)(b) and subparagraphs (7)(c)2. and 3.

(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(a) His or her transfer is effective and rightful; and

(10) A broker gives to his or her customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his or her customer.

Section 662. Section 678.307, Florida Statutes, is amended to read:

678.307 Effect of delivery without indorsement; right to compel indorsement.—If a certificated security in registered form has been delivered to a purchaser without a necessary indorsement he or she may become a bona fide purchaser only as of the time the indorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

Section 663. Subsection (1), paragraphs (a), (c), and (f) of subsection (8), and subsections (9), (10), and (11) of section 678.308, Florida Statutes, are amended to read:

678.308 Indorsements; instructions.—

(1) An indorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or her or his signature is written without more upon the back of the security.

(8) In addition to the persons designated in subsections (6) and (7), “an appropriate person” in subsections (1) and (5) includes:

(a) If the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or her or his successor;

(c) If the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, her or his executor, administrator, guardian, or like fiduciary;

(f) To the extent that the person designated or any of the foregoing persons may act through an agent, her or his authorized agent.

(9) Unless otherwise agreed, the indorser of a certificated security by her or his indorsement or the originator of an instruction by her or his origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in s. 678.306.

(10) Whether the person signing is appropriate is determined as of the date of signing and an indorsement made by or an instruction originated by the person ~~him~~ does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.

(11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render her or his indorsement or an instruction originated by her or him unauthorized for the purposes of this chapter.

Section 664. Subsection (1) of section 678.311, Florida Statutes, is amended to read:

678.311 Effect of unauthorized indorsement or instruction.—Unless the owner or pledgee has ratified an unauthorized indorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(1) He or she may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued, or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him or her; and

Section 665. Paragraphs (a), (b), (c), (d), (e), (f), and (g) of subsection (1) and subsection (2) of section 678.313, Florida Statutes, are amended to read:

678.313 When transfer to purchaser occurs; financial intermediary as bona fide purchaser; “financial intermediary.”—

(1) Transfer of a security or a limited interest (including a security interest) therein to a purchaser occurs only:

(a) At the time the purchaser ~~he~~ or a person designated by her or him acquires possession of a certificated security;

(b) At the time the transfer, pledge, or release of an uncertificated security is registered to the purchaser ~~him~~ or a person designated by her or him;

(c) At the time the purchaser's ~~his~~ financial intermediary acquires possession of a certificated security specially indorsed to or issued in the name of the purchaser;

(d) At the time a financial intermediary, not a clearing corporation, sends the purchaser ~~him~~ confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser:

1. A specific certificated security in the financial intermediary's possession;

2. A quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

3. A quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) With respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that she or he holds for the purchaser;

(f) With respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that she or he holds for the purchaser;

(g) At the time appropriate entries to the account of the purchaser or a person designated by her or him on the books of a clearing corporation are made under s. 678.320;

(2) The purchaser is the owner of a security held for her or him by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in subsection (1)(c), (d)1., and (g). If a security so held is part of a fungible bulk, as in the circumstances specified in subsection (1)(d)2. and 3., the purchaser is the owner of a proportionate property interest in the fungible bulk.

Section 666. Section 678.314, Florida Statutes, is amended to read:

678.314 Duty to transfer, when completed.—

(1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers:

(a) The selling customer fulfills his or her duty to transfer at the time he or she:

1. Places a certificated security in the possession of the selling broker or of a person designated by the broker;

2. Causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

3. If requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

4. Places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(b) The selling broker, including a correspondent broker acting for a selling customer, fulfills his or her duty to transfer at the time he or she:

1. Places a certificated security in the possession of the buying broker or a person designated by the buying broker;

2. Causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

3. Places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

4. Effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as provided in this section and unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until he or she:

(a) Places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

(b) Causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) If the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for his or her own account is within subsection (2) and not within subsection (1).

Section 667. Subsections (1) and (2) of section 678.315, Florida Statutes, are amended to read:

678.315 Action against transferee based upon wrongful transfer.—

(1) Any person against whom the transfer of a security is wrongful for any reason, including his or her incapacity, as against anyone except a bona fide purchaser, may:

- (a) Reclaim possession of the certificated security wrongfully transferred;
- (b) Obtain possession of any new certificated security representing all or part of the same rights;
- (c) Compel the origination of an instruction to transfer to the person him or a person designated by him or her an uncertificated security constituting all or part of the same rights; or
- (d) Have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security, even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against him or her under the provisions of this chapter on unauthorized indorsements (s. 678.311).

Section 668. Section 678.316, Florida Statutes, is amended to read:

678.316 Purchaser's right to requisites for registration of transfer, pledge, or release on books.—Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply her or his purchaser with any proof of her or his authority to transfer, pledge, or release or with any other requisite necessary to obtain registration of the transfer, pledge, or release of the security; but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made gives the purchaser the right to reject or rescind the transfer, pledge, or release.

Section 669. Section 678.318, Florida Statutes, is amended to read:

678.318 No conversion by good faith conduct.—An agent or bailee who in good faith (including observance of reasonable commercial standards if she or he is in the business of buying, selling, or otherwise dealing with securities) has received certificated securities and sold, pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which the agent or bailee he had control according to the instructions of her or his principal, is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities.

Section 670. Subsections (1), (3), and (4) of section 678.319, Florida Statutes, are amended to read:

678.319 Statute of frauds.—A contract for the sale of securities is not enforceable by way of action or defense unless:

- (1) There is some writing signed by the party against whom enforcement is sought or by her or his authorized agent or broker, sufficient to indicate

that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(3) Within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under subsection (1) has been received by the party against whom enforcement is sought and she or he has failed to send written objection to its contents within 10 days after its receipt; or

(4) The party against whom enforcement is sought admits in her or his pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price.

Section 671. Subsections (1), (3), and (4) of section 678.321, Florida Statutes, are amended to read:

678.321 Enforceability, attachment, perfection, and termination of security interests.—

(1) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him or her pursuant to a provision of s. 678.313(1).

(3) A security interest in a security is subject to the provisions of chapter 679, but:

(a) No filing is required to perfect the security interest; and

(b) No written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in s. 678.313(1)(h), (i), or (j).

The secured party has the rights and duties provided under s. 679.207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his or her possession.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him or her pursuant to a provision of s. 678.313(1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after 21 days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him or her pursuant to a provision of s. 678.313(1).

Section 672. Subsection (2) of section 678.401, Florida Statutes, is amended to read:

678.401 Duty of issuer to register transfer, pledge, or release.—

(2) If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting a certificated

security or an instruction for registration or the person's ~~his~~ principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.

Section 673. Subsection (2), paragraph (c) of subsection (3), paragraph (c) of subsection (4), and subsection (5) of section 678.403, Florida Statutes, are amended to read:

678.403 Issuer's duty as to adverse claims.—

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by her or him or, if there be no such address, at her or his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(a) An appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or

(b) There is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under s. 678.402(4) or receives notification of an adverse claim under subsection (1), if a certificated security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(c) The issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary herself or himself or to the fiduciary's ~~his~~ nominee.

(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(c) Claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to her or him; and

(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, she or he discharges that duty by:

(a) Including a notation of the claim in any statements sent with respect to the security under s. 678.408(3), (6), and (7); and

(b) Refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

Section 674. Subsections (1) and (3) of section 678.405, Florida Statutes, are amended to read:

678.405 Lost, destroyed, and stolen certificated securities.—

(1) If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after she or he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under s. 678.404 or any claim to a new security under this section.

(3) If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by s. 678.104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under her or him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

Section 675. Subsection (1) of section 678.406, Florida Statutes, is amended to read:

678.406 Duty of authenticating trustee, transfer agent, or registrar.—

(1) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities, in the issue of new securities, or in the cancellation of surrendered securities:

(a) He or she is under a duty to the issuer to exercise good faith and due diligence in performing his or her functions; and

(b) With regard to the particular functions he or she performs, he or she has the same obligation to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

Section 676. Subsection (2) of section 678.407, Florida Statutes, is amended to read:

678.407 Exchangeability of securities.—

(2) Upon surrender of a certificated security with all necessary indorsements and presentation of a written request by the person surrendering the security, the issuer, if he or she has no duty as to adverse claims or has

discharged the duty (s. 678.403), shall issue to the person or a person designated by him or her an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

Section 677. Paragraph (d) of subsection (2) and paragraph (d) of subsection (3) of section 679.103, Florida Statutes, are amended to read:

679.103 Perfection of security interests in multiple state transactions.—

(2) CERTIFICATE OF TITLE.—

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that the buyer ~~he~~ gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) ACCOUNTS, GENERAL INTANGIBLES, AND MOBILE GOODS.—

(d) A debtor shall be deemed located at her or his place of business if she or he has one, at her or his chief executive office if the debtor ~~he~~ has more than one place of business, otherwise at her or his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

Section 678. Paragraphs (d) and (k) of subsection (1) of section 679.105, Florida Statutes, are amended to read:

679.105 Definitions and index of definitions.—

(1) In this chapter unless the context otherwise requires:

(d) “Debtor” means the person who owes payment or other performance of the obligation secured, whether or not he or she owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term “debtor” means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(k) An advance is made “pursuant to a commitment” if the secured party has bound himself or herself to make it, whether or not a subsequent event of default or other event not within the secured party’s ~~his~~ control has relieved or may relieve him or her from his or her obligation;

Section 679. Section 679.108, Florida Statutes, is amended to read:

679.108 When after-acquired collateral not security for antecedent debt.—Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property her or his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires her or his rights in such collateral either in the ordinary course of her or his business or under a contract or purchase made pursuant to the security agreement within a reasonable time after new value is given.

Section 680. Subsection (4) of section 679.109, Florida Statutes, is amended to read:

679.109 Classification of goods; “consumer goods”; “equipment”; “farm products”; “inventory.”—Goods are:

(4) “Inventory” if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if the person ~~he~~ has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his or her equipment.

Section 681. Section 679.112, Florida Statutes, is amended to read:

679.112 Where collateral is not owned by debtor.—Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under s. 679.502(2) or under s. 679.504(1), and is not liable for the debt or for any deficiency after resale, and he or she has the same right as the debtor:

- (1) To receive statements under s. 679.208;
- (2) To receive notice of and to object to a secured party’s proposal to retain the collateral in satisfaction of the indebtedness under s. 679.505;
- (3) To redeem the collateral under s. 679.506;
- (4) To obtain injunctive or other relief under s. 679.507(1); and
- (5) To recover losses caused to him or her under s. 679.208(2).

Section 682. Subsection (1) of section 679.206, Florida Statutes, is amended to read:

679.206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.—

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he or she will not assert against an assignee any claim or defense which he or she may have against the seller or lessor is enforceable by an assignee who takes his or her assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted

against a holder in due course of a negotiable instrument under the chapter on negotiable instruments (chapter 673). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

Section 683. Subsections (1) and (3) of section 679.207, Florida Statutes, are amended to read:

679.207 Rights and duties when collateral is in secured party's possession.—

(1) A secured party must use reasonable care in the custody and preservation of collateral in her or his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(3) A secured party is liable for any loss caused by her or his failure to meet any obligation imposed by the preceding subsections but does not lose her or his security interest.

Section 684. Subsections (1) and (2) of section 679.208, Florida Statutes, are amended to read:

679.208 Request for statement of account or list of collateral.—

(1) A debtor may sign a statement indicating what she or he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party ~~he~~ may indicate that fact in her or his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply she or he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in her or his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by her or his failure to comply. If the secured party ~~he~~ no longer has an interest in the obligation or collateral at the time the request is received she or he must disclose the name and address of any successor in interest known to her or him and she or he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by her or him.

Section 685. Paragraphs (c) and (d) of subsection (1) and subsection (2) of section 679.301, Florida Statutes, are amended to read:

679.301 Persons who take priority over unperfected security interests; right of “lien creditor.”—

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he or she gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he or she gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 15 days after the debtor receives possession of the collateral, he or she takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

Section 686. Paragraph (b) of subsection (3) of section 679.302, Florida Statutes, is amended to read:

679.302 When filing is required to perfect security interest; security interests to which filing provisions of this chapter do not apply.—

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(b) The following statutes of this state: chapters 319 and 328; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (part IV) apply to a security interest in that collateral created by him or her as debtor; or

Section 687. Section 679.307, Florida Statutes, is amended to read:

679.307 Protection of buyers of goods.—

(1) A buyer in ordinary course of business (s. 671.201(9)) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his or her seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he or she buys without knowledge of the security interest, for value and for his or her own personal, family, or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

Section 688. Section 679.308, Florida Statutes, is amended to read:

679.308 Purchase of chattel paper and instruments.—A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his or her business has priority over a security interest in the chattel paper or instrument:

(1) Which is perfected under s. 679.304 (permissive filing and temporary perfection) or under s. 679.306 (perfection as to proceeds) if he or she acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) Which is claimed merely as proceeds of inventory subject to a security interest (s. 679.306) even though he or she knows that the specific paper or instrument is subject to the security interest.

Section 689. Section 679.310, Florida Statutes, is amended to read:

679.310 Priority of certain liens arising by operation of law.—When a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

Section 690. Subsection (3) of section 679.313, Florida Statutes, is amended to read:

679.313 Priority of security interests in fixtures.—

(3)(a) When under subsections (2) or (3) a secured party has priority over the claims of all persons who have interests in the real estate, he or she may, on default, subject to the provisions of part V, remove his or her collateral from the real estate but he or she must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

(b) The secured party shall give reasonable notification of his or her intention to remove the collateral to all persons entitled to reimbursement.

Section 691. Subsections (3) and (4) of section 679.314, Florida Statutes, are amended to read:

679.314 Accessions.—

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest in the whole to the extent that he or she makes subsequent advances,

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his or her own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he or she may on default subject to the provisions of part V remove his or her collateral from the whole but the secured party he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Section 692. Subsection (3) of section 679.318, Florida Statutes, is amended to read:

679.318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.—

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he or she does so the account debtor may pay the assignor.

Section 693. Paragraph (a) of subsection (1) of section 679.401, Florida Statutes, is amended to read:

679.401 Place of filing; erroneous filing; removal of collateral.—

(1) The proper place to file in order to perfect a security interest is as follows:

(a) If the collateral is farm products, or accounts, or general intangibles arising from or relating to the sale of farm products by a farmer, by recording:

1. In the office of the clerk of the circuit court in the county of the debtor's place of business if he or she has one, in the county of the debtor's ~~his~~ chief

executive office if he or she has more than one place of business, otherwise in the county of the debtor's his residence; or

2. If the debtor is not a resident of this state, in the office of the clerk of the circuit court in the county where the collateral is located; and

3. In addition, if the collateral is crops, in the office of the clerk of the circuit court in the county where the land is located on which the crops are growing or to be grown.

Section 694. Subsection (6) of section 679.402, Florida Statutes, is amended to read:

679.402 Formal requisites of financing statement; amendments.—

(6) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his or her name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change, unless a new appropriate financing statement is filed before the expiration of that time, in which case the new filing shall continue the priority of the original filing. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

Section 695. Subsections (3), (5), and (7) of section 679.403, Florida Statutes, are amended to read:

679.403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.—

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and comply with s. 679.405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he or she has retained a microfilm or other photographic record, or in other cases, 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related

filings, or by other means, that if he or she physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(5) The uniform fee for filing, indexing, and stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be as provided in chapter 15 or chapter 28. The secured party may, at his or her option, show a trade name for any person, or for more than one name, but an additional fee may be charged with respect thereto.

(7) When a financing statement covers crops growing or to be grown, timber to be cut, minerals or the like (including oil and gas), accounts subject to s. 679.103(5), or goods which are or are to become fixtures, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he or she were the mortgagee thereunder.

Section 696. Subsections (1) and (2) of section 679.404, Florida Statutes, are amended to read:

679.404 Termination statement.—

(1) If a financing statement is filed on or after July 1, 1992, then within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must, for each filing officer with whom the financing statement was filed, file a termination statement to the effect that he or she no longer claims a security interest under said financing statement, which shall be identified by file number, or official records book and page number, if applicable. Except for termination statements of financing statements filed under s. 679.402(2) and (5), a termination statement must be signed by the secured party of record or be accompanied by an assignment or a separate written statement of assignment signed by the secured party of record complying with s. 679.405(2), including payment of the required fee. If the affected secured party fails to send such a termination statement within 10 days after proper written demand therefor or written notice that the filing has been assigned to another party, together with such party's address, he or she is liable to the debtor in the amount of \$10 per day for each day of noncompliance, not exceeding 10 days, and in addition is liable for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, the officer must note it in the index and, if applicable, record it in the office where a mortgage on the real estate concerned would be filed or recorded. If the filing officer he has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of

any related continuation statement, statement of assignment, and statement of release, he or she may remove the originals from the files at any time after receipt of the termination statement or if the filing officer ~~he~~ has no such record, he or she may remove them from the files at any time after 1 year after receipt of the termination statement.

Section 697. Subsection (2) of section 679.405, Florida Statutes, is amended to read:

679.405 Assignment of security interest; duties of filing officer; fees.—

(2) A secured party may assign of record all or a part of his or her rights under a financing statement by the filing, in the place where the original financing statement was filed, of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and time of the filing, and shall file and index same. The filing officer ~~He~~ shall note the assignment on the index of the financing statement, or in the case of a filing on goods which are or are to become fixtures, filing on crops or timber to be cut under s. 679.402(5), or covering minerals or the like (including oil and gas) or accounts subject to s. 679.103(5), he or she shall index the assignment under the name of the assignor as grantor, and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he or she shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing data about such a separate statement of assignment shall be as provided in chapter 15 or chapter 28. An additional fee may be charged for each name, more than one, against which the statement of assignment is required to be indexed. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage may be made only by an assignment of the mortgage in the manner provided by the law of this state, other than this code.

Section 698. Section 679.406, Florida Statutes, is amended to read:

679.406 Release of collateral; duties of filing officer; fees.—A secured party of record may by his or her signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Except for statements of release of financing statements filed under s. 679.402(4) and (5), a statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with s. 679.405(2), including payment of the required fee, except that in the case of statements

of release of financing statements filed under s. 679.402(4) and (5), a separate written statement of assignment shall not be required. Upon presentation of such a statement of release to the filing officer, he or she shall mark the statement with the time and date of filing and note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and indexing such a statement of release shall be as provided in chapter 15 or chapter 28. An additional fee may be charged for each name, more than one, against which the statement of release is required to be indexed.

Section 699. Subsections (1), (4), and (5) of section 679.501, Florida Statutes, are amended to read:

679.501 Default; procedure when security agreement covers both real and personal property.—

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part, and except as limited by subsection (3) those provided in the security agreement. The secured party He may reduce his or her claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in s. 679.207. The rights and remedies referred to in this subsection are cumulative.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he or she may proceed as to both the real and the personal property in accordance with his or her rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

(5) When a secured party has reduced his or her claim to judgment the lien of any levy which may be made upon his or her collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

Section 700. Section 679.502, Florida Statutes, is amended to read:

679.502 Collection rights of secured party.—

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to her or him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which the secured party he is entitled under s. 679.306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor

and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct her or his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Section 701. Paragraph (c) of subsection (1), subsection (3), paragraph (a) of subsection (4), and subsection (5) of section 679.504, Florida Statutes, are amended to read:

679.504 Secured party's right to dispose of collateral after default; effect of disposition.—

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to chapter 672. The proceeds of disposition shall be applied in the order following to:

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the secured party need not comply with his or her demand.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if the debtor ~~he~~ has not signed after default a conspicuous statement renouncing or modifying his or her right to notification of sale; to any guarantor of the obligation secured who has not signed after default a conspicuous statement renouncing or modifying his or her right to notification of sale; and, except in the case of consumer goods, to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. The secured party may buy at any public sale and, if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he or she may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all

such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his or her rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

Section 702. Section 679.505, Florida Statutes, is amended to read:

679.505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.—

(1) If the debtor has paid 60 percent of the cash price in the case of a purchase money security interest in consumer goods or 60 percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his or her rights under this part a secured party who has taken possession of collateral must dispose of it under s. 679.504 and if the secured party he fails to do so within 90 days after he or she takes possession the debtor at his or her option may recover in conversion or under s. 679.507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral, a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and, except in the case of consumer goods, to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. If the debtor or other person entitled to receive notification objects in writing within 30 days from the date the notification is sent by the secured party or if any other secured party objects in writing within 30 days after the secured party obtains possession, the secured party must dispose of the collateral under s. 679.504 if the debtor or such other person has not signed after default a conspicuous statement renouncing or modifying his or her rights under this subsection. In the absence of such written objection, the secured party may retain the collateral in satisfaction of the debtor's obligation.

Section 703. Section 679.506, Florida Statutes, is amended to read:

679.506 Debtor's right to redeem collateral.—At any time before the secured party has disposed of collateral or entered into a contract for its disposition under s. 679.504 or before the obligation has been discharged under s. 679.505(2), the debtor, any guarantor of the obligation secured, or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding, and preparing the collateral for disposition, in

arranging for the sale, and, to the extent provided in the agreement and not prohibited by law, her or his reasonable attorneys' fees and legal expenses.

Section 704. Subsection (2) of section 679.507, Florida Statutes, is amended to read:

679.507 Secured party's liability for failure to comply with this part.—

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if the secured party he sells at the price current in such market at the time of his or her sale or if the secured party he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he or she has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

Section 705. Paragraphs (a) and (o) of subsection (1) of section 680.1031, Florida Statutes, are amended to read:

680.1031 Definitions and index of definitions.—

(1) In this chapter, unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. Buying may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. Leasing may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

Section 706. Subsection (1) of section 680.1091, Florida Statutes, is amended to read:

680.1091 Option to accelerate at will.—

(1) A term providing that one party or the party's ~~his~~ successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when he or she deems himself or herself insecure” or in words of similar import must be construed to mean that he or she has power to do so only if he or she in good faith believes that the prospect of payment or performance is impaired.

Section 707. Paragraph (b) of subsection (1) and subsection (2) of section 680.22, Florida Statutes, are amended to read:

680.22 Effect of default on risk of loss.—

(1) When risk of loss is to pass to the lessee and the time of passage is not stated:

(b) If the lessee rightfully revokes acceptance, she or he, to the extent of any deficiency in the lessee's ~~his~~ effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in her or his effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time.

Section 708. Subsection (2) of section 680.221, Florida Statutes, is amended to read:

680.221 Casualty to identified goods.—If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or s. 680.219, then:

(2) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at her or his option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

Section 709. Paragraphs (a) and (b) of subsection (2) and subsections (4) and (6) of section 680.303, Florida Statutes, are amended to read:

680.303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; assignment of rights.—

(2) Within a reasonable time after demand pursuant to paragraph (1)(b), the transferee shall:

(a) Cure or provide adequate assurance that he or she will promptly cure any default other than one arising from the transfer.

(b) Compensate or provide adequate assurance that he or she will promptly compensate the other party to the lease contract and any other person holding an interest in the lease contract, except the party whose interest is being transferred, for any loss to that party resulting from the transfer.

(4) An assignment of “the lease” or of “all my rights under the lease” or an assignment in similar general terms is a transfer of rights, and unless the language or the circumstances, as in an assignment for security, indicate the contrary, the assignment is a delegation of duties by the assignor to the assignee and acceptance by the assignee constitutes a promise by him or her to perform those duties. This promise is enforceable by either the assignor or the other party to the lease contract.

(6) A right to damages for default with respect to the whole lease contract or a right arising out of the assignor’s due performance of his or her entire obligation can be assigned despite agreement otherwise.

Section 710. Section 680.306, Florida Statutes, is amended to read:

680.306 Priority of certain liens arising by operation of law.—If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

Section 711. Subsection (8) of section 680.309, Florida Statutes, is amended to read:

680.309 Lessor’s and lessee’s rights when goods become fixtures.—

(8) If the interest of a lessor has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease agreement by the other party but subject to the provisions of the lease agreement and this chapter, or if necessary to enforce his or her other rights and remedies under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but he or she must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

Section 712. Subsection (5) of section 680.31, Florida Statutes, is amended to read:

680.31 Lessor's and lessee's rights when goods become accessions.—

(5) When under subsection (2) or subsection (3) and under subsection (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter, or if necessary to enforce his or her other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

Section 713. Subsection (2) of section 680.401, Florida Statutes, is amended to read:

680.401 Insecurity: adequate assurance of performance.—

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which she or he has not already received the agreed return.

Section 714. Subsection (2) of section 680.405, Florida Statutes, is amended to read:

680.405 Excused performance.—Subject to s. 680.404 on substituted performance, the following rules apply:

(2) If the causes mentioned in subsection (1) affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

Section 715. Subsection (5) of section 680.501, Florida Statutes, is amended to read:

680.501 Default: procedure.—

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with her or his rights and remedies in respect of the real property, in which case this part does not apply.

Section 716. Subsection (3) of section 680.504, Florida Statutes, is amended to read:

680.504 Liquidation of damages.—

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (s. 680.525 or s. 680.526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) In the absence of those terms, 20 percent of the then-present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or \$500.

Section 717. Subsection (3) of section 680.507, Florida Statutes, is amended to read:

680.507 Proof of market rent; time and place.—

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

Section 718. Subsections (1) and (2) of section 680.511, Florida Statutes, are amended to read:

680.511 Merchant lessee's duties as to rightfully rejected goods.—

(1) Subject to any security interest of a lessee (s. 680.508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1)) or any other lessee (s. 680.512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.

Section 719. Subsection (2) of section 680.513, Florida Statutes, is amended to read:

680.513 Cure by lessor of improper tender or delivery; replacement.—

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further

reasonable time to substitute a conforming tender if she or he seasonably notifies the lessee.

Section 720. Paragraph (a) of subsection (4) of section 680.516, Florida Statutes, is amended to read:

680.516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.—

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over:

(a) The lessee may give the lessor or the supplier written notice of the litigation. If the notice states that the lessor or the supplier may come in and defend and that if the lessor or the supplier does not do so he or she will be bound in any action against him or her by the lessee by any determination of fact common to the two litigations, then unless the lessor or the supplier after seasonable receipt of the notice does come in and defend he or she is so bound.

Section 721. Subsection (1) of section 680.517, Florida Statutes, is amended to read:

680.517 Revocation of acceptance of goods.—

(1) A lessee may revoke acceptance of a lot or commercial unit the nonconformity of which substantially impairs its value to the lessee if he or she has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

Section 722. Subsection (2) of section 680.526, Florida Statutes, is amended to read:

680.526 Lessor's stoppage of delivery in transit or otherwise.—

(2) In pursuing her or his remedies under subsection (1), the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

Section 723. Subsection (2) of section 680.531, Florida Statutes, is amended to read:

680.531 Standing to sue third parties for injury to goods.—

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

Section 724. Section 682.04, Florida Statutes, is amended to read:

682.04 Appointment of arbitrators by court.—If an agreement or provision for arbitration subject to this law provides a method for the appointment of arbitrators or an umpire, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator or umpire who has been appointed fails to act and his or her successor has not been duly appointed, the court, on application of a party to such agreement or provision shall appoint one or more arbitrators or an umpire. An arbitrator or umpire so appointed shall have like powers as if named or provided for in the agreement or provision.

Section 725. Subsection (1) of section 682.06, Florida Statutes, is amended to read:

682.06 Hearing.—Unless otherwise provided by the agreement or provision for arbitration:

(1)(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives a party's right to such notice. The arbitrators may adjourn their hearing from time to time upon their own motion and shall do so upon the request of any party to the arbitration for good cause shown, provided that no adjournment or postponement of their hearing shall extend beyond the date fixed in the agreement or provision for making the award unless the parties consent to a later date. An umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award shall, in the course of his or her jurisdiction, have like powers and be subject to like limitations thereon.

(b) The arbitrators, or umpire in the course of his or her jurisdiction, may hear and decide the controversy upon the evidence produced notwithstanding the failure or refusal of a party duly notified of the time and place of the hearing to appear. The court on application may direct the arbitrators, or the umpire in the course of his or her jurisdiction, to proceed promptly with the hearing and making of the award.

Section 726. Subsections (1) and (2) of section 682.08, Florida Statutes, are amended to read:

682.08 Witnesses, subpoenas, depositions.—

(1) Arbitrators, or an umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award, in the course of her or his jurisdiction, may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party to the arbitration or the arbitrators, or the umpire, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(2) On application of a party to the arbitration and for use as evidence, the arbitrators, or the umpire in the course of her or his jurisdiction, may permit a deposition to be taken, in the manner and upon the terms designated by them or her or him of a witness who cannot be subpoenaed or is unable to attend the hearing.

Section 727. Section 682.09, Florida Statutes, is amended to read:

682.09 Award.—

(1) The award shall be in writing and shall be signed by the arbitrators joining in the award or by the umpire in the course of his or her jurisdiction. They or he or she shall deliver a copy to each party to the arbitration either personally or by registered or certified mail, or as provided in the agreement or provision.

(2) An award shall be made within the time fixed therefor by the agreement or provision for arbitration or, if not so fixed, within such time as the court may order on application of a party to the arbitration. The parties may, by written agreement, extend the time either before or after the expiration thereof. Any objection that an award was not made within the time required is waived unless the objecting party notifies the arbitrators or umpire in writing of his or her objection prior to the delivery of the award to him or her.

Section 728. Section 682.10, Florida Statutes, is amended to read:

682.10 Change of award by arbitrators or umpire.—On application of a party to the arbitration, or if an application to the court is pending under s. 682.12, s. 682.13 or s. 682.14, on submission to the arbitrators, or to the umpire in the case of an umpire's award, by the court under such conditions as the court may order, the arbitrators or umpire may modify or correct the award upon the grounds stated in s. 682.14(1)(a) and (c) or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the other party to the arbitration, stating that he or she must serve his or her objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of ss. 682.12-682.14.

Section 729. Paragraphs (c) and (d) of subsection (1) of section 682.13, Florida Statutes, are amended to read:

682.13 Vacating an award.—

(1) Upon application of a party, the court shall vacate an award when:

(c) The arbitrators or the umpire in the course of her or his jurisdiction exceeded their powers.

(d) The arbitrators or the umpire in the course of her or his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s. 682.06, as to prejudice substantially the rights of a party.

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

Section 730. Paragraph (b) of subsection (1) of section 682.14, Florida Statutes, is amended to read:

682.14 Modification or correction of award.—

(1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when:

(b) The arbitrators or umpire have awarded upon a matter not submitted to them or him or her and the award may be corrected without affecting the merits of the decision upon the issues submitted.

Section 731. Section 682.19, Florida Statutes, is amended to read:

682.19 Venue.—Any application under this law may be made to the court of the county in which the other party to the agreement or provision for arbitration resides or has a place of business, or, if she or he has no residence or place of business in this state, then to the court of any county. All applications under this law subsequent to an initial application shall be made to the court hearing the initial application unless it shall order otherwise.

Section 732. Paragraph (a) of subsection (2) of section 684.04, Florida Statutes, is amended to read:

684.04 Definitions.—As used in this chapter:

(2) The term “resident of the United States” means:

(a) A natural person who maintains his or her sole residence within a state, possession, or territory of the United States or within the District of Columbia; or

Section 733. Subsection (2) of section 684.07, Florida Statutes, is amended to read:

684.07 Freedom of parties to fix rules for arbitration.—

(2) If any provision of this part or of the written undertaking to arbitrate is not complied with, any party who nevertheless proceeds with the arbitra-

tion without stating her or his objection without undue delay or, if a time limit is provided for stating such objection, within such time period may be deemed to have waived or be estopped from any right to object.

Section 734. Paragraph (c) of subsection (1) of section 686.201, Florida Statutes, is amended to read:

686.201 Sales representative contracts involving commissions; requirements; termination of agreement; civil remedies.—

(1) As used in this act, the term:

(c) “Sales representative” means a person who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission, but does not include a person who places orders for his or her own account for resale.

Section 735. Paragraphs (b) and (c) of subsection (16) of section 686.402, Florida Statutes, are amended to read:

686.402 Definitions of terms used in ss. 686.40-686.418.—In construing ss. 686.40-686.418, unless the context otherwise requires, the word, phrase, or term:

(16) “Tractor or farm equipment dealer” means a person who sells, solicits, or advertises the sale of new and used tractors and farm equipment to the consuming public, but does not include:

(b) A public officer while performing her or his duties as such officer.

(c) A person making casual or isolated sales of her or his own tractors or items of farm equipment not subject to sales tax under the laws of this state.

Section 736. Paragraph (a) of subsection (3) of section 686.405, Florida Statutes, is amended to read:

686.405 Warranty agreements; claims; compensation of dealers.—

(3)(a) The minimum lawful basis for compensating a dealer for warranty work, as provided for in this section, shall be calculated for labor in accordance with the reasonable and customary amount of time required to complete such work, expressed in hours and fractions of hours multiplied by the dealer’s established hourly retail labor rate. Prior to filing a claim for reimbursement for warranty work, the dealer must notify the applicable manufacturer, distributor, or wholesaler of his or her hourly retail labor rate.

Section 737. Subsection (3) of section 686.406, Florida Statutes, is amended to read:

686.406 Parts; availability; return.—

(3) Every manufacturer or distributor shall provide to her or his dealers, annually, an opportunity to return a portion of their surplus parts inventories for credit. The surplus procedure shall be administered as follows:

(a) The manufacturer or distributor may specify, and thereupon notify her or his dealers of, a time period of at least 60 days' duration during which the dealers may submit their surplus parts lists and return their surplus parts to the manufacturer or distributor.

(b) If a manufacturer or distributor has not notified a dealer of a specific time period for returning surplus parts within the preceding 12 months, she or he shall authorize and allow the dealer's surplus parts return request within 30 days after receipt of such request from the dealer.

(c) A manufacturer or distributor must allow surplus parts return authority on a dollar value of parts equal to 6 percent of the total dollar value of parts purchased from the manufacturer or distributor by the dealer during the 12-month period immediately preceding the notification to the dealer by the manufacturer or distributor of the surplus parts return program, or the month the dealer's return request is made, whichever is applicable. However, the dealer may, at her or his option, elect to return a dollar value of her or his surplus parts equal to less than 6 percent of the total dollar value of parts purchased by the dealer from the manufacturer or distributor during the preceding 12-month period as provided herein.

(d) No obsolete or superseded part may be returned, but any part listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list at the date of notification of the surplus parts return program by the manufacturer or distributor to the dealer, or the date of the dealer's parts return request, whichever is applicable, is eligible for return and credit specified. However, returned parts must be in new and unused condition and must have been purchased from the manufacturer, distributor, or wholesaler to whom they are returned.

(e) The minimum lawful credit to be allowed for returned parts is 85 percent of the wholesale cost of the parts as listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list at the date of the notification of the surplus parts return program by the manufacturer, wholesaler, or distributor to the dealer, or the date of the dealer's parts return request, whichever is applicable.

(f) Applicable credit must be issued or furnished by the manufacturer or distributor to the dealer within 60 days after receipt of her or his returned parts.

(g) The packing and return freight expense incurred in any return of surplus parts pursuant to the terms of this section shall be borne by the dealer.

Section 738. Subsections (1), (2), and (5) of section 686.407, Florida Statutes, are amended to read:

686.407 Repurchase of inventory upon termination of franchise agreement.—

(1) Whenever any tractor or farm equipment dealer enters into a franchise agreement with a manufacturer, distributor, or wholesaler in which

agreement the dealer agrees to maintain an inventory of tractors, farm equipment, or repair parts and the franchise is subsequently terminated, the manufacturer, distributor, or wholesaler shall repurchase the inventory as provided in this section. However, the dealer may keep the inventory if he or she desires. If the dealer has any outstanding debts to the manufacturer, distributor, or wholesaler, then the repurchase amount may be credited to the dealer's account.

(2) If the dealer decides not to keep the inventory, the manufacturer, distributor, or wholesaler shall repurchase that inventory previously purchased from him or her and held by the dealer on the date of termination of the contract. The manufacturer, distributor, or wholesaler shall pay:

(a) One hundred percent of the actual dealer cost, including freight, of all new, unsold, undamaged, and complete tractors, or other items of farm equipment which are resalable, less a reasonable allowance for depreciation due to usage by the dealer and deterioration directly attributable to weather conditions at the dealer's location; and

(b) Eighty-five percent of the current wholesale price of all new, unused, and undamaged repair parts and accessories which are listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list. The manufacturer, distributor, or wholesaler shall also pay the dealer 6 percent of the current wholesale price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. However, the manufacturer, distributor, or wholesaler shall have the option of performing the handling, packing, and loading in lieu of paying the 6-percent sum imposed in this subsection for these services; and, in this event, after receipt by the dealer of the full repurchase amount as provided in this section, the dealer shall make available to the manufacturer, distributor, or wholesaler, at the dealer's address or at the places at which the tractors and equipment are located, all tractors and items of farm equipment previously purchased by the dealer.

(5) If any manufacturer, distributor, or wholesaler fails or refuses to repurchase any inventory covered under the provisions of this section within 60 days after termination of a dealer's contract, he or she is civilly liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the dealer, the dealer's reasonable attorney's fees, court costs, and interest on the current wholesale price computed at the legal interest rate provided in s. 687.01 from the 61st day after termination.

Section 739. Section 686.409, Florida Statutes, is amended to read:

686.409 Compensation for inventory upon refusal to renew, termination of, or restriction on transfer of a franchise.—It is unlawful for the manufacturer, distributor, wholesaler, or franchisor, without due cause, to fail to renew a franchise on terms then equally available to all her or his tractor or farm equipment dealers, to terminate a franchise, or to restrict the transfer of a franchise unless the franchisee receives fair and reasonable compensation for the inventory of the business. As used in this section, the term "due cause" shall be construed in accordance with the definition of due cause contained in s. 686.413(3)(c)2.

Section 740. Section 686.41, Florida Statutes, is amended to read:

686.41 Indemnification of dealer with respect to legal actions.—A manufacturer, distributor, or wholesaler shall fully indemnify and hold harmless his or her dealer against any losses including, but not limited to, court costs and reasonable attorney's fees or damages arising out of any complaint, claim, or lawsuit involving, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission of the sale when the complaint, claim, or lawsuit relates to the manufacture, assembly, or design of new items covered by ss. 686.40-686.418, parts or accessories, or other functions by the manufacturer, distributor, or wholesaler which are beyond the control of the dealer.

Section 741. Paragraphs (b), (c), (d), (e), and (g) of subsection (3) and paragraph (c) of subsection (4) of section 686.413, Florida Statutes, are amended to read:

686.413 Unlawful acts and practices.—Unfair methods of competition and unfair or deceptive acts or practices in the conduct of the manufacturing, distribution, wholesaling, franchising, sale, and advertising of tractors and farm equipment are declared to be unlawful.

(3) It is deemed a violation of this section for a manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division, or officer, agent, or other representative thereof:

(b) To coerce, compel, or attempt to coerce or compel any tractor or farm equipment dealer to enter into any agreement, whether written or oral, supplementary to an existing franchise with such manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division, or officer, agent, or other representative thereof; or to do any other act prejudicial to such dealer by threatening to cancel any franchise or contractual agreement existing between such manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division and such dealer. However, notice in good faith to any tractor or farm equipment dealer of such dealer's violation or breach of any terms or provisions of such franchise or contractual agreement does not constitute a violation of this section if such notice is in writing and is mailed by registered or certified mail to such dealer at her or his current business address and such notice contains the specific facts as to the dealer's violation or breach of such franchise or contractual agreement.

(c)1. To terminate or cancel the franchise or selling agreement of any tractor or farm equipment dealer without due cause, as defined in subparagraph 2. The nonrenewal of a franchise or selling agreement, without due cause, constitutes an unfair termination or cancellation, regardless of the specified time period of such franchise or selling agreement. Except when the ground for such termination or cancellation falls within subparagraph 2.c., such manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division, or officer, agent, or other representative thereof, shall notify a tractor

or farm equipment dealer in writing of the termination or cancellation of the franchise or selling agreement of such dealer at least 90 days before the effective date of the termination or cancellation, stating the specific ground for such termination or cancellation. In no event shall the contractual term of any such franchise or selling agreement expire, without the written consent of the tractor or farm equipment dealer involved, prior to the expiration of at least 90 days following such written notice. During the 90-day period, either party may, in appropriate circumstances, petition a court of competent jurisdiction to modify such 90-day stay or to extend it pending a final determination of such proceeding on the merits. The court shall have authority to grant temporary, preliminary, and final injunctive relief.

2. As used in this subparagraph, tests for determining what constitutes due cause for a manufacturer or distributor to terminate, cancel, or refuse to renew a franchise agreement include whether the dealer:

a. Has transferred an ownership interest in the dealership without the manufacturer's or distributor's consent;

b. Has made a material misrepresentation in applying for or in acting under the franchise agreement;

c. Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against her or him which has not been discharged within 60 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer or distributor, or is in receivership;

d. Has engaged in unfair business or trade practices;

e. Has inadequately represented the manufacturer's or distributor's products with respect to sales, service, or warranty work;

f. Has inadequate and insufficient sales and service facilities and personnel;

g. Has failed to comply with an applicable federal, state, or local licensing law;

h. Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;

i. Has failed to operate in the normal course of business for 10 consecutive business days or has terminated her or his business;

j. Has relocated her or his place of business without the manufacturer's or distributor's consent; or

k. Has failed to comply with the terms of the dealership or franchise agreement.

(d) To resort to or use any false or misleading advertisement in connection with her or his business as such manufacturer, factory branch or divi-

sion, distributor, distributor branch or division, wholesaler, or wholesale branch or division, or officer, agent, or other representative thereof.

(e) To offer to sell or to sell any new tractor or item of farm equipment, or parts or accessories therefor, to any other tractor or farm equipment dealer at a lower actual price therefor than the actual price offered to any other tractor or farm equipment dealer for the same model tractor or farm equipment identically equipped or to utilize any device, including, but not limited to, sales promotion plans or programs, which results in such lesser actual price or results in a fixed price predetermined solely by the manufacturer or distributor. However, the provisions of this paragraph do not apply to sales to a tractor or farm equipment dealer for resale to any unit or agency of the United States Government, the state or any of its political subdivisions, or any municipality located within this state. Further, the provisions of this paragraph do not apply so long as a manufacturer, distributor, or wholesaler, or any agent thereof, sells or offers to sell such new tractor or farm equipment, parts, or accessories to all her or his franchised tractor or farm equipment dealers at an equal price.

(g) To prevent or attempt to prevent, by contract or otherwise, any tractor or farm equipment dealer from changing the capital structure of her or his dealership or the means by or through which the dealer ~~he~~ finances the operation of her or his dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer, distributor, or wholesaler and provided such change by the dealer does not result in a change in the executive management of the dealership.

(4) It is deemed a violation of this section for a tractor or farm equipment dealer:

(c) To resort to or use any false or misleading advertisement in connection with her or his business as such tractor or farm equipment dealer.

Section 742. Subsections (1) and (5) of section 686.417, Florida Statutes, are amended to read:

686.417 Remedies.—

(1) In addition to temporary, preliminary, or final injunctive relief as provided in s. 686.413(3)(c)1., any person who is aggrieved or injured in his or her business or property by reason of anything forbidden in ss. 686.40-686.418 may bring an action therefor in the appropriate circuit court of this state and shall recover the actual damages sustained and the costs of such action, including a reasonable attorney's fee.

(5) The Department of Legal Affairs or the state attorney, if a violation of ss. 686.40-686.418 occurs in his or her judicial circuit, may bring an action for injunctive or other appropriate civil relief for any violation of ss. 686.40-686.418.

Section 743. Subsections (2) and (3) of section 686.501, Florida Statutes, are amended to read:

686.501 Definitions.—As used in ss. 686.501-686.506:

(2) “Artist” means the creator of a work of art or, if she or he is deceased, the artist’s heirs or personal representative.

(3) “Art dealer” means a person engaged in the business of selling works of art, a person who is a consignee of a work of art, or a person who, by occupation, holds herself or himself out as having knowledge or skill peculiar to works of art or rare documents or prints, or to whom such knowledge or skill may be attributed by her or his employment of an agent or broker or other intermediary who, by occupation, holds herself or himself out as having such knowledge or skill. The term “art dealer” includes an auctioneer who sells works of art, rare maps, rare documents, or rare prints at public auction as well as the auctioneer’s consignor or principal. The term “art dealer” does not include a cooperative which is totally owned by artist members.

Section 744. Subsection (5) of section 686.503, Florida Statutes, is amended to read:

686.503 Contract provisions.—Whenever a consignee accepts a work of art for the purpose of sale, or exhibition and sale, to the public on a commission, fee, or other basis of compensation, there shall be a written contract or agreement between the consignor and consignee which shall include, but not be limited to, the following provisions:

(5) A work of art delivered to an art dealer by an artist for the purpose of exhibition or sale and the artist’s share of the proceeds of the sale of the work by the dealer, whether to the dealer on his or her own account or to a third person, shall create a priority in favor of the artist over the claims, liens, or security interests of the creditors of the art dealer, notwithstanding any provisions of the Uniform Commercial Code.

Section 745. Paragraph (b) of subsection (2) of section 686.504, Florida Statutes, is amended to read:

686.504 Warranties by art dealers; written statement; terminology.—Any provision in any other law to the contrary notwithstanding:

(2) In construing the degree of authenticity of authorship warranted, due regard shall be given to the terminology used in describing the authorship and the meaning accorded to such terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place. A written instrument delivered pursuant to a sale which took place in this state which, in describing the work, states, for example:

(b) That the work is attributed to a named author: means a work of the period of the author, attributed to her or him, but not with certainty by her or him.

Section 746. Subsection (3) of section 686.506, Florida Statutes, is amended to read:

686.506 Rights and liabilities, additional; merchant's liability.—

(3) An art dealer whose warranty of authenticity of authorship was made in good faith shall not be liable for damages beyond the return of the purchase price which he or she received, together with any attorney's fees and costs incurred by reason of the art dealer's refusal to comply with ss. 686.501-686.506.

Section 747. Subsections (5) and (6) of section 687.071, Florida Statutes, are amended to read:

687.071 Criminal usury, loan sharking; shylocking.—

(5) Books of account or other documents recording extensions of credit in violation of subsections (3) or (4) are declared to be contraband, and any person, other than a public officer in the performance of his or her duty, and other than the person charged such usurious interest and person acting on his or her behalf, who shall knowingly and willfully possess or maintain such books of account or other documents, or conspire so to do, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) No person shall be excused from attending and testifying or producing any books, paper, or other document before any court upon any investigation, proceeding, or trial, for any violation of this section upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person ~~him~~ may tend to convict him or her of a crime or subject the person ~~him~~ to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against the person ~~him~~ upon any criminal investigation or proceeding.

Section 748. Paragraph (d) of subsection (4) of section 687.14, Florida Statutes, is amended to read:

687.14 Definitions.—As used in this act, unless the context otherwise requires:

(4) "Loan broker" means any person, except any bank or savings and loan association, trust company, building and loan association, credit union, consumer finance company, retail installment sales company, securities broker-dealer, real estate broker or salesperson, attorney, federal Housing Administration or United States Department of Veterans Affairs approved lender, credit card company, installment loan licensee, mortgage broker or lender, or insurance company, provided that the person excepted is licensed by and subject to regulation or supervision of any agency of the United States or this state and is acting within the scope of the license; and also excepting subsidiaries of licensed or chartered consumer finance companies, banks, or savings and loan associations; who:

(d) Holds herself or himself out as a loan broker.

Section 749. Subsections (1) and (2) of section 687.145, Florida Statutes, are amended to read:

687.145 Injunction to restrain violations.—

(1) Whenever the department determines, from evidence satisfactory to it, that any person has engaged, is engaged, or is about to engage in an act or practice constituting a violation of this act or a rule or order promulgated thereunder, the department may bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practice or engaging therein or doing any act or acts in furtherance thereof or in violation of this act to enjoin the person or persons from continuing the violation or acts in furtherance thereof. In such court proceedings, the department may apply for and on due showing be entitled to have issued, the court's subpoena requiring the appearance of any defendant and his or her employees or agents, and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in such court proceedings, the court shall have the power and jurisdiction, upon application of the department, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him or her by the court. In such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may, with the consent of the presiding judge of the circuit, require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

Section 750. Paragraph (b) of subsection (2) of section 688.002, Florida Statutes, is amended to read:

688.002 Definitions.—As used in ss. 688.001-688.009, unless the context requires otherwise:

(2) "Misappropriation" means:

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

1. Used improper means to acquire knowledge of the trade secret; or
2. At the time of disclosure or use, knew or had reason to know that her or his knowledge of the trade secret was:

- a. Derived from or through a person who had utilized improper means to acquire it;
 - b. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - c. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
3. Before a material change of her or his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Section 751. Section 689.01, Florida Statutes, is amended to read:

689.01 How real estate conveyed.—No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by the party's ~~his~~ agent thereunto lawfully authorized, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's ~~his~~ agent thereunto lawfully authorized, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may convey in accordance with the provisions of this section or in accordance with the provisions of ss. 692.01 and 692.02.

Section 752. Subsection (1) of section 689.02, Florida Statutes, is amended to read:

689.02 Form of warranty deed prescribed.—

(1) Warranty deeds of conveyance to land may be in the following form, viz.:

“This indenture, made this day of A.D....., between, of the County of in the State of, party of the first part, and, of the County of, in the State of, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of dollars, to her or him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, her or his heirs and assigns forever, the following described land, to wit:

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.”

Section 753. Section 689.03, Florida Statutes, is amended to read:

689.03 Effect of such deed.—A conveyance executed substantially in the foregoing form shall be held to be a warranty deed with full common-law covenants, and shall just as effectually bind the grantor, and the grantor's his heirs, as if said covenants were specifically set out therein. And this form of conveyance when signed by a married woman shall be held to convey whatever interest in the property conveyed which she may possess.

Section 754. Section 689.05, Florida Statutes, is amended to read:

689.05 How declarations of trust proved.—All declarations and creations of trust and confidence of or in any messuages, lands, tenements or hereditaments shall be manifested and proved by some writing, signed by the party authorized by law to declare or create such trust or confidence, or by the party's his last will and testament, or else they shall be utterly void and of none effect; provided, always, that where any conveyance shall be made of any lands, messuages or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by the act and operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this section had not been made, anything herein contained to the contrary in anywise notwithstanding.

Section 755. Section 689.06, Florida Statutes, is amended to read:

689.06 How trust estate conveyed.—All grants, conveyances, or assignments of trust or confidence of or in any lands, tenements, or hereditaments, or of any estate or interest therein, shall be by deed signed and delivered, in the presence of two subscribing witnesses, by the party granting, conveying, or assigning, or by the party's his attorney or agent thereunto lawfully authorized, or by last will and testament duly made and executed, or else the same shall be void and of no effect.

Section 756. Paragraph (f) of subsection (1) and subsection (2) of section 689.075, Florida Statutes, are amended to read:

689.075 Inter vivos trusts; powers retained by settlor.—

(1) A trust which is otherwise valid and which complies with s. 737.111, including, but not limited to, a trust the principal of which is composed of real property, intangible personal property, tangible personal property, the possible expectancy of receiving as a named beneficiary death benefits as described in s. 733.808, or any combination thereof, and which has been created by a written instrument shall not be held invalid or an attempted testamentary disposition for any one or more of the following reasons:

(f) Because the settlor has retained the right to receive all or part of the income of the trust during her or his life or for any part thereof;

(2) Nothing contained herein shall affect the validity of those accounts, including but not limited to bank accounts, share accounts, deposits, certificates of deposit, savings certificates, and other similar arrangements, heretofore or hereafter established at any bank, savings and loan association, or

credit union by one or more persons, in trust for one or more other persons, which arrangements are, by their terms, revocable by the person making the same until her or his death or incompetency.

Section 757. Section 689.14, Florida Statutes, is amended to read:

689.14 Entailed estates.—No property, real or personal, shall be entailed in this state. Any instrument purporting to create an estate tail, express or implied, shall be deemed to create an estate for life in the first taker with remainder per stirpes to the lineal descendants of the first taker in being at the time of her or his death. If the remainder fails for want of such remainderman, then it shall vest in any other remaindermen designated in such instrument, or, if there is no such designation, then it shall revert to the original donor or to her or his heirs.

Section 758. Section 689.17, Florida Statutes, is amended to read:

689.17 Rule in Shelley's Case abolished.—The rule in Shelley's Case is hereby abolished. Any instrument purporting to create an estate for life in a person with remainder to her or his heirs, lawful heirs, heirs of her or his body or to her or his heirs described by words of similar import, shall be deemed to create an estate for life with remainder per stirpes to the life tenant's lineal descendants in being at the time said life estate commences, but said remainder shall be subject to open and to take in per stirpes other lineal descendants of the life tenant who come into being during the continuance of said life estate.

Section 759. Paragraph (b) of subsection (2) and subsections (3), (5), and (6) of section 689.21, Florida Statutes, are amended to read:

689.21 Disclaimer of interests in property passing under certain nontestamentary instruments or under certain powers of appointment.—

(2) SCOPE OF RIGHT TO DISCLAIM.—

(b) Disclaimer may be made for a minor, incompetent, or deceased beneficiary by the guardian or personal representative if the circuit court having jurisdiction of the estate of such minor, incompetent, or deceased beneficiary, after hearing upon petition filed by the guardian, personal representative, or other interested person and served upon such persons and in such manner as the judge shall direct, finds that it is in the best interests of those interested in the estate of such beneficiary, and of those who take the beneficiary's interest by virtue of the disclaimer, and not detrimental to the best interests of the beneficiary, to make the disclaimer. If so ordered by the circuit court, the guardian or personal representative shall execute and file the disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary herself or himself could disclaim if she or he were living, of legal age, and competent.

(3) DISPOSITION OF DISCLAIMED INTERESTS.—

(a) Unless the grantor, or a donee of a power of appointment, has otherwise provided by a nontestamentary instrument with reference to the possi-

bility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes her or him to become finally ascertained as a beneficiary and her or his interest to become indefeasibly fixed both in quality and quantity, and, in any case, the disclaimer shall relate for all purposes to such date, whether filed before or after such death or other event. An interest in property disclaimed shall never vest in the disclaimant.

(b) A beneficiary who disclaims any interest which would pass to her or him in any manner described in paragraph (2)(a) shall not be excluded, unless her or his disclaimer instrument so provides, from sharing in any other interest to which she or he may be entitled in any manner described in this section, including subparagraph (2)(a)9., even though such interest includes, by virtue of the beneficiary's disclaimer, disclaimed assets.

(5) TIME IN WHICH DISCLAIMER SHALL BE MADE.—A disclaimer shall be filed at any time after the creation of the interest but, in any event, within 12 months after the effective date of the nontestamentary instrument creating the interest, or, if the disclaimant is not then finally ascertained as a beneficiary or her or his interest has not then become indefeasibly fixed both in quality and quantity, such disclaimer shall be filed not later than 12 months after the event which would cause her or him so to become finally ascertained and her or his interest to become indefeasibly fixed both in quality and quantity.

(6) WAIVER OR BAR TO RIGHT TO DISCLAIM.—The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. Any voluntary assignment or transfer of, or contract to assign or transfer, or encumbrance of, an interest in real or personal property, or written waiver of the right to disclaim an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before she or he has filed a disclaimer as herein provided bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest. The acceptance, assignment, transfer, encumbrance, or written waiver of the right to disclaim, or sale pursuant to judicial process, of a part of an interest in property shall not bar the right to disclaim any other part of the interest in property.

Section 760. Section 694.09, Florida Statutes, is amended to read:

694.09 Certified copies admissible in evidence.—A copy of any of the instruments referred to in s. 694.08 duly certified, under the hand and seal of office of the officer in whose office the same may be recorded, to be a true and correct copy of the original, on file or of record in her or his office, shall in all cases and in all courts be admitted and received in evidence with the like effect and force as the original thereof might be.

Section 761. Section 694.14, Florida Statutes, is amended to read:

694.14 Validation of deeds executed by guardians appointed under Veterans' Guardianship Law.—Any deed of conveyance, executed bona fide and

for a valuable consideration authorized and approved by order of the probate court, by any limited guardian who was appointed as guardian under the Veterans' Guardianship Law of Florida and who acted under that law and the order of the probate court in the execution of the deed of conveyance is hereby cured and shall be deemed and taken as if properly executed, notwithstanding the fact that the deed was executed to property that the mentally incompetent veteran did not directly or otherwise acquire with money received by the veteran from the Veterans Administration, and notwithstanding the fact that the conveyance is to property acquired by the mentally incompetent veteran before she or he became a veteran or was declared insane, and notwithstanding the fact that some of the information required by the Veterans' Guardianship Law was not set out in the petition for appointment of the guardian, and notwithstanding the fact that the guardian did not publish the notice of application for an order of sale as required by s. 744.631, and notwithstanding any other defect in any part of the guardianship proceeding that resulted in the court-authorized and court-approved proceeding which resulted in the execution of such guardian's deed.

Section 762. Subsection (2) of section 695.02, Florida Statutes, is amended to read:

695.02 Blank or master form of instruments may be recorded.—

(2) When any such blank or master form is filed with the clerk of the circuit court, she or he shall record and index the same in the manner provided by law for recording and indexing mortgages and such other instruments respectively, except that the name of the person whose name appears on such blank or master form shall be inserted in the indexes as grantor and also as grantee.

Section 763. Section 695.03, Florida Statutes, is amended to read:

695.03 Acknowledgment and proof; validation of certain acknowledgments; legalization or authentication before foreign officials.—To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, or legalized or authenticated by a civil-law notary or notary public who affixes her or his official seal, before the officers and in the form and manner following:

(1) WITHIN THIS STATE.—An acknowledgment or proof made within this state may be made before a judge, clerk, or deputy clerk of any court; a United States commissioner or magistrate; or a notary public, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. All affidavits and acknowledgments heretofore made or taken in this manner are hereby validated.

(2) WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.—An acknowledgment or proof made out of this state but within the United States may be made before a commissioner of deeds appointed by the Governor of this state; a judge or clerk of any court of the United States or of any state, territory, or district; a United States commissioner or magistrate; or

a notary public, justice of the peace, master in chancery, or registrar or recorder of deeds of any state, territory, or district having a seal, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. If the acknowledgment or proof is made before a notary public who does not affix a seal, it is sufficient for the notary public to type, print, or write by hand on the instrument, "I am a Notary Public of the State of ...(state)..., and my commission expires on ...(date)..."

(3) WITHIN FOREIGN COUNTRIES.—If the acknowledgment, legalization, authentication, or proof is made in a foreign country, it may be made before a commissioner of deeds appointed by the Governor of this state to act in such country; before a civil-law notary or notary public of such foreign country who has an official seal; before an ambassador, envoy extraordinary, minister plenipotentiary, minister, commissioner, charge d'affaires, consul general, consul, vice consul, consular agent, or other diplomatic or consular officer of the United States appointed to reside in such country; or before a military or naval officer authorized by the Laws or Articles of War of the United States to perform the duties of notary public, and the certificate of acknowledgment, legalization, authentication, or proof must be under the seal of the officer. A certificate legalizing or authenticating the signature of a person executing an instrument concerning real property and to which a civil-law notary or notary public of that country has affixed her or his official seal is sufficient as an acknowledgment. For the purposes of this section, the term "civil-law notary" means an official of a foreign country who has an official seal and who is authorized to make legal or lawful the execution of any document in that jurisdiction, in which jurisdiction the affixing of her or his official seal is deemed proof of the execution of the document or deed in full compliance with the laws of that jurisdiction.

All affidavits, legalizations, authentications, and acknowledgments heretofore made or taken in the manner set forth above are hereby validated.

Section 764. Subsection (2) of section 695.031, Florida Statutes, is amended to read:

695.031 Affidavits and acknowledgments by members of armed forces and their spouses.—

(2) The instrument shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment or otherwise shall be required, and no seal shall be necessary, but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

On this day of, 19...., before me, the undersigned officer, personally appeared, known to me (or satisfactorily proven) to be serving in or with, or whose duties require her or his presence with the Armed Forces of the United States, and to be the person whose name is subscribed to the within instrument, and acknowledged that she or he executed the same for the purposes therein contained, and the undersigned does further certify that she or he is at the date of this certificate a commissioned officer of the

rank stated below and is in the active service of the Armed Forces of the United States.

...(Signature of commissioned officer.)...

...(Rank of commissioned officer and command or branch of service to which officer is attached.)...

Section 765. Section 695.09, Florida Statutes, is amended to read:

695.09 Identity of grantor.—No acknowledgment or proof shall be taken, except as set forth in s. 695.03(3), by any officer within or without the United States unless the officer he knows, or has satisfactory proof, that the person making the acknowledgment is the individual described in, and who executed, such instrument or that the person offering to make proof is one of the subscribing witnesses to such instrument.

Section 766. Section 695.11, Florida Statutes, is amended to read:

695.11 Instruments deemed to be recorded from time of filing.—All instruments which are authorized or required to be recorded in the office of the clerk of the circuit court of any county in the State of Florida, and which are to be recorded in the “Official Records” as provided for under s. 28.222, and which are filed for recording on or after the effective date of this act, shall be deemed to have been officially accepted by the said officer, and officially recorded, at the time she or he affixed thereon the consecutive official register numbers required under s. 28.222, and at such time shall be notice to all persons. The sequence of such official numbers shall determine the priority of recordation. An instrument bearing the lower number in the then current series of numbers shall have priority over any instrument bearing a higher number in the same series.

Section 767. Section 695.12, Florida Statutes, is amended to read:

695.12 Imperfect record.—Whenever any instrument authorized or required by law to be recorded in any county either has been or may be so imperfectly or erroneously recorded as to require a new record thereof, if the officer who so recorded the same be still in office, she or he shall, upon demand of the owner of such instrument, or person controlling the same, record it anew free of any charge or fee than the fee allowed by law for one perfect record thereof.

Section 768. Section 695.13, Florida Statutes, is amended to read:

695.13 Want of certificate of record.—Whenever any instrument authorized or required by law to be recorded shall appear to be recorded in the appropriate record book in the proper office, whether the record shall be in the handwriting of the officer whose duty it was to record such instrument, or in the handwriting of any other person, the record shall be presumed to have been made by the officer whose duty it was to make it, and the absence of a certificate of such officer that such instrument was recorded by her or him shall in no wise affect the validity of the record.

Section 769. Section 695.17, Florida Statutes, is amended to read:

695.17 United States deeds and patents may be recorded.—Deeds and patents issued by the United States Government and photographic copies made by authority of said government from its records thereof in the general land office, embracing lands within the state, shall be admitted to record in this state in the county or counties where the land lies, when presented to the clerk of the court of the county where same is to be recorded, and when said deeds, patents or photographic copies shall appear to her or him to be genuine.

Section 770. Section 695.18, Florida Statutes, is amended to read:

695.18 Indorsement by clerk.—Upon recording said deed, patent or certified copy, the clerk of the court shall indorse thereon and also upon the record made by her or him the following:

“This deed and patent (or certified copy as the case may be) having been presented to me on the day of for record, and same appearing to me to be genuine and to have been made and issued by the authority of the United States Government, I have duly recorded same in on page of the public records of my office.

Witness my hand and official seal at Florida, this day of
 ...(Clerk.)...”

Section 771. Section 695.20, Florida Statutes, is amended to read:

695.20 Unperformed contracts of record.—Whenever anyone shall have contracted to purchase real estate in the state, prior to January 1, 1930, by written agreement requiring all payments to be made within 10 years from the date of the contract, or has accepted an assignment of such an agreement, and the fact of the existence of such a contract of purchase, or assignment, appears of record from the instrument itself or by reference in some other recorded instrument, and shall not have obtained and placed of record a deed to the property or a decree of a court of competent jurisdiction recognizing her or his rights thereunto, and is not in actual possession of the property covered by the contract or by the assignment, as defined in s. 95.17, she or he, her or his surviving spouse ~~widow~~, heirs, personal representatives, successors, and assigns, shall have no further interest in the property described in the contract, or the assignment, by virtue thereof, and the record of such contract, assignment or other record reference thereto, shall no longer constitute either actual or constructive notice to a purchaser, mortgagee, or other person acquiring an interest in the property, unless within 6 months after this law shall take effect, (approved April 26, 1941) she or he or some one claiming under her or him shall:

(1) Place on record a deed or other conveyance of the property from the holder of the record title; or

(2) Place on record a written instrument executed by the holder of the record title evidencing an extension or modification of the original contract and showing that the original contract remains in force and effect; or

(3) Institute, or have pending, in a court of competent jurisdiction a suit for the enforcement of her or his rights under such contract.

Section 772. Subsection (1) of section 695.25, Florida Statutes, is amended to read:

695.25 Short form of acknowledgment.—The forms of acknowledgment set forth in this section may be used, and are sufficient for their respective purposes, under any law of this state. The forms shall be known as “Statutory Short Forms of Acknowledgment” and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in his or her own right:

STATE OF
COUNTY OF

The foregoing instrument was acknowledged before me this ...(date)... by ...(name of person acknowledging)..., who is personally known to me or who has produced ...(type of identification)... as identification.

...(Signature of person taking acknowledgment)...
...(Name typed, printed or stamped)...
...(Title or rank)...
...(Serial number, if any)...

Section 773. Subsection (2) of section 695.26, Florida Statutes, is amended to read:

695.26 Requirements for recording instruments affecting real property.—

(2) If a name or address is printed, typewritten, or stamped on an instrument in a position other than the position required by subsection (1), the clerk of the circuit court may, in her or his discretion, accept the instrument for recordation if she or he determines that the connection between the signature and the name or the name and the address is apparent.

Section 774. Section 697.06, Florida Statutes, is amended to read:

697.06 Prepayment of note.—Any note which is silent as to the right of the obligor to prepay the note in advance of the stated maturity date may be prepaid in full by the obligor or her or his successor in interest without penalty.

Section 775. Paragraph (c) of subsection (1) of section 697.08, Florida Statutes, is amended to read:

697.08 Equity skimming.—

(1) It is unlawful for any person, with intent to defraud the owner of real property, to engage in equity skimming, which is, to:

(c) Apply, or authorize the application of, rents from such dwellings for the person's ~~his~~ own use.

Section 776. Section 697.10, Florida Statutes, is amended to read:

697.10 Liability for error in mortgage deed or note.—In any action relating to real property, if the court shall find that any person has prepared an instrument which due to an inaccurate or improper legal description impairs another person's title to real property, the court may award to the prevailing party all costs incurred by her or him in such action, including reasonable attorney's fees, and in addition thereto may award to the prevailing party all actual damages that she or he may have sustained as a result of such impairment of title.

Section 777. Subsections (4), (6), and (7) of section 697.202, Florida Statutes, are amended to read:

697.202 Definitions of terms used in ss. 697.20-697.206.—As used in ss. 697.20-697.206, the term:

(4) "Home equity conversion" means any method by which a homeowner can convert the equity in her or his home into cash without relinquishing occupancy rights.

(6) "Mortgagee" means a party who makes a loan for which she or he receives a mortgage.

(7) "Mortgagor" means a party who receives a loan for which she or he gives a mortgage.

Section 778. Paragraph (a) of subsection (1) of section 697.205, Florida Statutes, is amended to read:

697.205 Recoveries from the trust fund.—

(1)(a) Any person is eligible to seek recovery from the Home Equity Conversion Mortgage Guaranty Fund if:

1. Such person was the mortgagee of a home equity conversion mortgage which was foreclosed upon termination, and the proceeds from the foreclosure sale were insufficient to repay the full loan amount due;

2. Such person has caused to be issued a writ of execution upon a decree rendered pursuant to chapter 702, and the officer executing the writ has made a return showing that no real or personal property of the judgment debtor can be found which is liable to be levied upon in satisfaction of the decree or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

3. Such person has made all searches and inquiries which are reasonable to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and such person through her or his search has discovered no property or assets or has discovered property and assets and taken all necessary action and proceedings for the application of such property and assets in satisfaction of the judgment but the amounts thereby realized were insufficient to satisfy the judgment;

4. Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the deficiency decree; or

5. The mortgage on which recovery is sought was insured pursuant to s. 697.204 prior to July 1, 1993.

Section 779. Section 698.01, Florida Statutes, is amended to read:

698.01 To be recorded.—No chattel mortgage shall be valid or effectual against creditors or subsequent purchasers for a valuable consideration and without notice unless it be recorded, or unless the property included in it be delivered to the mortgagee and continue to remain truly and bona fide in her or his possession.

Section 780. Subsections (1), (2), and (5) of section 698.03, Florida Statutes, are amended to read:

698.03 Power of sale may be included in certain mortgages; exercise of power.—

(1) In all mortgages to, or in favor of, the Government of the United States or any agencies thereunder making agricultural loans, or to secure principal indebtedness not exceeding \$500, bearing interest not in excess of the general legal rate, on farm machinery and equipment, and agricultural, horticultural, or fruit crops in being, it may be provided or covenanted that the mortgagee, her or his legal representatives or assigns, shall have the power to sell the mortgaged property upon any breach or default by the mortgagor of the terms, covenants, conditions, or stipulations of such mortgage or of the obligation thereby secured or upon nonpayment of the indebtedness secured by such mortgage or interest thereon, when due and payable in such manner and on such terms as may be provided in such mortgage, and all such provisions and covenants shall be valid, effectual, and enforceable, and every such sale thereunder shall vest in the purchaser, or purchasers, the title in and to the property mortgaged and described in such mortgage.

(2) In case of the exercise of such power of sale, written notice of such sale shall be given to the mortgagor and all persons claiming by, through, or under her or him by instrument duly recorded, not less than 15 days prior to such sale. Such notice may be served in the same manner as summons ad respondendum are served pursuant to the laws of Florida, and a copy of such notice shall be published at least twice, the first publication of which shall be not less than 20 days prior to such sale, in a newspaper published in the county where such sale shall occur, and another copy of such notice shall be served upon any person in charge, or having or taking part in the supervision or care of such mortgaged property, or any part thereof. If there be no newspaper published in such county, then such publication may be made in a newspaper published in any county adjoining that wherein such sale is to be made. Such notice may be served upon any of said parties wherever they may be within the state. If any person to whom notice is required to be given under this statute shall not reside in the state, or her or his residence be unknown to the mortgagee, her or his legal representatives or assigns, then it shall not be necessary to make personal service of

such notice upon her or him, and in such case, the publication of such notice as above provided shall be sufficient; provided, that where the address of such nonresident be known to the mortgagee, her or his legal representative or assigns, a copy of such notice shall be mailed to her or him at such address, by registered mail.

(5) The proceeds of every such sale shall be applied first to the payment of the costs and expenses of such sale, including the cost of advertising and serving notices and of the person conducting such sale (which shall be the same as the fees prescribed by law to be paid sheriffs for conducting sales and executing sheriffs' deeds under executions) and attorney's fees of 10 percent of the principal and accrued interest of the obligation secured by such mortgage, for the services of the attorney for the mortgagee or her or his assigns, and then to the payment of the obligation secured by such property mortgage, including unpaid interest, if any, and the balance or excess, if any, shall be paid to the owner of such mortgaged property if she or he be known; otherwise, such excess shall be paid by the person conducting such sale into the registry of the circuit court for such county to be there held for the benefit of the person lawfully entitled to the same.

Section 781. Section 698.09, Florida Statutes, is amended to read:

698.09 Extension of period of notice.—The effect as to third persons of the filing of any such instrument for record, may, in all respects, including the preservation of priority thereof, be extended for successive additional periods, each not exceeding 7 years from the date of the filing in the office of the clerk of the circuit court, wherein any such instrument is recorded, upon the filing by the owner or holder thereof, of an affidavit identifying such instrument, stating her or his interest therein and the nature and amount unpaid on the obligation still secured thereby. Provided, however, that where a mortgage or other security instrument has been amended or supplemented one or more times and an identifying affidavit is so filed for record by the owner or holder thereof with respect to the original mortgage or other security instrument and mention is made in such affidavit of any instrument or instruments amendatory or supplemental thereto such identifying affidavit need not be filed with respect to such amendatory or supplemental instrument or instruments so mentioned therein and the effect of such amendatory or supplemental instrument or instruments and the preservation of any lien or priority thereof shall be extended along with the original mortgage or other security instrument as to which affidavit or affidavits have been filed in accordance with the requirements of this section.

Section 782. Section 701.01, Florida Statutes, is amended to read:

701.01 Assignment.—Any mortgagee may assign and transfer any mortgage made to her or him, and the person to whom any mortgage may be assigned or transferred may also assign and transfer it, and that person he or her or his assigns or subsequent assignees may lawfully have, take and pursue the same means and remedies which the mortgagee may lawfully have, take or pursue for the foreclosure of a mortgage and for the recovery of the money secured thereby.

Section 783. Section 702.05, Florida Statutes, is amended to read:

702.05 Mortgaged lands sold for taxes.—Any person who has a lien by mortgage or otherwise upon lands sold for taxes may, within the time allowed by law for redemption, redeem such lands, and the receipt of the officer authorized to receive the amount paid for redemption money shall entitle the lienholder to collect the said amount, with interest at the rate of 10 percent per annum, as a part of and in the same manner as the amount secured by her or his original lien.

Section 784. Section 703.08, Florida Statutes, is amended to read:

703.08 Copies of abstracts as evidence.—The abstracts, copies, minutes, maps, and plats of said county purchased under the provisions of s. 703.07 shall thereupon be placed in the office of the clerk of the circuit court of said county, to be copied or arranged in such form as the board of county commissioners shall deem best for the public interest. And in case the originals have been lost or destroyed, and no certified copy from the records of the original papers shall be in the power, custody, or control of the party asking to use the same on any trial or other proceedings, copies of the same, or any part thereof, duly certified by the clerk of the circuit court of said county, shall be admitted in evidence in all courts of law and equity in this state. Such clerk shall furnish to any and all parties requesting it, upon being paid his or her proper fees, certified copies of the same, or parts thereof.

Section 785. Section 703.10, Florida Statutes, is amended to read:

703.10 Order to show cause; enjoining owners from removing abstracts beyond jurisdiction of court.—Upon the presentation of such petition to such judge, she or he shall make an order requiring the owner or custodian of such abstracts, copies, minutes, extracts, maps, or plats to appear her or him at a day by her or him fixed, not less than 10 nor more than 30 days from the date of such order, and show cause why the petition should not be granted, and the said judge shall at the time make an order enjoining the owners or persons in charge of such abstracts, copies, minutes, extracts, maps, or plats from removing the same beyond the jurisdiction of the court pending the litigation.

Section 786. Section 703.11, Florida Statutes, is amended to read:

703.11 Order granting petition; jury to assess compensation; copies of original abstracts.—Upon the day fixed, or any day to which the hearing may be adjourned, if no person shall appear, or if no sufficient cause be shown why the prayer of the petition should not be granted, then the said judge shall make an order granting the prayer of the petition and issue an order to the sheriff to impanel a jury of 12 persons ~~men~~ to try what shall be just compensation for the said abstracts, copies, minutes, extracts, maps, or plats, or copies thereof, sought to be taken for the county. If the defendant so appearing shall, in her or his return to such order, elect that the condemnation sought by the petitioner shall, if any such condemnation be allowed, be of copies of such abstracts, copies, minutes, extracts, maps, or plats and not of the originals thereof, no condemnation shall be allowed of such originals, and the petition, in case it shall have sought a condemnation of such

originals, shall thereupon be amended so as to seek only a condemnation of a copy of said abstracts, copies, minutes, extracts, maps, or plats.

Section 787. Section 703.18, Florida Statutes, is amended to read:

703.18 Refusing to make abstract.—Any person or any employee thereof, who may be engaged in such business of making abstracts, writing, entries, or maps in any county in which the records have been destroyed, shall furnish such abstract or copy, or any portion thereof and a certificate and affidavit of the correctness thereof to any person from time to time applying therefor in the order of application, and without unnecessary delay, and for a reasonable consideration to be allowed therefor, which in no case shall exceed the sum of 60 cents for each deed, mortgage, or other instrument for which such abstract is furnished, and \$5 for the certificate and affidavit, and only one certificate and affidavit shall be necessary or shall be charged to or for all the entries, instruments, or items of the abstract of any chain of title, and any and all persons so engaged, whose business is hereby declared to stand upon a like footing with that of common carriers, who shall refuse so to do, if tender or payment be made to him or her or them of the amount demanded for such abstract or copy, and not exceeding the amount aforesaid, as soon as such amount is made known and ascertained, or of a sum adequate to cover such amount before it is ascertained, shall be guilty of the crime of extortion, and shall also be liable in any action for any and all damages, loss or injury which any person applying therefor may suffer or incur by reason of such failure to furnish such abstract or copy, as aforesaid, and shall also be subject to be compelled to furnish such abstract by mandamus or other legal proceedings.

Section 788. Subsection (1) of section 704.01, Florida Statutes, is amended to read:

704.01 Common-law and statutory easements defined and determined.—

(1) IMPLIED GRANT OF WAY OF NECESSITY.—The common-law rule of an implied grant of a way of necessity is hereby recognized, specifically adopted, and clarified. Such an implied grant exists where a person has heretofore granted or hereafter grants lands to which there is no accessible right-of-way except over her or his land, or has heretofore retained or hereafter retains land which is inaccessible except over the land which the person ~~he~~ conveys. In such instances a right-of-way is presumed to have been granted or reserved. Such an implied grant or easement in lands or estates exists where there is no other reasonable and practicable way of egress, or ingress and same is reasonably necessary for the beneficial use or enjoyment of the part granted or reserved. An implied grant arises only where a unity of title exists from a common source other than the original grant from the state or United States; provided, however, that where there is a common source of title subsequent to the original grant from the state or United States, the right of the dominant tenement shall not be terminated if title of either the dominant or servient tenement has been or should be transferred for nonpayment of taxes either by foreclosure, reversion, or otherwise.

Section 789. Section 704.04, Florida Statutes, is amended to read:

704.04 Judicial remedy and compensation to servient owner.—When the owner or owners of such lands across which a statutory way of necessity under s. 704.01(2) is claimed, exclusive of the common-law right, objects or refuses to permit the use of such way under the conditions set forth herein or until she or he receives compensation therefor, either party or the board of county commissioners of such county may file suit in the circuit court of the county wherein the land is located in order to determine if the claim for said easement exists, and the amount of compensation to which said party is entitled for use of such easement. Where said easement is awarded to the owner of the dominant tenement, it shall be in compliance with s. 704.01(2) and shall exist so long as such easement is reasonably necessary for the purposes stated herein. The court, in its discretion, shall determine all questions, including the type, duration, extent, and location of the easement, the amount of compensation, and the attorney's fees and costs to be awarded to either party for unreasonable refusal to comply with the provisions of s. 704.01(2) provided that if either of said parties so requests in her or his original pleadings, the amount of compensation may be determined by a jury trial. The easement shall date from the time the award is paid.

Section 790. Subsections (2), (3), and (4) of section 705.102, Florida Statutes, are amended to read:

705.102 Reporting lost or abandoned property.—

(2) The law enforcement officer taking the report shall ascertain whether the person reporting the property wishes to make a claim to it if the rightful owner cannot be identified or located. If the person does wish to make such claim, he or she shall deposit with the law enforcement agency a reasonable sum sufficient to cover the agency's cost for transportation, storage, and publication of notice. This sum shall be reimbursed to the finder by the rightful owner should he or she identify and reclaim the property.

(3) It is unlawful for any person who finds any lost or abandoned property to appropriate the same to his or her own use or to refuse to deliver the same when required.

(4) Any person who unlawfully appropriates such lost or abandoned property to his or her own use or refuses to deliver such property when required commits theft as defined in s. 812.014, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 791. Subsections (2) and (5) of section 705.103, Florida Statutes, are amended to read:

705.103 Procedure for abandoned or lost property.—

(2) Whenever a law enforcement officer ascertains that an article of lost or abandoned property is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)...

Such notice shall be not less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles or the Department of Environmental Protection, respectively, in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15(1). On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any. If, at the end of 5 days after posting the notice and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, the following shall apply:

(a) For abandoned property, the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

(b) For lost property, the officer shall take custody and the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject

to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(5) Whoever opposes, obstructs, or resists any law enforcement officer or any person authorized by the law enforcement officer in the discharge of her or his duties as provided in this section upon conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 792. Subsections (1) and (3) of section 705.19, Florida Statutes, are amended to read:

705.19 Abandonment of animals by owner; procedure for handling.—

(1) Any animal placed in the custody of a licensed veterinarian or bona fide boarding kennel for treatment, boarding, or other care, which shall be abandoned by its owner or ~~the owner's~~ his agent for a period of more than 10 days after written notice is given to the owner or ~~the owner's~~ his agent at her or his last known address may be turned over to the custody of the nearest humane society or dog pound in the area for disposal as such custodian may deem proper.

(3) For the purpose of this section, the term "abandonment" means to forsake entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner or ~~the owner's~~ his agent. Such abandonment shall constitute the relinquishment of all rights and claim by the owner to such animal.

Section 793. Section 709.01, Florida Statutes, is amended to read:

709.01 Power of attorney; authority of nominee when principal dead.—If any agent, constituted by power of attorney or other authority, shall do any act for his or her principal which would be lawful if such principal were living, the same shall be valid and binding on the estate of said principal, although he or she may have died before such act was done; provided, the party treating with such agent dealt bona fide, not knowing at the time of the doing of such act that such principal was dead. An affidavit, executed by the attorney in fact or agent setting forth that he or she has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the death of the principal, or notice of any facts indicating his or her death, shall in the absence of fraud be conclusive proof of the absence of knowledge or notice by the agent of the death of the principal at such time. If the exercise of the power requires the execution and delivery of any instrument which is recordable under the laws of this state, such affidavit shall likewise be recordable. No report or listing, either

official or otherwise, of “missing” or “missing in action” regarding any person in connection with any activity pertaining to or connected with the prosecution of any hostilities in which the United States is then engaged, as such words “missing” or “missing in action” are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal, or notice of any facts indicating the death of such person, or shall operate to revoke the agency.

Section 794. Subsections (1) and (3) of section 709.015, Florida Statutes, are amended to read:

709.015 Power of attorney; authority of agent when principal listed as missing.—

(1) The acts of an agent under a power of attorney or other authority shall be as valid and as binding on the principal or her or his estate as if the principal were alive and competent if, in connection with any activity pertaining to hostilities in which the United States is then engaged, the principal is officially listed or reported by a branch of the United States Armed Forces in a missing status as defined in 37 U.S.C. s. 551 or 5 U.S.C. s. 5561, regardless of whether the principal is then dead, alive, or incompetent.

(3) Upon request of the person dealing with the agent, the agent shall make an affidavit that she or he has not received notice, and has no knowledge, that the principal is incompetent. In the absence of fraud, the affidavit shall be conclusively presumed to establish the agent’s lack of notice or knowledge of the principal’s incompetence.

Section 795. Section 709.02, Florida Statutes, is amended to read:

709.02 Power of appointment; method of release.—Powers of appointment over any property, real, personal, intangible or mixed, may be released, in whole or in part, by a written instrument signed by the donee or donees of such powers. Such written releases shall be signed in the presence of two witnesses but need not be sealed, acknowledged or recorded in order to be valid, nor shall it be necessary to the validity of such releases for spouses ~~husbands~~ of married donees to join such donees in the execution of releases, in whole or part, of powers of appointment.

Section 796. Paragraph (a) of subsection (7) of section 709.08, Florida Statutes, is amended to read:

709.08 Durable power of attorney.—

(7) POWERS OF THE ATTORNEY IN FACT AND LIMITATIONS.—

(a) Except as otherwise limited by this section, by other applicable law, or by the durable power of attorney, the attorney in fact has full authority to perform, without prior court approval, every act authorized and specifically enumerated in the durable power of attorney. Such authorization may include, except as otherwise limited in this section:

1. The authority to execute stock powers or similar documents on behalf of the principal and delegate to a transfer agent or similar person the

authority to register any stocks, bonds, or other securities either into or out of the principal's or nominee's name.

2. The authority to convey or mortgage homestead property. If the principal is married, the attorney in fact may not mortgage or convey homestead property without joinder of the spouse of the principal or the spouse's legal guardian. Joinder by a spouse may be accomplished by the exercise of authority in a durable power of attorney executed by the joining spouse, and either spouse may appoint the other as his or her attorney in fact.

Section 797. Section 712.02, Florida Statutes, is amended to read:

712.02 Marketable record title; suspension of applicability.—Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:

(1) The person claiming such estate; or

(2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed.

Section 798. Paragraph (b) of subsection (1) and subsection (2) of section 712.05, Florida Statutes, are amended to read:

712.05 Effect of filing notice.—

(1) Any person claiming an interest in land may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

(b) Unable to assert a claim on his or her behalf, or

(2) It shall not be necessary for the owner of the marketable record title, as herein defined, to file a notice to protect his or her marketable record title.

Section 799. Section 712.08, Florida Statutes, is amended to read:

712.08 Filing false claim.—No person shall use the privilege of filing notices hereunder for the purpose of asserting false or fictitious claims to

land; and in any action relating thereto if the court shall find that any person has filed a false or fictitious claim, the court may award to the prevailing party all costs incurred by her or him in such action, including a reasonable attorney's fee, and in addition thereto may award to the prevailing party all damages that she or he may have sustained as a result of the filing of such notice of claim.

Section 800. Subsections (16) and (22) of section 713.01, Florida Statutes, are amended to read:

713.01 Definitions.—As used in this part, the term:

(16) “Lienor” means a person who is:

- (a) A contractor;
- (b) A subcontractor;
- (c) A sub-subcontractor;
- (d) A laborer;
- (e) A materialman who contracts with the owner, a contractor, a subcontractor, or a sub-subcontractor; or
- (f) A professional lienor under s. 713.03;

and who has a lien or prospective lien upon real property under this part, and includes his or her successor in interest. No other person may have a lien under this part.

(22) “Perform” or “furnish” when used in connection with the words “labor” or “services” or “materials” means performance or furnishing by the lienor or by another for him or her.

Section 801. Subsection (7) of section 713.02, Florida Statutes, is amended to read:

713.02 Types of lienors and exemptions.—

(7) Notwithstanding any other provision of this part, no lien shall exist in favor of any contractor, subcontractor, or sub-subcontractor unless such contractor, subcontractor, or sub-subcontractor is licensed as a contractor pursuant to the laws of the jurisdiction within which she or he is doing business.

Section 802. Subsections (1) and (2) of section 713.03, Florida Statutes, are amended to read:

713.03 Liens for professional services.—

(1) Any person who performs services as architect, landscape architect, interior designer, engineer, or surveyor and mapper, subject to compliance with and the limitations imposed by this part, has a lien on the real property

improved for any money that is owing to him or her for his or her services used in connection with improving the real property or for his or her services in supervising any portion of the work of improving the real property, rendered in accordance with his or her contract and with the direct contract.

(2) Any architect, landscape architect, interior designer, engineer, or surveyor and mapper who has a direct contract and who in the practice of his or her profession shall perform services, by himself or herself or others, in connection with a specific parcel of real property and subject to said compliances and limitations, shall have a lien upon such real property for the money owing to him or her for his or her professional services, regardless of whether such real property is actually improved.

Section 803. Subsection (1) of section 713.04, Florida Statutes, is amended to read:

713.04 Subdivision improvements.—

(1) Any lienor who, regardless of privity, performs services or furnishes material to real property for the purpose of making it suitable as the site for the construction of an improvement or improvements shall be entitled to a lien on the real property for any money that is owed to her or him for her or his services or materials furnished in accordance with her or his contract and the direct contract. The total amount of liens allowed under this section shall not exceed the amount of the direct contract under which the lienor furnishes labor, materials, or services. The work of making real property suitable as the site of an improvement shall include but shall not be limited to the grading, leveling, excavating, and filling of land, including the furnishing of fill soil; the grading and paving of streets, curbs, and sidewalks; the construction of ditches and other area drainage facilities; the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes; and the construction of canals and shall also include the altering, repairing, and redoing of all these things. When the services or materials are placed on land dedicated to public use and are furnished under contract with the owner of the abutting land, the cost of the services and materials, if unpaid, may be the basis for a lien upon the abutting land. When the services or materials are placed upon land under contract with the owner of the land who subsequently dedicates parts of the land to public use, the person furnishing the services or materials placed upon the dedicated land shall be entitled to a lien upon the land abutting the dedicated land for the unpaid cost of the services and materials placed upon the dedicated land, or in the case of improvements that serve or benefit real property that is divided by the improvements, to a lien upon each abutting part for the equitable part of the full amount due and owing. If the part of the cost to be borne by each parcel of the land subject to the same lien is not specified in the contract, it shall be prorated equitably among the parcels served or benefited. No lien under this section shall be acquired until a claim of lien is recorded. No notice of commencement shall be filed for liens under this section. No lienor shall be required to serve a notice to owner for liens under this section.

Section 804. Subsection (4) of section 713.07, Florida Statutes, is amended to read:

713.07 Priority of liens.—

(4) If construction ceases before completion and the owner desires to recommence construction, he or she may pay all lienors in full or pro rata in accordance with s. 713.06(4) prior to recommencement in which event all liens for the recommenced construction shall take priority from such recommencement; or the owner may record an affidavit in the clerk's office stating his or her intention to recommence construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien or encumbrance on said property or of any lienor on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30-day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of commencement for the recommenced construction, as provided in s. 713.13.

Section 805. Section 713.09, Florida Statutes, is amended to read:

713.09 Single claim of lien.—A lienor is required to record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract. The single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land under one direct contract are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. In each claim of lien under this section, the owner under the direct contract must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

Section 806. Section 713.10, Florida Statutes, is amended to read:

713.10 Extent of liens.—Except as provided in s. 713.12, a lien under this part shall extend to, and only to, the right, title, and interest of the person who contracts for the improvement as such right, title, and interest exists at the commencement of the improvement or is thereafter acquired in the real property. When an improvement is made by a lessee in accordance with an agreement between such lessee and her or his lessor, the lien shall extend also to the interest of such lessor. When the lease expressly provides that the interest of the lessor shall not be subject to liens for improvements made by the lessee, the lessee shall notify the contractor making any such improvements of such provision or provisions in the lease, and the knowing or willful failure of the lessee to provide such notice to the contractor shall render the contract between the lessee and the contractor voidable at the option of the contractor. The interest of the lessor shall not be subject to liens for improvements made by the lessee when:

(1) The lease or a short form thereof is recorded in the clerk's office and the terms of the lease expressly prohibit such liability; or

(2) All of the leases entered into by a lessor for the rental of premises on a parcel of land prohibit such liability and a notice which sets forth the following is recorded by the lessor in the public records of the county in which the parcel of land is located:

(a) The name of the lessor.

(b) The legal description of the parcel of land to which the notice applies.

(c) The specific language contained in the various leases prohibiting such liability.

(d) A statement that all leases entered into for premises on the parcel of land contain the language identified in paragraph (c).

(3) The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

Section 807. Section 713.11, Florida Statutes, is amended to read:

713.11 Liens for improving land in which the contracting party has no interest.—When the person contracting for improving real property has no interest as owner in the land, no lien shall attach to the land, except as provided in s. 713.12, but if removal of such improvement from the land is practicable, the lien of a lienor shall attach to the improvement on which he or she has performed labor or services or for which he or she has furnished materials. The court, in the enforcement of such lien, may order such improvement to be separately sold and the purchaser may remove it within such reasonable time as the court may fix. The purchase price for such improvement shall be paid into court. The owner of the land upon which the improvement was made may demand that the land be restored substantially to its condition before the improvement was commenced, in which case the court shall order its restoration and the reasonable charge therefor shall be first paid out of such purchase price and the remainder shall be paid to lienors and other encumbrancers in accordance with their respective rights.

Section 808. Section 713.14, Florida Statutes, is amended to read:

713.14 Application of money to materials account.—

(1) Any owner, contractor, subcontractor, or sub-subcontractor, in making any payment under, or properly applicable to, any contract to one with whom she or he has a running account, or with whom she or he has more than one contract, or to whom she or he is otherwise indebted, shall designate the contract under which the payment is made or the items of account to which it is to be applied. If she or he shall fail to do so or shall make a false designation, she or he shall be liable to anyone suffering a loss in consequence for the amount of the loss.

(2) When a payment for materials is made to a subcontractor, sub-subcontractor, or materialman, the subcontractor, sub-subcontractor, or

materialman shall demand of the person making the payment a designation of the account and the items of account to which the payment is to apply. In any case in which a lien is claimed for materials furnished by a subcontractor, sub-subcontractor, or materialman, it is a defense to the claim, to the extent of the payment made, to prove that a payment made by the owner to the contractor for the materials has been paid over to the subcontractor, sub-subcontractor, or materialman, and to prove also that when such payment was received by such subcontractor, sub-subcontractor, or materialman she or he did not demand a designation of the account and of the items of account to which the payment was to be applied or, receiving a designation of its application to the account for the materials, she or he failed to apply the payment in accordance therewith. This subsection is cumulative to any other defenses available to the person paying the materialman, subcontractor, or sub-subcontractor.

Section 809. Section 713.15, Florida Statutes, is amended to read:

713.15 Repossession of materials not used.—If for any reason the completion of an improvement is abandoned or though the improvement is completed, materials delivered are not used therefor, a person who has delivered materials for the improvement which have not been incorporated therein and for which he or she has not received payment may peaceably repossess and remove such materials or replevy the same and thereupon he or she shall have no lien on the real property or improvements and no right against any persons for the price thereof, but shall have the same rights in regard to the materials as if he or she had never parted with their possession. This right to repossess and remove or replevy the materials shall not be affected by their sale, encumbrance, attachment, or transfer from the site of improvement, except that if the materials have been so transferred, the right to repossess or replevy them shall not be effective as against a purchaser or encumbrancer thereof in good faith whose interest therein is acquired after such transfer from the site of the improvement or as against a creditor attaching after such transfer. The right of repossession and removal given by this section shall extend only to materials whose purchase price does not exceed the amount remaining due to the person repossessing but where materials have been partly paid for, the person delivering them may repossess them as allowed in this section on refunding the part of the purchase price which has been paid.

Section 810. Subsections (1) and (4) of section 713.21, Florida Statutes, are amended to read:

713.21 Discharge of lien.—A lien properly perfected under this chapter may be discharged by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk's office when not otherwise prohibited by law. This satisfaction shall be signed by the lienor, the lienor's ~~his~~ agent or attorney and attested by said clerk. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint therefor by any interested party the clerk shall issue a summons to the lienor to show cause within 20 days why his or her lien should not be enforced by action or vacated and canceled of record. Upon failure of the lienor to show cause why his or her lien should not be enforced or the lienor's ~~his~~ failure to commence such action before the return date of the summons the court shall forthwith order cancellation of the lien.

Section 811. Subsection (2) of section 713.22, Florida Statutes, is amended to read:

713.22 Duration of lien.—

(2) An owner or the owner's ~~his~~ agent or attorney may elect to shorten the time prescribed in subsection (1) within which to commence an action to enforce any claim of lien or claim against a bond or other security under s. 713.23 or s. 713.24 by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF LIEN

To: ...(Name and address of lienor)...

You are notified that the undersigned contests the claim of lien filed by you on 19...., and recorded in Book, Page, of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This day of 19....

Signed: ...(Owner or Attorney)...

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. Service shall be deemed complete upon mailing.

Section 812. Paragraphs (c), (d), and (f) of subsection (1) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)

(c) Either before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who is not in privity with the contractor, except a laborer, shall serve the contractor with notice in writing that the lienor will look to the contractor's bond for protection on the work. If a notice of commencement is not recorded, or a reference to the bond is not given in the notice of commencement, and in either case if the lienor not in privity with the contractor is not otherwise notified in writing of the existence of the bond, the lienor not in privity with the contractor shall have 45 days from the date the lienor is notified of the existence of the bond within which to serve the notice. The notice may be in substantially the following form:

NOTICE TO CONTRACTOR

To ...(name of contractor)...

The undersigned notifies you that he or she has furnished or is furnishing ...(services or materials)... for the improvement of the real property identified as ...(property description)... owned by ...(owner's name and address)... under an order given by and that the undersigned will look to the contractor's bond for protection on the work.

...(Lienor's signature and address)...

(d) In addition, a lienor is required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the contractor and the surety not later than 90 days after the final furnishing of labor, services, or materials by the lienor. A written notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. The notice under this paragraph may be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned notifies you that he or she has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The amount now due and unpaid is \$.....

...(signature and address of lienor)...

(f) Any lienor has a direct right of action on the bond against the surety. A bond must not contain any provisions restricting the classes of persons protected thereby or the venue of any proceeding. The surety is not entitled to the defense of pro tanto discharge as against any lienor because of changes or modifications in the contract to which the surety is not a party; but the liability of the surety may not be increased beyond the penal sum of the bond. A lienor may not waive in advance his or her right to bring an action under the bond against the surety.

Section 813. Subsections (1) and (2) of section 713.24, Florida Statutes, are amended to read:

713.24 Transfer of liens to security.—

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by either:

(a) Depositing in the clerk's office a sum of money, or

(b) Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state,

either to be in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus \$500 to apply on any court costs which may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. The clerk shall be entitled to a fee for making and serving the certificate, in the sum of \$10. If the transaction involves the transfer of multiple liens, an additional charge of \$5 for each additional lien shall be charged. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party filing the same or her or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

Section 814. Subsection (13) of section 713.245, Florida Statutes, is amended to read:

713.245 Conditional payment bond.—

(13) The certificate of payment to the contractor and the notice of contest of payment must be signed by the owner or the contractor individually if she or he is a natural person, by the general partner if the owner or the contractor is a limited partnership, by a partner if the owner or the contractor is a general partnership, by the president or a vice president if the owner or the contractor is a corporation, or by any authorized agent if the owner or the contractor is any other type of business entity.

Section 815. Subsection (1) of section 713.28, Florida Statutes, is amended to read:

713.28 Judgments in case of failure to establish liens; personal and deficiency judgments or decrees.—

(1) If a lienor shall fail, for any reason, to establish a lien for the full amount found to be due him or her in an action to enforce the same under the provisions of this part, he or she may, in addition to the lien decreed in his or her favor, recover a judgment or decree in such action against any party liable therefor for such sums in excess of the lien as are due him or her or which the lienor he might recover in an action on a contract against any party to the action from whom such sums are due him or her.

Section 816. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney's fees.—In any action brought to enforce a lien or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's ~~his~~ costs, as allowed in equitable actions.

Section 817. Section 713.30, Florida Statutes, is amended to read:

713.30 Other actions not barred.—This part shall be cumulative to other existing remedies and nothing contained in this part shall be construed to prevent any lienor or assignee under any contract from maintaining an action thereon at law in like manner as if he or she had no lien for the security of his or her debt, and the bringing of such action shall not prejudice his or her rights under this part, except as herein otherwise expressly provided.

Section 818. Paragraphs (a) and (b) of subsection (2) of section 713.31, Florida Statutes, are amended to read:

713.31 Remedies in case of fraud or collusion.—

(2)(a) Any lien asserted under this part in which the lienor has willfully exaggerated the amount for which such lien is claimed or in which the lienor has willfully included a claim for work not performed upon or materials not furnished for the property upon which he or she seeks to impress such lien or in which the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration shall be deemed a fraudulent lien.

(b) It is a complete defense to any action to enforce a lien under this part, or against any lien in any action in which the validity of the lien is an issue, that the lien is a fraudulent lien; and the court so finding is empowered to and shall declare the lien unenforceable, and the lienor thereupon forfeits his or her right to any lien on the property upon which he or she sought to impress such fraudulent lien. However, a minor mistake or error in a claim of lien, or a good faith dispute as to the amount due does not constitute a willful exaggeration that operates to defeat an otherwise valid lien.

Section 819. Section 713.32, Florida Statutes, is amended to read:

713.32 Insurance proceeds liable for demands.—The proceeds of any insurance that by the terms of the policy contract are payable to the owner of improved real property or a lienor and actually received or to be received by him or her because of the damage, destruction, or removal by fire or other casualty of an improvement on which lienors have furnished labor or services or materials shall, after the owner or lienor, as the case may be, has been reimbursed therefrom for any premiums paid by him or her, be liable to liens or demands for payment provided by this part to the same extent and in the same manner, order of priority, and conditions as the real property or payments under a direct contract would have been, if the improvement not been so damaged, destroyed, or removed. The insurer may pay the

proceeds of the policy of insurance to the insured named in the policy and thereupon any liability of the insurer under this part shall cease. The named insured who receives any proceeds of the policy shall be deemed a trustee of the proceeds, and the proceeds shall be deemed trust funds for the purposes designated by this section for a period of 1 year from the date of receipt of the proceeds. This section shall not apply to that part of the proceeds of any policy of insurance payable to a person, including a mortgagee, who holds a lien perfected before the recording of the notice of commencement or recommencement.

Section 820. Paragraph (i) of subsection (2) of section 713.3471, Florida Statutes, is amended to read:

713.3471 Lender responsibilities with construction loans.—

(2)

(i) A contractor and any other lienor may not waive his or her right to receive notice under this subsection.

Section 821. Section 713.56, Florida Statutes, is amended to read:

713.56 Liens for labor on and with machines, etc.—In favor of any person by herself or himself or others performing any labor upon or with any engine, machine, apparatus, fixture, implement, newspaper or printing material or other property, or doing work in any hotel; upon such engine, machine, material, apparatus, fixture, implement, newspaper or printing material, or other property, and upon the furniture, furnishings and belongings of said hotel.

Section 822. Section 713.57, Florida Statutes, is amended to read:

713.57 Liens for labor on logs and timber.—In favor of any person by herself or himself or others cutting, rafting, running, driving, or performing other labor upon logs or timber of any kind; on such logs and timber, and on any article manufactured therefrom.

Section 823. Subsections (5), (8), and (10) of section 713.585, Florida Statutes, are amended to read:

713.585 Enforcement of lien by sale of motor vehicle.—A person claiming a lien under s. 713.58 for performing labor or services on a motor vehicle may enforce such lien by sale of the vehicle in accordance with the following procedures:

(5) At any time prior to the proposed or scheduled date of sale of a vehicle, the owner of the vehicle, or any person claiming an interest in the vehicle or a lien thereon, may file a demand for hearing with the clerk of the circuit court in the county in which the vehicle is held to determine whether the vehicle has been wrongfully taken or withheld from her or him. Any person who files a demand for hearing shall mail copies of the demand to all other owners and lienors as reflected on the notice required in subsection (1). Upon the filing of a demand for hearing, a hearing shall be held prior to the proposed or scheduled date of sale of the vehicle.

(8) A vehicle subject to lien enforcement pursuant to this section must be sold by the lienor at public sale. Immediately upon the sale of the vehicle and payment in cash of the purchase price, the lienor shall deposit with the clerk of the circuit court the proceeds of the sale less the amount claimed by the lienor for work done and storage, if any, and all reasonable costs and expenses incurred in conducting the sale, including any attorney's fees and costs ordered by the court. Simultaneously with depositing the proceeds of sale remaining after payment to the lienor, the lienor shall file with the clerk a verified report of the sale stating a description of the vehicle sold, including the vehicle identification number; the name and address of the purchaser; the date of the sale; and the selling price. The report shall also itemize the amount retained by the lienor pursuant to this section and shall indicate whether a hearing was demanded and held. All proceeds held by the court shall be held for the benefit of the owner of the vehicle or any lienholder whose lien is discharged by the sale and shall be disbursed only upon order of the court. Unless a proceeding is initiated to validate a claim to such proceeds within 1 year and a day from the date of the sale, the proceeds shall be deemed abandoned property and disposition thereof shall be governed by s. 705.103. The clerk shall receive 5 percent of the proceeds deposited with her or him, not to exceed \$25, for her or his services under this section.

(10) Nothing contained in this section shall be construed as affecting an owner's right to redeem her or his vehicle from the lien at any time prior to sale by paying the amount claimed by the lienor for work done and assessed storage charges, plus any costs incurred by the repair shop for utilizing enforcement procedures under this section.

Section 824. Section 713.60, Florida Statutes, is amended to read:

713.60 Liens for labor on or for vessels.—In favor of any person performing for himself or herself or others, any labor, or furnishing any materials or supplies for use in the construction of any vessel or watercraft; and in favor of any person performing for himself or herself or others, any labor or service of any kind, on, to or for the use or benefit of a vessel or watercraft, including masters, mates and members of the crew and persons loading or unloading the vessel or putting in or taking out ballast; upon such vessel or watercraft, whether partially or completely constructed and whether launched or on land, her tackle, apparel and furniture.

Section 825. Subsection (1) of section 713.665, Florida Statutes, is amended to read:

713.665 Liens for furnishing pest control.—The holder of a license under chapter 482 to engage in the business of pest control has and may enforce:

(1) A lien on real property improved for any money that is owed to him or her for labor or services performed or materials furnished in accordance with his or her contract and with the direct contract, subject to the licensee's compliance with the provisions of part I of this chapter.

Section 826. Subsection (2) of section 713.691, Florida Statutes, is amended to read:

713.691 Landlord's lien for rent; exemptions.—

(2) When the tenant is the head of a family, personal property owned by her or him in the value of \$1,000 is exempt from the lien provided by this section. This subsection does not authorize an exemption any greater than that which may be available to the tenant in s. 4, Art. X of the State Constitution.

Section 827. Section 713.71, Florida Statutes, is amended to read:

713.71 Liens for loans and advances.—Any person who shall procure a loan or advance of money or goods and chattels, wares or merchandise or other things of value, to aid him or her in the business of planting, farming, timber-getting or any other kind of businesses in this state, from any factor, merchant, firm or person in this state, or in the United States or in any foreign country, shall, by this part, be held to have given to the lender, lenders, or person making such advance, a statutory lien of prior dignity to all other encumbrances, saving and excepting liens for labor and liens in favor of landlords, upon all the timber-getting, all the crops, and products grown or anything else made or grown by said person, through the assistance of said loan or advances; provided, that the lien above-given shall not be created unless the person obtaining or procuring such loan or advance shall give to the person making such loan or advance an instrument of writing consenting to said lien; and the same shall be recorded in the office of the clerk of the circuit court of the county wherein such business of planting, farming, or timber-getting is conducted.

Section 828. Section 713.75, Florida Statutes, is amended to read:

713.75 Acquisition of liens by persons not in privity with the owner.—A person entitled to acquire a lien not in privity with the owner of the personal property shall acquire a lien upon the owner's personal property as against the owner and persons claiming through her or him by delivery to the owner of a written notice that the person for whom the labor has been performed or the material furnished is indebted to the person performing the labor or furnishing the material in the sum stated in the notice. A person who is performing or is about to perform labor or is furnishing or is about to furnish materials for personal property may deliver to the owner a written cautionary notice that she or he will do so. A lien shall exist from the time of delivery of either notice for the amount unpaid on the contract of the owner with the person contracting with the lienor and the delivery of the notice shall also create a personal liability against the owner of the personal property in favor of the lienor giving the notice, but not to a greater extent than the amount then unpaid on the contract between the owner and the person with whom the owner contracted. There shall be no lien upon personal property as against creditors and purchasers without notice except under the circumstances and for the time prescribed in s. 713.74 and for the amount of the debt due to the lienor at the time of the service of the notice provided for in this section.

Section 829. Subsection (1) of section 713.76, Florida Statutes, is amended to read:

713.76 Release of lien by filing bond.—

(1) Any lienee may release his or her property from any lien claimed thereon under this part by filing with the clerk of the circuit court a cash or surety bond, payable to the person claiming the lien, in the amount of the final bill, and conditioned for the payment of any judgment which may be recovered on said lien, with costs.

Section 830. Subsection (2) and paragraphs (a) and (b) of subsection (4) of section 713.78, Florida Statutes, are amended to read:

713.78 Liens for recovering, towing, or storing vehicles.—

(2) Whenever a person regularly engaged in the business of transporting vehicles by wrecker, tow truck, or car carrier recovers, removes, or stores a vehicle or mobile home upon instructions from:

(a) The owner thereof; or

(b) The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle is wrongfully parked, and such removal is done in compliance with s. 715.07; or

(c) Any law enforcement agency; or

(d) A mobile home park owner as defined in s. 723.003 who has a current writ of possession for a mobile home lot pursuant to s. 723.061,

she or he shall have a lien on such vehicle for a reasonable towing fee and for a reasonable storage fee; except that no storage fee shall be charged if such vehicle is stored for less than 6 hours.

(4)(a) The owner of a vehicle removed pursuant to the provisions of subsection (2), or any person claiming a lien, other than the towing-storage operator, within 10 days after the time she or he has knowledge of the location of the vehicle, may file a complaint in the county court of the county in which the vehicle is stored or in which the owner resides to determine if her or his property was wrongfully taken or withheld from her or him.

(b) Upon filing of a complaint, an owner or lienholder may have her or his vehicle released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage and lot rental amount to ensure the payment of such charges in the event she or he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle. At the time of such release, after reasonable inspection, she or he shall give a receipt to the towing-storage company reciting any claims she or he has for loss or damage to the vehicle or the contents thereof.

Section 831. Section 713.79, Florida Statutes, is amended to read:

713.79 Liens for interior design services.—Any person who, as part of his or her services performed as an interior designer, furnishes any articles of furniture, including, but not limited to, desks, tables, lamps, area rugs, wall hangings, photographs, paintings or other works of art, or any items of furnishing, subject to compliance with and the limitations imposed by this part, shall have a lien upon all such articles furnished and upon all such articles manufactured or converted from such furnishing, provided that the same shall be tangible personal property and provided further that such furnishings are rendered in accordance with a written contract and under direct contract with the owner.

Section 832. Subsection (1) of section 713.801, Florida Statutes, is amended to read:

713.801 Definitions.—As used in this part, the following terms shall have the following meanings unless the context clearly requires another meaning:

(1) “Interest holder” means a person, or his or her agent, holding, for oil or gas purposes or for any oil or gas pipeline, any interest in the legal or equitable title to any land or any leasehold interest, and shall include purchasers under executory contract, receivers, and trustees.

Section 833. Section 713.803, Florida Statutes, is amended to read:

713.803 Entitlement to lien.—Any person who, under contract with an interest holder or operator, performs any labor or furnishes any material or service used or furnished to be used:

(1) In the drilling or operating of any oil or gas well upon the land or leasehold of the interest holder or in the construction of any oil or gas pipeline, or

(2) In the construction of any material so used or employed, whether the labor is performed or the material or service is furnished on or off the said land or leasehold,

shall be entitled to a lien, whether or not a producing well is obtained and whether or not such material is consumed or becomes a part of the completed oil or gas well or oil or gas pipeline, for the amount due him or her for the performance of such labor or the furnishing of such material or service, but in no case greater than the contract price, with legal interest from the date the same was due.

Section 834. Section 713.807, Florida Statutes, is amended to read:

713.807 Subcontractors' lien.—Any person who shall, under contract, perform any labor or furnish any material or service as a subcontractor under an original contractor, or for or to an original contractor or subcontractor under an original contractor, shall be entitled to a lien for the amount due her or him, but in no case greater than the contract price, upon all the property upon which the lien of an original contractor may attach, to the same extent as an original contractor. The lien provided for in this section

shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to whom the labor, services, or materials were furnished.

Section 835. Section 713.811, Florida Statutes, is amended to read:

713.811 Notice to purchasers of oil and gas.—No lien under this part, to the extent that it may extend to oil or gas or the proceeds from the sale thereof, shall be effective against any purchaser of such oil or gas until the purchaser has received proper written notice of said claim. Such notice shall state the name of the claimant and his or her address, the amount for which the lien is claimed, and a description of the land or leasehold upon which the lien is claimed. Notice shall be delivered personally to the purchaser or by registered or certified mail. A purchaser who has received such notice shall withhold payment for such oil or gas runs to the extent of the lien amount claimed, together with legal interest, until said lien has been satisfied or held to be invalid by a court of competent jurisdiction.

Section 836. Section 713.823, Florida Statutes, is amended to read:

713.823 Release of lien by filing bond.—Any lienee may release her or his property from any lien under this part in the manner provided by s. 713.76.

Section 837. Subsections (4) and (5) of section 713.901, Florida Statutes, are amended to read:

713.901 Florida Uniform Federal Lien Registration Act.—

(4) EXECUTION OF NOTICES AND CERTIFICATES.—Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his or her delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed, and no other attestation, certification, or acknowledgment is necessary.

(5) DUTIES OF FILING OFFICER.—

(a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in paragraph (b) is presented to a filing officer who is:

1. The Secretary of State or his or her designee, he or she shall cause the notice to be marked, held, and indexed in accordance with the provisions of s. 679.403(4), as if the notice were a financing statement within the meaning of the Uniform Commercial Code.

2. Any other officer described in subsection (3), he or she shall mark and index the notice or certificate in the same manner as other instruments filed for recording in the official records.

(b) If a certificate of release, nonattachment, discharge, or subordination of any lien, or if a refiled notice of federal lien, is presented to the Secretary of State for filing, he or she shall:

1. Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files.
2. Cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.
3. Cause a refiled notice of federal lien to be marked, held, and indexed as if the refiled notice were a continuation statement within the meaning of the Uniform Commercial Code.

Section 838. Section 715.06, Florida Statutes, is amended to read:

715.06 Real estate; exploration for minerals.—Where title to the surface of real property and title to the subsurface and minerals on or under such real property is divided into different ownerships, then the surface owner and her or his heirs, successors, and assigns shall be entitled to explore, drill, and prospect such real property, including the subsurface thereof, for all minerals except oil, gas, and sulphur without being liable to the owners of the minerals, or any party or parties claiming under such owners, for any damages or for the value of such minerals, as it is usual by customary prospecting methods and procedures to take from such land for the purpose of analyzing and determining the kind and extent thereof.

Section 839. Subsection (2) of section 715.07, Florida Statutes, is amended to read:

715.07 Vehicles parked on private property; towing.—

(2) The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, under any of the following circumstances:

(a) The towing or removal of any vehicle from private property without the consent of the registered owner or other legally authorized person in control of that vehicle is subject to strict compliance with the following conditions and restrictions:

1.a. Any towed or removed vehicle must be stored at a site within 10 miles of the point of removal in any county of 500,000 population or more, and within 15 miles of the point of removal in any county of less than 500,000 population. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing such vehicle is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned

request to open the site to redeem a vehicle, the operator shall return to the site within 1 hour or she or he will be in violation of this section.

b. If no towing business providing such service is located within the area of towing limitations set forth in sub-subparagraph a., the following limitations apply: any towed or removed vehicle must be stored at a site within 20 miles of the point of removal in any county of 500,000 population or more, and within 30 miles of the point of removal in any county of less than 500,000 population.

2. The person or firm towing or removing the vehicle shall, within 30 minutes of completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff of such towing or removal, the storage site, the time the vehicle was towed or removed, and the make, model, color, and license plate number of the vehicle and shall obtain the name of the person at that department to whom such information was reported and note that name on the trip record.

3. If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and that person shall be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half of the posted rate for such towing service as provided in subparagraph 6., for which a receipt shall be given, unless that person refuses to remove the vehicle which is otherwise unlawfully parked.

4. The rebate or payment of money or any other valuable consideration from the individual or firm towing or removing vehicles to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited.

5. Except for property appurtenant to and obviously a part of a single-family residence, and except for instances when notice is personally given to the owner or other legally authorized person in control of the vehicle that the area in which that vehicle is parked is reserved or otherwise unavailable for unauthorized vehicles and subject to being removed at the owner's or operator's expense, any property owner or lessee, or person authorized by the property owner or lessee, prior to towing or removing any vehicle from private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements:

a. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.

b. The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.

c. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles, if the property owner, lessee, or person in control of the property has a written contract with the towing company.

d. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of any vehicles.

e. The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.

f. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.

A business owner or lessee may authorize the removal of a vehicle by a towing company when the vehicle is parked in such a manner that restricts the normal operation of business; and if a vehicle parked on a public right-of-way obstructs access to a private driveway the owner, lessee, or agent may have the vehicle removed by a towing company upon signing an order that the vehicle be removed without a posted tow-away zone sign.

6. Any person or firm that tows or removes vehicles and proposes to require an owner, operator, or person in control of a vehicle to pay the costs of towing and storage prior to redemption of the vehicle must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which authorize such person or firm to remove vehicles as provided in this section.

7. Any person or firm towing or removing any vehicles from private property without the consent of the owner or other legally authorized person in control of the vehicles shall, on any trucks, wreckers as defined in s. 713.78(1)(b), or other vehicles used in the towing or removal, have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the vehicle. The name shall be in at least 3-inch permanently affixed letters, and the address and telephone number shall be in at least 1-inch permanently affixed letters.

8. Vehicle entry for the purpose of removing the vehicle shall be allowed with reasonable care on the part of the person or firm towing the vehicle. Such person or firm shall be liable for any damage occasioned to the vehicle if such entry is not in accordance with the standard of reasonable care.

9. When a vehicle has been towed or removed pursuant to this section, it must be released to its owner or custodian within one hour after requested.

Any vehicle owner, custodian, or agent shall have the right to inspect the vehicle before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle owner, custodian, or agent as a condition of release of the vehicle to its owner. A detailed, signed receipt showing the legal name of the company or person towing or removing the vehicle must be given to the person paying towing or storage charges at the time of payment, whether requested or not.

(b) These requirements shall be the minimum standards and shall not preclude enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles are towed from private property.

Section 840. Subsection (1) of section 715.102, Florida Statutes, is amended to read:

715.102 Definitions of terms used in ss. 715.10-715.111.—As used in ss. 715.10-715.111, unless some other meaning is clearly indicated, the term:

(1) “Landlord” means any operator, keeper, lessor, or sublessor of furnished or unfurnished premises for rent, or her or his agent or successor-in-interest.

Section 841. Section 715.103, Florida Statutes, is amended to read:

715.103 Lost property.—Personal property which the landlord reasonably believes to have been lost shall be disposed of as otherwise provided by law. However, if the appropriate law enforcement agency or other government agency refuses to accept custody of property pursuant to chapter 705, the landlord may dispose of the property pursuant to ss. 715.10-715.111. The landlord is not liable to the owner of the property if she or he complies with this section and the other provisions of ss. 715.10-715.111.

Section 842. Subsection (3) of section 715.104, Florida Statutes, is amended to read:

715.104 Notification of former tenant of personal property remaining on premises after tenancy has terminated.—

(3) The notice shall be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at her or his last known address and, if there is reason to believe that the notice sent to that address will not be received by that person, also delivered or sent to such other address, if any, known to the landlord where such person may reasonably be expected to receive the notice.

Section 843. Section 715.107, Florida Statutes, is amended to read:

715.107 Storage of abandoned property.—The personal property described in the notice either shall be left on the vacated premises or be stored by the landlord in a place of safekeeping until the landlord either releases

the property pursuant to s. 715.108 or disposes of the property pursuant to s. 715.109. The landlord shall exercise reasonable care in storing the property, but she or he is not liable to the tenant or any other owner for any loss unless caused by the landlord's deliberate or negligent act.

Section 844. Subsection (2) of section 715.108, Florida Statutes, is amended to read:

715.108 Release of personal property.—

(2) Where personal property is not released pursuant to subsection (1) and the notice has stated that the personal property will be sold at a public sale, the landlord shall release the personal property to the former tenant if she or he claims it prior to the time it is sold and pays the reasonable costs of storage, advertising, and sale incurred prior to the time the property is withdrawn from sale.

Section 845. Subsection (1) of section 715.109, Florida Statutes, is amended to read:

715.109 Sale or disposition of abandoned property.—

(1) If the personal property described in the notice is not released pursuant to s. 715.108, it shall be sold at public sale by competitive bidding. However, if the landlord reasonably believes that the total resale value of the property not released is less than \$250, she or he may retain such property for her or his own use or dispose of it in any manner she or he chooses. Nothing in this section shall be construed to preclude the landlord or tenant from bidding on the property at the public sale. The successful bidder's title is subject to ownership rights, liens, and security interests which have priority by law.

Section 846. Subsection (1) of section 715.111, Florida Statutes, is amended to read:

715.111 Assessing costs of storage.—

(1) Costs of storage for which payment may be required under ss. 715.10-715.111 shall be assessed in the following manner:

(a) When a former tenant claims property pursuant to s. 715.108, she or he may be required to pay the reasonable costs of storage for all the personal property remaining on the premises at the termination of the tenancy, which costs are unpaid at the time the claim is made.

(b) When an owner other than the former tenant claims property pursuant to s. 715.108, she or he may be required to pay the reasonable costs of storage for only the property in which she or he claims an interest.

Section 847. Subsection (4) of section 716.02, Florida Statutes, is amended to read:

716.02 Escheat of funds in the possession of federal agencies.—All property within the provisions of subsections (1), (2), (3), (4) and (5), are declared

to have escheated, or to escheat, including all principal and interest accruing thereon, and to have become the property of the state.

(4) In the event any money is due to any resident of this state as a refund, rebate or tax rebate from the United States Commissioner of Internal Revenue, the United States Treasurer, or other governmental agency or department, which said resident will, or is likely to have her or his rights to apply for and secure such refund or rebate barred by any statute of limitations or, in any event, has failed for a period of 1 year after said resident could have filed a claim for said refund or rebate, the Department of Banking and Finance is hereby appointed agent of such resident to demand, file and apply for said refund or rebate, and is hereby appointed to do any act which a natural person could do to recover said money, and it is hereby declared that when the department files said application or any other proceeding to secure said refund or rebate, its agency is coupled with an interest in the money sought and money recovered.

Section 848. Subsection (2) of section 716.07, Florida Statutes, is amended to read:

716.07 Recovery of escheated property by claimant.—

(2) The Comptroller shall approve or disapprove the claim. If the claim is approved, the funds, money, or property of the claimant, less any expenses and costs which shall have been incurred by the state in securing the possession of said property, as provided by this chapter, shall be delivered to the claimant ~~him~~ by the State Treasurer upon warrant issued according to law and her or his receipt taken therefor. If the court finds, upon any judicial review, that the claimant is entitled to the property, money, or funds claimed, and shall render judgment in her or his or its favor, declaring that the claimant is entitled to said property, funds, or money, then upon presentation of said judgment or a certified copy thereof to the State Comptroller, said Comptroller shall draw her or his warrant for the amount of money stated in said judgment, without interest or cost to the state, less any sum paid by the state as costs or expenses in securing possession of said property, funds, or money. When payment has been made to any claimant, no action thereafter shall be maintained by any other claimant against the state or any officer thereof, for or on account of said money, property, or funds.

Section 849. Paragraph (b) of subsection (3) of section 717.107, Florida Statutes, is amended to read:

717.107 Funds owing under life insurance policies.—

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is deemed matured and the proceeds due and payable if:

(b)1. The insured has attained, or would have attained if he or she were living, the limiting age under the mortality table on which the reserve is based;

2. The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph 1.; and

3. Neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy; subjected the policy to a loan; corresponded in writing with the company concerning the policy; or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

Section 850. Subsection (15) of section 718.103, Florida Statutes, is amended to read:

718.103 Definitions.—As used in this chapter, the term:

(15) “Developer” means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a condominium or cooperative unit who has acquired the ~~his~~ unit for his or her own occupancy, nor does it include a cooperative association which creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

Section 851. Subsection (6) of section 718.104, Florida Statutes, is amended to read:

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(6) A person who joins in, or consents to the execution of, a declaration subjects his or her interest in the condominium property to the provisions of the declaration.

Section 852. Subsection (3) and paragraph (c) of subsection (4) of section 718.105, Florida Statutes, are amended to read:

718.105 Recording of declaration.—

(3) The clerk of the circuit court recording the declaration may, for his or her convenience, file the exhibits of a declaration which contains graphic descriptions of improvements in a separate book, and shall indicate the place of filing upon the margin of the record of the declaration.

(4)

(c) If the sum of money held by the clerk has not been paid to the developer or association as provided in paragraph (b) by 3 years after the date the declaration was originally recorded, the clerk in his or her discretion may notify, in writing, the registered agent of the association that the sum is still available and the purpose for which it was deposited. If the association does

not record the certificate within 90 days after the clerk has given the notice, the clerk may disburse the money to the developer. If the developer cannot be located, the clerk shall disburse the money to the Division of Florida Land Sales, Condominiums, and Mobile Homes for deposit in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.

Section 853. Subsection (3) of section 718.106, Florida Statutes, is amended to read:

718.106 Condominium parcels; appurtenances; possession and enjoyment.—

(3) A unit owner is entitled to the exclusive possession of his or her unit, subject to the provisions of s. 718.111(5). He or she is entitled to use the common elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other unit owners.

Section 854. Paragraphs (a) and (b) of subsection (1) and subsection (15) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value is subject to a civil penalty pursuant to s. 718.501(1)(d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he or she votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

(15) COMMINGLING.—All funds shall be maintained separately in the association's name. Reserve and operating funds of the association shall not be commingled. No manager or business entity required to be licensed or registered under s. 468.432, and no agent, employee, officer, or director of a condominium association shall commingle any association funds with his or her funds or with the funds of any other condominium association or community association as defined in s. 468.431.

Section 855. Subsection (3) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters.—

(3) A unit owner shall not do anything within his or her unit or on the common elements which would adversely affect the safety or soundness of the common elements or any portion of the association property or condominium property which is to be maintained by the association.

Section 856. Paragraph (a) of subsection (1), paragraph (c) of subsection (5), paragraph (b) of subsection (6), and paragraph (a) of subsection (9) of section 718.116, Florida Statutes, are amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

(5)

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's ~~his~~ agent or attorney may require the association to enforce a recorded claim of lien against his or her condominium parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)... You are notified that the undersigned contests the claim of lien filed by you on 19...., and recorded in Official Records Book at Page, of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this day of, 19.....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most

recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time that the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(6)

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

(9)(a) No unit owner may be excused from the payment of his or her share of the common expense of a condominium unless all unit owners are likewise proportionately excused from payment, except as provided in subsection (1) and in the following cases:

1. If the declaration so provides, a developer or other person who owns condominium units offered for sale may be excused from the payment of the share of the common expenses and assessments related to those units for a stated period of time subsequent to the recording of the declaration of condominium. The period must terminate no later than the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first condominium unit occurs. However, the developer must pay the portion of common expenses incurred during that period which exceed the amount assessed against other unit owners.

2. A developer or other person who owns condominium units or who has an obligation to pay condominium expenses may be excused from the payment of his or her share of the common expense which would have been assessed against those units during the period of time that he or she has guaranteed to each purchaser in the purchase contract, declaration, or prospectus, or by agreement between the developer and a majority of the unit owners other than the developer, that the assessment for common expenses

of the condominium imposed upon the unit owners would not increase over a stated dollar amount and has obligated himself or herself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners. The guarantee may provide that after an initial stated period, the developer has an option or options to extend the guarantee for one or more additional stated periods.

Section 857. Subsections (1) and (2) of section 718.119, Florida Statutes, are amended to read:

718.119 Limitation of liability.—

(1) The liability of the owner of a unit for common expenses is limited to the amounts for which he or she is assessed for common expenses from time to time in accordance with this chapter, the declaration, and bylaws.

(2) The owner of a unit may be personally liable for the acts or omissions of the association in relation to the use of the common elements, but only to the extent of his or her pro rata share of that liability in the same percentage as his or her interest in the common elements, and then in no case shall that liability exceed the value of his or her unit.

Section 858. Subsection (3) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(3) If a lien against two or more condominium parcels becomes effective, each owner may relieve his or her condominium parcel of the lien by exercising any of the rights of a property owner under chapter 713, or by payment of the proportionate amount attributable to his or her condominium parcel. Upon the payment, the lienor shall release the lien of record for that condominium parcel.

Section 859. Paragraph (a) of subsection (3) of section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

(3) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

Section 860. Paragraph (b) of subsection (1) and subsection (3) of section 718.202, Florida Statutes, are amended to read:

718.202 Sales or reservation deposits prior to closing.—

(1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds in the actual construction and development of the condominium property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of ~~salespersons~~ salesmen or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

Section 861. Subsection (5) of section 718.203, Florida Statutes, is amended to read:

718.203 Warranties.—

(5) The warranties provided by this section shall inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.

Section 862. Paragraph (f) of subsection (4) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall

accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the developer or the developer's ~~his~~ agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph do not apply.

Section 863. Subsection (2) of section 718.302, Florida Statutes, is amended to read:

718.302 Agreements entered into by the association.—

(2) Any grant or reservation made by a declaration, lease, or other document, or any contract made by the developer or association prior to the time when unit owners other than the developer elect a majority of the board of administration, which grant, reservation, or contract requires the association to purchase condominium property or to lease condominium property to another party, shall be deemed ratified unless rejected by a majority of the voting interests of unit owners other than the developer within 18 months after unit owners other than the developer elect a majority of the board of administration. This subsection does not apply to any grant or reservation made by a declaration whereby persons other than the developer or the developer's ~~his~~ heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the condominium property, so long as such persons are obligated to pay, at a minimum, a proportionate share of the cost associated with such property.

Section 864. Subsection (1) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners; waiver; levy of fine against unit by association.—

(1) Each unit owner, each tenant and other invitee, and each association shall be governed by, and shall comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws and the provisions thereof shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both,

for failure to comply with these provisions may be brought by the association or by a unit owner against:

- (a) The association.
- (b) A unit owner.
- (c) Directors designated by the developer, for actions taken by them prior to the time control of the association is assumed by unit owners other than the developer.
- (d) Any director who willfully and knowingly fails to comply with these provisions.
- (e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney's fees. A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law.

Section 865. Paragraphs (d) and (f) of subsection (1) of section 718.401, Florida Statutes, are amended to read:

718.401 Leaseholds.—

(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. However, if the condominium constitutes a nonresidential condominium or commercial condominium, or a timeshare condominium created pursuant to chapter 721, the lease shall have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(d)1. In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defense, legal or equitable, that he or she or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, the failure constitutes an absolute waiver of the unit owner's or association's defenses other than

payment, and the lessor is entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs that the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph affects litigation commenced prior to October 1, 1979.

(f)1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration conducted pursuant to chapter 44 or chapter 682. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

Section 866. Subsections (3) and (5) of section 718.403, Florida Statutes, are amended to read:

718.403 Phase condominiums.—

(3) The developer shall notify owners of existing units of the decision not to add one or more additional phases. Notice shall be by first-class mail addressed to each owner at the address of his or her unit or at his or her last known address.

(5) If the declaration requires the developer to convey any additional lands or facilities to the condominium after the completion of the first phase and he or she fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

Section 867. Subsection (3) of section 718.5019, Florida Statutes, is amended to read:

718.5019 Advisory council; membership; functions.—

(3) The council is authorized to elect a chairperson and vice chairperson and such other offices as it may deem advisable. The council shall meet at the call of its chairperson ~~chairman~~, at the request of a majority of its membership, at the request of the division, or at such times as may be prescribed by its rules. A majority of the members of the council shall constitute a quorum for the transaction of all business and the carrying out of the duties of the council.

Section 868. Subsections (1) and (4) of section 718.502, Florida Statutes, are amended to read:

718.502 Filing prior to sale or lease.—

(1) A developer of a residential condominium or mixed-use condominium shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 718.503 and 718.504, if applicable. Until the developer has so filed, a contract for sale of a unit or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his or her purchase or lease of a unit.

(4) Any developer who complies with this section is not required to file with any other division or agency of this state for approval to sell the units in the condominium, the information for the condominium for which he or she filed.

Section 869. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (a) of subsection (3) of section 718.503, Florida Statutes, are amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(a) Contents of contracts.—Any contract for the sale of a residential unit or a lease thereof for an unexpired term of more than 5 years shall:

1. Contain the following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

2. Contain the following caveat in conspicuous type on the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, contain a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. State the name and address of the escrow agent required by s. 718.202 and state that the purchaser may obtain a receipt for his or her deposit from the escrow agent upon request.

8. If the contract is for the sale or transfer of a unit in a condominium in which timeshare estates have been or may be created, contain within the text in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES. The contract for the sale of a fee interest in a timeshare estate shall also contain, in conspicuous type, the following: FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter shall comply with the provisions of this subsection prior to the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws, and rules of the association, as well as a copy of the question and answer sheet provided for by s. 718.504.

(3) OTHER DISCLOSURE.—

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the unit.

Section 870. Paragraph (b) of subsection (20) and subsection (22) of section 718.504, Florida Statutes, are amended to read:

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential

units, shall prepare a prospectus or offering circular and file it with the Division of Florida Land Sales, Condominiums, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of \$100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(20) An estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than common expenses paid by all unit owners, payable by the unit owner to persons or entities other than the association, as well as to the association, including fees assessed pursuant to s. 718.113(1) for maintenance of limited common elements where such costs are shared only by those entitled to use the limited common element, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(22) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in this field.

Section 871. Section 718.505, Florida Statutes, is amended to read:

718.505 Good faith effort to comply.—If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

Section 872. Subsection (1) of section 718.506, Florida Statutes, is amended to read:

718.506 Publication of false and misleading information.—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the purchase of a condominium parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his or her loss prior to the closing of the transaction. After the closing of the transaction, the purchaser shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

Section 873. Subsection (1) of section 718.612, Florida Statutes, is amended to read:

718.612 Right of first refusal.—

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 718.614, and the disclosure documents required by ss. 718.503 and 718.504. The failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion will automatically extend the rental agreement, any extension of the rental agreement provided for in s. 718.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no additional right of first refusal. As used in this paragraph, the term “offer” includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but does not include a transaction involving the sale of more than one unit to one purchaser.

Section 874. Paragraph (c) of subsection (10) and subsection (13) of section 719.103, Florida Statutes, are amended to read:

719.103 Definitions.—As used in this chapter:

(10) “Cooperative documents” means:

(c) The document recognizing a unit owner’s title or right of possession to his or her unit.

(13) “Developer” means a person who creates a cooperative or who offers cooperative parcels for sale or lease in the ordinary course of business, but does not include the owner or lessee of a unit who has acquired or leased the his unit for his or her own occupancy, nor does it include a condominium association which creates a cooperative by conversion of an existing residential condominium after control of the association has been transferred to the

unit owners if, following the conversion, the unit owners will be the same persons.

Section 875. Subsection (7) and paragraphs (a) and (b) of subsection (8) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(7) COMMINGLING.—All funds shall be maintained separately in the association's name. Reserve and operating funds of the association shall not be commingled. No manager or business entity required to be licensed or registered under s. 468.432, or an agent, employee, officer, or director of a cooperative association may commingle any association funds with his or her own funds or with the funds of any other cooperative association or community association as defined in s. 468.431.

(8) CORPORATE ENTITY.—

(a) The officers and directors of the association have a fiduciary relationship to the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts any thing or service of value is subject to a civil penalty pursuant to s. 719.501(1)(d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken is presumed to have assented to the action taken unless the director ~~he~~ votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

Section 876. Subsection (2) of section 719.105, Florida Statutes, is amended to read:

719.105 Cooperative parcels; appurtenances; possession and enjoyment.—

(2) Each unit owner is entitled to the exclusive possession of his or her unit. The unit owner ~~He~~ is entitled to use the common areas in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the rights of other unit owners.

Section 877. Subsection (1) and paragraph (a) of subsection (8) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(1) A unit owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all rents and assessments coming due while the unit owner ~~he~~ is in exclusive possession of a unit. In a voluntary transfer, the unit owner in exclusive possession shall be jointly and severally liable with the previous unit owner for all unpaid rents and assessments against the previous unit owner for his or her share of the common expenses up to the time of the transfer, without prejudice to the rights of the unit owner in exclusive possession to recover from the previous unit owner the amounts paid by the unit owner in exclusive possession therefor.

(8)(a) No unit owner may be excused from the payment of his or her share of the rents or assessments of a cooperative unless all unit owners are likewise proportionately excused from payment, except as provided in subsection (6) and in the following cases:

1. If the cooperative documents so provide, a developer or other person owning cooperative units offered for sale may be excused from the payment of the share of the common expenses, assessments, and rents related to those units for a stated period of time. The period must terminate no later than the first day of the fourth calendar month following the month in which the right of exclusive possession is first granted to a unit owner. However, the developer must pay the portion of common expenses incurred during that period which exceed the amount assessed against other unit owners.

2. A developer, or other person with an ownership interest in cooperative units or having an obligation to pay common expenses, may be excused from the payment of his or her share of the common expenses which would have been assessed against those units during the period of time that he or she shall have guaranteed to each purchaser in the purchase contract or in the cooperative documents, or by agreement between the developer and a majority of the unit owners other than the developer, that the assessment for common expenses of the cooperative imposed upon the unit owners would not increase over a stated dollar amount and shall have obligated himself or herself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners.

Section 878. Paragraph (b) of subsection (1) and subsection (3) of section 719.202, Florida Statutes, are amended to read:

719.202 Sales or reservation deposits prior to closing.—

(1) If a developer contracts to sell a cooperative parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to cooperative ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director shall have the discretion to accept other assurances, including, but not limited to, a surety bond

or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from the escrow as follows:

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(3) If the contract for sale of the cooperative so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. The developer ~~He~~ may use the funds in the actual construction and development of the cooperative property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons ~~salesmen~~ or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

Section 879. Subsection (5) of section 719.203, Florida Statutes, is amended to read:

719.203 Warranties.—

(5) The warranties provided by this section shall inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.

Section 880. Paragraph (f) of subsection (4) of section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the cooperative and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, the developer's ~~his~~ agent, or an architect or engineer authorized to practice in this state that such plans and specifications repre-

sent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the cooperative property and for the construction and installation of the mechanical components serving the improvements. If the cooperative property has been organized as a cooperative more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply.

Section 881. Subsection (2) of section 719.302, Florida Statutes, is amended to read:

719.302 Agreements entered into by the association.—

(2) Any grant or reservation made by a cooperative document, lease, or other document, or any contract made by the developer or association prior to the time unit owners other than the developer elect a majority of the board of administration, which requires the association to purchase cooperative property or to lease cooperative property to another party shall be deemed ratified unless rejected by a majority of the voting interests of unit owners other than the developer within 18 months after unit owners other than the developer elect a majority of the board of administration. This subsection does not apply to any grant or reservation made by a declaration whereby persons other than the developer or the developer's his heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the cooperative property, so long as such persons are obligated to pay, at a minimum, a proportionate share of the cost associated with such property.

Section 882. Subsections (1) and (3) of section 719.303, Florida Statutes, are amended to read:

719.303 Obligations of owners.—

(1) Each unit owner, each tenant and other invitee, and each association shall be governed by, and shall comply with the provisions of, this chapter, the cooperative documents, the documents creating the association, and the association bylaws, and the provisions thereof shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

- (a) The association.
- (b) A unit owner.
- (c) Directors designated by the developer, for actions taken by them prior to the time control of the association is assumed by unit owners other than the developer.
- (d) Any director who willfully and knowingly fails to comply with these provisions.
- (e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 719.503(1)(a) is entitled to recover reasonable attorney's fees. A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law.

(3) If the cooperative documents so provide, the association may levy reasonable fines against a unit owner for failure of the unit owner or his or her licensee or invitee or the unit's occupant to comply with any provision of the cooperative documents or reasonable rules of the association. No fine shall become a lien against a unit. No fine shall exceed \$100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed \$1,000. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, his or her licensee or invitee. The hearing shall be held before a committee of other unit owners. If the committee does not agree with the fine, it shall not be levied. This subsection does not apply to unoccupied units.

Section 883. Paragraphs (d) and (f) of subsection (1) of section 719.401, Florida Statutes, are amended to read:

719.401 Leaseholds.—

(1) A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(d)1. In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defenses, legal or equitable, that he or she or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, it shall constitute an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor shall be entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the

funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection, and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs which the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph shall affect litigation commenced prior to October 1, 1979.

(f)1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph shall not apply to a nonresidential cooperative and shall not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

Section 884. Subsections (3) and (5) of section 719.403, Florida Statutes, are amended to read:

719.403 Phase cooperatives.—

(3) The developer shall notify owners of existing units of the commencement of, or the decision not to add, one or more additional phases. Notice shall be by certified mail addressed to each owner at the address of the owner's ~~his~~ unit or at his or her last known address.

(5) If the cooperative documents require the developer to convey any additional lands or facilities to the cooperative after the completion of the first phase and the developer ~~he~~ fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

Section 885. Subsections (1) and (4) of section 719.502, Florida Statutes, are amended to read:

719.502 Filing prior to sale or lease.—

(1) A developer of a residential cooperative shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 719.503 and 719.504, if applicable. Until the developer has so filed, a contract for sale or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his or her purchase or lease of a unit.

(4) Any developer who complies with this section shall not be required to file with any other division or agency of this state for approval to sell the units in the cooperative, the information for the cooperative for which he or she filed.

Section 886. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (a) of subsection (3) of section 719.503, Florida Statutes, are amended to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(a) Contents of contracts.—Any contracts for the sale of a unit or a lease thereof for an unexpired term of more than 5 years shall contain:

1. The following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

2. The following caveat in conspicuous type shall be placed upon the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, the contract shall include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, the contract shall include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other common areas, the contract shall contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. The contract shall state the name and address of the escrow agent required by s. 719.202 and shall state that the purchaser may obtain a receipt for his or her deposit from the escrow agent, upon request.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with the provisions of this subsection prior to the sale of his

or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of the articles of incorporation of the association, the bylaws, and rules of the association, as well as a copy of the question and answer sheet as provided in s. 719.504.

(3) OTHER DISCLOSURE.—

(a) If cooperative parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common areas, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common areas appurtenant to the unit.

Section 887. Paragraph (b) of subsection (20) and subsection (22) of section 719.504, Florida Statutes, are amended to read:

719.504 Prospectus or offering circular.—Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Land Sales, Condominiums, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of \$100,000; and state whether membership in a recreational facilities association is mandatory and, if so, identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one cooperative, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(20) An estimated operating budget for the cooperative and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than assessments payable to the association, payable by the unit owner to persons or entities other than the association, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses that are personal to unit owners, which are not uniformly incurred by all unit owners, or which are not provided for or contemplated by the cooperative documents, including, but not limited to, the costs of private telephone; maintenance of the interior of cooperative units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the cooperative; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(22) The identity of the developer and the chief operating officer or principal directing the creation and sale of the cooperative and a statement of its and his or her experience in this field.

Section 888. Section 719.505, Florida Statutes, is amended to read:

719.505 Good faith effort to comply.—If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

Section 889. Subsection (1) of section 719.506, Florida Statutes, is amended to read:

719.506 Publication of false and misleading information.—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the lease of a cooperative parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his or her loss prior to the closing of the transaction. After the closing of the transaction, the lessee shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a)-(d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other

evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

Section 890. Subsection (1) of section 719.612, Florida Statutes, is amended to read:

719.612 Right of first refusal.—

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 719.614, and the disclosure documents required by ss. 719.503 and 719.504. Failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion shall automatically extend the rental agreement, any extension of the rental agreement provided for in s. 719.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the

tenant shall have no additional right of first refusal. As used in this paragraph, “offer” includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but shall not include a transaction involving the sale of more than one unit to one purchaser.

Section 891. Paragraph (d) of subsection (9), paragraphs (b) and (c) of subsection (13), subsection (17), and paragraph (a) of subsection (27) of section 721.05, Florida Statutes, are amended to read:

721.05 Definitions.—As used in this chapter, the term:

(9) “Developer” includes:

(d) The term “developer” does not include:

1. An owner of a timeshare period who has acquired the timeshare period for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption shall exist that an owner who has acquired more than seven timeshare periods did not acquire them for his or her own use and occupancy;

2. A managing entity that is not otherwise a developer of a timeshare plan in its own right and that offers timeshare periods for its own account in a timeshare plan which it manages to existing purchasers of that timeshare plan, or a managing entity which complies with the provisions of s. 721.065; or

3. A person who is conveyed, assigned, or transferred more than seven timeshare periods from a developer in a single voluntary or involuntary transaction and who subsequently conveys, assigns, or transfers all of the timeshare periods received from the developer to a single purchaser in a single transaction.

(13) “Escrow agent” includes only:

(b) An attorney who is a member of The Florida Bar or his or her law firm, so long as the attorney or firm has posted a fidelity bond issued by a company authorized and licensed to do business in this state as surety in the amount of \$50,000;

(c) A real estate broker who is licensed pursuant to chapter 475 or his or her brokerage firm, so long as the broker or firm has posted a fidelity bond issued by a company authorized and licensed to do business in this state as surety in the amount of \$50,000; or

If an escrow agent is required to post a \$50,000 fidelity bond pursuant to this subsection, the escrow agent shall only be required to post and maintain one such bond, regardless of the number of escrow accounts maintained by that agent for any number of developers, managing entities, or timeshare plans at any given time.

(17) “Incidental benefit” means an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a

timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her initial 10-day voidability period pursuant to s. 721.10; which is not an exchange program as defined in subsection (15); and which complies with the provisions of s. 721.075. The term shall not include an offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis.

(27) “Seller” means any developer or any other person, or any agent or employee thereof, who offers timeshare periods in the ordinary course of business. The term “seller” does not include:

(a) An owner of a timeshare period who has acquired the timeshare period for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption shall exist that an owner who has acquired more than seven timeshare periods did not acquire them for his or her own use and occupancy;

Section 892. Subsection (1) and paragraph (b) of subsection (2) of section 721.065, Florida Statutes, are amended to read:

721.065 Resale purchase agreements.—

(1) An owner who acquires a timeshare period for her or his own use and occupancy and later offers it for resale, or any agent of such person, must utilize a resale purchase agreement which complies with the provisions of subsection (2) to effectuate any resale of the timeshare period. A managing entity which, for its own account, offers fewer than 20 timeshare periods in the timeshare plan which it manages in a given calendar year to persons who are not existing purchasers of that timeshare plan may also use a resale purchase agreement which complies with subsection (2) in lieu of complying with the provisions of ss. 721.06-721.12 and 721.20. For purposes of this subsection, a rebuttable presumption shall exist that an owner who has acquired more than seven timeshare periods did not acquire them for her or his own use and occupancy.

(2) Any resale purchase agreement utilized by a person described in subsection (1) must contain all of the following:

(b) The following statements in conspicuous type located immediately prior to the disclosure required by paragraph (c):

The current year’s assessment for common expenses allocable to the timeshare period you are purchasing is \$..... This assessment, which may be increased from time to time by the managing entity of the timeshare plan, is payable in full each year on or before This assessment (includes/does not include) yearly ad valorem real estate taxes, which (are/are not) billed and collected separately. (If ad valorem real property taxes are not included in the current year’s assessment for common expenses, the following statement must be included: The most recent annual assessment for ad valorem real estate taxes for the timeshare period you are purchasing is \$.....) (If there are any delinquent assessments for common expenses or ad valorem taxes outstanding with respect to the timeshare period in question, the

following statement must be included: A delinquency in the amount of \$... for unpaid common expenses or ad valorem taxes currently exists with respect to the timeshare period you are purchasing, together with a per diem charge of \$... for interest and late charges.) For the purpose of ad valorem assessment, taxation, and special assessments, the managing entity will be considered the taxpayer as your agent pursuant to section 192.037, Florida Statutes. Each owner is personally liable for the payment of her or his assessments for common expenses, and failure to timely pay these assessments may result in restriction or loss of your use and/or ownership rights.

There are many important documents relating to the timeshare plan which you should review prior to purchasing a timeshare period, including the declaration of condominium or covenants and restrictions; the association articles and bylaws; the current year's operating and reserve budgets; and any rules and regulations affecting the use of timeshare plan accommodations and facilities.

Section 893. Paragraphs (t), (x), and (ii) of subsection (5) of section 721.07, Florida Statutes, are amended to read:

721.07 Public offering statement.—Prior to offering any timeshare plan, the developer must file a public offering statement with the division for approval as prescribed by s. 721.03, s. 721.55, or this section. Until the division approves such filing, any contract regarding the sale of the timeshare plan which is the subject of the public offering statement is voidable by the purchaser.

(5) Every public offering statement filed with the division for a timeshare plan which is not a multistate timeshare plan shall contain the information required by this subsection. The division is authorized to provide by rule the method by which a developer must provide such information to the division.

(t) If the timeshare plan is part of a phase project, a statement to that effect and a complete description of the phasing. Notwithstanding any provisions of s. 718.110, a developer may develop a timeshare condominium in phases if the original declaration of condominium submitting the initial phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for phasing. Notwithstanding any provisions of s. 718.403 to the contrary, the original declaration of condominium, or an amendment to the declaration adopted pursuant to this subsection, need only generally describe the developer's phasing plan and the land which may become part of the condominium, and, in conjunction therewith, the developer may also reserve all rights to vary his or her phasing plan as to phase boundaries, plot plans and floor plans, unit types, unit sizes and unit type mixes, numbers of units, and recreational areas and facilities with respect to each subsequent phase. There shall be no time limit during which a developer of a timeshare condominium must complete his or her phasing plan, and the developer shall not be required to notify owners of existing timeshare estates of his or her decision not to add one or more proposed phases.

(x) An estimated operating budget for the timeshare plan and a schedule of the purchaser's expense shall be attached as an exhibit and shall contain the following information:

1. The estimated annual expenses of the timeshare plan collectible from purchasers by assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall also be shown for the shortest timeshare period offered for sale by the developer. If the timeshare plan provides for the offer and sale of units to be used on a nontimeshare basis, the estimated monthly and annual expenses shall be set forth in a separate schedule.

2. The estimated weekly, monthly, and annual expenses of the purchaser of each timeshare period, other than assessments payable to the managing entity. Expenses which are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the timeshare plan documents may be excluded from this estimate.

3. The estimated items of expenses of the timeshare plan and the managing entity, except as excluded under subparagraph 2., including, but not limited to, the following items, which shall be stated either as management expenses collectible by assessments or as expenses of the purchaser payable to persons other than the managing entity:

a. Expenses for the managing entity:

(I) Administration of the managing entity.

(II) Management fees.

(III) Maintenance.

(IV) Rent for recreational and other commonly used facilities.

(V) Taxes upon timeshare property.

(VI) Taxes upon leased areas.

(VII) Insurance.

(VIII) Security provisions.

(IX) Other expenses.

(X) Operating capital.

(XI) Reserves for deferred maintenance and reserves for capital expenditures. All reserves shall be calculated by a formula which is based upon estimated life and replacement cost of each reserve item. Reserves for deferred maintenance shall include accounts for roof replacement, building painting, pavement resurfacing, replacement of unit furnishings and equipment, and any other component the useful life of which is less than the useful life of the overall structure.

(XII) Fees payable to the division.

b. Expenses for a purchaser:

(I) Rent for the unit, if subject to a lease.

(II) Rent payable by the purchaser directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the purchasers to the association.

4. The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time that purchasers elect a majority of the board of administration and the period after that date.

5. If the developer intends to guarantee the level of assessments, such guarantee must be based upon a good faith estimate of the revenues and expenses of the timeshare plan. The guarantee must include a description of the following:

a. The specific time period measured in one or more calendar or fiscal years during which the guarantee will be in effect.

b. A statement that the developer will pay all common expenses incurred in excess of the total revenues of the timeshare plan pursuant to s. 721.15(2) if the developer has excused himself or herself from the payment of assessments during the guarantee period.

c. The level, expressed in total dollars, at which the developer guarantees the budget. If the developer has reserved the right to extend or increase the guarantee level pursuant to s. 721.15(2), a disclosure must be included to that effect.

6. If the developer intends to provide a trust fund to defer or reduce the payment of annual assessments, a copy of the trust instrument shall be attached as an exhibit and shall include a description of such arrangement, including, but not limited to:

a. The specific amount of such trust funds and the source of the funds.

b. The name and address of the trustee.

c. The investment methods permitted by the trust agreement.

d. A statement in conspicuous type that the funds from the trust account may not cover all assessments and that there is no guarantee that purchasers will not have to pay assessments in the future.

(ii) Such other information as is necessary to fairly, meaningfully, and effectively disclose all aspects of the timeshare plan, including, but not limited to, any disclosures made necessary by the operation of s. 721.03(9). However, if a developer has, in good faith, attempted to comply with the

requirements of this section, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions shall not be actionable.

Section 894. Paragraphs (e) and (f) of subsection (1) and subsection (2) of section 721.075, Florida Statutes, are amended to read:

721.075 Incidental benefits.—Incidental benefits shall be offered only as provided in this section.

(1) Accommodations, facilities, products, services, discounts, or other benefits which satisfy the requirements of this subsection shall be subject to the provisions of this section and exempt from the other provisions of this part which would otherwise apply to accommodations and facilities if and only if:

(e) The incidental benefit will continue to be available in the manner represented to prospective purchasers for no less than 6 months but less than 3 years after the first date that the timeshare plan is available for use by the purchaser. The developer shall not be required to make the incidental benefit available for longer than 18 months after the date of purchase. Nothing herein shall prevent the renewal of an incidental benefit after the expiration of its term, provided that any ability to renew is not represented or otherwise portrayed to a prospective purchaser or to a purchaser prior to the expiration of his or her initial 10-day voidability period.

(f) The aggregate represented value of all incidental benefits offered by a developer to a purchaser may not exceed 15 percent of the purchase price paid by the purchaser for his or her timeshare period.

(2) Each purchaser shall execute a separate acknowledgment and disclosure statement with respect to all incidental benefits, which statement shall include the following information:

(a) A fair description of the incidental benefit, including, but not limited to, the represented value of the benefit; any user fees or costs associated therewith; and any restrictions upon use or availability.

(b) A statement that use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and that payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation.

(c) A statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser.

(d) The following disclosure in conspicuous type immediately above the space for the purchaser's signature:

[Describe incidental benefit] is an incidental benefit offered to prospective purchasers of the timeshare plan [or other permitted reference pursuant to s. 721.11(5)(a)]. This benefit is available for your use for a term of [minimum 6 months but less than 3 years] after the first date that the timeshare plan

is available for your use. You should not purchase an interest in the time-share plan in reliance upon the continued availability of this benefit.

The acknowledgment and disclosure statement for each incidental benefit shall be filed with the division prior to use. Each purchaser shall receive a copy of his or her executed acknowledgment and disclosure statement as a document required to be provided to him or her pursuant to s. 721.10(1)(b).

Section 895. Subsection (2) of section 721.08, Florida Statutes, is amended to read:

721.08 Escrow accounts; nondisturbance instruments; alternate security arrangements.—

(2) One hundred percent of all funds or other property which is received from or on behalf of purchasers of the timeshare plan or timeshare period prior to the occurrence of events required in this subsection shall be deposited pursuant to an escrow agreement approved by the division. The escrow agreement shall provide that the funds or property may be released from escrow only as follows:

(a) Cancellation.—In the event a purchaser gives a valid notice of cancellation pursuant to s. 721.10 or is otherwise entitled to cancel the sale, the funds or property received from or on behalf of the purchaser, or the proceeds thereof, shall be returned to the purchaser. Such refund shall be made within 20 days of demand therefor by the purchaser or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later. If the purchaser has received benefits under the contract prior to the effective date of the cancellation, the funds or property to be returned to the purchaser may be reduced by the proportion of contract benefits actually received.

(b) Purchaser's default.—Following expiration of the 10-day cancellation period, if the purchaser defaults in the performance of her or his obligations under the terms of the contract to purchase or such other agreement by which the seller sells the timeshare period, the developer shall provide an affidavit to the escrow agent requesting release of the escrowed funds or property and shall provide a copy of such affidavit to the purchaser who has defaulted. The developer's affidavit, as required herein, shall include:

1. A statement that the purchaser has defaulted and that the developer has not defaulted;

2. A brief explanation of the nature of the default and the date of its occurrence;

3. A statement that pursuant to the terms of the contract the developer is entitled to the funds held by the escrow agent; and

4. A statement that the developer has not received from the purchaser any written notice of a dispute between the purchaser and developer or a claim by the purchaser to the escrow.

(c) Compliance with conditions.—

1. If the timeshare plan is one in which timeshare licenses are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or property upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

(IV) Execution and recordation of the nondisturbance and notice to creditors instrument, as described in this section.

b. A certified copy of the recorded nondisturbance and notice to creditors instrument that complies with subsection (3).

c. A copy of a memorandum of agreement, as defined in s. 721.05(21), together with satisfactory evidence that the original memorandum of agreement has been irretrievably delivered for recording to the appropriate official responsible for maintaining the public records in the county in which the subject accommodations or facilities are located. The original memorandum of agreement must be recorded within 180 days after the date on which the purchaser executed her or his purchase agreement.

2. If the timeshare plan is one in which timeshare estates are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or property upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

b. If the timeshare estate is sold by agreement for deed, a certified copy of the recorded nondisturbance and notice to creditors instrument, as described in this section.

c. Evidence that the timeshare estate is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevocably made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument, or that are the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3).

If the developer has previously provided a certified copy of any document required by this section, she or he may for all subsequent disbursements

substitute a true and correct copy of the certified copy, provided no changes to the document have been made or are required to be made.

Section 896. Paragraph (b) of subsection (1) of section 721.10, Florida Statutes, is amended to read:

721.10 Cancellation.—

(1) A purchaser has the right to cancel the contract until midnight of the 10th calendar day following whichever of the following days occurs later:

(b) The day on which the purchaser received the last of all documents required to be provided to him or her.

This right of cancellation may not be waived by any purchaser or by any other person on behalf of the purchaser. Furthermore, no closing may occur until the cancellation period of the timeshare purchaser has expired. Any attempt to obtain a waiver of the cancellation right of the timeshare purchaser, or to hold a closing prior to the expiration of the cancellation period, is unlawful and such closing is voidable at the option of the purchaser for a period of 1 year after the expiration of the cancellation period. However, nothing in this section precludes the execution of documents in advance of closing for delivery after expiration of the cancellation period.

Section 897. Subsection (3) and paragraph (h) of subsection (5) of section 721.111, Florida Statutes, are amended to read:

721.111 Prize and gift promotional offers.—

(3) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day she or he appears to claim it, whether or not she or he purchases a timeshare period.

(5) Each filing of a prize and gift promotional offer with the division shall include, when applicable:

(h) Full disclosure of all pertinent information concerning the use of lodging or vacation certificates, including the terms and conditions of the campaign and the fact and extent of participation in such campaign by the developer. The division may require reasonable assurances that the obligation incurred by a seller or the seller's ~~his~~ agent in a lodging certificate program can be met.

Section 898. Paragraph (d) of subsection (3) and paragraphs (b), (c), and (g) of subsection (6) of section 721.13, Florida Statutes, are amended to read:

721.13 Management.—

(3) The duties of the managing entity include, but are not limited to:

(d)1. Maintenance of all books and records concerning the timeshare plan so that all such books and records are reasonably available for inspection by any purchaser or the authorized agent of such purchaser. For purposes of

this subparagraph, the books and records of the timeshare plan shall be considered “reasonably available” if copies of the requested portions are delivered to the purchaser or the purchaser’s ~~his~~ agent within 7 days of the date the managing entity receives a written request for the records signed by the purchaser. The managing entity may charge the purchaser a reasonable fee for copying the requested information not to exceed 25 cents per page. However, any purchaser or agent of such purchaser shall be permitted to personally inspect and examine the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of those records. The custodian shall supply copies of the records where requested and upon payment of the copying fee. No fees other than those set forth in this section may be charged for the providing of, inspection, or examination of books and records. All books and financial records of the timeshare plan must be maintained in accordance with generally accepted accounting practices.

2. If the books and records of the timeshare plan are not maintained on the premises of the accommodations and facilities of the timeshare plan, the managing entity shall inform the division in writing of the location of the books and records and the name and address of the person who acts as custodian of the books and records at that location. In the event that the location of the books and records changes, the managing entity shall notify the division of the change in location and the name and address of the new custodian within 30 days of the date the books and records are moved. The purchasers shall be notified of the location of the books and records and the name and address of the custodian in the copy of the annual budget provided to them pursuant to paragraph (c).

3. The division is authorized to adopt rules which specify those items and matters that shall be included in the books and records of the timeshare plan and which specify procedures to be followed in requesting and delivering copies of the books and records.

4. Notwithstanding any provision of chapter 718 or chapter 719 to the contrary, the managing entity may not furnish the name or address of any purchaser to any other purchaser or authorized agent thereof unless the purchaser whose name and address are requested first approves the disclosure in writing.

(6)

(b) A managing entity desiring to deny the use of the accommodations and facilities of the timeshare plan to a delinquent purchaser and to those claiming under the purchaser, including his or her guests, lessees, and third parties receiving use rights in the timeshare period in question through a nonaffiliated exchange program, shall, no less than 30 days prior to the first day of the purchaser’s use period, notify the purchaser in writing of the total amount of any delinquency which then exists or which will exist as of the first day of such use period, including any accrued interest and late charges permitted to be imposed under the terms of the public offering statement for the timeshare plan or by law and including a per diem amount, if any, to account for further accrual of interest and late charges between the stated

effective date of the notice and the first date of use. The notice shall also clearly state that the purchaser will not be permitted to use his or her timeshare period until the total amount of such delinquency is satisfied in full or until the purchaser produces satisfactory evidence that the delinquency does not exist. The notice shall be mailed to the purchaser at his or her last known address as recorded in the books and records of the timeshare plan, and the notice shall be effective to bar the use of the purchaser and those claiming use rights under the purchaser, including his or her guests, lessees, and third parties receiving use rights in the timeshare period in question through a nonaffiliated exchange program, until such time as the purchaser is no longer delinquent. The notice shall not be effective to bar the use of third parties receiving use rights in the timeshare period in question through an affiliated exchange program without the additional notice to the affiliated exchange program required by paragraph (c).

(c) In addition to giving notice to the delinquent purchaser as required by paragraph (b), a managing entity desiring to deny the use of the accommodations and facilities of the timeshare plan to third parties receiving use rights in the delinquent purchaser's timeshare period through any affiliated exchange program shall notify the affiliated exchange company in writing of the denial of use. The receipt of such written notice by the affiliated exchange company shall be effective to bar the use of all third parties claiming through the affiliated exchange program, and such notice shall be binding upon the affiliated exchange company and all third parties claiming through the affiliated exchange program until such time as the affiliated exchange company receives notice from the managing entity that the purchaser is no longer delinquent. However, any third party claiming through the affiliated exchange program who has received a confirmed assignment of the delinquent purchaser's use rights from the affiliated exchange company prior to the expiration of 48 hours after the receipt by the affiliated exchange company of such written notice from the managing entity shall be permitted by the managing entity to use the accommodations and facilities of the timeshare plan to the same extent that he or she would be allowed to use such accommodations and facilities if the delinquent purchaser were not delinquent.

(g) A managing entity shall have breached its fiduciary duty described in subsection (2) in the event it enforces the denial of use pursuant to paragraph (b) against any one purchaser or group of purchasers without similarly enforcing it against all purchasers, including all developers and owners of the underlying fee; however, a managing entity shall not be required to solicit rentals pursuant to paragraph (f) for every delinquent purchaser. A managing entity shall also have breached its fiduciary duty in the event an error in the books and records of the timeshare plan results in a denial of use pursuant to this subsection of any purchaser who is not, in fact, delinquent. In addition to any remedies otherwise available to purchasers of the timeshare plan arising from such breaches of fiduciary duty, such breach shall also constitute a violation of this chapter. In addition, any purchaser receiving a notice of delinquency pursuant to paragraph (b), or any third party claiming under such purchaser pursuant to paragraph (b), may immediately bring an action for injunctive or declaratory relief against the managing entity seeking to have the notice invalidated on the grounds

that the purchaser is not, in fact, delinquent, that the managing entity failed to follow the procedures prescribed by this section, or on any other available grounds. The prevailing party in any such action shall be entitled to recover his or her reasonable attorney's fees from the losing party.

Section 899. Subsection (2) of section 721.14, Florida Statutes, is amended to read:

721.14 Discharge of managing entity.—

(2) In the event the manager or management firm is discharged, the board of administration of the owners' association shall remain responsible for operating and maintaining the timeshare plan pursuant to the timeshare instrument and s. 721.13(1). If the board of administration fails to do so, any timeshare owner may apply to the circuit court within the jurisdiction of which the accommodations and facilities lie for the appointment of a receiver to manage the affairs of the association and the timeshare plan. At least 30 days before applying to the circuit court, the timeshare owner shall mail to the association and post in a conspicuous place on the timeshare property a notice describing the intended action. If a receiver is appointed, the association shall be responsible as a common expense of the timeshare plan, for payment of the salary and expenses of the receiver, relating to the discharge of her or his duties and obligations as receiver, together with the receiver's court costs, and reasonable attorney's fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until discharged by the circuit court.

Section 900. Paragraph (b) of subsection (2) and subsection (7) of section 721.15, Florida Statutes, are amended to read:

721.15 Assessments for common expenses.—

(2)

(b) No owner of a timeshare period may be excused from the payment of her or his share of the common expenses unless all owners are likewise excused from payment, except that the developer may be excused from the payment of her or his share of the common expenses which would have been assessed against her or his timeshare periods during a stated period of time during which the developer ~~he~~ has guaranteed to each purchaser in the timeshare instrument, or by agreement between the developer and a majority of the owners of timeshare periods other than the developer, that the assessment for common expenses imposed upon the owners would not increase over a stated dollar amount. In the event of such a guarantee, the developer is obligated to pay all common expenses incurred during the guarantee period in excess of the total revenues of the timeshare plan.

(7) A purchaser, regardless of how her or his timeshare estate or timeshare license has been acquired, including a purchaser at a judicial sale, is personally liable for all assessments for common expenses which come due while the purchaser ~~he~~ is the owner of such interest. A successor in interest is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of

the timeshare interest to such successor without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor. The predecessor in interest shall provide the managing entity with a copy of the recorded deed of conveyance if the interest is a timeshare estate or a copy of the instrument of transfer if the interest is a timeshare license, containing the name and mailing address of the successor in interest within 15 days after the date of transfer. The managing entity shall not be liable to any person for any inaccuracy in the books and records of the timeshare plan arising from the failure of the predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest. Nothing in this subsection shall be construed to impair the operation of s. 718.116 for timeshare condominiums.

Section 901. Section 721.17, Florida Statutes, is amended to read:

721.17 Transfer of interest.—Except in the case of a timeshare plan subject to the provisions of chapter 718 or chapter 719, no developer or owner of the underlying fee shall sell, lease, assign, mortgage, or otherwise transfer his or her interest in the accommodations or facilities of the timeshare plan except by an instrument evidencing the transfer recorded in the public records of the county in which the accommodations or facilities are located. The instrument shall be executed by both the transferor and transferee and shall state:

(1) That its provisions are intended to protect the rights of all purchasers of the plan.

(2) That its terms may be enforced by any prior or subsequent timeshare purchaser so long as that purchaser is not in default of his or her obligations.

(3) That the transferee will fully honor the rights of the purchasers to occupy and use the accommodations and facilities as provided in their original contracts and the timeshare instruments.

(4) That the transferee will fully honor all rights of timeshare purchasers to cancel their contracts and receive appropriate refunds.

(5) That the obligations of the transferee under such instrument will continue to exist despite any cancellation or rejection of the contracts between the developer and purchaser arising out of bankruptcy proceedings.

Should any transfer of the interest of the developer or owner of the underlying fee occur in a manner which is not in compliance with this section, the terms set forth in this section shall be presumed to be a part of the transfer and shall be deemed to be included in the instrument of transfer. Notice shall be mailed to each purchaser of record within 30 days of the transfer. Persons who hold mortgages on the property constituting a timeshare plan before the public offering statement of such plan is approved by the division shall not be considered transferees for the purposes of this section.

Section 902. Paragraph (k) of subsection (1) of section 721.18, Florida Statutes, is amended to read:

721.18 Exchange programs; filing of information and other materials; filing fees; unlawful acts in connection with an exchange program.—

(1) If a purchaser is offered the opportunity to subscribe to an exchange program, the seller shall deliver to the purchaser, together with the public offering statement, and prior to the offering or execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program; or, if the exchange company is dealing directly with the purchaser, the exchange company shall deliver to the purchaser, prior to the initial offering or execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program. In either case, the purchaser shall certify in writing to the receipt of such information. Such information shall include, but is not limited to, the following information, the form and substance of which shall first be approved by the division in accordance with subsection (2):

(k) Whether and under what circumstances a purchaser, in dealing with the exchange program, may lose the use and occupancy of her or his time-share period in any properly applied for exchange without her or his being provided with substitute accommodations by the exchange program.

Section 903. Paragraphs (b) and (d) of subsection (2) of section 721.20, Florida Statutes, are amended to read:

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.—

(2)

(b) It is unlawful for any person to solicit prospective purchasers of a timeshare plan without first having secured a timeshare occupational license and having paid the occupational license fee; however, an applicant who has completed and filed an application for a timeshare occupational license and who has paid the required occupational license fee may solicit prospective purchasers of a timeshare plan pursuant to this section pending approval or denial of his or her application by the division.

(d) The division may deny, suspend, or revoke any occupational license when the applicant or holder thereof has violated the provisions of chapter 468, chapter 718, chapter 719, this chapter, or the rules of the division governing timesharing, or when the holder of a license issued pursuant to chapter 475 has had his or her license suspended or revoked. If any occupational license expires by division rule while administrative charges are pending against the license, the proceedings against the license shall continue to conclusion as if the license were still in effect. In addition to those remedies available against the developer, the division may impose against an applicant or licensed solicitor a civil fine of up to \$500 in addition to, or in lieu of, a suspension or revocation provided for in this section for violation of the rules of the division.

Section 904. Paragraph (a) of subsection (1) and subsection (2) of section 721.265, Florida Statutes, are amended to read:

721.265 Service of process.—

(1) In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, service of process may be made by delivering a copy of the process to the director of the division, which shall be binding upon the defendant or respondent, if:

(a) The plaintiff, which may be the division, immediately sends a copy of the process and the pleading by certified mail to the defendant or respondent at her or his last known address.

(2) If any person, including any nonresident of this state, allegedly engages in conduct prohibited by this chapter, or by any rule or order of the division, and has not filed a consent to service of process, and personal jurisdiction over her or him cannot otherwise be obtained in this state, the director shall be authorized to receive service of process in any noncriminal proceeding against that person or her or his successor which grows out of the conduct and which is brought under this chapter or any rule or order of the division. The process shall have the same force and validity as if personally served. Notice shall be given as provided in subsection (1).

Section 905. Paragraph (b) of subsection (1) of section 721.301, Florida Statutes, is amended to read:

721.301 Florida Timesharing, Vacation Club, and Hospitality Program.—

(1)

(b) In conducting the program, the director, or the director's ~~his~~ designee, shall:

1. Solicit research and educational projects and proposals from the timeshare, vacation club, hospitality, and tourism industries;

2. Consult with the Florida chapter of the American Resort Development Association (ARDA-Florida), the Chancellor of the State University System, or the chancellor's ~~his~~ designee; and

3. Assist in the preparation of appropriate reports produced by the program partnership.

Section 906. Paragraph (b) of subsection (4) of section 721.52, Florida Statutes, is amended to read:

721.52 Definitions.—As used in this part, the term:

(4) “Multisite timeshare plan” means any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site, only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan. However, the term “multisite timeshare plan” shall not include any method, arrangement, or procedure wherein:

(b) The term is for a period of 3 years or less, regardless of the purchaser's contractually specified maximum total financial obligation, if any. For purposes of determining the term of such use and occupancy rights, the period of any optional renewals which a purchaser, in his or her sole discretion, may elect to exercise, whether or not for additional consideration, shall be included.

Multisite timeshare plan does not mean an exchange program as defined in s. 721.05. Timeshare estates may only be offered in a multisite timeshare plan pursuant to s. 721.57.

Section 907. Paragraph (b) of subsection (1) of section 721.53, Florida Statutes, is amended to read:

721.53 Subordination instruments; alternate security arrangements.—

(1) With respect to each accommodation or facility of a multisite timeshare plan, the developer shall provide the division with satisfactory evidence that one of the following has occurred with respect to each interestholder prior to offering the accommodation or facility as a part of the multisite timeshare plan:

(b) The interestholder has executed a subordination and notice to creditors instrument and recorded it among the appropriate public records in the jurisdiction in which the subject accommodation or facility is located. The subordination instrument shall expressly subordinate the interest or lien of the interestholder in the subject accommodation or facility to the rights of purchasers of the multisite timeshare plan created with respect to such accommodation or facility by the timeshare instrument, and shall provide that:

1. If the party seeking enforcement is not in default of its obligations, the instrument may be enforced by both the seller and any purchaser of the multisite timeshare plan;

2. The instrument shall be effective as between the timeshare purchaser and interestholder despite any rejection or cancellation of the contract between the timeshare purchaser and developer as a result of bankruptcy proceedings of the developer; and

3. So long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the multisite timeshare plan, then the interestholder will honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument.

The subordination instrument shall also contain language sufficient to provide subsequent creditors of the developer and the interestholder with notice of the existence of the timeshare plan and of the rights of purchasers and shall serve to protect the interest of the timeshare purchasers from any claims of such subsequent creditors.

Section 908. Paragraph (a) of subsection (8) of section 721.55, Florida Statutes, is amended to read:

721.55 Multisite timeshare plan public offering statement.—Each public offering statement filed with the division for a multisite timeshare plan shall contain the information required by this section and shall comply with the provisions of s. 721.07. The division is authorized to provide by rule the method by which a developer must provide such information to the division. Each multisite timeshare plan public offering statement shall contain the following information and disclosures:

(8)(a) A timeshare plan containing only one component site must be filed with the division as a multisite timeshare plan if the timeshare instrument reserves the right for the developer to add future component sites. However, if the developer fails to add at least one additional component site to a timeshare plan described in this paragraph within 3 years after the date the plan is initially filed with the division, the multisite filing for such plan shall thereupon terminate, and the developer may not thereafter offer any further interests in such plan unless and until he or she refiles such plan with the division pursuant to this chapter.

Section 909. Paragraph (e) of subsection (2) of section 721.552, Florida Statutes, is amended to read:

721.552 Additions, substitutions, or deletions of component site accommodations or facilities; purchaser remedies for violations.—Additions, substitutions, or deletions of component site accommodations or facilities may be made only in accordance with the following:

(2) SUBSTITUTIONS.—

(e) The person authorized to make substitutions shall notify all purchasers of the multisite timeshare plan in writing of her or his intention to delete accommodations at a given component site and to substitute them with other specified accommodations pursuant to this subsection. This notice must be given at least 6 months in advance of the date that the substitution will occur, and the notice must inform the purchasers that they may reserve the use of the accommodations to be deleted during this 6-month period. At the end of the 6-month period, the person authorized to make substitutions may delete accommodations for substitution only to the extent that they were not reserved during the 6-month period.

Section 910. Subsection (1), paragraph (b) of subsection (5), and subsection (6) of section 721.56, Florida Statutes, are amended to read:

721.56 Management of multisite timeshare plans; reservation systems; demand balancing.—

(1) The developer as a prerequisite for approval of his or her public offering statement filing or his or her phase filing must obtain an affidavit, or other evidence satisfactory to the director of the division, from the component site managing entity containing all of the following:

(a) A statement that all assessments on inventory are fully paid as required by applicable law.

(b) A statement as to the amount of delinquent assessments existing at the component site, if any.

(c) If required by applicable law, a statement that the latest annual audit of the component site shows that, if required, reserves are adequately maintained with respect to each component site.

(d) A statement that the component site managing entity specifically acknowledges the existence of the multisite timeshare plan relating to the use of the accommodations and facilities of the component site by purchasers of the plan.

(5)

(b) In the event of a termination of a managing entity of a nonspecific license multisite timeshare plan as defined in s. 721.552(4), which managing entity owns the reservation system, irrespective of whether the termination is voluntary or involuntary and irrespective of the cause of such termination, in addition to any other remedies available to purchasers in this part, the terminated managing entity shall, prior to such termination, establish a trust meeting the criteria set forth in this paragraph. It is the intent of the Legislature that this trust arrangement provide for an adequate period of continued operation of the reservation system of the multisite timeshare plan, during which period the new managing entity shall make provision for the acquisition of a substitute reservation system.

1. The trust shall be established with an independent trustee. Both the terminated managing entity and the new managing entity shall attempt to agree on an acceptable trustee. In the event they cannot agree on an acceptable trustee, they shall each designate a nominee, and the two nominees shall select the trustee.

2. The terminated managing entity shall take all steps necessary to enable the trustee or the trustee's ~~his~~ designee to operate the reservation system in the same manner as provided in the timeshare instrument and the public offering statement. The trustee may, but shall not be required to, contract with the terminated managing entity for the continued operation of the reservation system. In the event the trustee elects to contract with the terminated managing entity, that managing entity shall be required to operate the reservation system and shall be entitled to payment for that service. The payment shall in no event exceed the amount previously paid to the terminated managing entity for operation of the reservation system.

3. The trust shall remain in effect for a period of no longer than 1 year following the date of termination of the managing entity.

4. Nothing contained in this subsection shall abrogate or otherwise interfere with any proprietary rights in the reservation system that have been reserved by the discharged managing entity, in its management contract or otherwise, so long as such proprietary rights are not asserted in a manner

that would prevent the continued operation of the reservation system as contemplated in this subsection.

(6) Prior to offering the multisite timeshare plan, the developer shall create the reservation system and shall establish rules and regulations for its operation. In establishing these rules and regulations, the developer shall take into account the location and anticipated relative use demand of each component site that he or she intends to offer as a part of the plan and shall use his or her best efforts, in good faith and based upon all reasonably available evidence under the circumstances, to further the best interests of the purchasers of the plan as a whole with respect to their opportunity to use and enjoy the accommodations and facilities of the plan. The rules and regulations shall also provide for periodic adjustment or amendment of the reservation system by the managing entity from time to time in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations and facilities existing at that time within the plan. The person authorized to make additions and substitutions during the term of the multisite timeshare plan shall also comply with the requirements of this subsection in ascertaining the desirability of the proposed addition, substitution, adjustment, or amendment and the impact of same upon the demand for and availability of existing plan accommodations and facilities.

Section 911. Paragraph (b) of subsection (2) of section 721.57, Florida Statutes, is amended to read:

721.57 Offering of timeshare estates in multisite timeshare plans; required provisions in the timeshare instrument.—

(2) The timeshare instrument of a multisite timeshare plan in which timeshare estates are offered must contain or provide for all of the following matters:

(b) In the event that the reservation system is terminated or otherwise becomes unavailable for any reason prior to the expiration of the term of the multisite timeshare plan:

1. The purchaser will be able to continue to use the accommodations and facilities of the component site in which she or he has been conveyed a timeshare estate in the manner described in the timeshare instrument for the remaining term of the timeshare estate; and

2. Any use rights in that component site which had previously been made available through the reservation system to purchasers of the multisite timeshare plan who were not offered a timeshare estate at that component site will terminate when the reservation system is terminated or otherwise becomes unavailable for any reason.

Section 912. Subsection (4) of section 723.003, Florida Statutes, is amended to read:

723.003 Definitions.—As used in this chapter, the following words and terms have the following meanings unless clearly indicated otherwise:

(4) The term “mobile home lot rental agreement” or “rental agreement” means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his or her mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.

Section 913. Section 723.007, Florida Statutes, is amended to read:

723.007 Annual fees.—Each mobile home park owner shall pay to the division, on or before October 1 of each year, an annual fee of \$4 for each mobile home lot within a mobile home park which he or she owns. The division may, after December 31, 1993, by rule, increase the amount of the annual fee to an amount not to exceed \$5 for each mobile home lot to fund operation of the division. If the fee is not paid by December 31, the mobile home park owner shall be assessed a penalty of 10 percent of the amount due, and he or she shall not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

Section 914. Subsection (7) of section 723.012, Florida Statutes, is amended to read:

723.012 Prospectus or offering circular.—The prospectus or offering circular, which is required to be provided by s. 723.011, must contain the following information:

(7) A description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.

Section 915. Subsections (1) and (2) of section 723.013, Florida Statutes, are amended to read:

723.013 Written notification in the absence of a prospectus.—A mobile home park owner who enters into a rental agreement in which a prospectus is not provided shall give written notification to the mobile home owner of the following information prior to occupancy:

(1) The nature and type of zoning under which the mobile home park operates; the name of the zoning authority which has jurisdiction over the land comprising the mobile home park; and a detailed description containing all information available to the mobile home park owner, including the time, manner, and nature, of any definite future plans which he or she has for future changes in the use of the land comprising the mobile home park or a portion thereof.

(2) The name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf.

Section 916. Section 723.017, Florida Statutes, is amended to read:

723.017 Publication of false or misleading information; remedies.—Any person who pays anything of value toward the purchase of a mobile home or placement of a mobile home in a mobile home park located in this state

in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the park owner or developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, shall have a cause of action to rescind the contract or collect damages from the developer, park owner, or mobile home dealer for her or his loss.

Section 917. Subsection (5) of section 723.022, Florida Statutes, is amended to read:

723.022 Mobile home park owner's general obligations.—A mobile home park owner shall at all times:

(5) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and conduct themselves in a manner that does not unreasonably disturb the park residents or constitute a breach of the peace.

Section 918. Subsections (2) and (3) of section 723.023, Florida Statutes, are amended to read:

723.023 Mobile home owner's general obligations.—A mobile home owner shall at all times:

(2) Keep the mobile home lot which he or she occupies clean and sanitary.

(3) Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply therewith and to conduct themselves in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Section 919. Subsection (2) of section 723.0381, Florida Statutes, is amended to read:

723.0381 Civil actions; arbitration.—

(2) The court shall refer the action to a panel of three arbitrators for court-annexed nonbinding arbitration pursuant to s. 44.103 and the Florida Rules of Civil Procedure, except that compensation for the arbitrators shall be in accordance with the authorized rate for circuit court mediators in that judicial circuit. The court shall assess the parties equally to pay the compensation awarded to the arbitrators if neither party requests a trial de novo. If a party has filed for a trial de novo, the party shall be assessed the arbitration costs, court costs, and other reasonable costs of the opposing party, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If subsequent to arbitration a party files for a trial de novo, the arbitration decision may be made known to the judge only after he or she has entered his or her order on the merits.

Section 920. Paragraph (e) of subsection (1) and subsection (2) of section 723.041, Florida Statutes, are amended to read:

723.041 Entrance fees; refunds; exit fees prohibited.—

(1)

(e) Whenever an entrance fee is charged by a mobile home park owner or developer for the entrance of a mobile home into the park and such mobile home is moved from the park before 2 years have passed from the date on which the fee was charged, the fee shall be prorated and a portion returned as follows:

1. The entrance fee shall be refunded at the rate of one twenty-fourth of such fee for each month short of 2 years that the mobile home owner maintained his or her mobile home within the park.

2. The entrance fee shall be refunded within 15 days after the mobile home has been physically moved from the park.

No new entrance fee may be charged for a move within the same park. This paragraph does not apply in instances in which the mobile home owner is evicted on the ground of nonpayment of rent; violation of a federal, state, or local ordinance; or violation of a properly promulgated park rule or regulation or leaves before the expiration date of his or her rental agreement. However, the sums due to the park by the mobile home owner may be offset against the balance due on the entrance fee.

(2) No person shall be required by a mobile home park owner to pay an exit fee upon termination of his or her residency.

Section 921. Section 723.044, Florida Statutes, is amended to read:

723.044 Interference with installation of appliances or interior improvements.—A mobile home park owner or developer shall not charge any resident who chooses to install an electric or gas appliance in her or his mobile home an additional fee solely on the basis of such installation or restrict the installation, service, or maintenance of any such appliance or the making of any interior improvement in such mobile home, so long as the installation or improvement is in compliance with applicable building codes and other provisions of law.

Section 922. Section 723.045, Florida Statutes, is amended to read:

723.045 Sale of utilities by park owner or developer.—No mobile home park owner or developer who purchases electricity or gas (natural, manufactured, or similar gaseous substance) from any public utility or municipally owned utility or who purchases water from a water system for the purpose of supplying or reselling the electricity, gas, or water to any other person to whom she or he leases, lets, rents, subleases, sublets, or subrents the premises upon which the electricity, gas, or water is to be used shall charge, demand, or receive, directly or indirectly, any amount for the resale of such electricity, gas, or water greater than that amount charged by the public utility or municipally owned utility from which the electricity or gas was purchased or by the public water system from which the water was purchased. However, as concerns the distribution of water, the park owner may

charge for maintenance actually incurred and administrative costs. This section does not apply to a park owner who is regulated pursuant to chapter 367 or by a county water ordinance.

Section 923. Subsections (1) and (4) of section 723.058, Florida Statutes, are amended to read:

723.058 Restrictions on sale of mobile homes.—

(1) No mobile home park owner or subdivision developer shall make or enforce any rule, regulation, or rental agreement provision which denies or abridges the right of any mobile home owner or owner of a lot in a mobile home subdivision to sell his or her mobile home within the park or mobile home subdivision; which prohibits the mobile home owner or the owner of a lot in a mobile home subdivision from placing a “for sale” sign on or in his or her mobile home (except that the size, placement, and character of all signs are subject to properly promulgated and reasonable rules and regulations of the mobile home park or mobile home subdivision); or which requires the mobile home owner or the owner of a lot in a mobile home subdivision to remove the mobile home from the park or mobile home subdivision solely on the basis of the sale thereof.

(4) No resale agreement shall be construed to be of perpetual or indefinite duration. Any duration shall be construed to expire 6 months following written notice from the homeowner to the park owner or subdivision developer informing the park owner or subdivision developer that the homeowner is placing his or her mobile home for sale, and requesting the park owner or subdivision developer to utilize his or her best efforts to sell the mobile home on the homeowner’s behalf. Any extension or renewal of a resale agreement shall be in writing and shall be of specified duration.

Section 924. Subsection (4) of section 723.059, Florida Statutes, is amended to read:

723.059 Rights of purchaser.—

(4) However, nothing herein shall be construed to prohibit a mobile home park owner from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and this act.

Section 925. Paragraph (c) of subsection (1), paragraph (a) of subsection (2), and subsection (4) of section 723.061, Florida Statutes, are amended to read:

723.061 Eviction; grounds, proceedings.—

(1) A mobile home park owner may evict a mobile home owner or a mobile home only on one or more of the grounds provided in this section.

(c) Violation of a park rule or regulation, the rental agreement, or this chapter.

1. For the first violation of any properly promulgated rule or regulation, rental agreement provision, or this chapter which is found by any court having jurisdiction thereof to have been an act which endangered the life, health, safety, or property of the park residents or the peaceful enjoyment of the mobile home park by its residents, the mobile home park owner may terminate the rental agreement, and the mobile home owner will have 7 days from the date that the notice is delivered to vacate the premises.

2. For a second violation of the same properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months, the mobile home park owner may terminate the tenancy if she or he has given the mobile home owner written notice within 30 days of the first violation, which notice specified the actions of the mobile home owner which caused the violation and gave the mobile home owner 7 days to correct the noncompliance. The mobile home owner must have received written notice of the ground upon which she or he is to be evicted at least 30 days prior to the date on which she or he is required to vacate. A second violation of a properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months of the first violation is unequivocally a ground for eviction, and it is not a defense to any eviction proceeding that a violation has been cured after the second violation. Violation of a rule or regulation, rental agreement provision, or this chapter after the passage of 1 year from the first violation of the same rule or regulation, rental agreement provision, or this chapter does not constitute a ground for eviction under this section.

No properly promulgated rule or regulation may be arbitrarily applied and used as a ground for eviction.

(2) In the event of eviction for change of land use, homeowners must object to the change in land use by petitioning for administrative or judicial remedies within 90 days of the date of the notice or they will be barred from taking any subsequent action to contest the change in land use. This provision shall not be construed to prevent any homeowner from objecting to a zoning change at any time.

(a) Within 90 days from the time the park owner gives the 1-year notice, she or he shall notify the homeowner of her or his election to either buy the mobile home, relocate the mobile home to another park owned by the park owner, or pay to relocate the mobile home to another mobile home park, as follows:

1. Pay as damages the actual cost, including setup fees, to move an evicted mobile home, with comparable and any required appurtenances, to a comparable mobile home park within a 50-mile radius of the mobile home park or other distance agreed upon by the park owner and mobile home owner. Since the amount of damages that a homeowner will suffer due to the change in land use by the park owner cannot be easily estimated and would be difficult and expensive to determine, it is the intent of the Legislature that the payment contained herein be considered in the nature of liquidated

damages and not a penalty. It is the intent of the Legislature that the liquidated damages to which the mobile home owner is entitled be limited to the damages defined in this subparagraph only for so long as this subsection remains in effect. The liquidated damages apply only to the harm incurred by the homeowner for having to relocate, and this provision shall not preclude incidental damages that might occur in relocating the mobile home;

2. Purchase the mobile home and all appurtenances thereto at a value to be determined as follows:

a. A mutually agreed upon appraiser will assess the book value of the mobile home and cash value of all appurtenances thereto and the market value of the mobile home as situated immediately prior to the notice of change in land use. Any nationally recognized publication for valuation of mobile and manufactured homes shall be used as a guide for determining such value.

b. The homeowner will be entitled to the book value of the mobile home and cash value of the appurtenances.

c. The homeowner will also be entitled to the following portion of the difference between the book value and cash value of the appurtenances and the market value of the mobile home. If the homeowner has resided in the mobile home at the time of notice of land use change by the park owner:

0 years up to 5 years	40 percent
5 years up to 15 years	60 percent
15 years up to 20 years	80 percent
20 years or more	100 percent

d. The homeowner who has become a resident of the park within 0-5 years of the notice of change in land use shall be entitled, in addition to the compensation set forth above, to 60 percent of the difference between the book value and the market value of the mobile home.

e. Between the date of the appraisals referred to in this subsection and the delivery of title and possession of the mobile home and all appurtenances thereto to the park owner, the mobile home and the appurtenances shall be maintained by the homeowner in the condition existing on the date of the appraisals, ordinary wear and tear excepted; or

3. Reach a mutually agreed to settlement between the park owner and the homeowner.

(4) Any notice required by this section must be in writing, and must be posted on the premises and sent to the mobile home owner by certified or registered mail, return receipt requested, addressed to the mobile home owner at her or his last known address. Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

Section 926. Subsection (2) of section 723.0615, Florida Statutes, is amended to read:

723.0615 Retaliatory conduct.—

(2) Evidence of retaliatory conduct may be raised by the home owner as a defense in any action brought against him or her for possession.

Section 927. Section 723.062, Florida Statutes, is amended to read:

723.062 Removal of mobile home owner; process.—

(1) In an action for possession, after entry of judgment in favor of the mobile home park owner, the clerk shall issue a writ of possession to the sheriff, describing the lot or premises and commanding the sheriff him to put the mobile home park owner in possession. The writ of possession shall not issue earlier than 10 days from the date judgment is granted.

(2) At the time the sheriff executes the writ of possession, the landlord or the landlord's his agent may remove any personal property, including the mobile home, found on the premises to or near the property line or, in the case of the mobile home, into storage. If requested by the landlord, the sheriff shall stand by to keep the peace while the landlord removes personal property. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord nor his or her agent shall be responsible to the tenant or any other party for loss, destruction, or damage to the property after it has been removed.

Section 928. Subsection (1) of section 723.063, Florida Statutes, is amended to read:

723.063 Defenses to action for rent or possession; procedure.—

(1) In any action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof, the mobile home owner may defend upon the ground of a material noncompliance with any portion of this chapter or may raise any other defense, whether legal or equitable, which he or she may have. The defense of material noncompliance may be raised by the mobile home owner only if 7 days have elapsed after he or she has notified the park owner in writing of his or her intention not to pay rent, or a portion thereof, based upon the park owner's noncompliance with portions of this chapter, specifying in reasonable detail the provisions in default. A material noncompliance with this chapter by the park owner is a complete defense to an action for possession based upon nonpayment of rent, or a portion thereof, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the lot during the period of noncompliance with any portion of this chapter. After consideration of all other relevant issues, the court shall enter appropriate judgment.

Section 929. Subsections (1) and (2) of section 723.071, Florida Statutes, are amended to read:

723.071 Sale of mobile home parks.—

(1)(a) If a mobile home park owner offers a mobile home park for sale, she or he shall notify the officers of the homeowners' association created pursuant to ss. 723.075-723.079 of the ~~his~~ offer, stating the price and the terms and conditions of sale.

(b) The mobile home owners, by and through the association defined in s. 723.075, shall have the right to purchase the park, provided the home owners meet the price and terms and conditions of the mobile home park owner by executing a contract with the park owner within 45 days, unless agreed to otherwise, from the date of mailing of the notice and provided they have complied with ss. 723.075-723.079. If a contract between the park owner and the association is not executed within such 45-day period, then, unless the park owner thereafter elects to offer the park at a price lower than the price specified in her or his notice to the officers of the homeowners' association, the park owner ~~he~~ has no further obligations under this subsection, and her or his only obligation shall be as set forth in subsection (2).

(c) If the park owner thereafter elects to offer the park at a price lower than the price specified in her or his notice to the home owners, the home owners, by and through the association, will have an additional 10 days to meet the price and terms and conditions of the park owner by executing a contract.

(2) If a mobile home park owner receives a bona fide offer to purchase the park that she or he intends to consider or make a counteroffer to, the park owner's ~~his~~ only obligation shall be to notify the officers of the homeowners' association that she or he has received an offer and disclose the price and material terms and conditions upon which she or he would consider selling the park and consider any offer made by the home owners, provided the home owners have complied with ss. 723.075-723.079. The park owner shall be under no obligation to sell to the home owners or to interrupt or delay other negotiations, and ~~he~~ shall be free at any time to execute a contract for the sale of the park to a party or parties other than the home owners or the association.

Section 930. Subsection (1) of section 723.072, Florida Statutes, is amended to read:

723.072 Affidavit of compliance with statutory requirements.—

(1) A park owner may at any time record, in the official records of the county where a mobile home park is situated, an affidavit in which the park owner ~~he~~ certifies that:

(a) With reference to an offer by him or her for the sale of such park, he or she has complied with the provisions of s. 723.071(1);

(b) With reference to an offer received by him or her for the purchase of such park, or with reference to a counteroffer which he or she intends to make, or has made, for the sale of such park, he or she has complied with the provisions of s. 723.071(2);

(c) Notwithstanding his or her compliance with the provisions of either subsection (1) or subsection (2) of s. 723.071, no contract has been executed

for the sale of such park between himself or herself and the park homeowners' association;

(d) The provisions of subsections (1) and (2) of s. 723.071 are inapplicable to a particular sale or transfer of such park by him or her, and compliance with such subsections is not required; or

(e) A particular sale or transfer of such park is exempted from the provisions of this section and s. 723.071.

Any party acquiring an interest in a mobile home park, and any and all title insurance companies and attorneys preparing, furnishing, or examining any evidence of title, have the absolute right to rely on the truth and accuracy of all statements appearing in such affidavit and are under no obligation to inquire further as to any matter or fact relating to the park owner's compliance with the provisions of s. 723.071.

Section 931. Section 723.074, Florida Statutes, is amended to read:

723.074 Sale of facilities serving a mobile home subdivision.—The owner of recreational facilities or other property exclusively serving a mobile home subdivision shall not sell such recreational facilities or other property unless she or he first gives the right to purchase such recreational facilities or other property to the owners of lots within the mobile home subdivision, in the manner provided for in s. 723.071, provided the owners of lots within the subdivision have created a homeowners' association similar to that required by s. 723.075. A mobile home subdivision in which no more than 30 percent of the total lots are leased will not be deemed to be a mobile home park, provided the mobile home owner is granted an option to purchase the lot when the lease is entered into and provided the purchase price of the lot is included in the original lease agreement.

Section 932. Subsection (7) of section 723.079, Florida Statutes, is amended to read:

723.079 Powers and duties of homeowners' association.—

(7) An association has the authority, without the joinder of any home owner, to modify, move, or create any easement for ingress and egress or for the purpose of utilities if the easement constitutes part of or crosses the park property upon purchase of the mobile home park. This subsection does not authorize the association to modify or move any easement created in whole or in part for the use or benefit of anyone other than the members, or crossing the property of anyone other than the members, without his or her consent or approval as required by law or the instrument creating the easement. Nothing in this subsection affects the rights of ingress or egress of any member of the association.

Section 933. Section 725.01, Florida Statutes, is amended to read:

725.01 Promise to pay another's debt, etc.—No action shall be brought whereby to charge any executor or administrator upon any special promise to answer or pay any debt or damages out of her or his own estate, or

whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements or hereditaments, or of any uncertain interest in or concerning them, or for any lease thereof for a period longer than 1 year, or upon any agreement that is not to be performed within the space of 1 year from the making thereof, or whereby to charge any health care provider upon any guarantee, warranty, or assurance as to the results of any medical, surgical, or diagnostic procedure performed by any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, podiatrist licensed under chapter 461, or dentist licensed under chapter 466, unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or by some other person by her or him thereunto lawfully authorized.

Section 934. Section 725.03, Florida Statutes, is amended to read:

725.03 Newspaper subscription.—No person shall be liable to pay for any newspaper, periodical or other like matter, unless the person he shall subscribe for or order the same in writing.

Section 935. Subsection (2) of section 725.06, Florida Statutes, is amended to read:

725.06 Construction contracts; limitation on indemnification.—Any portion of any agreement or contract for, or in connection with, any construction, alteration, repair, or demolition of a building, structure, appurtenance, or appliance, including moving and excavating connected with it, or any guarantee of, or in connection with, any of them, between an owner of real property and an architect, engineer, general contractor, subcontractor, sub-subcontractor, or materialman, or between any combination thereof, wherein any party referred to herein obtains indemnification from liability for damages to persons or property caused in whole or in part by any act, omission, or default of that party arising from the contract or its performance shall be void and unenforceable unless:

(2) The person indemnified by the contract gives a specific consideration to the indemnitor for the indemnification that shall be provided for in his or her contract and section of the project specifications or bid documents, if any.

Section 936. Subsection (2) of section 726.103, Florida Statutes, is amended to read:

726.103 Insolvency.—

(2) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

Section 937. Paragraph (b) of subsection (1) of section 726.105, Florida Statutes, is amended to read:

726.105 Transfers fraudulent as to present and future creditors.—

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Section 938. Section 726.201, Florida Statutes, is amended to read:

726.201 Fraudulent loans void.—When any loan of goods and chattels shall be pretended to have been made to any person with whom or those claiming under her or him, possession shall have remained for the space of 2 years without demand and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder or otherwise in goods and chattels, and the possession thereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and the absolute property shall be with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded.

Section 939. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 727.104, Florida Statutes, are amended to read:

727.104 Commencement of proceedings.—

(1)

(b) The assignment shall be in substantially the following form:

ASSIGNMENT

ASSIGNMENT, made this day of, 19...., between, with a principal place of business at, hereinafter "assignor," and, whose address is, hereinafter "assignee."

WHEREAS, the assignor has been engaged in the business of

WHEREAS, the assignor is indebted to creditors, as set forth in Schedule A annexed hereto, is unable to pay its debts as they become due, and is desirous of providing for the payment of its debts, so far as it is possible by an assignment of all of its assets for that purpose.

NOW, THEREFORE, the assignor, in consideration of the assignee's acceptance of this assignment, and for other good and valuable consideration, hereby grants, assigns, conveys, transfers, and sets over, unto the assignee, her or his successors and assigns, all of its assets, except such assets as are exempt by law from levy and sale under an execution, including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims and demands belonging to the assignor, wherever such assets may be located, hereinafter the "estate," as which assets are, to the best knowledge and belief of the assignor, set forth on Schedule B annexed hereto.

The assignee shall take possession and administer the estate in accordance with the provisions of chapter 727, Florida Statutes, and shall liquidate the assets of the estate with reasonable dispatch and convert the estate into money, collect all claims and demands hereby assigned as may be collectible, and pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution and administration of this assignment from the proceeds of such liquidations and collections.

The assignee shall then pay and discharge in full, to the extent that funds are available in the estate after payment of administrative expenses, costs, and disbursements, all of the debts and liabilities now due from the assignor, including interest on such debts and liabilities. If funds of the estate shall not be sufficient to pay such debts and liabilities in full, then the assignee shall pay from funds of the estate such debts and liabilities, on a pro rata basis and in proportion to their priority as set forth in s. 727.114, Florida Statutes.

In the event that all debts and liabilities are paid in full, any funds of the estate remaining shall be returned to the assignor.

To accomplish the purposes of this assignment, the assignor hereby appoints the assignee its true and lawful attorney, irrevocable, with full power and authority to do all acts and things which may be necessary to execute the assignment hereby created; to demand and recover from all persons all assets of the estate; to sue for the recovery of such assets; to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances; and to appoint one or more attorneys under her or him to assist the assignee ~~him~~ in carrying out her or his duties hereunder.

The assignor hereby authorizes the assignee to sign the name of the assignor to any check, draft, promissory note, or other instrument in writing which is payable to the order of the assignor, or to sign the name of the assignor to any instrument in writing, whenever it shall be necessary to do so, to carry out the purpose of this assignment.

The assignee hereby accepts the trust created by the assignment, and agrees with the assignor that the assignee will faithfully and without delay carry out her or his duties under the assignment.

.....
 Assignor

Assignee

STATE OF FLORIDA
COUNTY OF SS:

The foregoing assignment was acknowledged before me this day of, 19...., by, as assignor, and by, as assignee, for the purposes therein expressed.

.....
Notary Public

My Commission Expires:

(2) Within 10 days after delivery of the assignment to the assignee, the assignee shall:

(b) File, in the office of the clerk of the court in the county of the assignor's place of business if it has one, in the county of its chief executive office if it has more than one place of business, or in the county of the assignor's residence if the assignor is an individual not engaged in business, in accordance with the procedures for filing a complaint as set forth in the Florida Rules of Civil Procedure, a petition setting forth the name and address of the assignor and the name and address of the assignee; a copy of the assignment, together with Schedules A and B; and a request that the court fix the amount of the assignee's bond to be filed with the clerk of the court. This bond shall be subject to reconsideration upon the motion of any party in interest after notice and hearing. The bond shall be payable to the clerk of the court, in an amount not less than double the liquidation value of the assets of the estate as set forth in Schedule B, conditioned upon the assignee's faithful discharge of her or his duties. Within 30 days after the court enters an order setting the amount of such bond, the assignee shall file the bond with the clerk of the court, who shall approve the bond.

Section 940. Section 727.106, Florida Statutes, is amended to read:

727.106 Turnover.—Any person or entity, other than a creditor, in possession, custody, or control of assets of the estate shall, upon notice by the assignee of the assignment proceeding, promptly turn such assets over to the assignee or the assignee's ~~his~~ duly authorized representative.

Section 941. Subsections (6), (10), and (12) of section 727.108, Florida Statutes, are amended to read:

727.108 Duties of assignee.—The assignee shall:

(6) To the extent necessary, employ at the expense of the estate one or more appraisers, auctioneers, accountants, attorneys, or other professional persons, to assist the assignee in carrying out his or her duties under this chapter;

(10) Abandon assets to duly perfected secured or lien creditors, where, after due investigation, he or she determines that the estate has no equity in such assets or such assets are burdensome to the estate or are of inconsequential value and benefit to the estate;

(12) File with the court a final report of all receipts and disbursements and file an application for his or her discharge pursuant to the provisions of s. 727.116.

Section 942. Subsections (6) and (10) of section 727.109, Florida Statutes, are amended to read:

727.109 Power of the court.—The court shall have power to:

(6) Hear and determine any of the following actions brought by the assignee, which she or he is hereby empowered to maintain:

(a) Enforce the turnover of assets of the estate pursuant to s. 727.106;

(b) Determine the validity, priority, and extent of a lien or other interests in assets of the estate, or to subordinate or avoid an unperfected security interest pursuant to the assignee’s rights as a lien creditor under s. 679.301;

(c) Avoid any conveyance or transfer void or voidable by law;

(10) Discharge the assignee and the assignee’s his surety from liability upon matters included in the assignee’s final report;

Section 943. Subsections (2) and (5) of section 727.111, Florida Statutes, are amended to read:

727.111 Notice.—

(2) The notice of assignment shall be in substantially the following form:

NOTICE OF ASSIGNMENT

IN THE CIRCUIT COURT
OF THE....
CIRCUIT, IN AND FOR
....COUNTY,
FLORIDA

IN RE:,
Assignor,

to:.....,
Assignee.

TO CREDITORS AND OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE that on, a petition commencing an assignment for the benefit of creditors pursuant to chapter 727, Florida Statutes, made by, assignor, with principal place of business at, to, assignee, whose address is, was filed on, 19....

YOU ARE HEREBY further notified that in order to receive any dividend in this proceeding you must file a proof of claim with the assignee or the assignee’s his attorney on or before....(120 days from the date of the filing of the petition).

.....
ASSIGNEE

Attorney for assignee (if any):....

Address:.....

(5) The assignee shall give the assignor and all creditors not less than 20 days' notice by mail of the filing of his or her petition for discharge and the final report of receipts and disbursements pursuant to s. 727.116. The notice shall include a summary of all receipts and disbursements of the estate and shall set forth the date and place of the final hearing.

Section 944. Subsections (2) and (3) of section 727.115, Florida Statutes, are amended to read:

727.115 Resignation or removal of assignee.—

(2) Upon removal, resignation, or death of the assignee, the court shall appoint a replacement assignee if the court deems in its discretion that further administration of the estate is required. Upon executing and filing a bond pursuant to s. 727.104(2), the replacement assignee shall forthwith take possession of the estate and assume her or his duties as assignee.

(3) Whenever the court shall be satisfied that the assignee so removed or replaced has fully accounted for and turned over to the replacement assignee appointed by the court all of the property of the estate and has filed a report of all receipts and disbursements during her or his tenure as assignee, the court shall enter an order discharging the assignee ~~him~~ from all further duties, liabilities, and responsibilities as assignee after notice and a hearing.

Section 945. Subsections (1), (3), and (4) of section 727.116, Florida Statutes, are amended to read:

727.116 Assignee's final report and discharge.—

(1) Upon distribution of all assets of the estate, the assignee shall petition the court for his or her discharge upon notice and a hearing in accordance with s. 727.111(5).

(3) Upon approval of the final report, the court shall discharge the assignee and release his or her bond.

(4) The assignee's discharge shall have the effect of releasing him or her from any duties, liabilities, and responsibilities as assignee pursuant to the provisions of the assignment and this chapter.

Section 946. Subsection (3) of section 731.103, Florida Statutes, is amended to read:

731.103 Evidence as to death or status.—In proceedings under this code, the rules of evidence in civil actions are applicable unless specifically changed by the code. The following additional rules relating to determination of death and status are applicable:

(3) A person who is absent from the place of his or her last known domicile for a continuous period of 5 years and whose absence is not satisfactorily

explained after diligent search and inquiry is presumed to be dead. The person's ~~His~~ death is presumed to have occurred at the end of the period unless there is evidence establishing that death occurred earlier.

Section 947. Subsection (2) of section 731.106, Florida Statutes, is amended to read:

731.106 Assets of nondomiciliaries.—

(2) When a nonresident decedent who is a citizen of the United States or a citizen or subject of a foreign country provides in her or his will that the testamentary disposition of her or his tangible or intangible personal property having a situs within this state, or of her or his real property in this state, shall be construed and regulated by the laws of this state, the validity and effect of the dispositions shall be determined by Florida law. The court may, and in the case of a decedent who was at the time of ~~his~~ death a resident of a foreign country the court shall, direct the personal representative appointed in this state to make distribution directly to those designated by the decedent's will as beneficiaries of the tangible or intangible property or to the persons entitled to receive the decedent's personal estate under the laws of the decedent's domicile, as the case may be.

Section 948. Subsection (1) of section 731.110, Florida Statutes, is amended to read:

731.110 Caveat; proceedings.—

(1) If any creditor of the estate of a decedent is apprehensive that an estate, either testate or intestate, will be administered without the creditor's ~~his~~ knowledge, or if any person other than a creditor is apprehensive that an estate may be administered, or that a will may be admitted to probate, without the person's ~~his~~ knowledge, he or she may file a caveat with the court.

Section 949. Subsections (2), (10), (21), and (35) of section 731.201, Florida Statutes, are amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code and chapters 737, 738, and 744:

(2) "Beneficiary" means heir at law, in an intestate estate, and devisee, in a testate estate. The term "beneficiary" does not apply to an heir at law or a devisee after his or her interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, in the absence of a conflict of interest of the trust, the trustee is a beneficiary of the estate. An owner of a beneficial interest in the trust is a beneficiary of the trust and is, in the absence of a conflict of interest of the trust, not a beneficiary of the estate.

(10) "Distributee" means a person who has received estate property from a personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or incre-

ments to them remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(21) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration of the estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include an heir at law or a devisee who has received his or her distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(35) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's his property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

Section 950. Paragraphs (a) and (c) of subsection (1) and paragraph (a) of subsection (2) of section 731.301, Florida Statutes, are amended to read:

731.301 Notice; method and time; proof.—

(1) FORMAL NOTICE.—

(a) When formal notice of a petition or other proceeding is required, the petitioner shall serve a copy of the petition to any interested person or her or his attorney, if the interested person ~~he~~ has appeared by attorney or requested that notice be sent to her or his attorney. The petition shall be served:

1. By any form of mail or by any commercial delivery service approved by the chief judge of each judicial circuit, requiring a signed receipt, as follows:

a. On the interested person's his attorney of record, if any, or to the post-office address given in her or his demand for notice, if any;

b. On an individual, other than an incompetent, by mailing a copy to the individual's his dwelling house or usual place of abode or to the place where she or he regularly conducts her or his business or profession;

c. On an incompetent person, by mailing a copy to the incompetent, to the person having custody of the incompetent, and to any legal guardian of the incompetent, at their respective dwelling houses, usual places of abode, or regular places of business or profession;

- d. On a corporation, by mailing a copy to the corporation at its last known address; or
2. As provided in chapter 48; or
3. In the circumstances provided in chapter 49, in the manner provided therein.

(c) If service is made under subparagraph (a)2. or subparagraph (a)3., proof shall be made as provided in chapter 48 or chapter 49. If service is made by mail under subparagraph (a)1., proof shall be by a verified statement of the person mailing service who shall attach the signed receipt or other evidence satisfactory to the court that delivery was made to, or refused by, the addressee or the addressee's ~~his~~ agent.

(2) INFORMAL NOTICE.—

(a) When informal notice of a petition or other proceeding is required or permitted, it shall be served on the person or the person's ~~his~~ attorney as provided in the Florida Rules of Civil Procedure relating to service of pleadings.

Section 951. Paragraphs (b) and (c) of subsection (2) and paragraph (a) of subsection (4) of section 731.303, Florida Statutes, are amended to read:

731.303 Representation.—In proceedings involving estates of decedents or trusts, the following apply:

(2) Persons are bound by orders binding others in the following cases:

(b) To the extent there is no conflict of interest between them or among the persons represented:

1. Orders binding a guardian of the property bind the ward whose estate he or she controls.

2. Orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will, in establishing or adding to a trust, in reviewing the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties.

3. Orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate, in actions or proceedings by or against the estate.

(c) An unborn or unascertained person, or a minor or any other person under a legal disability, who is not otherwise represented is bound by an order to the extent that his or her interest is represented by another party having the same or greater quality of interest in the proceeding.

(4) Notice is required as follows:

(a) Notice as prescribed by s. 731.301 shall be given to every interested person, or to one who can bind the interested person as described in para-

graph (2)(a) or paragraph (2)(b). Notice may be given both to the interested person and to another who can bind him or her.

Section 952. Section 732.106, Florida Statutes, is amended to read:

732.106 Afterborn heirs.—Heirs of the decedent conceived before his or her death, but born thereafter, inherit intestate property as if they had been born in the decedent's lifetime.

Section 953. Paragraph (a) of subsection (2), subsections (3) and (4), and paragraph (a) of subsection (6) of section 732.107, Florida Statutes, are amended to read:

732.107 Escheat.—

(2)(a) In this event, or when doubt exists about the existence of any person entitled to the estate, the personal representative shall institute a proceeding for the determination of beneficiaries, as provided in this code, within 1 year after letters have been issued to him or her, and notice shall be served on the Department of Legal Affairs. If the personal representative fails to institute the proceeding within the time fixed, it may be instituted by the Department of Legal Affairs.

(3) If the court determines that there is no person entitled to the estate and that the estate escheats, the property shall be sold and the proceeds paid to the Treasurer of the state and deposited by him or her in the State School Fund within a reasonable time to be fixed by the court.

(4) At any time within 10 years after the granting of letters, a person claiming to be entitled to the estate of the decedent may petition to reopen the administration and assert his or her rights to escheated property. If the claimant is entitled to any of the estate of the decedent, the court shall fix the amount to which he or she is entitled, and it shall be repaid to him or her with interest at the legal rate by the officials charged with the disbursement of state school funds. If no claim is asserted within the time fixed, the title of the state to the property and the proceeds shall become absolute.

(6)(a) If a person entitled to the funds assigns his or her rights to receive payment to an attorney or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with such person, the Department of Banking and Finance is authorized to make distribution in accordance with such assignment.

Section 954. Section 732.108, Florida Statutes, is amended to read:

732.108 Adopted persons and persons born out of wedlock.—

(1) For the purpose of intestate succession by or from an adopted person, the adopted person is a lineal descendant of the adopting parent and is one of the natural kindred of all members of the adopting parent's family, and ~~he~~ is not a lineal descendant of his or her natural parents, nor is he or she one of the kindred of any member of the ~~his~~ natural parent's family or any prior adoptive parent's family, except that:

(a) Adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and the natural parent or the natural parent's family.

(b) Adoption of a child by a natural parent's spouse who married the natural parent after the death of the other natural parent has no effect on the relationship between the child and the family of the deceased natural parent.

(c) Adoption of a child by a close relative, as defined in s. 63.172(2), has no effect on the relationship between the child and the families of the deceased natural parents.

(2) For the purpose of intestate succession in cases not covered by subsection (1), a person born out of wedlock is a lineal descendant of his or her mother and is one of the natural kindred of all members of the mother's family. The person is also a lineal descendant of his or her father and is one of the natural kindred of all members of the father's family, if:

(a) The natural parents participated in a marriage ceremony before or after the birth of the person born out of wedlock, even though the attempted marriage is void.

(b) The paternity of the father is established by an adjudication before or after the death of the father.

(c) The paternity of the father is acknowledged in writing by the father.

Section 955. Section 732.1101, Florida Statutes, is amended to read:

732.1101 Aliens.—No person is disqualified to take as an heir because he or she, or a person through whom he or she claims, is, or has been, an alien.

Section 956. Subsections (1) and (2) of section 732.222, Florida Statutes, are amended to read:

732.222 Purchaser for value or lender.—

(1) If a surviving spouse has apparent title to property to which ss. 732.216-732.228 apply, a purchaser for value or a lender taking a security interest in the property takes his or her interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which ss. 732.216-732.228 apply, a purchaser for value or a lender taking a security interest in the property takes his or her interest in the property free of any rights of the surviving spouse.

Section 957. Section 732.223, Florida Statutes, is amended to read:

732.223 Perfection of title of surviving spouse.—If the title to any property to which ss. 732.216-732.228 apply was held by the decedent at the time of his or her death, title of the surviving spouse may be perfected by an order of the probate court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the

probate court. The probate court in which the decedent's estate is being administered has no duty to discover whether property held by the decedent is property to which ss. 732.216-732.228 apply. The personal representative has no duty to discover whether property held by the decedent is property to which ss. 732.216-732.228 apply unless a written demand is made by the surviving spouse or the spouse's successor in interest within 6 months after the first publication of the notice of administration.

Section 958. Section 732.302, Florida Statutes, is amended to read:

732.302 Pretermitted children.—When a testator omits to provide in his or her will for any of his or her children born or adopted after making the will and the child has not received a part of the testator's property equivalent to a child's part by way of advancement, the child shall receive a share of the estate equal in value to that he or she would have received if the testator had died intestate, unless:

- (1) It appears from the will that the omission was intentional; or
- (2) The testator had one or more children when the will was executed and devised substantially all the ~~his~~ estate to the other parent of the pretermitted child.

The share of the estate that is assigned to the pretermitted child shall be obtained in accordance with s. 733.805.

Section 959. Paragraph (a) of subsection (2) of section 732.4015, Florida Statutes, is amended to read:

732.4015 Devise of homestead.—

- (2) For the purposes of subsection (1), the term:

- (a) "Owner" includes the settlor of a trust evidenced by a written instrument in existence at the time of the settlor's death pursuant to which the settlor retained the right either alone or in conjunction with any other person to amend or revoke the trust at any time before his or her death.

Section 960. Section 732.403, Florida Statutes, is amended to read:

732.403 Family allowance.—In addition to homestead and exempt property, if the decedent was domiciled in Florida at the time of ~~his~~ death, the surviving spouse and the decedent's lineal heirs whom the decedent was obligated to support or who were in fact being supported by him or her are entitled to a reasonable allowance in money out of the estate for their maintenance during administration. After notice and hearing, the court may order this allowance to be paid as a lump sum or in periodic installments. The allowance shall not exceed a total of \$6,000. It shall be paid to the surviving spouse, if living, for the use of the spouse and dependent lineal heirs. If the surviving spouse is not living, it shall be paid to the lineal heirs or to the persons having their care and custody. If any lineal heir is not living with the surviving spouse, the allowance may be made partly to the lineal heir or his or her guardian or other person having the lineal heir's ~~his~~ care

and custody and partly to the surviving spouse, as the needs of the dependent lineal heir and the surviving spouse appear. The family allowance shall have the priority established by s. 733.707. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or to the dependent lineal heirs by intestate succession, elective share, or the will of the decedent, unless the will otherwise provides. The death of any person entitled to a family allowance terminates his or her right to the part of the allowance not paid. For purposes of this section, the term "lineal heir" or "lineal heirs" means lineal ascendants and lineal descendants of the decedent.

Section 961. Paragraphs (a) and (b) of subsection (1) of section 732.502, Florida Statutes, are amended to read:

732.502 Execution of wills.—Every will must be in writing and executed as follows:

(1)(a) Testator's signature.—

1. The testator must sign the will at the end; or
2. The testator's name must be subscribed at the end of the will by some other person in the testator's presence and by his or her direction.

(b) Witnesses.—The testator's:

1. Signing, or
2. Acknowledgment:
 - a. That he or she has previously signed the will, or
 - b. That another person has subscribed the testator's name to it,

must be in the presence of at least two attesting witnesses.

Section 962. Section 732.503, Florida Statutes, is amended to read:

732.503 Self-proof of will.—A will or codicil executed in conformity with s. 732.502(1) and (2) may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

STATE OF
COUNTY OF

We,,, and the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the testator, in the presence of witnesses, signed the instrument as the testator's his last will (codicil), that the testator he (signed) (or directed another to sign for him or her), and that each of the witnesses, in the presence of the testator and in the presence

of each other, signed the will as a witness.

...(Testator)...
 ...(Witness)...
 ...(Witness)...

Subscribed and sworn to before me by, the testator a witness who is personally known to me or who has produced ...(type of identification)... as identification, and by ... a witness who is personally known to me or who has produced ...(type of identification)... as identification and a witness who is personally known to me or who has produced ...(type of identification)... as identification, on, 19.....

...(Signature of Notary Public)...
 ...(Print, type, or stamp commissioned name of Notary Public)...
 My Commission Expires:

Section 963. Section 732.506, Florida Statutes, is amended to read:

732.506 Revocation by act.—A will or codicil is revoked by the testator, or some other person in the testator's his presence and at the testator's his direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation.

Section 964. Section 732.514, Florida Statutes, is amended to read:

732.514 Vesting of devises.—The death of the testator is the event that vests the right to devises unless the testator in his or her will has provided that some other event must happen before a devise shall vest.

Section 965. Section 732.6005, Florida Statutes, is amended to read:

732.6005 Rules of construction and intention.—

(1) The intention of the testator as expressed in his or her will controls the legal effect of the testator's his dispositions. The rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.

(2) Subject to the foregoing, a will is construed to pass all property which the testator owns at his death, including property acquired after the execution of the will.

Section 966. Subsection (1) of section 732.601, Florida Statutes, is amended to read:

732.601 Simultaneous Death Law.—

(1) When title to property or its devolution depends on priority of death and there is insufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he or she had survived, except as provided otherwise in this law.

Section 967. Section 732.603, Florida Statutes, is amended to read:

732.603 Antilapse; deceased devisee; class gifts.—Unless a contrary intention appears in the will:

(1) If a devisee who is a grandparent, or a lineal descendant of a grandparent, of the testator:

- (a) Is dead at the time of the execution of the will,
- (b) Fails to survive the testator, or
- (c) Is required by the will to be treated as if he or she predeceased the testator,

then the descendants of the devisee take per stirpes in place of the deceased devisee. A person who would have been a devisee under a class gift if he or she had survived the testator shall be a devisee for purposes of this section whether his or her death occurred before or after the execution of the will.

(2) If a devisee who is not a grandparent, or a descendant of a grandparent, of the testator:

- (a) Is dead at the time of the execution of the will,
- (b) Fails to survive the testator, or
- (c) Is required by the will to be treated as if he or she predeceased the testator,

then the testamentary disposition to the devisee shall lapse unless an intention to substitute another in his or her place appears in the will.

Section 968. Subsection (2) of section 732.604, Florida Statutes, is amended to read:

732.604 Failure of testamentary provision.—

(2) Except as provided in s. 732.603, if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his or her share passes to the other residuary devisee, or to the other residuary devisees in proportion to their interests in the residue.

Section 969. Subsection (1) and paragraph (d) of subsection (2) of section 732.606, Florida Statutes, are amended to read:

732.606 Nonademption of specific devises in certain cases; sale by guardian of the property; unpaid proceeds of sale, condemnation, or insurance.—

(1) If specifically devised property is sold by a guardian of the property for the care and maintenance of the ward or if a condemnation award or insurance proceeds are paid to a guardian of the property as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he or she has under subsection (2).

(2) A specific devisee has the right to the remaining specifically devised property and:

(d) Property owned by the testator at his or her death as a result of foreclosure, or obtained instead of foreclosure, of the security for the specifically devised obligation.

Section 970. Subsections (2), (3), and (5) and paragraph (a) of subsection (6) of section 732.801, Florida Statutes, are amended to read:

732.801 Disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment.—

(2) SCOPE OF RIGHT TO DISCLAIM.—

(a) A beneficiary may disclaim his or her succession to any interest in property that, unless disclaimed, would pass to the beneficiary:

1. By intestate succession or devise.
2. Under descent of homestead, exempt property, or family allowance or under s. 222.13.
3. Through exercise or nonexercise of a power of appointment exercisable by will.
4. Through testamentary exercise or nonexercise of a power of appointment exercisable by either deed or will.
5. As beneficiary of a testamentary trust.
6. As a beneficiary of a testamentary gift to any nontestamentary trust.
7. As donee of a power of appointment created by will.
8. By succession in any manner described in this subsection to a disclaimed interest.
9. In any manner not specifically enumerated herein under a testamentary instrument.

(b) Disclaimer may be made for a minor, incompetent, incapacitated person, or deceased beneficiary by the guardian or personal representative if the court having jurisdiction of the estate of the minor, incompetent, incapacitated person, or deceased beneficiary finds that the disclaimer:

1. Is in the best interests of those interested in the estate of the beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and
2. Is not detrimental to the best interests of the beneficiary.

The determination shall be made on a petition filed for that purpose and served on all interested persons. If ordered by the court, the guardian or

personal representative shall execute and record the disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim if he or she were living, of legal age, and competent.

(3) DISPOSITION OF DISCLAIMED INTERESTS.—

(a) Unless the decedent or a donee of a power of appointment has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that caused him or her to become finally ascertained as a beneficiary and the disclaimant's his interest to become indefeasibly fixed both in quality and quantity. The disclaimer shall relate to that date for all purposes, whether recorded before or after the death or other event. An interest in property disclaimed shall never vest in the disclaimant. If the provisions of s. 732.603 would have been applicable had the disclaimant in fact died immediately preceding the death or other event, they shall be applicable to the disclaimed interest.

(b) Unless his or her disclaimer instrument so provides, a beneficiary who disclaims any interest that would pass to him or her in any manner described in subsection (2) shall not be excluded from sharing in any other interest to which he or she may be entitled in any manner described in the subsection, including subparagraph (2)(a)8., even though the interest includes disclaimed assets by virtue of the beneficiary's disclaimer.

(5) TIME FOR RECORDING DISCLAIMER.—A disclaimer shall be recorded at any time after the creation of the interest, but in any event within 9 months after the event giving rise to the right to disclaim, including the death of the decedent; or, if the disclaimant is not finally ascertained as a beneficiary or the disclaimant's his interest has not become indefeasibly fixed both in quality and quantity at the death of the decedent, then the disclaimer shall be recorded not later than 6 months after the event that would cause him or her to become finally ascertained and his or her interest to become indefeasibly fixed both in quality and quantity. However, a disclaimer may be recorded at any time after the creation of the interest, upon the written consent of all interested parties as provided in s. 731.302.

(6) WAIVER OR BAR TO RIGHT TO DISCLAIM.—

(a) The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim and also by:

1. Making a voluntary assignment or transfer of, a contract to assign or transfer, or an encumbrance of, an interest in real or personal property.

2. Giving a written waiver of the right to disclaim the succession to an interest in real or personal property.

3. Making any sale or other disposition of an interest in real or personal property pursuant to judicial process by the beneficiary before he or she has recorded a disclaimer.

Section 971. Section 732.804, Florida Statutes, is amended to read:

732.804 Provisions relating to cremation.—The fact that cremation occurred pursuant to a provision of a will or any written contract signed by the decedent in which he or she expressed the ~~his~~ intent that his or her body be cremated is a complete defense to a cause of action against the personal representative or person providing the services.

Section 972. Subsection (2) of section 732.901, Florida Statutes, is amended to read:

732.901 Production of wills.—

(2) By petition and notice of it served on him or her, the custodian of any will may be compelled to produce and deposit the will as provided in subsection (1). All costs, damages, and a reasonable attorney's fee shall be adjudged to petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for withholding the deposit of the will.

Section 973. Subsection (2) of section 732.911, Florida Statutes, is amended to read:

732.911 Definitions.—For the purpose of this part:

(2) “Donor” means an individual who makes a gift of all or part of his or her body.

Section 974. Subsection (1) and paragraphs (f) and (g) of subsection (2) of section 732.912, Florida Statutes, are amended to read:

732.912 Persons who may make an anatomical gift.—

(1) Any person who may make a will may give all or part of his or her body for any purpose specified in s. 732.910, the gift to take effect upon death. An anatomical gift made by an adult and not revoked by the donor as provided in s. 732.916 is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(2) In the order of priority stated and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, any of the following persons may give all or any part of the decedent's body for any purpose specified in s. 732.910:

(f) A guardian of the person of the decedent at the time of his or her death; or

(g) A representative ad litem who shall be appointed by a court of competent jurisdiction forthwith upon a petition heard ex parte filed by any person, which representative ad litem shall ascertain that no person of higher priority exists who objects to the gift of all or any part of the decedent's body and that no evidence exists of the decedent's having made a communication expressing a desire that his or her body or body parts not be donated upon death;

but no gift shall be made by the spouse if any adult son or daughter objects, and provided that those of higher priority, if they are reasonably available, have been contacted and made aware of the proposed gift, and further provided that a reasonable search is made to show that there would have been no objection on religious grounds by the decedent.

Section 975. Subsection (4) of section 732.913, Florida Statutes, is amended to read:

732.913 Persons who may become donees; purposes for which anatomical gifts may be made.—The following persons may become donees of gifts of bodies or parts of them for the purposes stated:

(4) Any individual specified by name for therapy or transplantation needed by him or her.

However, the Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, sex, national origin, age, physical handicap, health status, marital status, or economic status, and such restrictions are hereby declared void and unenforceable.

Section 976. Subsections (2) and (4) of section 732.914, Florida Statutes, are amended to read:

732.914 Manner of executing anatomical gifts.—

(2)(a) A gift of all or part of the body under s. 732.912(1) may also be made by a document other than a will. The gift becomes effective upon the death of the donor. The document must be signed by the donor in the presence of two witnesses who shall sign the document in the donor's his presence. If the donor cannot sign, the document may be signed for him or her at the donor's his direction and in his or her presence and the presence of two witnesses who must sign the document in the donor's his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(b) The following form of written instrument shall be sufficient for any person to give all or part of his or her body for the purposes of this part:

UNIFORM DONOR CARD

The undersigned hereby makes this anatomical gift, if medically acceptable, to take effect on death. The words and marks below indicate my desires:

I give:

- (a) any needed organs or parts;
- (b) only the following organs or parts
 ...[Specify the organ(s) or part(s)]..

for the purpose of transplantation, therapy, medical research, or education;

(c) my body for anatomical study if needed. Limitations or special wishes, if any:

...(If applicable, list specific donee)...

Signed by the donor and the following witnesses in the presence of each other:

...(Signature of donor)...

...(Date of birth of donor)...

...(Date signed)...

...(City and State)...

...(Witness)...

...(Witness)...

...(Address)...

...(Address)...

(4) Notwithstanding s. 732.917(2), the donor may designate in his or her will or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

Section 977. Paragraph (d) of subsection (1) of section 732.916, Florida Statutes, is amended to read:

732.916 Amendment or revocation of the gift.—

(1) If the will or other document authorized under the provisions of s. 732.915(2) has been delivered to a specified donee, the donor may amend or revoke the gift by:

(d) A signed document found on the donor's ~~his~~ person or in the donor's ~~his~~ effects.

Section 978. Subsection (5) of section 732.917, Florida Statutes, is amended to read:

732.917 Rights and duties at death.—

(5) A person who acts in good faith and without negligence in accord with the terms of this part or under the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution for his or her acts in any criminal proceeding.

Section 979. Subsection (2) of section 732.9185, Florida Statutes, is amended to read:

732.9185 Corneal removal by medical examiners.—

(2) Neither the district medical examiner nor the medical examiner's ~~his~~ appropriately qualified designee nor any eye bank authorized under s. 732.918 may be held liable in any civil or criminal action for failure to obtain consent of the next of kin.

Section 980. Subsections (2) and (5) of section 732.922, Florida Statutes, are amended to read:

732.922 Duty of certain hospital administrators.—

(2) Where, based on accepted medical standards, a hospital patient is a suitable candidate for organ or tissue donation, the hospital administrator or the hospital administrator's ~~his~~ designee shall, at or near the time of death, access the organ and tissue donor registry created by s. 732.915(4) to ascertain the existence of a donor card document executed by the decedent. In the absence of a donor card or document, the hospital administrator or designee shall request any of the persons specified in s. 732.912, in the order and manner of priority stated in s. 732.912, to consent to the gift of all or any part of the decedent's body for any purpose specified in this part. Except as provided in s. 732.912, in the absence of actual notice of opposition, consent or refusal need only be obtained from the person or persons in the highest priority class available.

(5) No recovery shall be allowed nor shall civil or criminal proceedings be instituted in any court in this state against the licensed hospital or the hospital administrator or the hospital administrator's ~~his~~ designee when, in his or her best judgment, he or she deems such a request for organ donation to be inappropriate according to the procedures established by the Agency for Health Care Administration, or he or she has made every reasonable effort to comply with the provisions of this section.

Section 981. Paragraph (a) of subsection (1) of section 733.101, Florida Statutes, is amended to read:

733.101 Venue of probate proceedings.—

(1) The venue of probate of all wills and granting of letters shall be:

(a) In the county in this state where the decedent had his or her domicile.

Section 982. Subsection (1) of section 733.104, Florida Statutes, is amended to read:

733.104 Suspension of statutes of limitation in favor of the personal representative.—

(1) If a person entitled to bring an action dies before the expiration of the time limited for the commencement of the action and the cause of action survives, the action may be commenced by his or her personal representative after the expiration and within 12 months from the date of the decedent's death.

Section 983. Subsection (1) of section 733.105, Florida Statutes, is amended to read:

733.105 Determination of beneficiaries.—

(1) When property passes by intestate succession or under a will to a person not sufficiently identified in the will and the personal representative is in doubt about:

- (a) Who is entitled to receive it or part of it, or
- (b) The shares and amounts that any person is entitled to receive,

the personal representative may file a petition setting forth the names, residences, and post-office addresses of all persons in interest, except creditors of the decedent, so far as known or ascertainable by diligent search and inquiry, and the nature of their respective interests, designating those who are believed by the personal representative ~~him~~ to be minors or incompetents and stating whether those so designated are under legal guardianship in this state. If the personal representative believes that there are, or may be, persons whose names are not known to him or her who have claims against, or interest in, the estate as heirs or devisees, the petition shall so state.

Section 984. Subsection (2) of section 733.106, Florida Statutes, is amended to read:

733.106 Costs and attorney fees.—

(2) A person nominated as personal representative of the last known will, or any proponent of the will if the person so nominated does not act within a reasonable time, if in good faith justified in offering the will in due form for probate, shall receive his or her costs and attorney fees out of the estate even though he or she is unsuccessful.

Section 985. Subsection (3) of section 733.201, Florida Statutes, is amended to read:

733.201 Proof of wills.—

(3) If it appears to the court that the attesting witnesses cannot be found or that they have become incompetent after the execution of the will or their testimony cannot be obtained within a reasonable time, a will may be admitted to probate upon the oath of the personal representative nominated by the will as provided in subsection (2), whether or not he or she is interested in the estate, or of any person having no interest in the estate under the will, that he or she believes the writing exhibited to be the true last will of the decedent.

Section 986. Paragraph (a) of subsection (2) of section 733.202, Florida Statutes, is amended to read:

733.202 Petition.—

(2) The petition for administration shall contain:

(a) A statement of the interest of the petitioner, the petitioner's ~~his~~ name and address, and the name and office address of his or her attorney.

Section 987. Section 733.2123, Florida Statutes, is amended to read:

733.2123 Adjudication before issuance of letters.—A petitioner may serve formal notice of his or her petition for administration on interested

persons. A copy of the will proposed to be admitted to probate shall be attached to the notice. No person who is served with formal notice of the petition for administration prior to the issuance of letters or who has waived notice may challenge the validity of the will, testacy of the decedent, qualifications of the personal representative, venue, or jurisdiction of the court, except in connection with the proceedings before issuance of letters.

Section 988. Paragraph (a) of subsection (1) and subsection (5) of section 733.301, Florida Statutes, are amended to read:

733.301 Preference in appointment of personal representative.—In the granting of letters, the following preferences shall be observed:

(1) In testate estates:

(a) The personal representative, or his or her successor, nominated by the will or pursuant to a power conferred in the will.

(5) After letters have been granted in either a testate or an intestate estate, if a person who was entitled to, and has not waived, preference over the person appointed at the time of his or her appointment and on whom formal notice was not served seeks the appointment, the letters granted may be revoked and the person entitled to preference may have letters granted to him or her after formal notice and hearing.

Section 989. Section 733.302, Florida Statutes, is amended to read:

733.302 Who may be appointed personal representative.—Subject to the limitations in this part, any person sui juris who is a resident of Florida at the time of the death of the person whose estate he or she seeks to administer is qualified to act as personal representative in Florida. A person who has been convicted of a felony or who, from sickness, intemperance, or want of understanding, is incompetent to discharge the duties of a personal representative is not qualified.

Section 990. Subsection (1) of section 733.303, Florida Statutes, is amended to read:

733.303 Persons not qualified.—

(1) A person is not qualified to act as a personal representative if the person:

(a) ~~He~~ Has been convicted of a felony.

(b) ~~He~~ Is mentally or physically unable to perform the duties.

(c) ~~He~~ Is under the age of 18 years.

Section 991. Section 733.309, Florida Statutes, is amended to read:

733.309 Executor de son tort.—No person shall be liable to a creditor of a decedent as executor de son tort, but any person taking, converting, or intermeddling with the property of a decedent shall be liable to the personal

representative or curator, when appointed, for the value of all the property so taken or converted and for all damages to the estate caused by his or her wrongful action. This section shall not be construed to prevent a creditor of a decedent from suing anyone in possession of property fraudulently conveyed by the decedent to set aside the fraudulent conveyance.

Section 992. Subsection (1) of section 733.402, Florida Statutes, is amended to read:

733.402 Bond of personal representative; when required; form.—

(1) Unless the testator waived the requirement, every person to whom letters are granted shall execute and file a bond with surety, as defined in s. 45.011, to be approved by the clerk. The bond shall be payable to the Governor and the Governor's ~~his~~ successors in office, conditioned on the performance of all duties as personal representative according to law. The bond must be joint and several.

Section 993. Subsections (2), (3), and (4) of section 733.405, Florida Statutes, are amended to read:

733.405 Release of surety.—

(2) Pending the hearing of the petition, the court may restrain the principal from acting in his or her representative capacity, except to preserve the estate.

(3) On hearing, the court shall enter an order prescribing the amount of the new bond for the personal representative or curator and the date when the bond shall be filed. If the principal fails to give the new bond, he or she shall be removed at once, and further proceedings shall be had as in cases of removal.

(4) The original surety or sureties shall be liable for all acts of the personal representative or surety until he or she has given the new bond and, after the giving of the new bond, shall remain liable for all the principal's acts to the time of the filing and approval of the new bond. The new surety shall be liable for the principal's acts only after the filing and approval of the new bond.

Section 994. Section 733.406, Florida Statutes, is amended to read:

733.406 Bond premium allowable as expense or costs.—Any receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give bond as such, may include as part of his or her lawful expense such reasonable sum paid such an insurer for such suretyship not exceeding 1 percent per annum on the amount of the bond, as the head of department, board, court, judge or officer by whom, or the court or body in which, he or she was appointed allows; and in all actions or proceedings the party entitled to recover costs may include therein such reasonable sum as may have been paid such an insurer executing or guaranteeing any bond or undertaking therein.

Section 995. Subsection (5) of section 733.501, Florida Statutes, is amended to read:

733.501 Curators.—

(5) The curator shall file an inventory of the property within 20 days. When the personal representative qualifies, the curator shall immediately account and deliver all assets of the estate in his or her hands to the personal representative within 20 days, and in default shall be subject to the provisions of this code relating to removal of personal representatives.

Section 996. Section 733.502, Florida Statutes, is amended to read:

733.502 Resignation of personal representative.—A personal representative may resign and be relieved of his or her office. Notice of the petition shall be given to all interested persons. Before relieving the personal representative from his or her duties and obligations, the court shall require the personal representative him to file a true and correct account of his or her administration and deliver to his or her successor or to his or her joint personal representative all of the property of the decedent and all records concerning the estate. The acceptance of the resignation, after compliance with this section, shall not exonerate any personal representative or his or her surety from liability previously incurred.

Section 997. Section 733.503, Florida Statutes, is amended to read:

733.503 Appointment of successor upon resignation.—If there is no joint personal representative, a successor must be appointed and qualified before a personal representative may be relieved of his or her duties and obligations as provided in s. 733.502.

Section 998. Section 733.504, Florida Statutes, is amended to read:

733.504 Causes of removal of personal representative.—A personal representative may be removed and his or her letters revoked for any of the following causes, and the removal shall be in addition to any penalties prescribed by law:

- (1) Adjudication of incompetency.
- (2) Physical or mental incapacity rendering the personal representative him incapable of the discharge of his or her duties.
- (3) Failure to comply with any order of the court, unless the order has been superseded on appeal.
- (4) Failure to account for the sale of property or to produce and exhibit the assets of the estate when so required.
- (5) The wasting or maladministration of the estate.
- (6) Failure to give bond or security for any purpose.
- (7) Conviction of a felony.

(8) Insolvency of, or the appointment of a receiver or liquidator for, any corporate personal representative.

(9) The holding or acquiring by the personal representative of conflicting or adverse interests against the estate that will or may adversely interfere with the administration of the estate as a whole. This cause of removal shall not apply to the surviving spouse because of the exercise of the right to the elective share, family allowance, or exemptions, as provided elsewhere in this code.

(10) Revocation of the probate of the decedent's will that authorized or designated the appointment of such personal representative.

(11) Removal of domicile from Florida, if the personal representative is no longer qualified under part III of this chapter.

Section 999. Section 733.508, Florida Statutes, is amended to read:

733.508 Accounting upon removal.—A removed personal representative shall file a full, true, and correct account of his or her administration within 30 days after his removal.

Section 1000. Section 733.601, Florida Statutes, is amended to read:

733.601 Time of accrual of duties and powers.—The duties and powers of a personal representative commence upon his or her appointment. The powers of a personal representative relate back in time to give acts by the person appointed, occurring before appointment and beneficial to the estate, the same effect as those occurring thereafter. Before issuance of letters, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's his body and funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others when the acts would have been proper for a personal representative.

Section 1001. Section 733.602, Florida Statutes, is amended to read:

733.602 General duties.—

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by s. 737.302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. A personal representative ~~He~~ shall use the authority conferred upon him or her by this code, the authority in the will, if any, and the authority of any order in proceedings to which he or she is party, for the best interests of interested persons, including creditors as well as beneficiaries.

(2) A personal representative shall not be liable for any act of administration or distribution if the act was authorized at the time. Subject to other obligations of administration, a probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a

personal representative is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a proceeding challenging intestacy or a proceeding questioning his or her appointment or fitness to continue. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of interested persons.

Section 1002. Section 733.603, Florida Statutes, is amended to read:

733.603 Personal representative to proceed without court order.—A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified by this code or ordered by the court, shall do so without adjudication, order, or direction of the court. A personal representative He may invoke the jurisdiction of the court to resolve judicial questions concerning the estate or its administration.

Section 1003. Subsections (1) and (3) of section 733.604, Florida Statutes, are amended to read:

733.604 Inventory.—

(1) Within 60 days after issuance of letters, a personal representative who is not a curator or a successor to another personal representative who has previously discharged the duty shall file an inventory of property of the estate, listing it with reasonable detail and including for each listed item its estimated fair market value at the date of the decedent's death. Unless otherwise ordered by the court for good cause shown, any such inventory or amended or supplementary inventory is subject to inspection only by the clerk of the court or the clerk's his representative, the personal representative and the personal representative's his attorney, and other interested persons.

(3) If the personal representative learns of any property not included in the original inventory, or learns that the estimated value or description indicated in the original inventory for any item is erroneous or misleading, he or she shall prepare an amended or supplementary inventory showing the estimated value of the new item at the date of the decedent's death, or the revised estimated value or description; and the personal representative shall serve a copy of the amended or supplementary inventory on each person on whom a copy of the inventory was served and shall file proof of such service. The amended or supplementary inventory shall be verified by the personal representative.

Section 1004. Section 733.605, Florida Statutes, is amended to read:

733.605 Appraisers.—The personal representative may employ a qualified and disinterested appraiser to assist him or her in ascertaining the fair market value of any asset at the date of the decedent's death or any other date that may be appropriate, the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate.

Section 1005. Subsection (1) of section 733.607, Florida Statutes, is amended to read:

733.607 Possession of estate.—

(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution. He or she may maintain an action to recover possession of property or to determine the title to it.

Section 1006. Section 733.609, Florida Statutes, is amended to read:

733.609 Improper exercise of power; breach of fiduciary duty.—If the exercise of power concerning the estate is improper or in bad faith, the personal representative is liable to interested persons for damage or loss resulting from a breach of his or her fiduciary duty to the same extent as a trustee of an express trust. In all actions challenging the proper exercise of a personal representative's powers, the court shall award taxable costs as in chancery actions, including attorney's fees.

Section 1007. Section 733.610, Florida Statutes, is amended to read:

733.610 Sale, encumbrance or transaction involving conflict of interest.—Any sale or encumbrance to the personal representative or his or her spouse, agent, or attorney, or any corporation or trust in which the personal representative ~~he~~ has a substantial beneficial interest, or any transaction that is affected by a conflict of interest on the part of the personal representative, is voidable by any interested person except one who has consented after fair disclosure, unless:

(1) The will or a contract entered into by the decedent expressly authorized the transaction; or

(2) The transaction is approved by the court after notice to interested persons.

Section 1008. Section 733.611, Florida Statutes, is amended to read:

733.611 Persons dealing with the personal representative; protection.—Except as provided in s. 733.613(1), a person who in good faith either assists a personal representative or deals with him or her for value is protected as if the personal representative properly exercised his or her power. The fact that a person knowingly deals with the personal representative does not

alone require the person to inquire into the existence of his or her power, the limits on ~~the his~~ power, or the propriety of its exercise. A person is not bound to see to the proper application of estate assets paid or delivered to the personal representative. The protection here expressed extends to instances in which a procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is alive. The protection here expressed is not by substitution for that provided in comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Section 1009. Subsections (13), (15), (19), (20), and (22) of section 733.612, Florida Statutes, are amended to read:

733.612 Transactions authorized for the personal representative; exceptions.—Except as otherwise provided by the will or by order of court, and subject to the priorities stated in s. 733.805, without order of court, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(13) Insure the assets of the estate against damage, loss, and liability and insure himself or herself against liability to third persons.

(15) Extend, renew, or in any manner modify any obligation owing to the estate. If the personal representative holds a mortgage, security interest, or other lien upon property of another person, he or she may accept a conveyance or transfer of encumbered assets from the owner in satisfaction of the indebtedness secured by its lien instead of foreclosure.

(19) Employ persons, including attorneys, accountants, auditors, investment advisers, and others, even if they are one and the same as the personal representative or are associated with the personal representative, to advise or assist the personal representative in the performance of his or her administrative duties; act upon the recommendations of such employed persons without independent investigation; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary. Any fees and compensation paid to any such person who is the same as, associated with, or employed by, the personal representative shall be taken into consideration in determining the personal representative's compensation.

(20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his or her duties.

(22) Continue any unincorporated business or venture in which the decedent was engaged at the time of his or her death:

(a) In the same business form for a period of not more than 4 months from the date of his or her appointment, if continuation is a reasonable means of preserving the value of the business, including good will.

(b) In the same business form for any additional period of time that may be approved by order of court.

Section 1010. Paragraph (e) of subsection (2) and subsection (4) of section 733.6121, Florida Statutes, are amended to read:

733.6121 Powers of personal representatives conferred by this part in relation to environmental or human health laws affecting property subject to administration or to property subject to administration contaminated with hazardous or toxic substances; liability.—

(2) A personal representative has the power, acting reasonably and for the benefit of the interested parties:

(e) To decline to serve as a personal representative, or having undertaken to serve as a personal representative, to resign at any time, if the personal representative believes that there is or could be a conflict of interest in his or her fiduciary capacity and in his or her individual capacity because of potential claims or liabilities that could be asserted against it on behalf of the estate by reason of the type or condition of the assets held; or

(4) A personal representative who acquires ownership or control of a vessel or other property without having owned, operated, or materially participated in the management of that vessel or property before assuming ownership or control as personal representative is not considered an owner or operator for purposes of liability under chapter 376, chapter 403, or any other environmental law. A personal representative who willfully, knowingly, or recklessly causes or exacerbates a release or threatened release of a hazardous substance is personally liable for the cost of the response, to the extent that the release or threatened release is attributable to the personal representative's activities. This subsection does not preclude the filing of claims against the assets that constitute the estate held by the personal representative or the filing of actions against the personal representative in his or her representative capacity. In any such action, an award or judgment against the personal representative must be satisfied only from the assets of the estate.

Section 1011. Subsection (1) of section 733.613, Florida Statutes, is amended to read:

733.613 Personal representative's right to sell real property.—

(1) When a personal representative of a decedent dying intestate, or whose testator has not conferred upon him or her a power of sale or whose testator has granted a power of sale but his or her power is so limited by the will or by operation of law that it cannot be conveniently exercised, shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the personal representative may sell it at public or private sale. No title shall pass until the sale is authorized or confirmed by the court. Petition for authorization or confirmation of sale shall set forth the reasons for the sale, a description of the property sold or to be sold, and the price and terms of the sale. Except when interested persons have joined in the petition for sale of real property or have consented to the sale, notice of the petition shall be given. No bona fide purchaser shall be required to examine any proceedings before the order of sale.

Section 1012. Section 733.614, Florida Statutes, is amended to read:

733.614 Powers and duties of successor personal representative.—A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but he or she shall not exercise any power made personal to the personal representative named in the will.

Section 1013. Subsections (2) and (3) of section 733.615, Florida Statutes, are amended to read:

733.615 Joint personal representatives; when joint action required.—

(2) Where action by a majority of the joint personal representatives appointed is authorized, a joint personal representative who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise, and a dissenting joint personal representative is not liable for the consequences of an act in which he or she joins at the direction of the majority of the joint personal representatives, if he or she expressed his or her dissent in writing to any of his or her joint personal representatives at or before the time of the joinder.

(3) A person dealing with a joint personal representative without actual knowledge that joint personal representatives have been appointed or if advised by the joint personal representative with whom he or she deals that the joint personal representative has authority to act alone for any of the reasons mentioned in subsection (1) is as fully protected in dealing with that joint personal representative as if that joint personal representative possessed and properly exercised the power he or she purports to exercise.

Section 1014. Section 733.6175, Florida Statutes, is amended to read:

733.6175 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.—After notice to all affected interested persons and upon petition of an interested person bearing all or part of the impact of the payment of compensation to the personal representative or any person employed by him or her, the propriety of such employment and the reasonableness of such compensation or payment may be reviewed by the court. The burden of proof of propriety of such employment and the reasonableness of the compensation shall be upon the personal representative and the person employed by him or her. Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

Section 1015. Subsections (1), (2), and (3) of section 733.619, Florida Statutes, are amended to read:

733.619 Individual liability of personal representative.—

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract, except a contract for attorney's fee, properly entered into in his or her fiduciary capacity in the administration of the estate unless the personal representative ~~he~~ fails to reveal his or her representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he or she is personally at fault.

(3) Claims based on contracts, except a contract for attorney's fee, entered into by a personal representative in his or her fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration, may be asserted against the estate by proceeding against the personal representative in his or her fiduciary capacity, whether or not the personal representative is individually liable therefor.

Section 1016. Subsection (1) and paragraph (b) of subsection (4) of section 733.702, Florida Statutes, are amended to read:

733.702 Limitations on presentation of claims.—

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed within the later of 3 months after the time of the first publication of the notice of administration or, as to any creditor required to be served with a copy of the notice of administration, 30 days after the date of service of such copy of the notice on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or, within 3 months after the first publication of the notice of administration, he or she may file a proof of claim of all claims he or she has paid or intends to pay.

(4) Nothing in this section affects or prevents:

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he or she is protected by the casualty insurance.

Section 1017. Subsections (1) and (4) of section 733.705, Florida Statutes, are amended to read:

733.705 Payment of and objection to claims.—

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice of administration, provided that the time shall be extended with respect to claims in litigation, unmatured claims, and contingent claims for the period necessary to dispose of such

claims pursuant to subsections (4), (5), (6), and (7). The court may extend the time for payment of any claim upon a showing of good cause. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 5 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 5 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he or she prevails, nor shall the judgment change the class of the claim for payment under this code.

(4) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of service of an objection and that may or may not become due in the future. For good cause, the court may extend the time for filing an action or proceeding after objection is filed. The extension of time shall be granted only after notice. No action or proceeding on the claim shall be brought against the personal representative after the time limited above, and any such claim is thereafter forever barred without any court order. If an objection is filed to the claim of any creditor and an action is brought by the creditor to establish his or her claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

Section 1018. Paragraphs (d) and (h) of subsection (1) of section 733.707, Florida Statutes, are amended to read:

733.707 Order of payment of expenses and obligations.—

(1) The personal representative shall pay the expenses of the administration and obligations of the estate in the following order:

(d) Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending him or her.

(h) Class 8.—All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's his lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

Section 1019. Subsections (1) and (2) of section 733.802, Florida Statutes, are amended to read:

733.802 Proceedings for compulsory payment of devises or distributive interest.—

(1) Before final distribution, no personal representative shall be compelled:

(a) To pay a devise in money before the final settlement of his or her accounts,

- (b) To deliver specific personal property devised that may have come into his or her hands, unless the personal property is exempt personal property,
- (c) To pay all or any part of a distributive share in the personal estate of a decedent, or
- (d) To surrender land to any beneficiary,

unless the beneficiary files a petition setting forth the facts that entitle him or her to relief and stating that the property will not be required for the payment of debts, family allowance, estate and inheritance taxes, claims, elective share of the surviving spouse, charges, or expenses of administration or for providing funds for contribution or enforcing equalization in case of advancements.

(2) An order directing the surrender of real property or the delivery of personal property shall describe the property to be surrendered or delivered. The order shall be conclusive in favor of bona fide purchasers for value from the beneficiary or distributee as against the personal representative and all other persons claiming by, through, under, or against the decedent or the decedent's ~~his~~ estate.

Section 1020. Subsection (1) of section 733.805, Florida Statutes, is amended to read:

733.805 Order in which assets are appropriated.—

(1) If a testator makes provision by his or her will, or designates the funds or property to be used, for the payment of debts, estate and inheritance taxes, family allowance, exempt property, elective share charges, expenses of administration, and devises, they shall be paid out of the funds or from the property or proceeds as provided by the will so far as sufficient. If no provision is made or any fund designated, or if it is insufficient, the property of the estate shall be used for such purposes, except as otherwise provided in s. 733.817 with respect to estate, inheritance, and other death taxes, and to raise the shares of a pretermitted spouse and children, in the following order:

- (a) Property not disposed of by the will.
- (b) Property devised to the residuary devisee or devisees.
- (c) Property not specifically or demonstratively devised.
- (d) Property specifically or demonstratively devised.

Section 1021. Section 733.806, Florida Statutes, is amended to read:

733.806 Advancement.—If a person dies intestate as to all his or her estate, property that ~~the decedent~~ he gave in his or her lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir. The property advanced shall be valued at the time the

heir came into possession or enjoyment of the property or at the time of the death of the decedent, whichever first occurs. If the recipient of the property does not survive the decedent, the property shall not be taken into account in computing the intestate share to be received by the recipient's descendants unless the declaration or acknowledgment provides otherwise.

Section 1022. Section 733.809, Florida Statutes, is amended to read:

733.809 Right of retainer.—The amount of a noncontingent indebtedness of a beneficiary to the estate, if due, or its present value, if not due, may be offset against the beneficiary's interest, but the beneficiary has the benefit of any defense that would be available to him or her in a direct proceeding for recovery of the debt.

Section 1023. Section 733.812, Florida Statutes, is amended to read:

733.812 Improper distribution; liability of distributee.—Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitations, a distributee of property improperly distributed or paid or a claimant who was improperly paid, if he or she has the property, is liable to return the property improperly received and its income since distribution to the personal representative or to the beneficiaries entitled to it. If he or she does not have the property, then he or she is liable to return the value of the property improperly received at the date of disposition and its income and gain received by him or her.

Section 1024. Section 733.815, Florida Statutes, is amended to read:

733.815 Private agreements among distributees.—Subject to the rights of creditors and taxing authorities, competent interested persons may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will or under the laws of intestacy in a written contract executed by all who are affected. The personal representative shall abide by the terms of the agreement, subject to his or her obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his or her office for the benefit of any beneficiaries of the decedent who are not parties to the agreement. Personal representatives are not required to see to the performance of trusts if the trustee is another person who is willing to accept the trust. Trustees of a testamentary trust are beneficiaries for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

Section 1025. Subsections (1), (3), and (4) and paragraph (a) of subsection (5) of section 733.816, Florida Statutes, are amended to read:

733.816 Disposition of unclaimed property held by personal representatives.—

(1) In all cases in which there is unclaimed property in the hands of a personal representative that cannot be distributed or paid to the lawful owner because of inability to find him or her or because no lawful owner is known, the court shall order the personal representative to sell the property

and deposit the proceeds and cash already in hand, after retaining those amounts provided for in subsection (4), with the clerk and receive a receipt, and the clerk shall deposit the funds in the registry of the court to be disposed of as follows:

(a) If the value of the funds is \$500 or less, the clerk shall post a notice for 30 days at the courthouse door giving the amount involved, the name of the personal representative, and the other pertinent information that will put interested persons on notice.

(b) If the value of the funds is over \$500, the clerk shall publish the notice once a month for 2 consecutive months in a newspaper of general circulation in the county.

After the expiration of 6 months from the posting or first publication, the clerk shall deposit the funds with the State Treasurer after deducting his or her fees and the costs of publication.

(3) Within 10 years from the date of deposit with the State Treasurer, on written petition to the court that directed the deposit of the funds and informal notice to the Department of Legal Affairs, and after proof of his or her right to them, any person entitled to the funds before or after payment to the State Treasurer and deposit as provided by subsection (1) may obtain an order of court directing the payment of the funds to him or her. All funds deposited with the State Treasurer and not claimed within 10 years from the date of deposit shall escheat to the state for the benefit of the State School Fund.

(4) The personal representative depositing assets with the clerk is permitted to retain from the funds in his or her possession a sufficient amount to pay final costs of administration, including fees allowed pursuant to s. 733.617 accruing between the deposit of the funds with the clerk of the court and the order of discharge. Any funds so retained which are surplus shall be deposited with the clerk prior to discharge of the personal representative.

(5)(a) If a person entitled to the funds assigns his or her rights to receive payment to an attorney or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with such person, the Department of Banking and Finance is authorized to make distribution in accordance with such assignment.

Section 1026. Subsections (3), (4), and (5) and paragraph (b) of subsection (6) of section 733.817, Florida Statutes, are amended to read:

733.817 Apportionment of estate taxes.—

(3) Unless otherwise directed by the governing instrument, the tax shall be paid by the personal representative out of the estate, or if a personal representative is not acting under appointment, by a person receiving or holding the interests included in the measure of the tax. In all cases in which any property required to be included in the gross estate does not come into the possession of the personal representative, he or she shall recover:

(a) From the fiduciary in possession of the corpus of the trust or of property subject to the power of appointment in cases in which property of a trust created inter vivos or property subject to a power of appointment is included in the gross estate; and

(b) In all other cases, from the recipient or beneficiaries of property or interests with respect to which the tax is levied or assessed,

the proportionate amount of the tax payable by the fiduciary or persons with which they are chargeable under the provisions of this act, unless relieved of the duty as provided in subsection (6). This subsection shall not authorize the recovery of any taxes from any company issuing insurance included in the gross estate, or from any bank, trust company, savings and loan association, or similar institution with respect to any account in the name of the decedent and any other person that passed by operation of law on the decedent's death. If the fiduciary brings an action to recover a share of tax apportioned to an interest not within his or her control, the judgment he or she obtains may include costs and reasonable attorney's fees.

(4) No personal representative or other fiduciary shall be required to transfer any property until the amount of any tax due from the transferee is paid or, if the apportionment of tax has not been determined, until adequate security is furnished for the payment. The fiduciary shall not be required to distribute assets that he or she reasonably anticipates may be necessary to pay any state or federal taxes.

(5) After the amount of all estate, inheritance, and death taxes is finally determined, the personal representative or other fiduciary shall petition for an order of apportionment and shall give formal notice of the petition and the hearing to all interested persons. The personal representative shall be entitled, and it shall be his or her duty, except as provided in subsection (6), to attempt to effect apportionment as determined by the order, and the apportionment shall be prima facie correct in proceedings in any court or jurisdiction. The personal representative shall not be required to seek collection of any portion of tax attributable to any interest not within his or her control until after entry of the order.

(6)

(b) The fiduciary shall not be liable for failure to attempt to enforce collection if the attempt would in fact have been economically impracticable. Nothing in this section shall limit the right of any person who is charged with more than the amount of the tax apportionable to him or her to obtain contribution from those who shall not have paid the full amount of the tax apportionable to them, and that right is hereby conferred.

Section 1027. Subsections (1) and (6) of section 733.901, Florida Statutes, are amended to read:

733.901 Distribution; final discharge.—

(1) When a personal representative has completed administration except for distribution, he or she shall file a final accounting and a petition for discharge that shall contain:

(a) A complete report of all receipts and disbursements since the date of the last annual accounting or, if none, from the commencement of administration.

(b) A statement that he or she has fully administered the estate by making payment, settlement, or other disposition of all claims and debts that were presented and the expenses of administration.

(c) The proposed distribution of the assets of the estate.

(d) Any prior distributions that have been made.

(e) A statement that objections to this report or proposed distribution of assets be filed within 30 days.

The final accounting and petition for discharge shall be filed and served on all interested persons within 12 months after issuance of letters for estates not required to file a federal estate tax return, otherwise 12 months from the date the return is due, unless the time is extended by the court for cause shown after notice to interested persons. The petition shall state the status of the estate and the reasons for the extension.

(6) The discharge of the personal representative shall release the personal representative of the estate and shall bar any action against the personal representative, as such or individually, and his or her surety.

Section 1028. Subsections (3) and (4) of section 734.101, Florida Statutes, are amended to read:

734.101 Foreign personal representative.—

(3) Debtors who have not received a written demand for payment from a personal representative or curator appointed in this state within 60 days after appointment of a personal representative in any other state or country, and whose property in Florida is subject to a mortgage or other lien securing the debt held by the foreign personal representative, may pay the foreign personal representative after the expiration of 60 days from the date of his or her appointment. Thereafter, a satisfaction of the mortgage or lien executed by the foreign personal representative, with an authenticated copy of his or her letters or other evidence of authority attached, may be recorded in the public records. The satisfaction shall be an effective discharge of the mortgage or lien, irrespective of whether the debtor making payment had received a written demand before paying the debt.

(4) All persons indebted to the estate of a decedent, or having possession of personal property belonging to the estate, who have received no written demand from a personal representative or curator appointed in this state for payment of the debt or the delivery of the property are authorized to pay the debt or to deliver the personal property to the foreign personal representative after the expiration of 60 days from the date of his or her appointment.

Section 1029. Subsection (1) of section 734.102, Florida Statutes, is amended to read:

734.102 Ancillary administration.—

(1) If a nonresident of this state dies leaving assets in this state, credits due him or her from residents in this state, or liens on property in this state, a personal representative specifically designated in the decedent's will to administer the Florida property shall be entitled to have ancillary letters issued to him or her, if qualified to act in Florida. Otherwise, the foreign personal representative of the decedent's estate shall be entitled to have letters issued to him or her, if qualified to act in Florida. If the foreign personal representative is not qualified to act in Florida and the will names an alternate or successor who is qualified to act in Florida, the alternate or successor shall be entitled to have letters issued to him or her. Otherwise, those entitled to a majority interest of the Florida property may have letters issued to a personal representative selected by them who is qualified to act in Florida. If the decedent dies intestate and the foreign domiciliary personal representative is not qualified to act in Florida, the order of preference for appointment of a personal representative as prescribed in this code shall apply. If ancillary letters are applied for by other than the domiciliary personal representative, prior notice shall be given to any domiciliary personal representative.

Section 1030. Subsections (1) and (6) of section 734.1025, Florida Statutes, are amended to read:

734.1025 Nonresident decedent's estate with property not exceeding \$25,000 in this state; determination of claims.—

(1) When a nonresident decedent leaves property in this state the value of which does not exceed \$25,000, the domiciliary personal representative of the ~~his~~ estate may determine the question of claims in this state before the expiration of the 2-year period provided in s. 733.710 by filing in the circuit court of the county where any property is located an authenticated transcript of so much of the domiciliary proceedings as will show:

(a) In a testate estate, the probated will and all probated codicils of the decedent; the order admitting them to record; the letters or their equivalent; and the part of the record showing the names of the devisees and heirs of the decedent or an affidavit of the domiciliary personal representative reciting that the names are not shown or not fully disclosed by the domiciliary record and specifying the names. On presentation of the foregoing, the court shall admit the will and any codicils to probate if they comply with s. 732.502(1) or s. 732.502(2).

(b) In an intestate estate, the authenticated copy of letters of administration, or their equivalent, with the part of the record showing the names of the heirs of the decedent or an affidavit of the domiciliary personal representative supplying the names, as provided in paragraph (a). On presentation of the foregoing, the court shall order them recorded.

(6) If an ancillary personal representative is appointed pursuant to subsection (5), the procedure for filing, objecting to, and suing on claims shall be the same as for other estates, except that the ancillary personal repre-

sentative appointed shall have not fewer than 30 days from the date of his or her appointment within which to object to any claim filed.

Section 1031. Subsection (3) of section 734.201, Florida Statutes, is amended to read:

734.201 Jurisdiction by act of foreign personal representative.—A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding concerning the estate by:

(3) Doing any act as a personal representative in this state that would have given the state jurisdiction over him or her as an individual.

Section 1032. Section 734.202, Florida Statutes, is amended to read:

734.202 Jurisdiction by act of decedent.—In addition to jurisdiction conferred by s. 734.201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his or her decedent was subject to jurisdiction immediately before death.

Section 1033. Section 735.103, Florida Statutes, is amended to read:

735.103 Petition for family administration.—A verified petition for family administration shall contain, in addition to the statements required by s. 733.202, the following:

(1) Facts showing that petitioners are entitled to family administration, as provided in s. 735.101.

(2) A complete list of the assets of the gross estate for federal estate tax purposes and their estimated value.

(3) An appropriate statement that the estate is not indebted or that provision for payment of debts has been made or the claims are barred.

(4) A proposed schedule of distribution of all assets to those entitled thereto as surviving spouse, heirs, beneficiaries, or creditors.

The petition shall be signed and verified by all beneficiaries and the surviving spouse, if any. The petition may be signed on behalf of a minor or an incompetent by her or his legal guardian or, if none, by her or his natural guardian.

Section 1034. Paragraphs (f) and (g) of subsection (3) and paragraph (b) of subsection (4) of section 735.107, Florida Statutes, are amended to read:

735.107 Family administration distribution.—

(3) The order of family administration and the distribution so entered shall have the following effect:

(f) After 2 years from the death of the decedent, neither her nor his estate nor those to whom it may be assigned shall be liable for any claim against

the decedent, unless proceedings have been taken for the enforcement of the claim.

(g) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but was not included in the order of family administration and distribution may enforce her or his rights against those who procured the order in appropriate proceedings and, when successful, shall be awarded reasonable attorney's fees as an element of costs.

(4)

(b) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of family administration and distribution may enforce her or his rights against those who procured the order in appropriate proceedings and, when successful, shall be awarded reasonable attorney's fees as an element of costs.

Section 1035. Paragraphs (f) and (g) of subsection (3) of section 735.206, Florida Statutes, are amended to read:

735.206 Summary administration distribution.—

(3) The order of summary administration and distribution so entered shall have the following effect:

(f) After 2 years from the death of the decedent, neither the decedent's ~~his~~ estate nor those to whom it may be assigned shall be liable for any claim against the decedent, unless proceedings have been taken for the enforcement of the claim.

(g) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution may enforce his or her rights in appropriate proceedings against those who procured the order and, when successful, shall be awarded reasonable attorney's fees as an element of costs.

Section 1036. Subsection (2) of section 735.209, Florida Statutes, is amended to read:

735.209 Joinder of heirs, devisees, or surviving spouse in summary administration.—

(2) The joinder in, or consent to, a petition for summary administration is not required of an heir or beneficiary who will receive his or her full distributive share under the proposed distribution. Any beneficiary not joining or consenting shall receive formal notice of the petition.

Section 1037. Subsection (1) of section 737.101, Florida Statutes, is amended to read:

737.101 Principal place of administration of trust; duty to register trust.—

(1) Unless otherwise designated in the trust agreement, the principal place of administration of a trust is the trustee's usual place of business

where the records pertaining to the trust are kept or, if he or she has no place of business, the trustee's residence.

Section 1038. Subsection (1) of section 737.204, Florida Statutes, is amended to read:

737.204 Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.—

(1) After notice to all interested persons, the court may review the propriety of employment by a trustee of any person, including any attorney, auditor, investment adviser, or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed and of the compensation determined by the trustee for his or her own services. A person who has received excessive compensation from a trust may be ordered to make a refund of the excess.

Section 1039. Section 737.304, Florida Statutes, is amended to read:

737.304 Duty to provide bond.—A trustee need not provide bond to secure performance of his or her duties unless this is required by the trust instrument, reasonably requested by a beneficiary, or found by the court to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On application of the trustee or other interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the clerk's office in the county where the trust has its principal place of business, in amounts and with surety as provided in s. 45.011 and conditioned on the faithful performance of the trust.

Section 1040. Subsection (1) of section 737.306, Florida Statutes, is amended to read:

737.306 Personal liability of trustee.—

(1)(a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts, except contracts for attorneys' fees, properly entered into in the trustee's his fiduciary capacity in the course of administration of the trust estate unless he or she fails to reveal his or her representative capacity and identify the trust estate in the contract.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if the trustee he is personally at fault.

(c) Claims based on contracts, except contracts for attorneys' fees, entered into by a trustee in his or her fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in his or her fiduciary capacity, whether or not the trustee is personally liable.

Section 1041. Section 737.307, Florida Statutes, is amended to read:

737.307 Limitations on proceedings against trustees after beneficiary receives account.—Unless previously barred by adjudication, consent, or limitations, an action against a trustee for breach of trust is barred for any beneficiary who has received a final, annual, or periodic account or other statement fully disclosing the matter unless a proceeding to assert the claim is commenced within 6 months after receipt of the final, annual, or periodic account or statement. In any event, and notwithstanding lack of full disclosure, all claims against a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his or her examination are barred as provided in chapter 95. A beneficiary has received a final, annual, or periodic account or statement if, being an adult, it is received by the beneficiary or if, being a minor, disabled person, or person who may take by virtue of the exercise or nonexercise of a power of appointment, it is received by the beneficiary's representative as described in s. 731.303.

Section 1042. Section 737.401, Florida Statutes, is amended to read:

737.401 Powers of trustee conferred by trust or by law.—The trustee has all powers conferred upon him or her by this part, unless limited in the trust instrument.

Section 1043. Paragraphs (y) and (z) of subsection (2) of section 737.402, Florida Statutes, are amended to read:

737.402 Powers of trustees conferred by this part.—

(2) Unless otherwise provided in the trust instrument, a trustee has the power:

(y) To employ persons, including attorneys, auditors, investment advisers, or agents, even if they are the trustee or associated with the trustee, to advise or assist the trustee in the performance of his or her administrative duties; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

(z) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his or her duties.

Section 1044. Subsection (2) of section 737.403, Florida Statutes, is amended to read:

737.403 Power of court to permit deviation or to approve transactions involving conflict of interest.—

(2) If the duty of the trustee and the trustee's ~~his~~ individual interest or his or her interest as trustee of another trust conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in s. 737.402(2)(a), (e), (g), (s) and (y). Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

Section 1045. Subsection (1) of section 737.404, Florida Statutes, is amended to read:

737.404 Powers exercisable by joint trustees; liability.—

(1) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise, and a dissenting trustee is not liable for the consequences of an act in which he or she joins at the direction of the majority of the trustees if the dissenting trustee ~~he~~ expressed his or her dissent in writing to any of his or her cotrustees at or before the time of the joinder.

Section 1046. Section 737.405, Florida Statutes, is amended to read:

737.405 Third persons protected.—With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power. A third person without actual knowledge that the trustee is exceeding his or her powers or improperly exercising them is as fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he or she purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

Section 1047. Paragraph (b) of subsection (5) of section 737.501, Florida Statutes, is amended to read:

737.501 Definitions.—As used in this part:

(5) “State attorney” means:

(b) The state attorney for the judicial circuit where the trustee is domiciled or has his or her principal place of business if the trust is not registered.

Section 1048. Section 737.503, Florida Statutes, is amended to read:

737.503 Trustee of a private foundation trust or a split interest trust.—Except as provided in s. 737.505, the trustee of a private foundation trust or a split interest trust has the duties and powers conferred on him or her by this part.

Section 1049. Subsections (1) and (3) of section 737.504, Florida Statutes, are amended to read:

737.504 Powers and duties of trustee of a private foundation trust or a split interest trust.—

(1) In the exercise of his or her powers, including the powers granted by this part, a trustee has a duty to act with due regard to his or her obligation as a fiduciary, including a duty not to exercise any power in such a way as to:

- (a) Deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes.
- (b) Deprive a donor of a trust asset or tax deduction or credit.
- (c) Operate to impose a tax upon a donor, trust, or other person.

“Tax” includes, but is not limited to, any federal, state, or local excise, income, gift, estate, or inheritance tax.

(3) Except as provided in subsection (4) and in s. 737.505, a trustee of a private foundation trust, or a split interest trust to the extent that the split interest trust is subject to the provisions of s. 4947(a)(2), in the exercise of his or her powers shall not:

- (a) Engage in any act of self-dealing as defined in s. 4941(d).
- (b) Retain any excess business holdings as defined in s. 4943(c).
- (c) Make any investments in a manner that subjects the foundation to tax under s. 4944.
- (d) Make any taxable expenditures as defined in s. 4945(d).

Section 1050. Section 737.507, Florida Statutes, is amended to read:

737.507 Power of court to permit deviation.—This part does not affect the power of a court to relieve a trustee from any restrictions on his or her powers and duties that are placed upon him or her by the governing instrument or applicable law for cause shown and upon complaint of the trustee, state attorney, or an affected beneficiary and notice to the affected parties.

Section 1051. Paragraph (c) of subsection (1) of section 738.02, Florida Statutes, is amended to read:

738.02 Duty of trustee for receipts and expenditures.—

(1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited, or an expenditure is charged, to income or principal, or partly to each:

(c) If neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of:

1. The interests of those entitled to income as well as of those entitled to principal, and
2. The manner in which persons ~~men~~ of ordinary prudence would act in the management of the property of another.

Section 1052. Subsection (4) of section 738.04, Florida Statutes, is amended to read:

738.04 When right to income arises; apportionment of income.—

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to:

(a) Income undistributed on the date of termination.

(b) Income due but not paid to the trustee on the date of termination.

(c) Income in the form of periodic payments, including rent, interest, or annuities, other than corporate distributions to stockholders, distributions from mutual funds, and dividends from savings banks and savings and loan associations, not due on the date of termination, accrued from day to day.

Section 1053. Subsection (2) of section 738.09, Florida Statutes, is amended to read:

738.09 Disposition of natural resources.—

(2) If a trustee on January 1, 1976, held an asset of depletable property of a type specified in this section, the trustee ~~he~~ shall allocate receipts from the property in the manner used before January 1, 1976, but for all depletable property acquired after January 1, 1976, by an existing or new trust, the method of allocation provided herein shall be used.

Section 1054. Paragraph (b) of subsection (1) of section 738.12, Florida Statutes, is amended to read:

738.12 Underproductive property.—

(1)

(b) In the event of a termination or initiation of a trust, or the termination of a beneficial income interest of a trust, for a period of less than 12 months, the amount to be paid to the income beneficiary shall be prorated proportionately with the length of the time of his or her interest in the trust and in accordance with s. 738.03.

Section 1055. Subsection (1) of section 738.14, Florida Statutes, is amended to read:

738.14 Expenses; nontrust estates.—

(1) The provisions of s. 738.13, so far as applicable, and excepting those dealing with costs of, or assessments for, improvements to property, shall govern the apportionment of expenses between tenants and remaindermen when no trust has been created, subject to any agreement of the parties or specific direction of the taxing or other statutes, but when either tenant or remainderman has incurred an expense for the benefit of his or her own estate without the consent or agreement of the other, he or she shall pay such expense in full.

Section 1056. Section 741.03, Florida Statutes, is amended to read:

741.03 County court judge or clerk of the circuit court not to send out marriage license signed in blank.—It is unlawful for any county court judge or clerk of the circuit court in the state to send out of his or her office any marriage license signed in blank to be issued upon application to persons not in the office of the county court judge or clerk of the circuit court.

Section 1057. Section 741.04, Florida Statutes, is amended to read:

741.04 Marriage license issued.—No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; and unless one party is a male and the other party is a female.

Section 1058. Subsections (1), (2), and (3) of section 741.0405, Florida Statutes, are amended to read:

741.0405 When marriage license may be issued to persons under 18 years.—

(1) If either of the parties shall be under the age of 18 years but at least 16 years of age, the county court judge or clerk of the circuit court shall issue a license for the marriage of such party only if there is first presented and filed with him or her the written consent of the parents or guardian of such minor to such marriage, acknowledged before some officer authorized by law to take acknowledgments and administer oaths. However, the license shall be issued without parental consent when both parents of such minor are deceased at the time of making application or when such minor has been married previously.

(2) The county court judge of any county in the state may, in the exercise of his or her discretion, issue a license to marry to any male or female under the age of 18 years, upon application of both parties sworn under oath that they are the parents of a child.

(3) When the fact of pregnancy is verified by the written statement of a licensed physician, the county court judge of any county in the state may, in his or her discretion, issue a license to marry:

(a) To any male or female under the age of 18 years upon application of both parties sworn under oath that they are the expectant parents of a child; or

(b) To any female under the age of 18 years and male over the age of 18 years upon the female's application sworn under oath that she is an expectant parent.

Section 1059. Section 741.08, Florida Statutes, is amended to read:

741.08 Marriage not to be solemnized without a license.—Before any of the persons named in s. 741.07 shall solemnize any marriage, he or she shall

require of the parties a marriage license issued according to the requirements of s. 741.01, and within 10 days after solemnizing the marriage he or she shall make a certificate thereof on the license, and shall transmit the same to the office of the county court judge or clerk of the circuit court from which it issued.

Section 1060. Section 742.031, Florida Statutes, is amended to read:

742.031 Hearings; court orders for support, hospital expenses, and attorney's fee.—Hearings for the purpose of establishing or refuting the allegations of the complaint and answer shall be held in the chambers and may be restricted to persons, in addition to the parties involved and their counsel, as the judge in his or her discretion may direct. The court shall determine the issues of paternity of the child and the ability of the parents to support the child. If the court finds that the alleged father is the father of the child, it shall so order. If appropriate, the court shall order the father to pay the complainant, her guardian, or any other person assuming responsibility for the child moneys sufficient to pay reasonable attorney's fees, hospital or medical expenses, cost of confinement, and any other expenses incident to the birth of the child and to pay all costs of the proceeding. The court shall order either or both parents owing a duty of support to the child to pay support pursuant to s. 61.30.

Section 1061. Section 742.045, Florida Statutes, is amended to read:

742.045 Attorney's fees, suit money, and costs.—The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings. An application for attorney's fees, suit money, or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support an award under this chapter. The court may order that the amount be paid directly to the attorney, who may enforce the order in his or her name. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Revenue shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1).

Section 1062. Section 742.08, Florida Statutes, is amended to read:

742.08 Default of support payments.—Upon default in payment of any moneys ordered by the court to be paid, the court may enter a judgment for the amount in default, plus interest, administrative costs, filing fees, and other expenses incurred by the clerk of the circuit court which shall be a lien upon all property of the defendant both real and personal. Costs and fees shall be assessed only after the court makes a determination of the nonprevailing party's ability to pay such costs and fees. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be

assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Health and Rehabilitative Services shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1). Willful failure to comply with an order of the court shall be deemed a contempt of the court entering the order and shall be punished as such. The court may require bond of the defendant for the faithful performance of his or her obligation under the order of the court in such amount and upon such conditions as the court shall direct.

Section 1063. Section 743.01, Florida Statutes, is amended to read:

743.01 Removal of disabilities of married minors.—The disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowered, is removed. The minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could do if not a minor.

Section 1064. Subsection (7) of section 743.015, Florida Statutes, is amended to read:

743.015 Disabilities of nonage; removal.—

(7) The court shall consider the petition and, if satisfied that the removal of the disabilities is in the minor's best interest, shall remove the disabilities of nonage; and shall authorize the minor to perform all acts that the minor he could do if he or she were 18 years of age.

Section 1065. Section 743.06, Florida Statutes, is amended to read:

743.06 Removal of disabilities of minors; donation of blood without parental consent.—Any minor who has reached the age of 17 years may give consent to the donation, without compensation therefor, of her or his blood and to the penetration of tissue which is necessary to accomplish such donation. Such consent shall not be subject to disaffirmance because of minority, unless the parent or parents of such minor specifically object, in writing, to the donation or penetration of the skin.

Section 1066. Paragraph (a) of subsection (2) of section 743.064, Florida Statutes, is amended to read:

743.064 Emergency medical care or treatment to minors without parental consent.—

(2) This section shall apply only when parental consent cannot be immediately obtained for one of the following reasons:

(a) The minor's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the minor to the hospital.

Section 1067. Section 744.1012, Florida Statutes, is amended to read:

744.1012 Legislative intent.—The Legislature finds that adjudicating a person totally incapacitated and in need of a guardian deprives such person of all her or his civil and legal rights and that such deprivation may be unnecessary. The Legislature further finds that it is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs. Recognizing that every individual has unique needs and differing abilities, the Legislature declares that it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf. This act shall be liberally construed to accomplish this purpose.

Section 1068. Section 744.107, Florida Statutes, is amended to read:

744.107 Court monitors.—The court may, upon inquiry from any interested person or upon its own motion in any proceeding over which it has jurisdiction, appoint a monitor. The monitor may investigate, seek information, examine documents, or interview the ward and shall report to the court his or her findings. The court shall not appoint as a monitor a family member or any person with a personal interest in the proceedings. Unless otherwise prohibited by law, a monitor may be allowed a reasonable fee as determined by the court and paid from the property of the ward. No full-time state, county, or municipal employee or officer shall be paid a fee for such investigation and report.

Section 1069. Subsection (6) of section 744.1095, Florida Statutes, is amended to read:

744.1095 Hearings.—At any hearing under this chapter, the alleged incapacitated person or the adjudicated ward has the right to:

(6) Have the hearing open or closed as she or he may choose.

Section 1070. Subsection (1) of section 744.3031, Florida Statutes, is amended to read:

744.3031 Emergency temporary guardianship.—

(1) A court, prior to appointment of a guardian but after a petition for determination of incapacity has been filed pursuant to this chapter, may appoint an emergency temporary guardian for the person or property, or both, of an alleged incapacitated person. The court must specifically find that there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person's ~~his~~ property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The subject of the proceeding or any adult interested

in the welfare of that person may apply to the court in which the proceeding is pending for the emergency appointment of a temporary guardian. The powers and duties of the emergency temporary guardian must be specifically enumerated by court order. The court shall appoint counsel to represent the alleged incapacitated person during any such summary proceedings, and such appointed counsel may request that the proceeding be recorded and transcribed.

Section 1071. Subsection (3) of section 744.304, Florida Statutes, is amended to read:

744.304 Standby guardianship.—

(3) The standby guardian or alternate shall be empowered to assume the duties of his or her office immediately on the death or adjudication of incapacity of the last surviving natural or adoptive parent of a minor, or upon the death, removal, or resignation of the guardian for an adult; however, such a guardian of the ward's property may not be empowered to deal with the ward's property, other than to safeguard it, prior to issuance of letters of guardianship. If the incapacitated person is over the age of 18 years, the court shall conduct a hearing as provided in s. 744.331 before confirming the appointment of the standby guardian, unless the ward has previously been found to be incapacitated.

Section 1072. Section 744.306, Florida Statutes, is amended to read:

744.306 Foreign guardians.—

(1) When the residence of a ward of a foreign guardian is moved to this state, the guardian shall, within 60 days after such change of residence, file the authenticated order of her or his appointment with the clerk of the court in the county where the ward resides. Such order shall be recognized and given full faith and credit in the courts of this state. The guardian and the ward are subject to this chapter.

(2) A guardian appointed in any state, territory, or country may maintain or defend any action in this state as a representative of her or his ward.

(3) Debtors who have received no written demand for payment from a guardian appointed in this state within 60 days after the appointment of a guardian, curator, conservator, or committee in any state, territory, or country other than this state, and whose property in this state is subject to a mortgage or other lien securing the debt held by the foreign guardian, curator, conservator, or committee, may pay the debt to the foreign guardian, curator, conservator, or committee after the expiration of 60 days from the date of her or his appointment. A satisfaction of the mortgage or lien, executed after the 60 days have expired by the foreign guardian, curator, conservator, or committee, with an authenticated copy of the letters or other evidence of authority of the foreign guardian, curator, conservator, or committee attached, may be recorded in the public records of this state and shall constitute an effective discharge of the mortgage or lien, irrespective of whether the debtor had received written demand before paying the debt.

(4) All persons indebted to a ward, or having possession of personal property belonging to a ward, who have received no written demand for payment of the indebtedness or the delivery of the property from a guardian appointed in this state are authorized to pay the indebtedness or to deliver the personal property to the foreign guardian, curator, conservator, or committee after the expiration of the 60 days from the date of her or his appointment.

Section 1073. Subsections (1) and (3) of section 744.307, Florida Statutes, are amended to read:

744.307 Foreign guardian may manage the property of nonresident ward.—

(1) A guardian of the property of a nonresident ward, duly appointed by a court of another state, territory, or country, who desires to manage any part or all of the property of the ward located in this state, may file a petition showing his or her appointment, describing the property, stating its estimated value, and showing the indebtedness, if any, existing against the ward in this state, to the best of the guardian's ~~his~~ knowledge and belief.

(3) The guardian shall file authenticated copies of his or her letters of guardianship or other authority and of his or her bond or other security. The court shall determine if the foreign bond or other security is sufficient to guarantee the faithful management of the ward's property in this state. The court may require a new guardian's bond in this state in the amount it deems necessary and conditioned for the proper management and application of the property of the ward coming into the custody of the guardian in this state.

Section 1074. Subsections (1), (4), and (5) of section 744.308, Florida Statutes, are amended to read:

744.308 Resident guardian of the property of nonresident ward.—

(1) The court may appoint a person qualified under s. 744.309 as guardian of a nonresident ward's property upon the petition of a foreign guardian, next of kin, or creditor of the ward, regardless of whether he or she has a foreign guardian or not.

(4) If the question about the mental or physical incapacity of a nonresident is presented while the nonresident ~~he~~ is temporarily residing in this state and he or she is not under an adjudication of incapacity made in some other state, territory, or country, the procedure for the appointment of a guardian of the nonresident's ~~his~~ property shall be the same as though he or she were a resident of this state.

(5) When the ground for the appointment of a guardian is incapacity for which the person has been adjudicated in another state, territory, or country, notice of the hearing shall be served personally or by registered mail on the ward and the ward's ~~his~~ next of kin and legal custodian, if any, at least 20 days before the hearing.

Section 1075. Subsection (2) of section 744.3125, Florida Statutes, is amended to read:

744.3125 Application for appointment.—

(2) A person may not be appointed a guardian unless the person ~~he~~ discloses in the application form the names of all wards for whom the person is currently acting as a guardian. The application must identify each ward by court file number and circuit court in which the case is pending and must state whether the person is acting as the limited or plenary guardian of the person or property or both.

Section 1076. Section 744.3135, Florida Statutes, is amended to read:

744.3135 Credit and criminal investigation.—The court may require a prospective guardian to submit, at his or her own expense, to an investigation of the prospective guardian's credit history or an investigatory check by the National Crime Information Center and the Florida Crime Information Center systems, or both. The court may order these investigations if it deems it necessary.

Section 1077. Subsection (3) of section 744.3145, Florida Statutes, is amended to read:

744.3145 Guardian education requirements.—

(3) Each person appointed by the court to be a guardian must complete the 8 hours of instruction and education within 1 year after his or her appointment as guardian. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

Section 1078. Paragraph (a) of subsection (2) of section 744.3201, Florida Statutes, is amended to read:

744.3201 Petition to determine incapacity.—

(2) The petition must be verified and must:

(a) State the name, age, and present address of the petitioner and his or her relationship to the alleged incapacitated person;

Section 1079. Section 744.3371, Florida Statutes, is amended to read:

744.3371 Notice of petition for appointment of guardian and hearing.—

(1) When the petition for appointment of a guardian for an incapacitated person is heard upon the conclusion of the hearing in which the person is determined to be incapacitated, the court shall hear the petition without further notice. If the petition is heard on a later date, reasonable notice of the hearing must be served on the incapacitated person, the person's ~~his~~ attorney, if any, any guardian then serving, the person's ~~his~~ next of kin, and such other interested persons as the court may direct.

(2) When a petition for appointment of a guardian for a minor is filed, formal notice must be served on the minor's parents. If the petitioner has custody of the minor and the petition alleges that, after diligent search, the parents cannot be found, the parents may be served by informal notice, delivered to their last known address or addresses. When a parent petitions for appointment as guardian for his or her minor child, no notice is necessary unless the other parent is living and does not consent to the appointment.

Section 1080. Subsection (1) of section 744.341, Florida Statutes, is amended to read:

744.341 Voluntary guardianship.—

(1) Without adjudication of incapacity, the court shall appoint a guardian of the property of a resident or nonresident person who, though mentally competent, is incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity and who has voluntarily petitioned for the appointment. The petition shall be accompanied by a certificate of a licensed physician specifying that he or she has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his or her delegation of authority. Notice of hearing on any petition for appointment and for authority to act shall be given to the petitioner and to any person to whom the petitioner requests that notice be given. Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the petitioner.

Section 1081. Subsection (2) of section 744.344, Florida Statutes, is amended to read:

744.344 Order of appointment.—

(2) The order appointing a guardian must be consistent with the incapacitated person's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the incapacitated person the right to make decisions in all matters commensurate with the person's ~~his~~ ability to do so.

Section 1082. Section 744.347, Florida Statutes, is amended to read:

744.347 Oath of guardian.—Before exercising his or her authority as guardian, every guardian shall take an oath that he or she will faithfully perform his or her duties as guardian. This oath is not jurisdictional.

Section 1083. Subsection (1) of section 744.358, Florida Statutes, is amended to read:

744.358 Liability of a guardian.—

(1) A guardian is not liable, solely because of the guardianship, for the debts, contracts, or torts of her or his ward.

Section 1084. Paragraph (b) of subsection (6) and subsections (7) and (8) of section 744.361, Florida Statutes, are amended to read:

744.361 Powers and duties of guardian.—

(6) A guardian who is given authority over any property of the ward shall:

(b) Perform all other duties required of him or her by law.

(7) The guardian shall observe the standards in dealing with the guardianship property that would be observed by a prudent person dealing with the property of another, and, if the guardian has special skills or is named guardian on the basis of representations of special skills or expertise, he or she is under a duty to use those skills.

(8) The guardian, if authorized by the court, shall take possession of all of the ward's property and of the rents, income, issues, and profits from it, whether accruing before or after the guardian's ~~his~~ appointment, and of the proceeds arising from the sale, lease, or mortgage of the property or of any part. All of the property and the rents, income, issues, and profits from it are assets in the hands of the guardian for the payment of debts, taxes, claims, charges, and expenses of the guardianship and for the care, support, maintenance, and education of the ward or the ward's ~~his~~ dependents, as provided for under the terms of the guardianship plan or by law.

Section 1085. Subsection (1) of section 744.362, Florida Statutes, is amended to read:

744.362 Initial guardianship report.—

(1) Each guardian shall file with the court an initial guardianship report within 60 days after her or his letters of guardianship are signed. The initial guardianship report for a guardian of the property must consist of a verified inventory. The initial report for a guardian of the person must consist of an initial guardianship plan. The initial report shall be served on the ward, unless the ward is a minor under the age of 14 years or is totally incapacitated, and the attorney for the ward. Either the ward or the ward's attorney may request a hearing concerning the adequacy of the report.

Section 1086. Subsections (4), (5), and (6) of section 744.363, Florida Statutes, are amended to read:

744.363 Initial guardianship plan.—

(4) The guardianship plan may not restrict the physical liberty of the ward more than reasonably necessary to protect the ward or others from serious physical injury, illness, or disease and to provide the ward with medical care and mental health treatment for the ward's ~~his~~ physical and mental health.

(5) An initial guardianship plan continues in effect until it is amended or replaced by the approval of an annual guardianship plan, until the restoration of capacity or death of the ward, or until the ward, if a minor, reaches the age of 18 years. If there are significant changes in the capacity of the ward to meet the essential requirements for his or her health or safety, the

guardian may file a petition to modify the guardianship plan and shall serve notice on all persons who received notice of the plan. At the hearing on such petition, the court may modify the guardianship plan and specify the effective date of such amendment.

(6) In exercising his or her powers, the guardian shall recognize any rights retained by the ward.

Section 1087. Paragraph (a) of subsection (5) of section 744.365, Florida Statutes, is amended to read:

744.365 Verified inventory.—

(5) RECORDS RETENTION.—

(a) The guardian shall maintain substantiating papers and records sufficient to demonstrate the accuracy of the initial inventory for a period of 3 years after her or his discharge. The substantiating papers need not be filed with the court but must be made available for inspection and review at such time and place and before such persons as the court may order.

Section 1088. Subsection (3) of section 744.3678, Florida Statutes, is amended to read:

744.3678 Annual accounting.—

(3) The guardian must obtain a receipt or canceled check for all expenditures and disbursements made on behalf of the ward. The guardian must preserve the receipts and canceled checks, along with other substantiating papers, for a period of 3 years after his or her discharge. The receipts, checks, and substantiating papers need not be filed with the court but shall be made available for inspection and review at such time and in such place and before such persons as the court may from time to time order.

Section 1089. Subsection (2) of section 744.368, Florida Statutes, is amended to read:

744.368 Responsibilities of the clerk of the circuit court.—

(2) The clerk shall, within 30 days after the date of filing of the initial or annual report of the guardian of the person, complete his or her review of the report.

Section 1090. Section 744.3685, Florida Statutes, is amended to read:

744.3685 Order requiring guardianship report; contempt.—When a guardian fails to file the guardianship report, the court shall order the guardian him to file the report within 15 days after the service of the order upon her or him or show cause why she or he should not be compelled to do so. A copy of the order shall be served on the guardian or on the guardian's his resident agent. If the guardian fails to file her or his report within the time specified by the order without good cause, the court may cite the guardian him for contempt of court and may fine her or him. The fine may not be paid out of the ward's property.

Section 1091. Subsection (1) of section 744.3701, Florida Statutes, is amended to read:

744.3701 Inspection of report.—

(1) Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the court, the clerk or the clerk's ~~his~~ representative, the guardian and the guardian's ~~his~~ attorney, and the ward, unless he or she is a minor or has been determined to be totally incapacitated, and the ward's ~~his~~ attorney.

Section 1092. Subsection (1) of section 744.3715, Florida Statutes, is amended to read:

744.3715 Petition for interim judicial review.—

(1) At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and the guardian is not acting in the best interest of the ward. The petition for review must state the nature of the objection to the guardian's action or proposed action. Upon the filing of any such petition, the court shall review the petition and act upon it expeditiously.

Section 1093. Subsection (3) of section 744.3725, Florida Statutes, is amended to read:

744.3725 Procedure for extraordinary authority.—Before the court may grant authority to a guardian to exercise any of the rights specified in s. 744.3215(4), the court must:

(3) Personally meet with the incapacitated person to obtain its own impression of the person's capacity, so as to afford the incapacitated person the full opportunity to express his or her personal views or desires with respect to the judicial proceeding and issue before the court;

The provisions of this section and s. 744.3215(4) are procedural and do not establish any new or independent right to or authority over the termination of parental rights, dissolution of marriage, sterilization, abortion, or the termination of life support systems.

Section 1094. Section 744.373, Florida Statutes, is amended to read:

744.373 Production of property.—On the petition of a creditor or other interested person, including the ward, or on its own motion, the court may require a guardian of the property to produce satisfactory evidence that the property of the ward for which the guardian is responsible is in the guardian's ~~his~~ possession or under her or his control. If it deems it necessary or proper, the court may order the guardian to produce the property for the inspection of the creditor, another interested person, the ward, or the court.

Section 1095. Section 744.374, Florida Statutes, is amended to read:

744.374 Payments to guardian.—If there is more than one guardian, either guardian may petition for an order directing the guardian of the property to pay to the guardian of the person periodic amounts for the support, care, maintenance, education, and other needs of the ward if not otherwise provided for in the guardianship plan. The amount may be increased or decreased from time to time. If an order is entered, the receipt of the guardian for payments made shall be a sufficient discharge of the guardian who makes the payments. The guardian He shall not be bound to see to the application of the payments.

Section 1096. Subsection (2) of section 744.384, Florida Statutes, is amended to read:

744.384 Subsequently discovered or acquired property.—

(2) If a limited guardian of the property of the ward learns of any property that was not known to the court at the time of his or her appointment, he or she shall file a report of such property with the court. Upon petition by the guardian, ward, or other interested person, the court, after hearing with appropriate notice, may direct the guardian to take custody and control of such property, without further adjudicatory proceeding under s. 744.331.

Section 1097. Section 744.391, Florida Statutes, is amended to read:

744.391 Actions by and against guardian or ward.—If an action is brought by the guardian against the ward, or vice versa, or if the interest of the guardian is adverse to that of his or her ward, a guardian ad litem shall be appointed to represent the ward in that particular litigation. In any litigation between the guardian and the ward, a guardian ad litem shall be appointed to represent the ward. If there is a conflict of interest between the guardian and the ward, the guardian ad litem shall petition the court for removal of the guardian. Judgments in favor of the ward shall become the property of the ward without the necessity for any assignment by the guardian or receipt by the ward upon termination of guardianship. The guardian may receive payment and satisfy any judgment in behalf of the ward without joinder by the ward.

Section 1098. Section 744.394, Florida Statutes, is amended to read:

744.394 Suspension of statutes of limitations in favor of guardian.—If a person entitled to bring an action is declared incapacitated before the expiration of the time limited for the commencement of it and the cause of the action survives, the action may be commenced by the guardian of the property after such expiration and within 1 year from the date of the order appointing the guardian ~~him~~ or the time otherwise limited by law, whichever is longer.

Section 1099. Subsections (1) and (3) of section 744.397, Florida Statutes, are amended to read:

744.397 Application of income of property of ward.—

(1) The court may authorize the guardian of the property to apply the ward's income, first to the ward's ~~his~~ care, support, education, and mainte-

nance, and then for the care, support, education, maintenance, cost of final illness, and cost of funeral and burial or cremation of the parent, spouse, or dependents, if any, of the ward, to the extent necessary. If the income is not sufficient for these purposes, the court may authorize the expenditure of part of the principal for such purposes from time to time.

(3) If the ward is a minor and the ward's his parents are able to care for him or her and to support, maintain, and educate him or her, the guardian of the minor shall not so use his or her ward's property unless directed or authorized to do so by the court.

Section 1100. Subsections (1), (11), and (14) of section 744.441, Florida Statutes, are amended to read:

744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(1) Perform, compromise, or refuse performance of a ward's contracts that continue as obligations of the estate, as he or she may determine under the circumstances.

(11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties.

(14) Purchase the entire fee simple title to real estate in this state in which the guardian has no interest, but the purchase may be made only for a home for the ward, to protect the home of the ward or the ward's his interest, or as a home for the ward's his dependent family. If the ward is a married person and the home of the ward or of the dependent family of the ward is owned by the ward and spouse as an estate by the entirety and the home is sold pursuant to the authority of subsection (12), the court may authorize the investment of any part or all of the proceeds from the sale toward the purchase of a fee simple title to real estate in this state for a home for the ward or the dependent family of the ward as an estate by the entirety owned by the ward and spouse. If the guardian is authorized to acquire title to real estate for the ward or dependent family of the ward as an estate by the entirety in accordance with the preceding provisions, the conveyance shall be in the name of the ward and spouse and shall be effective to create an estate by the entirety in the ward and spouse.

Section 1101. Subsections (4), (5), (13), and (14) of section 744.444, Florida Statutes, are amended to read:

744.444 Power of guardian without court approval.—Without obtaining court approval, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(4) Insure the assets of the estate against damage, loss, and liability and insure himself or herself against liability as to third persons.

(5) Execute and deliver in his or her name as guardian any instrument necessary or proper to carry out and give effect to this section.

(13) When reasonably necessary, employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the guardian, to advise or assist the guardian in the performance of his or her duties.

(14) Execute and deliver in his or her name as guardian any instrument that is necessary or proper to carry out the orders of the court.

Section 1102. Paragraph (d) of subsection (2) of section 744.446, Florida Statutes, is amended to read:

744.446 Conflicts of interest; prohibited activities; court approval.—

(2) Unless prior approval is obtained by court order, or unless such relationship existed prior to appointment of the guardian and is disclosed to the court in the petition for appointment of guardian, a guardian may not:

(d) Directly or indirectly purchase, rent, lease, or sell any property or services from or to any business entity of which the guardian or the guardian's ~~his~~ spouse or any of the guardian's ~~his~~ lineal descendants, or collateral kindred, is an officer, partner, director, shareholder, or proprietor, or has any financial interest.

Section 1103. Paragraph (b) of subsection (1) of section 744.457, Florida Statutes, is amended to read:

744.457 Conveyance of various property rights by guardians of the property.—

(1)

(b) In ordering or approving the sale and conveyance of the real or personal property owned by the ward and the ward's ~~his~~ spouse as an estate by the entirety or as joint tenants with right of survivorship, the court may provide that one-half of the net proceeds of the sale shall go to the guardian of the ward and the other one-half to the ward's spouse, or the court may provide for the proceeds of the sale to retain the same character as to survivorship as the original asset.

Section 1104. Paragraph (b) of subsection (2) of section 744.464, Florida Statutes, is amended to read:

744.464 Restoration to capacity.—

(2) SUGGESTION OF CAPACITY.—

(b) Upon the filing of the suggestion of capacity, the court shall immediately appoint a physician to examine the ward. The physician must examine the ward and file his or her report with the court within 20 days after the appointment.

Section 1105. Section 744.467, Florida Statutes, is amended to read:

744.467 Resignation of guardian.—A guardian may resign and be relieved of his or her duties after the notice that the court may require and notice to the surety on his or her bond. Before entering an order discharging a guardian of the property, the court shall require the guardian ~~him~~ to file a true and correct final report of his or her guardianship and to deliver to the successor guardian all property of the ward, all records concerning the property of the ward or of the guardianship, and all money due to the ward from him or her. A guardian of the person must deliver to the successor guardian copies of all records of medical or personal care, prior to being discharged. Before entering the order, the court shall be satisfied that the interest of the ward will not be placed in jeopardy by the resignation. The acceptance of the resignation shall not exonerate the guardian or the guardian's ~~his~~ surety from any liability previously incurred.

Section 1106. Section 744.471, Florida Statutes, is amended to read:

744.471 Appointment of successor.—A successor guardian must be appointed and duly qualified before a guardian shall be relieved of his or her duties and obligations as provided in s. 744.467. A successor guardian shall be appointed if a guardian dies, becomes incapacitated, or is removed. Successor guardians are governed by the laws concerning guardianships.

Section 1107. Section 744.511, Florida Statutes, is amended to read:

744.511 Accounting upon removal.—A removed guardian shall file with the court a true, complete, and final report of his or her guardianship within 20 days after his removal and shall serve a copy on the successor guardian and the ward, unless the ward is under 14 years of age or has been determined to be totally incapacitated.

Section 1108. Section 744.514, Florida Statutes, is amended to read:

744.514 Surrender of property upon removal.—The successor guardian shall demand of the removed guardian or her or his heirs, personal representative, or surety all the property of the ward and copies of all records of the ward. The removed guardian or her or his heirs, personal representative, or surety shall turn over the items to her or his duly qualified successor.

Section 1109. Section 744.517, Florida Statutes, is amended to read:

744.517 Proceedings for contempt.—If a removed guardian of the property fails to file a true, complete, and final accounting of his or her guardianship; to turn over to his or her successor or to the ward all the property of his or her ward and copies of all records that are in his or her control and that concern the ward; or to pay over to the successor guardian of the property or to the ward all money due the ward by him or her, the court shall issue a show cause order. If cause is shown for the default, the court shall set a reasonable time within which to comply, and, on failure to comply with this or any subsequent order, the removed guardian may be held in contempt. Proceedings for contempt may be instituted by the court, by any interested person, including the ward, or by a successor guardian.

Section 1110. Section 744.521, Florida Statutes, is amended to read:

744.521 Termination of guardianship.—When a ward becomes sui juris or is restored to capacity, when the guardian has been unable to locate the ward through diligent search, or, for a guardian of the property, when the property subject to the guardianship has been exhausted, the guardian shall file a final report and receive his or her discharge. A guardian of the person is discharged without further proceeding upon filing a certified copy of the ward's death certificate. The court may require proof of the removal of incapacity.

Section 1111. Section 744.524, Florida Statutes, is amended to read:

744.524 Termination of guardianship on change of domicile of resident ward.—When the domicile of a resident ward has changed as provided in s. 744.2025, and the foreign court having jurisdiction over the ward at the ward's ~~his~~ new domicile has appointed a guardian and that guardian has qualified and posted a bond in an amount required by the foreign court, the guardian in this state may file her or his final report and close the guardianship in this state. The guardian of the property in this state shall cause a notice to be published once a week for 2 consecutive weeks, in a newspaper of general circulation published in the county, that she or he has filed her or his accounting and will apply for discharge on a day certain and that jurisdiction of the ward will be transferred to the state of foreign jurisdiction. If an objection is filed to the termination of the guardianship in this state, the court shall hear the objection and enter an order either sustaining or overruling the objection. Upon the disposition of all objections filed, or if no objection is filed, final settlement shall be made by the Florida guardian. On proof that the remaining property in the guardianship has been received by the foreign guardian, the guardian of the property in this state shall be discharged. The entry of the order terminating the guardianship in this state shall not exonerate the guardian or the guardian's ~~his~~ surety from any liability previously incurred.

Section 1112. Section 744.527, Florida Statutes, is amended to read:

744.527 Final reports and application for discharge; hearing.—

(1) When the court terminates the guardianship, the guardian shall promptly file his or her final report. If no objections are filed and if it appears that the guardian has made full and complete distribution to the person entitled and has otherwise faithfully discharged his or her duties, the court shall approve the final report. If objections are filed, the court shall conduct a hearing in the same manner as provided for a hearing on objections to annual guardianship reports.

(2) The guardian applying for discharge is authorized to retain from the funds in his or her possession a sufficient amount to pay the final costs of administration, including guardian and attorney's fees regardless of the death of the ward, accruing between the filing of his or her final returns and the order of discharge.

Section 1113. Section 744.531, Florida Statutes, is amended to read:

744.531 Order of discharge.—If the court is satisfied that the guardian has faithfully discharged her or his duties, has rendered a complete and accurate final report, and, in the case of a guardian of the property, has delivered the property of the ward to the person entitled, and that the interest of the ward is protected, the court shall enter an order of discharge. The discharge shall operate as a release from the duties of the guardianship and as a bar to any action against the guardian or the guardian's his surety unless the action is commenced within 3 years after the date of the order.

Section 1114. Paragraphs (a), (c), (d), and (e) of subsection (2) of section 744.534, Florida Statutes, are amended to read:

744.534 Disposition of unclaimed funds held by guardian.—

(2)(a) In those cases in which it is appropriate for the guardianship to terminate pursuant to s. 744.521 and in which property in the hands of a guardian cannot be distributed to the ward or the ward's his estate solely because the guardian is unable to locate the ward through diligent search, the court shall order the guardian of the property to sell the property of the ward and deposit the proceeds and cash already on hand after retaining those amounts provided for in paragraph (e) with the clerk of the court exercising jurisdiction over the guardianship and receive a receipt. The clerk shall deposit the funds in the registry of the court, to be disposed of as follows:

1. If the value of the funds is \$50 or less, the clerk shall post a notice for 30 days at the courthouse door giving the amount involved, the name of the ward, and other pertinent information that will put interested persons on notice.

2. If the value of the funds is over \$50, the clerk shall publish the notice once a month for 2 consecutive months in a newspaper of general circulation in the county.

3. After the expiration of 6 months from the posting or first publication, the clerk shall deposit the funds with the State Treasurer after deducting his or her fees and the costs of publication.

(c) Within 10 years from the date of deposit with the State Treasurer, on written petition to the court that directed the deposit of the funds and informal notice to the Department of Legal Affairs, and after proof of his or her right to them, any person entitled to the funds, before or after payment to the State Treasurer and deposit as provided for in paragraph (a), may obtain a court order directing the payment of the funds to him or her. All funds deposited with the State Treasurer and not claimed within 10 years from the date of deposit shall escheat to the state for the benefit of public guardianship.

(d) Upon depositing the funds with the clerk, the guardian of the property may proceed with the filing of his or her final return and application for discharge under s. 744.527.

(e) The guardian depositing assets with the clerk is permitted to retain from the funds in his or her possession a sufficient amount to pay the final costs of administration, including guardian and attorney's fees accruing between the deposit of the funds with the clerk of the court and the order of discharge. Any surplus funds so retained must be deposited with the clerk prior to discharge of the guardian of the property.

Section 1115. Subsection (3) of section 744.604, Florida Statutes, is amended to read:

744.604 Definitions.—As used in this part, the term:

(3) “Secretary” means the Secretary of Veterans Affairs as head of the United States Department of Veterans Affairs or her or his successor.

Section 1116. Subsections (2) and (3) of section 744.613, Florida Statutes, are amended to read:

744.613 Appointment of guardian for ward authorized.—

(2) When a petition is filed for the appointment of a guardian of a minor ward, a certificate of the secretary or the secretary's his authorized representative setting forth the age of such minor, as shown by the records of the United States Department of Veterans Affairs, and a statement that the appointment of a guardian is a condition precedent to the payment of any moneys due to the minor by the United States Department of Veterans Affairs are prima facie evidence of the necessity for such appointment.

(3) When a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the secretary or the secretary's his authorized representative, setting forth the fact that the person has been found incompetent and has been rated incompetent by the United States Department of Veterans Affairs, on examination in accordance with the laws and regulations governing the United States Department of Veterans Affairs, and that the appointment of a guardian is a condition precedent to the payment of any moneys due to such person by the United States Department of Veterans Affairs, is prima facie evidence of the necessity for such appointment.

Section 1117. Subsection (2) of section 744.618, Florida Statutes, is amended to read:

744.618 Persons who may be appointed guardian.—

(2) It is unlawful for a circuit judge to appoint either herself or himself, or a member of her or his family, as guardian for any person entitled to the benefits provided for in 38 U.S.C., as amended, except in a case when the person entitled to such benefits is a member of the family of the circuit judge involved.

Section 1118. Section 744.621, Florida Statutes, is amended to read:

744.621 Inventory of ward's property; guardian's failure to file inventory; discharge; forfeiture of commissions.—Every guardian shall, within 30 days

after his or her qualification and whenever subsequently required by the circuit judge, file in the circuit court a complete inventory of all the ward's personal property in his or her hands and, also, a schedule of all real estate in the state belonging to his or her ward, describing it and its quality, whether it is improved or not, and, if it is improved, in what manner, and the appraised value of same. The failure on the part of the guardian to conform to the requirements of this section is a ground for the discharge of the guardian, in which case the guardian shall forfeit all commissions.

Section 1119. Section 744.622, Florida Statutes, is amended to read:

744.622 Guardian empowered to receive moneys due ward from the United States Government.—A guardian appointed under the provisions of s. 744.616 may receive income and benefits payable by the United States through the United States Department of Veterans Affairs and also has the right to receive for the account of the ward any moneys due from the United States Government in the way of arrears of pay, bonus, compensation or insurance, or other sums due by reason of his or her service (or the service of the person through whom the ward claims) in the Armed Forces of the United States and any other moneys due from the United States Government, payable through its agencies or entities, together with the income derived from investments of these moneys.

Section 1120. Section 744.624, Florida Statutes, is amended to read:

744.624 Guardian's application of estate funds for support and maintenance of person other than ward.—A guardian shall not apply any portion of the estate of her or his ward to the support and maintenance of any person other than her or his ward, except upon order of the court after a hearing, notice of which has been given to the proper office of the United States Department of Veterans Affairs as provided in s. 744.625.

Section 1121. Section 744.626, Florida Statutes, is amended to read:

744.626 Exemption of benefits from claims of creditors.—Except as provided by federal law, payments of benefits from the United States Department of Veterans Affairs or the Social Security Administration to or for the benefit of a disabled veteran or the veteran's surviving spouse his widow or dependents are exempt from the claims of creditors and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after the receipt of the payments by the guardian or the beneficiary. ~~For the purposes of this section, the term "widow" includes the widower of any female veteran.~~

Section 1122. Section 744.631, Florida Statutes, is amended to read:

744.631 Guardian's petition for authority to sell ward's real estate; notice by publication; penalties.—

(1) When a guardian of the estate of a minor or an incompetent ward, which guardian has the control or management of any real estate that is the property of such minor or incompetent, deems it necessary or expedient to sell all or part of the real estate, the guardian shall apply, either in term

time or in vacation by petition to the judge of the circuit court for the county in which the real estate is situated, for authority to sell all or part of the real estate. If the prayer of the petition appears to the judge to be reasonable and just and financially beneficial to the estate of the ward, the judge he may authorize the guardian to sell the real estate described in the petition under such conditions as the interest of the minor or incompetent may, in the opinion of the judge, seem to require.

(2) The authority to sell the real estate described in the petition shall not be granted unless the guardian has given previous notice, published once a week for 4 successive weeks in a newspaper published in the county where the application is made, of his or her intention to make application to the judge for authority to sell such real estate, the guardian setting forth in the notice the time and place and to what judge the application will be made. If the lands lie in more than one county, the application for such authority shall be made in each county in which the lands lie.

(3) The failure on the part of the guardian to comply with the provisions of this section makes the guardian him and the guardian's bond agents his bondsmen individually responsible for any loss that may accrue to the estate of the ward involved, and is a ground for the immediate removal of such guardian as to his or her functions, but does not discharge the guardian him as to his or her liability or discharge the liabilities of his or her sureties.

Section 1123. Subsections (1) and (5) of section 744.634, Florida Statutes, are amended to read:

744.634 Guardian's accounts, filing with court and certification to United States Department of Veterans Affairs; notice and hearing on accounts; failure to account.—

(1) Every guardian who receives on account of his or her ward any moneys from the United States Department of Veterans Affairs shall annually file with the court on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath, which account is an account of all moneys so received by him or her and of all disbursements from such moneys, and which account shows the balance of the moneys in his or her hands at the date of such filing and shows how the moneys are invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which such court is located. If the requirement of certification is waived in writing by the United States Department of Veterans Affairs, an uncertified copy of each of such accounts shall be sent.

(5) If a guardian fails to file any account of the moneys received by him or her from the United States Department of Veterans Affairs on account of his or her ward within 30 days after such account is required by either the court or the United States Department of Veterans Affairs, or fails to furnish the United States Department of Veterans Affairs a copy of his or her accounts as required by subsection (1), such failure shall be a ground for the removal of the guardian.

Section 1124. Section 744.637, Florida Statutes, is amended to read:

744.637 Certified copies of public records made available.—When a copy of any public record is required by the United States Department of Veterans Affairs to be used in determining the eligibility of any person to participate in benefits made available by the United States Department of Veterans Affairs, the official charged with the custody of such public record shall, without charge, provide to the applicant for such benefits or any person acting on her or his behalf, or to the authorized representative of the United States Department of Veterans Affairs, a certified copy of such record. For each and every certified copy so furnished by the official, the official shall be paid by the board of county commissioners the fee provided by law for copies.

Section 1125. Section 744.638, Florida Statutes, is amended to read:

744.638 Clerk of the circuit court; fees; duties.—Upon the filing of the petition for guardianship, granting of same, and entering decree thereon, the clerk of the circuit court is entitled to the service charge as provided by law, which shall include the cost of recording the petition, bond, and decree and the issuing of letters of guardianship. The certificate of the secretary or the secretary's ~~his~~ authorized representative provided for in s. 744.613 need not be recorded but must be kept in the file. Upon issuing letters of guardianship or letters appointing a guardian for the estate of a minor or incompetent, the clerk of the circuit court shall send to the regional office of the United States Department of Veterans Affairs having jurisdiction in this state two certified copies of the letters and two certified copies of the bond approved by the court, without charge or expense to the estate involved. The clerk of the circuit court shall also send a certified copy of such letters to the property appraiser and to the tax collector in each county in which the ward owns real property.

Section 1126. Section 744.641, Florida Statutes, is amended to read:

744.641 Guardian's compensation; bond premiums.—The amount of compensation payable to a guardian shall not exceed 5 percent of the income of the ward during any year and may be taken, by the guardian, on a monthly basis. In the event of extraordinary services rendered by such guardian, the court may, upon petition and after hearing on the petition, authorize additional compensation for the extraordinary services, payable from the estate of the ward. Extraordinary services approved by the Veterans Administration do not require a court hearing for approval of the fees, but shall require an order authorizing the guardian to withdraw the amount from the guardianship account. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of her or his ward reasonable premiums paid by the guardian to any corporate surety upon the guardian's bond.

Section 1127. Section 744.643, Florida Statutes, is amended to read:

744.643 Discharge of guardian of minor or incompetent ward.—When a minor ward, for whom a guardian has been appointed under the provisions of this part or other laws of this state, attains his or her majority and, if such

minor ward has been incompetent, is declared competent by the United States Department of Veterans Affairs and the court, or when an incompetent ward who is not a minor is declared competent by the United States Department of Veterans Affairs and the court, the guardian shall, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.

Section 1128. Section 744.709, Florida Statutes, is amended to read:

744.709 Surety bond.—Upon taking office, a public guardian shall file a bond with surety as prescribed in s. 45.011 to be approved by the clerk. The bond shall be payable to the Governor and the Governor's his successors in office, in the penal sum of not less than \$5,000 nor more than \$25,000, conditioned on the faithful performance of all duties by the guardian. The amount of the bond shall be fixed by the majority of the judges within the judicial circuit. In form the bond shall be joint and several. The bond shall be purchased with funding provided in the funds appropriated to the judicial circuit for the office of public guardian.

Section 1129. Subsection (2) of section 747.01, Florida Statutes, is amended to read:

747.01 Who are absentees under this law.—

(2) Any resident of this state, or any person owning property herein, who disappears under circumstances indicating that he or she may have died, either naturally, accidentally or at the hand of another, or may have disappeared as the result of mental derangement, amnesia or other mental cause, shall also be an “absentee” within the meaning of this law.

Section 1130. Section 747.02, Florida Statutes, is amended to read:

747.02 Jurisdiction.—The circuit court has jurisdiction to appoint a conservator of the estate of an absentee as defined in s. 747.01 upon a showing that:

(1)(a)1. The absentee has an interest in any form of property in this state; or

2. The absentee is a legal resident of this state; or

3. The spouse wife or next of kin of the absentee is a legal resident of this state; and

(b) The absentee has not provided an adequate power of attorney authorizing another to act in his or her behalf with regard to such property or interest or the term of any such power of attorney has expired; and

(2) A necessity exists for providing care for the property or estate of the absentee or care for or judgments concerning the absentee's spouse his wife and children or, if he or she has no spouse wife and children, the absentee's his mother or his father.

Section 1131. Subsection (1) and paragraphs (b), (c), and (f) of subsection (2) of section 747.03, Florida Statutes, are amended to read:

747.03 Petition.—

(1) The jurisdiction of the court shall be invoked by the filing of a petition by any person who would have an interest in the property or estate of the absentee were such absentee deceased or any person who is dependent on said absentee for his or her maintenance or support.

(2) The petition shall be sworn to by the petitioner and shall state:

(b) The name, address, and age of any other person who would have an interest in the property or the estate of the absentee if he or she were deceased;

(c) The exact circumstances which cause the person missing to be an absentee under s. 747.01 including the date he or she was first known to be missing, interned, beleaguered, etc.;

(f) A statement of all property constituting an asset of the alleged absentee's estate or in which he or she has any interest and the approximate value of same.

Section 1132. Subsection (1) of section 747.032, Florida Statutes, is amended to read:

747.032 Order of appointment.—

(1) If, after hearing, the court is satisfied that the person alleged to be an absentee is an absentee as defined in s. 747.01 and that it is necessary that a conservatorship be established, she or he shall appoint a conservator of the estate and property of said absentee to take charge of the absentee's estate and property under the supervision, and subject to the further orders, of the court.

Section 1133. Section 747.033, Florida Statutes, is amended to read:

747.033 Oath.—Every conservator, before exercising his or her authority as conservator, shall take oath that he or she will faithfully perform his or her duties as conservator and ~~that he~~ will render true accounts whenever required according to law, which oath may be administered by any officer authorized to administer oaths under the laws of this state. Such oath shall be filed with the court.

Section 1134. Subsections (2), (3), and (4) of section 747.04, Florida Statutes, are amended to read:

747.04 Termination of conservatorship.—

(2) Likewise, if at any time subsequent to the appointment of a conservator it shall appear that the absentee has died and an executor or administrator has been appointed for her or his estate, the court shall direct the termination of the conservatorship and the transfer of all property of the deceased absentee held thereunder to such executor or administrator.

(3) When the need for a conservatorship terminates, the conservator shall promptly file her or his final returns and ~~his~~ application for discharge with the court. If it appears to the court that the returns are correct and that the conservator has made full and complete transfer of the absentee's assets as directed, the court may approve the returns and discharge the conservator. If objections to the returns are filed, the circuit judge shall conduct a hearing under the same conditions for a hearing on objections to annual returns.

(4) Such discharge shall operate as a release from the duties of the conservatorship and as a bar to any suit against said conservator or her or his surety, unless such suit is commenced within 1 year from the date of discharge.

Section 1135. Subsections (1) and (2) of section 747.051, Florida Statutes, are amended to read:

747.051 Summary procedure.—

(1) If the spouse wife of any person defined as an absentee in s. 747.01(1), or her or his next of kin if said absentee has no spouse wife, shall wish to sell or transfer any property of the absentee which has a gross value of less than \$5,000, or shall require the consent of the absentee in any matter regarding the absentee's children or in any other matter in which the gross value of the subject matter is less than \$5,000, he or she may apply to the circuit court for an order authorizing said sale, transfer, or consent without opening a full conservatorship proceeding as provided by this chapter. He or she may make the application without the assistance of an attorney. Said application shall be made by petition on the following form, which form shall be made readily available to the applicant by the clerk of the circuit court:

In the Circuit Court

In re: ...(Absentee)...., case number

PETITION FOR SUMMARY RELIEF

Petitioner, ...(Name)...., whose residence is ...(Street & number)...., ...(City or town)...., and ...(County)...., Florida, and who is the ...(Describe relationship to absentee)... of the absentee, ...(Name)...., states that the absentee has been ...(Imprisoned or missing in action)... since ...(Date)... when ...(Describe details).... Petitioner desires to sell/transfer ...(Describe property)... of the value of ...(Value)... because ...(Give reasons).... The terms of sale/transfer are ...(Give reasons).... Petitioner requires the consent of the absentee for the purpose of

...(Petitioner)...

State of Florida
County of....

The above named,, being by me duly sworn, says the foregoing petition is true and correct to the best of his/her knowledge and belief.

...(Notary Public or County Court Judge)...

My commission expires

(2) The court shall, without hearing or notice, enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interests of the absentee or her or his dependents.

Section 1136. Subsection (1) and paragraphs (b), (c), and (f) of subsection (2) of section 747.052, Florida Statutes, are amended to read:

747.052 Procedure for order authorizing action by spouse or next of kin.—

(1) If the spouse, or the next of kin if there is no spouse, of any person defined as an absentee under s. 747.01(1), shall wish to sell, lease, or mortgage specific property having a gross value of \$5,000 or more owned by the absentee or in which the absentee had an interest, or take specific action with respect to the absentee's interest having a gross value of \$5,000 or more, he or she may petition the circuit court for an order authorizing the action with respect to such property or interest.

(2) The petition shall be sworn to by the petitioner and shall state:

(b) The name, address, and age of any other person who would have an interest in the property or the estate of the absentee if she or he were deceased;

(c) The exact circumstances which cause the person missing to be an absentee under s. 747.01, including the date she or he was first known to be missing, interned, beleaguered, etc.;

(f) A statement of all property constituting an asset of the alleged absentee's estate or in which she or he has any interest and the approximate value of same.

Section 1137. Section 760.07, Florida Statutes, is amended to read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 1138. Paragraph (a) of subsection (7) of section 760.22, Florida Statutes, is amended to read:

760.22 Definitions.—As used in ss. 760.20-760.37, the term:

(7) "Handicap" means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

Section 1139. Section 760.24, Florida Statutes, is amended to read:

760.24 Discrimination in the provision of brokerage services.—It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, sex, handicap, familial status, or religion.

Section 1140. Subsection (1) of section 760.25, Florida Statutes, is amended to read:

760.25 Discrimination in the financing of housing or in residential real estate transactions.—

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, handicap, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, handicap, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

Section 1141. Subsection (2) of section 760.32, Florida Statutes, is amended to read:

760.32 Investigations; subpoenas; oaths.—

(2) Upon written application to the commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the commission to the same extent and subject to the same limitations as subpoenas issued by the commission itself. A subpoena issued at the request of a respondent shall show on its face the name and address of such respondent and shall state that it was issued at her or his request.

Section 1142. Section 760.37, Florida Statutes, is amended to read:

760.37 Interference, coercion, or intimidation; enforcement by administrative or civil action.—It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised, or on account of her or his having aided or encouraged any other person in the exercise of any right granted under ss. 760.20-760.37. This section may be enforced by appropriate administrative or civil action.

Section 1143. Subsection (3) of section 760.85, Florida Statutes, is amended to read:

760.85 Environmental Equity and Justice Commission created; membership; duties; public hearings; administration.—

(3) The Governor shall make the appointments described in subsection (2) after soliciting input from the Speaker of the House of Representatives, the President of the Senate, the ~~Chair~~ Chairman of the State Conference of Black Legislators, and the ~~Chair~~ Chairman of the Hispanic Caucus. The members of the commission shall be appointed by September 30, 1994. The commission shall meet initially and make study assignments by November 30, 1994, and shall complete its study assignments and issue a preliminary written report by June 30, 1995.

Section 1144. Section 765.102, Florida Statutes, is amended to read:

765.102 Legislative findings and intent.—

(1) The Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions pertaining to his or her own health, including the right to choose or refuse medical treatment. This right is subject to certain interests of society, such as the protection of human life and the preservation of ethical standards in the medical profession.

(2) To ensure that such right is not lost or diminished by virtue of later physical or mental incapacity, the Legislature intends that a procedure be established to allow a person to plan for incapacity by designating another person to direct the course of his or her medical treatment upon his or her incapacity. Such procedure should be less expensive and less restrictive than guardianship and permit a previously incapacitated person to exercise his or her full right to make health care decisions as soon as the capacity to make such decisions has been regained.

(3) The Legislature further finds that the artificial prolongation of life for a person with a terminal condition may secure for him or her only a precarious and burdensome existence, while providing nothing medically necessary or beneficial to the patient. In order that the rights and intentions of a person with such a condition may be respected even after he or she is no longer able to participate actively in decisions concerning himself or herself, and to encourage communication among such patient, his or her family, and his or her physician, the Legislature declares that the laws of this state recognize the right of a competent adult to make an advance directive instructing his or her physician to provide, withhold, or withdraw life-prolonging procedures, or to designate another to make the treatment decision for him or her in the event that such person should be found to be incompetent and suffering from a terminal condition.

Section 1145. Section 765.203, Florida Statutes, is amended to read:

765.203 Suggested form of designation.—A written designation of a health care surrogate executed pursuant to this chapter may, but need not be, in the following form:

DESIGNATION OF HEALTH CARE SURROGATE

Name:....(Last)....(First)....(Middle Initial)....

In the event that I have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:

Name:
Address: Zip Code:
Phone:.....

If my surrogate is unwilling or unable to perform his or her duties, I wish to designate as my alternate surrogate:

Name:
Address: Zip Code:
Phone:.....

I fully understand that this designation will permit my designee to make health care decisions and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.

Additional instructions (optional):
.....
.....

I further affirm that this designation is not being made as a condition of treatment or admission to a health care facility. I will notify and send a copy of this document to the following persons other than my surrogate, so they may know who my surrogate is.

Name:
Name:
.....
.....

Signed:
Date:
Witnesses: 1.
2.

Section 1146. Subsections (1) and (2) of section 765.204, Florida Statutes, are amended to read:

765.204 Capacity of principal; procedure.—

(1) A principal is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. Incapacity may not be inferred from the person's voluntary or involuntary hospitalization for mental illness or from her or his mental retardation.

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is in question, the attending physician shall evaluate the principal's capacity. If the attending physician concludes that the principal lacks such capacity, another physician shall evaluate the principal's capacity. If the second physician agrees that the principal lacks the capacity to make health care decisions or provide informed consent, the health care facility shall enter both physicians' evaluations in the principal's clinical record and, if the principal has designated a health care surrogate, shall notify such surrogate in writing that her or his authority under the instrument has commenced.

Section 1147. Subsection (2) of section 765.302, Florida Statutes, is amended to read:

765.302 Procedure for making a living will; notice to physician.—

(2) It is the responsibility of the principal to provide for notification to her or his attending or treating physician that the living will has been made. In the event the principal is physically or mentally incapacitated at the time the principal is admitted to a health care facility, any other person may notify the physician or health care facility of the existence of the living will. An attending or treating physician or health care facility which is so notified shall promptly make the living will or a copy thereof a part of the principal's medical records.

Section 1148. Subsection (1) of section 765.308, Florida Statutes, is amended to read:

765.308 Transfer of a patient.—

(1) A health care provider or facility that refuses to comply with the declaration of a patient, or the treatment decision of his or her surrogate, shall make reasonable efforts to transfer the patient to another health care provider or facility that will comply with the declaration or treatment decision. This chapter does not require a health care provider or facility to commit any act which is contrary to the provider's or facility's moral or ethical beliefs concerning life-prolonging procedures, if the patient:

(a) Is not in an emergency condition, and

(b) Has received written information upon admission informing the patient of the policies of the health care provider or facility regarding such moral or ethical beliefs.

Section 1149. Subsection (2) of section 766.102, Florida Statutes, is amended to read:

766.102 Medical negligence; standards of recovery.—

(2)(a) If the health care provider whose negligence is claimed to have created the cause of action is not certified by the appropriate American board as being a specialist, is not trained and experienced in a medical specialty, or does not hold himself or herself out as a specialist, a "similar health care provider" is one who:

1. Is licensed by the appropriate regulatory agency of this state;
2. Is trained and experienced in the same discipline or school of practice; and
3. Practices in the same or similar medical community.

(b) If the health care provider whose negligence is claimed to have created the cause of action is certified by the appropriate American board as a specialist, is trained and experienced in a medical specialty, or holds himself or herself out as a specialist, a “similar health care provider” is one who:

1. Is trained and experienced in the same specialty; and
2. Is certified by the appropriate American board in the same specialty.

However, if any health care provider described in this paragraph is providing treatment or diagnosis for a condition which is not within his or her specialty, a specialist trained in the treatment or diagnosis for that condition shall be considered a “similar health care provider.”

(c) The purpose of this subsection is to establish a relative standard of care for various categories and classifications of health care providers. Any health care provider may testify as an expert in any action if he or she:

1. Is a similar health care provider pursuant to paragraph (a) or paragraph (b); or
2. Is not a similar health care provider pursuant to paragraph (a) or paragraph (b) but, to the satisfaction of the court, possesses sufficient training, experience, and knowledge as a result of practice or teaching in the specialty of the defendant or practice or teaching in a related field of medicine, so as to be able to provide such expert testimony as to the prevailing professional standard of care in a given field of medicine. Such training, experience, or knowledge must be as a result of the active involvement in the practice or teaching of medicine within the 5-year period before the incident giving rise to the claim.

Section 1150. Subsection (3) of section 766.103, Florida Statutes, is amended to read:

766.103 Florida Medical Consent Law.—

(3) No recovery shall be allowed in any court in this state against any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, podiatrist licensed under chapter 461, or dentist licensed under chapter 466 in an action brought for treating, examining, or operating on a patient without his or her informed consent when:

(a)1. The action of the physician, osteopath, chiropractor, podiatrist, or dentist in obtaining the consent of the patient or another person authorized

to give consent for the patient was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community; and

2. A reasonable individual, from the information provided by the physician, osteopath, chiropractor, podiatrist, or dentist, under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other physicians, osteopaths, chiropractors, podiatrists, or dentists in the same or similar community who perform similar treatments or procedures; or

(b) The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the physician, osteopath, chiropractor, podiatrist, or dentist in accordance with the provisions of paragraph (a).

Section 1151. Subsection (1) of section 766.104, Florida Statutes, is amended to read:

766.104 Pleading in medical negligence cases; claim for punitive damages.—

(1) No action shall be filed for personal injury or wrongful death arising out of medical negligence, whether in tort or in contract, unless the attorney filing the action has made a reasonable investigation as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint or initial pleading shall contain a certificate of counsel that such reasonable investigation gave rise to a good faith belief that grounds exist for an action against each named defendant. For purposes of this section, good faith may be shown to exist if the claimant or his or her counsel has received a written opinion, which shall not be subject to discovery by an opposing party, of an expert as defined in s. 766.102 that there appears to be evidence of medical negligence. If the court determines that such certificate of counsel was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court shall award attorney's fees and taxable costs against claimant's counsel, and shall submit the matter to The Florida Bar for disciplinary review of the attorney.

Section 1152. Paragraphs (b) and (c) of subsection (2) and paragraphs (g) and (i) of subsection (3) of section 766.107, Florida Statutes, are amended to read:

766.107 Court-ordered arbitration.—

(2)

(b) A person may be certified to serve as an attorney arbitrator if the person ~~he~~ has been a member of The Florida Bar for at least 5 years and the chief judge determines that he or she is competent to serve as an arbitrator.

A person may be certified as a health care practitioner arbitrator if the person ~~he~~ has been licensed to practice his or her profession in this state for at least 5 years and the chief judge determines that he or she is competent to serve as an arbitrator. Current lists of all persons certified as arbitrators shall be maintained in the office of the clerk of the circuit court and shall be open to public inspection. An attorney may not be disqualified from appearing and acting as counsel in a case pending before the court because he or she is serving as an arbitrator in another case.

(c) The plaintiff or plaintiffs shall select one arbitrator from the claimant's list and the defendant or defendants shall select one arbitrator from the defendant's list, and each shall notify the chief judge of such selection. If a party does not select his or her arbitrator within 20 days, the party's right to select an arbitrator is waived and the chief judge shall proceed with the selection of an arbitrator from the appropriate list. The two arbitrators selected shall, within 10 days after their selection, select a third arbitrator from the third list. If the arbitrators have not selected the third arbitrator within such 10-day period, the chief judge shall submit three names from the third list to the two arbitrators. Each arbitrator shall strike one name from the list, and the person whose name remains shall be the third arbitrator. No person may serve as an arbitrator in any arbitration in which he or she has a financial or personal interest. The third arbitrator shall disclose any circumstances likely to create a presumption of bias which might disqualify him or her as an impartial arbitrator. Either party may advise the chief judge why an arbitrator should be disqualified from serving. If the third arbitrator resigns, is disqualified, or is unable to perform his or her duties, the chief judge shall appoint a replacement. If an arbitrator selected by one of the parties is unable to serve, that party shall select a replacement arbitrator, unless he or she has waived such right, in which case the replacement shall be selected by the chief judge. The chief judge shall designate one panel member as chair ~~chairman~~.

(3)

(g) Any party may have a recording and transcript of the arbitration hearing made at his or her own expense.

(i) No member of the arbitration panel shall be liable in damages for any action taken or recommendation made by such member in the performance of his or her duties as a member of the arbitration panel.

Section 1153. Subsections (2) and (5) of section 766.202, Florida Statutes, are amended to read:

766.202 Definitions.—As used in ss. 766.201-766.212, the term:

(2) "Collateral sources" means any payments made to the claimant, or made on his or her behalf, by or pursuant to:

(a) The United States Social Security Act; any federal, state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits, except as prohibited by federal law.

(b) Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by him or her or provided by others.

(c) Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.

(d) Any contractual or voluntary wage continuation plan provided by employers or by any other system intended to provide wages during a period of disability.

(5) "Medical expert" means a person duly and regularly engaged in the practice of his or her profession who holds a health care professional degree from a university or college and has had special professional training and experience or one possessed of special health care knowledge or skill about the subject upon which he or she is called to testify or provide an opinion.

Section 1154. Subsection (2) of section 766.303, Florida Statutes, is amended to read:

766.303 Florida Birth-Related Neurological Injury Compensation Plan; exclusiveness of remedy.—

(2) The rights and remedies granted by this plan on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, her or his personal representative, parents, dependents, and next of kin, at common law or otherwise, against any person or entity directly involved with the labor, delivery, or immediate postdelivery resuscitation during which such injury occurs, arising out of or related to a medical malpractice claim with respect to such injury; except that a civil action shall not be foreclosed where there is clear and convincing evidence of bad faith or malicious purpose or willful and wanton disregard of human rights, safety, or property, provided that such suit is filed prior to and in lieu of payment of an award under ss. 766.301-766.316. Such suit shall be filed before the award of the division becomes conclusive and binding as provided for in s. 766.311.

Section 1155. Section 767.04, Florida Statutes, is amended to read:

767.04 Dog owner's liability for damages to persons bitten.—The owner of any dog that bites any person while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of the dog, is liable for damages suffered by persons bitten, regardless of the former viciousness of the dog or the owners' knowledge of such viciousness. However, any negligence on the part of the person bitten that is a proximate cause of the biting incident reduces the liability of the owner of the dog by the percentage that the bitten person's negligence contributed to the biting incident. A person is lawfully upon private property of such owner within the meaning of this act when the person ~~he~~ is on such property in the performance of any duty imposed upon him or her by the laws of this state

or by the laws or postal regulations of the United States, or when the person ~~he~~ is on such property upon invitation, expressed or implied, of the owner. However, the owner is not liable, except as to a person under the age of 6, or unless the damages are proximately caused by a negligent act or omission of the owner, if at the time of any such injury the owner had displayed in a prominent place on his or her premises a sign easily readable including the words "Bad Dog." The remedy provided by this section is in addition to and cumulative with any other remedy provided by statute or common law.

Section 1156. Subsection (2) of section 767.11, Florida Statutes, is amended to read:

767.11 Definitions.—As used in this act, unless the context clearly requires otherwise:

(2) "Unprovoked" means that the victim who has been conducting himself or herself peacefully and lawfully has been bitten or chased in a menacing fashion or attacked by a dog.

Section 1157. Subsections (2), (3), and (4) of section 767.12, Florida Statutes, are amended to read:

767.12 Classification of dogs as dangerous; certification of registration; notice and hearing requirements; confinement of animal; exemption; appeals; unlawful acts.—

(2) Within 14 days after a dog has been classified as dangerous by the animal control authority or a dangerous dog classification is upheld by the county court on appeal, the owner of the dog must obtain a certificate of registration for the dog from the animal control authority serving the area in which he or she resides, and the certificate shall be renewed annually. Animal control authorities are authorized to issue such certificates of registration, and renewals thereof, only to persons who are at least 18 years of age and who present to the animal control authority sufficient evidence of:

- (a) A current certificate of rabies vaccination for the dog.
- (b) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign at all entry points that informs both children and adults of the presence of a dangerous dog on the property.
- (c) Permanent identification of the dog, such as a tattoo on the inside thigh or electronic implantation.

The appropriate governmental unit may impose an annual fee for the issuance of certificates of registration required by this section.

(3) The owner shall immediately notify the appropriate animal control authority when a dog that has been classified as dangerous:

- (a) Is loose or unconfined.
- (b) Has bitten a human being or attacked another animal.

- (c) Is sold, given away, or dies.
- (d) Is moved to another address.

Prior to a dangerous dog being sold or given away, the owner shall provide the name, address, and telephone number of the new owner to the animal control authority. The new owner must comply with all of the requirements of this act and implementing local ordinances, even if the animal is moved from one local jurisdiction to another within the state. The animal control officer must be notified by the owner of a dog classified as dangerous that the dog is in his or her jurisdiction.

(4) It is unlawful for the owner of a dangerous dog to permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but will prevent it from biting any person or animal. The owner may exercise the dog in a securely fenced or enclosed area that does not have a top, without a muzzle or leash, if the dog remains within his or her sight and only members of the his immediate household or persons 18 years of age or older are allowed in the enclosure when the dog is present. When being transported, such dogs must be safely and securely restrained within a vehicle.

Section 1158. Subsection (2) of section 768.041, Florida Statutes, is amended to read:

768.041 Release or covenant not to sue.—

(2) At trial, if any defendant shows the court that the plaintiff, or any person lawfully on her or his behalf, has delivered a release or covenant not to sue to any person, firm, or corporation in partial satisfaction of the damages sued for, the court shall set off this amount from the amount of any judgment to which the plaintiff would be otherwise entitled at the time of rendering judgment and enter judgment accordingly.

Section 1159. Subsection (2) of section 768.0425, Florida Statutes, is amended to read:

768.0425 Damages in actions against contractors for injuries sustained from negligence, malfeasance, or misfeasance.—

(2) In any action against a contractor for injuries sustained resulting from the contractor's negligence, malfeasance, or misfeasance, the consumer shall be entitled to three times the actual compensatory damages sustained in addition to costs and attorney's fees if the contractor is neither certified as a contractor by the state nor licensed as a contractor pursuant to the laws of the municipality or county within which she or he is conducting business.

Section 1160. Section 768.07, Florida Statutes, is amended to read:

768.07 Railroad liability for injury to employees.—If any person is injured by a railroad company by the running of the locomotives or cars, or

other machinery of such company, the person ~~he~~ being at the time of such injury an employee of the company, and the damage was caused by negligence of another employee, and without fault or negligence on the part of the person injured, her or his employment by the company shall be no bar to a recovery. No contract which restricts such liability shall be legal or binding.

Section 1161. Section 768.075, Florida Statutes, is amended to read:

768.075 Immunity from liability for injury to trespassers on real property.—A person or organization owning or controlling an interest in real property, or an agent of such person or organization, shall not be held liable for any civil damages for death of or injury or damage to a trespasser upon the property resulting from or arising by reason of the trespasser's commission of the offense of trespass as described in s. 810.08 or s. 810.09, when such trespasser was under the influence of alcoholic beverages with a blood alcohol level of 0.10 percent or higher, when such trespasser was under the influence of any chemical substance set forth in s. 877.111, when such trespasser was illegally under the influence of any substance controlled under chapter 893, or if the trespasser is affected by any of the aforesaid substances to the extent that her or his normal faculties are impaired. For the purposes of this section, voluntary intoxication or impediment of faculties by use of alcohol or any of the aforementioned substances shall not excuse a party bringing an action or on whose behalf an action is brought from proving the elements of trespass. However, the person or organization owning or controlling the interest in real property shall not be immune from liability if gross negligence or willful and wanton misconduct on the part of such person or organization or agent thereof is a proximate cause of the death of or injury or damage to the trespasser.

Section 1162. Section 768.08, Florida Statutes, is amended to read:

768.08 Liability of corporations having relief department for injury to employees; contracts in violation of act void.—Any person, association of persons, or corporation that has, or shall hereafter have, a relief department for the benefit of their or its employees, or which shall contribute any money or other thing of value to any relief society or association for the benefit of their or its employees, to which such employee may also contribute any money, or other thing of value, shall not be relieved of liability to such employee, or in case of her or his death to any person authorized by law to sue for such death, for the negligent injury or killing of such employee, because such employee may have been a member of or contributed to any such relief department, or received any benefits therefrom, but such employee, and in case of her or his death any person or persons authorized by law to sue for such death, shall be entitled to demand, sue for and recover any benefit that such employee may have been entitled to receive by reason of having been a member of or contributed to any such relief department, society or association, and such employee, and in case of her or his death any person authorized by law to sue for such death, shall be entitled to institute suit against any such person, association of persons or corporations, and to recover for any injury suffered by such employee and for the death of such employee, suffered through the negligence of such person, association of persons, or corporation, and any contract, stipulation or provision in violation of this section is declared to be null and void.

Section 1163. Subsection (1) of section 768.091, Florida Statutes, is amended to read:

768.091 Employer liability limits; ridesharing.—

(1) No employer shall be liable for injuries or damages sustained by operators, passengers, or other persons resulting from the operation of a motor vehicle while being used in a ridesharing arrangement between a place of residence and a place of employment or termini near such places; nor shall such employer be liable for injuries or damages sustained to operators, passengers, or other persons because such employer provides information or incentives to, or otherwise encourages, employees to participate in ridesharing arrangements. However, this section does not apply to motor vehicles owned or leased by an employer nor to acts by an employee within the scope of his employment as defined in subsection (2).

Section 1164. Subsection (3) of section 768.13, Florida Statutes, is amended to read:

768.13 Good Samaritan Act; immunity from civil liability.—

(3) Any person, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person ~~man~~ would have acted under the same or similar circumstances.

Section 1165. Subsections (1) and (2) of section 768.137, Florida Statutes, as enacted by section 1 of chapter 92-85, Laws of Florida, are amended to read:

768.137 Definition; limitation of civil liability for certain farmers; exception.—

(1) For the purposes of this section, the term “farmer” means a person who is engaging in the growing or producing of farm produce, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land or a person designated in writing by the owner or lessee to act as her or his agent.

(2) Any farmer who gratuitously allows persons to enter upon her or his own land for the purpose of removing any farm produce or crops remaining in ~~the his~~ fields following the harvesting thereof, shall be exempt from civil liability arising out of any injury or death resulting from the nature or condition of such land or the nature, age, or condition of any such farm produce or crop.

Section 1166. Subsection (2) of section 768.137, Florida Statutes, as enacted by section 3 of chapter 92-151, Laws of Florida, is amended to read:

768.137 Definition; limitation of civil liability for certain farmers; exception.—

(2) Any farmer who gratuitously allows persons to enter upon her or his own land for the purpose of removing any farm produce or crops remaining in the his fields following the harvesting thereof shall be exempt from civil liability arising out of any injury or death resulting from the nature or condition of such land or the nature, age, or condition of any such farm produce or crop provided that this exemption shall not apply if the farmer knowingly allows a dangerous condition or situation to exist and does not disclose such condition or situation.

Section 1167. Subsection (5) of section 768.18, Florida Statutes, is amended to read:

768.18 Definitions.—As used in ss. 768.16-768.27:

(5) “Net accumulations” means the part of the decedent’s expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of her or his estate if the decedent ~~he~~ had lived her or his normal life expectancy. “Net business or salary income” is the part of the decedent’s probable gross income after taxes, excluding income from investments continuing beyond death, that remains after deducting the decedent’s personal expenses and support of survivors, excluding contributions in kind.

Section 1168. Section 768.20, Florida Statutes, is amended to read:

768.20 Parties.—The action shall be brought by the decedent’s personal representative, who shall recover for the benefit of the decedent’s survivors and estate all damages, as specified in this act, caused by the injury resulting in death. When a personal injury to the decedent results in his death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate. The wrongdoer’s personal representative shall be the defendant if the wrongdoer dies before or pending the action. A defense that would bar or reduce a survivor’s recovery if she or he were the plaintiff may be asserted against the survivor ~~him~~, but shall not affect the recovery of any other survivor.

Section 1169. Subsection (1) and paragraph (b) of subsection (6) of section 768.21, Florida Statutes, are amended to read:

768.21 Damages.—All potential beneficiaries of a recovery for wrongful death, including the decedent’s estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

(1) Each survivor may recover the value of lost support and services from the date of the decedent’s injury to her or his death, with interest, and future loss of support and services from the date of death and reduced to present value. In evaluating loss of support and services, the survivor’s relationship to the decedent, the amount of the decedent’s probable net income available for distribution to the particular survivor, and the replacement value of the

decedent's services to the survivor may be considered. In computing the duration of future losses, the joint life expectancies of the survivor and the decedent and the period of minority, in the case of healthy minor children, may be considered.

(6) The decedent's personal representative may recover for the decedent's estate the following:

(b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against her or his estate or that were paid by or on behalf of decedent, excluding amounts recoverable under subsection (5).

Section 1170. Section 768.24, Florida Statutes, is amended to read:

768.24 Death of a survivor before judgment.—A survivor's death before final judgment shall limit the survivor's recovery to lost support and services to the date of his or her death. The personal representative shall pay the amount recovered to the personal representative of the deceased survivor.

Section 1171. Paragraphs (b) and (f) of subsection (2) and paragraphs (c) and (d) of subsection (4) of section 768.31, Florida Statutes, are amended to read:

768.31 Contribution among tortfeasors.—

(2) RIGHT TO CONTRIBUTION.—

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than her or his pro rata share of the common liability, and the tortfeasor's his total recovery is limited to the amount paid by her or him in excess of her or his pro rata share. No tortfeasor is compelled to make contribution beyond her or his own pro rata share of the entire liability.

(f) This act does not impair any right of indemnity under existing law. When one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of her or his indemnity obligation.

(4) ENFORCEMENT.—

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by her or him to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the tortfeasor's his right of contribution is barred unless she or he has either:

1. Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against her or him and has commenced her or his action for contribution within 1 year after payment, or

2. Agreed, while action is pending against her or him, to discharge the common liability and has within 1 year after the agreement paid the liability and commenced her or his action for contribution.

Section 1172. Section 768.72, Florida Statutes, is amended to read:

768.72 Pleading in civil actions; claim for punitive damages.—In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

Section 1173. Subsection (1) and paragraph (a) of subsection (2) of section 768.76, Florida Statutes, are amended to read:

768.76 Collateral sources of indemnity.—

(1) In any action to which this part applies in which liability is admitted or is determined by the trier of fact and in which damages are awarded to compensate the claimant for losses sustained, the court shall reduce the amount of such award by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant ~~him~~, from all collateral sources; however, there shall be no reduction for collateral sources for which a subrogation or reimbursement right exists. Such reduction shall be offset to the extent of any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of the claimant's ~~his~~ immediate family to secure her or his right to any collateral source benefit which the claimant ~~he~~ is receiving as a result of her or his injury.

(2) For purposes of this section:

(a) “Collateral sources” means any payments made to the claimant, or made on the claimant's ~~his~~ behalf, by or pursuant to:

1. The United States Social Security Act, except Title XVIII and Title XIX; any federal, state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits, except those prohibited by federal law and those expressly excluded by law as collateral sources.

2. Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by her or him or provided by others.

3. Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.

4. Any contractual or voluntary wage continuation plan provided by employers or by any other system intended to provide wages during a period of disability.

Section 1174. Paragraph (f) of subsection (1) of section 768.78, Florida Statutes, is amended to read:

768.78 Alternative methods of payment of damage awards.—

(1)

(f) Claimant's attorney's fee, if payable from the judgment, shall be based upon the total judgment, adding all amounts awarded for past and future damages. The attorney's fee shall be paid from past and future damages in the same proportion. If a claimant has agreed to pay her or his attorney's fees on a contingency fee basis, the claimant shall be responsible for paying the agreed percentage calculated solely on the basis of that portion of the award not subject to periodic payments. The remaining unpaid portion of the attorney's fees shall be paid in a lump sum by the defendant, who shall receive credit against future payments for this amount. However, the credit against each future payment is limited to an amount equal to the contingency fee percentage of each periodic payment. Any provision of this paragraph may be modified by the agreement of all interested parties.

Section 1175. Subsection (1) of section 768.79, Florida Statutes, is amended to read:

768.79 Offer of judgment and demand for judgment.—

(1) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him or on the defendant's his behalf pursuant to a policy of liability insurance or other contract from the date of filing of the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and attorney's fees against the award. Where such costs and attorney's fees total more than the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the plaintiff's award. If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney's fees incurred from the date of the filing of the demand. If rejected, neither an offer nor demand is admissible in subsequent litigation, except for pursuing the penalties of this section.

Section 1176. Section 769.03, Florida Statutes, is amended to read:

769.03 Recovery for injuries where employee and employer both at fault; damages; negligence of fellow servant.—The persons mentioned in s. 769.01 shall not be liable in damages for injuries to their agents and employees, or for the death of such agents and employees, where same is done by their

consent, or is caused by their own negligence. If the employees or agents injured or killed, and the persons mentioned in s. 769.01, or their agents and employees are both at fault, there may be a recovery, but the amount of the recovery shall be such a proportion of the entire damages sustained, as the defendant's negligence bears to the combined negligence of both the plaintiff and the defendant; provided, that damages shall not be recovered for injuries to an employee injured in part through his or her own negligence and in part through the negligence of another employee, when both of such employees are fellow servants, where the former and latter are jointly engaged in performing the act causing the injury and the employer is guilty of no negligence contributing to such injury.

Section 1177. Section 769.04, Florida Statutes, is amended to read:

769.04 Doctrine of "assumption of risk" abrogated.—The doctrine of "assumption of risk" shall not obtain in any case arising under the provisions of this chapter, where the injury or death was attributable to the negligence of the employer, his or her agents or servants.

Section 1178. Section 770.01, Florida Statutes, is amended to read:

770.01 Notice condition precedent to action or prosecution for libel or slander.—Before any civil action is brought for publication or broadcast, in a newspaper, periodical, or other medium, of a libel or slander, the plaintiff shall, at least 5 days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory.

Section 1179. Section 770.08, Florida Statutes, is amended to read:

770.08 Limitation on recovery of damages.—No person shall have more than one choice of venue for damages for libel founded upon a single publication or exhibition or utterance, as described in s. 770.05, and upon his or her election in any one of his or her choices of venue, then the person ~~he~~ shall be bound to recover there all damages allowed him or her.

Section 1180. Section 772.104, Florida Statutes, is amended to read:

772.104 Civil cause of action.—Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts. In no event shall punitive damages be awarded under this section. The defendant shall be entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support. In awarding attorney's fees and costs under this section, the court shall not consider the ability of the opposing party to pay such fees and costs. Nothing under this section shall be interpreted as limiting any right to recover attorney's fees or costs provided under other provisions of law.

Section 1181. Section 772.11, Florida Statutes, is amended to read:

772.11 Civil remedy for theft.—Any person who proves by clear and convincing evidence that he or she has been injured in any fashion by reason of any violation of the provisions of ss. 812.012-812.037 has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts. Before filing an action for damages under this section, the person claiming injury must make a written demand for \$200 or the treble damage amount of the person liable for damages under this section. If the person to whom a written demand is made complies with such demand within 30 days after receipt of the demand, that person shall be given a written release from further civil liability for the specific act of theft by the person making the written demand. Any person who has a cause of action under this section may recover the damages allowed under this section from the parents or legal guardian of any unemancipated minor who lives with his or her parents or legal guardian and who is liable for damages under this section. In no event shall punitive damages be awarded under this section. The defendant shall be entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support. In awarding attorney's fees and costs under this section, the court shall not consider the ability of the opposing party to pay such fees and costs. Nothing under this section shall be interpreted as limiting any right to recover attorney's fees or costs provided under other provisions of law.

Section 1182. Subsection (1) of section 773.01, Florida Statutes, is amended to read:

773.01 Definitions.—As used in ss. 773.01-773.05:

(1) "Engages in an equine activity" means riding, training, assisting in veterinary treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted, visiting or touring or utilizing an equine facility as part of an organized event or activity, or any person assisting a participant or show management. The term "engages in an equine activity" does not include being a spectator at an equine activity, except in cases where a spectator places himself or herself in an unauthorized area.

Section 1183. Paragraph (b) of subsection (2) of section 773.03, Florida Statutes, is amended to read:

773.03 Limitation on liability for equine activity; exceptions.—

(2) Nothing in s. 773.02 shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine professional, or person:

(b) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity, or to determine the ability of the participant to safely manage the

particular equine based on the participant's representation of his or her ability;

Section 1184. Section 775.04, Florida Statutes, is amended to read:

775.04 What penal acts or omissions not public offenses.—Acts or omissions to which a pecuniary penalty is attached, recoverable by action by a person for his or her own use or for the use, in whole or in part, of the state or of a county or a public body, or of a corporation, are not public offenses within the meaning of these statutes.

Section 1185. Section 775.0845, Florida Statutes, is amended to read:

775.0845 Wearing mask while committing offense; enhanced penalties.—The penalty for any criminal offense, other than a violation of ss. 876.12-876.15, shall be increased as provided in this section if, while committing the offense, the offender was wearing a hood, mask, or other device that concealed his or her identity.

(1)(a) A misdemeanor of the second degree shall be punishable as if it were a misdemeanor of the first degree.

(b) A misdemeanor of the first degree shall be punishable as if it were a felony of the third degree. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such offense is ranked in level 2 of the offense severity ranking chart.

(2)(a) A felony of the third degree shall be punishable as if it were a felony of the second degree.

(b) A felony of the second degree shall be punishable as if it were a felony of the first degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense which is reclassified under this subsection is ranked one level above the ranking under s. 921.0012 or s. 921.0013 of the offense committed.

Section 1186. Subsection (2) of section 775.0846, Florida Statutes, is amended to read:

775.0846 Wearing bulletproof vest while committing certain offenses.—

(2) A person is guilty of the unlawful wearing of a bulletproof vest when, acting alone or with one or more other persons and while possessing a firearm, he or she commits or attempts to commit any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy and, in the course of and in furtherance of any such crime, he or she wears a bulletproof vest.

Section 1187. Paragraph (b) of subsection (6) and subsections (7) and (12) of section 775.089, Florida Statutes, are amended to read:

775.089 Restitution.—

(6)

(b) The criminal court, at the time of enforcement of the restitution order, shall consider the financial resources of the defendant, the present and potential future financial needs and earning ability of the defendant and his or her dependents, and such other factors which it deems appropriate.

(7) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. The burden of demonstrating the present financial resources and the absence of potential future financial resources of the defendant and the financial needs of the defendant and his or her dependents is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(12)(a) Issuance of income deduction order with an order for restitution.—

1. Upon the entry of an order for restitution, the court shall enter a separate order for income deduction if one has not been entered.

2. The income deduction order shall direct a payor to deduct from all income due and payable to the defendant the amount required by the court to meet the defendant's obligation.

3. The income deduction order shall be effective so long as the order for restitution upon which it is based is effective or until further order of the court.

4. When the court orders the income deduction, the court shall furnish to the defendant a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state:

- a. All fees or interest which shall be imposed.
- b. The total amount of income to be deducted for each pay period.
- c. That the income deduction order applies to current and subsequent payors and periods of employment.
- d. That a copy of the income deduction order will be served on the defendant's payor or payors.
- e. That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of restitution owed.
- f. That the defendant is required to notify the clerk of court within 7 days after changes in the defendant's address, payors, and the addresses of his or her payors.

(b) Enforcement of income deduction orders.—

1. The clerk of court or probation officer shall serve an income deduction order and the notice to payor on the defendant's payor unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.

2.a. Service by or upon any person who is a party to a proceeding under this subsection shall be made in the manner prescribed in the Florida Rules of Civil Procedure for service upon parties.

b. Service upon the defendant's payor or successor payor under this subsection shall be made by prepaid certified mail, return receipt requested, or in the manner prescribed in chapter 48.

3. The defendant, within 15 days after having an income deduction order entered against him or her, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed. The timely request for a hearing shall stay the service of an income deduction order on all payors of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.

4. The notice to payor shall contain only information necessary for the payor to comply with the income deduction order. The notice shall:

a. Require the payor to deduct from the defendant's income the amount specified in the income deduction order and to pay that amount to the clerk of court.

b. Instruct the payor to implement the income deduction order no later than the first payment date which occurs more than 14 days after the date the income deduction order was served on the payor.

c. Instruct the payor to forward within 2 days after each payment date to the clerk of court the amount deducted from the defendant's income and a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.

d. Specify that, if a payor fails to deduct the proper amount from the defendant's income, the payor is liable for the amount the payor should have deducted plus costs, interest, and reasonable attorney's fees.

e. Provide that the payor may collect up to \$5 against the defendant's income to reimburse the payor for administrative costs for the first income deduction and up to \$2 for each deduction thereafter.

f. State that the income deduction order and the notice to payor are binding on the payor until further notice by the court or until the payor no longer provides income to the defendant.

g. Instruct the payor that, when he or she no longer provides income to the defendant, the payor ~~he~~ shall notify the clerk of court and shall also provide the defendant's last known address and the name and address of the

defendant's new payor, if known, and that, if the payor violates this provision, the payor is subject to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation.

h. State that the payor shall not discharge, refuse to employ, or take disciplinary action against the defendant because of an income deduction order and shall state that a violation of this provision subjects the payor to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation.

i. Inform the payor that, when he or she receives income deduction orders requiring that the income of two or more defendants be deducted and sent to the same clerk of court, the payor he may combine the amounts that are to be paid to the depository in a single payment as long as he or she identifies that portion of the payment attributable to each defendant.

j. Inform the payor that if the payor receives more than one income deduction order against the same defendant, he or she shall contact the court for further instructions.

5. The clerk of court shall enforce income deduction orders against the defendant's successor payor who is located in this state in the same manner prescribed in this subsection for the enforcement of an income deduction order against an original payor.

6. A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this provision is subject to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation.

7. When a payor no longer provides income to a defendant, the payor he shall notify the clerk of court and shall provide the defendant's last known address and the name and address of the defendant's new payor, if known. A payor who violates this provision is subject to a civil penalty not to exceed \$250 for the first violation or \$500 for a subsequent violation.

Section 1188. Section 776.012, Florida Statutes, is amended to read:

776.012 Use of force in defense of person.—A person is justified in the use of force, except deadly force, against another when and to the extent that the person he reasonably believes that such conduct is necessary to defend himself or herself or another against such other's imminent use of unlawful force. However, the person he is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

Section 1189. Section 776.031, Florida Statutes, is amended to read:

776.031 Use of force in defense of others.—A person is justified in the use of force, except deadly force, against another when and to the extent that the person he reasonably believes that such conduct is necessary to prevent or

terminate such other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person ~~he~~ is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony.

Section 1190. Subsection (2) of section 776.041, Florida Statutes, is amended to read:

776.041 Use of force by aggressor.—The justification described in the preceding sections of this chapter is not available to a person who:

(2) Initially provokes the use of force against himself or herself, unless:

(a) Such force is so great that the person ~~he~~ reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, the person ~~he~~ withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

Section 1191. Section 776.05, Florida Statutes, is amended to read:

776.05 Law enforcement officers; use of force in making an arrest.—A law enforcement officer, or any person whom the officer ~~he~~ has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer ~~He~~ is justified in the use of any force:

(1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;

(2) When necessarily committed in retaking felons who have escaped; or

(3) When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

(a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or

(b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

Section 1192. Subsection (2) of section 776.051, Florida Statutes, is amended to read:

776.051 Use of force in resisting or making an arrest; prohibition.—

(2) A law enforcement officer, or any person whom the officer ~~he~~ has summoned or directed to assist him or her, is not justified in the use of force if the arrest is unlawful and known by him or her to be unlawful.

Section 1193. Section 776.07, Florida Statutes, is amended to read:

776.07 Use of force to prevent escape.—

(1) A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody.

(2) A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

Section 1194. Section 777.011, Florida Statutes, is amended to read:

777.011 Principal in first degree.—Whoever commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed, is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.

Section 1195. Subsection (5) of section 777.04, Florida Statutes, is amended to read:

777.04 Attempts, solicitation, and conspiracy.—

(5) It is a defense to a charge of criminal attempt, criminal solicitation, or criminal conspiracy that, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose, the defendant:

(a) Abandoned his or her attempt to commit the offense or otherwise prevented its commission;

(b) After soliciting another person to commit an offense, persuaded such other person not to do so or otherwise prevented commission of the offense; or

(c) After conspiring with one or more persons to commit an offense, persuaded such persons not to do so or otherwise prevented commission of the offense.

Section 1196. Section 777.201, Florida Statutes, is amended to read:

777.201 Entrapment.—

(1) A law enforcement officer, a person engaged in cooperation with a law enforcement officer, or a person acting as an agent of a law enforcement officer perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of a crime, he or she induces or encourages and, as a direct result, causes another person to engage in conduct constituting such crime by employing methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than one who is ready to commit it.

(2) A person prosecuted for a crime shall be acquitted if the person he proves by a preponderance of the evidence that his or her criminal conduct occurred as a result of an entrapment. The issue of entrapment shall be tried by the trier of fact.

Section 1197. Section 782.02, Florida Statutes, is amended to read:

782.02 Justifiable use of deadly force.—The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her or upon or in any dwelling house in which such person shall be.

Section 1198. Paragraph (b) of subsection (4) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence for protective injunction; powers and duties of court and clerk of court; filing and form of petition; notice and hearing; temporary injunction; issuance; statewide verification system; enforcement.—

(4)

(b) The sworn petition shall be in substantially the following form:

PETITION FOR INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE

Before me, the undersigned authority, personally appeared Petitioner ...(Name)..., who has been sworn and says that the following statements are true:

- 1. Petitioner resides at ...(address)...
- 2. Respondent resides at ...(address)...
- 3. Petitioner has suffered repeat violence as demonstrated by the fact that the respondent has: ...(enumerate incidents of violence)...

.....
.....
.....

4. Petitioner genuinely fears repeat violence by the respondent.

5. Petitioner seeks: an immediate injunction against the respondent, enjoining him or her from committing any further acts of repeat violence; an injunction enjoining the respondent from committing any further acts of repeat violence; and an injunction providing any terms the court deems necessary for the protection of the petitioner and the petitioner's his immediate family, including any injunctions or directives to law enforcement agencies.

Section 1199. Subsection (3) of section 784.05, Florida Statutes, is amended to read:

784.05 Culpable negligence.—

(3) Whoever violates subsection (1) by storing or leaving a loaded firearm within the reach or easy access of a minor commits, if the minor obtains the firearm and uses it to inflict injury or death upon himself or herself or any other person, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, this subsection does not apply:

(a) If the firearm was stored or left in a securely locked box or container or in a location which a reasonable person would have believed to be secure, or was securely locked with a trigger lock;

(b) If the minor obtains the firearm as a result of an unlawful entry by any person;

(c) To injuries resulting from target or sport shooting accidents or hunting accidents; or

(d) To members of the Armed Forces, National Guard, or State Militia, or to police or other law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties.

When any minor child is accidentally shot by another family member, no arrest shall be made pursuant to this subsection prior to 7 days after the date of the shooting. With respect to any parent or guardian of any deceased minor, the investigating officers shall file all findings and evidence with the state attorney's office with respect to violations of this subsection. The state attorney shall evaluate such evidence and shall take such action as he or she deems appropriate under the circumstances and may file an information against the appropriate parties.

Section 1200. Subsection (2) of section 784.08, Florida Statutes, is amended to read:

784.08 Assault or battery on persons 65 years of age or older; reclassification of offenses; minimum sentence.—

(2) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon a person 65 years of

age or older, regardless of whether he or she knows or has reason to know the age of the victim, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(b) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(c) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(d) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

Section 1201. Subsections (1), (2), (4), and (6) of section 787.03, Florida Statutes, are amended to read:

787.03 Interference with custody.—

(1) Whoever, without lawful authority, knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another to take or entice, any child 17 years of age or under or any incompetent person from the custody of ~~the child or incompetent person's~~ his parent, his or her guardian, a public agency having the lawful charge of the child or incompetent person, or any other lawful custodian commits the offense of interference with custody and shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) In the absence of a court order determining rights to custody or visitation with any child 17 years of age or under or with any incompetent person, any parent of the child or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of such child or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that child or incompetent person within or without the state, with malicious intent to deprive another person of his or her right to custody of the child or incompetent person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is a defense that:

(a) The defendant reasonably believes that his or her action was necessary to preserve the child or the incompetent person from danger to his or her welfare.

(b) The child or incompetent person was taken away at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the child or incompetent person.

(6) This section shall not apply in cases where a spouse who is the victim of any act of domestic violence or who has reasonable cause to believe he or she is about to become the victim of any act of domestic violence, as defined in s. 741.28, or believes that his or her action was necessary to preserve the

child or the incompetent person from danger to his or her welfare seeks shelter from such acts or possible acts and takes with him or her any child 17 years of age or younger.

Section 1202. Paragraph (b) of subsection (3) of section 790.001, Florida Statutes, is amended to read:

790.001 Definitions.—The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this chapter, except where the context otherwise requires:

(3)

(b) “Tear gas gun,” “chemical weapon,” or “device” shall apply to all weapons of such nature except those designed to be carried in a ~~woman’s~~ handbag or a ~~man’s~~ pants or coat pocket or designed as a pocket pencil or pen and containing not more than one-half ounce of chemical.

Section 1203. Subsections (1) and (2) of section 790.01, Florida Statutes, are amended to read:

790.01 Carrying concealed weapons.—

(1) Whoever shall carry a concealed weapon or electric weapon or device on or about his or her person shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever shall carry a concealed firearm on or about his or her person shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1204. Subsection (2) of section 790.052, Florida Statutes, is amended to read:

790.052 Carrying concealed firearms; off-duty law enforcement officers.—

(2) The superior officer of any police department or sheriff’s office or the Florida Highway Patrol, if he or she elects to direct the officers under his or her supervision to carry concealed firearms while off duty, shall file a statement with the governing body of such department of his or her instructions and requirements relating to the carrying of said firearms.

Section 1205. Section 790.053, Florida Statutes, is amended to read:

790.053 Open carrying of weapons.—Except as otherwise provided by law, it shall be unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device; provided, however, that a person may openly carry a stun gun or nonlethal electric weapon or device designed solely for defensive purposes, which weapon does not fire a dart or projectile. Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1206. Paragraphs (f) and (j) of subsection (2), paragraph (b) of subsection (5), and subsections (11), (12), and (15) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(2) The Department of State shall issue a license if the applicant:

(f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under chapter 397 or under the provisions of former chapter 396 or has been convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

(j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application; and

(5) The applicant shall submit to the Department of State:

(b) A nonrefundable license fee not to exceed \$85, if he or she has not previously been issued a statewide license, or a nonrefundable license fee not to exceed \$70 for renewal of a statewide license. Costs for processing the set of fingerprints as required in paragraph (c) shall be borne by the applicant. However, an individual holding an active certification from the Criminal Justice Standards and Training Commission as a “law enforcement officer,” “correctional officer,” or “correctional probation officer” as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the licensing requirements of this section. If any individual holding an active certification from the Criminal Justice Standards and Training Commission as a “law enforcement officer,” a “correctional officer,” or a “correctional probation officer” as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) wishes to receive a concealed weapons or firearms license, such person is exempt from the background investigation and all background investigation fees, but shall pay the current license fees regularly required to be paid by nonexempt applicants. Further, a law enforcement officer, a correctional officer, or a correctional probation officer as defined in s. 943.10(1), (2), or (3) is exempt from the required fees and background investigation for a period of 1 year subsequent to the date of retirement of said officer as a law enforcement officer, a correctional officer, or a correctional probation officer.

(11) No less than 90 days prior to the expiration date of the license, the Department of State shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State. The licensee must renew his or her license on or before the expiration date by filing with the Department of State the renewal form containing a notarized affidavit stating that the licensee remains qualified pursuant to the criteria

specified in subsections (2) and (3), a color photograph as specified in paragraph (5)(e), and the required renewal fee. Out-of-state residents must also submit a completed fingerprint card and fingerprint processing fee. The license shall be renewed upon receipt of the completed renewal form, color photograph, appropriate payment of fees, and, if applicable, a completed fingerprint card. Additionally, a licensee who fails to file a renewal application on or before its expiration date must renew his or her license by paying a late fee of \$15. No license shall be renewed 6 months or more after its expiration date, and such license shall be deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure; however, an application for licensure and fees pursuant to subsection (5) must be submitted, and a background investigation shall be conducted pursuant to the provisions of this section. Persons who knowingly file false information pursuant to this subsection shall be subject to criminal prosecution under s. 837.06.

(12) No license issued pursuant to this section shall authorize any person to carry a concealed weapon or firearm into any place of nuisance as defined in s. 823.05; any police, sheriff, or highway patrol station; any detention facility, prison, or jail; any courthouse; any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom; any polling place; any meeting of the governing body of a county, public school district, municipality, or special district; any meeting of the Legislature or a committee thereof; any school, college, or professional athletic event not related to firearms; any school administration building; any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose; any elementary or secondary school facility; any area technical center; any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile; inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or any place where the carrying of firearms is prohibited by federal law. Any person who willfully violates any provision of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(15) The Legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed weapons and firearms for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed weapons or firearms for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this section is subjectively or arbitrarily denied his or her rights. The Department of State shall implement and administer the provisions of this section. The Legislature does not delegate to the Department of State the authority to regulate or restrict the issuing of licenses provided for in this section, beyond those provisions contained in this section. Subjective or arbitrary actions or rules which encumber the

issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this section or which create restrictions beyond those specified in this section are in conflict with the intent of this section and are prohibited. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms, and nothing in this section shall impair or diminish such rights.

Section 1207. Subsections (3) and (6) of section 790.08, Florida Statutes, are amended to read:

790.08 Taking possession of weapons and arms; reports; disposition; custody.—

(3) If the person arrested as aforesaid is acquitted of the offenses mentioned in subsection (2), the said weapons, electric weapons or devices, or arms taken from the person ~~him~~ as aforesaid shall be returned to him or her; however, if he or she fails to call for or receive the same within 60 days from and after his or her acquittal or the dismissal of the charges against him or her, the same shall be delivered to the sheriff as aforesaid to be held by the sheriff ~~him~~ as hereinafter provided. This subsection shall likewise apply to persons and their weapons, electric weapons or devices, or arms who have heretofore been acquitted or the charges against them dismissed.

(6) Weapons, electric weapons or devices, and arms coming into the hands of the sheriff as aforesaid shall be listed, kept, and held by him or her as custodian for the state. Any or all such weapons, electric weapons or devices, and arms suitable for use by the sheriff may be so used. All such weapons, electric weapons or devices, and arms not needed by the said sheriff may be loaned to any other department of the state or to any county or municipality having use for such weapons, electric weapons or devices, and arms. The sheriff shall take the receipt of such other department, county, or municipality for such weapons, electric weapons or devices, and arms loaned to them. All weapons, electric weapons or devices, and arms which are not needed or which are useless or unfit for use shall be destroyed or otherwise disposed of by the sheriff as provided in chapter 705 or as provided in the Florida Contraband Forfeiture Act. All sums received from the sale or other disposition of the said weapons, electric weapons or devices, or arms disposed of by the sheriff under chapter 705 as aforesaid shall be paid into the State Treasury for the benefit of the State School Fund and shall become a part thereof. All sums received from the sale or other disposition of any such weapons, electric weapons or devices, or arms disposed of by the sheriff under the Florida Contraband Forfeiture Act shall be disbursed as provided therein.

Section 1208. Section 790.11, Florida Statutes, is amended to read:

790.11 Carrying firearms in national forests prohibited.—Except during the hunting season as established by law, no person shall carry, on or about his or her person, or in any vehicle in which such person may be riding, or on any animal which such person may be using, within the limits of a national forest area within the state, any gun or firearm of any description

whatever, without first having obtained a permit as hereinafter prescribed except on state roads when securely locked within a vehicle.

Section 1209. Paragraph (d) of subsection (2) of section 790.115, Florida Statutes, is amended to read:

790.115 Possessing or discharging weapons or firearms on school property prohibited; penalties; exceptions.—

(2)

(d) A person who discharges any weapon or firearm while in violation of paragraph (a), unless discharged for lawful defense of himself or herself or another or for a lawful purpose, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1210. Subsection (3) of section 790.151, Florida Statutes, is amended to read:

790.151 Using firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances; penalties.—

(3) It is unlawful and punishable as provided in subsection (4) for any person who is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, when affected to the extent that his or her normal faculties are impaired, to use a firearm in this state.

Section 1211. Paragraph (a) of subsection (1) of section 790.153, Florida Statutes, is amended to read:

790.153 Tests for impairment or intoxication; right to refuse.—

(1)(a) Any person who uses a firearm within this state shall submit to an approved chemical or physical breath test to determine the alcoholic content of the blood and to a urine test to detect the presence of controlled substances, if there is probable cause to believe that the person was using a firearm while under the influence of alcoholic beverages or controlled substances or that the person is lawfully arrested for any offense allegedly committed while he or she was using a firearm while under the influence of alcoholic beverages or controlled substances. The breath test shall be incidental to a lawful arrest and administered at the request of a law enforcement officer who has probable cause to believe such person was using the firearm within this state while under the influence of alcoholic beverages. The urine test shall be incidental to a lawful arrest and administered at a detention facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has probable cause to believe such person was using a firearm within this state while under the influence of controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of either test shall not preclude the administration of the other test. The refusal to submit to a chemical or physical

breath or urine test upon the request of a law enforcement officer as provided in this section shall be admissible into evidence in any criminal proceeding. This section shall not hinder the taking of a mandatory blood test as outlined in s. 790.155.

Section 1212. Paragraph (a) of subsection (1) of section 790.155, Florida Statutes, is amended to read:

790.155 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.—

(1)(a) Notwithstanding any recognized ability to refuse to submit to the tests provided in s. 790.153, if a law enforcement officer has probable cause to believe that a firearm used by a person under the influence of alcoholic beverages or controlled substances has caused the death or serious bodily injury of a human being, such person shall submit, upon the request of a law enforcement officer, to a test of his or her blood for the purpose of determining the alcoholic content thereof or the presence of controlled substances therein. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner.

Section 1213. Subsections (1), (2), and (4) of section 790.157, Florida Statutes, are amended to read:

790.157 Presumption of impairment; testing methods.—

(1) It is unlawful and punishable as provided in s. 790.151 for any person who is under the influence of alcoholic beverages or controlled substances, when affected to the extent that his or her normal faculties are impaired, to use a firearm in this state.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while using a firearm while under the influence of alcoholic beverages or controlled substances, when affected to the extent that his or her normal faculties were impaired or to the extent that the person he was deprived of full possession of his or her normal faculties, the results of any test administered in accordance with s. 790.153 or s. 790.155 and this section shall be admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood or chemical or physical analysis of the person's breath, shall give rise to the following presumptions:

(a) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(b) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his or her normal faculties were

impaired, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(c) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, that fact shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

The percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(4) Any person charged with using a firearm while under the influence of alcoholic beverages or controlled substances to the extent that his or her normal faculties were impaired, whether in a municipality or not, shall be entitled to trial by jury according to the Florida Rules of Criminal Procedure.

Section 1214. Subsection (2) of section 790.16, Florida Statutes, is amended to read:

790.16 Discharging machine guns; penalty.—

(2) This section shall not apply to the use of such machine guns by any United States or state militia or by any law enforcement officer while in the discharge of his or her lawful duty in suppressing riots and disorderly conduct and in preserving and protecting the public peace or in the preservation of public property, or when said use is authorized by law.

Section 1215. Subsections (3) and (4) of section 790.165, Florida Statutes, are amended to read:

790.165 Planting of "hoax bomb" prohibited; penalties.—

(3) Any person who, while committing or attempting to commit any felony, possesses, displays, or threatens to use any hoax bomb commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld. However, the state attorney or defense attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

(4) The provisions of subsection (2) shall not apply to any law enforcement officer, ~~firefighter~~ ~~fireman~~, person, or corporation licensed pursuant to chapter 493, or member of the armed forces of the United States while engaged in training or other lawful activity within the scope of his or her employment, or to any person properly authorized to test a security system,

or to any security personnel, while operating within the scope of their employment, including, but not limited to, security personnel in airports and other controlled access areas, or to any member of a theatrical company or production utilizing a hoax bomb as property during the course of a rehearsal or performance.

Section 1216. Subsection (1) of section 790.174, Florida Statutes, is amended to read:

790.174 Safe storage of firearms required.—

(1) A person who stores or leaves, on a premise under his or her control, a loaded firearm, as defined in s. 790.001, and who knows or reasonably should know that a minor is likely to gain access to the firearm without the lawful permission of the minor's parent or the person having charge of the minor, or without the supervision required by law, shall keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure or shall secure it with a trigger lock, except when the person ~~he~~ is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body.

Section 1217. Subsection (1) of section 790.221, Florida Statutes, is amended to read:

790.221 Possession of short-barreled rifle, short-barreled shotgun, or machine gun; penalty.—

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable; but this section shall not apply to antique firearms.

Section 1218. Paragraphs (d), (m), and (n) of subsection (3) of section 790.25, Florida Statutes, are amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.—

(3) **LAWFUL USES.**—The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(d) Sheriffs, marshals, prison or jail wardens, police officers ~~policemen~~, Florida highway patrol officers ~~patrolmen~~, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;

(m) A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place

of business or to a place of repair or back to his or her home or place of business;

(n) A person possessing arms at his or her home or place of business;

Section 1219. Section 790.28, Florida Statutes, is amended to read:

790.28 Purchase of rifles and shotguns in contiguous states.—A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

Section 1220. Subsection (4) of section 790.29, Florida Statutes, is amended to read:

790.29 Paramilitary training; teaching or participation prohibited.—

(4) Nothing contained in this section shall be construed to prohibit any act of a law enforcement officer which is performed in connection with the lawful performance of his or her official duties or to prohibit the training or teaching of the use of weapons to be used for hunting, recreation, competition, self-defense or the protection of one's person or property, or other lawful use.

Section 1221. Paragraph (a) of subsection (3) of section 790.31, Florida Statutes, is amended to read:

790.31 Armor-piercing or exploding ammunition or dragon's breath shotgun shells, bolo shells, or flechette shells prohibited.—

(3) This section does not apply to:

(a) The possession of any item described in subsection (1) by any law enforcement officer, when possessed in connection with the performance of his or her duty as a law enforcement officer, or law enforcement agency.

Section 1222. Subsection (1) of section 791.013, Florida Statutes, is amended to read:

791.013 Testing and approval of sparklers; penalties.—

(1) A person who wishes to sell sparklers must submit samples of his or her product to the division for testing to determine whether it is a sparkler as defined in s. 791.01. Such samples must be received by the division by September 1 to be considered for approval the following year. On February 1 of each year the division shall approve those products which it has tested and found to meet the requirements for sparklers. All approved sparkler products are legal for sale until January 31 of the following year. The list of approved sparkler products shall be published in the Florida Administrative Weekly and shall prominently state the dates between which the products may be sold. The division shall make copies of this list available to the public. A product must be tested and approved for sale in accordance with the rules adopted to implement this section. Beginning February 1, 1988, only those products approved by the division may be sold in the state. The

State Fire Marshal shall adopt rules describing the testing, approval, and listing procedures.

Section 1223. Subsection (2) of section 791.02, Florida Statutes, is amended to read:

791.02 Sale of fireworks regulated; rules and regulations.—

(2) A sparkler or other product authorized for sale under this chapter may not be sold by a retailer or seasonal retailer unless the product was obtained from a manufacturer, distributor, or wholesaler registered with the division pursuant to s. 791.015. Each retailer and seasonal retailer shall keep, at every location where sparklers are sold, a copy of an invoice or other evidence of purchase from the manufacturer, distributor, or wholesaler, which states the registration certificate number for the particular manufacturer, distributor, or wholesaler and the specific items covered by the invoice. Each seasonal retailer shall, in addition, exhibit a copy of his or her registration certificate at each seasonal retail location.

Section 1224. Section 791.03, Florida Statutes, is amended to read:

791.03 Bond of licensees.—The board of county commissioners shall require a bond deemed adequate by the board of county commissioners from the licensee in a sum not less than \$500 conditioned for the payment of all damages which may be caused either to a person or to property by reason of the licensee's display, and arising from any acts of the licensee, his or her agents, employees or subcontractors.

Section 1225. Section 791.05, Florida Statutes, is amended to read:

791.05 Seizure of illegal fireworks.—Each sheriff, or his or her appointee, or any other police officer, shall seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

Section 1226. Subsection (1) of section 794.027, Florida Statutes, is amended to read:

794.027 Duty to report sexual battery; penalties.—A person who observes the commission of the crime of sexual battery and who:

(1) Has reasonable grounds to believe that he or she has observed the commission of a sexual battery;

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1227. Section 796.02, Florida Statutes, is amended to read:

796.02 Lease of house to expire on conviction.—When the lessee of a dwelling house is convicted of the offense mentioned in the preceding section, the lease or contract for letting the house shall, at the option of the lessor, become void, and the lessor shall have the like remedy to recover the

possession as against a tenant holding over after the expiration of his or her term.

Section 1228. Paragraph (c) of subsection (1) and subsection (2) of section 806.01, Florida Statutes, are amended to read:

806.01 Arson.—

(1) Any person who willfully and unlawfully, or while in the commission of any felony, by fire or explosion, damages or causes to be damaged:

(c) Any other structure that he or she knew or had reasonable grounds to believe was occupied by a human being,

is guilty of arson in the first degree, which constitutes a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who willfully and unlawfully, or while in the commission of any felony, by fire or explosion, damages or causes to be damaged any structure, whether the property of himself or herself or another, under any circumstances not referred to in subsection (1), is guilty of arson in the second degree, which constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1229. Subsection (2) of section 806.10, Florida Statutes, is amended to read:

806.10 Preventing or obstructing extinguishment of fire.—

(2) Any person who willfully or unreasonably interferes with, hinders, or assaults, or attempts to interfere with or hinder, any firefighter in the performance of his or her duty shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1230. Subsection (3) of section 806.111, Florida Statutes, is amended to read:

806.111 Fire bombs.—

(3) Subsection (1) shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the Armed Forces of the United States or by firefighters ~~firemen~~, police officers, peace officers, or law enforcement officers so authorized by duly constituted authorities.

Section 1231. Paragraph (a) of subsection (1) and paragraph (c) of subsection (5) of section 806.13, Florida Statutes, are amended to read:

806.13 Criminal mischief; penalties; penalty for minor.—

(1)(a) A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.

(5) In addition to any other penalty provided by law, if a minor is found to have committed a delinquent act under this section for placing graffiti on any public property or private property, and:

(c) The minor is ineligible by reason of age for a driver's license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver's license or driving privilege for not more than 1 year after the date on which he or she would otherwise have become eligible.

Section 1232. Section 810.06, Florida Statutes, is amended to read:

810.06 Possession of burglary tools.—Whoever has in his or her possession any tool, machine, or implement with intent to use the same, or allow the same to be used, to commit any burglary or trespass shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1233. Paragraph (c) of subsection (2) of section 810.08, Florida Statutes, is amended to read:

810.08 Trespass in structure or conveyance.—

(2)

(c) If the offender is armed with a firearm or other dangerous weapon, or arms himself or herself with such while in the structure or conveyance, the trespass in a structure or conveyance is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and he or she reasonably believes that the person to be taken into custody and detained has committed or is committing such violation. In the event a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention by such person, if done in compliance with the requirements of this paragraph, shall not render such person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

Section 1234. Section 810.115, Florida Statutes, is amended to read:

810.115 Breaking or injuring fences.—Whoever willfully and maliciously breaks down, mars, injures, defaces, cuts, or otherwise creates or causes to be created an opening, gap, interruption, or break in any fence, or any part thereof, belonging to or enclosing land not his or her own, or whoever causes to be broken down, marred, injured, defaced, or cut any fence belonging to or enclosing land not his or her own, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and the court may require full compensation to the owner of the fence for any and all damages or losses resulting directly or indirectly from the act or commission pursuant to s. 775.089.

Section 1235. Subsection (2) of section 810.12, Florida Statutes, is amended to read:

810.12 Unauthorized entry on land; prima facie evidence of trespass.—

(2) The act of entry upon enclosed and posted land without permission of the owner of said land by any ~~worker~~ workman, servant, employee, or agent while actually engaged in the performance of his or her work or ~~his~~ duties incident to such employment and while under the supervision or direction, or through the procurement, of any other person acting as supervisor, foreman, employer, or principal, or in any other capacity, shall be prima facie evidence of the causing, and of the procurement, of such act by the supervisor, foreman, employer, principal, or other person.

Section 1236. Section 812.016, Florida Statutes, is amended to read:

812.016 Possession of altered property.—Any dealer in property who knew or should have known that the identifying features, such as serial numbers and permanently affixed labels, of property in his or her possession had been removed or altered without the consent of the manufacturer, shall be guilty of a misdemeanor of the first degree, punishable as defined in ss. 775.082 and 775.083.

Section 1237. Subsection (1) of section 812.019, Florida Statutes, is amended to read:

812.019 Dealing in stolen property.—

(1) Any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

Section 1238. Paragraphs (a) and (b) of subsection (1) and subsection (9) of section 812.035, Florida Statutes, are amended to read:

812.035 Civil remedies; limitation on civil and criminal actions.—

(1) Any circuit court may, after making due provisions for the rights of innocent persons, enjoin violations of the provisions of ss. 812.012-812.037 or s. 812.081 by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself or herself of any interest in any enterprise, including real estate.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he or she was engaged in violation of the provisions of ss. 812.012-812.037 or s. 812.081.

(9) The Department of Legal Affairs may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) if he or she certifies that, in his or her opinion, the action or proceed-

ing is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Department of Legal Affairs had instituted this action or proceeding.

Section 1239. Subsections (5), (6), and (8) of section 812.061, Florida Statutes, are amended to read:

812.061 Larceny; return of property to owner; procedure.—In every instance in which any money or motor vehicle shall have been taken from its rightful owner under circumstances constituting larceny of such money or motor vehicle and such money or motor vehicle is being held by state, county or municipal officials as evidence, the rightful owner of such money or motor vehicle may obtain the return and possession thereof in the following manner:

(5) Within 5 days after receipt of service of the notice hereinabove provided or within 10 days after the last publication of the mentioned notice, any person other than the petitioner claiming title or right of possession to the money or motor vehicle involved shall file his or her objections to the granting of such petition. Such objections shall be under oath of the person making them and shall set forth facts showing that the petitioner is not the rightful owner or not entitled to possession. If the person interposing objections to the petition desires that the question of ownership or right to possession be resolved by a jury, he or she shall make and file a demand for a jury trial at the time of filing his or her objections. If the objector fails to demand a jury trial at such time he or she shall be deemed to have waived such right.

(6) If objections are filed, as herein provided, the court having criminal jurisdiction may order the pleadings transferred to the court having civil jurisdiction of the cause where the same shall be adjudicated upon the pleadings, or he or she may defer hearing the matter until the criminal case has been adjudicated.

(8) When money or motor vehicle is returned to the rightful owner, as hereinabove provided, the court shall direct the clerk to make a detailed inventory description of such money or motor vehicle. The clerk in compliance with such direction shall make such inventory and description, including photographs of the motor vehicle involved where practicable and certify the same as being a true and correct inventory and description. The certified inventory and description shall then be filed by the clerk among the records of his or her office.

Section 1240. Subsection (2) of section 812.081, Florida Statutes, is amended to read:

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to

be made a copy of an article representing a trade secret is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1241. Paragraphs (c) and (e) of subsection (4) of section 812.15, Florida Statutes, are amended to read:

812.15 Unauthorized reception of cable television services; penalties.—

(4)

(c) Damages awarded by any court under this section shall be computed in accordance with either of the following:

1. The party aggrieved may recover the actual damages suffered by him or her as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the violation; or

2. The party aggrieved may recover an award of statutory damages for all violations involved in the action, in a sum of not less than \$250 or more than \$10,000, as the court considers just.

(e) In any case in which the court finds that the violator was not aware and had no reason to believe that his or her acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than \$100.

Section 1242. Subsection (3) of section 812.155, Florida Statutes, is amended to read:

812.155 Hiring, leasing, or obtaining personal property or equipment with the intent to defraud; failing to return hired or leased personal property or equipment; rules of evidence.—

(3) FAILURE TO REDELIVER HIRED OR LEASED PERSONAL PROPERTY.—Whoever, after hiring or leasing any personal property or equipment under an agreement to redeliver the same to the person letting such personal property or equipment or his or her agent at the termination of the period for which it was let, shall, without the consent of such person or persons and with the intent to defraud, abandon or willfully refuse to redeliver such personal property or equipment as agreed, shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the value of the personal property or equipment is of a value of \$300 or more; in that event the violation constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1243. Section 812.171, Florida Statutes, is amended to read:

812.171 Definition.—As used in this act, the term “convenience business” means any place of business that is primarily engaged in the retail sale of

groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m. The term “convenience business” does not include:

- (1) A business that is solely or primarily a restaurant.
- (2) A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.
- (3) A business that has at least 10,000 square feet of retail floor space.

The term “convenience business” does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

Section 1244. Section 817.02, Florida Statutes, is amended to read:

817.02 Obtaining property by false personation.—Whoever falsely personates or represents another, and in such assumed character receives any property intended to be delivered to the party so personated, with intent to convert the same to his or her own use, shall be punished as if he or she had been convicted of larceny.

Section 1245. Section 817.03, Florida Statutes, is amended to read:

817.03 Making false statement to obtain property or credit.—Any person who shall make or cause to be made any false statement, in writing, relating to his or her financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he or she is acting, with a fraudulent intent of obtaining credit, goods, money or other property, and shall by such false statement obtain credit, goods, money or other property, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1246. Subsection (1) of section 817.037, Florida Statutes, is amended to read:

817.037 Fraudulent refunds.—

(1) Any person who engages in a systematic, ongoing course of conduct to obtain a refund for merchandise from a business establishment by knowingly giving a false or fictitious name or address as his or her own or the name or address of any other person without that person’s knowledge and approval is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1247. Section 817.08, Florida Statutes, is amended to read:

817.08 Receiving money or property upon false promises of services as seaman or sponge ~~fisher fisherman~~.—Whoever enters into a written agreement with any master or owner of a vessel to perform certain services upon said vessel as seaman or sponge fisher fisherman for a contemplated voyage,

and receives or accepts any money or goods, wares or merchandise, as advances or bounty for the performance of said services, and shall willfully and without just cause refuse to perform said services, or to go on said vessel at the time of the sailing of the same, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1248. Section 817.14, Florida Statutes, is amended to read:

817.14 Procuring assignments of produce upon false representations.—Any person acting for himself or herself or another, who shall procure any consignment of produce grown in this state, to himself or herself or such other, for sale on commission or for other compensation by any knowingly false representation as to the prevailing market price at such time for such produce at the point to which it is consigned, or as to the price which such person for whom he or she is acting is at said time paying to other consignors for like produce at said place, or as to the condition of the market for such produce at such time and place, and any such person acting for another who shall procure any consignment for sale as aforesaid by false representation of authority to him or her by such other to make a guaranteed price to the consignor, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1249. Section 817.19, Florida Statutes, is amended to read:

817.19 Fraudulent issue of certificate of stock of corporation.—Any officer, agent, clerk or servant of a corporation, or any other person, who fraudulently issues or transfers a certificate of stock of a corporation to any person not entitled thereto, or fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred by himself or herself or any other person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1250. Section 817.22, Florida Statutes, is amended to read:

817.22 Making false invoice to defraud insurer.—If the owner of a ship or vessel or of property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of a ship or vessel, makes out or exhibits, or causes to be made out or exhibited, a false or fraudulent invoice, bill of lading, bill or parcels or other false estimates of any goods or property laden or pretended to be laden, on board such ship or vessel, with intent to injure and defraud an insurer of such ship, vessel or property, or of any part thereof, he or she shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1251. Section 817.23, Florida Statutes, is amended to read:

817.23 Making false affidavit to defraud insurer.—If a master, other officer, or mariner of a ship or vessel, makes or causes to be made, or swears to any false affidavit or protest, or if an owner or other person concerned in such ship or vessel or in the goods and property laden on board the same, procures any such false affidavits or protest to be made, or exhibits the same, with intent to injure, deceive or defraud an insurer of such ship or

vessel, or of any goods or property laden on board the same, he or she shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1252. Section 817.233, Florida Statutes, is amended to read:

817.233 Burning to defraud the insurer.—Any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or attempts so to do or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or herself or of another, which shall at the time be insured by any person against loss or damage by fire, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1253. Subsection (8) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.—

(8) It is unlawful for any person, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association, to solicit any business in or about city receiving hospitals, city and county receiving hospitals, county hospitals, justice courts, or municipal courts; in any public institution; in any public place; upon any public street or highway; in or about private hospitals, sanitariums, or any private institution; or upon private property of any character whatsoever for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736. Any person who violates the provisions of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1254. Section 817.24, Florida Statutes, is amended to read:

817.24 Unlawful to add or alter or deface existing brand.—It is unlawful for anyone to add to or alter or deface any existing brand on any animal not his or her own or without the consent of the owner, with a fraudulent intent to claim the same, any bar, letter, figure, or character of any kind. Any violation of this section shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1255. Section 817.26, Florida Statutes, is amended to read:

817.26 Fraudulently changing marks on animal.—If any person shall fraudulently alter or change the marks of any animal, not his or her own, with intent to claim the same or to prevent identification by the true owner thereof, the person so offending shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1256. Section 817.28, Florida Statutes, is amended to read:

817.28 Fraudulent obtaining of property by gaming.—Whoever, by the game of three-card monte, so-called, or any other game, device, sleight-of-hand, pretensions to fortunetelling, or other means whatever by the use of

cards or other implement or implements, fraudulently obtains from another person property of any description, shall be punished as if he or she had been convicted of larceny.

Section 1257. Subsection (4) of section 817.37, Florida Statutes, is amended to read:

817.37 Touting; defining; providing punishment; ejection from race-tracks.—

(4) Any person who has been convicted of touting by any court, and the record of whose conviction on such charge is on file in the office of the Florida Division of Pari-mutuel Wagering, any court of this state, or of the Federal Bureau of Investigation, or any person who has been ejected from any race-track of this or any other state for touting or practices inimical to the public interest shall be excluded from all racetracks in this state and if such person returns to a racetrack he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any such person who refuses to leave such track when ordered to do so by inspectors of the Florida Division of Pari-mutuel Wagering or by any peace officer, or by an accredited attache of a racetrack or association shall be guilty of a separate offense which shall be a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 1258. Subsections (2), (3), and (5) of section 817.41, Florida Statutes, are amended to read:

817.41 Misleading advertising prohibited.—

(2) It shall be unlawful for any person to advertise, in any way or by any medium whatsoever, any sale as a “wholesale sale,” “below cost sale,” or terms of similar purport, unless the goods, wares or merchandise offered for sale thereby are offered by the seller at or below his or her delivered net cost price, or below the average wholesale price of such goods, wares, or merchandise. Such advertising of goods, wares, or merchandise for sale shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.

(3) Any retailer using the term or phrase “wholesale sale,” “below cost sale,” or terms of similar purport, in connection with the sale of goods, wares, or merchandise at retail, shall, upon demand by a customer, forthwith make available, unless the same shall have theretofore been made available, to the Better Business Bureau, the Merchant’s Division of the Chamber of Commerce, or to the state attorney’s office for inspection, invoices, or shipping charges or true and correct copies thereof, of any goods, wares, or merchandise so offered for sale, described or represented, indicating the delivery net cost to the seller of the particular goods, wares or merchandise sold or offered for sale, from which the seller’s delivered net cost may be determined. The said retailer shall also and at the same time give all reasonable assistance in determining and ascertaining his or her net cost price of said goods, wares, or merchandise. The said Better Business Bureau, Merchant’s Division of the Chamber of Commerce or state attorney, upon determining the said delivered net cost, shall forthwith issue a certificate evidencing such

delivered net cost, as determined, and deliver the same to the retailer for delivery or exhibition to the customer. Unless such certificate shall show a delivered net cost equal to or in excess of the advertised price, the retailer shall be presumed to have violated this law.

(5) No retailer shall knowingly and willfully advertise merchandise for sale at a special or wholesale price, in any way or by any medium whatsoever, if he or she does not have sufficient quantities of the advertised merchandise to meet the reasonably foreseeable demand, unless the fact of limited quantity and the approximate number of items is stated in the advertisement, or unless the retailer provides a means by which the consumer may obtain the advertised item at the advertised price within a reasonable time or a value equivalent thereto.

Section 1259. Paragraph (b) of subsection (3) of section 817.415, Florida Statutes, is amended to read:

817.415 Florida Free Gift Advertising Law.—

(3) DEFINITIONS.—As used in this act:

(b) “Free” includes the use of terms such as “awarded,” “prize,” “absolutely without charge,” “free of charge,” and words or groups of words of similar intent which reasonably lead a person to believe that he or she may receive, or has been selected to receive, something of value, entirely or in part without a requirement of compensation in any form from the recipient.

Section 1260. Subsection (3) of section 817.52, Florida Statutes, is amended to read:

817.52 Obtaining vehicles with intent to defraud, failing to return hired vehicle, or tampering with mileage device of hired vehicle.—

(3) FAILURE TO REDELIVER HIRED VEHICLE.—Whoever, after hiring a motor vehicle under an agreement to redeliver the same to the person letting such motor vehicle or his or her agent, at the termination of the period for which it was let, shall, without the consent of such person or persons and with intent to defraud, abandon or willfully refuse to redeliver such vehicle as agreed shall, upon conviction, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1261. Subsection (1) of section 817.53, Florida Statutes, is amended to read:

817.53 False charges for radio and television repairs and parts; penalty.—

(1) It is unlawful for a person to knowingly charge for any services which are not actually performed in repairing a radio or television set, or to knowingly charge for any parts which are not actually furnished, or to knowingly misinform a customer concerning what is wrong with his or her radio or television set, or to knowingly and fraudulently substitute parts when such substitution has no relation to the repairing or servicing of the radio or television set.

Section 1262. Subsection (1) of section 817.55, Florida Statutes, is amended to read:

817.55 Tourist attraction advertisement; misleading use of the word “free.”—

(1) It shall be unlawful for any person or persons, including corporations, operating a tourist attraction, event, show, or similar places of business for profit catering to the public to use or advertise in connection therewith the words “free” or “free admission” or any similar words or words of similar or like import and meaning, in a false, misleading, deceptive, or fraudulent manner, calculated to cause or actually causing any member of the public to be misled, deceived or defrauded to his or her detriment.

Section 1263. Subsection (3) of section 817.554, Florida Statutes, is amended to read:

817.554 Fraudulently offering for sale tour or travel-related services.—

(3) Any person who offers his or her services as a tour or travel service consultant to anyone engaged in the tour or travel service business and who knowingly makes claims relating to his or her qualifications to provide such consulting services or his or her ability to provide travel-related services with the intent to defraud such person of a fee or other valuable consideration is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1264. Paragraph (h) of subsection (2) of section 817.56, Florida Statutes, is amended to read:

817.56 Misrepresentations of television picture tubes prohibited, penalty; definitions.—

(2) No person shall knowingly:

(h) Represent that a tube is being sold at a reduction or savings when the alleged reduction or savings is from a fictitious price. Without limiting the generality of the foregoing, an alleged reduction or savings is from a fictitious price;

1. When the alleged reduction or savings of a reactivated tube, second-hand tube, or used tube is from the manufacturer’s established list price for his or her first quality or new tubes;

2. When the alleged reduction of a tube utilizing used components is from the manufacturer’s established list price for tubes utilizing only new components in the manufacture thereof;

3. When the alleged reduction is, in fact, a savings in that it is from the list price of a manufacturer other than the owner of the brand name appearing on the tube being sold.

Section 1265. Subsection (2) of section 817.562, Florida Statutes, is amended to read:

817.562 Fraud involving a security interest.—

(2) A person is guilty of fraud involving a security interest when, having executed a security agreement creating a security interest in personal property, including accounts receivable, which security interest secures a monetary obligation owed to a secured party, and:

(a) Having under the security agreement both the right of sale or other disposition of the property and the duty to account to the secured party for the proceeds of disposition, he or she sells or otherwise disposes of the property and wrongfully and willfully fails to account to the secured party for the proceeds of disposition; or

(b) Having under the security agreement no right of sale or other disposition of the property, he or she knowingly secretes, withholds, or disposes of such property in violation of the security agreement.

Section 1266. Subsection (1) of section 817.5621, Florida Statutes, is amended to read:

817.5621 Unlawful subleasing of a motor vehicle.—

(1) It is unlawful for any person who is not a party to a lease contract, conditional sale contract, or security agreement which transfers any right or interest in a motor vehicle to:

(a) Obtain or exercise control over the motor vehicle and then sell, transfer, assign, or lease the motor vehicle to another person without first obtaining written authorization from the secured creditor, lessor, or lienholder for the sale, transfer, assignment, or lease if he or she receives compensation or other consideration for the sale, transfer, assignment, or lease of the motor vehicle; or

(b) Assist, cause, or arrange the actual or purported sale, transfer, assignment, or lease of the motor vehicle to another person without first obtaining written authorization from the secured creditor, lessor, or lienholder for the sale, transfer, assignment, or lease if he or she receives compensation or other consideration for assisting, causing, or arranging the sale, transfer, assignment, or lease of the motor vehicle.

Section 1267. Section 817.566, Florida Statutes, is amended to read:

817.566 Misrepresentation of association with, or academic standing at, postsecondary educational institution.—Any person who, with intent to defraud, misrepresents his or her association with, or academic standing or other progress at, any postsecondary educational institution by falsely making, altering, simulating, or forging a document, degree, certificate, diploma, award, record, letter, transcript, form, or other paper; or any person who causes or procures such a misrepresentation; or any person who utters and publishes or otherwise represents such a document, degree, certificate, diploma, award, record, letter, transcript, form, or other paper as true, knowing it to be false, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Individuals who present a religious

academic degree from any college, university, seminary, or institution which is not licensed by the State Board of Independent Colleges and Universities or which is not exempt pursuant to the provisions of s. 246.085 shall disclose the religious nature of the degree upon presentation.

Section 1268. Section 817.59, Florida Statutes, is amended to read:

817.59 False statement as to financial condition or identity.—A person who makes or causes to be made, either directly or indirectly, any false statement as to a material fact in writing, knowing it to be false and with intent that it be relied on respecting his or her identity or that of any other person, firm, or corporation or his or her financial condition or that of any other person, firm, or corporation, for the purpose of procuring the issuance of a credit card, violates this section and is subject to the penalties set forth in s. 817.67(1).

Section 1269. Subsections (2) and (5), paragraphs (a), (c), and (d) of subsection (6), and subsection (7) of section 817.60, Florida Statutes, are amended to read:

817.60 Theft; obtaining credit card through fraudulent means.—

(2) THEFT OF CREDIT CARD LOST, MISLAID, OR DELIVERED BY MISTAKE.—A person who receives a credit card that he or she knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder and who retains possession with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in s. 817.67(1).

(5) DEALING IN CREDIT CARDS OF ANOTHER.—A person other than the issuer who, during any 12-month period, receives two or more credit cards issued in the name or names of different cardholders, which cards he or she has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of this part, violates this subsection and is subject to the penalties set forth in s. 817.67(2).

(6) FORGERY OF CREDIT CARD.—

(a) A person who, with intent to defraud a purported issuer or a person or organization providing money, goods, services, or anything else of value or any other person, falsely makes, falsely embosses, or falsely alters in any manner a credit card or utters such a credit card or who, with intent to defraud, has a counterfeit credit card or any invoice, voucher, sales draft, or other representation or manifestation of a counterfeit credit card in his or her possession, custody, or control is guilty of credit card forgery and is subject to the penalties set forth in s. 817.67(2).

(c) A person falsely makes a credit card when he or she makes or draws in whole or in part a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing or when he or she alters a credit card which was validly issued.

(d) A person falsely embosses a credit card when, without the authorization of the named issuer, he or she completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

(7) **SIGNING CREDIT CARD OF ANOTHER.**—A person other than the cardholder or a person authorized by him or her who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value or any other person, signs a credit card violates this subsection and is subject to the penalties set forth in s. 817.67(1).

Section 1270. Section 817.61, Florida Statutes, is amended to read:

817.61 Fraudulent use of credit cards.—A person who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value or any other person, uses, for the purpose of obtaining money, goods, services, or anything else of value, a credit card obtained or retained in violation of this part or a credit card which he or she knows is forged, or who obtains money, goods, services, or anything else of value by representing, without the consent of the cardholder, that he or she is the holder of a specified card or by representing that he or she is the holder of a card and such card has not in fact been issued violates this section. A person who, in any 6-month period, uses a credit card in violation of this section two or fewer times, or obtains money, goods, services, or anything else in violation of this section the value of which is less than \$100, is subject to the penalties set forth in s. 817.67(1). A person who, in any 6-month period, uses a credit card in violation of this section more than two times, or obtains money, goods, services, or anything else in violation of this section the value of which is \$100 or more, is subject to the penalties set forth in s. 817.67(2).

Section 1271. Section 817.612, Florida Statutes, is amended to read:

817.612 Expired or revoked credit cards.—A person who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value, uses, for the purpose of obtaining money, goods, services, or anything else of value, a credit card which he or she knows is expired or revoked violates this section and is subject to the penalties set forth in s. 817.67(1). Knowledge of revocation shall be presumed to have been received by a cardholder 7 days after such notice has been mailed to him or her by first-class mail at the last known address.

Section 1272. Subsections (1) and (2) and paragraphs (a) and (b) of subsection (3) of section 817.62, Florida Statutes, are amended to read:

817.62 Fraud by person authorized to provide goods or services.—

(1) **ILLEGALLY OBTAINED OR ILLEGALLY POSSESSED CREDIT CARD; FORGED, REVOKED, OR EXPIRED CREDIT CARD.**—A person who is authorized by an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer,

the acquirer, or the cardholder, furnishes money, goods, services, or anything else of value upon presentation of a credit card obtained or retained in violation of this part or a credit card which he or she knows is forged, expired, or revoked violates this subsection and is subject to the penalties set forth in s. 817.67(1), if the value of all money, goods, services, and other things of value furnished in violation of this subsection does not exceed \$300 in any 6-month period. The violator is subject to the penalties set forth in s. 817.67(2) if such value does exceed \$300 in any 6-month period.

(2) MISREPRESENTATION TO ISSUER OR ACQUIRER.—A person who is authorized by an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, the acquirer, or the cardholder, fails to furnish money, goods, services, or anything else of value which he or she represents in writing to the issuer or the acquirer that he or she has furnished violates this subsection and is subject to the penalties set forth in s. 817.67(2).

(3) ILLEGALLY FACTORING CREDIT CARD TRANSACTIONS.—

(a) A person who is authorized by an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card or a credit card account number by a cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, the acquirer, or the cardholder, presents to the issuer or acquirer, for payment, a credit card transaction record of a sale, which sale was not made by such person or his or her agent or employee, violates this paragraph and is subject to the penalties set forth in s. 817.67(2).

(b) A person who, without the acquirer's authorization, employs, solicits, or otherwise causes a person who is authorized by an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card or a credit card account number by a cardholder, or employs, solicits, or otherwise causes an agent or employee of such authorized person, to remit to the acquirer a credit card transaction record of a sale that was not made by such authorized person or his or her agent or employee violates this paragraph and is subject to the penalties set forth in s. 817.67(2).

Section 1273. Section 817.645, Florida Statutes, is amended to read:

817.645 Alteration of credit card invoice; penalties.—Whoever, with intent to defraud any person, falsely alters any invoice for money, goods, services, or anything else of value obtained by use of a credit card after it has been signed by the cardholder or a person authorized by him or her violates this section and is subject to the penalties set forth in s. 817.67(1).

Section 1274. Subsection (5) of section 817.703, Florida Statutes, is amended to read:

817.703 Information statement.—The information statement required under s. 817.702 shall include all of the following:

(5) A statement notifying the buyer of his or her right to proceed against the bond or trust account required under s. 817.7005.

Section 1275. Subsection (1) of section 818.01, Florida Statutes, is amended to read:

818.01 Disposing of personal property under lien or subject to conditional sale.—

(1) Whoever shall pledge, mortgage, sell, or otherwise dispose of any personal property to him or her belonging, or which shall be in his or her possession, and which shall be subject to any written lien, or which shall be subject to any statutory lien, whether written or not, or which shall be the subject of any written conditional sale contract under which the title is retained by the vendor, without the written consent of the person holding such lien, or retaining such title; and whoever shall remove or cause to be removed beyond the limits of the county where such lien was created or such conditional sale contract was entered into, any such property, without the consent aforesaid, or shall hide, conceal or transfer, such property with intent to defeat, hinder or delay the enforcement of such lien, or the recovery of such property by the vendor, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1276. Section 818.03, Florida Statutes, is amended to read:

818.03 Removing such property beyond the limits of county.—Whoever shall knowingly and without the written consent of the person having such a lien thereon, as mentioned in s. 818.01, buy, take, receive or remove or cause to be removed beyond the limits of the county, any personal property subject to such lien from the owner or any person in possession thereof, and whoever shall willfully conceal such property or obstruct, delay or hinder such lienholder in prosecuting his or her rights against any of such property, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1277. Section 818.04, Florida Statutes, is amended to read:

818.04 Selling collateral security before debt due.—Whoever holding any collateral security deposited with him or her for the payment of a debt which may be due him or her sells, pledges, loans or in any way disposes of the same, as his or her own, before such debt becomes due and payable, and without the authority of the person depositing the same, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1278. Subsections (2) and (4) of section 823.07, Florida Statutes, are amended to read:

823.07 Iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or airtight units; abandonment, discard.—

(2) It is unlawful for any person knowingly to abandon or discard or to permit to be abandoned or discarded on premises under his or her control any icebox, refrigerator, deep-freeze locker, clothes washer, clothes dryer, or similar airtight unit having an interior storage capacity of 1½ cubic feet or more from which the door has not been removed.

(4) It shall be unlawful for any junkyard dealer or secondhand furniture dealer with unenclosed premises used for display of secondhand iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units to fail to remove the doors on such secondhand units having an interior storage capacity of 1½ cubic feet or more from which the door has not been removed. This section will not apply to any dealer who has fenced and locked his or her premises.

Section 1279. Paragraph (c) of subsection (3) of section 823.14, Florida Statutes, is amended to read:

823.14 Florida Right to Farm Act.—

(3) DEFINITIONS.—As used in this section:

(c) “Farm product” means any plant or animal useful to humans ~~man~~ and includes, but is not limited to, any product derived therefrom.

Section 1280. Subsections (2) and (5) of section 826.02, Florida Statutes, are amended to read:

826.02 Exceptions.—The provisions of s. 826.01 shall not extend to any person:

(2) Whose prior spouse has voluntarily deserted him or her and remained absent for the space of 3 years continuously, the party marrying again not knowing the other to be living within that time.

(5) Who reasonably believes that he or she is legally eligible to remarry.

Section 1281. Section 826.04, Florida Statutes, is amended to read:

826.04 Incest.—Whoever knowingly marries or has sexual intercourse with a person to whom he or she is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest, which constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. “Sexual intercourse” is the penetration of the female sex organ by the male sex organ, however slight; emission of semen is not required.

Section 1282. Section 827.06, Florida Statutes, is amended to read:

827.06 Persistent nonsupport.—

(1) Any person who, after notice, fails to provide support which he or she is able to provide to children or spouse whom the person ~~he~~ knows he or she is legally obligated to support, and over whom no court has jurisdiction in any proceedings for child support or dissolution of marriage, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Prior to commencing prosecution under this section, the state attorney must advise the person responsible for support by certified mail, return receipt requested, that a prosecution under this section will be commenced

against him or her unless the person ~~he~~ makes such delinquent support payments or provides a satisfactory explanation as to why he or she has not made such payments.

Section 1283. Subsections (2), (3), and (5) of section 827.071, Florida Statutes, are amended to read:

827.071 Sexual performance by a child; penalties.—

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1284. Subsection (3) of section 828.05, Florida Statutes, is amended to read:

828.05 Killing an injured or diseased domestic animal.—

(3) Whenever any domestic animal is so injured or diseased as to appear useless and is suffering, and it reasonably appears to an officer that such animal is imminently near death or cannot be cured or rendered fit for service and the officer has made a reasonable and concerted, but unsuccessful, effort to locate the owner, the owner's agent, or a veterinarian, then such officer, acting in good faith and upon reasonable belief, may immediately destroy such animal by shooting the animal or injecting it with a barbiturate drug. If the officer locates the owner or the owner's agent, the officer ~~he~~ shall notify him or her of the animal's location and condition. If the officer locates only a veterinarian, the officer shall destroy the animal only upon the advice of the veterinarian. However, this section does not prohibit an owner from destroying his or her own domestic animal in a humane and proficient manner when the conditions described in this section exist.

Section 1285. Subsections (3) and (6) of section 828.073, Florida Statutes, are amended to read:

828.073 Animals found in distress; when agent may take charge; hearing; disposition; sale.—

(3) The officer or agent of any county or of any society or association for the prevention of cruelty to animals taking charge of any animal pursuant to the provisions of this section shall have written notice served, at least 5 days prior to the hearing set forth in subsection (2), upon the owner of the animal, if he or she is known and is residing in the county where the animal was taken, in conformance with the provisions of chapter 48 relating to service of process. The sheriff of the county shall not charge a fee for service of such notice. If the owner of the animal is known but is residing outside of the county wherein the animal was taken, notice of the hearing shall be by publication in conformance with the provisions of chapter 49.

(6) If the evidence indicates a lack of proper and reasonable care of the animal, the burden is on the owner to demonstrate by clear and convincing evidence that he or she is able and fit to have custody of and provide adequately for the animal.

Section 1286. Subsection (3) of section 828.12, Florida Statutes, is amended to read:

828.12 Cruelty to animals.—

(3) A veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this section. Such a veterinarian is, therefore, under this subsection, immune from a lawsuit for his or her part in an investigation of cruelty to animals.

Section 1287. Section 828.16, Florida Statutes, is amended to read:

828.16 Contagious diseases.—Whoever, being the owner, or having the charge of any animal, knowing the same to have any contagious or infectious disease, or to have been recently exposed thereto, sells, barter, or disposes of such animal without first disclosing to the person to whom the same is sold, bartered, or disposed of, that such animal is so diseased, or has been exposed, as aforesaid, or knowingly permits such animal to run at large, or knowing such animal to be diseased as aforesaid, knowingly allows the same to come into contact with any such animal of another person without his or her knowledge or permission, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1288. Section 828.17, Florida Statutes, is amended to read:

828.17 Officer to arrest without warrant.—Any sheriff or any other peace officer of the state, or any police officer of any city or town of the state, shall arrest without warrant any person found violating any of the provisions of ss. 828.04, 828.08, 828.12, and 828.13-828.16, and the officer making the arrest shall hold the offender until a warrant can be procured, and he or she shall use proper diligence to procure such warrant.

Section 1289. Paragraph (f) of subsection (1) and paragraph (a) of subsection (4) of section 828.27, Florida Statutes, are amended to read:

828.27 Local animal control or cruelty ordinances; penalty.—

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

(f) “Citation” means a written notice, issued to a person by an officer, that the officer has probable cause to believe that the person has committed a civil infraction in violation of a duly enacted ordinance and that the county court will hear the charge. The citation must contain:

1. The date and time of issuance.
2. The name and address of the person.
3. The date and time the civil infraction was committed.
4. The facts constituting probable cause.
5. The ordinance violated.
6. The name and authority of the officer.
7. The procedure for the person to follow in order to pay the civil penalty, to contest the citation, or to appear in court as required under subsection (5).
8. The applicable civil penalty if the person elects to contest the citation.
9. The applicable civil penalty if the person elects not to contest the citation.
10. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person ~~he~~ shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.
11. A conspicuous statement that if the person is required to appear in court as mandated by subsection (5), he or she does not have the option of paying a fine in lieu of appearing in court.

(4)(a)1. County-employed animal control officers shall, and municipally employed animal control officers may, successfully complete a 40-hour minimum standards training course. Such course shall include, but is not limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations. The course curriculum must be approved by the Florida Animal Control Association. An animal control officer who successfully completes such course shall be issued a certificate indicating that he or she has received a passing grade.

2. Any animal control officer who is authorized prior to January 1, 1990, by a county or municipality to issue citations is not required to complete the minimum standards training course.

3. In order to maintain valid certification, every 2 years each certified county-employed animal control officer shall complete 4 hours of postcertification continuing education training. Such training may include, but is not

limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations.

Section 1290. Paragraph (b) of subsection (3) and subsections (6) and (12) of section 828.29, Florida Statutes, are amended to read:

828.29 Dogs and cats transported or offered for sale; health requirements; consumer guarantee.—

(3)

(b) The term “official certificate of veterinary inspection” means a legible certificate of veterinary inspection signed by the examining veterinarian licensed by the state of origin and accredited by the United States Department of Agriculture, that shows the age, sex, breed, color, and health record of the dog or cat, the printed or typed names and addresses of the person or business from whom the animal was obtained, the consignor or seller, the consignee or purchaser, and the examining veterinarian, and the veterinarian’s license number. The official certificate of veterinary inspection must list all vaccines and deworming medications administered to the dog or cat, including the manufacturer, vaccine, type, lot number, expiration date, and the dates of administration thereof, and must state that the examining veterinarian warrants that, to the best of his or her knowledge, the animal has no sign of contagious or infectious diseases and has no evidence of internal or external parasites, including coccidiosis and ear mites, but excluding fleas and ticks. The Department of Agriculture and Consumer Services shall supply the official intrastate certificate of veterinary inspection required by this section at cost.

(6) A consumer may sign a waiver relinquishing his or her right to return the dog or cat for congenital or hereditary disorders. In the case of such waiver, the consumer has 48 normal business hours, excluding weekends and holidays, in which to have the animal examined by a licensed veterinarian of the consumer’s choosing. If the veterinarian certifies that, at the time of sale, the dog or cat was unfit for purchase due to a congenital or hereditary disorder, the pet dealer must afford the consumer the right to choose one of the following options:

(a) The right to return the animal and receive a refund of the purchase price, including sales tax, but excluding the veterinary costs related to the certification that the dog or cat is unfit; or

(b) The right to return the animal and receive an exchange dog or cat of the consumer’s choice of equivalent value, but not a refund of the veterinary costs related to the certification that the dog or cat is unfit.

(12) Every pet dealer who sells an animal to a consumer must provide the consumer at the time of sale with a written notice, printed or typed, which reads as follows:

It is the consumer’s right, pursuant to section 828.29, Florida Statutes, to receive a certificate of veterinary inspection with each dog or cat purchased from a pet dealer. Such certificate shall list all vaccines and

deworming medications administered to the animal and shall state that the animal has been examined by a Florida-licensed veterinarian who certifies that, to the best of the veterinarian's ~~his~~ knowledge, the animal was found to have been healthy at the time of the veterinary examination. In the event that the consumer purchases the animal and finds it to have been unfit for purchase as provided in section 828.29(5), Florida Statutes, the consumer must notify the pet dealer within 2 business days of the veterinarian's determination that the animal was unfit. The consumer has the right to retain, return, or exchange the animal and receive reimbursement for certain related veterinary services rendered to the animal, subject to the right of the dealer to have the animal examined by another veterinarian.

Section 1291. Section 831.08, Florida Statutes, is amended to read:

831.08 Possessing certain forged notes or bills.—Whoever has in his or her possession 10 or more similar false, altered, forged or counterfeit notes, bills of credit, bank bills or notes, such as are mentioned in any of the preceding sections of this chapter, payable to the bearer thereof or to the order of any person, knowing the same to be false, altered, forged or counterfeit, with intent to utter and pass the same as true, and thereby to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1292. Section 831.11, Florida Statutes, is amended to read:

831.11 Bringing into the state forged bank bills.—Whoever brings into this state or has in his or her possession a false, forged or counterfeit bill or note in the similitude of the bills or notes payable to the bearer thereof or to the order of any person issued by or for any bank or banking company established in this state, or within the United States, or any foreign province, state or government, with intent to utter and pass the same or to render the same current as true, knowing the same to be false, forged or counterfeit, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1293. Section 831.13, Florida Statutes, is amended to read:

831.13 Having in possession uncurrent bills.—Whoever has in his or her possession at the same time five or more uncurrent bank bills or notes, knowing the same to be worthless, or has papers, not bank bills or notes but made in the similitude of bank bills or notes of any bank which has never existed, knowing the character of such papers, with intent to pass, utter or circulate the same, or to procure any other person to do so, for the purpose of injuring or defrauding, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1294. Section 831.15, Florida Statutes, is amended to read:

831.15 Counterfeiting coin; having 10 or more such coins in possession with intent to utter.—Whoever counterfeits any gold, silver, or any metallic money coin, current by law or usage within this state, or has in his or her

possession at the same time 10 or more pieces of false money, or coin counterfeited in the similitude of any gold, silver or metallic coin; current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1295. Section 831.16, Florida Statutes, is amended to read:

831.16 Having less than 10 counterfeit coins in possession, with intent to utter.—Whoever has in his or her possession any number of pieces less than 10 of the counterfeit coin mentioned in the preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, or who utters, passes or tenders in payment as true any such counterfeit coin, knowing the same to be false and counterfeit, shall be punished by imprisonment in the state prison not exceeding 10 years, or in the county jail not exceeding 12 months, or by fine not exceeding \$1,000.

Section 1296. Section 831.18, Florida Statutes, is amended to read:

831.18 Making or possessing instruments for forging bills.—Whoever engraves, makes or amends, or begins to engrave, make or amend, any plate, block, press, or other tool, instrument or implement, or makes or provides any paper or other material, adapted and designed for the making of a false and counterfeit note, certificate, or other bill of credit, purporting to be issued by lawful authority for a debt of this state, or a false or counterfeit note or bill, in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, or in any foreign province, state or government; and whoever has in his or her possession any such plate or block engraved in any part, or any press or other tool, instrument or any paper or other material adapted and designed as aforesaid, with intent to issue the same, or to cause or permit the same to be used in forging or making any such false and counterfeit certificates, bills or notes, shall be punished by imprisonment in the state prison not exceeding 10 years, or by fine not exceeding \$1,000.

Section 1297. Section 831.19, Florida Statutes, is amended to read:

831.19 Making or having instruments for counterfeiting coin.—Whoever casts, stamps, engraves, makes or amends, or knowingly has in his or her possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making counterfeit coin in the similitude of any gold, silver or metallic coin, current by law or usage in this state, with intent to use or employ the same, or to cause or to permit the same to be used or employed in coining and making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not exceeding 10 years, or by fine not exceeding \$1,000.

Section 1298. Section 831.20, Florida Statutes, is amended to read:

831.20 Counterfeit bills and counterfeiters' tools to be seized.—When false, forged or counterfeit bank bills or notes, or plates, dies or other tools, instruments or implements used by counterfeiters, designed for the forging

or making of false or counterfeit notes, coin or bills, or worthless and uncurrent bank bills or notes described in this chapter shall come to the knowledge of any sheriff, police officer or other officer of justice in this state, such officer shall immediately seize and take possession of and deliver the same into the custody of the court having jurisdiction of the offense of counterfeiting in the county, and the court shall, as soon as the ends of justice will permit, cause the same to be destroyed by an officer of the court who shall make return to the court of his or her doings in the premises.

Section 1299. Section 831.22, Florida Statutes, is amended to read:

831.22 Damaging bank bills.—Whoever willfully and maliciously cuts, or in any manner damages and impairs the usefulness for circulation of any bank bill or note of any bank in this state, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, but the possession or uttering of a bill so damaged shall not be evidence against the party charged, unless connected with other circumstances tending to prove that the note or bill was damaged by him or her.

Section 1300. Section 831.29, Florida Statutes, is amended to read:

831.29 Making or having instruments and material for counterfeiting drivers' licenses.—Whoever has control, custody, or possession of any plate, block, press, stone, or other tool, instrument, or implement, or any part thereof, or whoever engraves, makes, or amends, or begins to engrave, make, or amend any plate, block, press, stone, or other tool, instrument, or implement, or whoever brings into the state any such plate, block, press, stone, or other tool, instrument, or implement, or any part thereof, in the similitude of the drivers' licenses issued by the Department of Highway Safety and Motor Vehicles or its duly authorized agents or those of any state or jurisdiction which issues licenses recognized in this state for the operation of a motor vehicle, or whoever has control, custody, possession or makes or provides any paper or other material adapted and designed for the making of a false and counterfeit driver's license purporting to be issued by the Department of Highway Safety and Motor Vehicles or its duly authorized agents, or those of any state or jurisdiction which issues licenses recognized in this state for the operation of a motor vehicle; or whoever has in his or her possession, control, or custody any such plate or block engraved in any part, or any press or other tool, instrument or any paper or other material adapted and designed as aforesaid, with intent to sell, issue, publish, pass, or utter the same or to cause or permit the same to be used in forging or making any such false or counterfeit driver's license; or whoever prints, photographs or in any manner makes or executes any engraved photograph print or impression by any process whatsoever in the similitude of any such licenses with the intent to sell, issue, publish, or utter the same or to cause or permit the same to be used in forging or making any such false and counterfeit driver's license of this state or any state or jurisdiction which issues licenses recognized in this state for the operation of a motor vehicle shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1301. Subsections (1) and (2) of section 832.04, Florida Statutes, are amended to read:

832.04 Stopping payment; purchase of farm or grove products.—

(1) Whoever, with intent to defraud any producer of farm or grove products or product of such products or product shall, in person or by agent, make, draw, utter, deliver, or give to such producer any check, draft, or written order for the payment of money upon any bank, person, or corporation and secure from such producer such products or product for or on account of such check, draft, or written order, whether such products or product are valued at the amount of such check, draft, or written order or at a greater or lesser value, and who shall, pursuant to and in furtherance of such intent to defraud, stop payment on such check, draft, or written order, shall be deemed to be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the value of the products or product secured for or on account of such check, draft, or written order is \$150 or more; and if the value of the products or product secured for or on account of such check, draft, or written order is less than \$150, he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) In all prosecutions under this section, the introduction in evidence of any unpaid and dishonored check, draft, or written order for the payment of money upon any bank, person, or corporation, bearing the drawee's refusal to pay the same because of payment having been stopped, stamped, or written thereon or attached thereto, shall be prima facie evidence of the making or uttering of said check, draft, or written order, and of due presentation to the drawee for payment, and of the dishonor thereof, and that the same was properly dishonored because of payment thereof having been stopped by the maker or drawer. And, as against the maker or drawer thereof, the stopping of payment of any such check, draft, or written order made, drawn, uttered, delivered, or given to a producer of farm or grove products or product in payment for any such products or product, the possession or control of which shall have been transferred upon faith of payment of such check, draft, or written order, whether such products or product be valued at the amount of such check, draft, or written order or at a greater or lesser amount, shall be prima facie evidence that such maker or drawer had the above mentioned intent to defraud such producer, if such maker or drawer, or his or her agent, shall have personally inspected such products or product at or before such transfer of possession or control.

Section 1302. Subsection (1) of section 832.041, Florida Statutes, is amended to read:

832.041 Stopping payment with intent to defraud.—

(1) Whoever, with intent to defraud any person shall, in person or by agent, make, draw, utter, deliver, or give any check, draft, or written order for the payment of money upon any bank, person, or corporation and secure from such person goods or services for or on account of such check, draft, or written order, whether such goods or services are valued at the amount of such check, draft, or written order or at a greater or lesser value, and who shall, pursuant to and in furtherance of such intent to defraud, stop payment on such check, draft, or written order, shall be deemed to be guilty of

a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the value of the goods or services secured for or on account of such check, draft, or written order is \$150 or more; and if the value of the goods or services secured for or on account of such check, draft, or written order is less than \$150, he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1303. Paragraph (a) of subsection (2) and paragraphs (a) and (b) of subsection (4) of section 832.05, Florida Statutes, are amended to read:

832.05 Giving worthless checks, drafts, and debit card orders; penalty; duty of drawee; evidence; costs; complaint form.—

(2) WORTHLESS CHECKS, DRAFTS, OR DEBIT CARD ORDERS; PENALTY.—

(a) It is unlawful for any person, firm, or corporation to draw, make, utter, issue, or deliver to another any check, draft, or other written order on any bank or depository, or to use a debit card, for the payment of money or its equivalent, knowing at the time of the drawing, making, uttering, issuing, or delivering such check or draft, or at the time of using such debit card, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation; except that this section does not apply to any check when the payee or holder knows or has been expressly notified prior to the drawing or uttering of the check, or has reason to believe, that the drawer did not have on deposit or to the drawer's ~~his~~ credit with the drawee sufficient funds to ensure payment as aforesaid, nor does this section apply to any postdated check.

(4) OBTAINING PROPERTY OR SERVICES IN RETURN FOR WORTHLESS CHECKS, DRAFTS, OR DEBIT CARD ORDERS; PENALTY.—

(a) It is unlawful for any person, firm, or corporation to obtain any services, goods, wares, or other things of value by means of a check, draft, or other written order upon any bank, person, firm, or corporation, knowing at the time of the making, drawing, uttering, issuing, or delivering of such check or draft that the maker thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation. However, no crime may be charged in respect to the giving of any such check or draft or other written order when the payee knows, has been expressly notified, or has reason to believe that the drawer did not have on deposit or to the drawer's ~~his~~ credit with the drawee sufficient funds to ensure payment thereof. A payee does not have reason to believe a payor does not have sufficient funds to ensure payment of a check solely because the payor has previously issued a worthless check to him or her.

(b) It is unlawful for any person to use a debit card to obtain money, goods, services, or anything else of value knowing at the time of such use that he or she does not have sufficient funds on deposit with which to pay for the same or that the value thereof exceeds the amount of credit which is available to him or her through an overdraft financing agreement or prearranged line of credit which is accessible by the use of the card.

Section 1304. Subsection (1) of section 832.06, Florida Statutes, is amended to read:

832.06 Prosecution for worthless checks given tax collector for licenses or taxes; refunds.—

(1) Whenever any person, firm, or corporation violates the provisions of s. 832.05 by drawing, making, uttering, issuing, or delivering to any county tax collector any check, draft, or other written order on any bank or depository for the payment of money or its equivalent for any tag, title, lien, tax (except ad valorem taxes), penalty, or fee relative to a boat, airplane, or motor vehicle; any occupational license, beverage license, or sales or use tax; or any hunting or fishing license, the county tax collector, after the exercise of due diligence to locate the person, firm, or corporation which drew, made, uttered, issued, or delivered the check, draft, or other written order for the payment of money, or to collect the same by the exercise of due diligence and prudence, shall swear out a complaint in the proper court against the person, firm, or corporation for the issuance of the worthless check or draft. If the state attorney cannot sign the information due to lack of proof, as determined by the state attorney in good faith, for a prima facie case in court, he or she shall issue a certificate so stating to the tax collector. If payment of the dishonored check, draft, or other written order, together with court costs expended, is not received in full by the county tax collector within 30 days after service of the warrant, 30 days after conviction, or 60 days after the collector swears out the complaint or receives the certificate of the state attorney, whichever is first, the county tax collector shall make a written report to this effect to the Department of Highway Safety and Motor Vehicles relative to airplanes and motor vehicles, to the Department of Environmental Protection relative to boats, to the Department of Revenue relative to occupational licenses and the sales and use tax, to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation relative to beverage licenses, or to the Game and Fresh Water Fish Commission relative to hunting and fishing licenses, containing a statement of the amount remaining unpaid on the worthless check or draft. If the information is not signed, the certificate of the state attorney is issued, and the written report of the amount remaining unpaid is made, the county tax collector may request the sum be forthwith refunded by the appropriate governmental entity, agency, or department. If a warrant has been issued and served, he or she shall certify to that effect, together with the court costs and amount remaining unpaid on the check. The county tax collector may request that the sum of money certified by him or her be forthwith refunded by the Department of Highway Safety and Motor Vehicles, the Department of Environmental Protection, the Department of Revenue, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, or the Game and Fresh Water Fish Commission to the county tax collector. Within 30 days after receipt of the request, the Department of Highway Safety and Motor Vehicles, the Department of Environmental Protection, the Department of Revenue, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, or the Game and Fresh Water Fish Commission, upon being satisfied as to the correctness of the certificate of the tax collector, or the report, shall refund to the county tax collector the sums of money so certified

or reported. If any officer of any court issuing the warrant is unable to serve it within 60 days after the issuance and delivery of it to the officer for service, the officer shall make a written return to the county tax collector to this effect. Thereafter, the county tax collector may certify that the warrant has been issued and that service has not been had upon the defendant and further certify the amount of the worthless check or draft and the amount of court costs expended by the county tax collector, and the county tax collector may file the certificate with the Department of Highway Safety and Motor Vehicles relative to motor vehicles and airplanes, with the Department of Environmental Protection relative to boats, with the Department of Revenue relative to occupational licenses and the sales and use tax, with the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation relative to beverage licenses, or with the Game and Fresh Water Fish Commission relative to hunting and fishing licenses, together with a request that the sums of money so certified be forthwith refunded by the Department of Highway Safety and Motor Vehicles, the Department of Environmental Protection, the Department of Revenue, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, or the Game and Fresh Water Fish Commission, to the county tax collector, and within 30 days after receipt of the request, the Department of Highway Safety and Motor Vehicles, the Department of Environmental Protection, the Department of Revenue, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, or the Game and Fresh Water Fish Commission, upon being satisfied as to the correctness of the certificate, shall refund the sums of money so certified to the county tax collector.

Section 1305. Subsection (1) of section 832.062, Florida Statutes, is amended to read:

832.062 Prosecution for worthless checks, drafts, or debit card orders given to pay any tax or associated amount administered by the Department of Revenue.—

(1) It is unlawful for any person, firm, or corporation to draw, make, utter, issue, or deliver to the Department of Revenue any check, draft, or other written order on any bank or depository, or to use a debit card, for the payment of any taxes, penalties, interest, fees, or associated amounts administered by the Department of Revenue, knowing at the time of the drawing, making, uttering, issuing, or delivering such check, draft, or other written order, or at the time of using such debit card, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation; except that this section does not apply to any check when the Department of Revenue knows or has been expressly notified prior to the drawing or uttering of the check, or has reason to believe, that the drawer did not have on deposit or to the drawer's ~~his~~ credit with the drawee sufficient funds to ensure payment as aforesaid, nor does this section apply to any postdated check.

Section 1306. Section 836.03, Florida Statutes, is amended to read:

836.03 Owner or editor of the paper also guilty.—Any owner, manager, publisher or editor of any newspaper or other publication who permits any

anonymous communication or communications such as is signed otherwise than with the true name of the writer, and such name published therewith to appear in the columns of the ~~his~~ publication in which said communication any person is attacked in his or her good name, or it is attempted to bring disgrace or ridicule upon any person, such owner, manager, publisher or editor shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1307. Section 836.05, Florida Statutes, is amended to read:

836.05 Threats; extortion.—Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1308. Section 836.07, Florida Statutes, is amended to read:

836.07 Notice condition precedent to prosecution for libel.—Before any criminal action is brought for publication, in a newspaper periodical, of a libel, the prosecutor shall at least 5 days before instituting such action serve notice in writing on defendant, specifying the article and the statements therein which he or she alleges to be false and defamatory.

Section 1309. Section 836.09, Florida Statutes, is amended to read:

836.09 Communicating libelous matter to newspapers; penalty.—If any person shall state, deliver, or transmit by any means whatever, to the manager, editor, publisher or reporter of any newspaper or periodical for publication therein any false and libelous statement concerning any person, then and there known by such person to be false or libelous, and thereby secure the publication of the same he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1310. Section 837.012, Florida Statutes, is amended to read:

837.012 Perjury when not in an official proceeding.—

(1) Whoever makes a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his or her statement was not material is not a defense.

Section 1311. Section 837.02, Florida Statutes, is amended to read:

837.02 Perjury in official proceedings.—

(1) Whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his or her statement was not material is not a defense.

Section 1312. Subsections (4) and (5) of section 837.021, Florida Statutes, are amended to read:

837.021 Perjury by contradictory statements.—

(4) In any prosecution under this section for perjury by contradictory statements, it shall be a defense that the accused believed each statement to be true at the time he or she made it.

(5) A person may not be prosecuted under this section for making contradictory statements in separate proceedings if the contradictory statement made in the most recent proceeding was made under a grant of immunity under s. 914.04; but such person may be prosecuted under s. 837.02 for any false statement made in that most recent proceeding, and the contradictory statements may be received against him or her upon any criminal investigation or proceeding for such perjury.

Section 1313. Section 837.06, Florida Statutes, is amended to read:

837.06 False official statements.—Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1314. Subsections (1) and (2) of section 838.015, Florida Statutes, is amended to read:

838.015 Bribery.—

(1) "Bribery" means corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant ~~he~~ had assumed office, that the matter was properly pending before him or her or

might by law properly be brought before him or her, that the public servant he possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose.

Section 1315. Subsection (2) of section 838.016, Florida Statutes, is amended to read:

838.016 Unlawful compensation or reward for official behavior.—

(2) It is unlawful for any person corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

Section 1316. Section 838.021, Florida Statutes, is amended to read:

838.021 Corruption by threat against public servant.—

(1) Whoever unlawfully harms or threatens unlawful harm to any public servant, to his or her immediate family, or to any other person with whose welfare the public servant he is interested, with the intent or purpose:

(a) To influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(b) To cause or induce the public servant him to use or exert, or procure the use or exertion of, any influence upon or with any other public servant regarding any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant he had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant he possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose.

(3)(a) Whoever unlawfully harms any public servant or any other person with whose welfare the public servant he is interested shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Whoever threatens unlawful harm to any public servant or to any other person with whose welfare the public servant he is interested shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1317. Section 838.12, Florida Statutes, is amended to read:

838.12 Bribery in athletic contests.—

(1) Whoever gives, promises, offers or conspires to give, promise or offer, to anyone who participates or expects to participate in any professional or amateur game, contest, match, race or sport; or to any umpire, referee, judge or other official of such game, contest, match, race or sport; or to any owner, manager, coach or trainer of, or to any relative of, or to any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to influence him or her or them to lose or cause to be lost any game, contest, match, race or sport, or to limit his or her or their or any person's or any team's margin of victory in any game, contest, match, race, or sport, or to fix or throw any game, contest, match, race or sport, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any participant or prospective participant in any professional or amateur game, contest, match, race or sport; or any umpire, referee, judge or other official of such game, contest, match, race or sport; or any owner, manager, coach or trainer of, or any relative of, or any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid; who in any way solicits, receives or accepts, or agrees to receive or accept, or who conspires to receive or accept, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to lose or cause to be lost any game, contest, match, race or sport, or to limit his, her, their or any person's or any team's margin of victory in any game, contest, match, race or sport, or to fix or throw any game, contest, match, race or sport, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1318. Section 839.05, Florida Statutes, is amended to read:

839.05 Municipal officers not to speculate in municipal scrip.—Any mayor, marshal, treasurer, clerk, tax collector or other officer of any incorporated city or town, or any deputy of such officer, who buys up at a discount, or in any manner, directly or indirectly, speculates in any scrip or other evidence of indebtedness issued by the municipal corporation of which she or he is an officer, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall be removed from office.

Section 1319. Section 839.08, Florida Statutes, is amended to read:

839.08 Public officer not to purchase supplies for public use from herself or himself.—No state or county officer shall purchase supplies or materials for public use from herself or himself or from any firm or corporation in which the officer ~~he~~ is interested, nor in any manner share in the proceeds

of such purchase. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1320. Section 839.09, Florida Statutes, is amended to read:

839.09 Boards not to purchase supplies from members of boards.—No state or county board or municipal board or council shall purchase supplies, goods or materials for public use from any firm or corporation in which any member of such board is either directly or indirectly interested, nor shall any such board pay for such supplies, goods or materials so purchased. Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; provided, that no member of any board aforesaid who shall have recorded her or his vote against such illegal purchase, or who shall have been absent at the taking of the vote thereon, shall be convicted of a violation of this section.

Section 1321. Section 839.10, Florida Statutes, is amended to read:

839.10 No officer or board to bid for public work.—No state or county officer nor member of any state or county board shall bid for, or enter into, or be in any manner interested in any contract for public work for which the said officer or state or county board is or may be a party to the letting. Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; provided, that no member of any board aforesaid who shall have recorded her or his vote against the letting of such contract, or who shall have been absent at the taking of the vote thereon, shall be convicted of a violation of this section.

Section 1322. Section 839.11, Florida Statutes, is amended to read:

839.11 Extortion by officers of the state.—Any officer of this state who willfully charges, receives, or collects any greater fees or services than the officer ~~he~~ is entitled to charge, receive, or collect by law is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1323. Section 839.12, Florida Statutes, is amended to read:

839.12 Officer failing to keep record of costs.—If any clerk of a court, sheriff, or county court judge neglects or refuses to keep a record book of the costs which she or he charges, she or he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Such record book shall be prima facie evidence in the courts of the amounts charged therein, in all cases in which any such officer is prosecuted for charging more costs than are allowed by law.

Section 1324. Section 839.14, Florida Statutes, is amended to read:

839.14 Officer withholding records from successor.—If any officer, after the expiration of the time for which she or he may have been appointed or

elected, or in case of his death, her or his executors and administrators, or the person in possession thereof, shall willfully and unlawfully withhold or detain from her or his successors the records, papers, documents, or other writings appertaining and belonging to her or his office, or mutilate, destroy, take away, or otherwise prevent the complete possession by her or his successors of said records, documents, papers, or other writings, she or he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1325. Section 839.15, Florida Statutes, is amended to read:

839.15 Judicial officer withholding records.—Any justice of the Supreme Court or judge of the circuit court who, upon resignation or on being impeached, fails to file all papers and records in her or his possession belonging to her or his court with the proper clerk shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1326. Section 839.16, Florida Statutes, is amended to read:

839.16 Fraud of clerk in drawing jury.—If the clerk of any court shall be guilty of any fraud, either by practicing on a jury box previous to a draft, or in drawing a juror, or in returning into the box any juror which had been lawfully drawn out and drawing or substituting another in her or his stead, or in any other way in the drawing of jurors, the clerk ~~he~~ shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 1327. Section 839.17, Florida Statutes, is amended to read:

839.17 Misappropriation of moneys by commissioners to make sales.—Any commissioner or master in chancery, having received the purchase money or the securities resulting from any of the sales authorized by law, who shall fail to deliver such moneys and securities, or either of them, to the executor or administrator, or the person entitled to receive the same, upon the order of the court, unless she or he is rendered unable to do so by some cause not attributable to her or his own default or neglect, shall be fined in a sum equal to the amount received from the purchaser, and shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1328. Section 839.19, Florida Statutes, is amended to read:

839.19 Failure to execute process generally.—Any sheriff or other officer authorized to execute process, who willfully or corruptly refuses or neglects to execute and return, according to law, any process delivered to him or her, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1329. Section 839.20, Florida Statutes, is amended to read:

839.20 Refusal to execute criminal process.—If any officer authorized to serve process, willfully and corruptly refuses to execute any lawful process to him or her directed and requiring him or her to apprehend and confine any person convicted or charged with an offense, or willfully and corruptly

omits or delays to execute such process, whereby such person escapes and goes at large, the officer ~~he~~ shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1330. Section 839.21, Florida Statutes, is amended to read:

839.21 Refusal to receive prisoner.—Any jailer or other officer, who willfully refuses to receive into the jail or into her or his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1331. Section 839.23, Florida Statutes, is amended to read:

839.23 Officer taking insufficient bail.—An official who takes bail which the official ~~he~~ knows is not sufficient, accepts a surety she or he knows does not have the qualifications required by law, or accepts as a surety a professional bond agent ~~bondsman~~ who is not registered with the clerk of the circuit court and qualified to act as surety shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. An official convicted of violating this section may be removed from office by the Governor.

Section 1332. Section 839.24, Florida Statutes, is amended to read:

839.24 Penalty for failure to perform duty required of officer.—A sheriff, county court judge, prosecuting officer, court reporter, stenographer, interpreter, or other officer required to perform any duty under the criminal procedure law who willfully fails to perform his or her duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1333. Subsection (1) of section 839.25, Florida Statutes, is amended to read:

839.25 Official misconduct.—

(1) “Official misconduct” means the commission of the following act by a public servant, with corrupt intent to obtain a benefit for himself or herself or another or to cause unlawful harm to another: knowingly falsifying, or causing another to falsify, any official record or official document.

Section 1334. Section 839.26, Florida Statutes, is amended to read:

839.26 Misuse of confidential information.—Any public servant who, in contemplation of official action by herself or himself or by a governmental unit with which the public servant ~~he~~ is associated, or in reliance on information to which she or he has access in her or his official capacity and which has not been made public, commits any of the following acts:

(1) Acquisition of a pecuniary interest in any property, transaction, or enterprise or gaining of any pecuniary or other benefit which may be affected by such information or official action;

- (2) Speculation or wagering on the basis of such information or action;
or
- (3) Aiding another to do any of the foregoing,

shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1335. Section 843.025, Florida Statutes, is amended to read:

843.025 Depriving officer of means of protection or communication.—It is unlawful for any person to deprive a law enforcement officer as defined in s. 943.10(1), a correctional officer as defined in s. 943.10(2), or a correctional probation officer as defined in s. 943.10(3) of her or his weapon or radio or to otherwise deprive the officer ~~him~~ of the means to defend herself or himself or summon assistance. Any person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1336. Section 843.03, Florida Statutes, is amended to read:

843.03 Obstruction by disguised person.—Whoever in any manner disguises himself or herself with intent to obstruct the due execution of the law, or with the intent to intimidate, hinder, or interrupt any officer, beverage enforcement agent, or other person in the legal performance of his or her duty or the exercise of his or her rights under the constitution or laws of this state, whether such intent is effected or not, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1337. Section 843.05, Florida Statutes, is amended to read:

843.05 Resisting timber agent.—Whoever obstructs, resists, or opposes a timber agent in the discharge of her or his duties, or attempts so to do, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 1338. Section 843.06, Florida Statutes, is amended to read:

843.06 Neglect or refusal to aid peace officers.—Whoever, being required in the name of the state by any officer of the Florida Highway Patrol, police officer, beverage enforcement agent, or watchman, neglects or refuses to assist him or her in the execution of his or her office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in case of the rescue or escape of a person arrested upon civil process, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1339. Subsection (3) of section 843.081, Florida Statutes, is amended to read:

843.081 Prohibited use of certain lights; penalty.—

(3) The provisions of this section shall not apply to salespersons ~~salesmen~~, service representatives, or other employees of businesses licensed to sell or repair law enforcement equipment.

Section 1340. Section 843.09, Florida Statutes, is amended to read:

843.09 Escape through voluntary action of officer.—If a jailer or other officer voluntarily suffers a prisoner in her or his custody, upon conviction of any criminal charge, to escape, she or he shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1341. Section 843.10, Florida Statutes, is amended to read:

843.10 Escape by negligence of officer.—If a jailer or other officer, through negligence, suffers a prisoner in her or his custody upon conviction of any criminal charge to escape, she or he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1342. Section 843.11, Florida Statutes, is amended to read:

843.11 Conveying tools into jail to aid escape; forcible rescue.—Whoever conveys into a jail or other like place of confinement, any disguise, instrument, tool, weapon, or other thing adapted or useful to aid a prisoner in making his or her escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or, by any means whatever, aids or assists such prisoner in his or her endeavors to escape therefrom, whether such escape is effected or attempted or not; and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of an offense, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; or if the person whose escape or rescue was effected or intended, was charged with an offense not capital nor punishable by imprisonment in the state prison, then a person who assists a prisoner as described in this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; or if the prisoner while his or her escape or rescue is being effected or attempted commits any crime with the weapon, tool, or instrument conveyed to him or her, the person conveying the weapon, tool, or instrument to the prisoner ~~him~~ shall be subject to whatever fine, imprisonment, or other punishment the law imposes for the crime committed, as an accessory before the fact.

Section 1343. Section 843.13, Florida Statutes, is amended to read:

843.13 Aiding escape of juvenile inmates of correctional institutions.—Whoever in any manner knowingly aids or assists any inmate of any correctional institution for boys or girls in the state to escape therefrom, or who knowingly, or having good reason to believe that any person is an inmate of such schools and is escaping or attempting to escape therefrom, aids or assists such inmate to make his or her escape or to avoid detention or recapture, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1344. Section 843.14, Florida Statutes, is amended to read:

843.14 Compounding felony.—Whoever, having knowledge of the commission of an offense punishable with death or by imprisonment in the state prison, takes money or a gratuity or reward, or an engagement therefor,

upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, shall when such offense of which he or she has knowledge is punishable with death or imprisonment in the state prison for life, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; and where the offense of which he or she so had knowledge was punishable in any other manner, he or she shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1345. Subsection (1) of section 843.15, Florida Statutes, is amended to read:

843.15 Failure of defendant on bail to appear.—

(1) Whoever, having been released pursuant to chapter 903, willfully fails to appear before any court or judicial officer as required shall incur a forfeiture of any security which was given or pledged for her or his release and, in addition, shall:

(a) If she or he was released in connection with a charge of felony or while awaiting sentence or pending review by certiorari after conviction of any offense, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or;

(b) If she or he was released in connection with a charge of misdemeanor, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1346. Section 843.17, Florida Statutes, is amended to read:

843.17 Publishing name and address of law enforcement officer.—Any person who shall maliciously, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his or her duties, publish or disseminate the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1347. Subsection (1) of section 843.18, Florida Statutes, is amended to read:

843.18 Boats; fleeing or attempting to elude a law enforcement officer.—

(1) It is unlawful for the operator of any boat plying the waters of the state, having knowledge that she or he has been directed to stop such vessel by a duly authorized law enforcement officer, willfully to refuse or fail to stop in compliance with such directive or, having stopped in knowing compliance with such a directive, willfully to flee in an attempt to elude such officer. Any person violating this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1348. Paragraph (a) of subsection (1), subsections (2), (6), and (7), and paragraph (e) of subsection (8) of section 847.011, Florida Statutes, are amended to read:

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—

(1)(a) Any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.

(6) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the

time such act was committed or conduct engaged in the defendant ~~he~~ had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, by showing facts and circumstances from which it may fairly be inferred that he or she had such knowledge, or by showing that he or she had knowledge of such facts and circumstances as would put a person ~~man~~ of ordinary intelligence and caution on inquiry as to such contents or character.

(7) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section; and, upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer, the same shall be held by the arresting agency. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and, after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if the claimant ~~he~~ shows that he or she is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(8)

(e) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this subsection, is chargeable with knowledge of the contents and character thereof.

Section 1349. Paragraphs (d) and (f) of subsection (5) of section 847.012, Florida Statutes, are amended to read:

847.012 Prohibition of sale or other distribution of harmful materials to persons under 18 years of age; penalty.—

(5)

(d) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of her or ~~his~~ compliance.

(f) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon her or ~~him~~ of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

Section 1350. Paragraphs (c), (d), and (e) of subsection (2) and paragraphs (b) and (e) of subsection (3) of section 847.013, Florida Statutes, are amended to read:

847.013 Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.—

(2) OFFENSES AND PENALTIES.—

(c) The provisions of paragraph (a) do not apply to a minor when the minor ~~he~~ is accompanied by his or her parents or either of them.

(d) It is unlawful for any minor to falsely represent to the owner of any premises mentioned in paragraph (a), or to the owner's ~~his~~ agent, or to any person mentioned in paragraph (b), that such minor is 17 years of age or older, with the intent to procure such minor's admission to such premises, or such minor's purchase or rental of a videotape, for a monetary consideration.

(e) It is unlawful for any person to knowingly make a false representation to the owner of any premises mentioned in paragraph (a), or to the owner's ~~his~~ agent, or to any person mentioned in paragraph (b), that he or she is the parent of any minor or that any minor is 17 years of age or older, with intent to procure such minor's admission to such premises or to aid such minor in procuring admission thereto, or to aid or enable such minor's purchase or rental of a videotape, for a monetary consideration.

(3) INJUNCTIVE PROCEEDINGS.—

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person or persons complained of until final hearing or further order of the court. Whenever the relator requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application therefor has been given to the person or persons restrained of the time when and place where the application for such restraining order is to be heard. However, such notice shall be dispensed with when it is manifest to such judge, from the allegations of a sworn complaint or independent affidavit, sworn to by the relator or by some person associated with him or her in the field of law enforcement and filed by the relator, that the apprehended violation will be committed if an immediate remedy is not afforded.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any motion picture, exhibition, show, representation, or presentation described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents or character thereof.

Section 1351. Section 847.02, Florida Statutes, is amended to read:

847.02 Confiscation of obscene material.—Whenever anyone is convicted under s. 847.011, the court in awarding sentence shall make an order confiscating said obscene material and authorize the sheriff of the county in which the material is held to destroy the same. The sheriff shall file with the court a certificate of his or her compliance.

Section 1352. Section 847.03, Florida Statutes, is amended to read:

847.03 Officer to seize obscene material.—Whenever any officer arrests any person charged with any offense under s. 847.011, ~~the officer~~ he shall seize said obscene material and take the same into his or her custody to await the sentence of the court upon the trial of the offender.

Section 1353. Subsection (2) of section 847.06, Florida Statutes, is amended to read:

847.06 Obscene matter; transportation into state prohibited; penalty.—

(2) When any person is convicted of a violation of this section, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his or her arrest.

Section 1354. Section 847.08, Florida Statutes, is amended to read:

847.08 Hearings for determination of probable cause.—Whenever an indictment, information, or affidavit is filed under the provisions of ss. 847.07-847.09, the state attorney or his or her duly appointed assistant may apply to the court for the issuance of an order directing the defendant or his or her principal agent or bailee or other like person to produce the allegedly obscene materials at a time and place so designated by the court for the purpose of determining whether there is probable cause to believe said material is obscene. After hearing the parties on the issue, if the court determines probable cause exists, it may order the material held by the clerk of the court pending further order of the court. This section shall not be construed to prohibit the seizure of obscene materials by any other lawful means.

Section 1355. Section 849.01, Florida Statutes, is amended to read:

849.01 Keeping gambling houses, etc.—Whoever by herself or himself, her or his servant, clerk or agent, or in any other manner has, keeps, exercises or maintains a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter or other place for the purpose of gaming or gambling or in any place of which she or he may directly or indirectly have charge, control or management, either exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever, whether heretofore prohibited or not, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1356. Section 849.04, Florida Statutes, is amended to read:

849.04 Permitting minors and persons under guardianship to gamble.—Whoever being the proprietor, owner or keeper of any E. O., keno or pool table, or billiard table, wheel of fortune, or other game of chance, kept for the purpose of betting, willfully and knowingly allows any minor or any person who is mentally incompetent or under guardianship to play at such

game or to bet on such game of chance or whoever aids or abets or otherwise encourages such playing or betting of any money or other valuable thing upon the result of such game of chance by any minor or any person who is mentally incompetent or under guardianship shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For the purpose of this section, a “mentally incompetent person” is one who because of mental illness, mental retardation, senility, excessive use of drugs or alcohol, or other mental incapacity is incapable of either managing his or her property or caring for himself or herself or both.

Section 1357. Section 849.07, Florida Statutes, is amended to read:

849.07 Permitting gambling on billiard or pool table by holder of license.—If any holder of a license to operate a billiard or pool table shall permit any person to play billiards or pool or any other game for money, or any other thing of value, upon such tables, she or he shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1358. Paragraphs (b) and (d) of subsection (3) of section 849.085, Florida Statutes, are amended to read:

849.085 Certain penny-ante games not crimes; restrictions.—

(3) A penny-ante game is subject to the following restrictions:

(b) A person may not receive any consideration or commission for allowing a penny-ante game to occur in his or her dwelling.

(d) A person may not solicit participants by means of advertising in any form, advertise the time or place of any penny-ante game, or advertise the fact that he or she will be a participant in any penny-ante game.

Section 1359. Paragraphs (f), (h), (j), and (k) of subsection (1) of section 849.09, Florida Statutes, are amended to read:

849.09 Lottery prohibited; exceptions.—

(1) It is unlawful for any person in this state to:

(f) Have in her or his possession any lottery wheel, implement, or device whatsoever for conducting any lottery or scheme for the disposal by lot or chance of anything of value;

(h) Have in her or his possession any lottery ticket, or any evidence of any share or right in any lottery ticket, or in any lottery scheme or device, whether such ticket or evidence of share or right represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played;

(j) Have in her or his possession any lottery advertisement, circular, poster, or pamphlet, or any list or schedule of any lottery prizes, gifts, or drawings.

(k) Have in her or his possession any so-called “run down sheets,” tally sheets, or other papers, records, instruments, or paraphernalia designed for use, either directly or indirectly, in, or in connection with, the violation of the laws of this state prohibiting lotteries and gambling.

Provided, that nothing in this section shall prohibit participation in any nationally advertised contest, drawing, game or puzzle of skill or chance for a prize or prizes unless it can be construed as a lottery under this section; and, provided further, that this exemption for national contests shall not apply to any such contest based upon the outcome or results of any horse-race, harness race, dograce, or jai alai game.

Section 1360. Subsection (2) of section 849.091, Florida Statutes, is amended to read:

849.091 Chain letters, pyramid clubs, etc., declared a lottery; prohibited; penalties.—

(2) A “pyramid sales scheme,” which is any sales or marketing plan or operation whereby a person pays a consideration of any kind, or makes an investment of any kind, in excess of \$100 and acquires the opportunity to receive a benefit or thing of value which is not primarily contingent on the volume or quantity of goods, services, or other property sold in bona fide sales to consumers, and which is related to the inducement of additional persons, by himself or herself or others, regardless of number, to participate in the same sales or marketing plan or operation, is hereby declared to be a lottery, and whoever shall participate in any such lottery by becoming a member of or affiliating with, any such group or organization or who shall solicit any person for membership or affiliation in any such group or organization commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, the term “consideration” and the term “investment” do not include the purchase of goods or services furnished at cost for use in making sales, but not for resale, or time and effort spent in the pursuit of sales or recruiting activities.

Section 1361. Subsection (3) of section 849.0915, Florida Statutes, is amended to read:

849.0915 Referral selling.—

(3) In addition to the penalty provided herein, the Attorney General and her or his assistants, the state attorneys and their assistants, and the Division of Consumer Services of the Department of Agriculture and Consumer Services are authorized to apply to the circuit court within their respective jurisdictions, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating the provisions of this section, whether or not there exists an adequate remedy at law, and such injunction shall issue without bond.

Section 1362. Subsection (4) of section 849.092, Florida Statutes, is amended to read:

849.092 Retail merchandising business; certain activities permitted.— The provisions of s. 849.09 shall not be construed to prohibit or prevent persons who are licensed to conduct business under s. 206.404, from giving away prizes to persons selected by lot, if such prizes are made on the following conditions:

(4) The person selected to receive any such gift or prize offered by any such licensee in connection with any such advertising or promotion is notified of his or her selection at his or her last known address. Newspapers, magazines, television and radio stations may, without violating any law, publish and broadcast advertising matter describing such advertising and promotional undertakings of such licensees which may contain instructions pursuant to which persons desiring to become eligible for such gifts or prizes may make their name and address known to such licensee.

Section 1363. Paragraphs (f) and (h) of subsection (12) of section 849.0931, Florida Statutes, are amended to read:

849.0931 Bingo authorized; conditions for conduct; permitted uses of proceeds; limitations.—

(12) Each bingo game shall be conducted in accordance with the following rules:

(f) When a caller has started to vocally announce a number, the caller he shall complete the call. If any player has obtained a bingo on a previous number, such player will share the prize with the player who gained bingo on the last number called.

(h) Upon determining a winner, the caller shall ask, “Are there any other winners?” If no one replies, the caller shall declare the game closed. No other player is entitled to share the prize unless she or he has declared a bingo prior to this announcement.

Section 1364. Paragraph (b) of subsection (4) and subsection (5) of section 849.094, Florida Statutes, are amended to read:

849.094 Game promotion in connection with sale of consumer products or services.—

(4)

(b) The Department of State may waive the provisions of this subsection for any operator who has conducted game promotions in the state for not less than 5 consecutive years and who has not had any civil, criminal, or administrative action instituted against him or her by the state or an agency of the state for violation of this section within that 5-year period. Such waiver may be revoked upon the commission of a violation of this section by such operator, as determined by the Department of State.

(5) Every operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 shall provide the Department of State with a certified list of the names and addresses of all persons,

whether from this state or from another state, who have won prizes which have a value of more than \$25, the value of such prizes, and the dates when the prizes were won within 60 days after such winners have been finally determined. The operator shall provide a copy of the list of winners, without charge, to any person who requests it. In lieu of the foregoing, the operator of a game promotion may, at his or her option, publish the same information about the winners in a Florida newspaper of general circulation within 60 days after such winners have been determined and shall provide to the Department of State a certified copy of the publication containing the information about the winners. The operator of a game promotion is not required to notify a winner by mail or by telephone when the winner is already in possession of a game card from which the winner ~~himself~~ can determine that he or she has won a designated prize. All winning entries shall be held by the operator for a period of 90 days after the close or completion of the game.

Section 1365. Section 849.12, Florida Statutes, is amended to read:

849.12 Money and prizes to be forfeited.—All sums of money and every other valuable thing drawn and won as a prize, or as a share of a prize, or as a share, percentage or profit of the principal promoter or operator, in any lottery, and all money, currency or property of any kind to be disposed of, or offered to be disposed of, by chance or device in any scheme or under any pretext by any person, and all sums of money or other thing of value received by any person by reason of her or his being the owner or holder of any ticket or share of a ticket in a lottery, or pretended lottery, or of a share or right in any such schemes of chance or device and all sums of money and other thing of value used in the setting up, conducting or operation of a lottery, and all money or other thing of value at stake, or used or displayed in or in connection with any illegal gambling or any illegal gambling device contrary to the laws of this state, shall be forfeited, and may be recovered by civil proceedings, filed, or by action for money had and received, to be brought by the Department of Legal Affairs or any state attorney, or other prosecuting officer, in the circuit courts in the name and on behalf of the state; the same to be applied when collected as all other penal forfeitures are disposed of.

Section 1366. Section 849.14, Florida Statutes, is amended to read:

849.14 Unlawful to bet on result of trial or contest of skill, etc.—Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of human man or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depository of any money or other thing of value so staked, bet, or wagered upon any such result, or whoever aids, or assists, or abets in any manner in any of such acts all of which are hereby forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1367. Section 849.15, Florida Statutes, is amended to read:

849.15 Manufacture, sale, possession, etc., of coin-operated devices prohibited.—It is unlawful:

(1) To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person him or under the person's his management or control, any slot machine or device or any part thereof; or

(2) To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

Section 1368. Subsection (1) of section 849.16, Florida Statutes, is amended to read:

849.16 Machines or devices which come within provisions of law defined.—

(1) Any machine or device is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

Section 1369. Section 849.17, Florida Statutes, is amended to read:

849.17 Confiscation of machines by arresting officer.—Upon the arrest of any person charged with the violation of any of the provisions of ss. 849.15-849.23 the arresting officer shall take into his or her custody any such machine, apparatus or device, and its contents, and the arresting agency, at the place of seizure, shall make a complete and correct list and inventory of all such things so taken into his or her custody, and deliver to the person from whom such article or articles may have been seized, a true copy of the list of all such articles. The arresting agency shall retain all evidence seized and shall have the same forthcoming at any investigation, prosecution or other proceedings, incident to charges of violation of any of the provisions of ss. 849.15-849.23.

Section 1370. Section 849.19, Florida Statutes, is amended to read:

849.19 Property rights in confiscated machine.—The right of property in and to any machine, apparatus or device as defined in s. 849.16 and to all money and other things of value therein, is declared not to exist in any person, and the same shall be forfeited and such money or other things of value shall be forfeited to the county in which the seizure was made and shall be delivered forthwith to the clerk of the circuit court and shall by her or him be placed in the fine and forfeiture fund of said county.

Section 1371. Section 849.20, Florida Statutes, is amended to read:

849.20 Machines and devices declared nuisance; place of operation subject to lien for fine.—Any room, house, building, boat, vehicle, structure or place wherein any machine or device, or any part thereof, the possession, operation or use of which is prohibited by ss. 849.15-849.23, shall be maintained or operated, and each of such machines or devices, is declared to be a common nuisance. If a person has knowledge, or reason to believe, that his or her room, house, building, boat, vehicle, structure or place is occupied or used in violation of the provisions of ss. 849.15-849.23 and by acquiescence or consent suffers the same to be used, such room, house, building, boat, vehicle, structure or place shall be subject to a lien for and may be sold to pay all fines or costs assessed against the person guilty of such nuisance, for such violation, and the several state attorneys shall enforce such lien in the courts of this state having jurisdiction.

Section 1372. Subsection (1) of section 849.231, Florida Statutes, is amended to read:

849.231 Gambling devices; manufacture, sale, purchase or possession unlawful.—

(1) Except in instances when the following described implements or apparatus are being held or transported by authorized persons for the purpose of destruction, as hereinafter provided, and except in instances when the following described instruments or apparatus are being held, sold, transported, or manufactured by persons who have registered with the United States Government pursuant to the provisions of Title 15 of the United States Code, ss. 1171 et seq., as amended, so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida, or held or manufactured in contravention of the requirements of 15 U.S.C. ss. 1171 et seq., it shall be unlawful for any person to manufacture, sell, transport, offer for sale, purchase, own, or have in his or her possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings, or any other device, implement, apparatus, or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards.

Section 1373. Section 849.232, Florida Statutes, is amended to read:

849.232 Property right in gambling devices; confiscation.—There shall be no right of property in any of the implements or devices enumerated or included in s. 849.231 and upon the seizure of any such implement, device, apparatus or paraphernalia by an authorized enforcement officer the same shall be delivered to and held by the clerk of the court having jurisdiction of such offenses and shall not be released by such clerk until he or she shall be advised by the prosecuting officer of such court that the said implement is no longer required as evidence and thereupon the said clerk shall deliver the said implement to the sheriff of the county who shall immediately cause the destruction of such implement in the presence of the said clerk or his or her authorized deputy.

Section 1374. Paragraph (a) of subsection (1) of section 849.25, Florida Statutes, is amended to read:

849.25 “Bookmaking” defined; penalties; exceptions.—

(1)(a) The term “bookmaking” means the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human man, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever.

Section 1375. Section 849.31, Florida Statutes, is amended to read:

849.31 Loser’s testimony not to be used against her or him.—In the event that suit is brought under the authorization of ss. 849.26-849.34 by someone other than the loser of the money or thing of value involved in the suit, such loser shall not be excused from being required to attend and testify or produce any book, paper or other document or evidence in such suit, upon the ground or for the reason that the testimony or evidence required of the loser him may tend to convict her or him of a crime or to subject her or him to a penalty or forfeiture, but the loser he shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which she or he may so be required to testify or produce evidence, and no testimony so given or produced shall be received against the loser him upon any criminal investigation or prosecution. If the loser of money or thing of value involved in a suit brought under authorization of ss. 849.26-849.34, whether by her or him or by someone else, voluntarily attends or produces evidence in such suit, the loser he shall not be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which she or he may so testify or produce evidence, and no testimony so given or produced shall be received against her or him upon any criminal investigation or prosecution. Also, neither the fact of the bringing of suit under this act by a loser nor any statement or admission in her or his pleadings which is material and relevant to the subject matter of the suit shall be received against the loser him upon any criminal investigation or proceeding.

Section 1376. Section 849.33, Florida Statutes, is amended to read:

849.33 Judgment and collection of money; execution.—Any judgment recovered in such a suit shall adjudge separately the amounts recovered for

the use of the state, and the plaintiff shall not have execution therefor, and such amounts shall not be paid to the plaintiff, but shall be payable to the state attorney, who shall promptly transmit the sums collected by him or her to the State Treasurer. The state attorney shall diligently seek the collection of such amounts and may cause a separate execution to issue for the collection thereof.

Section 1377. Section 849.34, Florida Statutes, is amended to read:

849.34 Loser's judgment; recovery of property; writ of assistance.—If the plaintiff in any such suit seek to recover property lost, and if the plaintiff ~~he~~ shall prevail as to any such property, he or she shall take judgment for the property itself and for the value thereof, the judgment as to such property to be satisfied by the recovery of the property or of the value thereof. The plaintiff may, at his or her option, sue out a separate writ of possession for the property and a separate execution for any other moneys and costs adjudged in his or her favor, or the plaintiff ~~he~~ may sue out an execution for the value of the property and any other moneys and costs adjudged in his or her favor. If the plaintiff ~~he~~ elect to sue out a writ of possession for the property, and if the officer shall return that he or she is unable to find the property, or any of it, the plaintiff may thereupon sue out execution for the value of the property not found. In any proceeding to ascertain the value of the property, the value of each article shall be found so that judgment for such value may be entered.

Section 1378. Subsection (2) of section 849.35, Florida Statutes, is amended to read:

849.35 Definitions.—In construing ss. 849.36-849.46 and each and every word, phrase, or part thereof, where the context permits:

(2) Gender-specific language includes the other gender and neuter ~~The masculine includes the feminine and neuter and vice versa.~~

Section 1379. Subsection (5) of section 849.36, Florida Statutes, is amended to read:

849.36 Seizure and forfeiture of property used in the violation of lottery and gambling statutes.—

(5) It shall be the duty of every peace officer in this state finding any vessel, vehicle, or paraphernalia being used in violation of the statutes and laws of this state as aforesaid to seize and take possession of such property for disposition as hereinafter provided. It shall also be the duty of every peace officer finding any such property being so used, in connection with any lawful search made by her or him, to seize and take possession of the same for disposition as hereinafter provided.

Section 1380. Subsections (2) and (3) of section 849.37, Florida Statutes, are amended to read:

849.37 Disposition and appraisal of property seized under this chapter.—

(2) When property is seized by the sheriff pursuant to this chapter, or when property seized by another is delivered to the sheriff as aforesaid, the sheriff ~~he~~ shall forthwith fix the approximate value thereof and make return thereof to the clerk of the circuit court as hereinafter provided.

(3) The return of the sheriff aforesaid shall contain a schedule of the property seized describing the same in reasonable detail and give in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew or was led to believe that the property was being used for or in connection with a violation of the statutes and laws of this state prohibiting lotteries or gambling in this state; and a statement of the names of all persons, firms and corporations known to the sheriff to be interested in the seized property; and in cases where the said property was seized by another the sheriff shall attach to his or her said return, as an exhibit thereto, the return of the seizing officer to him or her.

Section 1381. Section 849.39, Florida Statutes, is amended to read:

849.39 Delivery of property to claimant.—Any person, firm, or corporation filing a claim in the cause, which claim shall state fully her or his right, title, claim, or interest, in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the sheriff and posting with her or him, to be approved by her or him, a surety bond, payable to the Governor of the state in twice the amount of the value of the said property as fixed in the sheriff's return to the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon her or his paying to the sheriff the value of the property together with costs of the proceeding, if judgment of forfeiture be entered by the court. Upon the posting of such bond with the sheriff and the release of the property to the applicant the cause shall proceed to final judgment in the same manner as it would have had no such bond been filed, except that any execution to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and the person's ~~his~~ surety.

Section 1382. Section 849.41, Florida Statutes, is amended to read:

849.41 Proceeding when claim filed.—When one or more claims are filed in the cause the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized, after which the cause shall proceed as in other common-law cases; except any claimant shall prove to the satisfaction of the court that he or she ~~he~~ did not know or have any reason to believe, at the time his or her right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting lotteries and gambling and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner of the property has been convicted of a violation of the statutes and laws of this state prohibiting lotteries or gambling such conviction shall be prima facie evidence that each claimant had

reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and it shall be incumbent upon such claimant to satisfy the court that he or she was without knowledge of such conviction. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the State Constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

Section 1383. Subsection (3) of section 856.011, Florida Statutes, is amended to read:

856.011 Disorderly intoxication.—

(3) Any person who shall have been convicted or have forfeited collateral under the provisions of subsection (1) three times in the preceding 12 months shall be deemed a habitual offender and may be committed by the court to an appropriate treatment resource for a period of not more than 60 days. Any peace officer, in lieu of incarcerating an intoxicated person for violation of subsection (1), may take or send the intoxicated person to her or his home or to a public or private health facility, and the law enforcement officer may take reasonable measures to ascertain the commercial transportation used for such purposes is paid for by such person in advance. Any law enforcement officers so acting shall be considered as carrying out their official duty.

Section 1384. Subsection (2) of section 856.021, Florida Statutes, is amended to read:

856.021 Loitering or prowling; penalty.—

(2) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself for any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person ~~him~~ to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

Section 1385. Section 856.031, Florida Statutes, is amended to read:

856.031 Arrest without warrant.—Any sheriff, police officer ~~policeman~~, or other law enforcement officer may arrest any suspected loiterer or prowler without a warrant in case delay in procuring one would probably enable such suspected loiterer or prowler to escape arrest.

Section 1386. Subsection (1) of section 859.04, Florida Statutes, is amended to read:

859.04 Provisions concerning poisons.—

(1) It is unlawful for any person not a registered pharmacist to retail any poisons enumerated below: Arsenic and all its preparations, corrosive sublimate, white and red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine, and all other poisonous vegetable alkaloids and their salts, and the essential oil of almonds, opium, and its preparations of opium containing less than two grains to the ounce, aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, veratrum digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic and oxalic acids; and she or he shall label the box, vessel, or paper in which said poison is contained with the name of the article, the word "poison," and the name and place of business of the seller.

Section 1387. Section 859.05, Florida Statutes, is amended to read:

859.05 Narcotics not to be sold except on prescription.—No person shall sell, give away, or otherwise dispose of any opium, morphine, cocaine, or its salts, atropine, belladonna, or conium, to any person, except upon the written prescription of a licensed practicing physician, which prescription shall not be filled but once; provided, however, that this section shall not apply to manufacturers making and selling at wholesale to druggists, or to sales thereof, for the use of dentists, physicians, hospitals, or infirmaries. Any person who shall, for himself or herself, or for any other person, violate any of the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1388. Paragraph (a) of subsection (3) of section 859.06, Florida Statutes, is amended to read:

859.06 Selling, delivering, bartering, furnishing, or giving tobacco products and cigarette wrappers to persons under 18 years of age; criminal penalties; defense.—

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the cigarette or other tobacco product or cigarette wrapper was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 18 years of age or older;

Section 1389. Section 859.08, Florida Statutes, is amended to read:

859.08 Penalty for selling adulterated drugs.—Every registered pharmacist, and the owner or proprietor of any store dealing in drugs or medicines, shall be held responsible for the quality of all drugs, chemicals, or medicines he or she may sell or dispense, with the exception of those sold in the original packages of the manufacturer and those known as proprietary; and any person who fraudulently adulterates, for the purpose of sale, any drug or medicine or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and such adulterated drugs and medicine shall be forfeited and destroyed under the direction

of the court; and if the offender be a registered pharmacist, his or her name shall be stricken from the register.

Section 1390. Section 860.03, Florida Statutes, is amended to read:

860.03 Intoxicated servant of common carrier.—If any person while in charge of a locomotive engine, acting as the conductor or superintendent of a car or train, on the car or train as a brakeman, employed to attend the switches, drawbridges or signal stations on any railway, or acting as captain or pilot on any steamboat shall be intoxicated, the person ~~he~~ shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1391. Section 860.05, Florida Statutes, is amended to read:

860.05 Unauthorized person interfering with railroad train, cars, or engines.—Any person, other than an employee or authorized agent of the railroad company acting within the line of ~~his~~ duty, who shall knowingly or willfully detach or uncouple any train; put on, apply, or tamper with any brake, bell cord, or emergency valve; or otherwise interfere with any train, engine, car, or part thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1392. Section 860.08, Florida Statutes, is amended to read:

860.08 Interference with railroad signals prohibited; penalty.—Any person, other than an employee or authorized agent of a railroad company acting within the line of ~~his~~ duty, who knowingly or willfully interferes with or removes any railroad signal system used to control railroad operations, any railroad crossing warning devices, or any lantern, light, lamp, torch, flag, fuse, torpedo, or other signal used in connection with railroad operations is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1393. Section 860.09, Florida Statutes, is amended to read:

860.09 Interference with railroad track and other equipment prohibited; penalties.—Any person, other than an employee or authorized agent of a railroad company acting within the line of ~~his~~ duty, who knowingly or willfully moves, interferes with, removes, or obstructs any railroad switch, bridge, track, crossties, or other equipment located on the right-of-way or property of a railroad and used in railroad operations is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1394. Subsections (1) and (2) of section 860.154, Florida Statutes, are amended to read:

860.154 Florida Motor Vehicle Theft Prevention Authority.—

(1) There is hereby established within the Department of Legal Affairs the Florida Motor Vehicle Theft Prevention Authority, which shall exercise its powers, duties, and responsibilities independently of the department.

The purposes, powers, and duties of the authority shall be vested in and exercised by a board of directors. There shall be nine members of the board, consisting of the commissioner of the Department of Insurance or the commissioner's his designee; the executive director of the Department of Highway Safety and Motor Vehicles; the executive director of the Department of Law Enforcement; six additional members, each of whom shall be appointed by the Attorney General: a state attorney or city or county executive, a chief executive law enforcement official, a sheriff, one representative of companies authorized to sell motor vehicle insurance, one representative of insurers authorized to write motor vehicle insurance in this state, and one representative of purchasers of motor vehicle insurance in this state who is not employed by or connected with the business of insurance.

(2) The Attorney General shall designate the ~~chair~~ chairman of the board from the membership annually. All members of the board appointed by the Attorney General shall serve at the discretion of the Attorney General for a term not to exceed 2 years. The initial appointed members of the board shall serve from October 1, 1992, until October 1, 1994, or until their successors are appointed. The board shall meet at least quarterly.

Section 1395. Section 861.07, Florida Statutes, is amended to read:

861.07 Obstructing wagon roads.—Whenever any tie cutter or log cutter cutting ties for a railroad or logs for milling purposes shall cut or fell any tree into or across any traveled road, whether it be a county road, a road regularly used by the public, or a neighborhood road, and shall fail to remove the same within 2 hours thereafter so as to free the road from all obstruction therefrom, such tie cutter or log cutter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; and such person and the person's his employer shall be liable or responsible for any and all damages resulting from so obstructing a traveled road.

Section 1396. Section 865.08, Florida Statutes, is amended to read:

865.08 Purchase of cotton or leaf tobacco.—Whoever trades, traffics for, or buys, except from the producer or the producer's his authorized agent, any cotton or leaf tobacco, unless the same be baled or boxed in the usual manner, or unless upon some exhibition of evidence in writing that the producer has parted with her or his interest therein, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1397. Paragraph (a) of subsection (2) and subsections (3) and (7) of section 865.09, Florida Statutes, are amended to read:

865.09 Fictitious name registration.—

(2) DEFINITIONS.—As used in this section:

(a) “Fictitious name” means any name under which a person transacts business in this state, other than the person's his legal name.

(3) REGISTRATION.—A person may not engage in business under a fictitious name unless the person he first registers the name with the division by filing a sworn statement listing:

- (a) The name to be registered.
- (b) The mailing address of the business.
- (c) The name and address of each owner and, if a corporation, its federal employer's identification number and Florida incorporation or registration number.
- (d) Certification by the applicant that the intention to register such fictitious name has been advertised at least once in a newspaper as defined in chapter 50 in the county where the principal place of business of the applicant will be located.
- (e) Any other information the division may deem necessary to adequately inform other governmental agencies and the public as to the persons so conducting business.

Such statement shall be accompanied by the applicable processing fees and any other taxes or penalties owed to the state.

(7) EXEMPTIONS.—A business formed by an attorney licensed to practice law in this state, or by a person licensed by the Department of Business and Professional Regulation, for the purpose of practicing his or her licensed profession need not be registered under this section, notwithstanding that it transacts business ancillary to the practice of such profession.

Section 1398. Subsection (1) of section 865.10, Florida Statutes, is amended to read:

865.10 Linen suppliers.—

(1) REGISTRATION OF NAME.—A person engaged in the business of supplying or furnishing for hire or compensation on a rental or lease basis clean laundered bed linen or table linen, garments, aprons, or towels who uses her or his name and the word “registered” on such articles or supplies may register such articles or supplies by filing in the office of the clerk of the circuit court of the county where her or his principal place of business is situated, and also with the Department of State, a description of the name so used by her or him, and paying a fee of \$25 to each office for each filing, and shall publish such description once in each of 3 successive weeks in a newspaper of general circulation in the county where the description has been filed.

Section 1399. Section 870.04, Florida Statutes, is amended to read:

870.04 Specified officers to disperse riotous assembly.—If any number of persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in any county, city or municipality, the sheriff or the sheriff's ~~his~~ deputies, or the mayor, or any commissioner, council member ~~councilman~~, alderman or police officer of the said city or municipality, or any officer or member of the Florida Highway Patrol, or any officer or agent of the Game and Fresh Water Fish Commission, Department of Environmental Protection, or beverage enforcement agent, any personnel or representatives of the

Department of Law Enforcement or its successor, or any other peace officer, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said officers shall command the assistance of all such persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, the person ~~he~~ shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly.

Section 1400. Section 870.043, Florida Statutes, is amended to read:

870.043 Declaration of emergency.—Whenever the sheriff or designated city official determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof, he or she may declare that a state of emergency exists within that jurisdiction or any part or parts thereof.

Section 1401. Subsection (3) of section 870.044, Florida Statutes, is amended to read:

870.044 Automatic emergency measures.—Whenever the public official declares that a state of emergency exists, pursuant to s. 870.043, the following acts shall be prohibited during the period of said emergency throughout the jurisdiction:

(3) The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.

Section 1402. Section 870.045, Florida Statutes, is amended to read:

870.045 Discretionary emergency measures.—Whenever the public official declares that a state of emergency exists, pursuant to s. 870.043, he or she may order and promulgate all or any of the following emergency measures, in whole or in part, with such limitations and conditions as he or she may deem appropriate:

(1) The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking, except for the provision of designated essential services such as fire, police, and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians.

- (2) The prohibition of the sale or distribution of any alcoholic beverage, with or without the payment or a consideration therefor.
- (3) The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage.
- (4) The closing of places of public assemblage with designated exceptions.
- (5) The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof.
- (6) The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.

Any such emergency measure so ordered and promulgated shall be in effect during the period of said emergency in the area or areas for which the emergency has been declared.

Section 1403. Section 870.06, Florida Statutes, is amended to read:

870.06 Unauthorized military organizations.—No body of persons ~~men~~, other than the regularly organized land and naval militia of this state, the troops of the United States, and the students of regularly chartered educational institutions where military science is a prescribed part of the course of instruction, shall associate themselves together as a military organization for drill or parade in public with firearms, in this state, without special license from the Governor for each occasion, and application for such license must be approved by the mayor and aldermen of the cities and towns where such organizations may propose to parade. Each person unlawfully engaging in the formation of such military organization, or participating in such drill or parade, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1404. Section 871.02, Florida Statutes, is amended to read:

871.02 Indictments or informations for disturbing assembly.—The several grand juries of this state in their respective counties may return indictments or the several state attorneys of the state in their respective circuits may file information against all persons violating s. 871.01, and such indictments or informations, when filed with the clerk of the circuit court in the county where such offense is alleged to have been committed, shall be forthwith certified by the clerk ~~him~~ to some court in the county having jurisdiction to try and determine such charge, and said court to which such indictment or information is certified shall proceed to try and determine such charge upon such indictment or information, the same as if affidavit had been made before such court charging the said offense.

Section 1405. Section 871.03, Florida Statutes, is amended to read:

871.03 Peddling at camp meeting.—Whoever during the time of holding any camp or field meeting for religious purposes, and within 1 mile of the

place of holding such meeting, hawks or peddles goods, wares, merchandise, or without permission from the authorities having charge of such meeting, establishes any tent or booth for vending of provisions or refreshments, or practices or engages in gaming or horseracing, or exhibits, or offers to exhibit, shows or plays shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083; but a person having his or her usual and regular place of business within such limits is not hereby required to suspend the his business.

Section 1406. Subsection (2) of section 871.04, Florida Statutes, is amended to read:

871.04 Advertising; religious discrimination; public places.—

(2) No person, directly or indirectly, for herself or himself or for another, shall publish, post, broadcast by any means, maintain, circularize, issue, display, transmit, or otherwise disseminate or place in any manner before the public with reference to an establishment any advertisement that the patronage of any person is not welcome, or is objectionable, or is not acceptable because of the person's his religion. No person shall cause or solicit another person to violate this section.

Section 1407. Section 872.01, Florida Statutes, is amended to read:

872.01 Dealing in dead bodies.—Whoever buys, sells, or has in his or her possession for the purpose of buying or selling or trafficking in the dead body of any human being shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; provided, however, that nothing contained in this section shall be construed to prohibit the obtaining, dissecting, using, and disposing of dead bodies for the purpose of teaching or other appropriate university research by any medical school, dental school, school of nursing, or other university research or teaching unit which is a part of a regularly established or chartered institution of higher learning under the laws of the state.

Section 1408. Subsection (1) of section 872.02, Florida Statutes, is amended to read:

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(1) A person who willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead, or willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. However, if the damage

to such property is greater than \$100 or if any property removed is greater than \$100 in value, then the person ~~he~~ is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1409. Subsection (4) of section 872.04, Florida Statutes, is amended to read:

872.04 Autopsies; consent required, exception.—

(4) If after diligent search and inquiry it is established by the chief law enforcement officer having jurisdiction, through his or her examination of missing persons records and other inquiry, that no person can be found who can authorize an autopsy as herein provided, then after a reasonable time, any person licensed to practice medicine under chapter 458 or osteopathic medicine under chapter 459, and whose practice involves the usual performance of autopsies, may conduct an autopsy, without written consent, on the remains for purposes of confirming medical diagnosis and suspected communicable diseases; and no cause of action will be brought against such physician for performance of such autopsy. A reasonable time for purposes of this provision shall be not less than 48 hours or more than 72 hours after death.

Section 1410. Paragraphs (a) and (b) of subsection (4), paragraph (c) of subsection (5), and subsection (6) of section 872.05, Florida Statutes, are amended to read:

872.05 Unmarked human burials.—

(4) **DISCOVERY OF AN UNMARKED HUMAN BURIAL OTHER THAN DURING AN ARCHAEOLOGICAL EXCAVATION.**—When an unmarked human burial is discovered other than during an archaeological excavation authorized by the state or an educational institution, all activity that may disturb the unmarked human burial shall cease immediately, and the district medical examiner shall be notified. Such activity shall not resume unless specifically authorized by the district medical examiner or the State Archaeologist.

(a) If the district medical examiner finds that the unmarked human burial may be involved in a legal investigation or represents the burial of an individual who has been dead less than 75 years, the district medical examiner shall assume jurisdiction over and responsibility for such unmarked human burial, and no other provisions of this section shall apply. The district medical examiner shall have 30 days after notification of the unmarked human burial to determine if he or she shall maintain jurisdiction or refer the matter to the State Archaeologist.

(b) If the district medical examiner finds that the unmarked human burial is not involved in a legal investigation and represents the burial of an individual who has been dead 75 years or more, he or she shall notify the State Archaeologist, and the division may assume jurisdiction over and responsibility for the unmarked human burial pursuant to subsection (6).

(5) **DISCOVERY OF AN UNMARKED HUMAN BURIAL DURING AN ARCHAEOLOGICAL EXCAVATION.**—

(c) Within 15 days after the discovery of an unmarked human burial, the archaeologist conducting the excavation shall report to the State Archaeologist his or her opinion regarding the cultural and biological characteristics of the unmarked human burial and where human skeletal remains and associated burial artifacts should be held prior to a final disposition. The division may assume jurisdiction over and responsibility for the unmarked human burial pursuant to subsection (6).

(6) JURISDICTION; DUTIES OF THE STATE ARCHAEOLOGIST.— The division may assume jurisdiction over and responsibility for an unmarked human burial in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts. Whenever the division assumes jurisdiction over and responsibility for an unmarked human burial, the State Archaeologist shall:

(a) Determine whether the unmarked human burial is historically, archaeologically, or scientifically significant. If the burial is deemed significant, reinterment may not occur until the remains have been examined by a human skeletal analyst designated by the State Archaeologist.

(b) Make reasonable efforts to identify and locate persons who can establish direct kinship, tribal, community, or ethnic relationships with the individual or individuals whose remains constitute the unmarked human burial. If possible, the State Archaeologist shall consult with the closest related family member or recognized community leaders, if a community or ethnic relationship is established, in determining the proper disposition of the remains found in the unmarked human burial.

(c) If he or she is unable to establish a kinship, tribal, community, or ethnic relationship with the unmarked human burial, determine the proper disposition of the burial and consult with persons with relevant experience, including:

1. A human skeletal analyst.
2. Two Native American members of current state tribes recommended by the Governor's Council on Indian Affairs, Inc., if the remains are those of a Native American.
3. Two representatives of related community or ethnic groups if the remains are not those of a Native American.
4. An individual who has special knowledge or experience regarding the particular type of the unmarked human burial.

If the State Archaeologist finds that an unmarked human burial is historically, archaeologically, or scientifically significant and if the parties with whom he or she is required under this subsection to consult agree, the human skeletal remains and the associated burial artifacts thereof shall belong to the state with title thereto vested in the division.

Section 1411. Subsection (3) of section 876.02, Florida Statutes, is amended to read:

876.02 Criminal anarchy, Communism, and other specified doctrines; prohibitions.—Any person who:

(3) Openly, willfully and deliberately urges, advocates, or justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any official of the Government of the United States or of this state because of his or her official character, or any other crime, with intent to teach, spread, or advocate the propriety of the doctrines of criminal anarchy, criminal Communism, criminal Naziism, or criminal Fascism; or

shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1412. Section 876.03, Florida Statutes, is amended to read:

876.03 Unlawful assembly for purposes of anarchy, communism, or other specified doctrines.—Whenever two or more persons assemble for the purpose of promoting, advocating, or teaching the doctrine of criminal anarchy, criminal Communism, criminal Naziism or criminal Fascism, as defined in s. 876.01 of this law, such an assembly or organization is unlawful, and every person voluntarily participating therein by his or her presence, aid, or instigation shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1413. Section 876.04, Florida Statutes, is amended to read:

876.04 Allowing unlawful assembly in building prohibited.—No owner, agent, superintendent, janitor, caretaker, or occupant of any place, building, or room, shall willfully and knowingly permit therein any assemblage of persons prohibited by s. 876.03, and if such person after notification that the premises are so used permits such use to be continued he or she shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1414. Section 876.06, Florida Statutes, is amended to read:

876.06 Discharge for refusal to execute.—If any person required by ss. 876.05-876.10 to take the oath herein provided for fails to execute the same, the governing authority under which such person is employed shall cause said person to be immediately discharged, and his or her name removed from the payroll, and such person shall not be permitted to receive any payment as an employee or as an officer where he or she was serving.

Section 1415. Section 876.10, Florida Statutes, is amended to read:

876.10 False oath; penalty.—If any person required by the provisions of ss. 876.05-876.10 to execute the oath herein required executes such oath, and it is subsequently proven that at the time of the execution of said oath said individual was guilty of making a false statement in said oath, he or she shall be guilty of perjury.

Section 1416. Subsections (2) and (4) of section 876.155, Florida Statutes, are amended to read:

876.155 Applicability; ss. 876.12-876.15.—The provisions of ss. 876.12-876.15 apply only if the person was wearing the mask, hood, or other device:

(2) With the intent, by force or threat of force, to injure, intimidate, or interfere with any person because of the person's ~~his~~ exercise of any right secured by federal, state, or local law or to intimidate such person or any other person or any class of persons from exercising any right secured by federal, state, or local law;

(4) While she or he was engaged in conduct that could reasonably lead to the institution of a civil or criminal proceeding against her or him, with the intent of avoiding identification in such a proceeding.

Section 1417. Section 876.28, Florida Statutes, is amended to read:

876.28 Grand jury to investigate violations of ss. 876.22-876.31.—The judge of any court exercising general criminal jurisdiction when in his or her discretion it appears appropriate, or when informed by the Department of Legal Affairs that there is information or evidence of the character described in s. 876.27 to be considered by the grand jury, shall charge the grand jury to inquire into violations of ss. 876.22-876.31 for the purpose of proper action, and further to inquire generally into the purposes, processes, activities, and any other matters affecting communism or any related or other subversive organizations, associations, groups, or persons.

Section 1418. Section 876.30, Florida Statutes, is amended to read:

876.30 Subversive person not to be candidate for election.—No person shall become a candidate nor shall be certified by any political party as a candidate for election to any public office created by the constitution or laws of this state if she or he has ever been tried and convicted as a subversive person as defined in s. 876.22.

Section 1419. Section 876.41, Florida Statutes, is amended to read:

876.41 Conspirators.—If two or more persons conspire to commit any crime defined by this law, each of such persons is guilty of conspiracy and subject to the same punishment as if he or she had committed the crime which he or she conspired to commit, whether or not any act be done in furtherance of the conspiracy. It shall not constitute any defense or ground of suspension of judgment, sentence or punishment on behalf of any person prosecuted under this section, that any of his or her fellow conspirators has been acquitted, has not been arrested or convicted, is not amenable to justice or has been pardoned or otherwise discharged before or after conviction.

Section 1420. Section 876.42, Florida Statutes, is amended to read:

876.42 Witnesses' privileges.—No person shall be excused from attending and testifying, or producing any books, papers, or other documents before any court, magistrate, referee or grand jury upon any investigation, proceeding or trial, for or relating to or concerned with a violation of any section of this law or attempt to commit such violation, upon the ground or for the reason that the testimony or evidence, documentary or otherwise

required by the state may tend to convict the person him of a crime or to subject him or her to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against the person him, upon any criminal investigation, proceeding or trial, except upon a prosecution for perjury or contempt of court, based upon the giving or producing of such testimony.

Section 1421. Section 876.43, Florida Statutes, is amended to read:

876.43 Unlawful entry on property.—Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in, or preparing to engage in, the manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war or in the prosecution of war by the United States, or the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons or things, is surrounded by a fence or wall, or a fence or wall and buildings, may post around her or his or its property at each gate, entrance, dock or railway entrance and every 100 feet of waterfront a sign reading “No Entry Without Permission.” Whoever without permission of such owner shall willfully enter upon premises so posted shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1422. Section 876.44, Florida Statutes, is amended to read:

876.44 Questioning and detaining suspected persons.—Any peace officer or any other person employed as a person who watches or guards watchman, guard, or in a supervisory capacity on premises posted as provided in s. 876.43 may stop any person found on any premises to which entry without permission is forbidden by s. 876.43 and may detain the person him for the purpose of demanding, and may demand, of the person him, his or her name, address and business in such place. If said peace officer or employee has reason to believe from the answers of the person so interrogated that such person has no right to be in such place, said peace officer shall forthwith release such person or he or she may arrest such person without a warrant on the charge of violating the provisions of s. 876.43; and said employee shall forthwith release such person or turn him or her over to a peace officer, who may arrest the person him without a warrant on the charge of violating the provisions of s. 876.43.

Section 1423. Subsection (1) of section 876.45, Florida Statutes, is amended to read:

876.45 Closing and restricting use of highway.—

(1) Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in or preparing

to engage in the manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations or any of the states for defense or for war or in the prosecution of war by the United States, or in the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, who has property so used which he or she or it believes will be endangered if public use and travel is not restricted or prohibited on one or more highways or parts thereof upon which such property abuts, may petition the highway commissioners of any city, town or county to close one or more of said highways or parts thereof to public use and travel or to restrict by order the use and travel upon one or more of said highways or parts thereof.

Section 1424. Subsection (3) of section 877.01, Florida Statutes, is amended to read:

877.01 Instigation of litigation; penalty.—

(3) Any person violating the provisions of this section shall not be privileged from testifying, but if the person ~~he~~ does testify in response to a subpoena issued by the state attorney or court having jurisdiction of such offense, nothing said by the person ~~him~~ in his or her testimony shall be admissible in any civil or criminal action against him or her, nor shall the person ~~he~~ be subjected to any penalty or forfeiture for or on account of any such testimony or evidence so given or produced.

Section 1425. Subsection (1) of section 877.02, Florida Statutes, is amended to read:

877.02 Solicitation of legal services or retainers therefor; penalty.—

(1) It shall be unlawful for any person or her or his agent, employee or any person acting on her or his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal service, or to make it a business to solicit or procure such business, retainers or agreements; provided, however, that nothing herein shall prohibit or be applicable to banks, trust companies, lawyer reference services, legal aid associations, lay collection agencies, railroad companies, insurance companies and agencies, and real estate companies and agencies, in the conduct of their lawful businesses, and in connection therewith and incidental thereto forwarding legal matters to attorneys at law when such forwarding is authorized by the customers or clients of said businesses and is done pursuant to the canons of legal ethics as pronounced by the Supreme Court of Florida.

Section 1426. Subsection (1) of section 877.04, Florida Statutes, is amended to read:

877.04 Tattooing prohibited; penalty.—

(1) It is unlawful for any person to tattoo the body of any human being; except that tattooing may be performed by a person licensed to practice

medicine or dentistry under chapters 458 and 459 or chapter 466, or by a person under his or her general supervision as defined by the Board of Medicine.

Section 1427. Section 877.05, Florida Statutes, is amended to read:

877.05 Killing young veal for sale; penalty; exception.—Whoever kills or causes to be killed for the purpose of sale, any calf less than 4 weeks old, and knowingly sells, or has in his or her possession with intent to sell, the meat of any calf killed when less than 4 weeks old, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. This section shall not apply to calves slaughtered on the premises of meat packing or slaughtering establishments operating under state or federal meat inspection supervision.

Section 1428. Subsection (1) of section 877.061, Florida Statutes, is amended to read:

877.061 Marketing establishments; maintenance of scales.—

(1) Any milk plant, meat-processing plant, or any other marketing establishment which purchases dairy and agricultural products directly from the producer, his or her agent or employee on the basis of the weight of the product shall maintain scales in a location in the plant or other marketing establishment where the seller-producer and purchaser or their agent shall have the right and opportunity to attest to the weight thereof.

Section 1429. Subsections (2) and (3) of section 877.08, Florida Statutes, are amended to read:

877.08 Coin-operated vending machines and parking meters; defined; prohibited acts, penalties.—

(2) Whoever maliciously or mischievously molests, opens, breaks, injures, damages, or inserts any part of her or his body or any instrument into any coin-operated vending machine or parking meter of another, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Whoever molests, opens, breaks, injures, damages, or inserts any part of her or his body or any instrument into any coin-operated vending machine or parking meter of another with intent to commit larceny is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1430. Section 877.15, Florida Statutes, is amended to read:

877.15 Failure to control or report dangerous fire.—Any person who knows, or has reasonable grounds to believe, that a fire is endangering the life or property of another, and who fails to take reasonable measures to put out or control the fire when the person ~~he~~ can do so without substantial risk to himself or herself, or who fails to give a prompt fire alarm, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, if:

- (1) The person ~~He~~ knows that he or she is under an official, contractual, or other legal duty to control or combat the fire; or
- (2) The fire was started lawfully by the person ~~him~~ or with his or her assent and was started on property in his or her custody or control.

Section 1431. Subsection (1) of section 877.155, Florida Statutes, is amended to read:

877.155 Report of initial treatment of burn injuries; penalty for failure to report.—

(1) Any person who initially treats or is requested to treat a person with second-degree or third-degree burn injuries affecting 10 percent or more of the surface area of his or her body shall immediately report such treatment to the local sheriff's department if the treating person determines that the burns were caused by a flammable substance and if the treating person ~~he~~ suspects the injury is a result of violence or unlawful activity. The report shall state the name and address of the injured person and the extent of his or her injuries. This section does not apply to burn injuries received by a member of the armed forces, or by a governmental employee, engaged in the performance of his or her duties.

Section 1432. Subsections (3) and (4) of section 877.22, Florida Statutes, are amended to read:

877.22 Minors prohibited in public places and establishments during certain hours; penalty; procedure.—

(3) A minor who violates this section shall receive a written warning for her or his first violation. A minor who violates this section after having received a prior written warning is guilty of a civil infraction and shall pay a fine of \$50 for each violation.

(4) If a minor violates a curfew and is taken into custody, the minor shall be transported immediately to a police station or to a facility operated by a religious, charitable, or civic organization that conducts a curfew program in cooperation with a local law enforcement agency. After recording pertinent information about the minor, the law enforcement agency shall attempt to contact the parent of the minor and, if successful, shall request that the parent take custody of the minor and shall release the minor to the parent. If the law enforcement agency is not able to contact the minor's parent within 2 hours after the minor is taken into custody, or if the parent refuses to take custody of the minor, the law enforcement agency may transport the minor to her or his residence or proceed as authorized under part III of chapter 39.

Section 1433. Subsections (1), (2), and (6) of section 877.24, Florida Statutes, are amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(1) Accompanied by his or her parent or by another adult authorized by the minor's parent to have custody of the minor.

(2) Involved in an emergency or engaged, with his or her parent's permission, in an emergency errand.

(6) On the property of, or on the sidewalk of, the place where the minor ~~he~~ resides, or who is on the property or sidewalk of an adult next-door neighbor with that neighbor's permission.

Section 1434. Subsection (6), paragraph (a) of subsection (13), and subsection (19) of section 893.02, Florida Statutes, are amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(6) "Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.

(13)(a) "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.

2. A practitioner, or by his or her authorized agent under the practitioner's ~~his~~ supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

(19) "Prescription" means and includes an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies, issued in good faith and in the course of professional practice, intended to be filled, compounded, or dispensed by another person licensed by the laws of the state to do so, and meeting the requirements of s. 893.04. The term also includes an order for drugs or medicinal supplies so transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or

medicinal supplies so ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness. However, if the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of said prescription. A prescription order for a controlled substance shall not be issued on the same prescription blank with another prescription order for a controlled substance which is named or described in a different schedule, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a prescription order for a medicinal drug, as defined in s. 465.031(5), which does not fall within the definition of a controlled substance as defined in this act.

Section 1435. Subsection (4) of section 893.0355, Florida Statutes, is amended to read:

893.0355 Control of scheduled substances; delegation of authority to Attorney General to reschedule substance, or delete substance, by rule.—

(4) Rulemaking under this section shall be in accordance with the procedural requirements of chapter 120, including the emergency rule provisions found in s. 120.54. The Attorney General may initiate proceedings for adoption, amendment, or repeal of any rule on his or her own motion or upon the petition of any interested party.

Section 1436. Paragraph (c) of subsection (1) of section 893.04, Florida Statutes, is amended to read:

893.04 Pharmacist and practitioner.—

(1) A pharmacist, in good faith and in the course of professional practice only, may dispense controlled substances upon a written or oral prescription of a practitioner, under the following conditions:

(c) There shall appear on the face of the prescription or written record thereof for the controlled substance the following information:

1. The full name and address of the person for whom, or the owner of the animal for which, the controlled substance is dispensed.

2. The full name and address of the prescribing practitioner and the practitioner's ~~his~~ federal controlled substance registry number shall be printed thereon.

3. If the prescription is for an animal, the species of animal for which the controlled substance is prescribed.

4. The name of the controlled substance prescribed and the strength, quantity, and directions for use thereof.

5. The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled.

6. The initials of the pharmacist filling the prescription and the date filled.

Section 1437. Subsections (1) and (3) of section 893.05, Florida Statutes, are amended to read:

893.05 Practitioners and persons administering controlled substances in their absence.—

(1) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner ~~he~~ may cause the same to be administered by a licensed nurse or an intern practitioner under his or her direction and supervision only. A veterinarian may so prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause it to be administered by an assistant or orderly under the veterinarian's ~~his~~ direction and supervision only.

(3) Any person who obtains from a practitioner or the practitioner's ~~his~~ agent, or pursuant to prescription, any controlled substance for administration to a patient during the absence of such practitioner shall return to such practitioner any unused portion of such controlled substance when it is no longer required by the patient.

Section 1438. Subsection (3) of section 893.06, Florida Statutes, is amended to read:

893.06 Distribution of controlled substances; order forms; labeling and packaging requirements.—

(3) A person in charge of a hospital or laboratory or in the employ of this state or of any other state, or of any political subdivision thereof, and a master or other proper officer of a ship or aircraft, who obtains controlled substances under the provisions of this section or otherwise, shall not administer, dispense, or otherwise use such controlled substances within this state, except within the scope of her or his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

Section 1439. Paragraph (b) of subsection (1) of section 893.07, Florida Statutes, is amended to read:

893.07 Records.—

(1) Every person who engages in the manufacture, compounding, mixing, cultivating, growing, or by any other process producing or preparing, or in the dispensing, importation, or, as a wholesaler, distribution, of controlled substances shall:

(b) On and after January 1, 1974, maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold, delivered, or otherwise disposed of by him or her, except that this subsection shall not require the maintenance of a perpetual inventory.

Compliance with the provisions of federal law pertaining to the keeping of records of controlled substances shall be deemed a compliance with the requirements of this subsection.

Section 1440. Paragraph (b) of subsection (3) of section 893.08, Florida Statutes, is amended to read:

893.08 Exceptions.—

(3) The exemptions authorized by this section shall be subject to the following conditions:

(b) Such compounds, mixtures, and preparations shall be sold by the pharmacist in good faith as a medicine and not for the purpose of evading the provisions of this chapter. The pharmacist may, in his or her discretion, withhold sale to any person whom the pharmacist ~~he~~ reasonably believes is attempting to purchase excepted compounds, mixtures, or preparations for the purpose of abuse.

Section 1441. Subsections (4) and (5) of section 893.09, Florida Statutes, are amended to read:

893.09 Enforcement.—

(4) It shall be unlawful and punishable as provided in chapter 843 for any person to interfere with any such law enforcement officer in the performance of the officer's ~~his~~ official duties. It shall also be unlawful for any person falsely to represent himself or herself to be authorized to enforce the drug abuse laws of this state, the United States, or any other state.

(5) No civil or criminal liability shall be imposed by virtue of this chapter upon any person whose duty it is to enforce the provisions of this chapter, by reason of his or her being lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

Section 1442. Subsection (2) of section 893.10, Florida Statutes, is amended to read:

893.10 Burden of proof.—

(2) In the case of a person charged under s. 893.14(1) with the possession of a controlled substance, the label required under s. 893.04(1) or s. 893.05(2) shall be admissible in evidence and shall be prima facie evidence that such substance was obtained pursuant to a valid prescription form or dispensed by a practitioner while acting in the course of his or her professional practice.

Section 1443. Section 893.11, Florida Statutes, is amended to read:

893.11 Suspension, revocation, and reinstatement of business and professional licenses.—Upon the conviction in any court of competent jurisdiction of any person holding a license, permit, or certificate issued by a state agency, for sale of, or trafficking in, a controlled substance or for conspiracy to sell, or traffic in, a controlled substance, if such offense is a felony, the clerk of said court shall send a certified copy of the judgment of conviction with the person's license number, permit number, or certificate number on the face of such certified copy to the agency head by whom the convicted defendant has received a ~~his~~ license, permit, or certificate to practice his or

her profession or to carry on his or her business. Such agency head shall suspend or revoke the license, permit, or certificate of the convicted defendant to practice his or her profession or to carry on his or her business. Upon a showing by any such convicted defendant whose license, permit, or certificate has been suspended or revoked pursuant to this section that his or her civil rights have been restored or upon a showing that the convicted defendant meets the following criteria, the agency head may reinstate or reactivate such license, permit, or certificate when:

(1) The person has complied with the conditions of paragraphs (a) and (b) which shall be monitored by the Department of Corrections while the person is under any supervisory sanction. If the person fails to comply with provisions of these paragraphs by either failing to maintain treatment or by testing positive for drug use, the department shall notify the licensing, permitting, or certifying agency, which shall revoke the license, permit, or certification. The person under supervision may:

(a) Seek evaluation and enrollment in, and once enrolled maintain enrollment in until completion, a drug treatment and rehabilitation program which is approved or regulated by the Department of Health and Rehabilitative Services. The treatment and rehabilitation program shall be specified by:

1. The court, in the case of court-ordered supervisory sanctions;
2. The Parole Commission, in the case of parole, control release, or conditional release; or
3. The Department of Corrections, in the case of imprisonment or any other supervision required by law.

(b) Submit to periodic urine drug testing pursuant to procedures prescribed by the Department of Corrections. If the person is indigent, the costs shall be paid by the Department of Corrections; or

(2) The person has successfully completed an appropriate program under the Correctional Education Program.

This section does not apply to any of the taxes, fees, or permits regulated, controlled, or administered by the Department of Revenue in accordance with s. 213.05.

Section 1444. Subsection (3) of section 893.12, Florida Statutes, is amended to read:

893.12 Contraband; seizure, forfeiture, sale.—

(3) Any law enforcement agency is empowered to authorize or designate officers, agents, or other persons to carry out the seizure provisions of this section. It shall be the duty of any officer, agent, or other person so authorized or designated, or authorized by law, whenever she or he shall discover any vessel, vehicle, aircraft, real property or interest in real property, money, negotiable instrument, security, book, record, or research which has

been or is being used or intended to be used, or which is acquired with proceeds obtained, in violation of any of the provisions of this chapter, or in, upon, or by means of which any violation of this chapter has taken or is taking place, to seize such vessel, vehicle, aircraft, real property or interest in real property, money, negotiable instrument, security, book, record, or research and place it in the custody of such person as may be authorized or designated for that purpose by the respective law enforcement agency pursuant to these provisions.

Section 1445. Subsection (5) of section 893.146, Florida Statutes, is amended to read:

893.146 Determination of paraphernalia.—In determining whether an object is drug paraphernalia, a court or other authority or jury shall consider, in addition to all other logically relevant factors, the following:

(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

Section 1446. Subsection (2) of section 895.04, Florida Statutes, is amended to read:

895.04 Criminal penalties and alternative fine.—

(2) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of s. 895.03, through which the person ~~he~~ derived pecuniary value, or by which he or she caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

Section 1447. Paragraphs (a) and (b) of subsection (1), subsection (9), and paragraphs (a) and (d) of subsection (12) of section 895.05, Florida Statutes, are amended to read:

895.05 Civil remedies.—

(1) Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of s. 895.03 by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself or herself of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant ~~he~~ was engaged in violation of the provisions of s. 895.03.

(9) The Department of Legal Affairs may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) if ~~it~~ he certifies that, in its ~~his~~ opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Department of Legal Affairs had instituted the action or proceeding.

(12)(a) In addition to the authority to file a RICO lien notice set forth in s. 895.07(1), the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney may apply ex parte to a criminal division of a circuit court and, upon petition supported by sworn affidavit, obtain an order authorizing the filing of a RICO lien notice against real property upon a showing of probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ss. 895.01-895.05. If the lien notice authorization is granted, the department shall, after filing the lien notice, forthwith provide notice to the owner of the property by one of the following methods:

1. By serving the notice in the manner provided by law for the service of process.
2. By mailing the notice, postage prepaid, by registered or certified mail to the person to be served at his or her last known address and evidence of the delivery.
3. If neither of the foregoing can be accomplished, by posting the notice on the premises.

(d) No testimony presented by the owner of the property at the hearing is admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury or false statement, nor shall such testimony constitute a waiver of the owner's constitutional right against self-incrimination.

Section 1448. Subsection (5) of section 895.06, Florida Statutes, is amended to read:

895.06 Civil investigative subpoenas.—

(5) Upon failure of a person or enterprise, without lawful excuse, to obey a subpoena issued under this section or a subpoena issued in the course of a civil proceeding instituted pursuant to s. 895.05, and after reasonable notice to such person or enterprise, the investigative agency may apply to the circuit court in which such civil proceeding is pending or, if no civil proceeding is pending, to the circuit court for the judicial circuit in which such person or enterprise resides, is found, or transacts business for an order compelling compliance. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or material after asserting a privilege against self-incrimination to which the individual ~~he~~ is entitled by law shall not have the testimony or material so provided, or evidence derived therefrom, received against him or her in any criminal investigation or proceeding.

Section 1449. Subsections (2) and (6) and paragraph (c) of subsection (7) of section 895.07, Florida Statutes, are amended to read:

895.07 RICO lien notice.—

(2) The RICO lien notice shall be signed by the head of the Department of Legal Affairs or her or his designee or by a state attorney or her or his designee. The notice shall be in such form as the Attorney General prescribes and shall set forth the following information:

(a) The name of the person against whom the civil proceeding has been brought. In its discretion, the investigative agency may also name in the RICO lien notice any other aliases, names, or fictitious names under which the person may be known and any corporation, partnership, or other entity that is either controlled or entirely owned by the person.

(b) If known to the investigative agency, the present residence and business addresses of the person named in the RICO lien notice and of the other names set forth in the RICO lien notice.

(c) A reference to the civil proceeding, stating: that a proceeding under the Florida RICO Act has been brought against the person named in the RICO lien notice; the name of the county or counties in which the proceeding has been brought; and, if known to the investigative agency at the time of filing the RICO lien notice, the case number of the proceeding.

(d) A statement that the notice is being filed pursuant to the Florida RICO Act.

(e) The name and address of the investigative agency filing the RICO lien notice and the name of the individual signing the RICO notice.

A RICO lien notice shall apply only to one person and, to the extent applicable, any other aliases, names, or fictitious names, including names of corporations, partnerships, or other entities, to the extent permitted in paragraph (a). A separate RICO lien notice shall be filed for each person against whom the investigative agency desires to file a RICO lien notice under this section.

(6) A trustee who acquires actual knowledge that a RICO lien notice or a civil proceeding or criminal proceeding has been filed against any person for whom the trustee ~~he~~ holds legal or record title to real property shall immediately furnish to the investigative agency the following:

(a) The name and address of the person, as known to the trustee.

(b) The name and address, as known to the trustee, of each other person for whose benefit the trustee holds title to the real property.

(c) If requested by the investigative agency, a copy of the trust agreement or other instrument pursuant to which the trustee holds legal or record title to the real property.

Any trustee who fails to comply with the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Any trustee who conveys title to real property for which, at the time of the conveyance, a RICO lien notice naming a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust has been filed in the county where the real property is situated is liable to the state for the greatest of:

(c) The fair market value of the interest of the person named in the RICO lien notice in the real property so conveyed; however, if the trustee conveys the real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or her or his designee, the trustee's liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

Section 1450. Paragraph (a) of subsection (4) of section 895.08, Florida Statutes, is amended to read:

895.08 Term of RICO lien notice.—

(4) If no civil proceeding is then pending against the person named in a RICO lien notice, the person named in the RICO lien notice may institute an action in the county where the notice has been filed against the investigative agency that filed the notice seeking a release or extinguishment of the notice. In such case:

(a) The court shall, upon the motion of such person, immediately enter an order setting a date for hearing, which date shall be not less than 5 or more than 10 days after the suit has been filed, and the order along with a copy of the complaint shall be served on the investigative agency within 3 days after the institution of the suit. At the hearing, the court shall take evidence on the issue of whether any real property or beneficial interest owned by such person is covered by the RICO lien notice or is otherwise subject to forfeiture under the Florida RICO Act; if such person shows by a preponderance of the evidence that the RICO lien notice is not applicable to him or her or that any real property or beneficial interest owned by the person ~~him~~ is not subject to forfeiture under the Florida RICO Act, the court shall enter a judgment extinguishing the RICO lien notice or releasing the real property or beneficial interest from the RICO lien notice.

Section 1451. Section 901.01, Florida Statutes, is amended to read:

901.01 Judicial officers to be committing magistrates.—Each state judicial officer is a conservator of the peace and a committing magistrate with authority to issue warrants of arrest, commit offenders to jail, and recognize them to appear to answer the charge. He or she may require sureties of the peace when the peace has been substantially threatened or disturbed.

Section 1452. Section 901.02, Florida Statutes, is amended to read:

901.02 When warrant of arrest to be issued.—A warrant may be issued for the arrest of the person complained against if the magistrate, from the

examination of the complainant and other witnesses, reasonably believes that the person complained against has committed an offense within the magistrate's ~~his~~ jurisdiction.

Section 1453. Section 901.07, Florida Statutes, is amended to read:

901.07 Admission to bail when arrest occurs in another county.—

(1) When an arrest by a warrant occurs in a county other than the one in which the alleged offense was committed and the warrant issued, if the person arrested has a right to bail, the arresting officer shall inform the person ~~him~~ of his or her right and, upon request, shall take the person ~~him~~ before a magistrate or other official of the same county having authority to admit to bail. The official shall admit the person arrested to bail for his or her appearance before the magistrate who issued the warrant.

(2) If the person arrested does not have a right to bail or, when informed of his or her right to bail, does not furnish bail immediately, the officer who made the arrest or the officer having the warrant shall take the person ~~him~~ before the magistrate who issued the warrant.

Section 1454. Subsections (2) and (3) of section 901.08, Florida Statutes, are amended to read:

901.08 Issue of warrant when offense triable in another county.—

(2) If the person arrested has a right to bail, the officer making the arrest shall inform the person ~~him~~ of his or her right to bail and, on request, shall take the person ~~him~~ before a magistrate or other official having authority to admit to bail in the county in which the arrest is made. The official shall admit the person ~~him~~ to bail for his or her appearance before the magistrate designated in the warrant.

(3) If the person arrested does not have a right to bail or, when informed of his or her right to bail, does not furnish bail immediately, he or she shall be taken before the magistrate designated in the warrant.

Section 1455. Subsections (1) and (2) of section 901.09, Florida Statutes, are amended to read:

901.09 When summons shall be issued.—

(1) When the complaint is for an offense that the magistrate is empowered to try summarily, the magistrate ~~he~~ shall issue a summons instead of a warrant, unless she or he reasonably believes that the person against whom the complaint was made will not appear upon a summons, in which event the magistrate ~~he~~ shall issue a warrant.

(2) When the complaint is for a misdemeanor that the magistrate is not empowered to try summarily, the magistrate ~~he~~ shall issue a summons instead of a warrant if she or he reasonably believes that the person against whom the complaint was made will appear upon a summons.

Section 1456. Section 901.11, Florida Statutes, is amended to read:

901.11 Effect of not answering summons.—Failure to appear as commanded by a summons without good cause is an indirect criminal contempt of court and may be punished by a fine of not more than \$100. When a person fails to appear as commanded by a summons, the magistrate shall issue a warrant. If the magistrate acquires reason to believe that the person summoned will not appear as commanded after issuing a summons, the magistrate ~~he~~ may issue a warrant.

Section 1457. Section 901.12, Florida Statutes, is amended to read:

901.12 Summons against corporation.—When a complaint of an offense is made against a corporation, the magistrate shall issue a summons that shall set forth substantially the nature of the offense and command the corporation to appear before the magistrate ~~him~~ at a stated time and place.

Section 1458. Subsection (1) and paragraphs (a), (b), and (d) of subsection (2) of section 901.1505, Florida Statutes, are amended to read:

901.1505 Federal law enforcement officers; powers.—

(1) As used in this section, the term “federal law enforcement officer” means a person who is employed by the Federal Government as a full-time law enforcement officer as defined by the applicable provisions of the United States Code, who is empowered to effect an arrest for violations of the United States Code, who is authorized to carry firearms in the performance of her or his duties, and who has received law enforcement training equivalent to that prescribed in s. 943.13.

(2) Every federal law enforcement officer has the following authority:

(a) To make a warrantless arrest of any person who has committed a felony or misdemeanor as defined by state statute, which felony or misdemeanor involves violence, in the presence of the officer while the officer is engaged in the exercise of her or his federal law enforcement duties. If the officer reasonably believes that such a felony or misdemeanor as defined by state statute has been committed in her or his presence, the officer ~~he~~ may make a warrantless arrest of any person whom she or he reasonably believes to have committed such felony or misdemeanor.

(b) To use any force which the officer ~~he~~ reasonably believes to be necessary to defend herself or himself or another from bodily harm while making the arrest or any force necessarily committed in arresting any felon fleeing from justice when the officer reasonably believes either that the fleeing felon poses a threat of death or serious physical harm to the officer or others or that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

(d) To possess firearms; and to seize weapons in order to protect herself or himself from attack, prevent the escape of an arrested person, or assure the subsequent lawful custody of the fruits of a crime or the articles used in the commission of a crime, as provided in s. 901.21.

Section 1459. Subsections (2), (4), and (5) of section 901.151, Florida Statutes, are amended to read:

901.151 Stop and Frisk Law.—

(2) Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer ~~he~~ may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's ~~his~~ presence abroad which led the officer to believe that the person ~~he~~ had committed, was committing, or was about to commit a criminal offense.

(4) If at any time after the onset of the temporary detention authorized by subsection (2), probable cause for arrest of person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, the person ~~he~~ shall be released.

(5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) has probable cause to believe that any person whom the officer ~~he~~ has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer ~~he~~ may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.

Section 1460. Section 901.16, Florida Statutes, is amended to read:

901.16 Method of arrest by officer by a warrant.—A peace officer making an arrest by a warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued, except when the person flees or forcibly resists before the officer has an opportunity to inform the person ~~him~~, or when giving the information will imperil the arrest. The officer need not have the warrant in his ~~or her~~ possession at the time of arrest but on request of the person arrested shall show it to the person ~~him~~ as soon as practicable.

Section 1461. Section 901.17, Florida Statutes, is amended to read:

901.17 Method of arrest by officer without warrant.—A peace officer making an arrest without a warrant shall inform the person to be arrested of the officer's ~~his~~ authority and the cause of arrest except when the person flees or forcibly resists before the officer has an opportunity to inform the person ~~him~~ or when giving the information will imperil the arrest.

Section 1462. Section 901.18, Florida Statutes, is amended to read:

901.18 Officer may summon assistance.—A peace officer making a lawful arrest may command the aid of persons she or ~~he~~ deems necessary to make

the arrest. A person commanded to aid shall render assistance as directed by the officer. A person commanded to aid a peace officer shall have the same authority to arrest as that peace officer and shall not be civilly liable for any reasonable conduct in rendering assistance to that officer.

Section 1463. Subsection (1) of section 901.19, Florida Statutes, is amended to read:

901.19 Right of officer to break into building.—

(1) If a peace officer fails to gain admittance after she or he has announced her or his authority and purpose in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, the officer ~~he~~ may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be.

Section 1464. Section 901.20, Florida Statutes, is amended to read:

901.20 Use of force to effect release of person making arrest detained in building.—A peace officer may use any reasonable force to liberate himself or herself or another person from detention in a building entered for the purpose of making a lawful arrest.

Section 1465. Section 901.215, Florida Statutes, is amended to read:

901.215 Search of person arrested for identifying device indicating a medical disability.—Every law enforcement officer, sheriff, deputy sheriff, or other arresting officer shall, when arresting any person who appears to be inebriated, intoxicated, or not in control of his or her physical functions, examine such person to ascertain whether or not the person is wearing a medic-alert bracelet or necklace or has upon his or her person some other visible identifying device which would specifically delineate a medical disability which would account for the actions of such person. Any arresting officer who does, in fact, discover such identifying device upon such person shall take immediate steps to aid the afflicted person in receiving medication or other treatment for his or her disability.

Section 1466. Section 901.22, Florida Statutes, is amended to read:

901.22 Arrest after escape or rescue.—If a person lawfully arrested escapes or is rescued, the person from whose custody she or he escapes or was rescued or any other officer may immediately pursue and retake the person arrested without a warrant at any time and in any place.

Section 1467. Subsections (2), (3), (4), and (5) of section 901.25, Florida Statutes, are amended to read:

901.25 Fresh pursuit; arrest outside jurisdiction.—

(2) Any duly authorized state, county, or municipal arresting officer is authorized to arrest a person outside the officer's ~~his~~ jurisdiction when in fresh pursuit. Such officer shall have the same authority to arrest and hold

such person in custody outside his or her jurisdiction, subject to the limitations hereafter set forth, as has any authorized arresting state, county, or municipal officer of this state to arrest and hold in custody a person not arrested in fresh pursuit.

(3) If an arrest is made in this state by an officer outside the county within which his or her jurisdiction lies, the officer ~~he~~ shall immediately notify the officer in charge of the jurisdiction in which the arrest is made. Such officer in charge of the jurisdiction shall, along with the officer making the arrest, take the person so arrested before a county court judge or other committing magistrate of the county in which the arrest was made without unnecessary delay.

(4) The employing agency of the state, county, or municipal officer making an arrest on fresh pursuit shall be liable for all actions of said officer in the same fashion that it is liable for the officer's ~~his~~ acts made while making an arrest within his or her jurisdiction.

(5) The officer making an arrest on fresh pursuit shall be fully protected with respect to pension, retirement, workers' compensation, and other such benefits just as if the officer ~~he~~ had made an arrest in his or her own jurisdiction.

Section 1468. Subsection (1) of section 901.252, Florida Statutes, is amended to read:

901.252 Authority to patrol municipally owned property and facilities outside municipal limits; taking into custody outside territorial jurisdiction.—

(1) A duly constituted law enforcement officer employed by a municipality may patrol property and facilities which are owned by the municipality but are outside the jurisdictional limits of the municipality, and, when there is probable cause to believe a person has committed or is committing a violation of state law or of a county or municipal ordinance on such property or facilities, may take the person into custody and detain the person ~~him~~ in a reasonable manner and for a reasonable time. The law enforcement officer employed by the municipality shall immediately call a law enforcement officer with jurisdiction over the property or facility on which the violation occurred after detaining a person under this subsection.

Section 1469. Subsection (3) of section 901.26, Florida Statutes, is amended to read:

901.26 Recognition of International Treaties Act; identification certificate; notification upon arrest.—

(3) Wherever in the state a citizen of any sovereign nation to which the United States extends diplomatic recognition shall be arrested or detained for any reason whatsoever, the official who makes the arrest or detention shall immediately notify the nearest consul or other officer of the nation concerned or, if unknown, the Embassy in Washington, D.C., of the nation concerned or, if unknown, the nearest state judicial officer who shall in turn

notify either of the above. Failure to give notice shall not be a defense in any criminal proceedings against any citizen of a sovereign nation and shall not be cause for the citizen's ~~his~~ discharge from custody.

Section 1470. Section 901.31, Florida Statutes, is amended to read:

901.31 Failure to obey written promise to appear.—Any person who willfully fails to appear before any court or judicial officer as required by a written notice to appear shall be fined not more than the fine of the principal charge or imprisoned up to the maximum sentence of imprisonment of the principal charge, or both, regardless of the disposition of the charge upon which the person ~~he~~ was originally arrested. Nothing in this section shall interfere with or prevent the court from exercising its power to punish for contempt.

Section 1471. Subsections (1), (2), (3), and (5) of section 902.17, Florida Statutes, are amended to read:

902.17 Procedure when witness does not give security.—

(1) If a witness required to enter into a recognizance to appear refuses to comply with the order, the magistrate shall commit the witness ~~him~~ to custody until she or he complies or she or he is legally discharged.

(2) If the magistrate requires a witness to give security for her or his appearance and the witness is unable to give the security, the witness may apply to the court having jurisdiction to try the defendant for a reduction of the security.

(3) If it appears from examination on oath of the witness or any other person that the witness is unable to give security, the magistrate or the court having jurisdiction to try the defendant shall make an order finding that fact, and the witness shall be detained pending application for her or his conditional examination. Within 3 days from the entry of the order, the witness shall be conditionally examined on application of the state or the defendant. The examination shall be by question and answer in the presence of the other party and counsel, and shall be transcribed by a court reporter or stenographer selected by the parties. At the completion of the examination the witness shall be discharged. The deposition of the witness may be introduced in evidence at the trial by the defendant, or, if the prosecuting attorney and the defendant and the defendant's ~~his~~ counsel agree, it may be admitted in evidence by stipulation. The deposition shall not be admitted on behalf of the state without the consent of the defendant.

(5) A witness detained for conditional examination shall be entitled to fees as a witness for the period of her or his commitment.

Section 1472. Subsections (1) and (3) of section 902.19, Florida Statutes, are amended to read:

902.19 When prosecutor liable for costs.—

(1) When a person makes a complaint before a county court judge that a crime has been committed and is recognized by the county court judge to

appear at the next term of the court having jurisdiction to give evidence of the crime and fails to appear, the person he shall be liable for all costs occasioned by his or her complaint, and the county court judge may obtain a judgment and execution for the costs as in other cases.

(3) A person who voluntarily appears or has himself or herself summoned before a county court judge as a witness on the trial of a misdemeanor shall not be paid per diem or mileage as a witness unless the trial results in a conviction of the defendant.

Section 1473. Section 902.20, Florida Statutes, is amended to read:

902.20 Contempts before committing magistrate.—A committing magistrate holding a preliminary hearing shall have the same power to punish for contempts that she or he has while presiding at the trial of criminal cases.

Section 1474. Paragraph (a) of subsection (2) of section 903.03, Florida Statutes, is amended to read:

903.03 Jurisdiction of trial court to admit to bail; duties and responsibilities of Department of Corrections.—

(2)(a) The Department of Corrections shall have the authority on the request of a circuit court when a person charged with a noncapital crime orailable offense is held, to make an investigation and report to the court, including:

1. The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;

2. The accused's ~~His~~ record of convictions, of appearance at court proceedings, of flight to avoid prosecution, or failure to appear at court proceedings; and

3. Other facts that may be needed to assist the court in its determination of the indigency of the accused and whether she or he should be released on her or his own recognizance.

Section 1475. Section 903.045, Florida Statutes, is amended to read:

903.045 Nature of criminal surety bail bonds.—It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent ~~bondsman~~ licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, shall be construed as a commitment by and an obligation upon the bail bond agent ~~bondsman~~ to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent ~~bondsman~~ of this commitment and obligation.

Section 1476. Paragraph (c) of subsection (2) of section 903.046, Florida Statutes, is amended to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider:

(c) The defendant's family ties, his length of residence in the community, his employment history, his financial resources, and his mental condition.

Section 1477. Section 903.09, Florida Statutes, is amended to read:

903.09 Justification of sureties.—

(1) A surety shall execute an affidavit stating that she or he possesses the qualifications and net worth required to become a surety. The affidavit shall describe the surety's his property and any encumbrances and shall state the number and amount of any bonds entered into by the surety him at any court that remain undischarged.

(2) A bond agent bondsman, as defined in s. 648.25(1), shall justify her or his suretyship by attaching a copy of the power of attorney issued by the company to the bond or by attaching to the bond United States currency, a United States postal money order, or a cashier's check in the amount of the bond; but the United States currency, United States postal money order, or cashier's check cannot be used to secure more than one bond. Nothing herein shall prohibit two or more qualified sureties from each posting any portion of a bond amount, and being liable for only that amount, so long as the total posted by all cosureties is equal to the amount of bond required.

Section 1478. Subsection (1) of section 903.132, Florida Statutes, is amended to read:

903.132 Bail on appeal; conditions for granting; appellate review.—

(1) No person may be admitted to bail upon appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if such person has previously been convicted of a felony, the commission of which occurred prior to the commission of the subsequent felony, and such person's civil rights have not been restored or if other felony charges are pending against the person him and probable cause has been found that the person has committed the felony or felonies at the time the request for bail is made.

Section 1479. Subsections (1) and (3) of section 903.14, Florida Statutes, are amended to read:

903.14 Contracts to indemnify sureties.—

(1) A surety shall file with the bond an affidavit stating the amount and source of any security or consideration which the surety he or anyone for his or her use has received or been promised for the bond.

(3) A limited surety or licensed bond agent ~~bondsman~~ may file a statement in lieu of the affidavit required in subsection (1). Such statement must be filed within 30 days from the execution of the undertaking.

Section 1480. Subsection (1) of section 903.16, Florida Statutes, is amended to read:

903.16 Deposit of money or bonds as bail.—

(1) A defendant who has been admitted to bail, or another person in the defendant's ~~his~~ behalf, may deposit with the official authorized to take bail money or nonregistered bonds of the United States, the state, or a city, town, or county in the state, equal in market value to the amount set in the order and the personal bond of the defendant and an undertaking by the depositor if the money or bonds are deposited by another. The sheriff or other officials may remit money or bonds received to the clerk to be held by the clerk pending court action or return to the defendant or depositor. The clerk shall accept money or bonds remitted by the sheriff.

Section 1481. Section 903.20, Florida Statutes, is amended to read:

903.20 Surrender of defendant.—The defendant may surrender himself or herself or a surety may surrender the defendant ~~him~~ any time before a breach of the bond.

Section 1482. Subsections (1) and (2) of section 903.21, Florida Statutes, are amended to read:

903.21 Method of surrender; exoneration of obligors.—

(1) A surety desiring to surrender a defendant shall deliver a copy of the bond and the defendant to the official who had custody of the defendant at the time bail was taken or to the official into whose custody the defendant ~~he~~ would have been placed if she or ~~he~~ had been committed. The official shall take the defendant into custody, as on a commitment, and issue a certificate acknowledging the surrender.

(2) When a surety presents the certificate and a copy of the bond to the court having jurisdiction, the court shall order the obligors exonerated and any money or bonds deposited as bail refunded. The surety shall give the state attorney 3 days' notice of application for an order of exoneration and furnish the state attorney ~~him~~ a copy of the certificate and bond.

Section 1483. Section 903.22, Florida Statutes, is amended to read:

903.22 Arrest of principal by surety before forfeiture.—A surety may arrest the defendant before a forfeiture of the bond for the purpose of surrendering the defendant ~~him~~ or the surety ~~he~~ may authorize a peace officer to make the arrest by endorsing the authorization on a certified copy of the bond.

Section 1484. Paragraphs (a) and (c) of subsection (2) and paragraph (a) of subsection (5) of section 903.26, Florida Statutes, are amended to read:

903.26 Forfeiture of the bond; when and how directed; discharge; how and when made; effect of payment.—

(2)(a) If there is a breach of the bond, the court shall declare the bond and any bonds or money deposited as bail forfeited. The clerk of the court shall mail a notice to the surety agent and surety company in writing within 5 days of the forfeiture. A certificate signed by the clerk of the court or the clerk's his designee, certifying that the notice required herein was mailed on a specified date and accompanied by a copy of the required notice, shall constitute sufficient proof that such mailing was properly accomplished as indicated therein. If such mailing was properly accomplished as evidenced by such certificate, the failure of the surety agent, of a company, or of a defendant to receive such mail notice shall not constitute a defense to such forfeiture and shall not be grounds for discharge, remission, reduction, set aside, or continuance of such forfeiture. The forfeiture shall be paid within 35 days of the date the notice was mailed.

(c) If there is a breach of the bond, the clerk shall provide, upon request, a certified copy of the warrant or capias to the bail bond agent ~~bondsman~~ or surety company.

(5) The court may discharge a forfeiture within 35 days upon:

(a) A determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's ~~his~~ control. The potential adverse economic consequences of appearing as required shall not be considered as constituting a ground for such a determination;

Section 1485. Subsections (2), (3), (4), and (5) of section 903.27, Florida Statutes, are amended to read:

903.27 Forfeiture to judgment.—

(2) A certificate signed by the clerk of the court or her or his designee, certifying that the notice required in subsection (1) was mailed on a specified date, and accompanied by a copy of the required notice constitutes sufficient proof that such mailing was properly accomplished as indicated therein. If such mailing was properly accomplished as evidenced by such certificate, the failure of a company to receive a copy of the judgment as prescribed in subsection (1) does not constitute a defense to the forfeiture and is not a ground for the discharge, remission, reduction, set-aside, or continuance of such forfeiture.

(3) Surety bail bonds may not be executed by a bail bond agent ~~bondsman~~ against whom a judgment has been entered which has remained unpaid for 60 days and may not be executed for a company against whom a judgment has been entered which has remained unpaid for 75 days. No sheriff or other official who is empowered to accept or approve surety bail bonds shall accept or approve such a bond executed by such a bail bond agent ~~bondsman~~ or executed for such a company until such judgment has been paid.

(4) After notice of judgment against the surety given by the clerk of the circuit court, the surety or bail bond agent ~~bondsman~~ shall, within 60 days

of the entry of judgment, submit to the clerk of the circuit court an amount equal to the judgment, unless the judgment has been set aside by the court within 60 days of the entry of judgment. If a motion to set aside the judgment has been filed pursuant to subsection (5), the amount submitted shall be held in escrow until such time as the court has disposed of the motion. The failure to comply with the provisions of this subsection constitutes a failure to pay the judgment.

(5) After notice of judgment against the surety given by the clerk of the circuit court, the surety or bail ~~bond agent~~ ~~bondsman~~ may within 60 days file a motion to set aside the judgment or to stay the judgment. It shall be a condition of any such motion and of any order to stay the judgment that the surety pay the amount of the judgment to the clerk, which amount shall be held in escrow until such time as the court has disposed of the motion to set aside the judgment. The filing of such a motion, when accompanied by the required escrow deposit, shall act as an automatic stay of further proceedings, including execution, until the motion has been heard and a decision rendered by the court.

Section 1486. Section 903.29, Florida Statutes, is amended to read:

903.29 Arrest of principal by surety after forfeiture.—Within 2 years from the date of forfeiture of a bond, the surety may arrest the principal for the purpose of surrendering the principal ~~him~~ to the official in whose custody she or he was at the time bail was taken or in whose custody the principal ~~he~~ would have been placed had she or he been committed.

Section 1487. Subsection (2) of section 903.32, Florida Statutes, is amended to read:

903.32 Defects in bond.—

(2) If no day, or an impossible day, is stated in a bond for the defendant's appearance before a magistrate for a hearing, the defendant shall be bound to appear 10 days after receipt of notice to appear by the defendant, the defendant's ~~his~~ counsel, or any surety on the undertaking. If no day, or an impossible day, is stated in a bond for the defendant's appearance for trial, the defendant ~~he~~ shall be bound to appear on the first day of the next term of court that will commence more than 3 days after the undertaking is given.

Section 1488. Section 903.33, Florida Statutes, is amended to read:

903.33 Bail not discharged for certain defects.—The liability of a surety shall not be affected by his or her lack of any qualifications required by law, any agreement not expressed in the undertakings, or the failure of the defendant to join in the bond.

Section 1489. Subsection (4) of section 903.36, Florida Statutes, is amended to read:

903.36 Guaranteed arrest bond certificates as cash bail.—

(4) The provisions of s. 903.045 applicable to bail bond agents ~~bondsmen~~ shall apply to surety insurers and their licensed general lines agents who execute bail bonds pursuant to this section.

Section 1490. Paragraph (b) of subsection (1) of section 905.04, Florida Statutes, is amended to read:

905.04 Grounds for challenge to individual prospective grand juror.—

(1) The state or a person who has been held to answer may challenge an individual prospective grand juror on the ground that the juror:

(b) Has a state of mind that will prevent him or her from acting impartially and without prejudice to the substantial rights of the party challenging;

Section 1491. Section 905.05, Florida Statutes, is amended to read:

905.05 When challenge or objection to be made.—A challenge or objection to the grand jury may not be made after it has been impaneled and sworn. This section shall not apply to a person who did not know or have reasonable ground to believe, at the time the grand jury was impaneled and sworn, that cases in which the person he was or might be involved would be investigated by the grand jury.

Section 1492. Section 905.075, Florida Statutes, is amended to read:

905.075 Excusing grand juror related to person being investigated.—A grand juror may excuse herself or himself, be excused by a majority vote of the other grand jurors, or be excused by order of the court on its own motion or on motion of the state attorney, and be relieved from deliberating and voting in any case being investigated by the grand jury in which the party being investigated is related by blood or marriage to the grand juror. When excused or relieved, the grand juror shall retire from the grand jury room during the investigation and voting on a true bill against the grand juror's ~~his~~ relative. The failure of a grand juror to excuse herself or himself or be relieved from participation in the investigation and voting shall not invalidate an indictment found or returned against the relative.

Section 1493. Section 905.08, Florida Statutes, is amended to read:

905.08 Appointment of foreperson foreman.—After the grand jury has been impaneled, the court shall appoint one of the grand jurors as foreperson foreman and another to act as foreperson foreman during absence of the foreperson foreman.

Section 1494. Section 905.095, Florida Statutes, is amended to read:

905.095 Extension of grand jury term.—Upon petition of the state attorney or the foreperson foreman of the grand jury acting on behalf of a majority of the grand jurors, the circuit court may extend the term of a grand jury impaneled under this chapter beyond the term of court in which it was originally impaneled. A grand jury whose term has been extended as provided herein shall have the same composition and the same powers and duties it had during its original term. In the event the term of the grand jury is extended under this section, it shall be extended for a time certain, not to exceed a total of 90 days, and only for the purpose of concluding one or more specified investigative matters initiated during its original term.

Section 1495. Section 905.13, Florida Statutes, is amended to read:

905.13 Appointment of clerk.—The foreperson ~~foreman~~ shall appoint one of the grand jurors as clerk to keep minutes of the proceedings.

Section 1496. Section 905.15, Florida Statutes, is amended to read:

905.15 Appointment of interpreter.—The foreperson ~~foreman~~ shall appoint an interpreter to interpret the testimony of any witness who does not speak the English language well enough to be readily understood. The interpreter must take an oath not to disclose any information coming to his or her knowledge, except on order of the court.

Section 1497. Section 905.16, Florida Statutes, is amended to read:

905.16 Duties of grand jury.—The grand jury shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information or affidavit filed for the offense, and all other indictable offenses triable within the county that are presented to it by the state attorney or her or his designated assistant or otherwise come to its knowledge.

Section 1498. Section 905.185, Florida Statutes, is amended to read:

905.185 State attorney to issue process.—When requested by the grand jury, the state attorney or his or her designated assistant shall issue process to secure the attendance of witnesses.

Section 1499. Section 905.19, Florida Statutes, is amended to read:

905.19 Duty of state attorney.—The state attorney or an assistant state attorney shall attend sessions of the grand jury to examine witnesses and give legal advice about any matter cognizable by the grand jury. The state attorney may designate one or more assistant state attorneys to accompany and assist the state attorney ~~him~~ in the performance of her or his duties, or the state attorney ~~he~~ may designate one or more assistant state attorneys to attend sessions, examine witnesses, and give legal advice to the grand jury. The state attorney or an assistant state attorney shall draft indictments.

Section 1500. Subsection (1) of section 905.195, Florida Statutes, is amended to read:

905.195 List of witnesses; minutes.—

(1) The foreperson ~~foreman~~ of the grand jury shall return to the court a list under his or her hand of all witnesses who have been sworn by the grand jury during the term. The list shall be filed by the clerk of the court.

Section 1501. Section 905.22, Florida Statutes, is amended to read:

905.22 Swearing of witnesses.—The foreperson ~~foreman~~, state attorney, or assistant state attorney shall administer an oath or affirmation in the manner prescribed by law to any witness who testifies before the grand jury.

Section 1502. Section 905.25, Florida Statutes, is amended to read:

905.25 Grand juror not permitted to state or testify.—A grand juror shall not be permitted to state or testify in any court how she or he or any other grand juror voted on any matter before them or what opinion was expressed by herself or himself or any other grand juror about the matter.

Section 1503. Subsections (2) and (3) of section 905.27, Florida Statutes, are amended to read:

905.27 Testimony not to be disclosed; exceptions.—

(2) It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding. When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney ~~him~~ to his or her assistants, legal associates, and employees, and to the defendant and the defendant's ~~his~~ attorney, and by the latter to his or her legal associates and employees. When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

(3) Nothing in this section shall affect the attorney-client relationship. A client shall have the right to communicate to his or her attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.

Section 1504. Subsection (1) of section 905.33, Florida Statutes, is amended to read:

905.33 Petition to Supreme Court by Governor; order.—

(1) Whenever the Governor, for good and sufficient reason, deems it to be in the public interest to impanel a statewide grand jury, she or he may petition in writing to the Supreme Court for an order impaneling a statewide grand jury. The petition shall state the general crimes or wrongs to be inquired into and shall state that said crimes or wrongs are of a multicircuit nature. The Supreme Court may order the impaneling of a statewide grand jury, in accordance with the petition, for a term of 12 calendar months. Upon petition by a majority of the statewide grand jury or by the legal adviser to the statewide grand jury, the Supreme Court, by order, may extend the term of the statewide grand jury for a period of up to 6 months.

Section 1505. Section 905.35, Florida Statutes, is amended to read:

905.35 Appointment of foreperson foreman and deputy foreperson foreman.—The statewide grand jury shall elect, by majority vote, a foreperson foreman and deputy foreperson foreman from among its members.

Section 1506. Section 905.36, Florida Statutes, is amended to read:

905.36 Duty of state attorney or other legal adviser; presentation of evidence.—The statewide prosecutor in charge of the Office of Statewide Prosecution shall attend sessions of the statewide grand jury and serve as its legal adviser. The legal adviser shall examine witnesses; present evidence; and draft indictments, presentments, and reports upon the direction of the statewide grand jury. The legal adviser may designate one or more of her or his assistants, any state attorney, or one or more assistant state attorneys to attend sessions of the statewide grand jury and perform the legal advisor's his duties. The legal adviser and her or his assistants or a state attorney or assistant state attorney designated by the legal adviser to advise the statewide grand jury shall be empowered to prosecute an indictment returned by the statewide grand jury in the judicial circuit where the proper venue lies.

Section 1507. Subsections (1), (3), and (4) of section 905.37, Florida Statutes, are amended to read:

905.37 List of prospective jurors; impanelment; composition of jury; compensation.—

(1) On or before July 15, 1973, and not later than the first week in December of each year thereafter, the chief judge of each judicial circuit shall cause to be compiled a list of persons called and certified for jury duty in each of the several counties in the circuit. From the lists of persons certified for jury duty in each of the several counties in his or her judicial circuit, the chief judge shall select by lot and at random a list of eligible prospective grand jurors from each county. The number of prospective statewide grand jurors to be selected from each county shall be determined on the basis of 3 such jurors for each 3,000 residents, or fraction thereof, in each county. When such lists are compiled, the chief judge of each judicial circuit shall cause the lists to be submitted to the state courts administrator on or before August 15, 1973, and not later than February 15 of each year thereafter.

(3) A statewide grand jury shall be composed of 18 members, of which 15 members shall constitute a quorum. Each member of the statewide grand jury shall be a registered elector in the county in which he or she resides. In all other respects, a statewide grand juror shall have the same qualifications as provided in this chapter in the case of a county grand jury.

(4) Upon receiving a summons to report for jury duty, any employee shall, on the next day the employee ~~he~~ is engaged in his or her employment, exhibit the summons to his or her immediate superior; and the employee shall thereupon be excused from his or her employment for the period that the employee ~~he~~ is actually required to be in court attendance, plus reasonable travel time.

Section 1508. Section 907.04, Florida Statutes, is amended to read:

907.04 Disposition of defendant upon arrest.—If a person who is arrested does not have a right to bail for the offense charged, he or she shall be delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed. If the person who is arrested has a right to bail, he or she shall be released after giving bond on the amount specified in the warrant.

Section 1509. Section 907.045, Florida Statutes, is amended to read:

907.045 Habeas corpus; motion to dismiss; preliminary hearing.—A defendant who is in custody when an indictment, information, or affidavit on which she or he can be tried is filed may apply for a writ of habeas corpus attacking the indictment, information, or affidavit, or the defendant ~~he~~ may move to dismiss the indictment, information, or affidavit. A defendant who has been confined for 30 days after her or his arrest without a trial shall be allowed a preliminary hearing upon application.

Section 1510. Subsection (1) of section 910.005, Florida Statutes, is amended to read:

910.005 State criminal jurisdiction.—

(1) A person is subject to prosecution in this state for an offense that she or he commits, while either within or outside the state, by her or his own conduct or that of another for which the person ~~he~~ is legally accountable, if:

(a) The offense is committed wholly or partly within the state;

(b) The conduct outside the state constitutes an attempt to commit an offense within the state;

(c) The conduct outside the state constitutes a conspiracy to commit an offense within the state, and an act in furtherance of the conspiracy occurs in the state;

(d) The conduct within the state constitutes an attempt or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction; or

(e) The conduct constitutes a knowing violation of s. 286.011.

Section 1511. Paragraph (e) of subsection (3) of section 910.006, Florida Statutes, is amended to read:

910.006 State special maritime criminal jurisdiction.—

(3) SPECIAL MARITIME CRIMINAL JURISDICTION.—The special maritime criminal jurisdiction of the state extends to acts or omissions on board a ship outside of the state under any of the following circumstances:

(e) The victim is a Florida law enforcement officer on board the ship in connection with his or her official duties.

Section 1512. Section 910.02, Florida Statutes, is amended to read:

910.02 Offense committed while in transit.—If an offense is committed on a railroad car, vehicle, watercraft, or aircraft traveling within this state and it is not known in which county the offense was committed, the accused may be tried in any county through which the railroad car, vehicle, watercraft, or aircraft has traveled. The accused is entitled to elect the county in which she or he will be tried, as provided in s. 910.03.

Section 1513. Subsection (1) of section 910.03, Florida Statutes, is amended to read:

910.03 Place of trial generally.—

(1) Except as provided in s. 910.035 or in subsection (2), criminal prosecutions shall be tried in the county where the offense was committed; but if the county is not known, the accused may be charged in two or more counties conjunctively, and before trial the accused may elect the county in which he or she will be tried. By his or her election, the accused waives the right to trial in the county in which the crime was committed. Such election shall have the force and effect of the granting of an application of the accused for change of venue from the county in which the offense was committed to the county in which the case is tried.

Section 1514. Section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea and sentence.—

(1) INDICTMENT OR INFORMATION PENDING.—A defendant arrested or held in a county other than that in which an indictment or information is pending against him or her may state in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the indictment or information is pending, and to consent to disposition of the case in the county in which the defendant ~~he~~ was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction for the county in which the defendant is held, and the prosecution shall continue in that county upon the information or indictment originally filed. In the event a fine is imposed upon the defendant in that county, two-thirds thereof shall be returned to the county in which the indictment or information was originally filed.

(2) INDICTMENT OR INFORMATION NOT PENDING.—A defendant arrested on a warrant issued upon a complaint in a county other than the county of arrest may state in writing that he or she wishes to plead guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and to consent to disposition of the case in the county in which the defendant ~~he~~ was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon

receipt of the defendant's statement and the written approval of the prosecuting attorney, and upon the filing of an information or the return of an indictment, the clerk of the court from which the warrant was issued shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction in the county in which the defendant was arrested, and the prosecution shall continue in that county upon the information or indictment originally filed.

(3) EFFECT OF NOT GUILTY PLEA.—If, after the proceeding has been transferred pursuant to subsection (1) or subsection (2), the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court. The defendant's statement that he or she wishes to plead guilty or nolo contendere shall not be used against the defendant ~~him~~.

(4) APPEARANCE IN RESPONSE TO A SUMMONS.—For the purpose of initiating a transfer under this section, a person who appears in response to a summons shall be treated as if he or she had been arrested on a warrant in the county of such appearance.

Section 1515. Section 910.04, Florida Statutes, is amended to read:

910.04 Where aider in one county and offense committed in another.—If a person in one county aids, abets, or procures the commission of an offense in another county, the person ~~he~~ may be tried in either county.

Section 1516. Section 910.10, Florida Statutes, is amended to read:

910.10 Where stolen property brought into another county.—A person who obtains property by larceny, robbery, or embezzlement may be tried in any county in which the person ~~he~~ exercises control over the property.

Section 1517. Subsection (1) of section 910.11, Florida Statutes, is amended to read:

910.11 Conviction or acquittal bar to prosecution.—

(1) No person shall be held to answer on a second indictment, information, or affidavit for an offense for which the person ~~he~~ has been acquitted. The acquittal shall be a bar to a subsequent prosecution for the same offense, notwithstanding any defect in the form or circumstances of the indictment, information, or affidavit.

Section 1518. Section 910.13, Florida Statutes, is amended to read:

910.13 Accessory after the fact.—A person who becomes an accessory after the fact to a felony may be tried in the county in which the person ~~he~~ became an accessory or in any county in which the principal in the first degree might be tried. Prosecution of a person who is an accessory after the fact to a felony shall not be contingent on prosecution or conviction of the principal in the first degree.

Section 1519. Section 910.14, Florida Statutes, is amended to read:

910.14 Kidnapping.—A person who commits an offense provided for in s. 787.01 or s. 787.02 may be tried in any county in which the person's ~~his~~ victim has been taken or confined during the course of the offense.

Section 1520. Subsections (2), (3), (8), and (10) of section 913.03, Florida Statutes, are amended to read:

913.03 Grounds for challenge to individual jurors for cause.—A challenge for cause to an individual juror may be made only on the following grounds:

(2) The juror is of unsound mind or has a bodily defect that renders him or her incapable of performing the duties of a juror, except that, in a civil action, deafness or hearing impairment shall not be the sole basis of a challenge for cause of an individual juror;

(3) The juror has conscientious beliefs that would preclude him or her from finding the defendant guilty;

(8) The juror is an adverse party to the defendant in a civil action, or has complained against or been accused by the defendant ~~him~~ in a criminal prosecution;

(10) The juror has a state of mind regarding the defendant, the case, the person alleged to have been injured by the offense charged, or the person on whose complaint the prosecution was instituted that will prevent the juror ~~him~~ from acting with impartiality, but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not be a sufficient ground for challenge to a juror if he or she declares and the court determines that he or she can render an impartial verdict according to the evidence;

Section 1521. Section 913.13, Florida Statutes, is amended to read:

913.13 Jurors in capital cases.—A person who has beliefs which preclude her or him from finding a defendant guilty of an offense punishable by death shall not be qualified as a juror in a capital case.

Section 1522. Section 914.04, Florida Statutes, is amended to read:

914.04 Witnesses; person not excused from testifying or producing evidence in certain prosecutions on ground testimony might incriminate him or her; use of testimony given or evidence produced.—No person who has been duly served with a subpoena or subpoena duces tecum shall be excused from attending and testifying or producing any book, paper, or other document before any court having felony trial jurisdiction, grand jury, or state attorney upon investigation, proceeding, or trial for a violation of any of the criminal statutes of this state upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person ~~him~~ may tend to convict him or her of a crime or to subject him or her to a penalty or forfeiture, but no testimony so given or evidence so produced shall be received against the person ~~him~~ upon any criminal investigation or proceeding. Such testimony or evidence, however, may be received against the person ~~him~~ upon any criminal investigation or proceeding for perjury com-

mitted while giving such testimony or producing such evidence or for any perjury subsequently committed.

Section 1523. Section 914.05, Florida Statutes, is amended to read:

914.05 Compelled testimony tending to incriminate witness; immunity.—The testimony or evidence of a witness who has been ordered by a court of the United States to testify or produce evidence regarding treason, sabotage, espionage, or seditious conspiracy against the United States, after claiming her or his privilege against self-incrimination, shall not subsequently be used against the witness ~~him~~ in a criminal prosecution in this state. A witness shall not be exempt from prosecution for perjury committed while giving testimony or producing evidence under compulsion as provided in this section.

Section 1524. Section 914.12, Florida Statutes, is amended to read:

914.12 Memorandum of recognizance of witness; removal for violation.—When a county court judge recognizes a witness to appear before the grand jury, the judge ~~he~~ shall give the witness a written memorandum stating that the witness is required to appear before the grand jury and the date when the grand jury will meet. An intentional failure of a county court judge to comply with this section, on recommendation of the grand jury, shall subject the judge ~~him~~ to suspension from office by the Governor.

Section 1525. Section 914.13, Florida Statutes, is amended to read:

914.13 Commitment for perjury.—When a court of record has reason to believe that a witness or party who has been legally sworn and examined or has made an affidavit in a proceeding has committed perjury, the court may immediately commit the person or take a recognizance with sureties for the person's ~~his~~ appearance to answer the charge of perjury. Witnesses who are present may be recognized to the proper court, and the state attorney shall be given notice of the proceedings.

Section 1526. Section 914.15, Florida Statutes, is amended to read:

914.15 Law enforcement officers; nondisclosure of personal information.—Any law enforcement officer of the state or of any political subdivision thereof who provides information relative to a criminal investigation or in proceedings preliminary to a criminal case may refuse, unless ordered by the court, to disclose his or her residence address, home telephone number, or any personal information concerning the officer's ~~his~~ family. Any law enforcement officer who testifies as a witness in a criminal case may refuse to disclose personal information concerning his or her family unless it is determined by the court that such evidence is relevant to the case.

Section 1527. Paragraph (c) of subsection (4) and subsection (8) of section 916.106, Florida Statutes, are amended to read:

916.106 Definitions.—For the purposes of this chapter:

(4) “Forensic client” or “patient” means any mentally retarded or mentally ill person who is committed to the department and:

- (c) Who has been determined by the department to:
1. Be dangerous to himself or herself or others; or
 2. Present a clear and present potential to escape.

(8) “Mental retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. “Adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual’s his age, cultural group, and community.

Section 1528. Paragraph (d) of subsection (1) of section 916.11, Florida Statutes, is amended to read:

916.11 Appointment of experts.—

(1)

(d) If a defendant’s suspected mental condition is mental retardation, the court shall appoint the developmental services program of the Department of Health and Rehabilitative Services to examine the defendant and determine whether she or he meets the definition of “retardation” in s. 393.063 and, if so, whether she or he is competent to stand trial.

Section 1529. Section 916.12, Florida Statutes, is amended to read:

916.12 Mental competence to stand trial.—

(1) A person is incompetent to stand trial within the meaning of this chapter if the person ~~he~~ does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the person ~~he~~ has no rational, as well as factual, understanding of the proceedings against her or him.

(2) A defendant who, because of psychotropic medication, is able to understand the nature of proceedings and assist in her or his defense shall not automatically be deemed incompetent to stand trial simply because the defendant’s ~~his~~ satisfactory mental functioning is dependent upon such medication. As used in this subsection, “psychotropic medication” means any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs.

Section 1530. Subsection (1) and paragraph (b) of subsection (2) of section 916.13, Florida Statutes, are amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent to stand trial or incompetent for sentencing.—

(1) CRITERIA.—Every person adjudicated incompetent to stand trial or incompetent for sentencing, pursuant to the applicable Florida Rules of Criminal Procedure, may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) The person ~~He~~ is mentally ill and because of her or his mental illness, or that the person ~~he~~ is mentally retarded and because of her or his mental retardation:

1. The person ~~He~~ is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the person ~~he~~ is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to her or his well-being; or

2. There is a substantial likelihood that in the near future the person ~~he~~ will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the person's ~~his~~ condition have been judged to be inappropriate.

(2) ADMISSION TO A FORENSIC FACILITY.—

(b) A defendant adjudicated incompetent to stand trial due to her or his mental retardation may be ordered into a secure facility designated by the department for retarded defendants. The department may not transfer a client from the secure facility to another residential setting without first notifying the court; the department may transfer such defendant unless the department receives written objection to the transfer from the court within 30 days after receipt of the notice by the court. No retarded client may be placed in the designated secure facility except by criminal court order. However, if criminal charges are subsequently dropped and the client is involuntarily admitted to retardation residential services, the placement at the secure facility may be continued if so ordered by the committing court following a hearing with the same due process requirements as set out in s. 393.11 for an initial involuntary admission. Such court hearings shall be held at least annually, with notice to the state attorney, and each order of continuing placement shall be based on a finding that the client is likely to physically injure others as specified in s. 393.11(1)(c)2. In no case may a client's placement in a secure facility exceed the maximum sentence for the crime for which she or he was charged.

Section 1531. Section 916.14, Florida Statutes, is amended to read:

916.14 Statute of limitations; former jeopardy.—The statute of limitations shall not be applicable to criminal charges dismissed because of the incompetency of the defendant to stand trial. If a defendant is declared incompetent to stand trial during trial and afterwards is declared competent

to stand trial, the defendant's ~~his~~ other, uncompleted trial shall not constitute former jeopardy.

Section 1532. Section 916.145, Florida Statutes, is amended to read:

916.145 Adjudication of incompetency due to mental retardation; dismissal of charges.—The charges against any defendant adjudicated incompetent to stand trial due to his or her mental retardation shall be dismissed if the defendant remains incompetent to stand trial 2 years after such adjudication, unless the court in its order specifies its reasons for believing that the defendant will become competent to stand trial and the time within which the defendant is expected to become competent to stand trial.

Section 1533. Subsections (1) and (3) of section 916.15, Florida Statutes, are amended to read:

916.15 Involuntary commitment of defendant adjudicated not guilty by reason of insanity.—

(1) A person who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed pursuant to such finding if the person ~~he~~ is mentally ill and, because of the person's ~~his~~ illness, is manifestly dangerous to himself or herself or others.

(3) In all proceedings under this subsection, both the patient and the state shall have the right to a hearing before the committing court. Evidence at such hearing may be presented by the hospital administrator or his or her designee as well as by the state and the defendant. The defendant shall have the right to counsel at any such hearing. In the event that a defendant cannot afford counsel, the court shall appoint the public defender to represent the defendant ~~him~~. The parties shall have access to the defendant's records at the treating facilities and may interview or depose personnel who have had contact with the defendant at the treating facilities.

Section 1534. Subsection (1) of section 916.17, Florida Statutes, is amended to read:

916.17 Conditional release.—

(1) The committing court may order a conditional release of any defendant who has been committed according to a finding of incompetency to stand trial or an adjudication of not guilty by reason of insanity, based on an approved plan for providing appropriate outpatient care and treatment. At such time as the administrator shall determine outpatient treatment of the defendant to be appropriate, she or he may file with the court, with copies to all parties, a written plan for outpatient treatment, including recommendations from qualified professionals. Such a plan may be submitted by the defendant. The plan shall include:

(a) Special provisions for residential care or adequate supervision of the defendant.

(b) Provisions for outpatient mental health services.

(c) If appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release and progress in treatment, with copies to all parties.

Section 1535. Section 916.19, Florida Statutes, is amended to read:

916.19 Duties, functions, and powers of institutional security personnel.—In case of emergency, and when necessary to provide protection and security to any patient, to the personnel, equipment, buildings, or grounds of a department facility, or to citizens in the surrounding community, institutional security personnel may, when authorized by the administrator of the facility or her or his designee when the administrator is not present, use a chemical weapon against a patient housed in a forensic facility. However, such weapon shall be used only to the extent necessary to provide such protection and security. Under no circumstances shall any such officer carry a chemical weapon on her or his person except during the period of the emergency for which its use was authorized. All chemical weapons shall be placed in secure storage when their use is not authorized as provided in this section.

Section 1536. Section 918.03, Florida Statutes, is amended to read:

918.03 Procedure when offense committed outside state.—When a court determines that it does not have jurisdiction because the offense charged was committed outside this state, the court may discharge the defendant or direct the clerk to communicate the location of the defendant to the chief executive of the state, territory, or district where the offense was committed. The court may commit the defendant to custody or admit him or her to bail for a reasonable period of time to await a requisition for his or her extradition. If a requisition is not received within the time set by the court, the defendant shall be discharged. If the defendant has been admitted to bail, the court shall order the bond canceled and any deposit of money or bonds returned.

Section 1537. Section 918.04, Florida Statutes, is amended to read:

918.04 Procedure when offense committed in another county.—When a court determines that it does not have jurisdiction because the offense charged was committed in another county of this state, the defendant shall be committed to custody or admitted to bail for a reasonable time to await a warrant for his or her arrest from the proper county. The clerk shall notify the prosecuting attorney of the proper county of the location of the defendant. If the defendant is not arrested on a warrant from the proper county within the time set by the court, he or she shall be discharged. If the defendant has been admitted to bail, the court shall order the bond canceled and any deposit of money or bonds returned.

Section 1538. Section 918.05, Florida Statutes, is amended to read:

918.05 View by jury.—When a court determines that it is proper for the jury to view a place where the offense may have been committed or other material events may have occurred, it may order the jury to be conducted in a body to the place, in custody of a proper officer. The court shall admonish the officer that no person, including the officer, shall be allowed to communicate with the jury about any subject connected with the trial. The jury shall be returned to the courtroom in accordance with the directions of the court. The judge and defendant, unless the defendant absents himself or herself without permission of court, shall be present, and the prosecuting attorney and defense counsel may be present at the view.

Section 1539. Section 918.07, Florida Statutes, is amended to read:

918.07 Admonition to officer in charge of jurors.—When the jury is committed to the charge of an officer, the officer ~~he~~ shall be admonished by the court to keep the jurors together in the place specified and not to permit any person to communicate with them on any subject except with the permission of the court given in open court in the presence of the defendant or the defendant's ~~his~~ counsel. The officer shall not communicate with the jurors on any subject connected with the trial and shall return the jurors to court as directed by the court.

Section 1540. Section 918.12, Florida Statutes, is amended to read:

918.12 Tampering with jurors.—Any person who influences the judgment or decision of any grand or petit juror on any matter, question, cause, or proceeding which may be pending, or which may by law be brought, before him or her as such juror, with intent to obstruct the administration of justice, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1541. Paragraphs (a) and (b) of subsection (2), paragraph (a) of subsection (3), and subsection (10) of section 921.001, Florida Statutes, are amended to read:

921.001 Sentencing Commission and sentencing guidelines generally.—

(2)(a) The commission is composed of 17 members, consisting of: 2 members of the Senate appointed by the President of the Senate; 2 members of the House of Representatives appointed by the Speaker of the House of Representatives; the Chief Justice of the Supreme Court or a member of the Supreme Court designated by the Chief Justice; 3 circuit court judges, 1 county court judge, and 1 representative of the victim advocacy profession, appointed by the Chief Justice of the Supreme Court; the Attorney General or her or ~~his~~ designee; and the secretary of the Department of Corrections or her or ~~his~~ designee. The following members are appointed by the Governor: one state attorney recommended by the Florida Prosecuting Attorneys Association; one public defender recommended by the Public Defenders Association; one private attorney recommended by the President of The Florida Bar; and two persons of the Governor's choice. The membership of the commission shall reflect the geographic and ethnic diversity of the state. The

Chief Justice or the member of the Supreme Court designated by the Chief Justice serves as chair ~~chairman~~ of the commission.

(b) The members of the commission appointed by the Governor and the members from the Senate and the House of Representatives serve 2-year terms. The members appointed by the Chief Justice of the Supreme Court serve at her or his pleasure.

(3)(a) The commission shall meet annually or at the call of the chair ~~chairman~~ to review sentencing practices and recommend modifications to the guidelines. In recommending modifications to the sentencing guidelines, the commission shall take into consideration the existing sentencing and release practices and correctional resources, including the capacities of local and state correctional facilities, in addition to other relevant factors.

(10)(a) A person who is convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may be released from incarceration only:

1. Upon expiration of the person's ~~his~~ sentence;
2. Upon expiration of the person's ~~his~~ sentence as reduced by accumulated gain-time;
3. As directed by an executive order granting clemency;
4. Upon attaining the provisional release date;
5. Upon placement in a conditional release program pursuant to s. 947.1405; or
6. Upon the granting of control release pursuant to s. 947.146.

(b) A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only:

1. Upon expiration of the person's ~~his~~ sentence;
2. Upon expiration of the person's ~~his~~ sentence as reduced by accumulated meritorious or incentive gain-time;
3. As directed by an executive order granting clemency;
4. Upon placement in a conditional release program pursuant to s. 947.1405 or a conditional medical release program pursuant to s. 947.149; or
5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

Section 1542. Paragraph (b) of subsection (1) and paragraphs (a) and (c) of subsection (2) of section 921.005, Florida Statutes, are amended to read:

921.005 Criteria for sentencing.—The courts shall use the following criteria for sentencing all persons who committed crimes before October 1, 1983:

(1)

(b) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of withholding a sentence of imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm.

2. The defendant did not know and had no reason to know that her or his criminal conduct would cause or threaten serious harm.

3. The defendant acted under a strong provocation.

4. There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense.

5. The defendant has compensated or will compensate the victim of her or his criminal conduct for the damage or injury that the victim sustained.

6. The defendant has no history of prior delinquency or criminal activity or had led a law-abiding life for a substantial period of time before the commission of the present crime.

7. The defendant's criminal conduct was the result of circumstances unlikely to recur.

8. The character and attitudes of the defendant indicate that she or he is unlikely to commit another crime.

9. The defendant is particularly likely to respond affirmatively to non-custodial treatment.

(2)(a) A court shall sentence a defendant to pay a fine unless it finds that the defendant is unable or will be unable to pay the fine and the imposition of a fine will not prevent the defendant from being rehabilitated or from making restitution to the victim of her or his crime.

(c) A court shall sentence a defendant to pay a fine in addition to imprisonment or probation if, in the opinion of the court, the defendant has derived a pecuniary gain from her or his crime or the fine is specially adapted to deterrence of the particular crime or to the punishment and rehabilitation of the offender.

Section 1543. Subsections (1) and (2) of section 921.15, Florida Statutes, are amended to read:

921.15 Stay of execution of sentence to fine; bond and proceedings.—

(1) When a defendant is sentenced to pay a fine, he or she shall have the right to give bail for payment of the fine and the costs of prosecution. The bond shall be executed by the defendant and two sureties approved by the sheriff or the officer charged with execution of the judgment.

(2) The bond shall be made payable in 90 days to the Governor and the Governor's ~~his~~ successors in office.

Section 1544. Section 921.161, Florida Statutes, is amended to read:

921.161 Sentence not to run until imposed; credit for county jail time after sentence; certificate of sheriff.—

(1) A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time she or he spent in the county jail before sentence. The credit must be for a specified period of time and shall be provided for in the sentence.

(2) In addition to other credits, a person sentenced to imprisonment in custody of the Department of Corrections shall receive credit on her or his sentence for all time spent between sentencing and being placed in custody of the department. When delivering a prisoner to the department, the sheriff shall certify to it in writing:

(a) The date the sentence was imposed and the date the prisoner was delivered to the department.

(b) The dates of any periods after sentence the prisoner was at liberty on bond.

(c) The dates and reasons for any other times the prisoner was at liberty after sentence.

(d) The offender-based transaction system number or numbers from the uniform arrest report or reports established pursuant to s. 943.05(2).

The certificate shall be prima facie evidence of the facts certified.

Section 1545. Section 921.18, Florida Statutes, is amended to read:

921.18 Sentence for indeterminate period for noncapital felony.—The court in its discretion may sentence a defendant convicted of a noncapital felony to the custody of the Department of Corrections for an indeterminate period of 6 months to a maximum period of imprisonment. The maximum sentence may be less than the maximum prescribed by law, but shall not be less than the minimum, if any, prescribed for the offense. After July 1, 1990, the court shall consider sentencing a defendant to serve his or her sentence in a county residential probation center facility as described in s. 951.23 for the county residential probation program as provided in s. 951.231 only if the defendant has not been previously convicted of a felony or twice convicted of a misdemeanor and the existing local facility has available capacity. This section shall not apply to sentences imposed under s. 775.084 or any other statute providing for punishment of habitual criminals.

Section 1546. Section 921.20, Florida Statutes, is amended to read:

921.20 Classification summary; Parole Commission.—As soon as possible after a prisoner has been placed in the custody of the Department of

Corrections, the classification board shall furnish a classification summary to the Parole Commission for use as provided in s. 947.14. The summary shall include the criminal, personal, social, and environmental background and other relevant factors considered in classifying the prisoner for a penal environment best suited for the prisoner's his rapid rehabilitation.

Section 1547. Section 921.21, Florida Statutes, is amended to read:

921.21 Progress reports to Parole Commission.—From time to time the Department of Corrections shall submit to the Parole Commission progress reports and recommendations regarding prisoners sentenced under s. 921.18. When the classification board of the Department of Corrections determines that justice and the public welfare will best be served by paroling or discharging a prisoner, it shall transmit its finding to the Parole Commission. The commission shall have the authority to place the prisoner on parole as provided by law or give the prisoner him a full discharge from custody. The period of a parole granted by the Parole Commission shall be in its discretion, but the parole period shall not exceed the maximum term for which the prisoner was sentenced.

Section 1548. Paragraphs (a), (e), (g), (j), (l), and (m) of subsection (1) of section 921.231, Florida Statutes, are amended to read:

921.231 Presentence investigation reports.—

(1) Any circuit court of the state, when the defendant in a criminal case has been found guilty or has entered a plea of nolo contendere or guilty, may refer the case to the Department of Corrections for investigation and recommendation. Upon request of the court, it shall be the duty of the department to make either or both of the following reports in writing to the circuit court at a specified time prior to sentencing, depending upon the circumstances of the offender and the offense. The full report shall include:

(a) A complete description of the situation surrounding the criminal activity with which the offender has been charged, including a synopsis of the trial transcript, if one has been made; nature of the plea agreement including the number of counts waived, the pleas agreed upon, the sentence agreed upon, and additional terms of agreement; and, at the offender's discretion, his or her version and explanation of the act.

(e) The offender's employment background, including any military record, his or her present employment status, and his or her occupational capabilities.

(g) The social history of the offender, including his or her family relationships, marital status, interests, and related activities.

(j) Information about the environments to which the offender might return or to which the offender he could be sent should a sentence of nonincarceration or community supervision be imposed by the court and consideration of the offender's plan concerning employment supervision and treatment.

(l) The views of the person preparing the report as to the offender's motivations and ambitions and an assessment of the offender's explanations for his or her criminal activity.

(m) An explanation of the offender's criminal record, if any, including his or her version and explanation of any previous offenses.

If requested by the court, the department shall also provide to the court a summary report designed to expeditiously give the court information critical to its approval of any plea. The summary report shall include the information required by paragraphs (a), (b), (c), (j), (m), (n), and (o).

Section 1549. Section 922.04, Florida Statutes, is amended to read:

922.04 Discharge of prisoner unable to pay fine.—When the court determines on the written application of a prisoner that he or she has been imprisoned for 60 days solely for failure to pay a fine or costs which total not more than \$300 and that the prisoner is indigent and unable to pay the fine or costs, the court shall order the prisoner discharged from custody.

Section 1550. Section 922.111, Florida Statutes, is amended to read:

922.111 Transfer to state prison for safekeeping before death warrant issued.—The sheriff shall deliver a person sentenced to death to the state prison to await the death warrant. A circuit judge of the circuit in which a death sentence was imposed may order the convicted person transferred to the state prison before the issuance of a warrant of execution if he or she determines that the transfer is necessary for the safekeeping of the prisoner.

Section 1551. Section 923.01, Florida Statutes, is amended to read:

923.01 Criminal report.—Each committing magistrate at the time commitment papers are sent by her or him to the proper trial court, and the sheriff when an arrest is made, other than on a *capias*, shall transmit to the prosecuting attorney of the trial court having jurisdiction, a report in the following form:

CRIMINAL REPORT

Date: Name and address of defendant: Age: If under 18, give name and address of parent, next friend, or guardian: Name of offense, such as murder, assault, robbery, etc.: Date and place where committed: Value of property stolen: Kind of property stolen: Kind of building robbed: Name and address of owner of property stolen or building robbed: Name and address of occupant of building robbed: Name of party assaulted or murdered: Weapon used in assault or murder: Exhibits taken at scene of crime or from defendant: Name of custodian of such exhibits: Location of building or place where offense committed: Previous prison record of defendant: Has defendant been arrested: Does defendant desire to plead guilty: Names and addresses of state witnesses: Name of defendant's lawyer: If defendant is released on bond, names and addresses of sureties: Brief statement of facts: Name of committing magistrate: If additional space required, use reverse side of this sheet.

...(Signature of party making this report.)...

Section 1552. Section 923.02, Florida Statutes, is amended to read:

923.02 Notice of setting case for trial.—The judge of any trial court may adopt as a rule of her or his court a rule requiring that at least 4 days before the sounding of the docket in criminal cases in any trial court, the clerk of said court shall send by United States mail, to the defendant, the defendant's his sureties, and the defendant's his attorney, if known, a notice in postcard form, reading as follows:

THE STATE OF FLORIDA

vs.

.....

NOTICE OF FILING INFORMATION

TO:

You are hereby notified that an information (indictment) charging you with the offense of has been filed in the office of in and for County; and you are required to appear in the court in and for County at the Courthouse in on (date) for arraignment, plea and trial, or setting for trial in default of which your bond will be estreated, for failure to appear. ... (Prosecuting Officer)....

If such rule is adopted by any court and the rule is not complied with by the clerk the failure so to comply with the rule shall not constitute reversible error nor affect the obligations of the bond.

Section 1553. Subsection (1) of section 923.03, Florida Statutes, is amended to read:

923.03 Indictment and information.—

(1) The following forms of indictment and information, in all cases to which they are applicable, shall be deemed sufficient, as a charge of the offense to which they relate as defined by the laws of this state, and analogous forms may be used in all other cases:

(a) As to first degree murder:

In the name and by the authority of the State of Florida: The Grand Jurors of the County of charge that A. B. unlawfully and from a premeditated design to effect the death of (or while robbing the house of as the case may be) did murder in said county, by shooting her or him with a gun or pistol (or by striking her or him with a club—or by giving her or him poison to drink—or by pushing her or him into the water whereby she or he was drowned).

(b) As to second degree murder:

Unlawfully by an act imminently dangerous to another, and evincing a depraved mind, regardless of human life; that is to say, by firing her or his shotgun into the store of (or by striking with an adz, as the case may be) but without a premeditated design to effect the death of any particular person, did kill in said county.

(c) As to third degree murder:

Unlawfully, and while feloniously stealing cattle (or timber, or while feloniously assaulting as the case may be), but without any design to effect death, did kill in said county, by sinking her or his boat (or by running over her or him with an automobile—or by shooting her or him with a gun or pistol, as the case may be).

(d) As to manslaughter:

Unlawfully and by culpable negligence, in driving an automobile (or firing a boiler—or by performing a surgical operation) or (in the heat of passion—omitting in this latter case the allegation of culpable negligence), but without intent to murder, did kill in said county, by running over her or him with said automobile (or by causing said boiler to explode—or by infecting her or him with a deadly infection—or by striking her or him with a hammer).

(e) As to perjury:

In the hearing of a cause in the court of County, Florida, in which and others were plaintiffs and others were defendants, after being duly sworn to speak the truth, falsely swore, etc. (stating the substance of the false testimony) such matter being material in said cause, and the said then and there knowing that she or he swore falsely.

Section 1554. Subsection (2) of section 924.071, Florida Statutes, is amended to read:

924.071 Additional grounds for appeal by the state; time for taking; stay of cause.—

(2) An appeal by the state from a pretrial order shall stay the case against each defendant upon whose application the order was made until the appeal is determined. If the trial court determines that the evidence, confession, or admission that is the subject of the order would materially assist the state in proving its case against another defendant and that the prosecuting attorney intends to use it for that purpose, the court shall stay the case of that defendant until the appeal is determined. A defendant in custody whose case is stayed either automatically or by order of the court shall be released on his or her own recognizance pending the appeal if he or she is charged with a bailable offense.

Section 1555. Section 924.16, Florida Statutes, is amended to read:

924.16 Discharge pending appeal.—If a defendant is in custody after judgment of conviction at the time of appeal, the appeal and supersedeas shall not discharge the defendant ~~him~~ from custody. The court appealed from or a judge of the appellate court may order the defendant released on bail in cases that are bailable.

Section 1556. Section 924.18, Florida Statutes, is amended to read:

924.18 Bail when state appeals.—If the state appeals after a conviction of the defendant, a justice or judge of the appellate or trial court may in his or her discretion admit the defendant to bail.

Section 1557. Section 924.22, Florida Statutes, is amended to read:

924.22 Stay when execution of sentence already commenced.—A defendant who is in custody and has started serving a sentence before an appeal may elect to continue to serve the sentence during the pendency of the appeal even though the defendant ~~he~~ may be eligible for bail.

Section 1558. Section 924.34, Florida Statutes, is amended to read:

924.34 When evidence sustains only conviction of lesser offense.—When the appellate court determines that the evidence does not prove the offense for which the defendant was found guilty but does establish ~~his~~ his guilt of a lesser statutory degree of the offense or a lesser offense necessarily included in the offense charged, the appellate court shall reverse the judgment and direct the trial court to enter judgment for the lesser degree of the offense or for the lesser included offense.

Section 1559. Subsections (1) and (5) of section 925.035, Florida Statutes, are amended to read:

925.035 Appointment and compensation of an attorney in capital cases; appeals from judgments imposing the death penalty.—

(1) If the court determines that the defendant in a capital case is insolvent and desires counsel, it shall appoint a public defender to represent the defendant. If the public defender appointed to represent two or more defendants found to be insolvent determines that neither the public defender ~~he~~ nor her or his staff can counsel all of the accused without conflict of interest, it shall be the public defender's ~~his~~ duty to move the court to appoint one or more members of The Florida Bar, who are in no way affiliated with the public defender in her or his capacity as such or in her or his private practice, to represent those accused. The attorney shall be allowed compensation, as provided for in s. 925.036 for representing a defendant.

(5) When the appointed attorney in a capital case has completed the duties imposed by this section, the attorney ~~he~~ shall file a written report in the trial court stating the duties performed by her or him and apply for discharge.

Section 1560. Subsection (1) of section 925.036, Florida Statutes, is amended to read:

925.036 Appointed counsel; compensation.—

(1) An attorney appointed pursuant to s. 925.035 or s. 27.53 shall, at the conclusion of the representation, be compensated at an hourly rate fixed by the chief judge or senior judge of the circuit in an amount not to exceed the prevailing hourly rate for similar representation rendered in the circuit; however, such compensation shall not exceed the maximum fee limits established by this section. In addition, such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court. If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the

rate provided for the most serious offense for which she or he represented the defendant. This section does not allow stacking of the fee limits established by this section.

Section 1561. Subsections (2), (4), and (5) of section 925.08, Florida Statutes, are amended to read:

925.08 Prisoners awaiting trial may be worked on roads and other projects.—

(2) No person shall be employed under this section without her or his written consent.

(4) If a person employed under this section is acquitted or discharged from further prosecution, she or he shall be paid by the county at the rate of \$5 for each day ~~he~~ was employed.

(5) If a person employed under this section is convicted, the time she or he was actually employed may be credited on any sentence of imprisonment, and if the person he is fined, the value of the labor at \$5 per day shall be credited to her or his fine and costs.

Section 1562. Section 925.09, Florida Statutes, is amended to read:

925.09 Authority of state attorney to order autopsies.—The state attorney may have an autopsy performed, before or after interment, on a dead body found in the county when she or he decides it is necessary in determining whether or not death was the result of a crime. Physicians performing the autopsy shall be paid reasonable fees from the county fine and forfeiture fund upon the approval of the county commission and the state attorney ordering the autopsy.

Section 1563. Section 932.49, Florida Statutes, is amended to read:

932.49 Failure of motor vehicle operators to stop and assist persons injured; form of information or indictment.—Informations and indictments under ss. 316.062 and 316.063 shall be deemed sufficient if made in substantially the following form:

“That one A. B. while operating or being in charge of a motor vehicle then and there being driven along the thoroughfare in County, Florida, did strike and injure or put in jeopardy the person or property (as the case may be, giving details sufficient to identify the occurrence) of one (or unknown as the case may be) and without stopping to render aid to the persons injured or put in jeopardy thereby or (without making known to the persons present his or her full, true and correct name and address as the case may be) did unlawfully depart from the scene of such accident contrary to the statute in such case made and provided.”

Section 1564. Section 932.50, Florida Statutes, is amended to read:

932.50 Evidence necessary in treason.—No person shall be convicted of treason except by the testimony of two lawful witnesses to the same overt

act of treason for which the person ~~he~~ is prosecuted, unless he or she confess the same in open court.

Section 1565. Subsections (1), (2), and (4) of section 932.61, Florida Statutes, are amended to read:

932.61 Transfer of county or municipal charge to court providing trial by jury.—A person charged in a court with a violation of a county or municipal ordinance for which no jury trial is provided may, when the violation of a county or municipal ordinance is also a violation of a state law, cause the transfer of the violation to the appropriate court in which a trial by jury is provided, in the following manner:

(1) Prior to the commencement of the trial in the court not providing trial by jury, the person charged, or his or her attorney, shall file a petition requesting transfer to the appropriate court providing trial by jury. The original petition shall be filed with the court where the charge is docketed and pending, and copies shall be furnished to the court where jury trial is provided and to the prosecuting authority of both courts.

(2) The petition shall be signed by the defendant or the defendant's ~~his~~ attorney and shall contain:

- (a) The defendant's name, age, and address;
- (b) A description and citation of the charges filed against the defendant;
- (c) A citation indicating that these charges also constitute a violation of state law;
- (d) The date and amount of bond set, if any;
- (e) An agreement to appear, answer, and attend the court to which the charge may be transferred;
- (f) The date of incarceration, if incarcerated at the time of the making of the petition; and
- (g) The demand for trial by jury.

(4) The clerk of the court not providing trial by jury, upon receipt of the judge's order directing transfer, shall within 3 days transmit to the clerk of the court providing criminal jury trial jurisdiction all the original record materials, including bond and the petition to transfer, filed in the petitioner's cause, certifying that they are all the original papers filed in the cause and kept by the clerk. The clerk of the court not providing trial by jury shall also transmit copies of all the record materials to the prosecuting attorney of the court providing jury trial jurisdiction to which defendant's cause is being transferred. The clerk shall also furnish notice of transfer to the surety or bail bond agent ~~bondsman~~, if there is one. Upon the entry of the order transferring the cause, it shall be the duty of the police authority of the court from which the cause is being transferred to transfer a complete and exact duplicate of all reports, records, and other papers relating to the cause to the prosecuting attorney of the court to which the cause is transferred.

Section 1566. Section 932.62, Florida Statutes, is amended to read:

932.62 Date for arraignment upon transfer; petitioner not incarcerated.—If the person whose case is transferred is at liberty on bond or on his or her own recognizance, the his appearance date for arraignment to the court to which the cause has been transferred shall be within 45 days from the date of transfer, and, if the defendant is on his or her own recognizance, the defendant ~~he~~ shall sign an agreement to appear before the court to which the his case is transferred as a part of his or her petition to transfer. If the defendant is at liberty on a cash or property bond, the clerk of the transferring court shall endorse the new returnable date on its face prior to transfer.

Section 1567. Section 932.64, Florida Statutes, is amended to read:

932.64 Transfer of surety bond.—With the written consent of the bond agent ~~bondsman~~, surety bonds shall be transferred and made returnable to the court in which trial by jury is provided.

Section 1568. Section 932.65, Florida Statutes, is amended to read:

932.65 Filing formal charges; petitioner incarcerated.—When a person is incarcerated for a violation of a county or municipal ordinance and fails, or is otherwise unable, to be released on bond and requests a trial by jury, the person shall be transferred within 5 days to the jail facilities of the criminal court providing trial by jury. The prosecuting authority shall file formal charges within 3 days of the transfer of the person who fails, or is unable to post bond. Upon the failure or inability of the prosecuting authority to file charges, the person incarcerated shall be released and the provisions of s. 932.62, shall apply. It shall be the responsibility of the jailer releasing the prisoner to have the prisoner ~~him~~ execute and sign an agreement to appear before the court to which his or her case has been transferred in accordance with s. 932.62.

Section 1569. Section 932.66, Florida Statutes, is amended to read:

932.66 Suggested forms for transfer.—The petition for transfer, order of transfer, and agreement of bail bond agent ~~bondsman~~ to transfer bond shall be substantially as follows:

PETITION FOR TRANSFER TO COURT
PROVIDING TRIAL BY JURY

IN THE COURT, FLORIDA

I, ...(Name)..., am ...(Age)... years of age and I reside at ...(Address)... I was arrested on ...(Date)... 19.... and am charged in this court with ...(Description and number of each county or municipal ordinance)... I am presently incarcerated in the ...(Jail)... awaiting trial on the charge(s) listed above.

—OR—

I am at liberty on (surety bond) (cash bond) (my own recognizance). My bail bond agent ~~bondsman~~ is ...(Name)...

...(Address)...

I am due to appear in this court on ...(Date)... for ...(Type of appearance)...

My charge(s) in this court constitute a violation of the criminal laws of the state as follows:

I desire a trial by jury and seek a transfer of the following charge(s)
.....
to a court of this county providing criminal trial by jury.

I agree to appear in the court to which my case is transferred on the day of 19.....

...(Signature of petitioner)...
...(Attorney for petitioner)...

ORDER OF TRANSFER

This cause is hereby transferred to the court at, Florida.
DONE AND ORDERED this day
of 19....
...(Judge)...

AGREEMENT OF BAIL BOND AGENT BONDSMAN TO
TRANSFER BOND TO COURT
PROVIDING TRIAL BY JURY

I,, a duly licensed bail bond agent bondsman agree to the transfer of that certain bond to Court at, Florida.
...(Signature of bail bond agent bondsman)...

Section 1570. Section 933.07, Florida Statutes, is amended to read:

933.07 Issuance of search warrants.—The judge, upon examination of the application and proofs submitted, if satisfied that probable cause exists for the issuing of the search warrant, shall thereupon issue a search warrant signed by him or her with his or her name of office, to any sheriff and the sheriff's ~~his~~ deputies or any police officer or other person authorized by law to execute process, commanding the officer or person forthwith to search the property described in the warrant or the person named, for the property specified, and to bring the property and any person arrested in connection therewith before the magistrate or some other court having jurisdiction of the offense.

Section 1571. Section 933.09, Florida Statutes, is amended to read:

933.09 Officer may break open door, etc., to execute warrant.—The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of the officer's ~~his~~ authority and purpose he or she is refused admittance to said house or access to anything therein.

Section 1572. Section 933.11, Florida Statutes, is amended to read:

933.11 Duplicate to be delivered when warrant served.—All search warrants shall be issued in duplicate. The duplicate shall be delivered to the

officer with the original warrant, and when the officer serves the warrant, he or she shall deliver a copy to the person named in the warrant, or in his or her absence to some person in charge of, or living on the premises. When property is taken under the warrant the officer shall deliver to such person a written inventory of the property taken and receipt for the same, specifying the same in detail, and if no person is found in possession of the premises where such property is found, shall leave the said receipt on the premises.

Section 1573. Subsections (1), (2), and (4) of section 933.14, Florida Statutes, are amended to read:

933.14 Return of property taken under search warrant.—

(1) If it appears to the magistrate or judge before whom the warrant is returned that the property or papers taken are not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds upon which the warrant was issued, or if it appears to the magistrate before whom any property is returned that the property was secured by an “unreasonable” search, the judge or magistrate may order a return of the property taken; provided, however, that in no instance shall contraband such as slot machines, gambling tables, lottery tickets, tally sheets, rundown sheets, or other gambling devices, paraphernalia and equipment, or narcotic drugs, obscene prints and literature be returned to anyone claiming an interest therein, it being the specific intent of the Legislature that no one has any property rights subject to be protected by any constitutional provision in such contraband; provided, further, that the claimant of said contraband may upon sworn petition and proof submitted by him or her in the circuit court of the county where seized, show that said contraband articles so seized were held, used or possessed in a lawful manner, for a lawful purpose, and in a lawful place, the burden of proof in all cases being upon the claimant. The sworn affidavit or complaint upon which the search warrant was issued or the testimony of the officers showing probable cause to search without a warrant or incident to a legal arrest, and the finding of such slot machines, gambling tables, lottery tickets, tally sheets, rundown sheets, scratch sheets, or other gambling devices, paraphernalia, and equipment, including money used in gambling or in furtherance of gambling, or narcotic drugs, obscene prints and literature, or any of them, shall constitute prima facie evidence of the illegal possession of such contraband and the burden shall be upon the claimant for the return thereof, to show that such contraband was lawfully acquired, possessed, held, and used.

(2) No intoxicating liquor seized on any warrant from any place other than a private dwelling house shall be returned, but the same may be held for such other and further proceedings which may arise upon a trial of the cause, unless it shall appear by the sworn petition of the claimant and proof submitted by him or her that said liquors so seized were held, used or possessed in a lawful manner, and in lawful place, or by a permit from the proper federal or state authority, the burden of proof in all cases being upon the claimant. The sworn affidavit or complaint upon which the search warrant was issued and the finding of such intoxicating liquor shall constitute prima facie evidence of the illegal possession of such liquor, and the burden

shall be upon the claimant for the return thereof, to show that such liquor was lawfully acquired, possessed, held, and used.

(4) If no cause is shown for the return of any property seized or taken under a search warrant, the judge or magistrate shall order that the same be impounded for use as evidence at any trial of any criminal or penal cause growing out of the having or possession of said property, but perishable property held or possessed in violation of law may be sold where the same is not prohibited, as may be directed by the court, or returned to the person from whom taken. The judge or magistrate to whom said search warrant is returned shall file the same with the inventory and sworn return in the proper office, and if the original affidavit and proofs upon which the warrant was issued are in his or her possession, he or she shall apply to the officer having the same and the officer shall transmit and deliver all of the papers, proofs, and certificates to the proper office where the proceedings are lodged.

Section 1574. Section 933.15, Florida Statutes, is amended to read:

933.15 Obstruction of service or execution of search warrant; penalty.—Whoever shall knowingly and willfully obstruct, resist, or oppose any officer or person aiding such officer, in serving or attempting to serve or execute any search warrant, or shall assault, beat or wound any person or officer, or his or her deputies or assistants, knowing him or her to be such an officer or person so authorized, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1575. Section 933.17, Florida Statutes, is amended to read:

933.17 Exceeding authority in executing search warrant; penalty.—Any officer who in executing a search warrant willfully exceeds his or her authority or exercises it with unnecessary severity, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1576. Section 933.18, Florida Statutes, is amended to read:

933.18 When warrant may be issued for search of private dwelling.—No search warrant shall issue under this chapter or under any other law of this state to search any private dwelling occupied as such unless:

(1) It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor;

(2) Stolen or embezzled property is contained therein;

(3) It is being used to carry on gambling;

(4) It is being used to perpetrate frauds and swindles;

(5) The law relating to narcotics or drug abuse is being violated therein;

(6) A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving said felony has been committed, is contained therein;

(7) One or more of the following misdemeanor child abuse offenses is being committed there:

(a) Interference with custody, in violation of s. 787.03.

(b) Commission of an unnatural and lascivious act with a child, in violation of s. 800.02.

(c) Exposure of sexual organs to a child, in violation of s. 800.03.

(8) It is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boardinghouse, or lodginghouse;

(9) It is being used for the unlawful sale, possession, or purchase of wildlife, saltwater products, or freshwater fish being unlawfully kept therein; or

(10) The laws in relation to cruelty to animals have been or are being violated therein, except that no search pursuant to such a warrant shall be made in any private dwelling after sunset and before sunrise unless specially authorized by the judge issuing the warrant, upon a showing of probable cause. Property relating to the violation of such laws may be taken on a warrant so issued from any private dwelling in which it is concealed or from the possession of any person therein by whom it shall have been used in the commission of such offense or from any person therein in whose possession it may be.

If, during a search pursuant to a warrant issued under this section, a child is discovered and appears to be in imminent danger, the law enforcement officer conducting such search may remove the child from the private dwelling and take the child into protective custody pursuant to s. 415.506. The term "private dwelling" shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodginghouse. No warrant shall be issued for the search of any private dwelling under any of the conditions hereinabove mentioned except on sworn proof by affidavit of some creditable witness that he or she has reason to believe that one of said conditions exists, which affidavit shall set forth the facts on which such reason for belief is based.

Section 1577. Section 933.20, Florida Statutes, is amended to read:

933.20 "Inspection warrant"; definition.—As used in ss. 933.20-933.30, "inspection warrant" means an order in writing, in the name of the people, signed by a person competent to issue search warrants pursuant to s. 933.01, and directed to a state or local official, commanding him or her to conduct an inspection required or authorized by state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards.

Section 1578. Section 933.23, Florida Statutes, is amended to read:

933.23 Examination of applicant for inspection warrant.—Before issuing an inspection warrant, the judge shall examine on oath the applicant and

any other witness and shall satisfy himself or herself of the existence of grounds for granting such application.

Section 1579. Section 933.24, Florida Statutes, is amended to read:

933.24 Issuance of inspection warrant; contents.—If the judge is satisfied that cause for the inspection exists, he or she may issue the warrant particularly describing the place, dwelling, structure, or premises to be inspected and designating on the warrant the purpose and limitations of the inspection, including the limitations required by this act.

Section 1580. Section 933.25, Florida Statutes, is amended to read:

933.25 Duration of inspection warrant.—An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days unless it is extended or renewed by the judge who signed and issued the original warrant upon satisfying himself or herself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void.

Section 1581. Paragraph (a) of subsection (4) of section 934.02, Florida Statutes, is amended to read:

934.02 Definitions.—As used in this chapter:

(4) “Electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

(a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof:

1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

2. Being used by a communications common carrier in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.

Section 1582. Paragraphs (a) and (b) of subsection (2) of section 934.03, Florida Statutes, are amended to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)(a)1. It is lawful under ss. 934.03-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the

normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with a court order directing such assistance signed by the authorizing judge setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

3. A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been furnished an order under ss. 934.03-934.09, except as may otherwise be required by legal process and then only after prior notice to the Governor, the Attorney General, the statewide prosecutor, or a state attorney, as may be appropriate. Any such disclosure renders such person liable for the civil damages provided under s. 934.10 and such person may be prosecuted under s. 934.43. An action may not be brought against any provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under ss. 934.03-934.09.

(b) It is lawful under ss. 934.03-934.09 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his or her employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. ch. 5, to intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained.

Section 1583. Subsection (2) of section 934.08, Florida Statutes, is amended to read:

934.08 Authorization for disclosure and use of intercepted wire, oral, or electronic communications.—

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of her or his official duties.

Section 1584. Paragraph (b) of subsection (1), paragraphs (a) and (e) of subsection (7), subsection (8), and paragraph (a) of subsection (9) of section 934.09, Florida Statutes, are amended to read:

934.09 Procedure for interception of wire, oral, or electronic communications.—

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under ss. 934.03-934.09 shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including:

1. Details as to the particular offense that has been, is being, or is about to be committed.

2. Except as provided in subsection (10), a particular description of the nature and location of the facilities from which, or the place where, the communications are to be intercepted.

3. A particular description of the type of communications sought to be intercepted.

4. The identity of the person, if known, committing the offense and whose communications are to be intercepted.

(7)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by ss. 934.03-934.09 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of s. 934.08(1) and (2) for investigations.

(e) Within a reasonable time but not later than 90 days after the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his or her discretion to be in the interest of justice, an inventory which shall include notice of:

1. The fact of the entry of the order or the application.

2. The date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application.
3. The fact that during the period wire, oral, or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, may make available to such person or the person's ~~his~~ counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this paragraph may be postponed.

(8) As required by federal law, the contents of any intercepted wire, oral, or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approved. This 10-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(9)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted;
2. The order of authorization or approval under which it was intercepted is insufficient on its face; or
3. The interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of ss. 934.03-934.09. The judge, upon the filing of such motion by the aggrieved person, may make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

Section 1585. Subsection (1) of section 934.15, Florida Statutes, is amended to read:

934.15 Situations in which law enforcement officer may order telephone line cut, rerouted, or diverted.—

(1) The supervising law enforcement officer at the scene of an incident where there is reasonable cause to believe:

- (a) That a person is holding one or more hostages,
- (b) That a person has barricaded herself or himself and taken a position of confinement to avoid apprehension,
- (c) That there is the probability that a subject about to be arrested will resist with the use of weapons, or
- (d) That a person has barricaded herself or himself and is armed and is threatening suicide,

may order law enforcement or telephone company personnel to cut, reroute, or divert telephone lines for the purpose of preventing telephone communications between the suspect and any person other than a law enforcement officer or the law enforcement officer's his designee, if such cutting, rerouting, or diverting of telephone lines is technically feasible and can be performed without endangering the lives of telephone company or other utility personnel.

Section 1586. Paragraph (a) of subsection (6) of section 934.24, Florida Statutes, is amended to read:

934.24 Backup preservation; customer notification; challenges by customer.—

(6) Within 14 days after notice by the investigative or law enforcement officer to the subscriber or customer under subsection (2), the subscriber or customer may file a motion to quash the subpoena or vacate the court order seeking contents of electronic communications, with copies served upon the investigative or law enforcement officer and with written notice of such challenge to the service provider. A motion to vacate a court order must be filed in the court which issued the order. A motion to quash a subpoena must be filed in the circuit court in the circuit from which the subpoena issued. Such motion or application must contain an affidavit or sworn statement:

(a) Stating that the applicant is a subscriber or customer of the service from which the contents of electronic communications maintained for her or him have been sought, and

Section 1587. Subsection (1) of section 934.41, Florida Statutes, is amended to read:

934.41 Alternative penalty.—

(1) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of this chapter, through which she or he derived pecuniary value, or by which she or he caused property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

Section 1588. Subsections (1) and (2) of section 936.003, Florida Statutes, are amended to read:

936.003 Procedure.—

(1) The state attorney may petition the county court in the county in which the body was found to hold an inquest into any death for which an examination, investigation, or autopsy is required to be performed by the medical examiner pursuant to the provisions of s. 406.11 when there is a question of the involvement of a criminal act, criminal negligence, or foul play in the death. The county court judge presiding at the inquest shall be deemed coroner only insofar as she or he is empowered to thus preside. Except as provided in this subsection, all duties and responsibilities of a coroner provided by law shall be vested in a medical examiner regulated pursuant to the provisions of chapter 406.

(2) Upon receipt of the petition of the state attorney, the county court judge shall schedule the time and place of the inquest. The county court judge shall send her or his warrant for witnesses, to be served by a sheriff, commanding the witnesses to come to the inquest to be examined and to declare their knowledge concerning the death. Any witness appearing at, or summoned to appear at, an inquest shall be entitled to the same compensation as that provided by law for witnesses in any criminal proceeding held in the county.

Section 1589. Section 939.05, Florida Statutes, is amended to read:

939.05 Insolvent defendant discharged without payment of costs.—In all cases less than capital, when it appears from due proof made in open court that the person convicted is wholly unable to pay costs, and that the judgment has in other respects been complied with, the court before which such person was convicted may discharge him or her without the payment of costs.

Section 1590. Section 939.06, Florida Statutes, is amended to read:

939.06 Acquitted defendant not liable for costs.—No defendant in a criminal prosecution who is acquitted or discharged shall be liable for any costs or fees of the court or any ministerial office, or for any charge of subsistence while detained in custody. If the defendant ~~he~~ shall have paid any taxable costs in the case, the clerk or judge shall give him or her a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to the defendant ~~him~~ by the county.

Section 1591. Section 939.07, Florida Statutes, is amended to read:

939.07 Pay of defendant's witnesses.—In all criminal cases prosecuted in the name of the state in the circuit courts or county courts in this state where the defendant is indigent or discharged, the county shall pay the legal expenses and costs, as is prescribed for the payment of costs incurred by the county in the prosecution of such cases, including the cost of the defendant's copy of all depositions and transcripts which are certified by the defendant's

attorney as serving a useful purpose in the disposition of the case; provided, that before any witness is subpoenaed on behalf of a defendant in the circuit or county court an application shall be made to the judge, in writing, on behalf of the defendant, setting forth the substance of the facts sought to be proved by the witness or witnesses, making affidavit that the defendant is insolvent, and if upon such showing the judge is satisfied that the witness or witnesses are necessary for the proper defense of the defendant, he or she shall order that subpoena issue, and that the costs as herein provided shall be paid by the county, and not otherwise.

Section 1592. Section 939.11, Florida Statutes, is amended to read:

939.11 Unnecessary charge for confining prisoner not to be allowed.—No charge for rent of any house for confining a prisoner, or for guarding a prisoner, any longer than may be necessary for transferring such prisoner to jail or place of safekeeping, or during the session of court at which such prisoner shall be arraigned, or to which he or she may be brought for trial, shall be allowed against the state or county.

Section 1593. Section 939.12, Florida Statutes, is amended to read:

939.12 Cost against state in Supreme Court.—The clerk of the Supreme Court shall give, upon application, a certified copy of any judgment against the state upon appeal in criminal cases, and the county commissioners of the county from the court of which such appeal was taken shall pay the same to the appellant, or the appellant's ~~his~~ agent or attorney, on demand.

Section 1594. Section 939.13, Florida Statutes, is amended to read:

939.13 Power of Comptroller.—The Comptroller may audit and approve or disapprove any claim or any item thereof against the state for costs, fees or expenses of criminal cases prosecuted in the name of the state, and for which the state is liable, if the Comptroller ~~he~~ is satisfied that the same is legal, just, necessary and correct or otherwise, and may prescribe forms and methods for the same. The Comptroller shall not dispense with any of the requirements of law relative to the auditing and payment of such accounts, but ~~he~~ may prescribe additional requirements.

Section 1595. Section 940.05, Florida Statutes, is amended to read:

940.05 Restoration of civil rights.—Any person who has been convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him or her prior to ~~his~~ conviction if the person ~~he~~ has:

- (1) Received a full pardon from the board of pardons;
 - (2) Served the maximum term of the sentence imposed upon him or her;
- or
- (3) Been granted his or her final release by the Parole Commission.

Section 1596. Section 941.03, Florida Statutes, is amended to read:

941.03 Form of demand.—No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under s. 941.06, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he or she fled from the state, and accompanied by an authenticated copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of a warrant supported by an affidavit made before a committing magistrate of the demanding state; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his or her bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

Section 1597. Section 941.04, Florida Statutes, is amended to read:

941.04 Governor may investigate case.—When a demand shall be made upon the Governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Department of Legal Affairs or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him or her the situation and circumstances of the person so demanded, and whether the person ~~he~~ ought to be surrendered.

Section 1598. Subsection (1) of section 941.05, Florida Statutes, is amended to read:

941.05 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.—

(1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against the person ~~him~~ in another state, the Governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or the person's ~~his~~ term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

Section 1599. Section 941.07, Florida Statutes, is amended to read:

941.07 Issue of Governor's warrant of arrest; its recitals.—If the Governor decides that the demand should be complied with, he or she shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom the Governor ~~he~~ may think fit to entrust with the execution thereof. The warrant shall be sufficient if it substantially recites facts to show that an extraditable crime has been committed under the laws of the demanding state.

Section 1600. Section 941.08, Florida Statutes, is amended to read:

941.08 Manner and place of execution.—Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he or she may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

Section 1601. Subsection (1) of section 941.10, Florida Statutes, is amended to read:

941.10 Rights of accused person; application for writ of habeas corpus.—

(1) No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding the person him shall have appointed to receive him or her unless the person he shall first be taken forthwith before a judge of a court of record in this state, who shall inform the person him of the demand made for his or her surrender and of the crime with which the person he is charged, and that the person he has the right to demand and procure legal counsel; and if the prisoner or his or her counsel shall state that he or she or they desire to test the legality of the his arrest, the judge of such court of record shall fix a reasonable time to be allowed him or her within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the state attorney for the county in which the arrest is made, and in which the accused is in custody, and to the said agent of the demanding state.

Section 1602. Section 941.11, Florida Statutes, is amended to read:

941.11 Penalty for noncompliance with s. 941.10.—Any officer who shall deliver to the agent for extradition of the demanding state a person in his or her custody under the Governor's warrant, in willful disobedience to s. 941.10, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1603. Section 941.12, Florida Statutes, is amended to read:

941.12 Confinement in jail when necessary.—

(1) The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the legal sufficiency of the prisoner's his arrest has been determined by the court and the officer or person having charge of the prisoner him is ready to proceed on his or her route; such officer or person shall pay the jailer holding the prisoner the costs of the prisoner's his jailing and keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or

to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner ~~him~~ is ready to proceed on his or her route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he or she is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

Section 1604. Section 941.13, Florida Statutes, is amended to read:

941.13 Arrest prior to requisition.—Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and except in cases arising under s. 941.06 with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under s. 941.06, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation, or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him or her to apprehend the person named therein, wherever the person ~~he~~ may be found in this state, and to bring the person ~~him~~ before the same or any other judge, magistrate, or court who or which may be available in, or convenient of, access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Section 1605. Section 941.14, Florida Statutes, is amended to read:

941.14 Arrest without a warrant.—The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against the accused ~~him~~ under oath setting forth the ground for the arrest as in the preceding section; and thereafter his or her answer shall be heard as if the accused ~~he~~ had been arrested on a warrant.

Section 1606. Section 941.15, Florida Statutes, is amended to read:

941.15 Commitment to await requisition; bail.—If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under s. 941.06, that the person ~~he~~ has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit the person ~~him~~ to the county jail for such a time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until the accused ~~he~~ shall be legally discharged.

Section 1607. Section 941.16, Florida Statutes, is amended to read:

941.16 Bail; in what cases; conditions of bond.—Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or other judicial officer having power of commitment in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as ~~he~~ or she deems proper, conditioned for the prisoner's ~~his~~ appearance before ~~him~~ or her at a time specified in such bond, and for the prisoner's ~~his~~ surrender, to be arrested upon the warrant of the Governor of this state.

Section 1608. Section 941.17, Florida Statutes, is amended to read:

941.17 Extension of time of commitment, adjournment.—If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge the accused ~~him~~ or may recommit ~~him~~ or her for a further period not to exceed 60 days, or a judge or magistrate judge may again take bail for ~~his~~ or her appearance and surrender, as provided in s. 941.16, but within a period not to exceed 60 days after the date of such new bond.

Section 1609. Section 941.18, Florida Statutes, is amended to read:

941.18 Forfeiture of bail.—If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of ~~his~~ or her bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order ~~his~~ or her immediate arrest without warrant if ~~he~~ or she be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

Section 1610. Section 941.19, Florida Statutes, is amended to read:

941.19 Persons under criminal prosecution in this state at time of requisition.—If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the Governor, in ~~his~~ or her discretion, either may surrender the person ~~him~~ on demand of the executive authority of another state or hold the person ~~him~~ until ~~he~~ or she has been tried and discharged or convicted and punished in this state.

Section 1611. Section 941.20, Florida Statutes, is amended to read:

941.20 Guilt or innocence of accused, when inquired into.—The guilt or innocence of the accused as to the crime of which he or she is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

Section 1612. Section 941.21, Florida Statutes, is amended to read:

941.21 Governor may recall warrant or issue alias.—The Governor may recall his or her warrant or warrants of arrest or may issue another warrant whenever he or she deems proper.

Section 1613. Section 941.22, Florida Statutes, is amended to read:

941.22 Fugitives from this state; duty of Governor.—Whenever the Governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his or her bail, probation, or parole in this state, from the executive authority of any other state, or from the Chief Justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, the Governor ~~he~~ shall issue a warrant under the seal of this state, to some agent, commanding the agent ~~him~~ to receive the person so charged if delivered to him or her and convey the person ~~him~~ to the proper officer of the county in this state in which the offense was committed.

Section 1614. Section 941.23, Florida Statutes, is amended to read:

941.23 Application for issuance of requisition; by whom made; contents.—

(1) When the return to this state of a person charged with crime in this state is required, the bailiff or state attorney shall present to the Governor his or her written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against the person ~~him~~, the approximate time, place, and circumstances of its commission, the state in which the person ~~he~~ is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said state attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his or her bail, probation, or parole, the state attorney of the county in which the offense was committed, the Parole Commission, the Department of Corrections, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which the

person ~~he~~ was convicted, the circumstances of his or her escape from confinement or of the breach of the terms of his or her bail, probation, or parole, and the state in which the person ~~he~~ is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned or information and affidavit filed or of the complaint made to the judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, Parole Commission, Department of Corrections, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he or she shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the Department of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

Section 1615. Section 941.25, Florida Statutes, is amended to read:

941.25 Immunity from service of process in certain civil actions.—A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which she or he is being or has been returned, until the person ~~he~~ has been convicted in the criminal proceeding, or, if acquitted, until the person ~~he~~ has had reasonable opportunity to return to the state from which she or he was extradited.

Section 1616. Subsections (1) and (3) of section 941.26, Florida Statutes, are amended to read:

941.26 Written waiver of extradition proceedings.—

(1) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his or her bail, probation, or parole may waive the issuance and service of the warrant provided for in ss. 941.07 and 941.08, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that the person ~~he~~ consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his or her rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in s. 941.10.

(3) Notwithstanding any other provision of law, a law enforcement agency in this state holding a person who is alleged to have broken the terms of his or her probation, parole, bail, or other release in the demanding state shall immediately deliver the person to the duly authorized agent of the demanding state without the requirement of a governor's warrant if:

(a) The person has signed a prior waiver of extradition as a term of his or her current probation, parole, bail, or other release in the demanding state; and

(b) The law enforcement agency holding the person has received a copy of the prior waiver of extradition signed by the person and confirmed by the demanding agency, as well as photographs or fingerprints or other evidence properly identifying the person as the person who signed the waiver.

Section 1617. Section 941.28, Florida Statutes, is amended to read:

941.28 No right of asylum; no immunity from other criminal prosecutions while in this state.—After a person has been brought back to this state by, or after waiver of, extradition proceedings, the person ~~he~~ may be tried in this state for other crimes which he or she may be charged with having committed here as well as that specified in the requisition for his or her extradition.

Section 1618. Section 941.31, Florida Statutes, is amended to read:

941.31 Fresh pursuit; authority of officers of other states; etc.—Any duly authorized state, county, or municipal arresting officer of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him or her on the ground that the person ~~he~~ is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any authorized arresting officer, state, county, or municipal, of this state, to arrest and hold in custody a person on the ground that the person ~~he~~ is believed to have committed a felony in this state.

Section 1619. Section 941.32, Florida Statutes, is amended to read:

941.32 Fresh pursuit; arrest; etc.—If an arrest is made in this state by an officer of another state in accordance with the provisions of s. 941.31, the officer ~~he~~ shall without unnecessary delay take the person so arrested before a county court judge or other judicial officer having jurisdiction of commitment, of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the committing judicial officer determines that the arrest was lawful, she or he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this state, or admit the person ~~him~~ to bail for such purpose. If the committing judicial officer determines that the arrest was unlawful, she or he shall discharge the person arrested.

Section 1620. Subsection (1) and paragraph (b) of subsection (2) of section 941.38, Florida Statutes, are amended to read:

941.38 Extradition of persons alleged to be of unsound mind.—

(1) A person alleged to be of unsound mind found in this state who has fled from another state in which at the time of his flight, the person ~~he~~ was under detention by law in a hospital or other institution for the mentally ill; or ~~he~~ had been heretofore determined by legal proceedings to be mentally

incompetent, the finding being unreversed and in full force and effect, and the control of his or her person having been acquired by a court of competent jurisdiction of the state from which he or she fled; or the person he was subject to detention in such state, being then his or her legal domicile (personal service of process having been made) based on legal proceedings then pending to have the person ~~him~~ declared mentally incompetent, shall on demand of the executive authority of the state from which the person he fled be delivered up to be removed thereto.

(2) For the purpose of this section:

(b) A “mentally incompetent person” is one who because of mental illness, mental retardation, senility, excessive use of drugs or alcohol, or other mental incapacity is incapable of either managing his or her property or caring for himself or herself or both.

Section 1621. Subsection (1) of section 941.39, Florida Statutes, is amended to read:

941.39 Extradition of persons alleged to be of unsound mind; definitions.—In this chapter, unless the context or subject matter otherwise requires:

(1) “Flight” or “fled” means any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending, with the effect of avoiding, impounding, or delaying the action of the court in which said proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if he or she then was under detention by law as a person of unsound mind and subject to detention.

Section 1622. Subsections (1) and (2) of section 941.40, Florida Statutes, are amended to read:

941.40 Extradition of persons alleged to be of unsound mind; procedure; limitation of detention; costs.—

(1) Whenever the executive authority of any state demands of the executive authority of this state any fugitive within the purview of s. 941.38 and produces a copy of the commitment, decree, or other judicial process and proceeding, certified as authentic by the governor or chief magistrate of the state from which the person so charged has fled, with an affidavit made before a proper officer showing the person to be such a fugitive, it shall be the duty of the executive authority of this state to cause the fugitive ~~him~~ to be apprehended and secured, if found in this state; to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive; and to cause the fugitive to be delivered to such agent when he or she shall appear.

(2) Any agent so appointed who receives the fugitive into custody shall be empowered to transmit the fugitive ~~him~~ to the state from which he or she has fled.

Section 1623. Section 941.45, Florida Statutes, is amended to read:

941.45 Interstate Agreement on Detainers.—The interstate compact known as the “Interstate Agreement on Detainers” is enacted into law and entered into by the state as a party, and is of full force and effect between the state and any other states joining therein in the form substantially as follows:

INTERSTATE AGREEMENT ON DETAINERS

ARTICLE I

Policy and Purpose

The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

Definitions

As used in this agreement:

(a) “State” means the United States of America, a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) “Sending state” means a state in which a prisoner is incarcerated at the time he or she initiates a request for final disposition pursuant to Article III or at the time that a request for custody or availability is initiated pursuant to Article IV.

(c) “Receiving state” means the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV.

ARTICLE III

Request for Final Disposition

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainee has been lodged against the prisoner, he or she shall be brought to trial within 180 days after the prisoner he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction written notice of the place of his or her

imprisonment and the prisoner's his request for a final disposition to be made of the indictment, information, or complaint; provided that, for good cause shown in open court, the prisoner or the prisoner's his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of the prisoner him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform the prisoner him of the source and contents of any detainer lodged against him or her and shall also inform the prisoner him of his or her right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainees have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d), and a waiver of extradition to the receiving state to serve any sentence there imposed upon him or her, after completion of the prisoner's his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his or her body in any court where the prisoner's his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his or her execution of the request for final disposition referred to in paragraph (a) shall void the request.

ARTICLE IV

Request for Custody or Availability

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom the officer ~~he~~ has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon the governor's ~~his~~ own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a), the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the prisoner's ~~his~~ counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which the prisoner ~~he~~ may have to contest the legality of his or her delivery as provided in paragraph (a), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to paragraph (e) of Article V, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

Offer to Deliver Temporary Custody

(a) In response to a request made under Article III or Article IV, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this article or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

1. Proper identification and evidence of the officer's ~~his~~ authority to act for the state into whose temporary custody the prisoner is to be given, and

2. A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this article shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for the prisoner's ~~his~~ attendance at court and while being transported to or from any place at which his or her presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this article is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any

escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

ARTICLE VI

Tolling Period and Limitations

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Designation of Officer

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

Effectiveness and Withdrawal

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

Construction and Severability

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary

to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Section 1624. Section 941.56, Florida Statutes, is amended to read:

941.56 Interstate Corrections Compact.—The Interstate Corrections Compact is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I

Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation or the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II

Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) “State” means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) “Sending state” means a state party to this compact in which conviction or court commitment was had.

(c) “Receiving state” means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) “Inmate” means a male or female offender who is committed, under sentence to, or confined in, a penal or correctional institution.

(e) “Institution” means any penal or correctional facility, including, but not limited to, a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

ARTICLE III

Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance.
3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from, or disposal of, any products resulting therefrom.
4. Delivery and retaking of inmates.
5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact which has entered into a contract pursuant to Article III shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required

pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his or her status changed on account of any action or proceeding in which the inmate ~~he~~ could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his or her exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V

Acts Not Reviewable in Receiving State:
Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge, or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he or she is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII

Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not

take effect until 1 year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX

Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Section 1625. Section 942.02, Florida Statutes, is amended to read:

942.02 Summoning witness in this state to testify in another state.—

(1) If a judge of a court of record, in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that that person's ~~his~~ presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing. The witness shall at all times be entitled to counsel.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to the witness ~~him~~ protection from arrest and the service

of civil and criminal process, the judge he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure her or his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before her or him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken in custody and delivered to an officer of the requesting state.

(4) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and \$5 for each day that the witness he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, the witness he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Section 1626. Section 942.03, Florida Statutes, is amended to read:

942.03 Witness from another state summoned to testify in this state.—

(1) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his or her attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the witness is summoned to attend and testify in this state, the witness he shall be tendered the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and \$5 for each day that he or she is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, the witness he shall be punished in the manner provided for the punishment of

any witness who disobeys a summons issued from a court of record in this state.

Section 1627. Section 942.04, Florida Statutes, is amended to read:

942.04 Exemption from arrest and service of process.—

(1) If a person comes into this state in obedience to a summons directing him or her to attend and testify in this state, the person ~~he~~ shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state, or while returning therefrom, the person ~~he~~ shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into this state under the summons.

Section 1628. Paragraphs (c) and (d) of subsection (1), and subsection (2) of section 943.11, Florida Statutes, are amended to read:

943.11 Criminal Justice Standards and Training Commission; membership; meetings; compensation.—

(1)

(c) Members appointed by the Governor shall be appointed for terms of 4 years, and no member shall serve beyond the time he or she ceases to hold the office or employment by reason of which the member ~~he~~ was eligible for appointment to the commission. Any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his or her predecessor. Members who have been duly appointed as of the effective date of this act shall complete their terms of office.

(d) Each member appointed by the Governor shall be accountable to the Governor for the proper performance of the duties of his or her office. The Governor may remove from office any such member for malfeasance, misfeasance, neglect of duty, incompetence, or permanent inability to perform official duties or for pleading guilty or nolo contendere to, or being found guilty of, a felony.

(2) The commission shall annually elect its chair ~~chairman~~ and other officers. The commission shall hold at least four regular meetings each year at the call of the chair ~~chairman~~ or upon the written request of three members of the commission. A majority of the members of the commission constitutes a quorum.

Section 1629. Subsection (5) of section 943.13, Florida Statutes, is amended to read:

943.13 Officers' minimum qualifications for employment or appointment.—On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a correctional probation officer; and on or after October 1, 1986, any person employed as a correctional officer by a private entity under contract to the Department of Corrections or to a county commission shall:

(5) Have his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have his or her fingerprints on file with the Department of Corrections or the Criminal Justice Standards and Training Commission. If administrative delays are caused by the department or the Federal Bureau of Investigation and the person has complied with subsections (1)-(4) and (6)-(9), the person ~~he~~ may be employed or appointed for a period not to exceed 1 calendar year from the date he or she was employed or appointed or until return of the processed fingerprints documenting noncompliance with subsections (1)-(4) or subsection (7), whichever occurs first.

Section 1630. Paragraphs (a) and (c) of subsection (1) of section 943.131, Florida Statutes, are amended to read:

943.131 Temporary employment or appointment; minimum basic recruit training exemption.—

(1)(a) An employing agency may temporarily employ or appoint a person who complies with the qualifications for employment in s. 943.13(1)-(8), but has not fulfilled the requirements of s. 943.13(9) and (10), if a critical need exists to employ or appoint the person and such person is or will be enrolled in the next approved basic recruit training program available in the geographic area or that no assigned state training program for state officers is available within a reasonable time. The employing agency must maintain documentation which demonstrates that a critical need exists to employ a person pursuant to this section. Prior to the employment or appointment of any person other than a correctional probation officer under this subsection, the person shall comply with the firearms provisions established pursuant to s. 943.17(1)(a). Any person temporarily employed or appointed as an officer under this subsection must enroll in the first training program offered in the geographic area, or the first assigned state training program for a state officer, subsequent to his or her employment or appointment. Further, upon successful completion of the basic recruit training program, any person temporarily employed or appointed as an officer must fulfill the requirements of s. 943.13(10) within 180 consecutive days.

(c) No person temporarily employed or appointed under the provisions of this subsection may perform the duties of an officer unless he or she is adequately supervised by another officer of the same discipline. The supervising officer must be in full compliance with the provisions of s. 943.13 and must be employed or appointed by the employing agency.

Section 1631. Subsections (2), (3), and (6) of section 943.133, Florida Statutes, are amended to read:

943.133 Responsibilities of employing agency, commission, and division with respect to compliance with employment qualifications and the conduct of background investigations; injunctive relief.—

(2) Prior to the employment or appointment of any officer, the chief law enforcement or correctional officer administrator or probation and parole regional administrator of the employing agency, or his or her designee, is required to execute and maintain an affidavit-of-compliance form adopted by the commission, attesting to compliance by the employing agency with subsection (1). The affidavit shall be executed under oath and constitutes an official statement within the purview of s. 837.06. The affidavit shall include conspicuous language that intentional false execution of the affidavit constitutes a misdemeanor of the second degree. A copy of the affidavit-of-compliance form must be submitted, or electronically transmitted, to the commission.

(3) The commission shall adopt rules that establish procedures for conducting background investigations. The rules must specify a form for employing agencies to use to document the findings of the background investigation. Before employing or appointing any officer, the employing agency must conduct a thorough background investigation in accordance with the rules. The background information should include information setting forth the facts and reasons for any of the applicant's previous separations from private or public employment or appointment, as the applicant understands them. For the purposes of this subsection, "separation from employment or appointment" includes any firing, termination, resignation, retirement, or voluntary or involuntary extended leave of absence from any salaried or nonsalaried position. The employing agency must maintain the original background investigation form, which must be signed by the administrator of the employing agency or his or her designee. A copy of the background investigation form must be submitted, or electronically transmitted, to the commission.

(6) If an employing agency employs or appoints an officer in violation of this section or of s. 943.13, s. 943.131, or s. 943.135, or any rules adopted pursuant thereto, the Department of Legal Affairs, at the request of the ~~chair~~ chairman of the commission, shall apply to the circuit court in the county of the employing agency for injunctive relief prohibiting the employment or appointment of the person contrary to this section.

Section 1632. Paragraph (a) of subsection (1) of section 943.135, Florida Statutes, is amended to read:

943.135 Requirements for continued employment.—

(1) The commission shall, by rule, adopt a program that requires all officers, as a condition of continued employment or appointment as officers, to receive periodic commission-approved continuing training or education. Such continuing training or education shall be required at the rate of 40 hours every 4 years. No officer shall be denied a reasonable opportunity by the employing agency to comply with this section. The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency. The employing agency

must maintain and submit, or electronically transmit, the documentation to the commission, in a format approved by the commission. The rule shall also provide:

(a) Assistance to an employing agency in identifying each affected officer, the date of his or her employment or appointment, and his or her most recent date for successful completion of continuing training or education;

Section 1633. Subsection (2) of section 943.139, Florida Statutes, is amended to read:

943.139 Notice of employment, appointment, or separation; response by the officer; duty of commission.—

(2) In a case of separation from employment or appointment, the employing agency shall execute and maintain an affidavit-of-separation form adopted by the commission, setting forth in detail the facts and reasons for such separation. A copy of the affidavit-of-separation form must be submitted, or electronically transmitted, to the commission. If the officer is separated for his or her failure to comply with s. 943.13, the notice must so specify. The affidavit must be executed under oath and constitutes an official statement within the purview of s. 837.06. The affidavit must include conspicuous language that intentional false execution of the affidavit constitutes a misdemeanor of the second degree. Any officer who has separated from employment or appointment must be permitted to respond to the separation, in writing, to the commission, setting forth the facts and reasons for the separation as he or she understands them.

Section 1634. Subsection (2) of section 943.16, Florida Statutes, is amended to read:

943.16 Payment of tuition or officer certification examination fee by employing agency.—

(2) A trainee who attends such approved training program at the expense of an employing agency must remain in the employment or appointment of such employing agency for a period of not less than 1 year. If his employment or appointment is terminated on the trainee's ~~his~~ own initiative within 1 year, he or she shall reimburse the employing agency for the cost of his or her participation; and such employing agency may institute a civil action to collect such tuition cost if it is not reimbursed.

Section 1635. Paragraph (b) of subsection (1) of section 943.17, Florida Statutes, is amended to read:

943.17 Basic recruit, advanced, and career development training programs; participation; cost; evaluation.—The commission shall, by rule, design, implement, maintain, evaluate, and revise job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses. The rules shall include, but are not limited to, a methodology to assess relevance of the subject matter to the job, student performance, and instructor competency.

(1) The commission shall:

(b) Design, implement, maintain, evaluate, and revise an advanced training program which is limited to those courses enhancing an officer's knowledge, skills, and abilities for the job he or she performs.

Section 1636. Subsection (1) of section 943.19, Florida Statutes, is amended to read:

943.19 Saving clause.—

(1) Any full-time, part-time, or auxiliary law enforcement or correctional officer duly certified by the commission and employed or appointed as of September 30, 1984, and any correctional probation officer employed or appointed as of September 30, 1986, and any correctional probation officer employed in an institution as of September 30, 1989, is not required to comply with s. 943.13(5) and (8) as a condition of continued employment or appointment with his or her current employing agency.

Section 1637. Subsection (4), paragraph (c) of subsection (6), and paragraph (b) of subsection (7) of section 943.25, Florida Statutes, are amended to read:

943.25 Criminal justice trust funds; source of funds; use of funds.—

(4) The Auditor General is directed in her or his financial audit of courts to ascertain that such assessments have been collected and remitted and shall report to the Legislature annually. All such records of the courts shall be open for her or his inspection. The Auditor General is further directed to conduct financial audits of the expenditures of the trust funds and to report to the Legislature annually.

(6) The commission shall authorize the establishment of regional training councils to advise and assist the commission in developing and maintaining a plan assessing regional criminal justice training needs and to act as an extension of the commission in the planning, programming, and budgeting for expenditures of the moneys in the Criminal Justice Standards and Training Trust Fund.

(c) By rule, the commission may establish criteria and procedures for use by the division and regions to amend the approved plan when an emergency exists. The division shall, with the consent of the chair ~~chairman~~ of the commission, initially grant, modify, or deny the requested amendment pending final approval by the commission. The commission's plan and amendments thereto must comply with the provisions of chapter 216.

(7) No training, room, or board cost may be assessed against any officer or employing agency for any advanced and specialized training course funded from the Criminal Justice Standards and Training Trust Fund. Such expenses shall be paid from the trust fund and are not reimbursable by the officer. Travel costs to and from the training site are the responsibility of the trainee or employing agency. Any compensation, including, but not limited to, salaries and benefits, paid to any person during the period of training

shall be fixed and determined by the employing agency; and such compensation shall be paid directly to the person.

(b) An officer who is not employed or appointed by an employing agency of this state may attend a course funded by the trust fund, provided the officer ~~he~~ is required to pay to the criminal justice training school all training costs incurred for her or his attendance.

Section 1638. Section 943.253, Florida Statutes, is amended to read:

943.253 Exemption; elected officers.—Elected officers are exempt from the requirements of ss. 943.085-943.25. However, an elected officer may participate in the programs and benefits under ss. 943.085-943.25 if he or she complies with s. 943.13(1)-(7).

Section 1639. Subsections (1) and (2) of section 943.2563, Florida Statutes, are amended to read:

943.2563 Advisory board organization; center oversight.—

(1) Each advisory board shall elect a chair ~~chairman~~ from among its members. Other offices may be created as each board finds necessary or appropriate, and any such offices shall be filled by election from the membership of the board.

(2) Each advisory board shall meet at least once during each calendar quarter, at such other times as the board may determine, and at any time upon the call of the chair ~~chairman~~. Each board shall recommend the adoption of rules for the transaction of its business. Based upon such recommendation, the center shall adopt procedural and substantive rules for its operation.

Section 1640. Subsections (1), (2), and (3) of section 943.355, Florida Statutes, are amended to read:

943.355 Florida Crime Laboratory Council.—There is created a Florida Crime Laboratory Council within the department.

(1) The council shall be composed of 10 members, consisting of the agency heads of the existing laboratories specified in s. 943.35(1)(a)-(f), the president of the state attorney's association, the Attorney General or his or her designee, and two members to be appointed by the Governor consisting of a medical examiner and a circuit judge of the criminal court.

(2) The members appointed by the Governor shall be appointed for terms of 4 years. The other members shall be standing members of the council. However, no member shall serve beyond the time he or she ceases to hold the office or employment by reason of which the member ~~he~~ was eligible for appointment to the council. Any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his or her predecessor or until a successor is appointed and qualifies. Any member who, without cause fails to attend two consecutive meetings may be removed by the appointing authority.

(3) The council shall annually elect its chair ~~chairman~~ and other officers. The council shall meet semiannually or at the call of its chair ~~chairman~~, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by department rules as recommended by the council. A majority of the members of the council constitutes a quorum.

Section 1641. Subsection (2) of section 943.37, Florida Statutes, is amended to read:

943.37 Option to become state-operated laboratory; operational control.—

(2) The Department of Law Enforcement shall evaluate the request and make a determination based on the crime laboratory needs of the state. If the department concurs with the request, a plan for the transfer of the laboratory shall be jointly developed between representatives of the department and the chief of such laboratory or his or her designated representative. Such transfer plan shall include:

(a) A provision to allow any employee of such laboratory to maintain his or her position, or a position with comparable duties, with no decrease in pay for a reasonable transition period.

(b) A provision specifying the duration of the transition period.

(c) A provision to ensure that there shall be no reduction in the level of services provided by the laboratory during the transition period. Implementation of the transfer plan is conditioned upon the approval of the Governor through inclusion of the expenses entailed in such transfer in his or her budget recommendations to the Legislature and the Legislature approving such recommendation.

Section 1642. Subsection (3) of section 944.012, Florida Statutes, is amended to read:

944.012 Legislative intent.—The Legislature hereby finds and declares that:

(3) One of the chief factors contributing to the high recidivism rate in the state is the general inability of ex-offenders to find or keep meaningful employment. Although 90 percent of all offenders sent to prison return to society one day, the correctional system has done little to provide the offender with the vocational skills the offender ~~he~~ needs to return to society as a productive citizen. This failure virtually guarantees the probability of return to crime. Vocational training and assistance in job placement must be looked to on a priority basis as an integral part of the process of changing deviant behavior in the institutionalized offender, when such change is determined to be possible.

Section 1643. Subsection (1) of section 944.0231, Florida Statutes, is amended to read:

944.0231 Reduction of capacity.—

(1) When the population of the state correctional system exceeds 100 percent of its total capacity, as defined in s. 944.023, and remains in excess of 100 percent of total capacity for 21 days, the Governor, pursuant to s. 252.36, may use his or her emergency powers to reduce the population of the state correctional system as follows: The Governor shall inform any federal jurisdiction which has a concurrent or consecutive sentence or any active detainer placed on any prisoner in the state correctional system of his or her intention to transfer custody to that jurisdiction within 30 days. No prisoner shall be so transferred who is convicted of a capital felony in this state nor shall any transfer take place to any county or municipal jurisdiction within the state.

Section 1644. Paragraph (a) of subsection (4) of section 944.096, Florida Statutes, is amended to read:

944.096 Budget requests for residential facility construction; estimates; appropriations; population in excess of capacity.—

(4) As used in this section, the term:

(a) “Criminal Justice Estimating Conference” means the designated professional staffs of the Governor’s office, the Legislature, and the Supreme Court who meet in regularly scheduled meetings chaired by the state economist or the state economist’s ~~his~~ designee to forecast inmate and caseload counts and other information needed to support the state budgeting process.

Section 1645. Subsection (1) of section 944.291, Florida Statutes, is amended to read:

944.291 Prisoner released by reason of gain-time allowances or attainment of provisional release date.—

(1) Notwithstanding any provision of law to the contrary, a prisoner who has served his or her term or terms, less allowable gain-time deductions as provided by law, or who has attained his or her provisional release date shall, upon release, be placed under further supervision and control of the department. Any released prisoner who is not under further supervision and control of the department or who is not subject to any statute relating to parole shall be eligible, on a voluntary basis, for any assistance available to him or her through any parole or probation office under the department.

Section 1646. Subsection (2) of section 944.292, Florida Statutes, is amended to read:

944.292 Suspension of civil rights.—

(2) This section shall not be construed to deny a convicted felon access to the courts, as guaranteed by s. 21, Art. I of the State Constitution, until restoration of her or his civil rights.

Section 1647. Section 944.33, Florida Statutes, is amended to read:

944.33 Failure of inspector to make report; false report; penalty.—If any prison inspector shall fail to make a report of his or her findings, he or she shall be immediately discharged and shall not be again employed in such capacity. If any prison inspector shall knowingly make a false report of his or her findings, he or she shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1648. Section 944.37, Florida Statutes, is amended to read:

944.37 Acceptance of unauthorized compensation; penalty.—No officer or employee of the department shall receive, directly or indirectly, from any prisoner or from anyone on behalf of such prisoner, any gift, reward, or any compensation whatsoever for his or her services or supplies other than that prescribed or authorized by law or the department. Whoever violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

Section 1649. Subsections (1) and (3) of section 944.38, Florida Statutes, are amended to read:

944.38 Acceptance of remuneration from contractor; dealing or barter with prisoners; interest in contract; penalty.—

(1) No officer or employee of the department shall receive any compensation whatsoever, directly or indirectly, for any act or service which she or he may do or perform for or on behalf of any officer or employee or agent, or employee of a contractor; nor shall any officer or employee of the department or the state be interested, directly or indirectly, in any contract or purchase made, or authorized to be made, by anyone for or on behalf of the department.

(3) For any violation of the provisions of this section the officer or employee of the state shall be discharged from her or his office or service; and every contractor, or employee, or agent of a contractor engaged therein, and a party thereto, shall be expelled from the institutional grounds, and not again permitted within the same as a contractor, agent, or employee.

Section 1650. Subsection (2) of section 944.405, Florida Statutes, is amended to read:

944.405 Warrant for retaking offender who has escaped from custody or absconded from rehabilitative community reentry program, or who is ineligible for release.—

(2) An offender who is arrested as provided in subsection (1) is ineligible for bond, bail, or release on his or her own recognizance.

Section 1651. Section 944.46, Florida Statutes, is amended to read:

944.46 Harboring, concealing, aiding escaped prisoners; penalty.—Whoever harbors, conceals, maintains, or assists, or gives any other aid to any prisoner after his or her escape from any state correctional institution, knowing that he or she is an escaped prisoner, shall be guilty of a felony of

the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1652. Paragraph (b) of subsection (1) of section 944.485, Florida Statutes, is amended to read:

944.485 Subsistence fees with respect to certain prisoners; time of adoption; requirements.—

(1) In recognition of the fact that many prisoners in the correctional system have sources of income and assets outside of the correctional system, which may include bank accounts, inheritances, real estate, social security payments, veteran's payments, and other types of financial resources, and in recognition of the fact that the daily subsistence cost of incarcerating prisoners in the correctional system is a great burden on the taxpayers of the state, each prisoner in the state correctional system, except those who have entered into an agreement under s. 947.135 prior to October 1, 1978:

(b) Shall pay from such income and assets, except where such income is exempt by state or federal law, all or a fair portion of the prisoner's daily subsistence costs, based upon the inmate's ability to pay, the liability or potential liability of the inmate to the victim or the guardian or the estate of the victim, and the needs of his or her dependents.

Section 1653. Subsections (1) and (3) of section 944.512, Florida Statutes, are amended to read:

944.512 State lien on proceeds from literary or other type of account of crime for which convicted.—

(1) A lien prior in dignity to all others shall exist in favor of the state upon royalties, commissions, proceeds of sale, or any other thing of value payable to or accruing to a convicted felon or a person on her or his behalf, including any person to whom the proceeds may be transferred or assigned by gift or otherwise, from any literary, cinematic, or other account of the crime for which she or he was convicted. A conviction shall be defined as a guilty verdict by a jury or judge, or a guilty or nolo contendere plea by the defendant, regardless of adjudication of guilt. The lien shall attach at the time of the conviction in county or circuit court. In the event of an appeal, the funds will be held in the Revolving Escrow Trust Fund of the Department of Legal Affairs until the appeal is resolved.

(3) A judge may place a lien prior in dignity to all others in favor of the state or county upon any financial settlement payable to or accruing to a convicted offender or person on her or his behalf, as a result of injury incurred during or at the time of a violation of the state law, or as a result of an attempt to flee apprehension for the offense for which the offender was convicted. A conviction is defined as in subsection (1). The lien shall be attached by order of the judge at the time of the conviction in county or circuit court. In the event of an appeal, the funds shall be held in the Revolving Escrow Trust Fund of the Department of Legal Affairs until the appeal is resolved.

Section 1654. Section 944.516, Florida Statutes, is amended to read:

944.516 Money or other property received for personal use or benefit of inmate; deposit; disposition of unclaimed trust funds.—The Department of Corrections shall protect the financial interest of the state with respect to claims which the state may have against inmates in state institutions under its supervision and control and shall administer money and other property received for the personal benefit of such inmates. In carrying out the provisions of this section, the department may delegate any of its enumerated powers and duties affecting inmates of an institution to the superintendent or regional director who shall personally, or through designated employees of his or her personal staff under his or her direct supervision, exercise such powers or perform such duties.

(1) The Department of Corrections may:

(a) Accept and administer as a trust any money or other property received for the personal use or benefit of any inmate.

(b) Deposit money so received in banks qualified as state depositories.

(c) Withdraw any such money and use it to meet the current needs of the inmate as they may exist from time to time.

(d) As trustee, invest in the manner authorized by law for fiduciaries such moneys not required to be used for current needs of the inmate.

(e) Commingle such moneys for the purpose of deposit or investment.

(f) Use interest earned from investments to replace any funds belonging to an inmate which have been stolen, lost, or otherwise misappropriated from the inmate's trust account through no fault of the state and which cannot be replaced by appropriated funds, insurance payments, or other available resources. Such use of interest may be made only if, pursuant to a thorough investigation as part of the normal auditing process, the internal auditor of the department recommends in a written report that such use is appropriate. The report may also recommend other action, including prosecution, with respect to any missing funds. If the internal auditor of the department concludes that the department is at fault, the loss shall be replaced out of department funds; interest from the inmate trust fund may not be used to replace such loss.

(g) Establish, by rule, a limit on each inmate's trust account, including the interest earned thereon, and deduct from any moneys in the inmate's trust account exceeding that limit moneys sufficient to pay for the cost of postage of any mail sent by the inmate which postage the state is not constitutionally required to pay.

(2) The department shall require documentation through an accounting of receipts for expenditures by inmates placed on extended limits of confinement pursuant to s. 945.091. However, the department may allow such inmates an amount up to \$25 per week which may not require documentation and which may be used for discretionary needs. The \$25 per week may

be increased by \$5 biennially, beginning in fiscal year 1985-1986, up to a total of \$50.

(3) Moneys received by the department in payment of claims of the state against inmates shall be transmitted to the Treasurer for deposit into the General Revenue Fund.

(4) Upon the death of any inmate in an institution affected by the provisions of this section, any unclaimed money held for the inmate ~~him~~ in trust by the department or by the Treasurer shall be applied first to the payment of any unpaid state claim against the inmate, and any balance remaining unclaimed for a period of 1 year shall escheat to the state as unclaimed funds held by fiduciaries.

(5) When an inmate is transferred between department facilities, is released from the custody of the department, dies, or escapes during incarceration, and the inmate has an unexpended inmate trust fund account balance of less than \$1, that balance shall be transferred to the Inmate Welfare Trust Fund.

Section 1655. Section 944.596, Florida Statutes, is amended to read:

944.596 Transfer of convicted foreign citizens or nationals under treaty.—When a treaty is in effect between the United States and a foreign country providing for the transfer of a convicted offender who is a citizen or national of a foreign country to the foreign country of which she or he is a citizen or national, the Governor or the Governor's ~~his~~ designee is authorized, subject to the terms of such treaty, to consent to the transfer of such convicted offender.

Section 1656. Subsection (1) of section 944.597, Florida Statutes, is amended to read:

944.597 Transportation and return of prisoners by private transport company.—

(1) The department is authorized to contract with private transport companies for the transportation of prisoners both within and beyond the limits of this state. Each prisoner shall be taken into custody by the transport company for the purpose of transportation and then delivered by the same transport company to the proper law enforcement official upon arriving at the point of destination. Any private transport company transporting a prisoner pursuant to this section shall be considered an independent contractor and shall be solely liable for the prisoner while she or he is in the custody of such company.

Section 1657. Section 944.602, Florida Statutes, is amended to read:

944.602 Notification of Department of Health and Rehabilitative Services before release of mentally retarded inmates.—Before the release by parole, release by reason of gain-time allowances provided for in s. 944.291, or expiration of sentence of any inmate who has been diagnosed as mentally retarded as defined in s. 393.063, the Department of Corrections shall notify

the Department of Health and Rehabilitative Services in order that sufficient time be allowed to notify the inmate or the inmate's ~~his~~ representative, in writing, at least 7 days prior to the inmate's release, of available community services.

Section 1658. Subsection (1) and paragraph (a) of subsection (2) of section 944.611, Florida Statutes, are amended to read:

944.611 Legislative intent.—The Legislature finds and declares that:

(1) It is desirable that each inmate be confined in and released from an institution or facility as close to the inmate's ~~his~~ permanent residence or county of commitment as possible, in order to lessen the transportation expense to the public.

(2) It is the intent of the Legislature that:

(a) To the extent possible, an inmate be returned, upon release, to the same area from which the inmate ~~he~~ was committed.

Section 1659. Paragraph (a) of subsection (1) of section 944.612, Florida Statutes, is amended to read:

944.612 Definitions for s. 944.613.—As used in s. 944.613, the term:

(1) "Florida releasee" means:

(a) An inmate paroled before expiration of his or her sentence, who will be supervised at the location shown on his or her parole certificate.

Section 1660. Subsection (2) of section 944.613, Florida Statutes, is amended to read:

944.613 Methods of transportation.—

(2) FLORIDA RELEASEE.—In instances when a releasee remains in this state but leaves the county where the correctional institution or facility of her or his confinement is located, transportation shall be provided by common carrier using the most economical means. Transportation as authorized herein shall be furnished by nonnegotiable travel voucher payable to the common carrier being utilized, and in no event shall there be any cash disbursement to the releasee or any person, firm, or corporation. Such travel voucher is to be utilized immediately by the releasee. The source of any private transportation must be a family member or friend whose purpose is to immediately transport the releasee to the approved location pursuant to section 1.

Section 1661. Paragraph (b) of subsection (5) of section 944.719, Florida Statutes, is amended to read:

944.719 Adoption of rules, monitoring, and reporting.—

(5) The Auditor General shall conduct a performance audit, including a review of the annual financial audit of the private entity and shall deliver

a report to the Legislature by April 1 of the first year following any contract awarded by the department for the operation of a correctional facility by a private vendor.

(b) In preparing the report, the Auditor General shall consider, in addition to other factors he or she determines are significant:

1. The extent to which the private vendor and the department have complied with the terms of the contract and ss. 944.710-944.719.

2. The wages and benefits that are provided to the staff of the private correctional facility as compared to wages and benefits provided to employees of the department performing comparable tasks.

Section 1662. Subsection (2) of section 945.047, Florida Statutes, is amended to read:

945.047 Licensing requirements for physicians, osteopathic physicians, and chiropractors employed by the department.—

(2) No person subject to the provisions of this section shall, by virtue of his or her continued employment in accordance with such provisions, be in violation of the unauthorized practice provisions of chapter 458, chapter 459, or chapter 460 during such period of employment.

Section 1663. Subsection (5) of section 945.12, Florida Statutes, is amended to read:

945.12 Transfers for rehabilitative treatment.—

(5) When the department plans to release a mentally ill or retarded offender, an involuntary commitment hearing shall be held as soon as possible prior to his or her release, according to the provisions of chapter 393 or chapter 394.

Section 1664. Subsections (2), (3), and (7) of section 945.6035, Florida Statutes, are amended to read:

945.6035 Dispute resolution.—

(2) If the authority and the Assistant Secretary for Health Services are unable to resolve a dispute regarding inmate physical or mental health care, the authority may submit a written notice to the Assistant Secretary for Health Services, setting forth each issue in controversy and the position of the authority. The Assistant Secretary for Health Services shall respond to the authority within 30 days after receipt of such written notice. The authority shall place the assistant secretary's response on the agenda of the next regularly scheduled meeting of the authority. If the dispute remains unresolved, the authority may submit a written report to the secretary detailing the authority's objections. The Assistant Secretary for Health Services shall submit a written report setting forth his or her position to the secretary on the issue or issues raised by the authority within 5 working days after receipt of the submission by the authority.

(3) The secretary shall review any disputes between the authority and the Assistant Secretary for Health Services, and shall provide written notice to the authority of his or her decision regarding such disputes within 40 days after the date when the authority provides written notice of the dispute to the secretary.

(7) Within 30 days after receipt of a petition from the authority, the Secretary of the Administration Commission, or his or her designee, shall conduct an informal hearing to consider the matters presented in the petition and the reply, and after the informal hearing shall promptly submit a report of the findings and recommendations to the Administration Commission. Within 30 days after the informal hearing, the Administration Commission shall approve either the position of the authority or that of the department. If the position of the authority is approved, the Administration Commission shall set forth whatever remedial measures it deems appropriate and the department shall implement such remedial measures. The decision of the Administration Commission is final and binding on the authority and the department and shall not be subject to appeal pursuant to s. 120.68.

Section 1665. Subsection (5) of section 945.73, Florida Statutes, is amended to read:

945.73 Inmate training program operation.—

(5) If an inmate in the training program becomes unmanageable, the department may place the inmate in the general inmate population to complete the remainder of his or her sentence. Any period of time in which the inmate is unable to participate in the inmate training program activities may be excluded from the specified time requirements in the inmate training program. The portion of the sentence served prior to placement in the inmate training program shall not be counted toward program completion.

Section 1666. Subsection (1) of section 946.513, Florida Statutes, is amended to read:

946.513 Private employment of inmates; disposition of compensation received.—

(1) Notwithstanding the provisions of any other law, an inmate may be employed by the corporation or by any other private entity operating on the grounds of a correctional institution prior to the last 24 months of the inmate's ~~his~~ confinement. Compensation received for such employment shall be credited by the department to an account for the inmate and shall be used to make any court-ordered payments, including restitution to the victim. The department rules shall provide that a portion of such compensation be credited by the department in the manner provided in s. 946.512.

Section 1667. Subsections (2), (3), (4), and (5) of section 947.002, Florida Statutes, are amended to read:

947.002 Intent.—

(2) Objective parole criteria will be designed to give primary weight to the seriousness of the offender's present criminal offense and the offender's

his past criminal record. In considering the risk of recidivism, practice has shown that the best predictor is prior record.

(3) The ~~chair chairman~~ shall be the agency head. While the commission is responsible for making decisions on the granting and revoking of parole, the chair chairman shall establish, execute, and be held accountable for all administrative policy decisions. The routine administrative decisions are the full responsibility of the chair chairman.

(4) Hearing examiners are assigned on the basis of caseload needs as determined by the chair chairman.

(5) It is the intent of the Legislature that the decision to parole an inmate from the incarceration portion of the inmate's ~~his~~ sentence is an act of grace of the state and shall not be considered a right.

Section 1668. Section 947.06, Florida Statutes, as amended by section 16 of chapter 90-211, Laws of Florida, is amended to read:

947.06 Meeting; when commission may act.—The commission shall meet at regularly scheduled intervals and from time to time as may otherwise be determined by the chair chairman. The making of recommendations to the Governor and Cabinet in matters relating to modifications of acts and decisions of the chair chairman as provided in s. 947.04(1) shall be by a majority vote of the commission. No prisoner shall be placed on parole except as provided in ss. 947.172 and 947.174 by a panel of no fewer than two commissioners appointed by the chair chairman. All matters relating to the granting, denying, or revoking of parole shall be decided in a meeting at which the public shall have the right to be present. Victims of the crime committed by the inmate shall be permitted to make an oral statement or submit a written statement regarding their views as to the granting, denying, or revoking of parole. Persons not members or employees of the commission or victims of the crime committed by the inmate may be permitted to participate in deliberations concerning the granting and revoking of paroles only upon the prior written approval of the chair chairman of the commission. To facilitate the ability of victims and other persons to attend commission meetings, the commission shall meet in various counties including, but not limited to, Broward, Dade, Duval, Escambia, Hillsborough, Leon, Orange, and Palm Beach, with the location chosen being as close as possible to the location where the parole-eligible inmate committed the offense for which the parole-eligible inmate was sentenced. The commission shall adopt rules governing the oral participation of victims and the submission of written statements by victims.

Section 1669. Section 947.06, Florida Statutes, as amended by section 22 of chapter 90-337, Laws of Florida, is amended to read:

947.06 Meeting; when commission may act.—The commission shall meet at regularly scheduled intervals and from time to time as may otherwise be determined by the chair chairman. The making of recommendations to the Governor and Cabinet in matters relating to modifications of acts and decisions of the chair chairman as provided in s. 947.04(1) shall be by a majority vote of the commission. No prisoner shall be placed on parole except as

provided in ss. 947.172 and 947.174 by a panel of no fewer than two commissioners appointed by the ~~chair~~ chairman. All matters relating to the granting, denying, or revoking of parole shall be decided in a meeting at which the public shall have the right to be present. Victims of the crime committed by the inmate shall be permitted to make an oral statement or submit a written statement regarding their views as to the granting, denying, or revoking of parole. Persons not members or employees of the commission or victims of the crime committed by the inmate may be permitted to participate in deliberations concerning the granting and revoking of paroles only upon the prior written approval of the ~~chair~~ chairman of the commission. To facilitate the ability of victims and other persons to attend commission meetings, the commission shall meet in counties including, but not limited to, Broward, Dade, Duval, Escambia, Hillsborough, Leon, Orange, and Palm Beach, with the location chosen being as close as possible to the location where the parolee or releasee committed the offense for which the parolee or releasee was sentenced. The commission shall adopt rules governing the oral participation of victims and the submission of written statements by victims.

Section 1670. Section 947.10, Florida Statutes, is amended to read:

947.10 Business and political activity upon part of members and full-time employees of commission.—No member of the commission and no full-time employee thereof shall, during her or his service upon or under the commission, engage in any other business or profession or hold any other public office, nor shall she or he serve as the representative of any political party, or any executive committee or other governing body thereof, or as an executive officer or employee of any political committee, organization, or association or be engaged on the behalf of any candidate for public office in the solicitation of votes or otherwise. However, this shall not be deemed to exclude the appointment of the Secretary of Corrections to the commission under the terms and conditions set forth in this chapter.

Section 1671. Paragraphs (a) and (b) of subsection (2) and paragraph (a) of subsection (3) of section 947.135, Florida Statutes, are amended to read:

947.135 Mutual participation program.—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(a) Involve the department and the commission in program planning with the offender while the offender ~~he~~ is incarcerated, leading to the establishment of certain criteria affecting the grant of parole and release from parole.

(b) Involve the offender in developing her or his individual rehabilitation program for the period of incarceration and parole with the department and the commission.

However, no offender shall be eligible to participate in this program who was sentenced as an habitual felony offender pursuant to s. 775.084 or who was convicted of a capital or life felony as provided by s. 775.081, s. 775.082, or

s. 775.083. Offenders meeting eligibility criteria may be offered the opportunity to participate in the program which will include a parole date.

(3) MUTUAL PARTICIPATION PROGRAM; DEVELOPMENT; CRITERIA; DEPARTMENT AND COMMISSION RULES.—

(a) The department and the commission shall jointly develop a mutual participation program which sets forth for each eligible offender the terms of her or his institutional confinement, a parole date, and terms of parole supervision and release, provided such offender meets the criteria set forth in this act and any additional criteria established by the department and the commission.

1. The department and the commission, as a portion of the mutual participation program, shall require that each eligible offender satisfactorily work at a job within the institution or as a part of a correctional industries program or satisfactorily participate in a vocational training or educational program offered by the department. Nothing in this subsection shall be construed to exclude eligible offenders from meeting both the work requirements and training and educational requirements when deemed appropriate by the department and commission.

2. Additional criteria shall be established and required by the commission and the department for participation in the program, including, but not limited to, vocational counseling and work-release programs; however, criteria for satisfactory participation in the program shall not include academic classroom instruction at the college level.

3. A panel of at least two members of the commission shall establish a parole date for each eligible offender, based on the satisfactory completion of the program. In no case shall such date fall after the date which would have been established under s. 947.172.

Section 1672. Subsection (1) and paragraph (a) of subsection (5) of section 947.149, Florida Statutes, are amended to read:

947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the department, establish the conditional medical release program. An inmate is eligible for consideration for release under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) “Permanently incapacitated inmate,” which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate ~~he~~ does not constitute a danger to herself or himself or others.

(b) “Terminally ill inmate,” which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be

no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(5)(a) If it is discovered during the conditional medical release that the medical or physical condition of the medical releasee has improved to the extent that she or he would no longer be eligible for conditional medical release under this section, the commission may order that the releasee be returned to the custody of the department for a conditional medical release revocation hearing, in accordance with s. 947.141. If conditional medical release is revoked due to improvement in the medical or physical condition of the releasee, she or he shall serve the balance of her or his sentence with credit for the time served on conditional medical release and without forfeiture of any gain-time accrued prior to conditional medical release. If the person whose conditional medical release is revoked due to an improvement in medical or physical condition would otherwise be eligible for parole or any other release program, the person ~~he~~ may be considered for such release program pursuant to law.

Section 1673. Subsection (1), paragraph (h) of subsection (2), subsection (3), and paragraphs (b), (d), (e), (f), and (g) of subsection (4) of section 947.16, Florida Statutes, are amended to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission.—

(1) Every person who has been convicted of a felony or who has been convicted of one or more misdemeanors and whose sentence or cumulative sentences total 12 months or more, who is confined in execution of the judgment of the court, and whose record during confinement or while under supervision is good, shall, unless otherwise provided by law, be eligible for interview for parole consideration of her or his cumulative sentence structure as follows:

(a) An inmate who has been sentenced for an indeterminate term or a term of 3 years or less shall have an initial interview conducted by a hearing examiner within 8 months after the initial date of confinement in execution of the judgment.

(b) An inmate who has been sentenced for a minimum term in excess of 3 years but of less than 6 years shall have an initial interview conducted by a hearing examiner within 14 months after the initial date of confinement in execution of the judgment.

(c) An inmate who has been sentenced for a minimum term of 6 or more years but other than for a life term shall have an initial interview conducted by a hearing examiner within 24 months after the initial date of confinement in execution of the judgment.

(d) An inmate who has been sentenced for a term of life shall have an initial interview conducted by a hearing examiner within 5 years after the initial date of confinement in execution of the judgment.

(e) An inmate who has been convicted and sentenced under ss. 958.011-958.15, or any other inmate who has been determined by the department to

be a youthful offender, shall be interviewed by a parole examiner within 8 months after the initial date of confinement in execution of the judgment.

(2) The following special types of cases shall have their initial parole interview as follows:

(h) If an inmate is serving a sentence imposed by a county or circuit court of this state concurrently with a sentence imposed by a court of another state or of the United States, and if the department has designated the correctional institution of the other jurisdiction as the place for reception and confinement of such person, the inmate so released to another jurisdiction shall be eligible for consideration for parole, except that the commission shall determine the presumptive parole release date and the effective parole release date by requesting such person's record file from the receiving jurisdiction. Upon receiving such records, the commission panel assigned by the ~~chair~~ chairman shall determine such release dates based on the relevant information in that file. The commission may concur with the parole release decision of the jurisdiction granting parole and accepting supervision. The provisions of s. 947.174 do not apply to an inmate serving a concurrent sentence in another jurisdiction pursuant to s. 921.16(2).

(3) Notwithstanding the provisions of ss. 775.021 and 921.16, if an inmate has received a consecutive sentence or sentences imposed by a court or courts of this state, the inmate ~~he~~ shall be eligible for consideration for parole, unless otherwise expressly prohibited by law.

(4) A person who has become eligible for an initial parole interview and who may, according to the objective parole guidelines of the commission, be granted parole shall be placed on parole in accordance with the provisions of this law; except that, in any case of a person convicted of murder, robbery, burglary of a dwelling or burglary of a structure or conveyance in which a human being is present, aggravated assault, aggravated battery, kidnapping, sexual battery or attempted sexual battery, incest or attempted incest, an unnatural and lascivious act or an attempted unnatural and lascivious act, lewd and lascivious behavior, assault or aggravated assault when a sexual act is completed or attempted, battery or aggravated battery when a sexual act is completed or attempted, arson, or any felony involving the use of a firearm or other deadly weapon or the use of intentional violence, at the time of sentencing the judge may enter an order retaining jurisdiction over the offender for review of a commission release order. This jurisdiction of the trial court judge is limited to the first one-third of the maximum sentence imposed. When any person is convicted of two or more felonies and concurrent sentences are imposed, then the jurisdiction of the trial court judge as provided herein applies to the first one-third of the maximum sentence imposed for the highest felony of which the person was convicted. When any person is convicted of two or more felonies and consecutive sentences are imposed, then the jurisdiction of the trial court judge as provided herein applies to one-third of the total consecutive sentences imposed.

(b) Gain-time as provided for by law shall accrue, except that an offender over whom the trial court has retained jurisdiction as provided herein shall not be released during the first one-third of her or his sentence by reason of gain-time.

(d) Within 10 days after receipt of the notice provided for in paragraph (c), the original sentencing judge or her or his replacement shall notify the commission as to whether or not the court further desires to retain jurisdiction. If the original sentencing judge or her or his replacement does not so notify the commission within the 10-day period or notifies the commission that the court does not desire to retain jurisdiction, then the commission may dispose of the matter as it sees fit.

(e) Upon receipt of notice of intent to retain jurisdiction from the original sentencing judge or her or his replacement, the commission shall, within 10 days, forward to the court its release order, the findings of fact, the parole hearing examiner's report and recommendation, and all supporting information upon which its release order was based.

(f) Within 30 days of receipt of the items listed in paragraph (e), the original sentencing judge or her or his replacement shall review the order, findings, and evidence; and, if the judge finds that the order of the commission is not based on competent substantial evidence or that the parole is not in the best interest of the community or the inmate, the court may vacate the release order. The judge or her or his replacement shall notify the commission of the decision of the court, and, if the release order is vacated, such notification shall contain the evidence relied on and the reasons for denial. A copy of such notice shall be sent to the inmate.

(g) The decision of the original sentencing judge or, in her or his absence, the chief judge of the circuit to vacate any parole release order as provided in this act is not appealable. Each inmate whose parole release order has been vacated by the court shall be reinterviewed within 2 years after the date of receipt of the vacated release order and every 2 years thereafter, or earlier by order of the court retaining jurisdiction.

Section 1674. Subsection (2) of section 947.172, Florida Statutes, is amended to read:

947.172 Establishment of presumptive parole release date.—

(2) Based on the objective parole guidelines and any other competent evidence relevant to aggravating and mitigating circumstances, the hearing examiner shall, within 10 days after the interview, recommend in writing to a panel of no fewer than two commissioners appointed by the chair chairman a presumptive parole release date for the inmate. The chair chairman shall assign cases to such panels on a random basis, without regard to the inmate or to the commissioners sitting on the panel. If the recommended presumptive parole release date falls outside the matrix time ranges as determined by the objective parole guidelines, the hearing examiner shall include with the recommendation a statement in writing as to the reasons for the decision, specifying individual particularities. If a panel fails to reach a decision on a recommended presumptive parole release date, the chair chairman or any other commissioner designated by the chair chairman shall cast the deciding vote. Within 90 days after the date of the initial interview, the inmate shall be notified in writing of the decision as to the inmate's presumptive parole release date.

Section 1675. Subsection (4) of section 947.174, Florida Statutes, is amended to read:

947.174 Subsequent interviews.—

(4) The department or a hearing examiner may recommend that an inmate be placed in a work-release program prior to the last 18 months of her or his confinement before the presumptive parole release date. If the commission does not deny the recommendation within 30 days of the receipt of the recommendation, the inmate may be placed in such a program, and the department shall advise the commission of the fact prior to such placement.

Section 1676. Subsection (1) of section 947.1745, Florida Statutes, is amended to read:

947.1745 Establishment of effective parole release date.—If the inmate's institutional conduct has been satisfactory, the presumptive parole release date shall become the effective parole release date as follows:

(1) Within 90 days before the presumptive parole release date, a hearing examiner shall conduct a final interview with the inmate in order to establish an effective parole release date and parole release plan. If it is determined that the inmate's institutional conduct has been unsatisfactory, a statement to this effect shall be made in writing with particularity and shall be forwarded to a panel of no fewer than two commissioners appointed by the chair ~~chairman~~.

Section 1677. Paragraph (b) of subsection (1) of section 947.181, Florida Statutes, is amended to read:

947.181 Victim restitution as condition of parole.—

(1)

(b) If the parolee fails to make the reparation or restitution to the aggrieved party as authorized in paragraph (a), it shall be considered by the commission as a violation of parole as specified in s. 947.21 and may be cause for revocation of her or his parole.

Section 1678. Subsection (3) of section 947.19, Florida Statutes, is amended to read:

947.19 Terms of parole.—

(3) A panel of no fewer than two commissioners appointed by the chair ~~chairman~~ shall consider requests for review of the terms and conditions of parole, render a written decision to continue or to modify the terms and conditions of parole, specifying the reasons therefor, and inform the parolee of the decision in writing within 30 days of the date of receipt of request for review. Such panel shall not include those commissioners who authorized the original conditions of parole.

Section 1679. Section 947.20, Florida Statutes, is amended to read:

947.20 Rules of commission.—The commission shall adopt general rules on the terms and conditions of parole and what shall constitute the violation thereof and may make special rules to govern particular cases. Such rules, both general and special, may include, among other things, a requirement that the parolee shall not leave the state or any definite area in Florida without the consent of the commission; that the parolee ~~he~~ shall contribute to the support of her or his dependents to the best of her or his ability; that the parolee ~~he~~ shall make reparation or restitution for her or his crime; that the parolee ~~he~~ shall not associate with persons engaged in criminal activity; and that the parolee ~~he~~ shall carry out the instructions of her or his parole supervisor and, in general, comport herself or himself in accordance with the terms and conditions of her or his parole.

Section 1680. Section 947.21, Florida Statutes, is amended to read:

947.21 Violations of parole.—

(1) A violation of the terms of parole may render the parolee liable to arrest and a return to prison to serve out the term for which the parolee ~~he~~ was sentenced.

(2) An offender whose parole is revoked may, at the discretion of the commission, be credited with any portion of the time the offender ~~he~~ has satisfactorily served on parole.

Section 1681. Section 947.22, Florida Statutes, is amended to read:

947.22 Authority to arrest parole violators with or without warrant.—

(1) If a member of the commission or a duly authorized representative of the commission has reasonable grounds to believe that a parolee has violated the terms and conditions of her or his parole in a material respect, such member or representative may issue a warrant for the arrest of such parolee. The warrant shall be returnable before a member of the commission or a duly authorized representative of the commission. The commission, a commissioner, or a parole examiner with approval of the parole examiner supervisor, may release the parolee on bail or her or his own recognizance, conditioned upon her or his appearance at any hearings noticed by the commission. If not released on bail or her or his own recognizance, the parolee shall be committed to jail pending hearings pursuant to s. 947.23. The commission, at its election, may have the hearing conducted by one or more commissioners or by a duly authorized representative of the commission. Any parole and probation officer, any officer authorized to serve criminal process, or any peace officer of this state is authorized to execute the warrant.

(2) Any parole and probation officer, when she or he has reasonable ground to believe that a parolee, control releasee, or conditional releasee has violated the terms and conditions of her or his parole, control release, or conditional release in a material respect, has the right to arrest the releasee or parolee without warrant and bring her or him forthwith before one or more commissioners or a duly authorized representative of the Parole Commission or Control Release Authority; and proceedings shall thereupon be

had as provided herein when a warrant has been issued by a member of the commission or authority or a duly authorized representative of the commission or authority.

Section 1682. Subsections (1), (2), and (3), paragraphs (a), (d), and (e) of subsection (4), subsection (5), paragraphs (a) and (b) of subsection (6), and subsection (7) of section 947.23, Florida Statutes, are amended to read:

947.23 Action of commission upon arrest of parolee.—

(1) Within 30 days after the arrest of a person charged with violation of the terms and conditions of her or his parole, the parolee shall be afforded a prompt preliminary hearing, conducted by a member of the commission or its duly authorized representative, at or near the place of violation or arrest to determine if there is probable cause or reasonable grounds to believe that the parolee has committed a violation of the terms or conditions of her or his parole. The parolee may knowingly execute a waiver of this hearing, up until the time of such hearing, provided the consequences of such action have been fully explained. If the parolee elects to proceed with the preliminary hearing:

(a) The parolee He shall be afforded a timely notice of the preliminary hearing, which notice shall state the purpose of the hearing and state the alleged violation.

(b) The parolee He shall be permitted to cross-examine adverse witnesses, unless it is determined that good cause exists not to allow such examination.

(c) The parolee He shall be allowed to call witnesses as provided in subsection (3), and present evidence in her or his own behalf.

(d) The parolee He may be represented by counsel.

The findings based on the evidence presented at the preliminary hearing shall be made available to the parolee either immediately following the preliminary hearing or within a reasonable time thereafter.

(2) If the preliminary hearing results in a finding of probable cause or reasonable grounds to believe that a violation of the terms or conditions of parole has occurred, any one or more commissioners or a duly authorized representative of the commission shall convene a final revocation hearing on the alleged violation. The parolee shall appear at the final hearing in person, and, if the parolee he desires, she or he may be represented by counsel. At the final hearing, the state and the parolee may introduce such evidence as is necessary and pertinent to the charge of parole violation.

(3) Any one or more commissioners or a duly authorized representative of the commission may administer oaths and compel the attendance of witnesses at such hearing by the issuance of summons, subpoenas, and subpoenas duces tecum. Subpoenas and subpoenas duces tecum shall be enforceable by appropriate proceedings in circuit court, and the failure to comply with a court order enforcing a subpoena or subpoena duces tecum shall constitute contempt of court. Any one or more commissioners or a duly

authorized representative of the commission may issue subpoenas on behalf of the state or the parolee. The commission may decline a request to subpoena a witness whose testimony it finds would be cumulative, irrelevant, or nonprobative. The party requesting the subpoenas shall furnish to the commissioner, commissioners, or duly authorized representative of the commission the names and addresses of her or his proposed witnesses at least 10 days prior to the hearing date.

(4) At the hearing, the parolee shall be informed orally and in writing of:

(a) The violation of the terms and conditions of parole with which the parolee ~~he~~ has been charged.

(d) The right to secure, present, and compel the attendance of witnesses as provided in subsection (3) and the production of documents on her or his behalf.

(e) The right of access to all evidence used against her or him.

(5)(a) At any such hearing convened by one or more commissioners or a duly authorized representative of the commission, the accused may waive her or his right to proceed further if, after being informed of her or his rights and after being advised of the consequences of a waiver in regard to the nature of the order which may be entered as a result of such waiver, the accused ~~he~~ affirms, in writing, knowledge and understanding of such rights and consequences and elects, in writing, to execute the waiver.

(b) The accused violator may execute a waiver, in writing, of a final revocation hearing prior to the commencement of such hearing. Such waiver may be executed before a member of the commission or a duly authorized representative of the commission after the accused violator has been informed of her or his rights and after she or he has been advised of the consequences of a waiver. Within 14 days after the execution of a waiver, the accused may withdraw the waiver by executing a withdrawal of waiver before a notary public and forwarding the original of that withdrawal to the commission.

(6) Within a reasonable time after the hearing, the commissioner, commissioners, or duly authorized representative of the commission who conducted the hearing shall make findings of fact in regard to the alleged parole violation.

(a) If the hearing was conducted by three or more commissioners, a majority of them shall enter an order determining whether the charges of parole violation have been sustained, based on the findings of fact made by them. By such order they shall revoke the parole and return the parolee to prison to serve the sentence theretofore imposed upon her or him, reinstate the original order of parole, order the placement of the parolee into a community control program as set forth in s. 948.03, or enter such other order as is proper.

(b) If the hearing was conducted by one or two commissioners or a duly authorized representative of the commission, at least two commissioners

shall enter an order determining whether or not the charges of parole violation have been sustained, based on the findings of fact made by the commissioner, commissioners, or duly authorized representative of the commission. The commissioners, by such order, shall revoke the parole and return the parolee to prison to serve the sentence theretofore imposed upon her or him, reinstate the original order of parole, order the placement of the parolee into a community control program as set forth in s. 948.03, or enter such other order as is proper.

However, any decision to revoke parole shall be based on a violation of a term or condition specifically enumerated in the parole release order. In a case in which parole is revoked, the majority of the commission or the two commissioners shall make a written statement of the evidence relied on and the reasons for revoking parole.

(7) Whenever a parole is revoked by the commission and the parolee is ordered by the commission to be returned to prison, the parolee, by reason of her or his misconduct, shall be deemed to forfeit all gain-time or commutation of time for good conduct, as provided for by law, earned up to the date of her or his release on parole. Nothing herein shall deprive the prisoner of her or his right to gain-time or commutation of time for good conduct, as provided by law, from the date the prisoner ~~he~~ is returned to prison.

Section 1683. Section 948.011, Florida Statutes, is amended to read:

948.011 When court may impose fine and place on probation or into community control as to imprisonment.—When the law authorizes the placing of a defendant on probation, and when the defendant's ~~his~~ offense is punishable by both fine and imprisonment, the trial court may, in its discretion, impose a fine upon him or her and place him or her on probation or into community control as to imprisonment.

Section 1684. Subsections (1), (5), (7), (10), (12), and (13) of section 948.015, Florida Statutes, are amended to read:

948.015 Presentence investigation reports.—The circuit court, when the defendant in a criminal case has been found guilty or has entered a plea of nolo contendere or guilty and has a recommended sentence under the sentencing guidelines of any nonstate prison sanction, may refer the case to the department for investigation or recommendation. Upon such referral, the department shall make the following report in writing at a time specified by the court prior to sentencing. The full report shall include:

(1) A complete description of the situation surrounding the criminal activity with which the offender has been charged, including a synopsis of the trial transcript, if one has been made; nature of the plea agreement, including the number of counts waived, the pleas agreed upon, the sentence agreed upon, and any additional terms of agreement; and, at the offender's discretion, his or her version and explanation of the criminal activity.

(5) The offender's employment background, including any military record, ~~his~~ present employment status, and ~~his~~ occupational capabilities.

(7) The social history of the offender, including his or her family relationships, marital status, interests, and activities.

(10) Information about the environments to which the offender might return or to which the offender ~~he~~ could be sent should a sentence of nonincarceration or community supervision be imposed by the court, and consideration of the offender's plan concerning employment supervision and treatment.

(12) The views of the person preparing the report as to the offender's motivations and ambitions and an assessment of the offender's explanations for his or her criminal activity.

(13) An explanation of the offender's criminal record, if any, including his or her version and explanation of any previous offenses.

Section 1685. Paragraphs (a), (b), and (c) of subsection (1) and paragraphs (a), (b), (c), (d), and (e) of subsection (2) of section 948.034, Florida Statutes, are amended to read:

948.034 Terms and conditions of probation; community residential drug punishment centers.—

(1) On or after October 1, 1993, any person who violates s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a) may, in the discretion of the trial court, be required to successfully complete a term of probation in lieu of serving a term of imprisonment as required or authorized by s. 775.084 or s. 921.001, as follows:

(a) If the person has not previously been convicted of violating s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), adjudication may be withheld and the offender may be placed on probation for not less than 18 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 90 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$500 nor more than \$10,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 396 or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 100 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(b) If the person has been previously convicted of one felony violation of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 24 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 180 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,000 nor more than \$10,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 396 or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 200 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(c) If the person has been previously convicted of two felony violations of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 36 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 360 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center

is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,500 nor more than \$10,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 396 or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 300 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(2) On or after October 1, 1993, any person who violates s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a) may, in the discretion of the trial court, be required to successfully complete a term of probation in lieu of serving a term of imprisonment as required or authorized by s. 775.084 or s. 921.001, as follows:

(a) If the person has not previously been convicted of violating s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may be withheld and the offender shall be placed on probation for not less than 12 months, as a condition of which the court may require the offender to comply with one or more of the following terms and conditions:

1. Pay a fine of not less than \$250 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 396 or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 50 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(b) If the person has been previously convicted of one felony violation of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 18 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 90 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$500 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse intervention program of a least 80 hours provided by a treatment resource licensed pursuant to chapter 396 or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 100 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(c) If the person has been previously convicted of two felony violations of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 24 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 120 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an

offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,000 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 396 or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 150 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(d) If the person has been previously convicted of three felony violations of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 30 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 200 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,500 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 396 or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender

must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 200 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(e) If the person has been previously convicted of four felony violations of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 36 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 360 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$2,000 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to chapter 396 or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 250 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

Section 1686. Subsection (2) of section 948.04, Florida Statutes, is amended to read:

948.04 Period of probation; duty of probationer; early termination.—

(2) Upon the termination of the period of probation, the probationer shall be released from probation and is not liable to sentence for the offense for which probation was allowed. During the period of probation, the probationer shall perform the terms and conditions of his or her probation.

Section 1687. Subsections (1), (2), (3), (4), and (6) of section 948.06, Florida Statutes, are amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(1) Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his or her probation or community control in a material respect, any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant wherever found and forthwith return him or her to the court granting such probation or community control. Any committing magistrate may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the probationer or offender, returnable forthwith before the court granting such probation or community control. Any parole or probation supervisor, any officer authorized to serve criminal process, or any peace officer of this state is authorized to serve and execute such warrant. The court, upon the probationer or offender being brought before it, shall advise him or her of such charge of violation and, if such charge is admitted to be true, may forthwith revoke, modify, or continue the probation or community control or place the probationer into a community control program. If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control. If such violation of probation or community control is not admitted by the probationer or offender, the court may commit him or her or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. If such charge is not at that time admitted by the probationer or offender and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. After such hearing, the court may revoke, modify, or continue the probation or community control or place the probationer into community control. If such probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer or offender on probation or into community control.

(2) No part of the time that the defendant is on probation or in community control shall be considered as any part of the time that the defendant he shall be sentenced to serve.

(3) Notwithstanding any other provision of this section, a probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the county or circuit in which the probationer or offender ~~he~~ was arrested. That court shall advise him or her of such charge of a violation and, if such charge is admitted, shall cause him or her to be brought before the court which granted the probation or community control. If such violation is not admitted by the probationer or offender, the court may commit him or her or release him or her with or without bail to await further hearing. The court, as soon as is practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. After such hearing, the court shall make findings of fact and forward the findings to the court which granted the probation or community control and to the probationer or offender or his or her attorney. The findings of fact by the hearing court are binding on the court which granted the probation or community control. Upon the probationer or offender being brought before it, the court which granted the probation or community control may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section.

(4) In any hearing in which the failure of a probationer or offender in community control to pay restitution or the cost of supervision as provided in s. 948.09, as directed, is established by the state, if the probationer or offender asserts his or her inability to pay restitution or the cost of supervision, it is incumbent upon the probationer or offender ~~him~~ to prove by clear and convincing evidence that he or she does not have the present resources available to pay restitution or the cost of supervision despite sufficient bona fide efforts legally to acquire the resources to do so. If the probationer or offender cannot pay restitution or the cost of supervision despite sufficient bona fide efforts, the court shall consider alternate measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the state's interests in punishment and deterrence may the court imprison a probationer or offender in community control who has demonstrated sufficient bona fide efforts to pay restitution or the cost of supervision.

(6) Any provision of law to the contrary notwithstanding, whenever probation, community control, or control release, including the probationary, community control portion of a split sentence, is violated and the probation or community control is revoked, the offender, by reason of his or her misconduct, may be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided by law, earned up to the date of his or her release on probation, community control, or control release. This subsection does not deprive the prisoner of his or her right to gain-time or commutation of time for good conduct, as provided by law, from the date on which the prisoner ~~he~~ is returned to prison. However, if a prisoner is sentenced to incarceration following termination from a drug punishment program imposed as a condition of probation, the sentence may include incarceration without the possibility of gain-time or early release for the period of time remaining in his or her treatment program placement term.

Section 1688. Subsections (2), (4), and (7) of section 948.08, Florida Statutes, as amended by section 9 of chapter 91-225, Laws of Florida, are amended to read:

948.08 Pretrial intervention program.—

(2) Any person who is charged with any nonviolent felony of the third degree is eligible for release to the pretrial intervention program on the approval of the administrator of the program and the consent of the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender. As used in this subsection, “nonviolent felony” excludes arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; aggravated battery; and armed burglary. In no case, however, shall any individual be released to the pretrial intervention program unless, after consultation with his or her attorney or one made available to the individual ~~him~~ if the individual ~~he~~ is indigent, he or she has voluntarily agreed to such program and has knowingly and intelligently waived his or her right to a speedy trial for the period of his or her diversion. In no case shall the defendant or the defendant's ~~his~~ immediate family personally contact the victim or the victim's ~~his~~ immediate family to acquire the victim's consent under the provisions of this act.

(4) Resumption of pending criminal proceedings shall be undertaken at any time if the program administrator or state attorney finds such individual is not fulfilling his or her obligations under this plan or if the public interest so requires.

(7) The chief judge in each circuit may appoint an advisory committee for the pretrial intervention program composed of the chief judge or his or her designee, who shall serve as chair ~~chairman~~; the state attorney, the public defender, and the program administrator, or their designees; and such other persons as the chair ~~chairman~~ deems appropriate. The committee may also include persons representing any other agencies to which persons released to the pretrial intervention program may be referred.

Section 1689. Subsection (2) of section 948.08, Florida Statutes, as amended by section 6 of chapter 91-280, Laws of Florida, is amended to read:

948.08 Pretrial intervention program.—

(2) Any first offender, or any person previously convicted of no more than one nonviolent misdemeanor, who is charged with any misdemeanor in the circuit court or felony of the third degree is eligible for release to the pretrial intervention program on the approval of the administrator of the program and the consent of the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender. In no case, however, shall any individual be so released unless, after consultation with his or her attorney or one made available to the individual ~~him~~ if the individual ~~he~~ is indigent, he or she has voluntarily agreed to such program and has knowingly and intelligently waived his or her right to a speedy trial for the period of his or her diversion. In no case shall the defendant or the defendant's ~~his~~

immediate family personally contact the victim or the victim's ~~his~~ immediate family to acquire the victim's consent under the provisions of this act.

Section 1690. Subsection (2) of section 948.10, Florida Statutes, is amended to read:

948.10 Community control programs.—

(2) The department shall commit not less than 10 percent of the parole and probation field staff and supporting resources to the operation of the community control program. Caseloads should be restricted to a maximum of 25 cases per officer in order to ensure an adequate level of staffing. Community control is an individualized program in which the offender is restricted to noninstitutional quarters or restricted to his or her own residence subject to an authorized level of limited freedom.

Section 1691. Subsections (1) and (3) of section 949.07, Florida Statutes, are amended to read:

949.07 Compacts with other states.—The Governor is hereby authorized and directed to enter into a compact on behalf of the state with any state of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the Congress, granted by an act entitled “An act granting the consent of Congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes.”

The contracting states solemnly agree;

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, herein called “sending state,” to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, herein called “receiving state,” while on probation or parole, if:

(a) Such person is in fact a resident of or has his or her family residing within the receiving state and can obtain employment there.

(b) Though not a resident of the receiving state and not having his or her family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person. A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his or her coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he or she has been convicted.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him or her within the receiving state any criminal charge, or he or she should be suspected of having committed within such state a criminal offense, the probationer or parolee he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

Section 1692. Section 950.03, Florida Statutes, is amended to read:

950.03 County jailers to receive United States prisoners.—The keeper of the jail in each county within this state shall receive into his or her custody any prisoner who may be committed to the keeper's his charge under the authority of the United States and shall safely keep each prisoner according to the warrant or precept for such commitment until he or she is discharged by due course of law of the United States.

Section 1693. Section 950.04, Florida Statutes, is amended to read:

950.04 Penalty for neglect of duty in keeping prisoners of the United States.—The keeper of each jail shall be subject to the same penalties for any neglect or failure of duty in keeping prisoners who are committed to his or her charge under the authority of the United States as he or she would be subject to under the laws of this state for the like neglect or failure in the case of prisoners committed under the authority of the said laws; provided, the United States pays or causes to be paid to the jailer such fees as the jailer he would be entitled to for like service rendered by virtue of the existing laws of this state during the time such prisoners shall be therein confined; and moreover, supports such of the prisoners as shall be committed for offenses.

Section 1694. Section 950.09, Florida Statutes, is amended to read:

950.09 Malpractice by jailers.—If any jailer shall, by too great duress of imprisonment or otherwise, make or induce a prisoner to disclose and give evidence against some other person, or be guilty of willful inhumanity and oppression to any prisoner under his or her care and custody, the jailer he shall be punished by removal from office and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1695. Section 951.04, Florida Statutes, is amended to read:

951.04 Duty of county commissioners upon discharge of prisoner.—When a prisoner is discharged by reasons of having served his or her sentence, or upon receiving a pardon or parole, he or she shall be furnished transportation, or its equivalent in money, back to the place from which the prisoner

he was sentenced, together with the sum of \$5, where the sentence is for 4 months or more, and the sum of \$3 where the sentence is for a lesser period than 4 months, in addition to his or her transportation, all of which shall be paid out of the general fund of the county in which he or she was convicted, and for the purpose of carrying out the provisions of this chapter, the clerk of the board of county commissioners of each county shall, under the directions of said board, issue a check on said fund with which to pay these amounts to the prisoners being discharged at the time of their release.

Section 1696. Subsection (9) of section 951.062, Florida Statutes, is amended to read:

951.062 Contractual arrangements for operation and maintenance of county detention facilities.—

(9) When a county enters into a contract for the operation and maintenance of county detention facilities, the sheriff of such county shall cease to be liable for actions arising out of the operation and maintenance of the facilities under contract, except as to any acts he or she commits personally.

Section 1697. Section 951.08, Florida Statutes, is amended to read:

951.08 Working prisoner more than 10 hours per day prohibited.—No prisoner shall be compelled to labor more than 10 hours per day nor be subject to punishment for any refusal to labor beyond such limit; provided, that the 10 hours shall be the time embraced from the leaving to the return of the prisoner to his or her place of detention.

Section 1698. Section 951.14, Florida Statutes, is amended to read:

951.14 Failure of person to discharge his or her duty; penalty.—Any person appointed by virtue of the laws of the state relative to working county prisoners on the public road, or to whom duties are assigned in this chapter, who shall fail to make complete return within the time specified therein, or who shall otherwise fail to discharge the duties imposed upon him or her by this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1699. Section 951.15, Florida Statutes, is amended to read:

951.15 Credit on fines and costs.—Every working prisoner shall be entitled to receive, together with subsistence, a credit at the rate of 30 cents per diem, on account of fines and costs adjudged against him or her.

Section 1700. Subsections (2) and (4) of section 951.21, Florida Statutes, are amended to read:

951.21 Gain-time for good conduct for county prisoners.—

(2) For each sustained charge of escape or attempted escape, mutinous conduct, or other serious misconduct, all the commutation which shall have accrued in favor of a county prisoner up to that day shall be forfeited, except that in case of escape if the prisoner voluntarily returns without expense to the state or county then such forfeiture may be set aside by the board of

county commissioners if in its judgment the prisoner's ~~his~~ subsequent conduct entitles him or her thereto.

(4) All or any part of the gain-time earned by a county prisoner and any extra gain-time allowed him or her, if any, shall be subject to forfeiture by the board of county commissioners upon recommendation of the sheriff or warden for violation of any law of the state or any rule or regulation of the board or institution.

Section 1701. Paragraphs (a) and (b) of subsection (1) of section 951.231, Florida Statutes, are amended to read:

951.231 County residential probation program.—

(1) Any prisoner who has been sentenced under s. 921.18 to serve a sentence in a county residential probation center as described in s. 951.23 shall:

(a) Reside at the center at all times other than during employment hours and reasonable travel time to and from his or her place of employment, except that supervisory personnel at a county residential probation center may extend the limits of confinement to include, but not be limited to, probation, community control, or other appropriate supervisory techniques.

(b) Seek and obtain employment on an 8-hours-a-day basis and retain employment throughout the period of time he or she is housed at the center.

Section 1702. Paragraph (a) of subsection (2), paragraphs (a), (b), and (c) of subsection (3), and subsections (4) and (5) of section 951.24, Florida Statutes, are amended to read:

951.24 Extend the limits of confinement for county prisoners.—

(2)(a) Whenever punishment by imprisonment in the county jail is prescribed, the sentencing court, in its discretion, may at any time during the sentence consider granting the privilege to the prisoner to leave the confines of the jail or county facility during necessary and reasonable hours, subject to the rules and regulations prescribed by the court, to work at paid employment, conduct his or her own business or profession, or participate in an educational or vocational training program, while continuing as an inmate of the county facility in which he or she shall be confined except during the period of his or her authorized release.

(3)(a) The wages or salary of prisoners employed under this program may be disbursed by the sheriff pursuant to court order for the following purposes in the order listed:

1. Board of the prisoner.
2. Necessary travel expense to and from work and other necessary incidental expenses of the prisoner.
3. Support of the prisoner's legal dependents.

4. Payment, either in full or ratable, of the prisoner's obligations acknowledged by him or her in writing or which have been reduced to judgment.

5. The balance to the prisoner upon discharge from his or her sentence, or until an order of the court is entered declaring that the prisoner has left lawful confinement, declaring that the balance remaining is forfeited, and directing the sheriff to deposit the funds in the general fund of the county to be spent for general purposes.

(b) The sheriff may collect from a prisoner the wages or salary earned pursuant to this program. The sheriff He shall deposit the same in a trust checking account and shall keep a ledger showing the status of the account of each prisoner. Such wages and salaries shall not be subject to garnishment in the hands of either the employer or the sheriff during the prisoner's sentence and shall be disbursed only as provided in this section.

(c) Every prisoner gainfully employed is liable for the cost of his or her board in the jail as fixed by the county. The sheriff shall charge the prisoner's his account, if he or she has one, for such board. If the prisoner is gainfully self-employed he or she shall deposit with the sheriff an amount determined by the court sufficient to accomplish the provisions of subparagraphs 1. through 5. of paragraph (a), in default of which his or her privileges under this section are automatically forfeited.

(4) Any prisoner who willfully fails to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement shall be deemed an escapee from custody and shall be subject to punishment as prescribed by law.

(5) Exchange for the purpose of work-release of county prisoners among other counties of the state that have implemented work-release programs is hereby authorized, with the concurrence of the sheriffs of the involved counties. For the purpose of this subsection, upon exchange, the prisoner shall be deemed a prisoner of the county where confined unless or until he or she is removed from extended confinement status. Prisoners from other jurisdictions, serving lawful sentences, may also be received into a county work-release program as above provided.

Section 1703. Subsection (4) of section 958.045, Florida Statutes, is amended to read:

958.045 Youthful offender basic training program.—

(4) Upon admittance to the department, an educational and substance abuse assessment shall be performed on each youthful offender. Upon admittance to the basic training program, each offender shall have a full substance abuse assessment to determine the offender's need for substance abuse treatment. The educational assessment shall be accomplished through the aid of the Test of Adult Basic Education or any other testing instrument approved by the Department of Education, as appropriate. Each offender who has not obtained a high school diploma shall be enrolled in an adult education program designed to aid the offender in improving his or her

academic skills and earning a high school diploma. Further assessments of the prior vocational skills and future career education shall be provided to the offender. A periodic evaluation shall be made to assess the progress of each offender, and upon completion of the basic training program the assessment and information from the department's record of each offender shall be transferred to the appropriate community residential program.

Section 1704. Section 958.07, Florida Statutes, is amended to read:

958.07 Presentence report; access by defendant.—The defendant is entitled to an opportunity to present to the court facts which would materially affect the decision of the court to adjudicate the defendant a youthful offender. The defendant, his or her attorney, and the state shall be entitled to inspect all factual material contained in the comprehensive presentence report or diagnostic reports prepared or received by the department. The court may withhold from disclosure to the defendant and his or her attorney sources of information which have been obtained through a promise of confidentiality. In all cases in which parts of the report are not disclosed, the court shall state for the record the reasons for its action and shall inform the defendant and his or her attorney that information has not been disclosed.

Section 1705. Subsection (1) of section 958.09, Florida Statutes, is amended to read:

958.09 Extension of limits of confinement.—

(1) The department shall adopt rules permitting the extension of the limits of the place of confinement of a youthful offender when there is reasonable cause to believe that the youthful offender he will honor the trust placed in him or her. The department may authorize a youthful offender, under prescribed conditions and following investigation and approval by the department which shall maintain a written record of such action, to leave the place of his or her confinement for a prescribed period of time:

(a) To visit a designated place or places for the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released; to otherwise aid in the correction of the youthful offender; or for another compelling reason consistent with the public interest and to return to the same or another institution or facility designated by the department; or

(b) To work at paid employment, participate in an educational or a training program, or voluntarily serve a public or nonprofit agency or a public service program in the community; provided, that the youthful offender shall be confined except during the hours of his or her employment, education, training, or service and while traveling thereto and therefrom.

Section 1706. Subsection (1) of section 958.12, Florida Statutes, is amended to read:

958.12 Participation in certain activities required.—

(1) A youthful offender shall be required to participate in work assignments, and in vocational, academic, counseling, and other rehabilitative programs in accordance with this section, including, but not limited to:

(a) All youthful offenders may be required, as appropriate, to participate in:

1. Reception and orientation.
2. Evaluation, needs assessment, and classification.
3. Educational programs.
4. Vocational and job training.
5. Life and socialization skills training, including anger/aggression control.
6. Prerelease orientation and planning.
7. Appropriate transition services.

(b) In addition to the requirements in paragraph (a), the department shall make available:

1. Religious services and counseling.
2. Social services.
3. Substance abuse treatment and counseling.
4. Psychological and psychiatric services.
5. Library services.
6. Medical and dental health care.
7. Athletic, recreational, and leisure time activities.
8. Mail and visiting privileges.

Income derived by a youthful offender from participation in such activities may be used, in part, to defray a portion of the costs of his or her incarceration or supervision; to satisfy preexisting obligations; to pay fines, counseling fees, or other costs lawfully imposed; or to pay restitution to the victim of the crime for which the youthful offender has been convicted in an amount determined by the sentencing court. Any such income not used for such reasons or not used as provided in s. 946.513 or s. 958.09 shall be placed in a bank account for use by the youthful offender upon his or her release.

Section 1707. Subsection (2) of section 958.13, Florida Statutes, is amended to read:

958.13 Sealing, expunction, and dissemination of records.—

(2) Nothing in this section shall be construed as prohibiting a youthful offender or his or her attorney from discovery of records or information as otherwise authorized by law or required by the state or the federal constitution.

Section 1708. Section 958.14, Florida Statutes, is amended to read:

958.14 Violation of probation or community control program.—A violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions of s. 948.06(1). However, no youthful offender shall be committed to the custody of the department for a substantive violation for a period longer than the maximum sentence for the offense for which he or she was found guilty, with credit for time served while incarcerated, or for a technical or nonsubstantive violation for a period longer than 6 years or for a period longer than the maximum sentence for the offense for which he or she was found guilty, whichever is less, with credit for time served while incarcerated.

Section 1709. Paragraph (c) of subsection (2) of section 960.002, Florida Statutes, is amended to read:

960.002 Direct-support organization to assist victims of adult and juvenile crime.—

(2) The contract must provide for:

(c) Certification by the Governor or the Governor's ~~his~~ designee, after conducting an annual financial and performance review, that the direct-support organization is operating in compliance with the terms of the contract and in a manner consistent with the goals of the Legislature in providing assistance to victims of adult and juvenile crime and in the best interest of the state;

Section 1710. Paragraph (k) of subsection (2) of section 960.05, Florida Statutes, is amended to read:

960.05 Crime Victims' Services Office.—

(2) The Crime Victims' Services Office is established for the following purposes:

(k) To request from the state attorney or from the law enforcement agencies involved such investigation and data as will enable the department to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his or her own injury or death.

Section 1711. Paragraph (d) of subsection (1) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(1) Except as provided in subsection (2), the following persons shall be eligible for awards pursuant to this chapter:

(d) Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.

Section 1712. Subsection (1) of section 960.07, Florida Statutes, is amended to read:

960.07 Filing of claims for compensation.—

(1) A claim for compensation may be filed by a person eligible for compensation as provided in s. 960.065 or, if such person is a minor, by his or her parent or guardian or, if the person entitled to make a claim is mentally incompetent, by the person's his guardian or such other individual authorized to administer his or her estate.

Section 1713. Subsection (1) of section 960.17, Florida Statutes, is amended to read:

960.17 Award constitutes debt owed to state.—

(1) Any payment of benefits to, or on behalf of, a victim or other claimant under this chapter creates a debt due and owing to the state by any person found, in a civil, criminal, or juvenile court proceeding in which he or she is a party, to have committed such criminal act. Such payment shall create an obligation of restitution in accordance with s. 775.089.

Section 1714. Subsections (2) and (3) of section 607.0502, Florida Statutes (1996 Supplement), are amended to read:

607.0502 Change of registered office or registered agent; resignation of registered agent.—

(2) Any registered agent may resign his or her agency appointment by signing and delivering for filing with the Department of State a statement of resignation and mailing a copy of such statement to the corporation at its principal office address shown in its most recent annual report or, if none, filed in the articles of incorporation or other most recently filed document. The statement of resignation shall state that a copy of such statement has been mailed to the corporation at the address so stated. The agency is terminated as of the 31st day after the date on which the statement was filed and unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

(3) If a registered agent changes his or her business name or business address, he or she may change such name or address and the address of the registered office of any corporation for which he or she is the registered agent by:

(a) Notifying all such corporations in writing of the change,

(b) Signing (either manually or in facsimile) and delivering to the Department of State for filing a statement that substantially complies with the requirements of paragraphs (1)(a) through (f), setting forth the names of all such corporations represented by the registered agent, and

(c) Reciting that each corporation has been notified of the change.

Section 1715. Paragraph (a) of subsection (1) of section 616.252, Florida Statutes (1996 Supplement), is amended to read:

616.252 Florida State Fair Authority; membership; number, terms, compensation.—

(1)(a) The authority shall be composed of 21 members. The Commissioner of Agriculture, or her or his designee, shall serve as a voting member. There shall also be a member who is the member of the Board of County Commissioners of Hillsborough County representing the county commission district in which the Florida State Fairgrounds is located, who shall serve as a voting member. The Commissioner of Agriculture shall appoint each other member of the authority. Each member appointed by the Commissioner of Agriculture shall serve at the pleasure of the Commissioner of Agriculture. The term of each member appointed by the Commissioner of Agriculture shall be 4 years, except, to provide staggered terms, 9 of the members shall be initially appointed for a 2-year term and 10 of the members shall be initially appointed for a 3-year term. Members may be appointed for more than one term. Any vacancy shall be filled for the remainder of the unexpired term pursuant to the method provided in this section for appointment. Six of the members may be from Hillsborough County. The Commissioner of Agriculture shall appoint and set the compensation of an executive director. The executive director shall serve at the pleasure of the Commissioner of Agriculture.

Section 1716. Subsections (2) and (3) of section 617.0502, Florida Statutes (1996 Supplement), are amended to read:

617.0502 Change of registered office or registered agent; resignation of registered agent.—

(2) Any registered agent may resign his or her agency appointment by signing and delivering for filing with the Department of State a statement of resignation and mailing a copy of such statement to the corporation at its principal office address shown in its most recent annual report or, if none, filed in the articles of incorporation or other most recently filed document. The statement of resignation shall state that a copy of such statement has been mailed to the corporation at the address so stated. The agency is terminated as of the 31st day after the date on which the statement was filed and unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

(3) If a registered agent changes his or her business name or business address, he or she may change such name or address and the address of the registered office of any corporation for which he or she is the registered agent by:

(a) Notifying all such corporations in writing of the change;

(b) Signing (either manually or in facsimile) and delivering to the Department of State for filing a statement that substantially complies with the requirements of paragraphs (1)(a)-(f), setting forth the names of all such corporations represented by the registered agent; and

(c) Reciting that each corporation has been notified of the change.

Section 1717. Subsection (3) of section 617.2103, Florida Statutes (1996 Supplement), is amended to read:

617.2103 Exemptions for certain corporations.—

(3) As to such corporations which are exempt from ss. 617.1601, 617.1602, 617.1603, 617.1604, and 617.1605, the following shall apply:

(a) Each such corporation shall keep as permanent records correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors. If the corporation has members entitled to vote, it must keep at its registered office in this state a copy of its articles of incorporation and its bylaws and any amendments thereto and a record of the names and addresses of such members in alphabetical order. All books and records of such a corporation shall be kept in written form or in another form capable of conversion into written form within a reasonable time and may be inspected by any member, or her or his agent or attorney, for any proper purpose at any reasonable time.

(b) If a member resorts to an action or proceeding to enforce the rights of members provided in this subsection and if the member prevails in such action or proceeding, the court shall allow such member the cost of her or his action or proceeding, including reasonable attorney's fees.

Section 1718. Subsections (6) and (7) of section 617.306, Florida Statutes (1996 Supplement), are amended to read:

617.306 Associations; meetings of members; voting and election procedures; amendments.—

(6) PROXY VOTING.—The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy. To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

(7) ELECTIONS.—Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association shall be eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.

Section 1719. Paragraph (a) of subsection (1) and paragraph (f) of subsection (4) of section 624.310, Florida Statutes (1996 Supplement), are amended to read:

624.310 Enforcement; cease and desist orders; removal of certain persons; fines.—

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

(a) “Affiliated party” means any person who directs or participates in the conduct of the affairs of a licensee and who is:

1. A director, officer, employee, trustee, committee member, or controlling stockholder of a licensee or a subsidiary or service corporation of the licensee, other than a controlling stockholder which is a holding company, or an agent of a licensee or a subsidiary or service corporation of the licensee;

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

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

4. An independent contractor who:

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

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

(I) Constitutes a violation of the insurance code or a lawful rule or order of the department; and

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

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

(4) REMOVAL OF AFFILIATED PARTIES BY THE DEPARTMENT.—

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

2. Whenever any affiliated party is charged with a felony in a state or federal court or with the equivalent of a felony in the courts of any foreign country with which the United States maintains diplomatic relations, and the charge alleges violation of any law involving fraud, theft, or moral turpitude, the department may enter an emergency order suspending the

affiliated party or restricting or prohibiting participation by the affiliated party in the affairs of the particular licensee or of any other licensee upon service of the order upon the licensee and the affiliated party charged. The order shall contain notice of opportunity for a hearing pursuant to ss. 120.569 and 120.57, where the affiliated party may request a postsuspension hearing to show that continued service to or participation in the affairs of the licensee does not pose a threat to the interests of the licensee's policyholders or creditors and does not threaten to impair public confidence in the licensee. In accordance with applicable departmental rules, the department shall notify the affiliated party whether the order suspending or prohibiting the person from participation in the affairs of a licensee will be rescinded or otherwise modified. The emergency order remains in effect, unless otherwise modified by the department, until the criminal charge is disposed of. The acquittal of the person charged, or the final, unappealed dismissal of all charges against the person, dissolves the emergency order, but does not prohibit the department from instituting proceedings under paragraph (a). If the person charged is convicted or pleads guilty or nolo contendere, whether or not an adjudication of guilt is entered by the court, the emergency order shall become final.

Section 1720. Paragraph (b) of subsection (4) of section 624.311, Florida Statutes (1996 Supplement), is amended to read:

624.311 Records; reproductions; destruction.—

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

(b) Agent, solicitor, adjuster, and similar license files, including license files of the Division of State Fire Marshal, over 2 years old; except that the department shall preserve by reproduction or otherwise a copy of the original records upon the basis of which each such licensee qualified for her or his initial license, except a competency examination, and of any disciplinary proceeding affecting the licensee;

Section 1721. Subsection (5) of section 624.319, Florida Statutes (1996 Supplement), is amended to read:

624.319 Examination and investigation reports.—

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

Section 1722. Paragraph (a) of subsection (4) of section 624.91, Florida Statutes (1996 Supplement), is amended to read:

624.91 The Florida Healthy Kids Corporation Act.—

(4) BOARD OF DIRECTORS.—

(a) The Florida Healthy Kids Corporation shall operate subject to the supervision and approval of a board of directors chaired by the Insurance Commissioner or her or his designee, and composed of 12 other members selected for 3-year terms of office as follows:

1. One member appointed by the Commissioner of Education from among three persons nominated by the Florida Association of School Administrators;

2. One member appointed by the Commissioner of Education from among three persons nominated by the Florida Association of School Boards;

3. One member appointed by the Commissioner of Education from the Office of School Health Programs of the Florida Department of Education;

4. One member appointed by the Governor from among three members nominated by the Florida Pediatric Society;

5. One member, appointed by the Governor, who represents the Children's Medical Services Program;

6. One member appointed by the Insurance Commissioner from among three members nominated by the Florida Hospital Association;

7. Two members, appointed by the Insurance Commissioner, who are representatives of authorized health care insurers or health maintenance organizations;

8. One member, appointed by the Insurance Commissioner, who represents the Institute for Child Health Policy;

9. One member, appointed by the Governor, from among three members nominated by the Florida Academy of Family Physicians;

10. One member, appointed by the Governor, who represents the Agency for Health Care Administration; and

11. The State Health Officer or her or his designee.

In order to provide for staggered terms, the initial term of the members appointed under subparagraphs 1., 4., and 6. shall be for 2 years and the initial term of the members appointed under subparagraphs 2., 5., 8., and 10. shall be for 4 years.

Section 1723. Paragraph (j) of subsection (3), subsection (5), and paragraph (c) of subsection (6) of section 626.2815, Florida Statutes (1996 Supplement), are amended to read:

626.2815 Continuing education required; application; exceptions; requirements; penalties.—

(3)

(j) A nonresident who must complete continuing education requirements in his or her home state may use ~~the~~ his home state requirements to meet this state's continuing education requirements as well, if the resident's state recognizes reciprocity with this state's continuing education requirements. A nonresident whose home state does not have a continuing education requirement but is licensed for the same class of business in another state which does have a continuing education requirement may comply with this section by furnishing proof of compliance with the other state's requirement if that state has a reciprocal agreement with this state relative to continuing education. A nonresident whose home state does not have such continuing education requirements, and who is not licensed as a nonresident agent in a state that has continuing education requirements and reciprocates with this state, must meet the continuing education requirements of this state.

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

(6)

(c) The members of the board shall serve at the pleasure of the Insurance Commissioner and Treasurer. Each board member shall be entitled to reimbursement for expenses pursuant to s. 112.061. The board shall designate one member as chair ~~chairman~~. The board shall meet at the call of the chair or the Insurance Commissioner and Treasurer.

Section 1724. Subsection (4) of section 626.521, Florida Statutes (1996 Supplement), is amended to read:

626.521 Character, credit reports.—

(4) Each person who for the first time in this state is applying and qualifying for a license as a reinsurance intermediary shall file with her or his application for license a full, detailed credit and character report for the 5-year period immediately prior to the date of application for license, made by an established and reputable independent reporting service, relative to the individual if a partnership or sole proprietorship, or the officers if a corporation or other legal entity.

Section 1725. Subsections (2) and (5) of section 626.601, Florida Statutes (1996 Supplement), are amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

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

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

Section 1726. Subsection (3) of section 626.9571, Florida Statutes (1996 Supplement), is amended to read:

626.9571 Defined practices; hearings, witnesses, appearances, production of books and service of process.—

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

Section 1727. Subsection (1) of section 626.9581, Florida Statutes (1996 Supplement), is amended to read:

626.9581 Cease and desist and penalty orders.—After the hearing provided in s. 626.9571, the department shall enter a final order in accordance with s. 120.569. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of insurance, the department shall also issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of insurance. Further, if the act or practice is a violation of s. 626.9541 or s. 626.9551, the department may, at its discretion, order any one or more of the following:

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

Section 1728. Subsections (5) and (6) of section 626.988, Florida Statutes (1996 Supplement), are amended to read:

626.988 Financial institutions; agents and solicitors prohibited from employment; exceptions.—

(5) Notwithstanding any provision of this section, the Department of Insurance shall permit the continued operation under the same ownership and control of all financial institution agencies which were in existence and engaged in insurance agency activities as of April 2, 1974. To make possible

such continuation, the Department of Insurance may license agents and solicitors who are otherwise qualified, as successors to those agents and solicitors who are exempt from the provisions of this section and their successors, for so long as the specified financial institution agency continues to function as it was constituted on April 2, 1974. However, no agent or solicitor so licensed under this section shall be permitted to be employed, or controlled to any degree, directly or indirectly, by any financial institution agency except the particular agency for which he or she was so licensed as a successor for the purposes of this section.

(6) This section shall not prevent an agent or solicitor from serving as an officer or director of a financial institution, provided he or she conducts all of his or her insurance activities free of ownership or control of the financial institution and provided further that the financial institution does not participate directly or indirectly in the earnings from his or her insurance activities.

Section 1729. Subsection (1) and paragraph (b) of subsection (4) of section 626.989, Florida Statutes (1996 Supplement), are amended to read:

626.989 Division of Insurance Fraud; definition; investigative, subpoena powers; protection from civil liability; reports to division; division investigator's power to execute warrants and make arrests.—

(1) For the purposes of this section, a person commits a “fraudulent insurance act” if the person ~~he~~ knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, self-insurer, self-insurance fund, servicing corporation, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a claim for payment or other benefit pursuant to any insurance policy, which the person ~~he~~ knows to contain materially false information concerning any fact material thereto or if the person ~~he~~ conceals, for the purpose of misleading another, information concerning any fact material thereto.

(4)

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

Section 1730. Subsection (1) and paragraph (b) of subsection (5) of section 626.99, Florida Statutes (1996 Supplement), are amended to read:

626.99 Life insurance solicitation.—

(1) PURPOSE.—The purpose of this section is to require insurers to deliver to purchasers of life insurance information which will improve the buyer's ability to select the most appropriate plan of life insurance for his

or her needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration, and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance. This section does not prohibit an insurer from using additional material which is not in violation of this chapter or any other statute or regulation.

(5) GENERAL RULES RELATING TO SOLICITATION.—

(b) An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance agent and shall inform the prospective purchaser of the full name of the insurance company which the agent he is representing. In sales situations in which an agent is not involved, the insurer shall identify its full name.

Section 1731. Subparagraph 5. of paragraph (c) of subsection (6) of section 627.351, Florida Statutes (1996 Supplement), as amended by section 2 of chapter 96-377, Laws of Florida, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) RESIDENTIAL PROPERTY AND CASUALTY JOINT UNDERWRITING ASSOCIATION.—

(c) The plan of operation of the association:

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. With respect to personal lines residential risks, if the risk is able to obtain an offer from an authorized insurer to insure the risk at its approved rate under either a standard policy including wind coverage or a basic policy including wind coverage, the risk is not eligible for any policy issued by the association. In the event that the risk accepts the offer of coverage through the market assistance plan, if the producing agent who submitted the application to the plan is not currently appointed by the insurer, the insurer shall either appoint the agent to service the risk or, if the insurer places the coverage through a new agent, require the new agent who then writes the policy to pay not less than 50 percent of his or her first year's commission to the producing agent who submitted the application to the plan, except that if the new agent is an employee or exclusive agent of the insurer, the new agent shall pay a policy fee of \$50 to the producing agent in lieu of splitting the commission. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the association; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The association shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

b. With respect to commercial lines residential risks, if the risk is able to obtain an offer to insure the risk under a policy including wind coverage

from an authorized insurer at its approved rate or from a surplus lines insurer at no more than 25 percent above the association rate, the risk is not eligible for any policy issued by the association; however, an offer from a surplus lines insurer does not disqualify a condominium association, cooperative, or homeowners' association from eligibility for coverage by the association. In the event that the risk accepts the offer of coverage through the market assistance plan, if the producing agent who submitted the application to the plan is not currently appointed by the insurer, the insurer shall either appoint the agent to service the risk or, if the insurer places the coverage through a new agent, require the new agent who then writes the policy to pay not less than 50 percent of his or her first year's commission to the producing agent who submitted the application to the plan, except that if the new agent is an employee or exclusive agent of the insurer, the new agent shall pay a policy fee of \$50 to the producing agent in lieu of splitting the commission. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the association. After December 31, 1996, an offer from a surplus lines insurer does not disqualify an applicant from obtaining coverage from the association. This subparagraph does not require the association to provide wind coverage or hurricane coverage in any area in which such coverage is available through the Florida Windstorm Underwriting Association.

Section 1732. Paragraph (b) of subsection (2), paragraph (a) of subsection (3), paragraphs (c) and (i) of subsection (4), paragraph (b) of subsection (5), and paragraph (c) of subsection (6), as amended by section 8 of chapter 96-194, Laws of Florida, of section 627.351, Florida Statutes (1996 Supplement), are amended to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers licensed to transact property insurance on a direct basis in this state to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage. The commissioner shall promulgate rules which provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties.

2.a. All insurers required to be members of such plan shall participate in its writings, expenses, profits, and losses. Such gross participation shall be in the proportion that the net direct premiums of each member written on property in this state during the preceding calendar year bear to the

aggregate net direct premiums of all members of the plan written on property in this state during the preceding calendar year. The commissioner, after review of annual statements, other reports, and any other statistics which he or she deems necessary, shall certify to the plan the aggregate net direct premiums written on property in this state by all members. The plan of operation shall provide that one additional domestic member of the board of directors be elected by the domestic companies of this state on the basis of cumulative weighted voting based on the net written premiums of domestic companies in this state. Any such plan shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from apportionment. A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

b. Assessments to pay deficits in the plan under this subparagraph shall be included as an appropriate factor in the making of rates as provided in s. 627.3512.

c. The Legislature finds that the potential for unlimited deficit assessments under this subparagraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the plan was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for covering any deficits of the plan; however, it is also the intent of the Legislature to provide a means by which assessment liabilities may be amortized over a period of years.

d.(I) When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for property insurance as defined in s. 624.404 for all insurers licensed to transact property insurance on a direct basis in this state, the association shall levy an assessment on such insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (II).

(II) Upon a determination by the board of governors that a deficit exceeds the amount that will be recovered through regular assessments of insurers, the board shall levy, after verification by the department, emergency assessments to be collected by insurers, including joint underwriting associations, upon issuance or renewal of policies in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance as defined in s. 624.404, as determined by the board and verified by the department. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business for the

prior year. The board may pledge the proceeds of the emergency assessments under this sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. Emergency assessments collected under this subparagraph are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

(III) Each insurer's share of the total assessment under this subparagraph shall be in the proportion that the insurer's direct written premium for property insurance as defined in s. 624.404 for the year preceding the assessment bears to the aggregate statewide direct written premium for property insurance as defined in s. 624.404 for that year.

e. The governing body of any unit of local government, any residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the plan, for the purpose of defraying deficits of the plan. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the plan and insurers responsible for apportionment of plan losses. The unit of local government shall enter into such contracts with the plan as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the plan from assessments under this subparagraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of \$20 million or less writing 25 percent of its total country-wide property insurance premiums in this state may petition the department, within 90 days of the effective date of chapter 76-96, Laws of Florida, and thereafter within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a company in

any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses in the aggregate which exceeds \$50 million after payment of available plan funds in any calendar year. The plan shall provide that, if the department determines that any assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger or impair the solvency of the member insurer. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in subparagraph 2.

5. The plan may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses. The plan shall provide for windstorm coverage on residential properties in limits up to \$10 million for commercial lines residential risks and up to \$1 million for personal lines residential risks. If coverage with the association is sought for a residential risk valued in excess of these limits, coverage shall be available to the risk up to the replacement cost or actual cash value of the property, at the option of the insured, if coverage for the risk cannot be located in the authorized market. The association must accept a commercial lines residential risk with limits above \$10 million or a personal lines residential risk with limits above \$1 million if coverage is not available in the authorized market. The association may write coverage above the limits specified in this subparagraph with or without facultative or other reinsurance coverage, as the association determines appropriate.

6.a. The plan may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, or a nonprofit mutual company which may be empowered, among other things, to borrow money by issuing bonds or by incurring other indebtedness and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan may authorize all actions necessary to facilitate the issuance of bonds, including the pledging of assessments or other revenues.

b. The entity created under this subparagraph, or any entity formed for the purposes of subparagraph 2., may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, rights, premiums, contractual rights, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The entity may accumulate reserves and retain surpluses as of the end of any association year to provide for the payment of losses incurred by the association during that year or any future year. The plan shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida,

to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

7. On such coverage, an agent's remuneration shall be that amount of money payable to the agent ~~him~~ by the terms of his or her contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that company.

(3) POLITICAL SUBDIVISION; CASUALTY INSURANCE RISK APPORTIONMENT.—

(a) The department shall, after consultation with the casualty insurers licensed in this state, adopt a plan or plans for the equitable apportionment among them of casualty insurance coverage which may be afforded political subdivisions which are in good faith entitled to, but are unable to, procure such coverage through the voluntary market at standard rates or through a statutorily approved plan authorized by the department. The department may adopt a joint underwriting plan which shall provide for one or more designated insurers able and willing to provide policyholder and claims service, including the issuance of insurance policies, to act on behalf of all other insurers required to participate in the joint underwriting plan. Any joint underwriting plan adopted shall provide for the equitable apportionment of any profits realized, or of losses and expenses incurred, among participating insurers. The plan shall include, but shall not be limited to:

1. Rules for the classification of risks and rates which reflect the past loss experience and prospective loss experience in different geographic areas.
2. A rating plan which reasonably reflects the prior claims experience of the insureds.
3. Excess coverage by insurers if the Insurance Commissioner, in his or her discretion, requires such coverage by insurers participating in the joint underwriting plan.

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

(c) The Joint Underwriting Association shall operate subject to the supervision and approval of a board of governors consisting of representatives of five of the insurers participating in the Joint Underwriting Association, an attorney to be named by The Florida Bar, a physician to be named by the Florida Medical Association, a dentist to be named by the Florida Dental Association, and a hospital representative to be named by the Florida Hospital Association. The board of governors shall choose, during the first meeting of the board after June 30 of each year, one of its members to serve as chair ~~chairman~~ of the board and another member to serve as vice chair ~~chairman~~ of the board. There shall be no liability on the part of, and no cause of action

of any nature shall arise against, any member insurer, self-insurer, or its agents or employees, the Joint Underwriting Association or its agents or employees, members of the board of governors, or the department or its representatives for any action taken by them in the performance of their powers and duties under this subsection.

(i) The manager of the plan or the manager's ~~his~~ assistant is the agent for service of process for the plan.

(5) PROPERTY AND CASUALTY INSURANCE RISK APPORTIONMENT.—The department shall adopt by rule a joint underwriting plan to equitably apportion among insurers authorized in this state to write property insurance as defined in s. 624.604 or casualty insurance as defined in s. 624.605, the underwriting of one or more classes of property insurance or casualty insurance, except for the types of insurance that are included within property insurance or casualty insurance for which an equitable apportionment plan, assigned risk plan, or joint underwriting plan is authorized under s. 627.311 or subsection (1), subsection (2), subsection (3), subsection (4), or subsection (6) and except for risks eligible for flood insurance written through the federal flood insurance program to persons with risks eligible under subparagraph (a)1. and who are in good faith entitled to, but are unable to, obtain such property or casualty insurance coverage, including excess coverage, through the voluntary market. For purposes of this subsection, an adequate level of coverage means that coverage which is required by state law or by responsible or prudent business practices. The Joint Underwriting Association shall not be required to provide coverage for any type of risk for which there are no insurers providing similar coverage in this state. The department may designate one or more participating insurers who agree to provide policyholder and claims service, including the issuance of policies, on behalf of the participating insurers.

(b) Rates used by the Joint Underwriting Association shall be actuarially sound. To the extent applicable, the rate standards set forth in s. 627.062 shall be considered by the department in establishing rates to be used by the joint underwriting plan. The initial rate level shall be determined using the rates, rules, rating plans, and classifications contained in the most current Insurance Services Office (ISO) filing with the department or the filing of other licensed rating organizations with an additional increment of 25 percent of premium. For any type of coverage or classification which lends itself to manual rating for which the Insurance Services Office or another licensed rating organization does not file or publish a rate, the Joint Underwriting Association shall file and use an initial rate based on the average current market rate. The initial rate level for the rate plan shall also be subject to an experience and schedule rating plan which may produce a maximum of 25 percent debits or credits. For any risk which does not lend itself to manual rating and for which no rate has been promulgated under the rate plan, the board shall develop and file with the commissioner, subject to his or her approval, appropriate criteria and factors for rating the individual risk. Such criteria and factors shall include, but not be limited to, loss rating plans, composite rating plans, and unique and unusual risk rating plans. The initial rates required under this paragraph shall be adjusted in conformity with future filings by the Insurance Services Office with the depart-

ment and shall remain in effect until such time as the Joint Underwriting Association has sufficient data as to independently justify an actuarially sound change in such rates.

(6) RESIDENTIAL PROPERTY AND CASUALTY JOINT UNDERWRITING ASSOCIATION.—

(c) The plan of operation of the association:

1. May provide for one or more designated insurers, able and willing to provide policy and claims service, to act on behalf of the association to provide such service. Each licensed agent shall be entitled to indicate the order of preference regarding who will service the business placed by the agent. The association shall adhere to each agent's preferences unless after consideration of other factors in assigning agents, including, but not limited to, servicing capacity and fee arrangements, the association has reason to believe it is in the best interest of the association to make a different assignment.

2. Must provide for adoption of residential property and casualty insurance policy forms, which forms must be approved by the department prior to use. The association shall adopt the following policy forms:

a. Standard personal lines policy forms including wind coverage, which are multiperil policies providing what is generally considered to be full coverage of a residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy.

b. Standard personal lines policy forms without wind coverage, which are the same as the policies described in sub-subparagraph a. except that they do not include wind coverage.

c. Basic personal lines policy forms including wind coverage, which are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which coverage is more limited than the coverage under a standard policy.

d. Basic personal lines policy forms without wind coverage, which are the same as the policies described in sub-subparagraph c. except that they do not include wind coverage.

e. Commercial lines residential policy forms including wind coverage that are generally similar to the basic perils of full coverage obtainable for commercial residential structures in the admitted voluntary market.

f. Commercial lines residential policy forms without wind coverage, which are the same as the policies described in sub-subparagraph e. except that they do not include wind coverage.

3. May provide that the association may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The association shall have the power to borrow funds, by issuing bonds or by incurring other

indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection. The association is authorized to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The association shall have the authority to pledge assessments and other funds available to the association as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the association operate subject to the supervision and approval of a board of governors consisting of 13 individuals, including 1 who is elected as chair ~~chairman~~. The board shall consist of:

a. The insurance consumer advocate appointed under s. 627.0613.

b. Five members designated by the insurance industry.

c. Five consumer representatives appointed by the Insurance Commissioner. Two of the consumer representatives must, at the time of appointment, be holders of policies issued by the association, who are selected with consideration given to reflecting the geographic balance of association policyholders. Two of the consumer members must be individuals who are minority persons as defined in s. 288.703(3). One of the consumer members shall have expertise in the field of mortgage lending.

d. Two representatives of the insurance industry appointed by the Insurance Commissioner. Of the two insurance industry representatives appointed by the Insurance Commissioner, at least one must be an individual who is a minority person as defined in s. 288.703(3).

Any board member may be disapproved or removed and replaced by the commissioner at any time for cause. All board members, including the chair ~~chairman~~, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. With respect to personal lines residential risks, the procedures shall require that the authorized insurer that last provided coverage of the risk shall first be given an opportunity to insure the risk at its approved rate. Upon rejection by such insurer, the risk shall be submitted to the market assistance plan. If the market assistance plan is able to obtain an offer from an authorized insurer to insure the risk at its approved rate under either a standard policy including wind coverage or a basic policy including wind coverage, the risk is not eligible for any policy issued by the association in the event that the risk accepts the offer of coverage, if the producing agent who submitted the application to the plan is not currently appointed by the insurer, the insurer shall either appoint the agent to service the risk or, if

the insurer places the coverage through a new agent, require the new agent who then writes the policy to pay not less than 50 percent of his or her first year's commission to the producing agent who submitted the application to the plan, except that if the new agent is an employee or exclusive agent of the insurer, the new agent shall pay a policy fee of \$50 to the producing agent in lieu of splitting the commission. If the market assistance plan is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the association; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The association shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

b. With respect to commercial lines residential risks, the procedures shall require that the authorized insurer that last provided coverage of the risk shall first be given an opportunity to insure the risk at its approved rate. Upon rejection by such insurer, the risk shall be submitted to the market assistance plan. If the market assistance plan is able to obtain an offer to insure the risk under a policy including wind coverage from an authorized insurer at its approved rate or from a surplus lines insurer at no more than 25 percent above the association rate, the risk is not eligible for any policy issued by the association; however, an offer from a surplus lines insurer does not disqualify a condominium association, cooperative, or homeowners' association from eligibility for coverage by the association in the event that the risk accepts the offer of coverage, if the producing agent who submitted the application to the plan is not currently appointed by the insurer, the insurer shall either appoint the agent to service the risk or, if the insurer places the coverage through a new agent, require the new agent who then writes the policy to pay not less than 50 percent of his or her first year's commission to the producing agent who submitted the application to the plan, except that if the new agent is an employee or exclusive agent of the insurer, the new agent shall pay a policy fee of \$50 to the producing agent in lieu of splitting the commission. If the market assistance plan is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the association. After December 31, 1996, an offer from a surplus lines insurer does not disqualify an applicant from obtaining coverage from the association. This subparagraph does not require the association to provide wind coverage or hurricane coverage in any area in which such coverage is available through the Florida Windstorm Underwriting Association.

6. Must include rules for classifications of risks and rates therefor.

7. Must provide that if premium and investment income attributable to a particular plan year are in excess of projected losses and expenses of the plan attributable to that year, such excess shall be held in surplus. Such surplus shall be available to defray deficits as to future years and shall be used for that purpose prior to assessing member insurers as to any plan year.

8. Must provide objective criteria and procedures to be uniformly applied for all applicants in determining whether an individual risk is so hazardous

as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

- a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and
- b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the association shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the association shall make its best efforts to procure catastrophe reinsurance at reasonable rates, as determined by the board of governors.

10. Must provide that in the event of deficit assessments under sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b., the association shall levy upon association policyholders a market equalization surcharge equal to the percentage assessment attributable to such deficit. Such surcharges, together with projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, assessment proceeds, and any other funds available to the association, may be used to fund lines of credit and other financing mechanisms to the extent available from public or private sources. The purpose of the lines of credit or other financing mechanism is to provide additional resources to assist the association in covering claims and expenses attributable to a catastrophe. Market equalization surcharges under this subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

11. The policies issued by the association must provide that for personal lines residential risks, if the association or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. However, if the risk is located in an area in which Florida Windstorm Underwriting Association coverage is available, such an offer of a standard or basic policy terminates eligibility regardless of whether or not the offer includes wind coverage. Upon termination of eligibility, the association shall provide written notice to the policyholder stating that the association policy shall be canceled as of 30 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this subparagraph.

12. Association policies and applications must include a notice that the association policy could, under this section or s. 627.3511, be replaced with a policy issued by an admitted insurer that does not provide coverage identical to the coverage provided by the association. The notice shall also specify that acceptance of association coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

Section 1733. Paragraph (b) of subsection (1) and subsection (2) of section 627.4147, Florida Statutes (1996 Supplement), are amended to read:

627.4147 Medical malpractice insurance contracts.—

(1) In addition to any other requirements imposed by law, each self-insurance policy as authorized under s. 627.357 or insurance policy providing coverage for claims arising out of the rendering of, or the failure to render, medical care or services, including those of the Florida Medical Malpractice Joint Underwriting Association, shall include:

(b)1. Except as provided in subparagraph 2., a clause authorizing the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if the offer is within the policy limits. It is against public policy for any insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration made pursuant to s. 766.106, settlement offer, or offer of judgment, when such offer is within the policy limits. However, any offer of admission of liability, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interests of the insured.

2.a. With respect to dentists licensed under chapter 466, a clause clearly stating whether or not the insured has the exclusive right to veto any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment if the offer is within policy limits. An insurer or self-insurer shall not make or conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if such offer is outside the policy limits. However, any offer for admission of liability and for arbitration made under s. 766.106, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interest of the insured.

b. If the policy contains a clause stating the insured does not have the exclusive right to veto any offer or admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment, the insurer or self-insurer shall provide to the insured or the insured's ~~his~~ legal representative by certified mail, return receipt requested, a copy of the final offer of admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment and at the same time such offer is provided to the claimant. A copy of any final agreement reached between the insurer and claimant shall also be provided to the insurer or his or her legal representative by certified return receipt requested not more than 10 days after affecting such agreement.

(2) Each insurer covered by this section may require the insured to be a member in good standing, i.e., not subject to expulsion or suspension, of a duly recognized state or local professional society of health care providers which maintains a medical review committee. No professional society shall expel or suspend a member solely because he or she participates in a health maintenance organization licensed under part I of chapter 641.

Section 1734. Paragraph (b) of subsection (5) of section 627.6692, Florida Statutes (1996 Supplement), is amended to read:

627.6692 Florida Health Insurance Coverage Continuation Act.—

(5) CONTINUATION OF COVERAGE UNDER GROUP HEALTH PLANS.—

(b) Coverage under the group health plan must, at a minimum, extend for the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

1. The date that is 18 months after the date on which the qualified beneficiary's benefits under the group health plan would otherwise have ceased because of a qualifying event.

2. The date on which coverage ceases under the group health plan by reason of a failure to make timely payment of the applicable premium with respect to any qualified beneficiary.

3. The date a qualified beneficiary becomes covered under any other group health plan, if the qualified beneficiary will not be subject to any exclusion or limitation because of a preexisting condition of that beneficiary.

4. The date a qualified beneficiary is entitled to benefits under either part A or part B of Title XVIII of the Social Security Act (Medicare).

5. The date on which the employer terminates coverage under the group health plan for all employees. If the employer terminates coverage under the group health plan for all employees and if such group health plan is replaced by similar coverage under another group health plan, the qualified beneficiary shall have the right to become covered under the new group health plan for the balance of the period that she or he would have remained covered under the prior group health plan. A qualified beneficiary is to be treated in the same manner as an active beneficiary for whom a qualifying event has not taken place.

Section 1735. Paragraph (h) of subsection (5) and paragraphs (b) and (g) of subsection (11) of section 627.6699, Florida Statutes (1996 Supplement), are amended to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(h) All health benefit plans issued under this section must comply with the following conditions:

1. In determining whether a preexisting condition provision applies to an eligible employee or dependent, credit must be given for the time the person was covered under qualifying previous coverage if the previous coverage was continuous to a date not more than 30 days prior to the effective date of the new coverage, exclusive of any applicable waiting period under the plan.

4. Late enrollees may be excluded from coverage only for the greater of 18 months or the period of an 18-month preexisting condition exclusion; however, if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months after the effective date of coverage. For employers who have fewer than three employees, a late enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by qualifying previous coverage continually to a date not more than 30 days before the effective date of his or her new coverage.

3. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

4. In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group insurance plan or an ERISA qualified self-insurance plan in determining whether the applicable percentage of participation is met.

5. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

6. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

7. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

8. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be offered to each small employer's eligible employees and their dependents.

(11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.—

(b)1. The program shall operate subject to the supervision and control of the board.

2. Until December 31, 1993, the board shall consist of the commissioner or his or her designee, who shall serve as chair ~~chairman~~, and seven additional members appointed by the commissioner on or before May 1, 1992, as follows:

a. One member shall be a representative of the largest health insurer in the state, as determined by market share as of December 31, 1991.

b. One member shall be a representative of the largest health maintenance organization in the state, as determined by market share as of December 31, 1991.

c. Three members shall be selected from a list of individuals recommended by the Health Insurance Association of America.

d. Two members shall be selected from a list of individuals recommended by the Florida Insurance Council.

The terms of members appointed under this subparagraph expire on December 31, 1993. The appointment of a member under this subparagraph does not preclude the commissioner from appointing the same person to serve as a member under subparagraph 3.

3. Beginning January 1, 1994, the board shall consist of the commissioner or his or her designee, who shall serve as chair ~~chairman~~, and eight additional members who are representatives of carriers and are appointed by the commissioner and serve as follows:

a. The commissioner shall include representatives of small employer carriers subject to assessment under this subsection. If two or more carriers elect to be risk-assuming carriers, the membership must include at least two representatives of risk-assuming carriers; if one carrier is risk-assuming, one member must be a representative of such carrier. At least one member must be a carrier who is subject to the assessments, but is not a small employer carrier. Subject to such restrictions, at least five members shall be selected from individuals recommended by small employer carriers pursuant to procedures provided by rule of the department.

b. A member appointed under this subparagraph shall serve a term of 4 years and shall continue in office until the member's successor takes office, except that, in order to provide for staggered terms, the commissioner shall designate two of the initial appointees under this subparagraph to serve terms of 2 years and shall designate three of the initial appointees under this subparagraph to serve terms of 3 years.

4. The commissioner may remove a member for cause.

5. Vacancies on the board shall be filled in the same manner as the original appointment for the unexpired portion of the term.

6. The commissioner may require an entity that recommends persons for appointment to submit additional lists of recommended appointees.

(g) A reinsuring carrier may reinsure with the program coverage of an eligible employee of a small employer, or any dependent of such an employee, subject to each of the following provisions:

1. With respect to a standard and basic health care plan, the program must reinsure the level of coverage provided; and, with respect to any other plan, the program must reinsure the coverage up to, but not exceeding, the level of coverage provided under the standard and basic health care plan.

2. Except in the case of a late enrollee, a reinsuring carrier may reinsure an eligible employee or dependent within 60 days after the commencement of the coverage of the small employer. A newly employed eligible employee or dependent of a small employer may be reinsured within 60 days after the commencement of his or her coverage.

3. A small employer carrier may reinsure an entire employer group within 60 days after the commencement of the group's coverage under the plan. The carrier may choose to reinsure newly eligible employees and dependents of the reinsured group pursuant to subparagraph 1.

4. The program may not reimburse a participating carrier with respect to the claims of a reinsured employee or dependent until the carrier has paid incurred claims of at least \$5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier shall be responsible for 10 percent of the next \$50,000 and 5 percent of the next \$100,000 of incurred claims during a calendar year and the program shall reinsure the remainder.

5. The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "Consumer Price Index for All Urban Consumers" of the Bureau of Labor Statistics of the Department of Labor, unless the board proposes and the department approves a lower adjustment factor.

6. A small employer carrier may terminate reinsurance for all reinsured employees or dependents on any plan anniversary.

7. The premium rate charged for reinsurance by the program to a health maintenance organization that is approved by the Secretary of Health and Human Services as a federally qualified health maintenance organization pursuant to 42 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to requirements that limit the amount of risk that may be ceded to the program, which requirements are more restrictive than subparagraph 4., shall be reduced by an amount equal to that portion of the risk, if any, which exceeds the amount set forth in subparagraph 4. which may not be ceded to the program.

8. The board may consider adjustments to the premium rates charged for reinsurance by the program for carriers that use effective cost containment measures, including high-cost case management, as defined by the board.

9. A reinsuring carrier shall apply its case-management and claims-handling techniques, including, but not limited to, utilization review, indi-

vidual case management, preferred provider provisions, other managed care provisions or methods of operation, consistently with both reinsured business and nonreinsured business.

Section 1736. Paragraph (c) of subsection (1) of section 627.701, Florida Statutes (1996 Supplement), is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(1) A property insurer may issue an insurance policy or contract covering either real or personal property in this state which contains provisions requiring the insured to be liable as a coinsurer with the insurer issuing the policy for any part of the loss or damage by covered peril to the property described in the policy only if:

(c) The rate for the insurance with or without the coinsurance clause is furnished the insured upon his or her request.

Section 1737. Paragraph (c) of subsection (1), paragraph (a) of subsection (4), and subsection (6) of section 627.728, Florida Statutes (1996 Supplement), are amended to read:

627.728 Cancellations; nonrenewals.—

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

(c) “Nonpayment of premium” means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. “Nonpayment of premium” also means the failure of a financial institution to honor an insurance applicant’s check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer; further, if the dishonored check represents the initial premium payment, the contract shall be void ab initio unless the nonpayment is cured within 5 days after actual notice by certified mail is received by the applicant, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full.

(4)(a) No insurer shall fail to renew a policy unless it mails or delivers to the named insured, at the address shown in the policy, and to the named insured’s insurance agent at her or his business address, at least 45 days’ advance notice of its intention not to renew; and the reasons for refusal to renew must accompany such notice. This subsection does not apply:

1. If the insurer has manifested its willingness to renew; or
2. In case of nonpayment of premium.

Notwithstanding the failure of an insurer to comply with this subsection, the policy shall terminate on the effective date of any other automobile liability

insurance policy procured by the insured with respect to any automobile designated in both policies. Unless a written explanation for refusal to renew accompanies the notice of intention not to renew, the policy shall remain in full force and effect.

(6) When a policy is canceled, other than for nonpayment of premium, or in the event of failure to renew a policy to which subsection (4) applies, the insurer shall notify the named insured of her or his possible eligibility for insurance through the Automobile Joint Underwriting Association. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew and shall state that such notice of availability of the Automobile Joint Underwriting Association is given pursuant to this section.

Section 1738. Paragraphs (a) and (b) of subsection (1), paragraph (b) of subsection (2), subsection (3), paragraph (d) of subsection (4), subsection (5), paragraphs (b) and (c) of subsection (6), and paragraph (b) of subsection (7) of section 627.736, Florida Statutes (1996 Supplement), are amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.—

(1) REQUIRED BENEFITS.—Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to the provisions of subsection (2) and paragraph (4)(d), to a limit of \$10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.—Eighty percent of all reasonable expenses for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and necessary ambulance, hospital, and nursing services. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his or her religious beliefs.

(b) Disability benefits.—Sixty percent of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision shall be paid not less than every 2 weeks.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and no such insurer shall

require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such required benefits. Insurers may not require that property damage liability insurance in an amount greater than \$10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. Any insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice shall be deemed to have violated part X of chapter 626, and such violation shall constitute an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance; and any such insurer committing such violation shall be subject to the penalties afforded in such part, as well as those which may be afforded elsewhere in the insurance code.

(2) **AUTHORIZED EXCLUSIONS.**—Any insurer may exclude benefits:

(b) To any injured person, if such person's conduct contributed to his or her injury under any of the following circumstances:

1. Causing injury to himself or herself intentionally; or
2. Being injured while committing a felony.

Whenever an insured is charged with conduct as set forth in subparagraph 2., the 30-day payment provision of paragraph (4)(b) shall be held in abeyance, and the insurer shall withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prossed or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(3) **INSURED'S RIGHTS TO RECOVERY OF SPECIAL DAMAGES IN TORT CLAIMS.**—No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party who is entitled to bring suit under the provisions of ss. 627.730-627.7405, or his or her legal representative, shall have no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his or her special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.

(4) **BENEFITS; WHEN DUE.**—Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the

Department of Health and Rehabilitative Services provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of the Medicaid program.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state, but within the United States of America or its territories or possessions or Canada, by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1. or subparagraph 2., provided the relative at the time of the accident is domiciled in the owner's household and is not himself or herself the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself or herself:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405; or

b. Entitled to personal injury benefits from the insurer of the owner or owners of such a motor vehicle.

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for the products, services, and accommodations rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment or his or her guardian has countersigned the invoice, bill, or claim form approved by the Department of Insurance upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, or accommodations in cases involving no insurance, provided that charges for cephalic thermograms and peripheral thermograms shall not exceed the maximum reimbursement allowance for such procedures as set forth in the applicable fee schedule established pursuant to s. 440.13. Every insurer shall include a provision in its policy for personal

injury protection benefits for binding arbitration of any claims dispute involving medical benefits arising between the insurer and any person providing medical services or supplies if that person has agreed to accept assignment of personal injury protection benefits. The provision shall specify that the provisions of chapter 682 relating to arbitration shall apply. The prevailing party shall be entitled to attorney's fees and costs.

(6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—

(b) Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for such treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or her or its records regarding such history, condition, treatment, dates, and costs of treatment. Such sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation of the physician-patient privilege or invasion of the right of privacy shall be permitted against any physician, hospital, clinic, or other medical institution complying with the provisions of this section. The person requesting such records and such sworn statement shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his or her history, condition, or treatment, or the dates and costs of such treatment, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON; REPORTS.—

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him or her a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out the examining physician's findings and conclu-

sions in detail. After such request and delivery, the party causing the examination to be made is entitled, upon request, to receive from the person examined every written report available to him or her or his or her representative concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered, or by taking the deposition of the examiner, the person examined waives any privilege he or she may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined, or may thereafter examine, him or her in respect to the same mental or physical condition. If a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits.

Section 1739. Paragraphs (a), (c), and (d) of subsection (1) of section 627.848, Florida Statutes (1996 Supplement), are amended to read:

627.848 Cancellation of insurance contract upon default.—

(1) When a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract listed in the agreement, the insurance contract shall not be canceled unless cancellation is in accordance with the following provisions:

(a)1. Not less than 10 days' written notice shall be mailed to each insured shown on the premium finance agreement of the intent of the premium finance company to cancel her or his insurance contract unless the defaulted installment payment is received within 10 days.

2. After expiration of such period, the premium finance company shall mail to the insurer a request for cancellation, specifying the effective date of cancellation and the unpaid premium balance due under the finance contract, and shall mail a copy thereof to the insured at her or his last known address as shown on the premium finance agreement.

(c) Upon receipt of a copy of the cancellation notice by the insurer or insurers, the insurance contract shall be canceled as of the date specified in the cancellation notice with the same force and effect as if the notice of cancellation had been submitted by the insured herself or himself, whether or not the premium finance company has complied with the notice requirement of this subsection, without requiring any further notice to the insured or the return of the insurance contract.

(d) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel her or his insurance contract unless she or he or the insurer first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, a mortgagee, an individual, or a person designated to receive such notice for such governmental agency, insurance carrier, or individual shall apply when cancellation is effected under the provisions of this section. The insurer, in accordance with such prescribed notice when it is required to give such notice in behalf of itself or the insured, shall give notice to such governmental agency, person, mortgagee, or individual; and it shall determine and calculate the effective date

of cancellation from the day it receives the copy of the notice of cancellation from the premium finance company.

Section 1740. Paragraph (b) of subsection (6) and subsection (8) of section 628.461, Florida Statutes (1996 Supplement), are amended to read:

628.461 Acquisition of controlling stock.—

(6) The department may disapprove any acquisition subject to the provisions of this section by any person or any affiliated person of such person who:

(b) In violation of an order of the department issued pursuant to subsection (10), fails to divest himself or herself of any stock obtained in violation of this section, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(8) No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this section is valid. Any acquisition of any security contrary to the provisions of this section is void. Upon the petition of the domestic stock insurer or controlling company, the circuit court for the county in which the principal office of such domestic stock insurer is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this section. There shall be a private right of action in favor of the domestic stock insurer or controlling company to enforce the provisions of this section. No demand upon the department that it perform its functions shall be required as a prerequisite to any suit by the domestic stock insurer or controlling company against any other person, and in no case shall the department be deemed a necessary party to any action by such domestic stock insurer or controlling company to enforce the provisions of this section. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this section, or who files such a statement, shall be deemed to have thereby designated the Insurance Commissioner and Treasurer, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this section, and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the department and to the jurisdiction of the circuit court.

Section 1741. Paragraph (b) of subsection (7) and subsection (9) of section 628.4615, Florida Statutes (1996 Supplement), are amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(7) The department may disapprove any acquisition subject to the provisions of this section by any person or any affiliated person of such person who:

(b) In violation of an order of the department issued pursuant to subsection (11), fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any

direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(9) No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this section is valid. Any acquisition contrary to the provisions of this section is void. Upon the petition of the specialty insurer or the controlling company, the circuit court for the county in which the principal office of the specialty insurer is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this section. There shall be a private right of action in favor of the specialty insurer or controlling company to enforce the provisions of this section. No demand upon the department that it perform its functions shall be required as a prerequisite to any suit by the specialty insurer or controlling company against any other person, and in no case shall the department be deemed a necessary party to any action by the specialty insurer or controlling company to enforce the provisions of this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, shall be deemed to have thereby designated the Insurance Commissioner and Treasurer, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this section and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the department and to the jurisdiction of the circuit court.

Section 1742. Section 633.111, Florida Statutes (1996 Supplement), is amended to read:

633.111 State Fire Marshal to keep records of fires; reports of agents.— The State Fire Marshal shall keep in her or his office a record of all fires occurring in this state upon which she or he had caused an investigation to be made and all facts concerning the same. These records, obtained or prepared by the State Fire Marshal pursuant to her or his investigation, include documents, papers, letters, maps, diagrams, tapes, photographs, films, sound recordings, and evidence. These records are confidential and exempt from the provisions of s. 119.07(1) until the investigation is completed or ceases to be active. For purposes of this section, an investigation is considered "active" while such investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the department or other administrative or law enforcement agency. Further, these documents, papers, letters, maps, diagrams, tapes, photographs, films, sound recordings, and evidence relative to the subject of an investigation shall not be subject to subpoena until the investigation is completed or ceases to be active, unless the State Fire Marshal consents. These records shall be made daily from the reports furnished the State Fire Marshal ~~him~~ by her or his agents or others. Whenever the State Fire Marshal releases an investigative report, any person requesting a copy of the report shall pay in advance, and the State Fire Marshal shall collect in advance, notwithstanding the provisions of s. 624.501(20)(a) and (b), a fee of \$10 for the copy of the

report, which fee shall be deposited into the Insurance Commissioner's Regulatory Trust Fund. The State Fire Marshal may release the report without charge to any state attorney or to any law enforcement agency or fire department assisting in the investigation.

Section 1743. Subsection (1) of section 633.161, Florida Statutes (1996 Supplement), is amended to read:

633.161 Cease and desist orders; orders to correct hazardous conditions; orders to vacate; violation; penalties.—

(1) If it is determined by the Department of Insurance that a violation specified in this subsection exists, the State Fire Marshal or her or his deputy may issue and deliver to the person committing the violation an order to cease and desist from such violation, to correct any hazardous condition, to preclude occupancy of the affected building or structure, or to vacate the premises of the affected building or structure. Such violations are:

(a) Except as set forth in paragraph (b), a violation of any provision of this chapter, of any rule adopted pursuant thereto, of any applicable uniform firesafety standard adopted pursuant to s. 633.022 which is not adequately addressed by any alternative requirements adopted on a local level, or of any minimum firesafety standard adopted pursuant to s. 394.879.

(b) A substantial violation of an applicable minimum firesafety standard adopted pursuant to s. 633.025 which is not reasonably addressed by any alternative requirement imposed at the local level, or an unreasonable interpretation of an applicable minimum firesafety standard, and which violation or interpretation clearly constitutes a danger to lifesafety.

(c) A building or structure which is in a dilapidated condition and as a result thereof creates a danger to life, safety, or property.

(d) A building or structure which contains explosive matter or flammable liquids or gases constituting a danger to life, safety, or property.

Section 1744. Subsections (2) and (7) of section 633.175, Florida Statutes (1996 Supplement), are amended to read:

633.175 Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.—

(2) If an insurance company has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means, the company shall notify the State Fire Marshal and shall furnish her or him with all material acquired by the company during the course of its investigation.

(7) Any official described in subsection (1) may be required to testify as to any information in her or his possession regarding an insurance loss in any civil action in which any person seeks recovery under a policy against an insurance company for an insurance loss, subject to the provisions of subsection (5).

Section 1745. Paragraphs (d) and (e) of subsection (5), paragraphs (d) and (e) of subsection (7), and subsection (9) of section 633.445, Florida Statutes (1996 Supplement), are amended to read:

633.445 State Fire Marshal Scholarship Grant Program.—

(5)

(d) The council shall elect annually a chair ~~chairman~~ from its membership.

(e) The council shall meet at the State Fire College, or such other site as the State Fire Marshal or chair ~~chairman~~ designates, at the call of the State Fire Marshal, the chair ~~chairman~~, or at the request of a majority of the members.

(7) The criteria and procedures for establishing standards of eligibility shall be recommended by the council to the Department of Insurance. The council shall recommend to the Department of Insurance a rating system upon which to base the approval of scholarship grants. However, to be eligible to receive a scholarship pursuant to this section, an applicant must:

(d) Have the firefighter unit by whom the applicant ~~he~~ is employed or for which the applicant ~~he~~ is a volunteer, recommend her or him and certify that, because of financial need, the scholarship is necessary for her or him to attend the State Fire College; and

(e) Agree that she or he intends to return to duty with the firefighter unit by whom she or he was recommended, or, by agreement with such unit, that she or he will remain in some capacity relating to the firefighting profession for a period of at least 1 year.

(9) After selection and approval of an applicant for a grant by the council, payment in the applicant's name for scholarship funds shall be transmitted from the Fire College Trust Fund by the Comptroller upon receipt of vouchers authorized by the State Fire Marshal. If a recipient terminates her or his enrollment during the course of her or his curriculum at the State Fire College, unless excused by the council and allowed to resume training at a later time, any unused portion of the scholarship funds shall be refunded to the trust fund. A recipient who terminates her or his enrollment is not liable for any portion of a scholarship.

Section 1746. Subsection (1) of section 634.031, Florida Statutes (1996 Supplement), is amended to read:

634.031 License required.—

(1) A person may not transact, administer, or market, attempt to transact, administer, or market, or in any manner hold itself out as transacting, administering, or marketing the service agreement business, on behalf of herself or himself or itself, in this state or from this state unless it is authorized to do so under a subsisting license issued to it by the department. The company shall pay to the department an annual nonrefundable license fee for the license.

Section 1747. Subsections (1) and (2) of section 634.201, Florida Statutes (1996 Supplement), are amended to read:

634.201 Refusal, suspension, or revocation of license or appointment of salespersons ~~salesmen~~.—

(1) If any salesperson ~~salesman~~ is convicted by a court of a violation of this part or of an applicable provision of the Florida Insurance Code, the license and appointment of the individual shall thereby be deemed to be immediately revoked.

(2) If after an investigation, or upon other evidence, the department has reason to believe that there may exist any one or more grounds therefor, as the grounds are specified in ss. 634.181 and 634.191, the department may suspend, revoke, or refuse to renew or continue the license or appointment of any salesperson ~~salesman~~.

Section 1748. Subsection (3) of section 634.338, Florida Statutes (1996 Supplement), is amended to read:

634.338 Prohibited practices; hearings, witnesses, appearances, production of books, and service of process.—

(3) A statement of charges, notice, or order under this part may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at her or his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

Section 1749. Subsection (1) of section 634.339, Florida Statutes (1996 Supplement), is amended to read:

634.339 Cease and desist and penalty orders.—After the hearing provided for in s. 634.338, the department shall enter a final order in accordance with s. 120.569. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of home warranty business, the department also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of home warranty business. Further, the department may, at its discretion, order any one or more of the following penalties:

(1) The suspension or revocation of such person's license, or eligibility for any license, if the person ~~he~~ knew, or reasonably should have known, that she or he was in violation of this part.

Section 1750. Subsection (3) of section 634.438, Florida Statutes (1996 Supplement), is amended to read:

634.438 Prohibited practices; hearings, witnesses, appearances, production of books, and service of process.—

(3) A statement of charges, notice, or order under this part may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at her or his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

Section 1751. Subsection (1) of section 634.439, Florida Statutes (1996 Supplement), is amended to read:

634.439 Cease and desist and penalty orders.—After the hearing provided for in s. 634.438, the department shall enter a final order in accordance with s. 120.569. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of service warranty business, the department also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of service warranty business. Further, the department may, at its discretion, order any one or more of the following penalties:

(1) The suspension or revocation of such person's license, or eligibility for any license, if the person ~~he~~ knew, or reasonably should have known, she or he was in violation of this part.

Section 1752. Subsection (10) of section 641.31, Florida Statutes (1996 Supplement), is amended to read:

641.31 Health maintenance contracts.—

(10) No alteration of any written application for any health maintenance contract shall be made by any person other than the applicant without his or her written consent, except that insertions may be made by the health maintenance organization, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

Section 1753. Paragraph (b) of subsection (1) and subsection (3) of section 641.386, Florida Statutes (1996 Supplement), are amended to read:

641.386 Agent licensing and appointment required; exceptions.—

(1) With respect to a health maintenance contract, no person shall, unless licensed and appointed as a health insurance agent in accordance with the applicable provisions of the Florida Insurance Code:

(b) Engage or hold himself or herself out as engaging in the business of analyzing or abstracting health maintenance contracts or of counseling or

advising or giving opinions to persons relative to such contracts other than as a consulting actuary advising a health maintenance organization or as a salaried bona fide full-time employee so counseling and advising his or her employer relative to coverage for the employer and his or her employees.

(3) An examination, license, or appointment is not required of any regular salaried officer or employee of a health maintenance organization who devotes substantially all of his or her services to activities other than the solicitation of health maintenance organization contracts from the public and who receives no commission or other compensation directly dependent upon the solicitation of such contracts. This exemption does not apply to the solicitation of Medicaid eligible subscribers.

Section 1754. Subsection (3) of section 641.3907, Florida Statutes (1996 Supplement), is amended to read:

641.3907 Defined unfair practices; hearings, witnesses, appearances, production of books, and service of process.—

(3) Statements of charges, notices, and orders under this part may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person, entity, or health maintenance organization affected by the statement, notice, order, or other process at her or his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as aforesaid, shall be proof of service of the same.

Section 1755. Subsection (3) of section 641.445, Florida Statutes (1996 Supplement), is amended to read:

641.445 Defined practices; hearings, witnesses, appearances, production of books, and service of process.—

(3) A statement of charges, notice, or order under this part may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy of the statement of charges, notice, or order to the person, entity, or prepaid health clinic affected by the statement, notice, or order or other process at his or her or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, or order or other process, setting forth the manner of the service, is proof of such service; and the return postcard receipt for such statement, notice, or order or other process, certified and mailed as provided in this subsection, is proof of the service of the statement, notice, or order or other process.

Section 1756. Section 648.36, Florida Statutes (1996 Supplement), is amended to read:

648.36 Bail bond agent's records.—Every bail bond agent must maintain in his or her office such records of bail bonds executed or countersigned by

him or her to enable the public to obtain all necessary information concerning such bail bonds for at least 3 years after the liability of the surety has been terminated. Such records shall be open to examination, inspection, and photographic reproduction by the department or an authorized representative of the insurer or managing general agent, or agents of the department, at all times, and the department may at any time require the licensee to furnish to it, in such manner or form as it requires, any information concerning the bail bond business of such licensee.

Section 1757. Paragraphs (a) and (d) of subsection (1) of section 648.44, Florida Statutes (1996 Supplement), are amended to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent, temporary bail bond agent, or runner may not:

(a) Suggest or advise the employment of, or name for employment, any particular attorney to represent his or her principal.

(d) Pay a fee or rebate or give or promise anything of value to a jailer, police officer ~~police~~man, peace officer, or committing magistrate or any other person who has power to arrest or to hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof.

Section 1758. Paragraph (a) of subsection (6) of section 655.037, Florida Statutes (1996 Supplement), is amended to read:

655.037 Removal of a financial institution-affiliated party by the department.—

(6)(a) The chief executive officer, or the person holding the equivalent office, of a state financial institution shall promptly notify the department if he or she has actual knowledge that any financial institution-affiliated party is charged with a felony in a state or federal court.

Section 1759. Paragraph (e) of subsection (2) of section 658.295, Florida Statutes (1996 Supplement), is amended to read:

658.295 Interstate banking.—

(2) DEFINITIONS.—For purposes of this section, the term:

(e) “Banking office” means any bank, branch of a bank, or other office at which a bank accepts deposits, provided the term does not include any:

1. Unmanned automatic teller machine, point-of-sale terminal, or other similar unmanned electronic banking facility at which deposits may be accepted;

2. Office located outside the United States; or

3. Loan production office, representative office, or other office at which deposits are not accepted.

Section 1760. Subsection (4) of section 658.33, Florida Statutes (1996 Supplement), is amended to read:

658.33 Directors, number, qualifications; officers.—

(4) Each director, upon assuming office, must acknowledge that he or she is familiar with his or her responsibilities as a director and that he or she will diligently and honestly administer the affairs of the bank or trust company and will not knowingly violate, or willfully permit to be violated, any of the provisions of the financial institutions codes or pertinent rules of the department. The signed copy of such oath must be filed with the department within 30 days after election.

Section 1761. Paragraph (b) of subsection (1) of section 697.04, Florida Statutes (1996 Supplement), is amended to read:

697.04 Future advances may be secured.—

(1)

(b) The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount which must be specified in such mortgage or other instrument, plus interest thereon; except that the mortgagor or her or his successor in title is authorized to file for record a notice limiting the maximum principal amount that may be so secured to an amount not less than the amount actually advanced at the time of such filing, provided a copy of such filing is also sent by certified mail to the mortgagee and, in the case of an open-end or revolving credit agreement, the mortgagor surrenders to the mortgagee all credit cards, checks, or other devices used to obtain further advances at the time of filing the notice, which notice shall be recorded and shall be effective from the date of filing. Notwithstanding the foregoing, any increase in the principal balance as a result of negative amortization or deferred interest shall be secured by the mortgage; and any disbursements made for the payment of taxes, levies, or insurance on the property covered by the lien, and any advances or disbursements made under a construction loan agreement referred to in a mortgage to enable completion of the contemplated improvement, with interest on such advances or disbursements, are secured by the mortgage or other instrument even though the mortgage or other instrument does not provide for future advances, or the advances or disbursements cause the total indebtedness to exceed the face amount stated in the instrument. This subsection does not apply to any mortgages, shipping contracts, or other instruments made and given by naval stores operators and producers to secure existing loans and future advances by naval stores factors.

Section 1762. Subsection (1) of section 705.18, Florida Statutes (1996 Supplement), is amended to read:

705.18 Disposal of personal property lost or abandoned on university or community college campuses or certain public-use airports; disposition of proceeds from sale thereof.—

(1) Whenever any lost or abandoned personal property shall be found on a campus of an institution in the State University System or a campus of a state-supported community college, or on premises owned or controlled by the operator of a public-use airport having regularly scheduled international passenger service, the president of the institution or the president's ~~his~~ designee or the director of the airport or the director's ~~his~~ designee shall take charge thereof and make a record of the date such property was found. If, within 30 days after such property is found, or a longer period of time as may be deemed appropriate by the president or the director under the circumstances, it is not claimed by the owner, the president or director shall order it sold at public outcry after giving notice of the time and place of sale in a publication of general circulation on the campus of such institution or within the county where the airport is located and written notice to the owner if known. The rightful owner of such property may reclaim same at any time prior to sale.

Section 1763. Section 713.05, Florida Statutes (1996 Supplement), is amended to read:

713.05 Liens of persons in privity.—A materialman or laborer, either of whom is in privity with the owner, or a contractor who complies with the provisions of this part shall, subject to the limitations thereof, have a lien on the real property improved for any money that is owed to him or her for labor, services, materials, or other items required by, or furnished in accordance with, the direct contract and for unpaid finance charges due under the lienor's contract. A materialman or laborer, in privity with the owner, or a contractor shall also have a lien on the owner's real property for any money that is owed to him or her for labor, services, or materials furnished to improve public property if the improvements to the public property are a condition of the permit to improve the owner's real property. No lien under this section shall be acquired until a claim of lien is recorded. A lienor who, as a subcontractor, sub-subcontractor, laborer, or materialman not in privity with the owner, commences to furnish labor, services, or material to an improvement and who thereafter becomes in privity with the owner shall have a lien for any money that is owed to him or her for the labor, services, or materials furnished after he or she becomes in privity with the owner. A lienor may record one claim of lien to cover both his or her work done in privity with the owner and not in privity with the owner. No lienor under this section shall be required to serve a notice to owner as provided in s. 713.06(2). A lienor, except a laborer or materialman, who is in privity with the owner and claims a lien under this section shall furnish the contractor's affidavit required in s. 713.06(3)(d). A contractor may claim a lien for any labor, services, or materials furnished by another lienor for which he or she is obligated to pay the lienor, regardless of the right of the lienor to claim a lien; but, if the lienor claims a valid lien, the contractor shall not recover the amount of the lien recovered by the lienor, and the amount of the contractor's claim of lien may be reduced accordingly by court order. No person shall have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

Section 1764. Subsection (1), paragraphs (a), (b), and (c) of subsection (2), and paragraphs (c), (d), (f), and (g) of subsection (3) of section 713.06, Florida Statutes (1996 Supplement), are amended to read:

713.06 Liens of persons not in privity; proper payments.—

(1) A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, has a lien on the real property improved for any money that is owed to him or her for labor, services, or materials furnished in accordance with his or her contract and with the direct contract and for any unpaid finance charges due under the lienor's contract. A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, also has a lien on the owner's real property for labor, services, or materials furnished to improve public property if the improvement of the public property is furnished in accordance with his or her contract and with the direct contract. The total amount of all liens allowed under this part for furnishing labor, services, or material covered by any certain direct contract must not exceed the amount of the contract price fixed by the direct contract except as provided in subsection (3). No person may have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

(2)(a) All lienors under this section, except laborers, as a prerequisite to perfecting a lien under this chapter and recording a claim of lien, must serve a notice on the owner setting forth the lienor's name and address, a description sufficient for identification of the real property, and the nature of the services or materials furnished or to be furnished. A sub-subcontractor or a materialman to a subcontractor must serve a copy of the notice on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor must serve a copy of the notice to owner on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor shall serve the notice to owner on the subcontractor if the materialman knows the name and address of the subcontractor. The notice must be served before commencing, or not later than 45 days after commencing, to furnish his or her services or materials, but, in any event, before the date of the owner's disbursement of the final payment after the contractor has furnished the affidavit under subparagraph (3)(d)1. The notice must be served regardless of the method of payments by the owner, whether proper or improper, and does not give to the lienor serving the notice any priority over other lienors in the same category; and the failure to serve the notice, or to timely serve it, is a complete defense to enforcement of a lien by any person. The serving of the notice does not dispense with recording the claim of lien. The notice is not a lien, cloud, or encumbrance on the real property nor actual or constructive notice of any of them.

(b) If the owner, in his or her notice of commencement, has designated a person in addition to himself or herself to receive a copy of such lienor's notice, as provided in s. 713.13(1)(b), the lienor shall mail a copy of his or her notice to the person so designated. The failure by the lienor to mail such copy, however, does not invalidate an otherwise valid lien.

(c) The notice must be in substantially the following form:

WARNING TO OWNER: UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.

TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

NOTICE TO OWNER

To ...(Owner's name and address)...

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

...(General description of services or materials)... for the improvement of the real property identified as ...(property description)... under an order given by.....

Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with Section 713.06, Florida Statutes.

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.

PROTECT YOURSELF:

—RECOGNIZE that this Notice to Owner may result in a lien against your property unless all those supplying a Notice to Owner have been paid.

—LEARN more about the Construction Lien Law, Chapter 713, Part I, Florida Statutes, and the meaning of this notice by contacting an attorney or the Florida Department of Business and Professional Regulation.

...(Lienor's Signature)...
...(Lienor's Name)...
...(Lienor's Address)...

Copies to: ...(Those persons listed in Section 713.06(2)(a) and (b), Florida Statutes)...

(3) The owner may make proper payments on the direct contract as to lienors under this section, in the following manner:

(c) When any payment becomes due to the contractor on the direct contract, except the final payment:

1. The owner shall pay or cause to be paid, within the limitations imposed by subparagraph 2., the sum then due to each lienor giving notice prior to the time of the payment. The owner may require, and, in such event, the contractor shall furnish as a prerequisite to requiring payment to himself or herself, an affidavit as prescribed in subparagraph (d)1., on any payment made, or to be made, on a direct contract, but the furnishing of the affidavit shall not relieve the owner of his or her responsibility to pay or cause to be paid all lienors giving notice. The owner shall be under no obligation to any lienor, except laborers, from whom he or she has not received a notice to owner at the time of making a payment.

2. When the payment due is insufficient to pay all bills of lienors giving notice, the owner shall prorate the amount then due under the direct contract among the lienors giving notice pro rata in the manner prescribed in subsection (4). Lienors receiving money shall execute partial releases, as provided in s. 713.20(2), to the extent of the payment received.

3. If any affidavit permitted hereunder recites any outstanding bills for labor, services, or materials, the owner may pay the bills in full direct to the person or firm to which they are due if the balance due on the direct contract at the time the affidavit is given is sufficient to pay the bills and shall deduct the amounts so paid from the balance of payment due the contractor. This subparagraph shall not create any obligation of the owner to pay any person who is not a lienor giving notice.

4. No person furnishing labor or material, or both, who is required to serve a notice under paragraph (2)(a) and who did not serve the notice and whose time for service has expired shall be entitled to be paid by the owner because he or she is listed in an affidavit furnished by the contractor under subparagraph (c)1.

5. If the contract is terminated before completion, the contractor shall comply with subparagraph (d)1.

(d) When the final payment under a direct contract becomes due the contractor:

1. The contractor shall give to the owner an affidavit stating, if that be the fact, that all lienors under his or her direct contract have been paid in full or, if the fact be otherwise, showing the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services, or materials furnished. The contractor shall have no lien or right of action against the owner for labor, services, or materials furnished under the direct contract while in default for not giving the owner the affidavit. The contractor shall execute the affidavit and deliver it to the owner at least 5 days before instituting an action as a prerequisite to the institution of any action to enforce his or her lien under this chapter, even if the final payment has not become due because the contract is terminated for a reason other than completion and regardless of whether the contractor has any lienors working under him or her or not.

2. If the contractor's affidavit required in this subsection recites any outstanding bills for labor, services, or materials, the owner may, after

giving the contractor at least 10 days' written notice, pay such bills in full direct to the person or firm to which they are due, if the balance due on a direct contract at the time the affidavit is given is sufficient to pay them and lienors giving notice, and shall deduct the amounts so paid from the balance due the contractor. Lienors listed in said affidavit not giving notice, whose 45-day notice time has not expired, shall be paid in full or pro rata, as appropriate, from any balance then remaining due the contractor; but no lienor whose notice time has expired shall be paid by the owner or by any other person except the person with whom that lienor has a contract.

3. If the balance due is not sufficient to pay in full all lienors listed in the affidavit and entitled to payment from the owner under this part and other lienors giving notice, the owner shall pay no money to anyone until such time as the contractor has furnished him or her with the difference; however, if the contractor fails to furnish the difference within 10 days from delivery of the affidavit or notice from the owner to the contractor to furnish the affidavit, the owner shall determine the amount due each lienor and shall disburse to them the amounts due from him or her on a direct contract in accordance with the procedure established by subsection (4).

4. The owner shall have the right to rely on the contractor's affidavit given under this paragraph in making the final payment, unless there are lienors giving notice who are not listed in the affidavit. If there are lienors giving notice who are not so listed, the owner may pay such lienors and any persons listed in the affidavit that are entitled to be paid by the owner under subparagraph (d)2. and shall thereupon be discharged of any further responsibility under the direct contract, except for any balance that may be due to the contractor.

5. The owner shall retain the final payment due under the direct contract that shall not be disbursed until the contractor's affidavit under subparagraph (d)1. has been furnished to the owner.

6. When final payment has become due to the contractor and the owner fails to withhold as required by subparagraph (d)5., the property improved shall be subject to the full amount of all valid liens of which the owner has notice at the time the contractor furnishes his or her affidavit.

(f) No contractor shall have any right to require the owner to pay any money to him or her under a direct contract if such money cannot be properly paid by the owner to the contractor in accordance with this section.

(g) Except with written consent of the contractor, before paying any money directly to any lienor except the contractor or any laborer, the owner shall give the contractor at least 10 days' written notice of his or her intention to do so, and the amount he or she proposes to pay each lienor.

Section 1765. Subsections (1), (2), and (3) of section 713.08, Florida Statutes (1996 Supplement), are amended to read:

713.08 Claim of lien.—

(1) For the purpose of perfecting her or his lien under this part, every lienor, including laborers and persons in privity, shall record a claim of lien which shall state:

(a) The name of the lienor and the address where notices or process under this part may be served on the lienor.

(b) The name of the person with whom the lienor contracted or by whom she or he was employed.

(c) The labor, services, or materials furnished and the contract price or value thereof. Materials specially fabricated at a place other than the site of the improvement for incorporation in the improvement but not so incorporated and the contract price or value thereof shall be separately stated in the claim of lien.

(d) A description of the real property sufficient for identification.

(e) The name of the owner.

(f) The time when the first and the last item of labor or service or materials was furnished.

(g) The amount unpaid the lienor for such labor or services or materials and for unpaid finance charges due under the lienor's contract.

(h) If the lien is claimed by a person not in privity with the owner, the date and method of service of the notice to owner. If the lien is claimed by a person not in privity with the contractor or subcontractor, the date and method of service of the copy of the notice on the contractor or subcontractor.

(2) The claim of lien shall be signed and verified by the lienor or her or his agent acquainted with the facts stated therein.

(3) The claim of lien shall be sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of

County of

Before me, the undersigned notary public, personally appeared, who was duly sworn and says that she or he is (the lienor herein) (the agent of the lienor herein), whose address is; and that in accordance with a contract with, lienor furnished labor, services, or materials consisting of on the following described real property in County, Florida:

(Legal description of real property)

owned by of a total value of \$...., of which there remains unpaid \$...., and furnished the first of the items on, 19...., and the last of the items on, 19....; and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on, 19...., by; and (if required) that the lienor served copies of the notice on the contractor on, 19...., by and on the subcontractor,, on, 19...., by

...(Signature)...

Sworn to and subscribed before me this day of, 19.....

...(Notary Public)...

My commission expires:

Section 1766. Paragraphs (a), (b), (d), and (g) of subsection (1) of section 713.13, Florida Statutes (1996 Supplement), are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt pursuant to s. 713.02(5), an owner or the owner's ~~his~~ authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's ~~his~~ interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(b) The owner, at his or her option, may designate a person in addition to himself or herself to receive a copy of the lienor's notice as provided in s. 713.06(2)(b), and if he or she does so, the name and address of such person must be included in the notice of commencement.

(d) A notice of commencement must be in substantially the following form:

Permit No.....

Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3. Owner information:.....

a. Name and address:.....

b. Interest in property:.....

c. Name and address of fee simple titleholder (if other than Owner):.....

4. Contractor: ...(name and address)....

a. Phone number:.....

b. Fax number:....(optional, if service by fax is acceptable).

5. Surety

a. Name and address:.....

b. Phone number:.....

c. Fax number:....(optional, if service by fax is acceptable).

d. Amount of bond: \$.....

6. Lender: ...(name and address)....

a. Phone number:.....

b. Fax number:....(optional, if service by fax is acceptable).

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes: ...(name and address)....

a. Phone number:.....

b. Fax number:....(optional, if service by fax is acceptable).

8. In addition to himself or herself, Owner designates of to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

a. Phone number:.....

b. Fax number:....(optional, if service by fax is acceptable).

9. Expiration date of notice of commencement (the expiration date is 1 year from the date of recording unless a different date is specified)....

...(Signature of Owner)...

Sworn to and subscribed before me this day of, 19.....

...(Notary Public)...

My Commission Expires:.....

(g) The owner must sign the notice of commencement and no one else may be permitted to sign in his or her stead.

Section 1767. Subsections (1), (2), (3), and (4) of section 713.16, Florida Statutes (1996 Supplement), are amended to read:

713.16 Demand for copy of contract and statements of account; form.—

(1) A copy of the contract of a lienor or owner and a statement of the amount due or to become due if fixed or ascertainable thereon must be furnished by any party thereto, upon written demand of an owner or a lienor contracting with or employed by the other party to such contract. If the owner or lienor refuses or neglects to furnish such copy of the contract or such statement, or willfully and falsely states the amount due or to become due if fixed or ascertainable under such contract, any person who suffers any detriment thereby has a cause of action against the person refusing or neglecting to furnish the same or willfully and falsely stating the amount due or to become due for his or her damages sustained thereby. The information contained in such copy or statement furnished pursuant to such written demand is binding upon the owner or lienor furnishing it unless actual notice of any modification is given to the person demanding the copy or statement before such person acts in good faith in reliance on it. The person demanding such documents must pay for the reproduction thereof; and, if such person fails or refuses to do so, he or she is entitled only to inspect such documents at reasonable times and places.

(2) The owner may serve in writing a demand of any lienor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to owner served by such lienor. The failure or refusal to furnish the statement does not deprive the lienor of his or her lien if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to owner. The failure or refusal to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person so failing or refusing to furnish such statement of his or her lien. If the owner serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her lien. The negligent inclusion or omission of any information deprives the person of his

or her lien to the extent the owner can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim of lien being enforced through a foreclosure case filed prior to the date the demand for statement is received by the lienor.

(3) A request for sworn statement of account must be in substantially the following form:

REQUEST FOR SWORN STATEMENT OF ACCOUNT

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

To: ...(Lienor's name and address)...

The undersigned hereby demands a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement for the improvement of real property identified as ...(property description)...

...(signature and address of owner)...

...(date of request for sworn statement of account)...

(4) When a contractor has furnished a payment bond pursuant to s. 713.23, he or she may, when an owner makes any payment to the contractor or directly to a lienor, serve a written demand on any other lienor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to contractor served by such lienor. The failure or refusal to furnish the statement does not deprive the lienor of his or her rights under the bond if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her rights under the bond. The negligent inclusion or omission of any information deprives the person of his or her rights under the bond to the extent the contractor can demonstrate prejudice from such

act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim on the bond being enforced in a lawsuit filed prior to the date the demand for statement of account is received by the lienor.

Section 1768. Paragraph (b) of subsection (1) of section 713.18, Florida Statutes (1996 Supplement), is amended to read:

713.18 Manner of serving notices and other instruments.—

(1) Service of notices, claims of lien, affidavits, assignments, and other instruments permitted or required under this part, or copies thereof when so permitted or required, unless otherwise specifically provided in this part, must be made by one of the following methods:

(b) By mailing the same, postage prepaid, by registered or certified mail to the person to be served at her or his last known address and evidence of delivery. If an instrument served by this method to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application is not received, but is returned by the United States Postal Service as being “refused,” “moved, not forwardable,” or “unclaimed,” or is otherwise not delivered or deliverable through no fault of the person serving the item, then service is effective as of the date of mailing.

Section 1769. Subsections (1) and (3) of section 713.20, Florida Statutes (1996 Supplement), are amended to read:

713.20 Waiver or release of liens.—

(1) The acceptance by the lienor of an unsecured note for all or any part of the amount of his or her demand shall not constitute a waiver of his or her lien therefor unless expressly so agreed in writing, nor shall it in any way affect the period for filing the notice under s. 713.06(2), or the claim of lien under s. 713.08.

(3) Any person may at any time waive, release, or satisfy any part of his or her lien under this part, either as to the amount due for labor, services, or materials furnished or for labor, services, or materials furnished through a certain date subject to exceptions specified at the time of release, or as to any part or parcel of the real property.

Section 1770. Subsection (14) of section 717.101, Florida Statutes (1996 Supplement), is amended to read:

717.101 Definitions.—As used in this chapter, unless the context otherwise requires:

(14) “Owner” means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, a claimant, or a payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his or her legal representative.

Section 1771. Subsections (3) and (5) of section 717.117, Florida Statutes (1996 Supplement), are amended to read:

717.117 Report of abandoned property.—

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, he or she shall file with his or her report all known names and addresses of each previous holder of the property.

(5) Not more than 120 days prior to filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at his or her last known address informing him or her that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate.

(b) The claim of the apparent owner is not barred by the statute of limitations.

Section 1772. Paragraph (a) of subsection (5) of section 717.124, Florida Statutes (1996 Supplement), is amended to read:

717.124 Filing of claim with department.—

(5)(a) If a claimant assigns his or her rights to receive payment to an attorney or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with such claimant, the department is authorized to make distribution of property or money in accordance with such assignment.

Section 1773. Paragraph (d) of subsection (2) of section 718.112, Florida Statutes (1996 Supplement), is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) Unit owner meetings.—

1. There shall be an annual meeting of the unit owners. Unless the bylaws provide otherwise, a vacancy on the board of administration caused by the expiration of a director's term shall be filled by electing a new board member, and the election shall be by closed ballot; however, if there is only one candidate for election to fill the vacancy, no election is required. If there is no provision in the bylaws for terms of the members of the board of administration, the terms of all members of the board of administration shall expire upon the election of their successors at the annual meeting. Any

unit owner desiring to be a candidate for board membership shall comply with subparagraph 3.

2. The bylaws shall provide the method of calling meetings of unit owners, including annual meetings. Written notice, which notice must include an agenda, shall be mailed or delivered to each unit owner at least 14 days prior to the annual meeting and shall be posted in a conspicuous place on the condominium property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the condominium property or association property upon which all notices of unit owner meetings shall be posted; however, if there is no condominium property or association property upon which notices can be posted, this requirement does not apply. Unless a unit owner waives in writing the right to receive notice of the annual meeting by mail, the notice of the annual meeting shall be sent by mail to each unit owner. Where a unit is owned by more than one person, the association shall provide notice, for meetings and all other purposes, to that one address which the developer initially identifies for that purpose and thereafter as one or more of the owners of the unit shall so advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered, in accordance with this provision, to each unit owner at the address last furnished to the association.

3. After January 1, 1992, the members of the board of administration shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board of administration, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. Not less than 60 days before a scheduled election, the association shall mail or deliver, whether by separate association mailing or included in another association mailing or delivery including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the association not less than 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 2., the association shall mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8½ inches by 11 inches, which must be furnished by the candidate not less than 35 days before the election, to be included with the mailing of the ballot, with the costs of mailing or delivery and copying to be borne by the association. However, the association has no liability for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with the provisions contained herein, including rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There shall be no

quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of members of the board of administration. No unit owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 718.303. The regular election shall occur on the date of the annual meeting. The provisions of this subparagraph shall not apply to timeshare condominium associations. Notwithstanding the provisions of this subparagraph, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the board.

4. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), shall be made at a duly noticed meeting of unit owners and shall be subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any statute which provides for such action.

5. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any statute.

6. Unit owners shall have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

7. Any unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)3., an association may, by the affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

Section 1774. Paragraph (d) of subsection (1) of section 718.501, Florida Statutes (1996 Supplement), is amended to read:

718.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.—

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the “division” in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto

relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has the following powers and duties:

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, officer, or member of the board of administration, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignee or agent, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant hereto, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. All amounts collected shall be deposited with the Treasurer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of

competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

Section 1775. Paragraphs (d) and (f) of subsection (1) of section 719.106, Florida Statutes (1996 Supplement), are amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(d) Shareholder meetings.—There shall be an annual meeting of the shareholders. All members of the board of administration shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. Any unit owner desiring to be a candidate for board membership shall comply with subparagraph 1. The bylaws shall provide the method for calling meetings, including annual meetings. Written notice, which notice shall incorporate an identification of agenda items, shall be given to each unit owner at least 14 days prior to the annual meeting and shall be posted in a conspicuous place on the cooperative property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notice of unit owner meetings shall be posted. Unless a unit owner waives in writing the right to receive notice of the annual meeting, the notice of the annual meeting shall be sent by mail to each unit owner. An officer of the association shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association, affirming that notices of the association meeting were mailed or hand delivered, in accordance with this provision, to each unit owner at the address last furnished to the association.

1. After January 1, 1992, the board of administration shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board of administration, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise unless otherwise provided in this chapter. Not less than 60 days before a scheduled election, the association shall mail or deliver, whether by separate association mailing or included in another association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the association not less than 40 days before a scheduled election. Together with the written notice and agenda as set forth in this section, the association shall mail a second notice of election to all unit owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8½ inches by 11 inches, which must be furnished by the candidate not

less than 35 days prior to the election, to be included with the mailing of the ballot, with the costs of mailing or delivery and copying to be borne by the association. The association has no liability for the contents of the information sheets provided by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with the provisions contained herein, including rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of members of the board of administration. No unit owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 719.303. The regular election shall occur on the date of the annual meeting. The provisions of this subparagraph shall not apply to timeshare cooperatives. Notwithstanding the provisions of this subparagraph, an election and balloting are not required unless more candidates file a notice of intent to run or are nominated than vacancies exist on the board.

2. Any approval by unit owners called for by this chapter, or the applicable cooperative documents, shall be made at a duly noticed meeting of unit owners and shall be subject to all requirements of this chapter or the applicable cooperative documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable cooperative documents or any Florida statute which provides for the unit owner action.

3. Unit owners may waive notice of specific meetings if allowed by the applicable cooperative documents or any Florida statute.

4. Unit owners shall have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

5. Any unit owner may tape record or videotape meetings of the unit owners subject to reasonable rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)1., an association may, by the affirmative vote of a majority of the total voting interests, provide for a different voting and election procedure in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) Recall of board members.—Subject to the provisions of s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the voting interests to

recall any member of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall shall be effective as provided herein. The board shall duly notice and hold a board meeting within 5 full business days of the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 719.1255. For purposes of this paragraph, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 719.501. Any member so recalled shall deliver to the board any and all records and property of the association in the member's ~~his~~ possession within 5 full business days of the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days of service of an agreement in writing or within 5 full business days of the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board

members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but prior to the recall election.

Section 1776. Paragraph (d) of subsection (1) of section 719.501, Florida Statutes (1996 Supplement), is amended to read:

719.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.—

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the “division” in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units. In performing its duties, the division shall have the following powers and duties:

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against a developer, association, officer, or member of the board, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, officer, or member of the board, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignees or agents, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant to this chapter, or a final order of the division. The term “willfully and knowingly” means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division, and that the officer or board member refused

to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. All amounts collected shall be deposited with the Treasurer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

Section 1777. Subsection (4) of section 721.071, Florida Statutes (1996 Supplement), is amended to read:

721.071 Trade secrets.—

(4) In the event of any administrative or circuit court proceeding relating to any third party attempt to compel disclosure of filed material or to challenge the confidentiality thereof, the developer or other person who filed the material shall be granted leave to appear as *amicus curiae* before the administrative law judge or the court. The prevailing party in any such attempt to compel disclosure shall be entitled to recover his or her reasonable attorney's fees and costs from the losing party.

Section 1778. Subsection (8) of section 723.031, Florida Statutes (1996 Supplement), is amended to read:

723.031 Mobile home lot rental agreements.—

(8) If a mobile home owner has deposited or advanced money on a rental agreement as security for performance of the rental agreement, which money is held in excess of 3 months by the mobile home park owner or his or her agent, such deposit shall be handled pursuant to s. 83.49.

Section 1779. Subsection (1) of section 741.01, Florida Statutes (1996 Supplement), is amended to read:

741.01 County court judge or clerk of the circuit court to issue marriage license; fee.—

(1) Every marriage license shall be issued by a county court judge or clerk of the circuit court under his or her hand and seal. The county court judge or clerk of the circuit court shall issue such license, upon application for the

license, if there appears to be no impediment to the marriage. The county court judge or clerk of the circuit court shall collect and receive a fee of \$2 for receiving the application for the issuance of a marriage license.

Section 1780. Subsection (8) of section 744.102, Florida Statutes (1996 Supplement), is amended to read:

744.102 Definitions.—As used in this chapter, the term:

(8) “Guardian” means a person who has been appointed by the court to act on behalf of a ward’s person or property, or both.

(a) “Limited guardian” means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.

(b) “Plenary guardian” means a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

Section 1781. Paragraph (b) of subsection (1) and subsections (2) and (3) of section 744.309, Florida Statutes (1996 Supplement), are amended to read:

744.309 Who may be appointed guardian of a resident ward.—

(1) RESIDENT.—

(b) No judge shall act as guardian after this law becomes effective, except when he or she is related to the ward by blood, marriage, or adoption, or has maintained a close relationship with the ward or the ward’s family, and serves without compensation.

(2) NONRESIDENT.—A nonresident of the state may serve as guardian of a resident ward if he or she is:

(a) Related by lineal consanguinity to the ward;

(b) A legally adopted child or adoptive parent of the ward;

(c) A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or

(d) The spouse of a person otherwise qualified under this section.

(3) DISQUALIFIED PERSONS.—No person who has been convicted of a felony or who, from any incapacity or illness, is incapable of discharging the duties of a guardian, or who is otherwise unsuitable to perform the duties of a guardian, shall be appointed to act as guardian. Further, no person who has been judicially determined to have committed abuse or

neglect against a child as defined in s. 39.01(2) and (47), or who has a confirmed report of abuse, neglect, or exploitation which has been uncontested or upheld pursuant to the provisions of ss. 415.104 and 415.1075 shall be appointed to act as a guardian. Except as provided in subsection (5) or subsection (6), a person who provides substantial services to the proposed ward in a professional or business capacity, or a creditor of the proposed ward, may not be appointed guardian and retain that previous professional or business relationship. A person may not be appointed a guardian if he or she is in the employ of any person, agency, government, or corporation that provides service to the proposed ward in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed ward or the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.

Section 1782. Paragraphs (b), (f), (h), and (j) of subsection (1), paragraphs (e) and (g) of subsection (3), and paragraph (b) of subsection (4) of section 744.3215, Florida Statutes (1996 Supplement), are amended to read:

744.3215 Rights of persons determined incapacitated.—

(1) A person who has been determined to be incapacitated retains the right:

(b) To have continuing review of the need for restriction of his or her rights.

(f) To remain as independent as possible, including having his or her preference as to place and standard of living honored, either as he or she expressed or demonstrated his or her preference prior to the determination of his or her incapacity or as he or she currently expresses his or her preference, insofar as such request is reasonable.

(h) To receive prudent financial management for his or her property and to be informed how his or her property is being managed, if he or she has lost the right to manage property.

(j) To be free from discrimination because of his or her incapacity.

(3) Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:

(e) To determine his or her residence.

(g) To make decisions about his or her social environment or other social aspects of his or her life.

(4) Without first obtaining specific authority from the court, as described in s. 744.3725, a guardian may not:

(b) Consent on behalf of the ward to the performance on the ward of any experimental biomedical or behavioral procedure or to the participation by

the ward in any biomedical or behavioral experiment. The court may permit such performance or participation only if:

1. It is of direct benefit to, and is intended to preserve the life of or prevent serious impairment to the mental or physical health of the ward; or
2. It is intended to assist the ward to develop or regain his or her abilities.

Section 1783. Subsection (1), paragraph (a) of subsection (2), paragraphs (a) and (d) of subsection (3), paragraph (b) of subsection (5), and paragraphs (a) and (c) of subsection (6) of section 744.331, Florida Statutes (1996 Supplement), are amended to read:

744.331 Procedures to determine incapacity.—

(1) NOTICE OF PETITION TO DETERMINE INCAPACITY.—Notice of the filing of a petition to determine incapacity and a petition for the appointment of a guardian if any and copies of the petitions must be served on and read to the alleged incapacitated person. The notice and copies of the petitions must also be given to the attorney for the alleged incapacitated person, and served upon all next of kin identified in the petition. The notice must state the time and place of the hearing to inquire into the capacity of the alleged incapacitated person and that an attorney has been appointed to represent the person ~~him~~ and that, if ~~she~~ or he is determined to be incapable of exercising certain rights, a guardian will be appointed to exercise those rights on her or his behalf.

(2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.—

(a) The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court.

(3) EXAMINING COMMITTEE.—

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee must consult with the physician. Members of the examining committee may not be related to or associated with one another or with the petitioner or the person alleged to be totally or partially incapacitated. A member may not be employed by any private or governmental agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged

to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee. Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if she or he is able to communicate.

(d) The committee's written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.

2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.

3. The results of the comprehensive examination and the committee members' assessment of information provided by the attending or family physician, if any.

4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.

5. The signature of each member of the committee.

(5) ADJUDICATORY HEARING.—

(b) The alleged incapacitated person must be present at the adjudicatory hearing, unless waived by the alleged incapacitated person or the person's ~~his~~ attorney or unless good cause can be shown for her or his absence. Determination of good cause rests in the sound discretion of the court.

(6) ORDER DETERMINING INCAPACITY.—If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity. A person is determined to be incapacitated only with respect to those rights specified in the order.

(a) The court shall make the following findings:

1. The exact nature and scope of the person's incapacities;

2. The exact areas in which the person lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for her or his physical or mental health or safety;

3. The specific legal disabilities to which the person is subject; and

4. The specific rights that the person is incapable of exercising.

(c) In determining that a person is totally incapacitated, the order must contain findings of fact demonstrating that the individual is totally without capacity to care for herself or himself or her or his property.

Section 1784. Subsection (1) of section 744.334, Florida Statutes (1996 Supplement), is amended to read:

744.334 Petition for appointment of guardian or professional guardian; contents.—

(1) Every petition for the appointment of a guardian shall be verified by the petitioner and shall contain statements, to the best of petitioner's knowledge and belief, showing the name, age, residence, and post office address of the alleged incapacitated person or minor; the nature of her or his incapacity, if any; the extent of guardianship desired, either plenary or limited; the residence and post office address of the petitioner; the names and addresses of the next of kin of the incapacitated person or minor, if known to the petitioner; the name of the proposed guardian; the relationship and previous relationship of the proposed guardian to the ward; the nature and value of property subject to the guardianship; and the reasons why this person should be appointed guardian. If a willing and qualified guardian cannot be located, the petition must so state.

Section 1785. Subsection (1) of section 744.351, Florida Statutes (1996 Supplement), is amended to read:

744.351 Bond of guardian.—

(1) Before exercising his or her authority as guardian, every person appointed a guardian of the property of a ward in this state shall file a bond with surety as prescribed in s. 45.011 to be approved by the clerk. The bond shall be payable to the Governor of the state and the Governor's ~~his~~ successors in office, conditioned on the faithful performance of all duties by the guardian. In form the bond shall be joint and several. When the petitioner or guardian presents compelling reasons, the court may waive a bond or require the use of a designated financial institution as defined in s. 655.005(1).

Section 1786. Paragraphs (a) and (c) of subsection (1) of section 744.3675, Florida Statutes (1996 Supplement), are amended to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

- (1) Each plan must, if applicable, include:
 - (a) Information concerning the residence of the ward, including:
 1. The ward's address at the time of filing the plan;

2. The name and address of each place where the ward was maintained during the preceding year;
 3. The length of stay of the ward at each place;
 4. A statement of whether the current residential setting is best suited for the current needs of the ward; and
 5. Plans for ensuring during the coming year that the ward is in the best residential setting to meet his or her needs.
- (c) Information concerning the social condition of the ward, including:
1. The social and personal services currently utilized by the ward;
 2. The social skills of the ward, including a statement of how well the ward ~~he~~ maintains interpersonal relationships with others;
 3. A description of the ward's activities at communication and visitation; and
 4. The social needs of the ward.

Section 1787. Section 744.454, Florida Statutes (1996 Supplement), is amended to read:

744.454 Guardian forbidden to borrow or purchase; exceptions.—A guardian may not purchase property or borrow money from her or his ward unless:

- (1) A court by written order authorizes the sale or loan after a hearing to which interested persons were given notice; or
- (2) The property is sold at public sale and the guardian is a spouse, parent, child, brother, or sister of the ward or a cotenant of the ward in the property to be sold.

Section 1788. Subsections (1), (2), (3), (4), and (8) of section 744.474, Florida Statutes (1996 Supplement), are amended to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

- (1) Fraud in obtaining her or his appointment.
- (2) Failure to discharge her or his duties.
- (3) Abuse of her or his powers.
- (4) An incapacity or illness, including substance abuse, which renders the guardian incapable of discharging her or his duties.
- (8) Failure to give bond or security for any purpose when required by the court or failure to file with the annual guardianship plan the evidence

required by s. 744.351 that the sureties on her or his bond are alive and solvent.

Section 1789. Subsection (5) of section 744.703, Florida Statutes (1996 Supplement), is amended to read:

744.703 Office of public guardian; appointment, notification.—

(5) The public guardian is to be appointed for a term of 4 years, after which her or his appointment must be reviewed by the chief judge of the circuit, and may be reappointed. Removal of the public guardian from ~~his~~ office during the his term of office must be by the chief judge. This section does not limit the application of ss. 744.474 and 744.477.

Section 1790. Subsections (4), (5), and (8) of section 744.704, Florida Statutes (1996 Supplement), are amended to read:

744.704 Powers and duties.—

(4) The public guardian shall be authorized to employ sufficient staff to carry out the duties of his or her office.

(5) The public guardian may delegate to assistants and other members of his or her staff the powers and duties of the office of public guardian, except as otherwise limited by law. The public guardian shall retain ultimate responsibility for the discharge of his or her duties and responsibilities.

(8) When a person is appointed successor public guardian, he or she immediately succeeds to all rights, duties, responsibilities, and powers of the preceding public guardian.

Section 1791. Subsection (4) of section 744.708, Florida Statutes (1996 Supplement), is amended to read:

744.708 Reports and standards.—

(4) Within 6 months of his or her appointment as guardian of a ward, the public guardian shall submit to the chief judge of the circuit a report on his or her efforts to locate a family member or friend, other person, bank, or corporation to act as guardian of the ward and a report on the ward's potential to be restored to capacity.

Section 1792. Subsection (1) of section 760.29, Florida Statutes (1996 Supplement), is amended to read:

760.29 Exemptions.—

(1)(a) Nothing in ss. 760.23 and 760.25 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the

exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of ss. 760.20-760.37 only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesperson salesman or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson salesman, or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of s. 760.23(3).

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(b) For the purposes of paragraph (a), a person is deemed to be in the business of selling or renting dwellings if the person:

1. ~~He~~ Has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or interest therein;

2. ~~He~~ Has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or interest therein; or

3. ~~He~~ Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Section 1793. Subsections (1), (2), and (3) of section 760.34, Florida Statutes (1996 Supplement), are amended to read:

760.34 Enforcement.—

(1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the commission. Complaints shall be in writing and shall contain such information and be in such form as the commission requires. Upon receipt of such a complaint, the commission shall furnish a copy to the person or persons

who allegedly committed the discriminatory housing practice or are about to commit the alleged discriminatory housing practice. Within 100 days after receiving a complaint, or within 100 days after the expiration of any period of reference under subsection (3), the commission shall investigate the complaint and give notice in writing to the person aggrieved whether it intends to resolve it. If the commission decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned. Any employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A complaint under subsection (1) must be filed within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both complaint and answer shall be verified.

(3) Wherever a local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in ss. 760.20-760.37, the commission shall notify the appropriate local agency of any complaint filed under ss. 760.20-760.37 which appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days from the date the alleged offense was brought to his or her attention, commenced proceedings in the matter. In no event shall the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Section 1794. Paragraph (b) of subsection (3) of section 760.35, Florida Statutes (1996 Supplement), is amended to read:

760.35 Civil actions and relief; administrative procedures.—

(3)

(b) Administrative hearings shall be conducted pursuant to ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The commission may

adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

Section 1795. Subsection (3) of section 760.40, Florida Statutes (1996 Supplement), is amended to read:

760.40 Genetic testing; informed consent; confidentiality.—

(3) A person who performs DNA analysis or receives records, results, or findings of DNA analysis must provide the person tested with notice that the analysis was performed or that the information was received. The notice must state that, upon the request of the person tested, the information will be made available to his or her physician. The notice must also state whether the information was used in any decision to grant or deny any insurance, employment, mortgage, loan, credit, or educational opportunity. If the information was used in any decision that resulted in a denial, the analysis must be repeated to verify the accuracy of the first analysis, and if the first analysis is found to be inaccurate, the denial must be reviewed.

Section 1796. Paragraph (b) of subsection (3) of section 760.50, Florida Statutes (1996 Supplement), is amended to read:

760.50 Discrimination on the basis of acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, and human immunodeficiency virus prohibited.—

(3)

(b) No person may fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of knowledge or belief that the individual has taken a human immunodeficiency virus test or the results or perceived results of such test unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

Section 1797. Subsection (3) of section 765.202, Florida Statutes (1996 Supplement), is amended to read:

765.202 Designation of a health care surrogate.—

(3) A document designating a health care surrogate may also designate an alternate surrogate provided the designation is explicit. The alternate surrogate may assume his or her duties as surrogate for the principal if the original surrogate is unwilling or unable to perform his or her duties. The principal's failure to designate an alternate surrogate shall not invalidate the designation.

Section 1798. Subsection (5) of section 766.101, Florida Statutes (1996 Supplement), is amended to read:

766.101 Medical review committee, immunity from liability.—

(5) The investigations, proceedings, and records of a committee as described in the preceding subsections shall not be subject to discovery or introduction into evidence in any civil or administrative action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such committee, and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee, nor should any person who testifies before such committee or who is a member of such committee be prevented from testifying as to matters within his or her knowledge, but the said witness cannot be asked about his or her testimony before such a committee or opinions formed by him or her as a result of said committee hearings.

Section 1799. Paragraphs (b), (c), (d), and (f) of subsection (3) of section 766.105, Florida Statutes (1996 Supplement), are amended to read:

766.105 Florida Patient's Compensation Fund.—

(3) THE FUND.—

(b) Fund administration and operation.—

1. The fund shall operate subject to the supervision and approval of a board of governors consisting of a representative of the insurance industry appointed by the Insurance Commissioner, an attorney appointed by The Florida Bar, a representative of physicians appointed by the Florida Medical Association, a representative of physicians' insurance appointed by the Insurance Commissioner, a representative of physicians' self-insurance appointed by the Insurance Commissioner, two representatives of hospitals appointed by the Florida Hospital Association, a representative of hospital insurance appointed by the Insurance Commissioner, a representative of hospital self-insurance appointed by the Insurance Commissioner, a representative of the osteopathic physicians' or podiatrists' insurance or self-insurance appointed by the Insurance Commissioner, and a representative of the general public appointed by the Insurance Commissioner. The board of governors shall, during the first meeting after June 30 of each year, choose one of its members to serve as chair ~~chairman~~ of the board and another member to serve as vice chair ~~chairman~~ of the board. The members of the board shall be appointed to serve terms of 4 years, except that the initial appointments of a representative of the general public by the Insurance Commissioner, an attorney by The Florida Bar, a representative of physicians by the Florida Medical Association, and one of the two representatives of the Florida Hospital Association shall be for terms of 3 years; thereafter, such representatives shall be appointed for terms of 4 years. Subsequent to initial appointments for 4-year terms, the representative of the osteopathic

physicians' or podiatrists' insurance or self-insurance appointed by the Insurance Commissioner and the representative of hospital self-insurance appointed by the Insurance Commissioner shall be appointed for 2-year terms; thereafter, such representatives shall be appointed for terms of 4 years. The members appointed during 1979 who have not resigned shall automatically, and without further action of their respective appointing authorities, be the initial appointees hereunder and shall continue their present service to serve the terms specified herein. Each appointed member may designate in writing to the ~~chair~~ chairman an alternate to act in the member's absence or incapacity. A member of the board, or ~~the member's~~ his alternate, may be reimbursed from the assets of the fund for expenses incurred by him or her as a member, or alternate member, of the board and for committee work, but he or she may not otherwise be compensated by the fund for his or her service as a board member or alternate.

2. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the fund or its agents or employees, professional advisers or consultants, members of the board of governors or their alternates, or the Department of Insurance or its representatives for any action taken by them in the performance of their powers and duties pursuant to this section.

(c) Powers of the fund.—The fund has the power to:

1. Sue and be sued, and appear and defend, in all actions and proceedings in its name to the same extent as a natural person.

2. Adopt, change, amend, and repeal a plan of operation, not inconsistent with law, for the regulation and administration of the affairs of the fund. The plan and any changes thereto shall be filed with the Insurance Commissioner and are all subject to his or her approval before implementation by the fund. All fund members, board members, and employees shall comply with the plan of operation.

3. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the fund is created.

4. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section.

5. Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the fund and to perform other necessary or proper functions unless prohibited by law.

6. Take such legal action as may be necessary to avoid payment of improper claims.

7. Indemnify any employee, agent, member of the board of governors or his or her alternate, or person acting on behalf of the fund in an official capacity, for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with any action, suit, or proceeding, including any appeal thereof, arising out of his or her capacity in acting on behalf of the fund, if

he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the fund and, with respect to any criminal action or proceeding, he or she had reasonable cause to believe his or her conduct was lawful.

(d) Fees and assessments.—Each health care provider, as set forth in subsection (2), electing to comply with paragraph (2)(b) for a given fiscal year shall pay the fees and any assessments established under this section relative to such fiscal year, for deposit into the fund. Those entering the fund after the fiscal year has begun shall pay a prorated share of the yearly fees for a prorated membership. Actuarially sound membership fees payable annually, semiannually, or quarterly with appropriate service charges shall be established by the fund before January 1 of each fiscal year, based on the following considerations:

1. Past and prospective loss and expense experience in different types of practice and in different geographical areas within the state;
2. The prior claims experience of the members covered under the fund; and
3. Risk factors for persons who are retired, semiretired, or part-time professionals.

Such fees shall be based on not more than three geographical areas, not necessarily contiguous, with five categories of practice and with categories which contemplate separate risk ratings for hospitals, for health maintenance organizations, for ambulatory surgical facilities, and for other medical facilities. The fund is authorized to adjust the fees of an individual member to reflect the claims experience of such member. Each fiscal year of the fund shall operate independently of preceding fiscal years. Participants shall only be liable for assessments for claims from years during which they were members of the fund; in cases in which a participant is a member of the fund for less than the total fiscal year, a member shall be subject to assessments for that year on a pro rata basis determined by the percentage of participation for the year. The fund shall submit to the Insurance Commissioner the classifications and membership fees to be charged, and the Insurance Commissioner shall review such fees and shall approve them if they comply with all the requirements of this section and fairly reflect the considerations provided for in this section. If the classifications or membership fees do not comply with this section, the Insurance Commissioner shall set classifications or membership fees which do comply and which give due recognition to all considerations provided for in this section. Nothing contained herein shall be construed as imposing liability for payment of any part of a fund deficit on the Joint Underwriting Association authorized by s. 627.351(4) or its member insurers. If the fund determines that the amount of money in an account for a given fiscal year is in excess of or not sufficient to satisfy the claims made against the account, the fund shall certify the amount of the projected excess or insufficiency to the Insurance Commissioner and request the Insurance Commissioner to levy an assessment against or refund to all participants in the fund for that fiscal year, prorated, based on

the number of days of participation during the year in question. The Insurance Commissioner shall approve the request of the fund to refund to, or levy any assessment against, the participants, provided the refund or assessment fairly reflects the same considerations and classifications upon which the membership fees were based. The assessment shall be in an amount sufficient to satisfy reserve requirements for known claims, including expenses to satisfy the claims, made against the account for a given fiscal year. In any proceeding to challenge the amount of the refund or assessment, it is to be presumed that the amount of refund or assessment requested by the fund is correct, if the fund demonstrates that it has used reasonable claims handling and reserving procedures. Additional assessments may be certified and levied in accordance with this paragraph as necessary for any fiscal year. If a fund member objects to his or her assessment, he or she shall, as a condition precedent to bringing legal action contesting the assessment, pay the assessment, under protest, to the fund. The fund may borrow money needed for current operations, if necessary to pay claims and related expenses, fees, and costs timely for a given fiscal year, from an account for another fiscal year until such time as sufficient funds have been obtained through the assessment process. Any such money, together with interest at the mean interest rate earned on the investment portfolio of the fund, shall be repaid from the next assessment for the given fiscal year. If any assessments are levied in accordance with this subsection as a result of claims in excess of \$500,000 per occurrence, and such assessments are a result of the liability of certain individuals and entities specified in paragraph (2)(e), only hospitals shall be subject to such assessments. Before approving the request of the fund to charge membership fees, issue refunds, or levy assessments, the Insurance Commissioner shall publish notice of the request in the Florida Administrative Weekly. Pursuant to chapter 120, any party substantially affected may request an appropriate proceeding. Any petition for such a proceeding shall be filed with the Department of Insurance within 21 days after the date of publication of the notice in the Florida Administrative Weekly.

(f) Claims procedures.—

1. Any person may file an action against a participating health care provider for damages covered under the fund, except that the person filing the claim may not recover against the fund unless the fund was named as a defendant in the suit. The fund is not required to actively defend a claim until the fund is named therein. If, after the facts upon which the claim is based are reviewed, it appears that the claim will exceed the applicable amount set forth in paragraph (2)(f) or, if greater, the amount of the health care provider's basic coverage, the fund shall appear and actively defend itself when named as a defendant in the suit. In so defending, the fund shall retain counsel and pay out of the account for the appropriate year attorneys' fees and expenses, including court costs incurred in defending the fund. In any claim, the attorney or law firm retained to defend the fund may not be retained to defend the Joint Underwriting Association authorized by s. 627.351(4). The fund is authorized to negotiate with any claimant having a judgment exceeding the applicable amount set forth in paragraph (2)(f) to reach an agreement as to the manner in which that portion of the judgment exceeding such amount is to be paid. Any judgment affecting the fund may

be appealed under the Florida Rules of Appellate Procedure, as with any defendant.

2. It is the responsibility of the insurer or self-insurer providing insurance or self-insurance for a health care provider who is also covered by the fund to provide an adequate defense on any claim filed which potentially affects the fund, with respect to such insurance contract or self-insurance contract. The insurer or self-insurer shall act in a fiduciary relationship toward the fund with respect to any claim affecting the fund. No settlement exceeding the applicable amount set forth in paragraph (2)(f), or any other amount which could require payment by the fund, may be agreed to unless approved by the fund.

3. A person who has recovered a final judgment against the fund or against a health care provider who is covered by the fund may file a claim with the fund to recover that portion of such judgment which is in excess of the applicable amount set forth in paragraph (2)(f) or the amount of the health care provider's basic coverage, if greater, as set forth in paragraph (2)(b). The amount of liability of the fund under a judgment, including court costs, reasonable attorney's fees, and interest, shall be paid in a lump sum, except that any claims for future special damages, as set forth in s. 768.48(1)(a) and (b), shall be paid periodically as they are incurred by the claimant. If a claimant dies while receiving periodic payments, payment for future medical expenses shall cease, but payment for future wage loss, if any, shall continue at a rate of not more than \$100,000 per year. The fund may pay a lump sum reflecting the present value of future wage losses in lieu of continuing the periodic payments.

4. Payment of settlements or judgments involving the fund shall be paid in the order received within 60 days after the date of settlement or judgment, unless appealed by the fund. If the account for a given year does not have enough money to pay all of the settlements or judgments, those claims received after the funds are exhausted shall be payable in the order in which they are received. However, no claimant has the right to execute against the fund to the extent that the judgment is for a claim covered in a membership year for which the fund has insufficient assets to pay the claim, as determined by membership fees for such year, investment income generated by such fees, and assessments collected from members for such year. When the fund has insufficient assets to pay claims for a fund year, the fund will not be required to post a supersedeas bond in order to stay execution of a judgment pending appeal. The fund shall retain a reasonable sum of money for payment of administrative and claims expense, which money will not be subject to execution.

5. Except to the extent of the appropriate fund entry level amount selected, if a judgment is entered against the fund for a year in which there are insufficient assets to satisfy the claim, an automatic stay of execution and collection in favor of the fund member shall exist for that portion of the judgment which exceeds the selected entry level amount, and for which fund coverage exists. Such stay shall only be granted to those members who have fully complied with the requirements of fund membership, and such stay shall remain in effect until adequate assessments are collected by the fund

to pay the claim. Upon competent proof that the portion of any claim covered by the fund is uncollectible from the fund, the member's stay of execution may be vacated by the court, upon application by the plaintiff and hearing thereon.

6. If a health care provider participating in the fund has coverage in excess of the applicable amount set forth in paragraph (2)(f), such health care provider shall be liable for losses up to the amount of his or her coverage, and such health care provider shall receive an appropriate reduction of the fees and assessments for participation in the fund. Such reduction shall be granted only after such health care provider has proved to the satisfaction of the fund that such health care provider had such coverage during the period of membership of the fiscal year.

7. The manager of the fund or his or her assistant is the agent for service of process for the plan.

Section 1800. Subsections (2), (9), and (10) of section 766.106, Florida Statutes (1996 Supplement), are amended to read:

766.106 Notice before filing action for medical malpractice; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.—

(2) After completion of presuit investigation pursuant to s. 766.203 and prior to filing a claim for medical malpractice, a claimant shall notify each prospective defendant and, if any prospective defendant is a health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466, the Department of Business and Professional Regulation by certified mail, return receipt requested, of intent to initiate litigation for medical malpractice. Notice to the Department of Business and Professional Regulation must include the full name and address of the claimant; the full names and any known addresses of any health care providers licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 who are prospective defendants identified at the time; the date and a summary of the occurrence giving rise to the claim; and a description of the injury to the claimant. The requirement for notice to the Department of Business and Professional Regulation does not impair the claimant's legal rights or ability to seek relief for his or her claim, and the notice provided to the department is not discoverable or admissible in any civil or administrative action. The Department of Business and Professional Regulation shall review each incident and determine whether it involved conduct by a licensee which is potentially subject to disciplinary action, in which case the provisions of s. 455.225 apply.

(9) Copies of any documents produced in response to the request of any party must be served upon all other parties. The party serving the documents or his or her attorney shall identify, in a notice accompanying the documents, the name and address of the parties to whom the documents were served, the date of service, the manner of service, and the identity of the document served.

(10) If a prospective defendant makes an offer to admit liability and for arbitration on the issue of damages, the claimant has 50 days from the date of receipt of the offer to accept or reject it. The claimant shall respond in writing to the insurer or self-insurer by certified mail, return receipt requested. If the claimant rejects the offer, he or she may then file suit. Acceptance of the offer of admission of liability and for arbitration waives recourse to any other remedy by the parties, and the claimant's written acceptance of the offer shall so state.

(a) If rejected, the offer to admit liability and for arbitration on damages is not admissible in any subsequent litigation. Upon rejection of the offer to admit liability and for arbitration, the claimant has 60 days or the remainder of the period of the statute of limitations, whichever period is greater, in which to file suit.

(b) If the offer to admit liability and for arbitration on damages is accepted, the parties have 30 days from the date of acceptance to settle the amount of damages. If the parties have not reached agreement after 30 days, they shall proceed to binding arbitration to determine the amount of damages as follows:

1. Each party shall identify his or her arbitrator to the opposing party not later than 35 days after the date of acceptance.

2. The two arbitrators shall, within 1 week after they are notified of their appointment, agree upon a third arbitrator. If they cannot agree on a third arbitrator, selection of the third arbitrator shall be in accordance with chapter 682.

3. Not later than 30 days after the selection of a third arbitrator, the parties shall file written arguments with each arbitrator and with each other indicating total damages.

4. Unless otherwise determined by the arbitration panel, within 10 days after the receipt of such arguments, unless the parties have agreed to a settlement, there shall be a 1-day hearing, at which formal rules of evidence and the rules of civil procedure shall not apply, during which each party shall present evidence as to damages. Each party shall identify the total dollar amount which he or she feels should be awarded.

5. No later than 2 weeks after the hearing, the arbitrators shall notify the parties of their determination of the total award. The court shall have jurisdiction to enforce any award or agreement for periodic payment of future damages.

Section 1801. Paragraph (b) of subsection (7) of section 766.207, Florida Statutes (1996 Supplement), is amended to read:

766.207 Voluntary binding arbitration of medical negligence claims.—

(7) Arbitration pursuant to this section shall preclude recourse to any other remedy by the claimant against any participating defendant, and shall be undertaken with the understanding that:

(b) Noneconomic damages shall be limited to a maximum of \$250,000 per incident, and shall be calculated on a percentage basis with respect to capacity to enjoy life, so that a finding that the claimant's injuries resulted in a 50-percent reduction in his or her capacity to enjoy life would warrant an award of not more than \$125,000 noneconomic damages.

The provisions of this subsection shall not preclude settlement at any time by mutual agreement of the parties.

Section 1802. Subsections (1) and (3) of section 766.21, Florida Statutes (1996 Supplement), are amended to read:

766.21 Misarbitration.—

(1) At any time during the course of voluntary binding arbitration of a medical negligence claim pursuant to s. 766.207, the administrative law judge serving as chief arbitrator on the arbitration panel, if he or she determines that agreement cannot be reached, shall be authorized to dissolve the arbitration panel and request the director of the Division of Administrative Hearings to appoint two new arbitrators from lists of three to five names timely provided by each party to the arbitration. Not more than one arbitrator shall be appointed from the list provided by any party, unless only one list is timely filed.

(3) At any time after the allocation arbitration hearing under s. 766.208 has concluded, the administrative law judge serving as chief arbitrator on the arbitration panel is authorized to dissolve the arbitration panel and declare the proceedings concluded if he or she determines that agreement cannot be reached.

Section 1803. Section 766.304, Florida Statutes (1996 Supplement), is amended to read:

766.304 Administrative law judge to determine claims.—The administrative law judge shall hear and determine all claims filed pursuant to ss. 766.301-766.316 and shall exercise the full power and authority granted to her or him in chapter 120, as necessary, to carry out the purposes of such sections. The division may adopt rules to promote the efficient administration of, and to minimize the cost associated with, the prosecution of claims.

Section 1804. Paragraph (a) of subsection (1) of section 766.305, Florida Statutes (1996 Supplement), is amended to read:

766.305 Filing of claims and responses; medical disciplinary review.—

(1) All claims filed for compensation under the plan shall commence by the claimant filing with the division a petition seeking compensation. Such petition shall include the following information:

(a) The name and address of the legal representative and the basis for her or his representation of the injured infant.

Section 1805. Subsection (2) of section 766.309, Florida Statutes (1996 Supplement), is amended to read:

766.309 Determination of claims; presumption; findings of administrative law judge binding on participants.—

(2) If the administrative law judge determines that the injury alleged is not a birth-related neurological injury or that obstetrical services were not delivered by a participating physician at the birth, she or he shall enter an order and shall cause a copy of such order to be sent immediately to the parties by registered or certified mail.

Section 1806. Subsection (1) of section 766.312, Florida Statutes (1996 Supplement), is amended to read:

766.312 Enforcement of awards.—

(1) The administrative law judge shall have full authority to enforce her or his awards and to protect herself or himself from any deception or lack of cooperation in reaching her or his determination as to any award. Such authority shall include the power to petition the circuit court for an order of contempt.

Section 1807. Paragraph (d) of subsection (9) of section 766.314, Florida Statutes (1996 Supplement), is amended to read:

766.314 Assessments; plan of operation.—

(9)

(d) If any person is precluded from asserting a claim against the association because of paragraph (c), the plan shall not constitute the exclusive remedy for such person, his or her personal representative, parents, dependents, or next of kin.

Section 1808. Subsection (3) and paragraph (k) of subsection (4) of section 766.315, Florida Statutes (1996 Supplement), are amended to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(3) The directors shall not transact any business or exercise any power of the plan except upon the affirmative vote of three directors. The directors shall serve without salary, but each director shall be reimbursed for actual and necessary expenses incurred in the performance of his or her official duties as a director of the plan in accordance with s. 112.061. ~~The directors shall not be subject to any liability with respect to the administration of the plan.~~

(4) The board of directors shall have the power to:

(k) Indemnify any employee, agent, member of the board of directors or alternate thereof, or person acting on behalf of the plan in an official capacity, for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any action, suit, or proceeding, including any appeal thereof, arising out of such person's capacity acting on behalf of the plan; provided that such person

acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the plan and provided that, with respect to any criminal action or proceeding, the person he had reasonable cause to believe his or her conduct was lawful.

Section 1809. Subsection (1), paragraph (a) of subsection (6), paragraphs (a) and (b) of subsection (9), and subsection (19) of section 768.28, Florida Statutes (1996 Supplement), are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(1) In accordance with s. 13, Art. X, State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued.

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality or the Spaceport Florida Authority, presents such claim in writing to the Department of Insurance, within 3 years after such claim accrues and the Department of Insurance or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to s. 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability.

(9)(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of

her or his employment or function. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115, any member of the Florida Health Services Corps, as defined in s. 381.0302, who provides uncompensated care to medically indigent persons referred by the Department of Health and Rehabilitative Services, and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

(19) Every municipality, and any agency thereof, is authorized to undertake to indemnify those employees that are exposed to personal liability pursuant to the Clean Air Act Amendments of 1990, 42 U.S.C.A. ss. 7401 et seq., and all rules and regulations adopted to implement that act, for acts performed within the course and scope of their employment with the municipality or its agency, including but not limited to indemnification pertaining to the holding, transfer, or disposition of allowances allocated to the municipality's or its agency's electric generating units, and the monitoring, submission, certification, and compliance with permits, permit applications, records, compliance plans, and reports for those units, when such acts are performed within the course and scope of their employment with the municipality or its agency. The authority to indemnify under this section covers every act by an employee when such act is performed within the course and scope of her or his employment with the municipality or its agency, but does not cover any act of willful misconduct or any intentional or knowing violation of any law by the employee. The authority to indemnify under this section includes, but is not limited to, the authority to pay any fine and provide legal representation in any action.

Section 1810. Subsection (1) of section 775.083, Florida Statutes (1996 Supplement), is amended to read:

775.083 Fines.—

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may

be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

- (a) \$15,000, when the conviction is of a life felony.
- (b) \$10,000, when the conviction is of a felony of the first or second degree.
- (c) \$5,000, when the conviction is of a felony of the third degree.
- (d) \$1,000, when the conviction is of a misdemeanor of the first degree.
- (e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.
- (f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.
- (g) Any higher amount specifically authorized by statute.

If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain.

Section 1811. Subsections (1) and (4) of section 775.0877, Florida Statutes (1996 Supplement), are amended to read:

775.0877 Criminal transmission of HIV; procedures; penalties.—

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

- (a) Section 794.011, relating to sexual battery,
- (b) Section 826.04, relating to incest,
- (c) Section 800.04(1), (2), and (3), relating to lewd, lascivious, or indecent assault or act upon any person less than 16 years of age,
- (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault,
- (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault,
- (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery,
- (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery,
- (h) Section 827.03(1), relating to child abuse,

- (i) Section 827.03(2), relating to aggravated child abuse,
- (j) Section 825.102(1), relating to abuse of an elderly person or disabled adult,
- (k) Section 825.102(2), relating to aggravated abuse of an elderly person or disabled adult,
- (l) Section 827.071, relating to sexual performance by person less than 18 years of age,
- (m) Sections 796.03, 796.07, and 796.08, relating to prostitution, or
- (n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health and Rehabilitative Services in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(i)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

(4) An offender may challenge the positive results of an HIV test performed pursuant to this section and may introduce results of a backup test performed at her or his own expense.

Section 1812. Subsection (3) of section 775.15, Florida Statutes (1996 Supplement), is amended to read:

775.15 Time limitations.—

(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

(a) Any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 1 year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.

(b) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment, within 2 years from the time he or she leaves public office or employment, or during any time permitted by any other part of this section, whichever time is greater.

Section 1813. Subsection (1) of section 787.01, Florida Statutes (1996 Supplement), is amended to read:

787.01 Kidnapping; kidnapping of child under age 13, aggravating circumstances.—

(1)(a) The term “kidnapping” means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to:

1. Hold for ransom or reward or as a shield or hostage.
2. Commit or facilitate commission of any felony.
3. Inflict bodily harm upon or to terrorize the victim or another person.
4. Interfere with the performance of any governmental or political function.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this subsection if such confinement is without the consent of her or his parent or legal guardian.

Section 1814. Subsection (1) of section 787.02, Florida Statutes (1996 Supplement), is amended to read:

787.02 False imprisonment; false imprisonment of child under age 13, aggravating circumstances.—

(1)(a) The term “false imprisonment” means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian.

Section 1815. Subsection (5) of section 787.04, Florida Statutes (1996 Supplement), is amended to read:

787.04 Removing minors from state or concealing minors contrary to state agency order or court order.—

(5) It is a defense under this section that a person who leads, takes, entices, or removes a minor beyond the limits of the state reasonably believes that his or her action was necessary to protect the minor from child abuse as defined in s. 827.03.

Section 1816. Subsection (1), paragraph (c) of subsection (2), and subsection (3) of section 790.065, Florida Statutes (1996 Supplement), are amended to read:

790.065 Sale and delivery of firearms.—

(1) No licensed importer, licensed manufacturer, or licensed dealer shall sell or deliver from her or his inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until she or he has:

(a) Obtained a completed form from the potential buyer or transferee, which form shall have been promulgated by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and has inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

(b)1. Collected a fee from the potential buyer for processing the criminal history check of the potential buyer. The fee shall be \$8. The Department of Law Enforcement shall, by rule, establish procedures for the fees to be transmitted by the licensee to the Department of Law Enforcement. All such fees shall be deposited into the Department of Law Enforcement Operating Trust Fund, but shall be segregated from all other funds deposited into such trust fund and must be accounted for separately. Such segregated funds must not be used for any purpose other than the operation of the criminal history checks required by this section. The Department of Law Enforcement, each year prior to February 1, shall make a full accounting of all receipts and expenditures of such funds to the President of the Senate, the Speaker of the House of Representatives, the majority and minority leaders of each house of the Legislature, and the chairs of the appropriations committees of each house of the Legislature. In the event that the cumulative amount of funds collected exceeds the cumulative amount of expenditures by more than \$2.5 million, excess funds may be used for the purpose of purchasing soft body armor for law enforcement officers.

2. For the 1995-1996 fiscal year only, if the cumulative amount of funds collected exceeds the cumulative amount of expenditures by more than \$2.5 million, \$1.5 million of such excess funds may be transferred to the General Revenue Fund. This subparagraph is repealed on July 1, 1996.

(c) Requested, by means of a toll-free telephone call, the Department of Law Enforcement to conduct a check of the information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems as of the date of the request.

(d) Received a unique approval number for that inquiry from the Department of Law Enforcement, and recorded the date and such number on the consent form.

However, if the person purchasing, or receiving delivery of, the firearm is a holder of a valid concealed weapons or firearms license pursuant to the provisions of s. 790.06 or holds an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), the provisions of this subsection do not apply.

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(c)1. Review any records available to it to determine whether the potential buyer or transferee has been indicted or has had an information filed against her or him for an offense that is a felony under either state or federal law, or, as mandated by federal law, has had an injunction for protection against domestic violence entered against the potential buyer or transferee under s. 741.30, has had an injunction for protection against repeat violence entered against the potential buyer or transferee under s. 784.046, or has been arrested for a dangerous crime as specified in s. 907.041(4)(a) or for any of the following enumerated offenses:

- a. Criminal anarchy under ss. 876.01 and 876.02.
- b. Extortion under s. 836.05.
- c. Explosives violations under s. 552.22(1) and (2).
- d. Controlled substances violations under chapter 893.
- e. Resisting an officer with violence under s. 843.01.
- f. Weapons and firearms violations under this chapter.
- g. Treason under s. 876.32.
- h. Assisting self-murder under s. 782.08.
- i. Sabotage under s. 876.38.
- j. Stalking or aggravated stalking under s. 784.048.

If the review indicates any such indictment, information, or arrest, the department shall provide to the licensee a conditional nonapproval number.

2. Within 24 working hours, the department shall determine the disposition of the indictment, information, or arrest and inform the licensee as to whether the potential buyer is prohibited from receiving or possessing a firearm. For purposes of this paragraph, "working hours" means the hours from 8 a.m. to 5 p.m. Monday through Friday, excluding legal holidays.

3. The office of the clerk of court, at no charge to the department, shall respond to any department request for data on the disposition of the indictment, information, or arrest as soon as possible, but in no event later than 8 working hours.

4. The department shall determine as quickly as possible within the allotted time period whether the potential buyer is prohibited from receiving or possessing a firearm.

5. If the potential buyer is not so prohibited, or if the department cannot determine the disposition information within the allotted time period, the department shall provide the licensee with a conditional approval number.

6. If the buyer is so prohibited, the conditional nonapproval number shall become a nonapproval number.

7. The department shall continue its attempts to obtain the disposition information and may retain a record of all approval numbers granted without sufficient disposition information. If the department later obtains disposition information which indicates:

a. That the potential buyer is not prohibited from owning a firearm, it shall treat the record of the transaction in accordance with this section; or

b. That the potential buyer is prohibited from owning a firearm, it shall immediately revoke the conditional approval number and notify local law enforcement.

8. During the time that disposition of the indictment, information, or arrest is pending and until the department is notified by the potential buyer that there has been a final disposition of the indictment, information, or arrest, the conditional nonapproval number shall remain in effect.

(3) In the event of scheduled computer downtime, electronic failure, or similar emergency beyond the control of the Department of Law Enforcement, the department shall immediately notify the licensee of the reason for, and estimated length of, such delay. After such notification, the department shall forthwith, and in no event later than the end of the next business day of the licensee, either inform the requesting licensee if its records demonstrate that the buyer or transferee is prohibited from receipt or possession of a firearm pursuant to Florida and Federal law or provide the licensee with a unique approval number. Unless notified by the end of said next business day that the buyer or transferee is so prohibited, and without regard to whether she or he has received a unique approval number, the licensee may complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

Section 1817. Subsections (2), (3), and (8) of section 790.22, Florida Statutes (1996 Supplement), are amended to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.—

(2) Any adult responsible for the welfare of any child under the age of 16 years who knowingly permits such child to use or have in his or her possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the provisions of subsection (1) of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless:

(a) The minor is engaged in a lawful hunting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult.

(b) The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:

1. At least 16 years of age; or
2. Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.

(c) The firearm is unloaded and is being transported by the minor directly to or from an event authorized in paragraph (a) or paragraph (b).

(8) Notwithstanding s. 39.042 or s. 39.044(1), if a minor under 18 years of age is charged with an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. Effective April 15, 1994, at the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 39.044(5), if the court finds that the minor meets the criteria specified in s. 39.044(2), or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection that states the period of detention and the relevant demographic information, including, but not limited to, the sex, age, and race of the minor; whether or not the minor was represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge to be considered when determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department. The Department of Juvenile Justice must send the form, including a copy of any order, without client-identifying information, to the Division of Economic and Demographic Research of the Joint Legislative Management Committee.

Section 1818. Paragraph (c) of subsection (2) of section 810.09, Florida Statutes (1996 Supplement), is amended to read:

810.09 Trespass on property other than structure or conveyance.—

(2)

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time,

any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and that the person to be taken into custody and detained has committed or is committing such violation. In the event a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention in compliance with the requirements of this paragraph does not result in criminal or civil liability for false arrest, false imprisonment, or unlawful detention.

Section 1819. Subsection (4) of section 812.014, Florida Statutes (1996 Supplement), is amended to read:

812.014 Theft.—

(4) Failure to comply with the terms of a lease when the lease is for a term of 1 year or longer shall not constitute a violation of this section unless demand for the return of the property leased has been made in writing and the lessee has failed to return the property within 7 days of his or her receipt of the demand for return of the property. A demand mailed by certified or registered mail, evidenced by return receipt, to the last known address of the lessee shall be deemed sufficient and equivalent to the demand having been received by the lessee, whether such demand shall be returned undelivered or not.

Section 1820. Paragraphs (c) and (f) of subsection (1) of section 812.015, Florida Statutes (1996 Supplement), are amended to read:

812.015 Retail and farm theft; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(1) As used in this section:

(c) “Value of merchandise” means the sale price of the merchandise at the time it was stolen or otherwise removed, depriving the owner of her or his lawful right to ownership and sale of said item.

(f) “Farmer” means a person who is engaging in the growing or producing of farm produce, milk products, eggs, or meat, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land or a person designated in writing by the owner or lessee to act as her or his agent. No person defined as a farm labor contractor pursuant to s. 450.28 shall be designated to act as an agent for purposes of this section.

Section 1821. Paragraph (a) of subsection (1) of section 832.07, Florida Statutes (1996 Supplement), is amended to read:

832.07 Prima facie evidence of intent; identity.—

(1) INTENT.—

(a) In any prosecution or action under this chapter, the making, drawing, uttering, or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence

of intent to defraud or knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, unless such maker or drawer, or someone for him or her, shall have paid the holder thereof the amount due thereon, together with a service charge not to exceed the service fees authorized under s. 832.08(5) or an amount of up to 5 percent of the face amount of the check, whichever is greater, within 7 days after receiving written notice that such check, draft, or order has not been paid to the holder thereof, and bank fees incurred by the holder. In the event of legal action for recovery, the maker or drawer may be additionally liable for court costs and reasonable attorney's fees. Notice mailed by certified or registered mail, evidenced by return receipt, to the address printed on the check or given at the time of issuance shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, whether such notice shall be returned undelivered or not. The form of such notice shall be substantially as follows:

"You are hereby notified that a check, numbered, in the face amount of \$....., issued by you on ...(date)...., drawn upon ...(name of bank)...., and payable to, has been dishonored. Pursuant to Florida law, you have 7 days from receipt of this notice to tender payment of the full amount of such check plus a service charge of \$25, if the face value does not exceed \$50, \$30, if the face value exceeds \$50 but does not exceed \$300, \$40, if the face value exceeds \$300, or an amount of up to 5 percent of the face amount of the check, whichever is greater, the total amount due being \$.... and cents. Unless this amount is paid in full within the time specified above, the holder of such check may turn over the dishonored check and all other available information relating to this incident to the state attorney for criminal prosecution. You may be additionally liable in a civil action for triple the amount of the check, but in no case less than \$50, together with the amount of the check, a service charge, court costs, reasonable attorney fees, and incurred bank fees, as provided in s. 68.065."

Subsequent persons receiving a check, draft, or order from the original payee or a successor endorsee have the same rights that the original payee has against the maker of the instrument, provided such subsequent persons give notice in a substantially similar form to that provided above. Subsequent persons providing such notice shall be immune from civil liability for the giving of such notice and for proceeding under the forms of such notice, so long as the maker of the instrument has the same defenses against these subsequent persons as against the original payee. However, the remedies available under this section may be exercised only by one party in interest.

Section 1822. Subsections (1), (4), and (5) of section 832.08, Florida Statutes (1996 Supplement), are amended to read:

832.08 State attorney bad check diversion program; fees for collections.—

(1) In any judicial circuit where a bad check diversion program is not in existence as of October 1, 1986, the state attorney may establish such a program, either within the state attorney's ~~his~~ office or through an independent contractor, for the purpose of diverting from prosecution certain persons accused of a violation of s. 832.04, s. 832.041, s. 832.05, or s.

832.06. The use of such a diversion program shall not affect the authority of the state attorney to prosecute any person for any such violation.

(4) If the state attorney allows the defendant to enter into a diversion program, the state attorney shall enter into a written agreement with the defendant to divert him or her on bad check charges. The diversion agreement shall include all of the following conditions, which must be accepted by the defendant:

(a) Attendance at a program designed to assist and educate persons who have violated the provisions of this chapter.

(b) Full restitution on the check.

(c) Full payment of fees due under subsection (5).

(d) Any individual who does not fulfill the agreements for diversion could then be prosecuted under the appropriate section.

(e) A knowing and intelligent waiver of the defendant's his right to a speedy trial for the period of his or her diversion.

(5) To fund the diversion program, the state attorney may collect a fee on each check that is collected through the state attorney's his office, whether it is collected through prosecution or through the diversion program. However, the state attorney may not collect such a fee on any check collected through a diversion program which was in existence in another office prior to October 1, 1986. A fee may be collected by an office operating such a preexisting diversion program for the purpose of funding such program. The amount of the fee for each check shall not exceed:

(a) Twenty-five dollars, if the face value does not exceed \$50.

(b) Thirty dollars, if the face value is more than \$50 but does not exceed \$300.

(c) Forty dollars, if the face value is more than \$300.

Section 1823. Subsection (2) of section 837.011, Florida Statutes (1996 Supplement), is amended to read:

837.011 Definitions.—In this chapter, unless a different meaning plainly is required:

(2) "Oath" includes affirmation or any other form of attestation required or authorized by law by which a person acknowledges that he or she is bound in conscience or law to testify truthfully in an official proceeding or other official matter.

Section 1824. Subsections (1), (3), (4), and (6) of section 838.014, Florida Statutes (1996 Supplement), are amended to read:

838.014 Definitions.—For the purposes of this chapter, unless a different meaning plainly is required:

(1) “Benefit” means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested.

(3) “Harm” means loss, disadvantage, or injury to the person affected, including loss, disadvantage, or injury to any other person in whose welfare he or she is interested.

(4) “Public servant” means any public officer, agent, or employee of government, whether elected or appointed, including, but not limited to, any executive, legislative, or judicial officer; any person who holds an office or position in a political party or political party committee, whether elected or appointed; and any person participating as a special master, receiver, auditor, juror, arbitrator, umpire, referee, consultant, administrative law judge, hearing officer, or hearing examiner, or person acting on behalf of any of these, in performing a governmental function; but the term does not include witnesses. Such term shall include a candidate for election or appointment to any such office, including any individual who seeks or intends to occupy any such office. It shall include any person appointed to any of the foregoing offices or employments before and after he or she qualifies.

(6) “Corruptly” means done with a wrongful intent and for the purpose of obtaining or compensating or receiving compensation for any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

Section 1825. Paragraph (e) of subsection (4) of section 849.0935, Florida Statutes (1996 Supplement), is amended to read:

849.0935 Charitable, nonprofit organizations; drawings by chance; required disclosures; unlawful acts and practices; penalties.—

(4) It is unlawful for any organization which, pursuant to the authority granted by this section, promotes, operates, or conducts a drawing by chance:

(e) To fail to promptly notify, at the address set forth on the entry blank, any person, whose entry is selected to win, of the fact that he or she won;

Section 1826. Subsections (2), (4), and (5), paragraph (b) of subsection (6), and paragraph (a) of subsection (7) of section 893.035, Florida Statutes (1996 Supplement), are amended to read:

893.035 Control of new substances; findings of fact; delegation of authority to Attorney General to control substances by rule.—

(2) The Attorney General shall apply the provisions of this section to any substance not currently controlled under the provisions of s. 893.03. The Attorney General may by rule:

(a) Add a substance to a schedule established by s. 893.03, or transfer a substance between schedules, if he or she finds that it has a potential for abuse and he or she makes with respect to it the other findings appropriate

for classification in the particular schedule under s. 893.03 in which it is to be placed.

(b) Remove a substance previously added to a schedule if he or she finds the substance does not meet the requirements for inclusion in that schedule.

Rules adopted under this section shall be made pursuant to the rulemaking procedures prescribed by chapter 120.

(4) In making any findings under this section, the Attorney General shall consider the following factors with respect to each substance proposed to be controlled or removed from control:

- (a) Its actual or relative potential for abuse.
- (b) Scientific evidence of its pharmacological effect, if known.
- (c) The state of current scientific knowledge regarding the drug or other substance.
- (d) Its history and current pattern of abuse.
- (e) The scope, duration, and significance of abuse.
- (f) What, if any, risk there is to the public health.
- (g) Its psychic or physiological dependence liability.
- (h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

The findings and conclusions of the United States Attorney General or his or her delegee, as set forth in the Federal Register, with respect to any substance pursuant to s. 201 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 811, as amended and in effect on April 1, 1985, shall be admissible as evidence in any rulemaking proceeding under this section, including an emergency rulemaking proceeding under subsection (7).

(5) Before initiating proceedings under subsection (2), the Attorney General shall request from the Department of Business and Professional Regulation and the Department of Law Enforcement a medical and scientific evaluation of the substance under consideration and a recommendation as to the appropriate classification, if any, of such substance as a controlled substance. In responding to this request, the Department of Business and Professional Regulation and the Department of Law Enforcement shall consider the factors listed in subsection (4). The Department of Business and Professional Regulation and the Department of Law Enforcement shall respond to this request promptly and in writing; however, their response shall not be subject to the provisions of chapter 120. If both the Department of Business and Professional Regulation and the Department of Law Enforcement recommend that a substance not be controlled, the Attorney General shall not control that substance. If the Attorney General determines, based

on the evaluations and recommendations of the Department of Business and Professional Regulation and the Department of Law Enforcement and all other available evidence, that there is substantial evidence of potential for abuse, he or she shall initiate proceedings under paragraph (2)(a) with respect to that substance.

(6)

(b) The Attorney General may by rule exempt any compound, mixture, or preparation containing a substance controlled by rule under this section from the application of this section if he or she finds that such compound, mixture, or preparation meets the requirements of either of the following subcategories:

1. A mixture or preparation containing a nonnarcotic substance controlled by rule, which mixture or preparation is approved for prescription use and which contains one or more other active ingredients which are not listed in any schedule and which are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse.

2. A compound, mixture, or preparation which contains any substance controlled by rule, which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

(7)(a) If the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03 on a temporary basis is necessary to avoid an imminent hazard to the public safety, he or she may by rule and without regard to the requirements of subsection (5) relating to the Department of Business and Professional Regulation and the Department of Law Enforcement schedule such substance in Schedule I if the substance is not listed in any other schedule of s. 893.03. The Attorney General shall be required to consider, with respect to his or her finding of imminent hazard to the public safety, only those factors set forth in paragraphs (3)(a) and (4)(d), (e), and (f), including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

Section 1827. Paragraph (a) of subsection (6) of section 893.13, Florida Statutes (1996 Supplement), is amended to read:

893.13 Prohibited acts; penalties.—

(6)(a) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1828. Subsection (5) of section 893.135, Florida Statutes (1996 Supplement), is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(5) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (1) commits a felony of the first degree and is punishable as if he or she had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

Section 1829. Subsection (2) of section 893.138, Florida Statutes (1996 Supplement), is amended to read:

893.138 Local administrative action to abate drug-related or prostitution-related public nuisances and criminal street gang activity.—

(2) Any county or municipality may, by ordinance, create an administrative board to hear complaints regarding the nuisances described in subsection (1). Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance as described in subsection (1).

Section 1830. Subsections (2) and (3), subsection (7), as amended by section 8 of chapter 96-392, Laws of Florida, subsections (8) and (9), paragraph (a) of subsection (10), and subsection (11) of section 901.15, Florida Statutes (1996 Supplement), are amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(2) A felony has been committed and he or she reasonably believes that the person committed it.

(3) He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.

(7) There is probable cause to believe that the person has committed:

(a) An act of domestic violence, as defined in s. 741.28;

(b) Child abuse, as defined in s. 827.04(2) and (3); or

(c) Any battery upon another person, as defined in s. 784.03.

With respect to an arrest for an act of domestic violence, the decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. A law enforcement officer who acts in good faith and

exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

(8) ~~The officer~~ He has probable cause to believe that the person has knowingly committed an act of repeat violence in violation of an injunction for protection from repeat violence entered pursuant to s. 784.046.

(9) The officer has determined that he or she has probable cause to believe that a misdemeanor has been committed, based upon a signed affidavit provided to the officer by a law enforcement officer of the United States Government, recognized as such by United States statute, or a United States military law enforcement officer, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, when the misdemeanor was committed in the presence of the United States law enforcement officer or the United States military law enforcement officer on federal military property over which the state has maintained exclusive jurisdiction for such a misdemeanor.

(10)(a) A law enforcement officer of the Florida National Guard, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, has probable cause to believe a felony was committed on state military property or when a felony or misdemeanor was committed in his or her presence on such property.

(11) He or she is employed by the State of Florida as a law enforcement officer as defined in s. 943.10(1) or part-time law enforcement officer as defined in s. 943.10(6), and:

(a) He or she reasonably believes that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing the felony;

(b) While engaged in the exercise of his or her state law enforcement duties, the officer ~~he~~ reasonably believes that a felony has been or is being committed; or

(c) A felony warrant for the arrest has been issued and is being held for execution by another peace officer.

Notwithstanding any other provision of law, the authority of an officer pursuant to this subsection is statewide. This subsection does not limit the arrest authority conferred on such officer by any other provision of law.

Section 1831. Paragraph (b) of subsection (7) of section 901.15, Florida Statutes (1996 Supplement), as amended by section 4 of chapter 96-215, Laws of Florida, is amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(7)

(b) A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

Section 1832. Paragraph (b) of subsection (7) of section 901.15, Florida Statutes (1996 Supplement), as amended by section 24 of chapter 96-322, Laws of Florida, is amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(7)

(b) A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

Section 1833. Subsection (1) of section 905.17, Florida Statutes (1996 Supplement), is amended to read:

905.17 Who may be present during session of grand jury.—

(1) No person shall be present at the sessions of the grand jury except the witness under examination, one attorney representing the witness for the sole purpose of advising and consulting with the witness, the state attorney and her or his assistant state attorneys, designated assistants as provided for in s. 27.18, the court reporter or stenographer, and the interpreter. The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.

Section 1834. Paragraphs (b), (i), and (j) of subsection (4) of section 907.041, Florida Statutes (1996 Supplement), are amended to read:

907.041 Pretrial detention and release.—

(4) PRETRIAL DETENTION.—

(b) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's ~~his~~ appearance at subsequent proceedings;

2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reason-

ably assure the defendant's appearance at subsequent criminal proceedings;
or

4. The defendant poses the threat of harm to the community. The court may so conclude if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. In addition, the court must find that at least one of the following conditions is present:

a. The defendant has previously been convicted of a crime punishable by death or life imprisonment.

b. The defendant has been convicted of a dangerous crime within the 10 years immediately preceding the date of his or her arrest for the crime presently charged.

c. The defendant is on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time of the current arrest.

(i) If ordered detained pending trial pursuant to subparagraph (b)4., the defendant may not be held for more than 90 days. Failure of the state to bring the defendant to trial within that time shall result in the defendant's ~~his~~ release from detention, subject to any conditions of release, unless the trial delay was requested or caused by the defendant or his or her counsel.

(j) A defendant convicted at trial following the issuance of a pretrial detention order shall have credited to his or her sentence, if imprisonment is imposed, the time the defendant ~~he~~ was held under the order, pursuant to s. 921.161.

Section 1835. Subsections (3) and (4), paragraph (c) of subsection (5), subsections (6) and (8), paragraph (b) of subsection (9), and subsection (11) of section 916.107, Florida Statutes (1996 Supplement), are amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A person committed to the department pursuant to this act shall be asked to give express and informed written consent for treatment. "Express and informed consent" or "consent" means consent given voluntarily in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment, the common side effects of the treatment, if any, the expected duration of the treatment, and any alternative treatment available. If a patient in a forensic facility refuses such treatment as is deemed necessary by the patient's multidisciplinary treatment team at the forensic facility for the appropriate care of the patient and the safety of the patient or others, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the patient or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the patient has not given express and informed consent to the treatment initially refused, the administrator of the forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator, for an order authorizing the continued treatment of the patient. In the interim, treatment may be continued without the consent of the patient upon the continued written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the patient or others.

2. In a situation other than an emergency situation, the administrator of the forensic facility shall petition the court for an order authorizing the treatment of the patient. The order shall allow such treatment for a period not to exceed 90 days from the date of the entry of the order. Unless the court is notified in writing that the patient has provided express and informed consent in writing or that the patient has been discharged by the committing court, the administrator shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the patient provides consent or is discharged by the committing court.

3. At the hearing on the issue of whether the court should enter an order authorizing treatment for which a patient has refused to give express and informed consent, the court shall determine by clear and convincing evidence that the patient is mentally ill or mentally retarded as defined in this chapter, that the treatment not consented to is essential to the care of the patient, and that the treatment not consented to is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

- a. The patient's expressed preference regarding treatment;
- b. The probability of adverse side effects;
- c. The prognosis without treatment; and
- d. The prognosis with treatment.

The hearing shall be as convenient to the patient as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the patient's condition. The court may appoint a master to preside at the hearing. The patient or the patient's ~~his~~ guardian, and his or her representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The patient has the right to have an attorney represent him or her at the hearing, and, if the patient is indigent, the court shall appoint the office of the public defender to represent the patient ~~him~~ at the hearing. The patient may testify or not, as he or she

chooses, and has the right to cross-examine witnesses testifying on behalf of the facility and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment or nonpsychiatric medical procedures, and prior to performing the procedure, written permission shall be obtained from the patient, if he or she is legally competent, from the parent or guardian of a minor patient, or from the guardian of an incompetent patient. The administrator of the forensic facility or his or her designated representative may, with the concurrence of the patient's attending physician, authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or for a situation threatening serious bodily harm to the patient and permission of the patient or the patient's his guardian cannot be obtained.

(4) QUALITY OF TREATMENT.—Each patient committed pursuant to this chapter shall receive treatment suited to his or her needs, which shall be administered skillfully, safely, and humanely with full respect for the patient's his dignity and personal integrity. Each patient shall receive such medical, vocational, social, educational, and rehabilitative services as the patient's his condition requires to bring about an early return to his or her community. In order to achieve this goal, the department is directed to coordinate its forensic mental health and mental retardation programs with all other programs of the department and other appropriate state agencies.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(c) If a patient's right to communicate is restricted by the administrator, written notice of such restriction shall be served on the patient or the patient's his guardian or representatives, and such restriction shall be recorded on the patient's clinical record with the reasons therefor. The restriction of a patient's right to communicate shall be reviewed at least every 90 days.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF PATIENTS.—A patient's right to his or her clothing and personal effects shall be respected. The department by rule, or the administrator of any facility by written institutional policy, may declare certain items to be hazardous to the welfare of patients or others or to the operation of the facility. Such items may be restricted from introduction into the facility or may be restricted from being in a patient's possession. The administrator may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the patient's clinical record.

(8) CLINICAL RECORD; CONFIDENTIALITY.—A clinical record for each patient shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department. Unless waived by express and informed consent by the patient or the patient's his legal guardian or, if the patient is deceased, by the patient's personal representative or by that family member who stands next in line of intestate succession or except as otherwise provided in this subsection, the clinical record is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) Such clinical record may be released:

1. To such persons and agencies as are designated by the patient or the patient's his legal guardian.

2. To persons authorized by order of court.

3. To a qualified researcher, as defined by rule; a staff member of the facility; or an employee of the department when the administrator of the facility or secretary of the department deems it necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

4. For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

5. If a patient receiving services pursuant to this chapter has declared an intention to harm other persons; however, only the declaration may be disclosed.

6. To the parent of a mentally ill or mentally retarded person who is committed to, or is being treated by, a forensic mental health facility or program when such information is limited to that person's treatment plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.

(b) Notwithstanding other provisions of this subsection, the department may request or receive from or provide to any of the following entities client information to facilitate treatment, rehabilitation, and continuity of care of any forensic client:

1. The Social Security Administration and the United States Department of Veterans Affairs;

2. Law enforcement agencies, state attorneys, public defenders or other attorneys defending the patient, and judges in regard to the patient's status;

3. Jail personnel in the jail to which a client may be returned; and

4. Community agencies and others expected to provide followup care to the patient upon his or her return to the community.

(c) The department may provide notice to any patient's next of kin or first representative regarding any serious medical illness or the death of the patient.

(d)1. Any law enforcement agency, treatment facility, or other governmental agency that receives information pursuant to this subsection shall maintain the confidentiality of such information except as otherwise provided herein.

2. Any agency or private practitioner who acts in good faith in releasing information pursuant to this subsection is not subject to civil or criminal liability for such release.

(9) HABEAS CORPUS.—

(b) A patient or the patient's ~~his~~ guardian or representatives may file a petition in the circuit court in the county where the patient is committed alleging that the patient is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the circuit court shall have the authority to conduct a judicial inquiry and to issue any appropriate order to correct an abuse of the provisions of this chapter.

(11) LIABILITY FOR VIOLATIONS.—Any person who violates or abuses any rights or privileges of a patient provided by this act is liable for damages as determined by law. Any person who acts in good faith in complying with the provisions of this act is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this subsection does not relieve any person from liability if the person ~~he~~ is negligent.

Section 1836. Subsection (1) of section 921.0014, Florida Statutes (1996 Supplement), is amended to read:

921.0014 Sentencing guidelines; worksheet computations; score-sheets.—

(1)

(a) The sentencing guidelines worksheet is used to compute the subtotal and total sentence points as follows:

FLORIDA SENTENCING GUIDELINES WORKSHEET

OFFENSE SCORE

Level	Primary Offense Sentence Points		Total
10	116	=	....
9	92	=	....
8	74	=	....
7	56	=	....
6	36	=	....
5	28	=	....
4	22	=	....
3	16	=	....
2	10	=	....
1	4	=	....
			<u>Total</u>

Level	Additional Offenses Sentence Points	Counts	Total
10	58	x .... =	....
9	46	x .... =	....
8	37	x .... =	....

Level	Additional Offenses		Counts	=	Total
	Sentence Points	Points			
7	28	x	....	=	....
6	18	x	....	=	....
5	5.4	x	....	=	....
4	3.6	x	....	=	....
3	2.4	x	....	=	....
2	1.2	x	....	=	....
1	0.7	x	....	=	....
M	0.2	x	....	=	....
					<u>Total</u>

Level	Victim Injury		Number	=	Total
	Sentence Points	Points			
2nd degree murder-death	240	x	....	=	....
Death	120	x	....	=	....
Severe Sexual penetration	80	x	....	=	....
Moderate Sexual contact	40	x	....	=	....
Slight	4	x	....	=	....
					<u>Total</u>

Primary Offense + Additional Offenses + Victim Injury=
TOTAL OFFENSE SCORE
PRIOR RECORD SCORE

Level	Prior Record		Number	=	Total
	Sentence Points	Points			
10	29	x	....	=	....
9	23	x	....	=	....
8	19	x	....	=	....
7	14	x	....	=	....
6	9	x	....	=	....
5	3.6	x	....	=	....
4	2.4	x	....	=	....
3	1.6	x	....	=	....
2	0.8	x	....	=	....
1	0.5	x	....	=	....
M	0.2	x	....	=	....
					<u>Total</u>

TOTAL OFFENSE SCORE	
TOTAL PRIOR RECORD SCORE	
LEGAL STATUS	
COMMUNITY SANCTION VIOLATION	
PRIOR SERIOUS FELONY	
PRIOR CAPITAL FELONY	
FIREARM OR SEMIAUTOMATIC WEAPON	
	SUBTOTAL.....
VIOLENT CAREER CRIMINAL (no)(yes)	
VIOLENT HABITUAL OFFENDER (no)(yes)	
HABITUAL OFFENDER (no)(yes)	
DRUG TRAFFICKER (no)(yes) (x multiplier)	
LAW ENF. PROTECT. (no)(yes) (x multiplier)	
MOTOR VEHICLE THEFT (no)(yes) (x multiplier)	
CRIMINAL STREET GANG MEMBER (no)(yes) (x multiplier)	
.....	
	TOTAL SENTENCE POINTS.....

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender’s legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation, and each successive community sanction violation; however, if the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for such violation, and for each successive community sanction violation involving a new felony conviction. Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of 30 points shall be added. For purposes of this section, a prior serious felony is an offense in the offender’s prior record that is ranked in level 8, level 9, or level 10 under s. 921.0012 or s. 921.0013 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender’s date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary

offense and any additional offense. A prior capital felony is a capital felony offense for which the offender has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional 18 sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(9) or (10), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Criminal street gang member: If the offender is convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, the subtotal sentence points are multiplied by 1.5.

Section 1837. Subsection (2) and paragraphs (e) and (g) of subsection (7) of section 921.142, Florida Statutes (1996 Supplement), are amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony under s.

893.135, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (6) and (7). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's his counsel shall be permitted to present argument for or against sentence of death.

(7) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall include the following:

(e) The capacity of the defendant to appreciate the criminality of her or his conduct or to conform her or his conduct to the requirements of law was substantially impaired.

(g) The defendant could not have reasonably foreseen that her or his conduct in the course of the commission of the offense would cause or would create a grave risk of death to one or more persons.

Section 1838. Subsection (1) of section 922.052, Florida Statutes (1996 Supplement), is amended to read:

922.052 Issuance of warrant of execution.—

(1) When a person is sentenced to death, the clerk of the court shall prepare a certified copy of the record of the conviction and sentence, and the sheriff shall send the record to the Governor. The sentence shall not be executed until the Governor issues a warrant, attaches it to the copy of the record, and transmits it to the superintendent, directing the superintendent ~~him~~ to execute the sentence at a time designated in the warrant.

Section 1839. Subsections (1), (2), (3), and (4) of section 922.07, Florida Statutes (1996 Supplement), are amended to read:

922.07 Proceedings when person under sentence of death appears to be insane.—

(1) When the Governor is informed that a person under sentence of death may be insane, the Governor ~~he~~ shall stay execution of the sentence and

appoint a commission of three psychiatrists to examine the convicted person. The Governor shall notify the psychiatrists in writing that they are to examine the convicted person to determine whether he or she understands the nature and effect of the death penalty and why it is to be imposed upon him or her. The examination of the convicted person shall take place with all three psychiatrists present at the same time. Counsel for the convicted person and the state attorney may be present at the examination. If the convicted person does not have counsel, the court that imposed the sentence shall appoint counsel to represent him or her.

(2) After receiving the report of the commission, if the Governor decides that the convicted person has the mental capacity to understand the nature of the death penalty and the reasons why it was imposed upon him or her, the Governor shall immediately lift the stay and notify the Attorney General of such action. Within 10 days after such notification, the Governor must set the new date for execution of the death sentence. When the new date for execution of the death sentence is set by the Governor under this subsection, the Attorney General shall notify the inmate's counsel of record of the date and time of execution.

(3) If the Governor decides that the convicted person does not have the mental capacity to understand the nature of the death penalty and why it was imposed on him or her, the Governor ~~he~~ shall have the convicted person ~~him~~ committed to a Department of Corrections mental health treatment facility.

(4) When a person under sentence of death has been committed to a Department of Corrections mental health treatment facility, he or she shall be kept there until the facility administrator determines that he or she has been restored to sanity. The facility administrator shall notify the Governor of his or her determination, and the Governor shall appoint another commission to proceed as provided in subsection (1).

Section 1840. Subsection (1) of section 922.08, Florida Statutes (1996 Supplement), is amended to read:

922.08 Proceedings when person under sentence of death appears to be pregnant.—

(1) When the Governor is informed that a person under sentence of death may be pregnant, the Governor ~~he~~ shall stay execution of the sentence and appoint a qualified physician to examine the convicted person and determine if she is pregnant.

Section 1841. Subsection (1) of section 922.11, Florida Statutes (1996 Supplement), is amended to read:

922.11 Regulation of execution.—

(1) The superintendent of the state prison or a deputy designated by him or her shall be present at the execution. The superintendent shall set the day for execution within the week designated by the Governor in the warrant.

Section 1842. Paragraph (a) of subsection (6) of section 924.051, Florida Statutes (1996 Supplement), is amended to read:

924.051 Terms and conditions of appeals and collateral review in criminal cases.—

(6) A petition or motion for collateral or other postconviction relief may not be considered if it is filed more than 2 years after the judgment and sentence became final in a noncapital case or more than 1 year after the judgment and sentence became final in a capital case in which a death sentence was imposed unless it alleges that:

(a) The facts upon which the claim is predicated were unknown to the petitioner or his or her attorney and could not have been ascertained by the exercise of due diligence;

Section 1843. Paragraph (a) of subsection (3) and subsection (6) of section 925.037, Florida Statutes (1996 Supplement), are amended to read:

925.037 Reimbursement of counties for fees paid to appointed counsel; circuit conflict committees.—

(3) In each judicial circuit a circuit conflict committee shall be established. The committee shall consist of the following:

(a) The chief judge of the judicial circuit or the chief judge's ~~his~~ designated representative.

(6) No funds may be transferred to increase the amount available for reimbursement; however, these funds may be reallocated among the counties with the approval of the Justice Administrative Commission in consultation with the chairs ~~chairmen~~ of the legislative appropriations committees.

Section 1844. Section 940.03, Florida Statutes (1996 Supplement), is amended to read:

940.03 Application for executive clemency.—When any person intends to apply for remission of any fine or forfeiture or the commutation of any punishment, or for pardon or restoration of civil rights, he or she shall request an application form from the Parole Commission in compliance with such rules regarding application for executive clemency as are adopted by the Governor with the approval of three members of the Cabinet. Such application may require the submission of a certified copy of the applicant's indictment or information, the judgment adjudicating the applicant to be guilty, and the sentence, if sentence has been imposed, and may also require the applicant to send a copy of the application to the judge and prosecuting attorney of the court in which the applicant was convicted, notifying them of the applicant's intent to apply for executive clemency. An application for executive clemency for a person who is sentenced to death must be filed within 1 year after the date the Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later.

Section 1845. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 943.0515, Florida Statutes (1996 Supplement), are amended to read:

943.0515 Retention of criminal history records of minors.—

(1)

(b) If the minor is not classified as a serious or habitual juvenile under chapter 39, the division shall retain the minor's ~~his~~ criminal history record for 5 years after the date the minor ~~he~~ reaches 19 years of age, at which time the record shall be expunged unless it meets the criteria of paragraph (2)(a) or paragraph (2)(b).

(2)

(b) If, at any time, a minor is adjudicated as an adult for a forcible felony, the minor's criminal history record prior to the time of the minor's ~~his~~ adjudication as an adult must be merged with his or her record as an adjudicated adult.

Section 1846. Paragraph (b) of subsection (1) of section 943.054, Florida Statutes (1996 Supplement), is amended to read:

943.054 Exchange of federal criminal history records and information.—

(1) Criminal history information derived from any United States Department of Justice criminal justice information system is available:

(b) Pursuant to applicable federal laws and regulations for use in connection with licensing or local or state employment or for such other uses only as authorized by federal or state laws which have been approved by the United States Attorney General or the Attorney General's ~~his~~ designee. When no active prosecution of the charge is known to be pending, arrest data more than 1 year old is not disseminated unless accompanied by information relating to the disposition of that arrest.

Section 1847. Paragraph (b) of subsection (1) of section 943.0585, Florida Statutes (1996 Supplement), is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s.

907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.— Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1848. Paragraph (b) of subsection (1) of section 943.059, Florida Statutes (1996 Supplement), is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each petition to a court to seal a criminal history record is complete only when accompanied by:

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1849. Subsections (2) and (3) of section 943.06, Florida Statutes (1996 Supplement), are amended to read:

943.06 Criminal and Juvenile Justice Information Systems Council.— There is created a Criminal and Juvenile Justice Information Systems Council within the department.

(2) Members appointed by the Governor shall be appointed for terms of 4 years. No appointive member shall serve beyond the time he or she ceases to hold the office or employment by reason of which the member he was eligible for appointment to the council. Any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his or her predecessor or until a successor is appointed and qualifies. Any member who, without cause, fails to attend two consecutive meetings may be removed by the Governor.

(3) The council shall annually elect its chair ~~chairman~~ and other officers. The council shall meet semiannually or at the call of its chair ~~chairman~~, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules. A majority of the members of the council constitutes a quorum, and action by a majority of the council shall be official.

Section 1850. Subsections (2) and (4), paragraph (c) of subsection (6), and paragraphs (c) and (d) of subsection (8) of section 943.1395, Florida Statutes (1996 Supplement), are amended to read:

943.1395 Certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation.—

(2) An officer who is certified in one discipline and who complies with s. 943.13 in another discipline shall hold concurrent certification and may be assigned in either discipline within his or her employing agency.

(4) The certification of an officer who fails to comply with s. 943.135(1) shall be inactive, and the officer he may not be employed or appointed as an officer until he or she complies with the provisions of s. 943.135(1).

(6) The commission shall revoke the certification of any officer who is not in compliance with the provisions of s. 943.13(4) or who intentionally executes a false affidavit established in s. 943.13(8), s. 943.133(2), or s. 943.139(2).

(c) When an officer's certification is revoked in any discipline, his or her certification in any other discipline shall simultaneously be revoked.

(8)

(c) For the purpose of implementing the penalties provided in subsections (6) and (7), the chair ~~chairman~~ of the commission may appoint one or more panels of three commissioners each to determine probable cause. In lieu of a finding of probable cause, the probable cause panel may issue a letter of guidance to the officer. However, when an employing agency disciplines an officer and the officer's employment is continued or reinstated by the agency, a probable cause panel may review the sustained disciplinary charges and disciplinary penalty, determine whether or not the penalty conforms to the disciplinary penalties prescribed by rule, and, in writing and on behalf of the commission, notify the employing agency and officer of the results of the review. If the penalty conforms to the disciplinary penalty provided by rule, the officer and employing agency shall be notified, in writing, that no further action shall be taken. If the penalty does not conform to such disciplinary penalty prescribed by rule, the officer and employer shall be notified, in writing, of further action to be taken.

(d) An administrative law judge assigned to conduct a hearing under ss. 120.569 and 120.57(1) regarding allegations that an officer is not in compliance with, or has failed to maintain compliance with, s. 943.13(4) or (7) must, in his or her recommended order:

1. Adhere to the disciplinary guidelines and penalties set forth in subsections (6) and (7) and the rules adopted by the commission for the type of offense committed.

2. Specify, in writing, any aggravating or mitigating circumstance that he or she considered in determining the recommended penalty.

Any deviation from the disciplinary guidelines or prescribed penalty must be based upon circumstances or factors that reasonably justify the aggravation or mitigation of the penalty. Any deviation from the disciplinary guidelines or prescribed penalty must be explained, in writing, by the administrative law judge.

Section 1851. Subsections (1) and (8) of section 943.14, Florida Statutes (1996 Supplement), are amended to read:

943.14 Criminal justice training schools; certificates and diplomas; exemptions; injunctive relief; fines.—

(1) Each criminal justice training school approved by the commission shall obtain from the commission a certificate of compliance, with rules of the commission, signed by the chair ~~chairman~~ of the commission. Any training or educational courses which are taught in any criminal justice training school must first be approved in writing by the commission.

(8)(a) If a criminal justice training school or person violates this section, or any rule adopted pursuant hereto, the Department of Legal Affairs, at the request of the chair ~~chairman~~ of the commission, shall apply to the circuit court in the county in which the violation or violations occurred for injunc-

tive relief prohibiting the criminal justice training school or person from operating contrary to this section.

(b)1. In addition to any injunctive relief available under paragraph (a), the commission may impose a civil fine upon any criminal justice training school or person who violates subsection (1) or subsection (5), or any rule adopted pursuant thereto, of up to \$10,000 for each violation, which fine shall be paid into the Criminal Justice Standards and Training Trust Fund. The commission may impose a civil fine upon any criminal justice training school or person who violates subsection (2), subsection (3), or subsection (4), or any rule adopted pursuant thereto, of up to \$1,000 for each violation, which fine shall be paid into the Criminal Justice Standards and Training Trust Fund.

2. A proceeding under this paragraph shall comply with the provisions of chapter 120, and the final order of the commission constitutes final agency action for the purposes of chapter 120. When the commission imposes a civil fine and the fine is not paid within a reasonable time, the Department of Legal Affairs, at the request of the ~~chair~~ chairman of the commission, shall bring a civil action under the provisions of s. 120.69 to recover the fine. The commission and the Department of Legal Affairs are not required to post any bond in any proceeding herein.

Section 1852. Paragraph (o) of subsection (1) of section 944.09, Florida Statutes (1996 Supplement), is amended to read:

944.09 Rules of the department; offenders, probationers, and parolees.—

(1) The department shall adopt rules governing the administration of the correctional system and the operation of the department, which rules shall relate to:

(o) Mail to and from inmates, including rules specifying the circumstances under which an inmate must pay for the cost of postage for mail that the inmate ~~he~~ sends. The department may not adopt a rule that requires an inmate to pay any postage costs that the state is constitutionally required to pay.

Section 1853. Paragraph (c) of subsection (4) of section 944.275, Florida Statutes (1996 Supplement), is amended to read:

944.275 Gain-time.—

(4)

(c) An inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence may be granted meritorious gain-time of from 1 to 60 days.

Section 1854. Subsection (1) and paragraphs (b) and (c) of subsection (2) of section 944.28, Florida Statutes (1996 Supplement), as amended by section 6 of chapter 89-531, Laws of Florida, are amended to read:

944.28 Forfeiture of gain-time and the right to earn gain-time in the future.—

(1) If a prisoner is convicted of escape, or if the clemency, conditional release as described in chapter 947, probation or community control as described in chapter 948, provisional release as described in s. 944.277, parole, or control release as described in s. 947.146 granted to the prisoner ~~him~~ is revoked, the department may, without notice or hearing, declare a forfeiture of all gain-time earned according to the provisions of law by such prisoner prior to such escape or his or her release under such clemency, conditional release, probation, community control, provisional release, control release, or parole.

(2)

(b) A prisoner's right to earn gain-time during all or any part of the remainder of the sentence or sentences under which he or she is imprisoned may be declared forfeited because of the seriousness of a single instance of misconduct or because of the seriousness of an accumulation of instances of misconduct.

(c) The method of declaring a forfeiture under paragraph (a) or paragraph (b) shall be as follows: A written charge shall be prepared, which shall specify each instance of misconduct upon which it is based and the approximate date thereof. A copy of such charge shall be delivered to the prisoner, and he or she shall be given notice of a hearing before the disciplinary committee created under the authorization of rules heretofore or hereafter adopted by the department for the institution in which he or she is confined. The prisoner shall be present at the hearing. If at such hearing the prisoner pleads guilty to the charge or if the committee determines that the prisoner he is guilty thereof upon the basis of proof presented at such hearing, it shall find him or her guilty. If the committee considers that all or part of the prisoner's gain-time and the prisoner's ~~his~~ right to earn gain-time during all or any part of the sentence or sentences under which he or she is imprisoned shall be forfeited, it shall so recommend in its written report. Such report shall be presented to the superintendent of the institution, who may approve such recommendation in whole or in part by endorsing such approval on the report. In the event of approval, the superintendent shall forward the report to the department. Thereupon, the department may, in its discretion, declare the forfeiture thus approved by the superintendent or any specified part thereof.

Section 1855. Subsection (1) of section 944.28, Florida Statutes (1996 Supplement), as reenacted by section 2 of chapter 91-280, Laws of Florida, is amended to read:

944.28 Forfeiture of gain-time and the right to earn gain-time in the future.—

(1) If a prisoner is convicted of escape, or if the clemency, conditional release as described in chapter 947, probation or community control as described in s. 948.01, provisional release as described in s. 944.277, or parole granted to the prisoner ~~him~~ is revoked, the department may, without

notice or hearing, declare a forfeiture of all gain-time earned according to the provisions of law by such prisoner prior to such escape or his or her release under such clemency, conditional release, probation, community control, provisional release, or parole.

Section 1856. Section 944.31, Florida Statutes (1996 Supplement), is amended to read:

944.31 Inspector general; inspectors; power and duties.—The inspector general shall be responsible for prison inspection and investigation, internal affairs investigations, inmate grievances, and management reviews. The office of the inspector general shall be charged with the duty of inspecting the penal and correctional systems of the state. The office of the inspector general shall inspect each correctional institution or any place in which state prisoners are housed, worked, or kept within the state, with reference to its physical conditions, cleanliness, sanitation, safety, and comfort; the quality and supply of all bedding; the quality, quantity, and diversity of food served and the manner in which it is served; the number and condition of the prisoners confined therein; and the general conditions of each institution. The office of inspector general shall see that all the rules and regulations issued by the department are strictly observed and followed by all persons connected with the correctional systems of the state. The office of the inspector general shall coordinate and supervise the work of inspectors throughout the state. The inspector general and inspectors may enter any place where prisoners in this state are kept and shall be immediately admitted to such place as they desire and may consult and confer with any prisoner privately and without molestation. The inspector general and inspectors shall be responsible for criminal and administrative investigation of matters relating to the Department of Corrections. In such investigations, the inspector general and inspectors may consult and confer with any prisoner or staff member privately and without molestation and shall have the authority to detain any person for violations of the criminal laws of the state. Such detention shall be made only on properties owned or leased by the department, and the detained person shall be surrendered without delay to the sheriff of the county in which the detention is made, with a formal complaint subsequently made against her or him in accordance with law.

Section 1857. Subsections (1) and (4) of section 945.091, Florida Statutes (1996 Supplement), are amended to read:

945.091 Extension of the limits of confinement; restitution by employed inmates.—

(1) The department is authorized to adopt regulations permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate ~~he~~ will honor his or her trust by authorizing the inmate ~~him~~, under prescribed conditions and following investigation and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

(a) Visit, for a specified period, a specifically designated place or places:

1. For the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released;

2. To otherwise aid in the rehabilitation of the inmate; or

3. For another compelling reason consistent with the public interest,

and return to the same or another institution or facility designated by the Department of Corrections.

(b) Work at paid employment, participate in an education or a training program, or voluntarily serve a public or nonprofit agency in the community, while continuing as an inmate of the institution or facility in which the inmate ~~he~~ is confined, except during the hours of his or her employment, education, training, or service and traveling thereto and therefrom. An inmate may participate in paid employment only during the last 36 months of his or her confinement, unless sooner requested by the Parole Commission or the Control Release Authority.

(c) Participate in a residential or nonresidential rehabilitative program operated by a public or private, nonprofit agency with which the department has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057 shall apply to all contracts between the department and any private entity providing such services. The department shall require such agency to provide appropriate supervision of inmates participating in such program. The department is authorized to terminate any inmate's participation in the program if such inmate fails to demonstrate satisfactory progress in the program as established by departmental rules.

(4) The willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the department shall be deemed as an escape from the custody of the department and shall be punishable as prescribed by law.

Section 1858. Paragraph (f) of subsection (1) of section 945.215, Florida Statutes (1996 Supplement), is amended to read:

945.215 Inmate welfare and employee benefit trust funds.—

(1)

(f) The secretary of the department or the secretary's ~~his~~ designee may invest in the manner authorized by law for fiduciaries any money in the Inmate Welfare Trust Fund of the department that in his or her opinion is not necessary for immediate use, and the interest earned and other increments derived from such investments made pursuant to this section shall be deposited in the Inmate Welfare Trust Fund of the department.

Section 1859. Subsections (3), (4), (5), (12), and (13) of section 945.42, Florida Statutes (1996 Supplement), are amended to read:

945.42 Definitions.—As used in ss. 945.40-945.49, the following terms shall have the meanings ascribed to them, unless the context shall clearly indicate otherwise:

(3) “Director” means the Director for Mental Health Services of the Department of Corrections or his or her designee.

(4) “In immediate need of care and treatment” means that an inmate is apparently mentally ill and is not able to be appropriately cared for in the institution where the inmate ~~he~~ is confined and that, without intervention, the alleged mental illness poses an immediate, real, and present threat of substantial harm to the inmate’s ~~his~~ well-being or to the safety of others.

(5) “In need of care and treatment” means that an inmate has a mental illness for which inpatient services in a mental health treatment facility are necessary, which mental illness poses a real and present threat of substantial harm to the inmate’s ~~his~~ well-being or to the safety of others.

(12) “Superintendent” means the superintendent of a state corrections facility or his or her designee.

(13) “Transitional mental health care” means a level of care that is more intensive than outpatient care, but less intensive than crisis stabilization care, and is characterized by the provision of traditional mental health treatments such as group and individual therapy, activity therapy, recreational therapy, and chemotherapy, in the context of a structured residential setting. Transitional mental health care is indicated for a person with chronic or residual symptomatology who does not require crisis stabilization care or acute psychiatric care at the hospital level, but whose impairments in functioning nevertheless render him or her incapable of adjusting satisfactorily within the general inmate population, even with the assistance of outpatient care.

Section 1860. Subsection (1), paragraphs (b) and (c) of subsection (2), and subsection (3) of section 945.43, Florida Statutes (1996 Supplement), are amended to read:

945.43 Admission of inmate to mental health treatment facility.—

(1) CRITERIA.—An inmate may be admitted to a mental health treatment facility if he or she is mentally ill and is in need of care and treatment.

(2) ADMISSION TO A MENTAL HEALTH TREATMENT FACILITY.—

(b) A copy of the certificate shall also be filed with the department, and copies shall be served on the inmate and the inmate’s ~~his~~ representatives, accompanied by:

1. A written notice, in plain and simple language, that the inmate or the inmate’s ~~his~~ representative may apply at any time for a hearing on the issue of the inmate’s need for treatment if he or she has previously waived such a hearing.

2. A petition for such hearing, which requires only the signature of the inmate or the inmate's his representative for completion.
3. A written notice that the petition may be filed with the court in the county in which the inmate is hospitalized at the time and stating the name and address of the judge of such court.
4. A written notice that the inmate or the inmate's his representative may apply immediately to the court to have an attorney appointed if the inmate cannot afford one.

(c) The petition may be filed in the county in which the inmate is being treated at any time within 6 months of the date of the certificate. The hearing shall be held in the same county, and one of the inmate's physicians at the facility shall appear as a witness at the hearing. If the court finds that the inmate is mentally ill and in need of care and treatment, it shall order that he or she be admitted to a mental health treatment facility or, if the inmate he is at a mental health treatment facility, that he or she be retained there. However, the inmate may be immediately transferred to and admitted at a mental health treatment facility by executing a waiver of the hearing by express and informed consent, without awaiting the court order. The court shall authorize the mental health treatment facility to retain the inmate for up to 6 months. If, at the end of that time, continued treatment is necessary, the superintendent shall apply to the court for an order authorizing continued placement.

(3) PROCEDURE FOR HEARING ON TRANSFER OF AN INMATE FOR MENTAL HEALTH TREATMENT.—If the inmate does not waive a hearing or if the inmate or the inmate's his representative files a petition for a hearing after having waived it, the court shall serve notice on the superintendent of the facility where the inmate is confined, the director, and the allegedly mentally ill inmate. The notice shall specify the date, time, and place of the hearing; the basis for the allegation of mental illness; and the names of the examining experts. The hearing shall be held within 5 days, and the court may appoint a master to preside. The hearing may be as informal as is consistent with orderly procedure. One of the experts whose opinion supported the recommendation shall be present at the hearing for information purposes. If, at the hearing, the court finds that the inmate is mentally ill and in need of care and treatment, it shall order that he or she be transferred to a mental health treatment facility and provided appropriate treatment. The court shall provide a copy of its order authorizing transfer and all supporting documentation relating to the inmate's condition to the superintendent of the treatment facility. If the court finds that the inmate is not mentally ill, it shall dismiss the petition for transfer.

Section 1861. Section 945.44, Florida Statutes (1996 Supplement), is amended to read:

945.44 Emergency admission of inmate to mental health treatment facility.—

(1) CRITERIA.—An inmate may be placed in a mental health treatment facility on an emergency basis if he or she is mentally ill and in immediate need of care and treatment.

(2) PROCEDURE FOR EMERGENCY ADMISSION.—An inmate who is mentally ill and in immediate need of care and treatment which cannot be provided at the institution where he or she is confined may be admitted to a mental health treatment facility on an emergency basis. The inmate may be transferred immediately to the facility and shall be accompanied by the recommendation of the superintendent of the institution where the inmate ~~he~~ is confined, which recommendation shall state the need for the transfer and shall include a written opinion of a physician verifying the need for transfer. Upon the admission of the inmate to the facility, the inmate shall be evaluated; if he or she is determined to be in need of treatment or care, the superintendent shall initiate proceedings for placement of the inmate, as described in s. 945.43(2).

Section 1862. Subsections (1) and (2) of section 945.45, Florida Statutes (1996 Supplement), are amended to read:

945.45 Procedure for continued placement of inmates.—

(1) If continued placement of an inmate is necessary, the superintendent shall, prior to the expiration of the period during which the treatment facility is authorized to retain the inmate, request an order authorizing continued placement. This request shall be accompanied by a statement from the inmate's physician justifying the request and a brief summary of the inmate's treatment during the time he or she has been placed. In addition, the superintendent shall submit an individualized plan for the inmate for whom he or she is requesting continued placement. Notification of this request for retention shall be mailed to the inmate and the inmate's ~~his~~ representative along with a completed petition, requesting only a signature and a waiver-of-hearing form. The waiver-of-hearing form shall require express and informed consent and shall state that the inmate is entitled to a hearing under the law; that the inmate ~~he~~ is entitled to be represented by an attorney at the hearing and that, if the inmate ~~he~~ cannot afford an attorney, one will be appointed; and that, if it is shown at the hearing that the inmate does not meet the criteria for continued placement, he or she will be transferred to another facility of the department. If the inmate or the inmate's ~~his~~ representative does not sign the petition, or if the inmate does not sign a waiver within 15 days, the administrative law judge shall notice a hearing with regard to the inmate involved in accordance with ss. 120.569 and 120.57(1).

(2) If, at a hearing pursuant to ss. 945.40-945.49, the administrative law judge finds that the inmate no longer meets the criteria for treatment, he or she shall order that the inmate be transferred to another facility of the department.

Section 1863. Section 945.47, Florida Statutes (1996 Supplement), is amended to read:

945.47 Discharge of inmate from mental health treatment.—

(1) An inmate who has been transferred for the purpose of mental health treatment shall be discharged from treatment by the superintendent under the following conditions:

(a) If the inmate is no longer in need of care and treatment, he or she may be transferred to another institution in the department;

(b) If the inmate continues to be mentally ill, but ~~he~~ is not in need of care and treatment as an inpatient, he or she may be transferred to another institution in the department and provided appropriate outpatient and aftercare services;

(c) If the inmate's sentence expires during his or her treatment, but he or she is no longer in need of care and treatment as an inpatient, the inmate ~~he~~ may be released with a recommendation for outpatient treatment, pursuant to the provisions of ss. 945.40-945.49; or

(d) If the inmate's sentence expires and he or she continues to be mentally ill and in need of care and treatment, the superintendent shall initiate proceedings for involuntary placement, pursuant to s. 394.467.

(2) An inmate who is involuntarily placed pursuant to s. 394.467 at the expiration of his or her sentence may be placed, by order of the court, in a facility designated by the Department of Health and Rehabilitative Services as a secure, nonforensic, civil facility. Such a placement shall be conditioned upon a finding by the court of clear and convincing evidence that the inmate is manifestly dangerous to himself or herself or others. The need for such placement shall be reviewed by facility staff every 90 days. At any time that a patient is considered for transfer to a nonsecure, civil unit, the court which entered the order for involuntary placement shall be notified.

(3) At any time that an inmate who has received mental health treatment while in the custody of the department becomes eligible for release on parole, a complete record of the inmate's ~~his~~ treatment shall be provided to the Parole Commission and to the Department of Health and Rehabilitative Services. The record shall include, at least, the inmate's diagnosis, length of stay in treatment, clinical history, prognosis, prescribed medication, and treatment plan and recommendations for aftercare services. In the event that the inmate is released on parole, the record shall be provided to the parole officer who shall assist the inmate in applying for services from a professional or an agency in the community. The application for treatment and continuation of treatment by the inmate may be made a condition of parole, as provided in s. 947.19(1); and a failure to participate in prescribed treatment may be a basis for initiation of parole violation hearings.

Section 1864. Subsections (1) and (2) of section 945.48, Florida Statutes (1996 Supplement), are amended to read:

945.48 Rights of inmate provided treatment.—

(1) RIGHT TO QUALITY TREATMENT.—An inmate in a mental health treatment facility has the right to receive treatment which is suited to his or her needs and which is provided in a humane psychological environment. Such treatment shall be administered skillfully, safely, and humanely with respect for the inmate's ~~his~~ dignity and personal integrity.

(2) RIGHT TO EXPRESS AND INFORMED CONSENT.—Any inmate provided psychiatric treatment within the department shall be asked to give

his or her express and informed written consent for such treatment. "Express and informed written consent" or "consent" means consent voluntarily given in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment; the common side effects of the treatment, if any; the expected duration of the treatment; and the alternative treatment available. The explanation shall enable the inmate to make a knowing and willful decision without any element of fraud, deceit, or duress or any other form of constraint or coercion. Involuntary mental health treatment of an inmate who refuses treatment that is deemed to be necessary for the appropriate care of the inmate and the safety of the inmate or others may be provided at an institution authorized to do so by the Assistant Secretary for Health Services under the following circumstances:

(a) In an emergency situation in which there is immediate danger to the health and safety of the inmate or other inmates, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the inmate has not given express and informed consent to the treatment initially refused, the superintendent shall, within 48 hours, excluding weekends and legal holidays, petition the circuit court serving the county in which the facility is located for an order authorizing the continued treatment of the inmate. In the interim, treatment may be continued upon the written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the inmate or others. If an inmate must be isolated for mental health purposes, that decision must be reviewed within 72 hours by medical staff different from that making the original placement.

(b) In a situation other than an emergency situation, the superintendent shall petition the court for an order authorizing the treatment of the inmate. The order shall allow such treatment for a period not to exceed 90 days from the date of the order. Unless the court is notified in writing that the inmate has provided express and informed consent in writing, that the inmate he has been transferred to another institution of the department, or that the inmate he is no longer in need of treatment, the superintendent shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the inmate provides consent or is no longer in need of treatment. Treatment may be continued pending a hearing after the filing of any petition.

(c) At the hearing on the issue of whether the court should authorize treatment for which an inmate has refused to give express and informed consent, the court shall determine by clear and convincing evidence whether the inmate is mentally ill as defined in this chapter; whether such treatment is essential to the care of the inmate; and whether the treatment is experimental or presents an unreasonable risk of serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following:

1. The inmate's expressed preference regarding treatment;

2. The probability of adverse side effects;
3. The prognosis for the inmate without treatment; and
4. The prognosis for the inmate with treatment.

The inmate and the inmate's ~~his~~ representative shall be provided with a copy of the petition and the date, time, and location of the hearing. The inmate may have an attorney represent him or her at the hearing, and, if the inmate ~~he~~ is indigent, the court shall appoint the office of the public defender to represent him or her at the hearing. The inmate may testify or not, as he or she chooses, may cross-examine witnesses testifying on behalf of the facility, and may present his or her own witnesses.

(d) In addition to the above provisions, when the permission of the inmate cannot be obtained, the superintendent of a mental health treatment facility, or his or her designated representative, with the concurrence of the inmate's attending physician, may authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or there is a situation threatening serious bodily harm to the inmate.

Section 1865. Subsections (1) and (2) of section 945.602, Florida Statutes (1996 Supplement), are amended to read:

945.602 State of Florida Correctional Medical Authority; creation; members.—

(1) There is created in the Department of Corrections the State of Florida Correctional Medical Authority. The governing board of the authority shall be composed of nine persons appointed by the Governor subject to confirmation by the Senate. One member must be a member of the Florida Hospital Association; one member must be a member of the Florida League of Hospitals; one member must be a member of the Association of Voluntary Hospitals; and one member must be a member of the Florida Medical Association. The Department of Corrections shall provide administrative support and service to the authority. The authority shall not be subject to control, supervision, or direction by the department. The authority shall annually elect one member to serve as chair ~~chairman~~. Members shall be appointed for terms of 4 years each. Each member is authorized to continue to serve upon the expiration of his or her term until a ~~his~~ successor is duly appointed as provided in this section. Before entering upon his or her duties, each member of the authority shall take and subscribe to the oath or affirmation required by the State Constitution.

(2) A member of the authority may not be a current employee of the department. Not more than one member of the authority may be a former employee of the department and such member, if appointed, may not be appointed to a term of office which begins within 5 years after the date of his or her last employment by the department.

Section 1866. Paragraph (a) of subsection (1) and subsection (4) of section 946.002, Florida Statutes (1996 Supplement), are amended to read:

946.002 Requirement of labor; compensation; amount; crediting of account of prisoner; forfeiture; civil rights; prisoner not employee or entitled to compensation insurance benefits.—

(1)(a) The department shall require of every able-bodied prisoner imprisoned in any institution as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules of the department. Every able-bodied prisoner classified as medium custody or minimum custody who does not satisfactorily participate in any institutional work, academic, or vocational programs shall be required to perform work for such political subdivisions of the state as might have entered into agreement with the department pursuant to s. 946.40.

(4)(a) When any prisoner shall willfully violate the terms of his or her employment or the rules and regulations of the department, the department may in its discretion determine what portion of all moneys earned by the prisoner shall be forfeited by said prisoner and such forfeiture shall be redeposited to the Department of Corrections Correctional Work Program Trust Fund.

(b) When any prisoner escapes, the department shall determine what portion of the prisoner's ~~his~~ earnings shall be forfeited, and such forfeiture shall be deposited in the State Treasury in the Inmate Welfare Fund of the department.

Section 1867. Paragraphs (h) and (j) of subsection (3) of section 946.006, Florida Statutes (1996 Supplement), are amended to read:

946.006 Correctional work programs.—

(3) The department is authorized to contract with the private sector for substantial involvement in a prison industry program which includes the operation of a direct private sector business within a prison and the hiring of inmate workers. The corporation acting on behalf of the state to operate prison industries established pursuant to part II is also authorized to contract with the private sector for substantial involvement in a prison industry program pursuant to this act, if said contract is approved by the department. Any contract authorized by this subsection shall be in compliance with federal law and shall not result in the significant displacement of employed workers in the community. The purposes and objectives of this program shall be to:

(h) Provide the financial basis for an inmate to contribute to the support of his or her family.

(j) Provide savings for the inmate to have available for his or her use upon the inmate's ~~his~~ eventual release from prison.

Section 1868. Paragraph (b) of subsection (5) of section 946.504, Florida Statutes (1996 Supplement), is amended to read:

946.504 Organization of corporation to operate correctional work programs; lease of facilities.—

(5)

(b) The lease must be submitted to the Attorney General for his or her approval as to form and legality.

Section 1869. Subsections (2) and (3) of section 947.02, Florida Statutes (1996 Supplement), are amended to read:

947.02 Parole Commission; members, appointment.—

(2) A parole qualifications committee shall consist of five persons who are appointed by the Governor and Cabinet. One member shall be designated as chair ~~chairman~~ by the Governor and Cabinet. The committee shall provide for statewide advertisement and the receiving of applications for any position or positions on the commission and shall devise a plan for the determination of the qualifications of the applicants by investigations and comprehensive evaluations, including, but not limited to, investigation and evaluation of the character, habits, and philosophy of each applicant. Each parole qualifications committee shall exist for 2 years. If additional vacancies on the commission occur during this 2-year period, the committee may advertise and accept additional applications; however, all previously submitted applications shall be considered along with the new applications according to the previously established plan for the evaluation of the qualifications of applicants.

(3) Within 90 days before an anticipated vacancy by expiration of term pursuant to s. 947.03 or upon any other vacancy, the Governor and Cabinet shall appoint a parole qualifications committee if one has not been appointed during the previous 2 years. The committee shall consider applications for the commission seat, including the application of an incumbent commissioner if he or she applies, according to the provisions of subsection (2). The committee shall submit a list of three eligible applicants, which may include the incumbent if the committee so decides, without recommendation, to the Governor and Cabinet for appointment to the commission. In the case of an unexpired term, the appointment must be for the remainder of the unexpired term and until a successor is appointed and qualified. If more than one seat is vacant, the committee shall submit a list of eligible applicants, without recommendation, containing a number of names equal to three times the number of vacant seats; however, the names submitted shall not be distinguished by seat, and each submitted applicant shall be considered eligible for each vacancy.

Section 1870. Subsections (1) and (3) of section 947.03, Florida Statutes (1996 Supplement), are amended to read:

947.03 Commissioners; tenure and removal.—

(1) Unless otherwise provided by law, each commissioner serving on July 1, 1983, shall be permitted to remain in office until completion of his or her current term. Upon the expiration of the term, a successor shall be appointed in the manner prescribed pursuant to the provisions of this section, unless otherwise provided by law. Members appointed by the Governor and Cabinet shall be appointed for terms of 6 years, unless otherwise provided

by law. No person is eligible to be appointed for more than two consecutive 6-year terms.

(3) Each member appointed by the Governor and Cabinet is accountable to the Governor and Cabinet for the proper performance of the duties of his or her office. The Governor and Cabinet may remove from office any such member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, or permanent inability to perform official duties or for pleading guilty or nolo contendere to, or being found guilty of, a felony. All such removals shall be submitted to the Senate for its consent as provided by the constitution.

Section 1871. Subsections (1), (2), and (5) of section 947.04, Florida Statutes (1996 Supplement), are amended to read:

947.04 Organization of commission; officers; offices.—

(1) Before July 1 of each even-numbered year, the Governor and Cabinet shall select a chair chairman who shall serve for a period of 2 years and until a successor is selected and qualified. The Governor and Cabinet shall, at the same time that a chair chairman is selected, select a vice chair chairman to serve during the same 2-year period as the chair chairman, in the absence of the chair chairman. The chair chairman may not succeed himself or herself. The chair chairman, as chief administrative officer of the commission, has the authority and responsibility to plan, direct, coordinate, and execute the powers, duties, and responsibilities assigned to the commission, except those of granting and revoking parole as provided for in this chapter. Subject to approval by the Governor and the Cabinet, the chair chairman may assign consenting retired commissioners or former commissioners to temporary duty when there is a workload need. Any such commissioner shall be paid \$100 for each day or portion of a day spent on the work of the commission and shall be reimbursed for travel expenses as provided in s. 112.061. The chair chairman is authorized to provide or disseminate information relative to parole by means of documents, seminars, programs, or otherwise as he or she determines necessary. The chair chairman shall establish, execute, and be held accountable for all administrative policy decisions. However, decisions to grant or revoke parole shall be made in accordance with the provisions of ss. 947.172, 947.174, and 947.23. The commissioners shall be directly accountable to the chair chairman in the execution of their duties as commissioners, and the chair chairman has authority to recommend to the Governor suspension of a commissioner who fails to perform the duties provided for by statute.

(2) Notwithstanding the provisions of s. 20.05(1)(g), the chair chairman shall appoint administrators with responsibility for the management of commission activities in the following functional areas:

- (a) Administration.
- (b) Operations.
- (c) Clemency.

(5) Acts and decisions of the ~~chair~~ chairman may be modified as provided in s. 947.06.

Section 1872. Subsection (5) of section 947.1405, Florida Statutes (1996 Supplement), is amended to read:

947.1405 Conditional release program.—

(5) Within 180 days prior to the tentative release date or provisional release date, whichever is earlier, a representative of the commission shall interview the inmate. The commission representative shall review the inmate's program participation, disciplinary record, psychological and medical records, and any other information pertinent to the impending release. A commission representative shall conduct a personal interview with the inmate for the purpose of determining the details of the inmate's release plan, including the inmate's ~~his~~ planned residence and employment. The results of the interview must be forwarded to the commission in writing.

Section 1873. Subsections (1) and (2) of section 947.146, Florida Statutes (1996 Supplement), are amended to read:

947.146 Control Release Authority.—

(1) There is created a Control Release Authority which shall be composed of the members of the Parole Commission and which shall have the same ~~chair~~ chairman as the commission. The authority shall utilize such commission staff as it determines is necessary to carry out its purposes.

(2) The authority shall implement a system for determining the number and type of inmates who must be released into the community under control release in order to maintain the state prison system between 99 and 100 percent of its total capacity as defined in s. 944.023. No inmate has a right to control release. Control release is an administrative function solely used to manage the state prison population within total capacity. An inmate may not receive an advancement of his or her control release date by an award of control release allotments for any period of time before the date the inmate becomes statutorily eligible for control release or before the subsequent date of establishment of the inmate's ~~his~~ advanceable control release date.

Section 1874. Subsections (1) and (2) of section 947.173, Florida Statutes (1996 Supplement), are amended to read:

947.173 Review of presumptive parole release date.—

(1) An inmate may request one review of his or her initial presumptive parole release date established according to s. 947.16(1) if the inmate shows cause in writing, with individual particularities, within 60 days after the date the inmate is notified of the decision on the presumptive parole release date.

(2) A panel of no fewer than two commissioners appointed by the ~~chair~~ chairman shall review the inmate's request for review and shall notify the

inmate in writing of its decision within 60 days after the date of receipt of the request by the commission.

Section 1875. Section 947.18, Florida Statutes (1996 Supplement), is amended to read:

947.18 Conditions of parole.—No person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison. No person shall be placed on parole until and unless the commission finds that there is reasonable probability that, if the person ~~he~~ is placed on parole, he or she will live and conduct himself or herself as a respectable and law-abiding person and that the person's ~~his~~ release will be compatible with his or her own welfare and the welfare of society. No person shall be placed on parole unless and until the commission is satisfied that he or she will be suitably employed in self-sustaining employment or that he or she will not become a public charge. The commission shall determine the terms upon which such person shall be granted parole. If the person's conviction was for a controlled substance violation, one of the conditions must be that the person submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3). In addition to any other lawful condition of parole, the commission may make the payment of the debt due and owing to the state under s. 960.17 or the payment of the attorney's fees and costs due and owing to a county under s. 27.56 a condition of parole subject to modification based on change of circumstances.

Section 1876. Subsection (2) of section 948.01, Florida Statutes (1996 Supplement), is amended to read:

948.01 When court may place defendant on probation or into community control.—

(2) If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt; and, in either case, it shall stay and withhold the imposition of sentence upon such defendant and shall place the defendant ~~him~~ upon probation. However, no defendant placed on probation for a misdemeanor may be placed under the supervision of the department unless the circuit court was the court of original jurisdiction.

Section 1877. Paragraphs (b), (e), (g), and (k) of subsection (1) and paragraph (b) of subsection (8) of section 948.03, Florida Statutes (1996 Supplement), are amended to read:

948.03 Terms and conditions of probation or community control.—

(1) The court shall determine the terms and conditions of probation or community control. Conditions specified in paragraphs (a) through and including (n) do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. Conditions specified in

paragraphs (a) through and including (n) and (2)(a) do not require oral pronouncement at sentencing and may be considered standard conditions of community control. These conditions may include among them the following, that the probationer or offender in community control shall:

(b) Permit such supervisors to visit him or her at his or her home or elsewhere.

(e) Make reparation or restitution to the aggrieved party for the damage or loss caused by his or her offense in an amount to be determined by the court. The court shall make such reparation or restitution a condition of probation, unless it determines that clear and compelling reasons exist to the contrary. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, it shall state on the record in detail the reasons therefor.

(g) Support his or her legal dependents to the best of his or her ability.

(k)1. Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.

2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correction system, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3).

(8)

(b) In determining the average weekly wage, unless otherwise determined by a specific funding program, all remuneration received from the employer shall be considered a gratuity, and the offender shall not be entitled to any benefits otherwise payable under s. 440.15, regardless of whether the offender he may be receiving wages and remuneration from other employment with another employer and regardless of his or her future wage-earning capacity. The provisions of this subsection do not apply to any person performing labor under a sentence of a court to perform community services as provided in s. 316.193.

Section 1878. Paragraphs (a) and (d) of subsection (3) and subsection (4) of section 948.09, Florida Statutes (1996 Supplement), are amended to read:

948.09 Payment for cost of supervision and rehabilitation.—

(3) Any failure to pay contribution as required under this section may constitute a ground for the revocation of probation by the court, the revocation of parole or conditional release by the Parole Commission, the revocation of control release by the Control Release Authority, or removal from the pretrial intervention program by the state attorney. The Department of Corrections may exempt a person from the payment of all or any part of the contribution if it finds any of the following factors to exist:

(a) The offender has diligently attempted, but has been unable, to obtain employment which provides him or her sufficient income to make such payments.

(d) The offender's age prevents him or her from obtaining employment.

(4) In addition to the contribution required under subsection (1), the department may provide a maximum payment of \$10 per month for each misdemeanor probationer who is contributing \$10 per month to the court-approved public or private entity which is providing him or her with misdemeanor supervision or rehabilitation. The \$10 payment set forth herein shall only be for first degree misdemeanors, petty theft, and worthless checks. The department shall make such payment to the court-approved public or private entity which is providing supervision to the offender under this section. Such payment shall be implemented through a contract to be entered into by the Secretary of Corrections and the entity. Terms of the contract shall state, but are not limited to, the extent of the services to be rendered by the entity providing supervision or rehabilitation. In addition, the entity shall supply the department with a monthly report documenting the acceptance of each offender placed under its supervision by the court, documenting the payment of the required contribution by each offender under supervision or rehabilitation, and notifying the department of all offenders for whom supervision or rehabilitation will be terminated. Supervisory records of the entity shall be open to inspection upon the request of the department or its agents.

Section 1879. Section 951.061, Florida Statutes (1996 Supplement), is amended to read:

951.061 Designation of sheriff as chief correctional officer; duties.—

(1) Upon adoption of an ordinance by a majority of the county commission, the sheriff may be designated the chief correctional officer of the county correctional system, and the sheriff ~~he~~ shall appoint such officers as he or she deems necessary.

(2) If designated, the sheriff or his or her designee shall enforce all existing state law concerning the operation and maintenance of county jails.

(3) The salaries for county correctional officers shall be paid from the general revenue fund of the county and shall be included by the sheriff, if designated as chief correctional officer of the county, in his or her proposed budget of expenditures for the maintenance and operation of the county correctional system as provided in s. 30.49.

Section 1880. Subsection (8) of section 951.23, Florida Statutes (1996 Supplement), is amended to read:

951.23 County and municipal detention facilities; definitions; administration; standards and requirements.—

(8) ASSISTANCE TO LOCAL GOVERNMENT.—Upon the request of a sheriff, or the chair ~~chairman~~ of the board of county commissioners in a

county in which the chief corrections officer is not a constitutional officer, the Department of Corrections may provide technical assistance to local governments in the design and implementation of offender classification systems, evaluation of construction and financing alternatives, the development of community service programs, and the use of mutual aid programs in jail-sharing efforts.

Section 1881. Paragraph (a) of subsection (1) of section 951.26, Florida Statutes (1996 Supplement), is amended to read:

951.26 Public safety coordinating councils.—

(1) Each board of county commissioners shall establish a county public safety coordinating council for the county or shall join with a consortium of one or more other counties to establish a public safety coordinating council for the geographic area represented by the member counties.

(a)1. The public safety coordinating council for a county shall consist of:

a. The state attorney, or an assistant state attorney designated by the state attorney.

b. The public defender, or an assistant public defender designated by the public defender.

c. The chief circuit judge, or another circuit judge designated by the chief circuit judge.

d. The chief county judge, or another county judge designated by the chief county judge.

e. The chief correctional officer.

f. The sheriff, or a member designated by the sheriff, if the sheriff is not the chief correctional officer.

g. The state probation circuit administrator, or a member designated by the state probation circuit administrator, to be appointed to a 4-year term.

h. The chairperson ~~chairman~~ of the board of county commissioners, or another county commissioner as designee.

i. If the county has such program available, the director of any county probation or pretrial intervention program, to be appointed to a 4-year term.

j. The director of a local substance abuse treatment program, or a member designated by the director, to be appointed to a 4-year term.

k. Representatives from county and state jobs programs and other community groups who work with offenders and victims, appointed by the chairperson ~~chairman~~ of the board of county commissioners to 4-year terms.

2. The chairperson of the board of county commissioners, or another county commissioner as designee, shall serve as the chairperson of the

council until the council elects a chairperson from the membership of the council.

Section 1882. Paragraph (b) of subsection (3) and subsection (6) of section 958.11, Florida Statutes (1996 Supplement), are amended to read:

958.11 Designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.—

(3) The department may assign a youthful offender to a facility in the state correctional system which is not designated for the care, custody, control, and supervision of youthful offenders or an age group only in the following circumstances:

(b) If the youthful offender becomes such a serious management or disciplinary problem resulting from serious violations of the rules of the department that his or her original assignment would be detrimental to the interests of the program and to other inmates committed thereto.

(6) The department may assign to a youthful offender facility any inmate, except a capital or life felon, whose age does not exceed 19 years but who does not otherwise meet the criteria of this section, if the Assistant Secretary for Youthful Offenders determines that such inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a nonyouthful offender facility. Assignments made under this subsection shall be included in the department's annual report.

Section 1883. Paragraphs (d), (e), and (i) of subsection (1) of section 960.001, Florida Statutes (1996 Supplement), are amended to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Parole Commission, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement the provisions of s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(d) Notification of scheduling changes.—Each victim or witness who has been scheduled to attend a criminal or juvenile justice proceeding shall be notified as soon as possible by the agency scheduling his or her appearance of any change in scheduling which will affect his or her appearance.

(e) Advance notification to victim or relative of victim concerning judicial proceedings; right to be present.—Any victim, relative of a minor who is a victim, or relative of a homicide victim shall receive from the appropriate agency, at the address found in the police report or the victim notification

card if such has been provided to the agency, prompt advance notification, unless the agency itself does not have advance notification, of judicial and postjudicial proceedings relating to his or her case, including all proceedings or hearings relating to:

1. The arrest of an accused;
2. The release of the accused pending judicial proceedings or any modification of release conditions; and
3. Proceedings in the prosecution or petition for delinquency of the accused, including the filing of the accusatory instrument, the arraignment, disposition of the accusatory instrument, trial or adjudicatory hearing, sentencing or disposition hearing, appellate review, subsequent modification of sentence, collateral attack of a judgment, and, when a term of imprisonment, detention, or residential commitment is imposed, the release of the defendant or juvenile offender from such imprisonment, detention, or residential commitment by expiration of sentence or parole and any meeting held to consider such release.

A victim or a victim's next of kin may not be excluded from any portion of any hearing, trial, or proceeding pertaining to the offense based solely on the fact that such person is subpoenaed to testify, unless, upon motion, the court determines such person's presence to be prejudicial. The appropriate agency with respect to notification under subparagraph 1. is the arresting law enforcement agency, and the appropriate agency with respect to notification under subparagraphs 2. and 3. is the Attorney General or state attorney, unless the notification relates to a hearing concerning parole, in which case the appropriate agency is the Parole Commission. The Department of Corrections, the Department of Juvenile Justice, or the sheriff is the appropriate agency with respect to release by expiration of sentence or any other release program provided by law. Any victim may waive notification at any time, and such waiver shall be noted in the agency's files.

(i) Notification to employer and explanation to creditors of victim or witness.—A victim or witness who so requests shall be assisted by law enforcement agencies and the state attorney in informing his or her employer that the need for victim and witness cooperation in the prosecution of the case may necessitate the absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of his or her cooperation with law enforcement agencies or a state attorney, is subjected to serious financial strain shall be assisted by such agencies and state attorney in explaining to the creditors of such victim or witness the reason for such serious financial strain.

Section 1884. Paragraph (a) of subsection (5) and subsection (6) of section 960.003, Florida Statutes (1996 Supplement), are amended to read:

960.003 Human immunodeficiency virus testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.—

(5) EXCEPTIONS.—The provisions of subsections (2) and (4) do not apply if:

(a) The person charged with or convicted of or alleged by petition for delinquency to have committed or been adjudicated delinquent for an offense described in subsection (2) has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(i)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal defendants, inmates, or juvenile offenders, subsequent to his or her arrest, conviction, or delinquency adjudication for the offense for which he or she was charged or alleged by petition for delinquency to have committed; and

(6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT; DISCLOSURE.—In any case in which a person convicted of or adjudicated delinquent for an offense described in subsection (2) has not been tested under subsection (2), but undergoes HIV testing during his or her incarceration, detention, or placement, the results of the initial HIV testing shall be disclosed in accordance with the provisions of subsection (3). Except as otherwise requested by the victim or the victim's legal guardian, or the parent or guardian of the victim if the victim is a minor, if the initial test is conducted within the first year of the imprisonment, detention, or placement, the request for disclosure shall be considered a standing request for any subsequent HIV test results obtained within 1 year after the initial HIV test performed, and need not be repeated for each test administration. Where the inmate or juvenile offender has previously been tested pursuant to subsection (2) the request for disclosure under this subsection shall be considered a standing request for subsequent HIV results conducted within 1 year of the test performed pursuant to subsection (2). If the HIV testing is performed by an agency other than the Department of Health and Rehabilitative Services, that agency shall be responsible for forwarding the test results to the Department of Health and Rehabilitative Services for disclosure in accordance with the provisions of subsection (3). This subsection shall not be limited to results of HIV tests administered subsequent to June 27, 1990, but shall also apply to the results of all HIV tests performed on inmates convicted of or juvenile offenders adjudicated delinquent for sex offenses as described in subsection (2) during their incarceration, detention, or placement prior to June 27, 1990.

Section 1885. Subsection (7) and paragraph (b) of subsection (9) of section 960.13, Florida Statutes (1996 Supplement), are amended to read:

960.13 Awards.—

(7) In determining the amount of an award, the department shall determine whether, because of his or her conduct, the victim of such crime or the intervenor contributed to the infliction of his or her physical injury or psychiatric or psychological injury or to his or her death, and the department shall reduce the amount of the award or reject the claim altogether, in accordance with such determination. However, the department may disregard for this purpose the contribution of the intervenor to his or her own physical injury or psychiatric or psychological injury or death when the record shows that such contribution was attributed to efforts by an intervenor as set forth in s. 960.03.

(9)

(b) A minor victim may receive continuing or periodic mental health care necessitated by the adverse impact of victimization upon normal emotional development, up to the maximum award of \$10,000. After approval of the initial application for an award to a minor victim, the minor victim or the minor victim's ~~his~~ legal guardian may submit supplemental requests for additional victimization treatment as necessary.

Reviser's note.—Amended pursuant to the directive of the Legislature in s. 1, ch. 93-199, Laws of Florida, to remove gender-specific references applicable to human beings from the Florida Statutes without substantive change in legal effect.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.