CHAPTER 97-93

Senate Bill No. 416

An act relating to the Florida Statutes; amending ss. 607.10025(4), 616.21(2)(a), 617.1507(2), 617.1533(1)(a), 617.1604(3), 627.092, 627.311(4)(b), 627.429(4)(a), (g), (5)(d), 627.659(8), 631.965, 636.053(2), 697.07(5), 721.301(1)(c), 721.55(8)(a), 721.553(4), 744.639, 790.08(1), 914.17(2)(c), 945.04(4), (5), and 945.35(3), (5), Florida Statutes, and ss. 641.22(6)(c), 626.9911(4), 626.9916(7)(d), 627.3511(5)(c), 627.481(1), 627.701(5)(d), 627.7013(2)(b), 627.7014(2)(a), 648.44(9)(a), 648.45(3)(e), 717.124(3), 718.112(2)(k), 766.105(3)(b), 768.28(19), 796.08(1)(b), 944.801(3)(c), 946.509(2), and 951.27(1), Florida Statutes (1996 Supplement), pursuant to s. 11.242, Florida Statutes; deleting provisions which have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replacing incorrect cross-references and citations; correcting grammatical, typographical, and like errors; removing inconsistencies, redundancies, and unnecessary repetition in the statutes; and improving the clarity of the statutes and facilitating their correct interpretation.

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

Section 1. Subsection (4) of section 607.10025, Florida Statutes, is amended to read:

607.10025 Shares; combination or division.—

(4) If a division or combination is effected by a board action without shareholder approval and includes an amendment to the articles <u>of</u> ~~or~~ incorporation, there shall be executed on behalf of the corporation and filed in the office of the Department of State a certificate of amendment setting forth:

(a) The name of the corporation.

(b) The date of adoption by the board of directors of the resolution approving the division or combination.

(c) That the amendment to the articles of incorporation does not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and does not result in the percentage of authorized shares that remain unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.

(d) The class or series and number of shares subject to the division or combination and the number of shares into which the shares are to be divided or combined.

(e) The amendment of the articles of incorporation made in connection with the division or combination.

(f) If the division or combination is to become effective at a time subsequent to the time of filing, the date, which may not exceed 90 days after the date of filing, when the division or combination becomes effective.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 2. 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 ~~Vocational, Adult, and Community 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 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.

Reviser's note.—Amended to conform to s. 16, ch. 94-232, Laws of Florida, which redesignated the Division of Vocational, Adult, and Community Education as the Division of Applied Technology and Adult Education.

Section 3. 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 being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 4. Paragraph (a) of subsection (1) of section 617.1533, Florida Statutes, is amended to read:

617.1533 Reinstatement following revocation.—

(1)(a) A foreign corporation whose certificate of authority has been revoked under s. 617.1531 may apply to the Department of State for reinstate-

ment at any time after the effective date of revocation of authority. The application must:

1. Recite the name of the corporation and the effective date of its revocation of authority;

2. State that the ground or grounds for revocation either did not exist or have been eliminated and that no further grounds currently exist for revocation of authority;

3. State that the corporation's name satisfies the requirements of s. 617.1506; and

4. State that all fees owed ~~owned~~ by the corporation and computed at the rate provided by law at the time the corporation applies for reinstatement have been paid; or

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 5. Subsection (3) of section 617.1604, Florida Statutes, is amended to read:

617.1604 Court-ordered inspection.—

(3) If the court orders inspection or ~~of~~ copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 6. Section 627.092, Florida Statutes, is amended to read:

627.092 Workers' Compensation Administrator.—There is created within the Division of Insurer Services ~~Insurance Company Regulation~~ of the Department of Insurance the position of Workers' Compensation Administrator to monitor carrier practices in the field of workers' compensation.

Reviser's note.—Amended to conform to s. 1, ch. 89-258, Laws of Florida, which redesignated the Division of Insurance Company Regulation as the Division of Insurer Services.

Section 7. Paragraph (b) of subsection (4) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers.—

(4)

(b) The operation of the plan shall be governed by a plan of operation that is prepared at the direction of the board of governors. The plan of operation may be changed at any time by the board of governors or upon request of the department. The plan of operation and all changes thereto are subject to the approval of the department. The plan of operation shall:

1. Authorize the board to engage in the activities necessary to implement this subsection, including, but not limited to, borrowing money.

2. Develop criteria for eligibility for coverage by the plan, including, but not limited to, documented rejection by at least two insurers which reasonably assures that insureds covered under the plan are unable to acquire coverage in the voluntary market. Any insured may voluntarily elect to accept coverage from an insurer for a premium equal to or greater than the plan premium if the insurer writing the coverage adheres to the provisions of s. 627.171.

3. Require notice from the agent to the insured at the time of the application for coverage that the application is for coverage with the plan and that coverage may be available through an insurer, group self-insurers' fund, commercial self-insurance fund, or assessable mutual insurer through another agent at a lower cost.

4. Establish programs to encourage insurers to provide coverage to applicants of the plan in the voluntary market and to insureds of the plan, including, but not limited to:

a. Establishing procedures for an insurer to use in notifying the plan of the insurer's desire to provide coverage to applicants to the plan or existing insureds of the plan and in describing the types of risks in which the insurer is interested. The description of the desired risks must be on a form developed by the plan.

b. Developing forms and procedures that provide an insurer with the information necessary to determine whether the insurer wants to write particular applicants to the plan or insureds of the plan.

c. Developing procedures for notice to the plan and the applicant to the plan or insured of the plan that an insurer will insure the applicant or the insured of the plan, and notice of the cost of the coverage offered; and developing procedures for the selection of an insuring entity by the applicant or insured of the plan.

d. Provide for a market-assistance plan to assist in the placement of employers. All applications for coverage in the plan received 45 days before the effective date for coverage shall be processed through the market-assistance plan. A market-assistance plan specifically designed to serve the needs of small good policyholders as defined by the board must be finalized by January 1, 1994.

5. Provide for policy and claims services to the insureds of the plan of the nature and quality provided for insureds in the voluntary market.

6. Provide for the review of applications for coverage with the plan for reasonableness and accuracy, using any available historic information regarding the insured.

7. Provide for procedures for auditing insureds of the plan which are based on reasonable business judgment and are designed to maximize the likelihood that the plan will collect the appropriate premiums.

8. Authorize the plan to terminate the coverage of and refuse future coverage for any insured that submits a fraudulent application to the plan or provides fraudulent or grossly erroneous records to the plan or to any service provider of the plan in conjunction with the activities of the plan.

9. Establish service standards for agents who submit business to the plan.

10. Establish criteria and procedures to prohibit any agent who does not adhere to the established service standards from placing business with the plan or receiving, directly or indirectly, any commissions for business placed with the plan.

11. Provide for the establishment of reasonable safety programs for all insureds in the plan. At the direction of the board, the Division of Safety shall provide inspection to insureds and applicants for coverage in the plan identified as high-risk insureds by the board or its designee.

12. Authorize the plan to terminate the coverage of and refuse future coverage to any insured who fails to pay premiums or surcharges when due; who, at the time of application, is delinquent in payments of workers' compensation or employer's liability insurance premiums or surcharges owed to an insurer, group self-insurers' fund, commercial self-insurance fund, or assessable mutual insurer licensed to write such coverage in this state; or who refuses to substantially comply with any safety programs recommended by the plan.

13. Authorize the board of governors to provide the services required by the plan through staff employed by the plan, through reasonably compensated service providers who contract with the plan to provide services as specified by the board of governors, or through a combination of employees and service providers.

14. Provide for service standards for service providers, methods of determining adherence to those service standards, incentives and disincentives for service, and procedures for terminating contracts for service providers that fail to adhere to service standards.

15. Provide procedures for selecting service providers and standards for qualification as a service provider that reasonably assure that any service provider selected will continue to operate as an ongoing concern and is capable of providing the specified services in the manner required.

16. Provide for reasonable accounting and data-reporting practices.

17. Provide for annual review of costs associated with the administration and servicing of the policies issued by the plan to determine alternatives by which costs can be reduced.

18. Authorize the acquisition of such excess insurance or reinsurance as is consistent with the purposes of the plan.

19. Provide for an annual report to the department on a date specified by the department and containing such information as the department reasonably requires.

20. Establish multiple rating plans for various classifications of risk which reflect risk of loss, hazard grade, actual losses, size of premium, and compliance with loss control. At least one of such plans must be a preferred-rating plan to accommodate small-premium ~~shall-premium~~ policyholders with good experience as defined in sub-subparagraph 22.a.

21. Establish agent commission schedules.

22. Establish three subplans as follows:

a. Subplan "A" must include those insureds whose annual premium does not exceed $2,500 and who have neither incurred any lost-time claims nor incurred medical-only claims exceeding 50 percent of their premium for the immediate 2 years.

b. Subplan "B" must include insureds that are employers identified by the board of governors as high-risk employers due solely to the nature of the operations being performed by those insureds and for whom no market exists in the voluntary market, and whose experience modifications are less than 1.00.

c. Subplan "C" must include all other insureds within the plan.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 8. Paragraphs (a) and (g) of subsection (4) and paragraph (d) of subsection (5) of section 627.429, Florida Statutes, are amended to read:

627.429 Medical tests for human immunodeficiency virus infection and acquired immune deficiency syndrome for insurance purposes.—

(4) USE OF MEDICAL TESTS FOR UNDERWRITING.—

(a) With respect to the issuance of or the underwriting of a policy regarding exposure to the HIV infection and sickness or medical conditions derived from HIV infection, the insurer may use only medical tests that are reliable predictors of risk. A test which is recommended by the Centers for Disease Control and Prevention or by the federal Food and Drug Administration is reliable for the purposes of this section. A test which is rejected or not recommended by the Centers for Disease Control and Prevention or the federal Food and Drug Administration is not reliable for the purposes of this section. If a specific test recommended by the Centers for Disease Control and Prevention or the federal Food and Drug Administration indicates the existence or potential existence of exposure to the HIV infection or a sickness or medical condition related to the HIV infection, the insurer shall, before relying on a single test result to deny or limit coverage or to rate the coverage, follow the applicable Centers for Disease Control and Prevention or federal Food and Drug Administration recommended test protocol and shall use any applicable followup tests or series of tests recommended by the Centers for Disease Control and Prevention or federal Food and Drug Administration to confirm the indication.

(g) A laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests only if it is certified by the

United States Department of Health and Human Services under the Clinical Laboratories Improvement Act of 1967, permitting testing of specimens obtained in interstate commerce, and only if the laboratory subjects itself to ongoing proficiency testing by the College of American Pathologists, the American Association of Bio Analysts, or an equivalent program approved by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

(5) RESTRICTIONS ON COVERAGE EXCLUSIONS AND LIMITATIONS.—

(d) Any major medical or comprehensive accident and health policy for which individual underwriting is authorized by law may contain a provision excluding coverage for expenses related to AIDS or ARC if, in the opinion of a legally qualified physician, the insured, prior to the first anniversary of the insured's coverage under the policy, first exhibited objective manifestations of AIDS or ARC, as defined by the Centers for Disease Control and Prevention, which objective manifestations are attributable to no other cause or was diagnosed as having AIDS or ARC if all of the following apply:

1. The applicant for the policy is not required to submit to any medical test for HIV infection.

2. The policy provision:

a. Is set forth separately from the other exclusion and limitation provisions of the policy.

b. Has an appropriate caption or heading.

c. Is disclosed and referenced in a conspicuous manner on the policy data page.

d. Contains a statement that the exclusion will not apply to any person if the insurer does not assert the defense before the person has been insured under the policy for 2 years.

3. The insurer must notify the insured in writing of a determination that the insured would be subject to the effect of the exclusion within 90 days after the insurer first determines that an insured would be subject to the effect of the exclusion, even if there are no claims for AIDS or ARC. Failure to provide timely written notice under this subparagraph bars the insurer from using the exclusion.

4. Objective manifestations of AIDS or ARC first exhibited after the 12-month manifestation period must be covered the same as any other illness.

Reviser's note.—Amended to conform to Pub. L. No. 102-531, which renamed the Centers for Disease Control as the Centers for Disease Control and Prevention.

Section 9. Subsection (8) of section 627.659, Florida Statutes, is amended to read:

627.659 Blanket health insurance; eligible groups.—Blanket health insurance is that form of health insurance which covers special groups of individuals as enumerated in one of the following subsections:

(8) Under a policy or contract issued to any health maintenance organization licensed pursuant to the provisions of part I ~~part II~~ of chapter 641, which shall be deemed the policyholder, covering the subscribers of the health maintenance organization. Payment may be made directly to the health maintenance organization by the blanket health insurer for health care services rendered by providers pursuant to the health care delivery plan.

Reviser's note.—Amended to conform to s. 185, ch. 91-108, Laws of Florida, which repealed sections constituting former part I and necessitated redesignation of former part II as new part I.

Section 10. Section 631.965, Florida Statutes, is amended to read:

631.965 Prohibited advertisement of solicitation.—A person may not make, publish, disseminate, advertise, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any print, television, or broadcast media, or in any circular, letter, pamphlet, or publication of ~~or~~ any kind, a statement or announcement that uses the existence of the Florida Self-Insurer's Fund Guaranty Association to induce an employer to purchase membership in or insurance from a self-insurance fund.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 11. Subsection (2) of section 636.053, Florida Statutes, is amended to read:

636.053 Injunction.—In addition to the penalties and other enforcement provisions of this act, the department is vested with the power to seek both temporary and permanent injunctive relief when:

(2) Any person, entity, or prepaid limited health service organization has engaged in any activity prohibited by this act or any rule adopted pursuant thereto.

The department's authority to seek injunctive relief is not conditioned on having conducted any proceeding pursuant to chapter 120.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 12. Subsection (5) of section 697.07, Florida Statutes, is amended to read:

697.07 Assignment of rents.—

(5) Nothing herein shall preclude the court from granting any other appropriate relief regarding the collected rents pending final adjudication of the action. The ~~collected~~ undisbursed collected rents remaining in the possession of the mortgagor or in the registry of the court, or in such other

depository as ordered by the court, shall be disbursed at the conclusion of the action in accordance with the court's final judgment or decree.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 13. Paragraph (c) of subsection (1) of section 721.301, Florida Statutes, is amended to read:

721.301 Florida Timesharing, Vacation Club, and Hospitality Program.—

(1)

(c) The director may designate funds from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, not to exceed $50,000 annually, to support the projects and proposals undertaken pursuant to paragraph (b). All state trust funds to be expended pursuant to this section must be matched equally with private moneys and shall comprise no more than half of the total moneys expended annually.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. The Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund is created in s. 498.019.

Section 14. 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 ~~subparagraph~~ 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 refiles such plan with the division pursuant to this chapter.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Paragraph (8)(a) is not divided into subparagraphs.

Section 15. Subsection (4) of section 721.553, Florida Statutes, is amended to read:

721.553 Portrayal of proposed component sites.—A seller of a multisite timeshare plan may portray a possible component site to prospective purchasers with no accommodations or facilities located at such component site

being available for use by purchasers so long as the seller satisfies the following requirements:

(4) Anything contained in this chapter to the contrary notwithstanding, a developer or managing entity may communicate with existing purchasers who have closed on their purchases regarding possible component sites without restriction, so long as all oral and written statements made to existing purchasers pursuant to this subsection ~~subparagraph~~ comply with the provisions of s. 721.11(4).

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Subsection (4) contains no further subdivisions.

Section 16. Section 744.639, Florida Statutes, is amended to read:

744.639 Attorney's fee.—The fee for the attorney filing the petition and conducting the proceedings shall be fixed by the court in an amount as small as reasonably possible, not to exceed $250. However, this section is not to be interpreted to exclude a petition for extraordinary attorney's fees, properly filed, and if approved by the United States Department of Veterans Affairs ~~Veterans Administration~~, does not necessitate a hearing before the court for approval, but the court shall enter its order for withdrawal of said attorney's fees from the ward's guardianship account accordingly.

Reviser's note.—Amended to conform to the redesignation of the United States Veterans' Administration as the United States Department of Veterans Affairs by s. 2, Pub. L. No. 100-527.

Section 17. Subsection (1) of section 790.08, Florida Statutes, is amended to read:

790.08 Taking possession of weapons and arms; reports; disposition; custody.—

(1) Every officer making an arrest under s. 790.07 ~~the preceding section~~, or under any other law or municipal ordinance within the state, shall take possession of any weapons, electric weapons or devices, or arms mentioned in s. 790.07 ~~the preceding section~~ found upon the person arrested and deliver them to the sheriff of the county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial of the person arrested.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 790.08, as amended by s. 1, ch. 22049, 1943, Laws of Florida, includes the two references to "the preceding section." The immediately preceding statutes section in 1943 was s. 790.07, and that situation continues presently.

Section 18. Paragraph (c) of subsection (2) of section 914.17, Florida Statutes, is amended to read:

914.17 Appointment of advocate for victims or witnesses who are minors or persons with mental retardation.—

(2) An advocate shall be appointed by the court to represent a person with mental retardation as defined in s. 393.063(41) in any criminal proceed-

ing if the person with mental retardation is a victim of or witness to abuse or neglect, or if the person with mental retardation is a victim of a sexual offense or a witness to a sexual offense committed against a minor or person with mental retardation. The court may appoint an advocate in any other criminal proceeding in which a person with mental retardation is involved as either a victim or a witness. The advocate shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the person with mental retardation at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists. It is the duty of the advocate to perform the following services:

(c) To assist the person with mental retardation and the person's family in coping with the emotional effects of the crime and subsequent criminal proceedings in which the person with mental retardation is ~~in~~ involved.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 19. Subsections (4) and (5) of section 945.04, Florida Statutes, are amended to read:

945.04 Department of Corrections; general function; seal; use of inmate labor.—

(4) The Department of Corrections shall exert its best efforts to assign inmates to the corporation authorized to conduct correctional work programs under part II of chapter 946, or the private sector business authorized under part I or part II of chapter 946, that have not less than 1 nor more than 5 years remaining before their tentative release date. By January 1, 1996, and at no time thereafter shall the department assign less than 60 percent of inmates to correctional work programs under part I or part II of chapter 946 who have less than ~~that~~ 10 years remaining before their tentative release dates. By November 1, 1995, the department shall submit to the Legislature a report which outlines strategies for complying with the provision of this subsection.

(5) The Department of Corrections may not remove an inmate once assigned to the corporation authorized to conduct correctional work programs under part II of chapter 946 or to the private sector business authorized under part I or part II of chapter 946, except upon request of or consent of such corporation or private sector business, except for population management, for inmate conduct which may subject the inmate to disciplinary confinement or loss of gain-time, or for ~~of~~ security and safety concerns specifically set forth in writing to the corporation or private sector business.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 20. Subsections (3) and (5) of section 945.35, Florida Statutes, are amended to read:

945.35 Requirement for education on human immunodeficiency virus and acquired immune deficiency syndrome.—

(3) When there is evidence that an inmate, while in the custody of the department, has engaged in behavior which places the inmate at a high risk of transmitting or contracting a human immunodeficiency disorder, the department may begin a testing program which is consistent with guidelines of the Centers for Disease Control and Prevention and recommendations of the Correctional Medical Authority. For purposes of this subsection, "high-risk behavior" includes:

(a) Sexual contact with any person.

(b) An altercation involving exposure to body fluids.

(c) The use of intravenous drugs.

(d) Tattooing.

(e) Any other activity medically known to transmit the virus.

(5) The department shall establish policies consistent with guidelines of the Centers for Disease Control and Prevention and recommendations of the Correctional Medical Authority on the housing, physical contact, dining, recreation, and exercise hours or locations for inmates with immunodeficiency disorders as are medically indicated and consistent with the proper operation of its facilities.

Reviser's note.—Amended to conform to Pub. L. No. 102-531, which renamed the Centers for Disease Control as the Centers for Disease Control and Prevention.

Section 21. Paragraph (c) of subsection (6) of section 641.22, Florida Statutes (1996 Supplement), is amended to read:

641.22 Issuance of certificate of authority.—The department shall issue a certificate of authority to any entity filing a completed application in conformity with s. 641.21, upon payment of the prescribed fees and upon the department's being satisfied that:

(6) The ownership, control, and management of the entity is competent and trustworthy and possesses managerial experience that would make the proposed health maintenance organization operation beneficial to the subscribers. The department shall not grant or continue authority to transact the business of a health maintenance organization in this state at any time during which the department has good reason to believe that:

(c) Any person, including any stock subscriber, stockholder, or incorporator, who exercises or has the ability to exercise effective control of the organization, or who influences or has the ability to influence the transaction of the business of the health maintenance organization, has been found guilty of, or has pled guilty or no contest to, any felony or crime punishable by imprisonment of 1 year or more under the laws of the United States or any state thereof or under the laws of any other country, which involves moral turpitude, without regard to whether a judgment or conviction has been entered by the court having jurisdiction in ~~is~~ such case. However, in the case of a health maintenance organization operating under a subsisting

certificate of authority, the health maintenance organization shall remove any such person immediately upon discovery of the conditions set forth in this paragraph when applicable to such person or under the order of the department, and the failure to so act by the organization is grounds for revocation or suspension of the health maintenance organization's certificate of authority; or

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 22. Subsection (4) of section 626.9911, Florida Statutes (1996 Supplement), is amended to read:

626.9911 Definitions.—As used in this act, the term:

(4) "Viatical settlement broker" means a person who, for valuable consideration, ~~or~~ offers or attempts to negotiate viatical settlement contracts between a viator resident in this state and one or more viatical settlement providers. The term does not include an attorney, accountant, financial planner, or person acting under a power of attorney from the viator, who is retained to represent the viator and whose compensation is paid solely by the viator without regard to whether a viatical settlement contract is effected.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 23. Paragraph (d) of subsection (7) of section 626.9916, Florida Statutes (1996 Supplement), is amended to read:

626.9916 Viatical settlement broker license required; application for license.—

(7) Upon the filing of a sworn application and the payment of the license fee and all other applicable fees under this act, the department shall investigate each applicant and may issue the applicant a license if the department finds that the applicant:

(d) ~~If the applicant~~ Is a corporation, a corporation incorporated under the laws of this state, or a foreign corporation authorized to transact business in this state.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 24. Paragraph (c) of subsection (5) of section 627.3511, Florida Statutes (1996 Supplement), is amended to read:

627.3511 Depopulation of Residential Property and Casualty Joint Underwriting Association.—

(5) APPLICABILITY.—

(c) It is the intent of the Legislature that an insurer eligible for the exemption under paragraph (3)(a) establish a preference in appointment of

agents ~~in~~ for those agents who lose a substantial amount of business as a result of risks being removed from the association.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 25. Subsection (1) of section 627.481, Florida Statutes (1996 Supplement), is amended to read:

627.481 Requirements for certain annuity agreements.—

(1) Any duly organized domestic or foreign nonstock corporation, or ~~to~~ any unincorporated charitable trust, if such corporation or trust has been in active operation for at least 5 years prior thereto and has qualified as an exempt organization under the Internal Revenue Code, 26 U.S.C. s. 501(c)(3) may enter into annuity agreements with donors in accordance with this section. Such corporation or trust may receive gifts conditioned upon, or in return for, its agreement to pay an annuity to the donor or other designated beneficiary or beneficiaries and to make and carry out such annuity agreement. Annuity benefits under any such annuity agreement must be calculated to return to such corporation or trust upon the death of the annuitant a residue at least equal to one-half the original gift or other consideration for such annuity.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 26. Paragraph (d) of subsection (5) of section 627.701, Florida Statutes (1996 Supplement), is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(5)

(d) The department shall draft and formally propose as a rule the form for the certificate of security no later than July 1, 1996. The certificate of security may be issued in any of the following circumstances:

1. A mortgage lender or other financial institution may issue a certificate of security after granting the applicant a line of credit, secured by equity in real property or other reasonable security, which line of credit may be drawn on only to pay for the deductible portion of insured construction or reconstruction after a hurricane loss. In the sole discretion of the mortgage lender or other financial institution, the line of credit may be issued to an applicant on an unsecured basis.

2. A licensed insurance agent may issue a certificate of security after obtaining for an applicant a line of credit, secured by equity in real property or other reasonable security, which line of credit may be drawn on only to pay for the deductible portion of insured construction or reconstruction after a hurricane loss. The Florida Hurricane Catastrophe Fund shall negotiate agreements creating a financing consortium to serve as an additional source of lines of credit to secure deductibles. Any licensed insurance agent may act as the agent of such consortium.

3. Any person qualified to act as a trustee for any purpose may issue a certificate of security secured by a pledge of assets, with the restriction that the assets may be drawn on only to pay for the deductible portion of insured construction or reconstruction after a hurricane loss.

4. Any insurer, including any admitted insurer or any surplus lines insurer, may issue a certificate of security after issuing the applicant a policy of supplemental insurance that will pay for 100 percent of the deductible portion of insured construction or reconstruction after a hurricane loss.

5. Any other method approved by the department upon finding that such other method provides a similar level of security as the methods specified in this paragraph and that such other method has no negative impact on residential property insurance catastrophic capacity. The legislative intent of this subparagraph is to provide the flexibility needed to achieve the public policy of expanding property insurance capacity while improving the affordability of property insurance.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 27. Paragraph (b) of subsection (2) of section 627.7013, Florida Statutes (1996 Supplement), is amended to read:

627.7013 Orderly markets for personal lines residential property insurance.—

(2) MORATORIUM COMPLETION.—

(b) The following restrictions apply only to cancellation or nonrenewal of personal lines residential property insurance policies that were in force on June 1, 1996, or the date on which this section became law, whichever was later.

1. In any 12-month period, an insurer may not cancel or nonrenew more than 5 percent of such insurer's total number of homeowner's policies, 5 percent of such insurer's total number of mobile home owner's policies, or 5 percent of such insurer's total number of personal lines residential policies of all types and classes in the state for the purpose of reducing the insurer's exposure to hurricane claims and may not, with respect to any county, cancel or nonrenew more than 10 percent of its total number of homeowner's policies, 10 percent of its total number of mobile home owner's policies, or 10 percent of its total number of personal lines residential policies of all types and classes in the county for the purpose of reducing the insurer's exposure to hurricane claims. This subparagraph does not prohibit any cancellations or nonrenewals of such policies for any other lawful reason unrelated to the risk of loss from hurricane exposure.

2.a. If, for any 12-month period, an insurer proposes to cancel or nonrenew personal lines residential policies to an extent not authorized by subparagraph 1. for the purpose of reducing exposure to hurricane claims, the insurer must file a phaseout plan with the department at least 90 days prior to the effective date of the plan. In the plan, the insurer must demonstrate to the department that the insurer is protecting market stability and

the interests of its policyholders. The plan may not be implemented unless it is approved by the department. In developing the plan, the insurer must consider policyholder longevity, the use of voluntary incentives to accomplish the reduction, and geographic distribution. The insurer must demonstrate that under the plan the insurer will not cancel or nonrenew more policies in the 12-month period than the largest number of similar policies the insurer canceled or nonrenewed for any reason in any 12-month period between August 24, 1989, and August 24, 1992.

b. If the insurer considers the number of cancellations and nonrenewals under sub-subparagraph a. to be insufficient, the insurer may apply for approval of additional cancellations or nonrenewals on the basis of an unreasonable risk of insolvency. In evaluating a request under this sub-subparagraph, the department shall consider and shall require the insurer to provide information relevant to: the insurer's size, market concentration, and general financial condition; the portion of the insurer's business in this state represented by personal lines residential property insurance; the reasonableness of assumptions with respect to size, frequency, severity, and path of hurricanes; the reinsurance available to the insurer and potential recoveries from the Florida Hurricane Catastrophe Fund; and the extent to which the insurer's assets have been voluntarily transferred by dividend or otherwise from the insurer to its stockholders, parent companies, or affiliated companies since June 1, 1996, or the date on which this section became law, whichever was later. In the implementation of exposure reductions under this sub-subparagraph, the department and the insurer shall consider such factors as policyholder longevity, the use of voluntary incentives to accomplish the exposure reduction, and geographic distribution.

c. A policy shall not be counted as having been canceled or nonrenewed for purposes of this subsection if any of the following apply:

(I) The policy was canceled or nonrenewed for an underwriting reason unrelated to the risk of loss from hurricane exposure, nonpayment of premium, or any other lawful reason that is unrelated to the risk of loss from hurricane exposure. The department shall consider the reason specified in the notice of cancellation or nonrenewal to be the reason for the cancellation or nonrenewal unless the department finds by a preponderance of the evidence that the stated reason was not the insurer's actual reason for the cancellation or nonrenewal.

(II) The cancellation or nonrenewal was initiated by the insured.

(III) The insurer has offered the policyholder replacement or alternative coverage at approved rates, which coverage meets the requirements of the secondary mortgage market.

d. In addition to any other cancellations or nonrenewals subject to the limitations in this subsection, a policy shall be considered as having been canceled or nonrenewed for purposes of this subsection if:

(I) The insurer implements a rate increase under the use-and-file provisions of s. 627.062(2)(a)2., which rate increase exceeds 150 percent of the increase ultimately approved by the department, and, while the rate filing

was pending, the policyholder voluntarily canceled or nonrenewed the policy and obtained replacement coverage from another insurer, including the Residential Property and Casualty Joint Underwriting Association; or

(II) The insurer reduces the commission to an agent by more than 25 percent and the agent thereafter places the risk with another insurer, including the Residential Property and Casualty Joint Underwriting Association, the Florida Windstorm Underwriting Association, or the Coastal Zone Insurance Plan.

e. The department must approve or disapprove an application for a waiver within 90 days after the department receives the application for waiver.

3. In addition to the cancellations or nonrenewals authorized under this section, an insurer may cancel or nonrenew policies to the extent authorized by an exemption from or waiver of either the moratorium created by chapter 93-401, Laws of Florida, or the moratorium phaseout under former s. 627.7013(2).

4. Notwithstanding any provisions of this section to the contrary, this section does not apply to any insurer that, prior to August 24, 1992, filed notice of such insurer's intent to discontinue writing insurance in this state under s. 624.430, and for which a finding has been made by the department, the Division of Administrative Hearings of the Department of Management Services, or a court that such notice satisfied all requirements of s. 624.430. Nothing in this section shall be construed to authorize an insurer to withdraw from any line of property insurance business for the purpose of reducing exposure to risk of hurricane loss if such withdrawal commenced at any time that the moratorium under chapter 93-401, Laws of Florida, or the moratorium phaseout under this section is in effect.

5. The following actions by an insurer do not constitute cancellations or nonrenewals for purposes of this subsection:

a. The transfer of a risk from one admitted insurer to another admitted insurer, unless the terms of the new or replacement policy place the policyholder in default of a mortgage obligation.

b. An increase in the hurricane deductible applicable to the policy, unless the new deductible places the policyholder in default of a mortgage obligation or the deductible exceeds the limits specified in s. 627.701.

c. Any other lawful change in coverage that does not place the policyholder in default of a mortgage obligation.

d. A cancellation or nonrenewal that is part of the same action as the removal of a policy including windstorm or hurricane coverage from the Residential Property and Casualty Joint Underwriting Association.

6. In order to assure fair and effective enforcement of this subsection, each insurer shall, no later than October 1, 1996, report to the department the policy number of each policy subject to this subsection, arranged by

county. The report shall include the policy number for each personal lines residential policy that was in force on June 1, 1996, or the date this section became law, whichever was later. Beginning October 1, 1996, each insurer shall also report, on a monthly basis, all cancellations and nonrenewals of policies included in such policy list and the reasons for the cancellations and nonrenewals.

7. An insurer that has ~~as~~ an overconcentration of wind risk in areas eligible for coverage under the Florida Windstorm Underwriting Association may submit to the department for approval an accelerated exposure reduction plan. The plan, if approved, shall allow the insurer to nonrenew additional policies for reasons of reducing hurricane loss, beyond the amounts authorized elsewhere in this paragraph, subject to the following conditions:

a. All additional nonrenewals under this subparagraph shall consist of nonrenewals of only the windstorm portion of a policy, and shall be allowed only if the Florida Windstorm Underwriting Association provides windstorm coverage to replace the nonrenewed windstorm coverage.

b. At the conclusion of the accelerated exposure reduction plan, which shall be no later than 12 months after the date of the first nonrenewal under such plan, the insurer is prohibited from any further nonrenewals for purposes of reducing hurricane loss until the expiration of this subsection.

c. The total number of nonrenewals statewide for purposes of reduction of hurricane loss, under this subparagraph taken together with the other provisions of this paragraph, shall not exceed the total number of nonrenewals that would have been allowed statewide under subparagraph 1. between June 1, 1996, and the expiration of this subsection.

d. Notwithstanding the provisions of s. 627.4133, the insurer must give the policyholder 45 days' advance notice of the nonrenewal of windstorm coverage under this subparagraph and the availability of such coverage through the Florida Windstorm Underwriting Association.

e. The first nonrenewal under an accelerated exposure reduction program under this subparagraph may not take effect earlier than February 1, 1997.

f. In reviewing the proposed accelerated exposure reduction plan, the department shall consider:

(I) The degree to which the exposure reduction plan is necessary to address the insurer's overconcentration.

(II) Prior levels of participation in writing voluntary wind coverage in areas eligible for coverage through the Florida Windstorm Underwriting Association.

(III) The availability of wind coverage in the voluntary market for the subject risks.

(IV) The capacity of the Florida Windstorm Underwriting Association to absorb the risks proposed to be covered by the association.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 28. Paragraph (a) of subsection (2) of section 627.7014, Florida Statutes (1996 Supplement), is amended to read:

627.7014 Orderly markets for condominium association residential property insurance.—

(2) MORATORIUM.—

(a) As used in this subsection, the term "total number of policies" means the number of an insurer's condominium association policies providing windstorm or hurricane coverage that were in force on the effective date of this section. The following restrictions apply to the cancellation or nonrenewal of condominium association residential property insurance policies that were in force on the effective date of this section:

1. In any 12-month period, an insurer may not cancel or nonrenew more than 5 percent of its total number of condominium association policies in the state for the purpose of reducing the insurer's exposure to hurricane claims and may not, with respect to any county, cancel or nonrenew more than 10 percent of its total number of condominium association policies in the county for the purpose of reducing the insurer's exposure to hurricane claims. This subparagraph does not prohibit any cancellations or nonrenewals of such policies for any other lawful reason unrelated to the risk of loss from hurricane exposure.

2.a. If, for any 12-month period, an insurer proposes to cancel or nonrenew condominium association policies to an extent not authorized by subparagraph 1. for the purpose of reducing exposure to hurricane claims, the insurer must file a phaseout plan with the department at least 90 days prior to the effective date of the plan. In the plan, the insurer must demonstrate to the department that the insurer is protecting market stability and the interests of its policyholders. The plan may not be implemented unless it is approved by the department. In developing the plan, the insurer must consider policyholder longevity, the use of voluntary incentives to accomplish the reduction, and geographic distribution. The insurer must demonstrate that under the plan the insurer will not cancel or nonrenew more policies in the 12-month period than the largest number of similar policies the insurer canceled or nonrenewed for any reason in any 12-month period between August 24, 1989, and August 24, 1992.

b. If the insurer considers the number of cancellations and nonrenewals under sub-subparagraph a. to be insufficient, the insurer may apply for approval of additional cancellations or nonrenewals on the basis of an unreasonable risk of insolvency. In evaluating a request under this sub-subparagraph, the department shall consider, and shall require the insurer to provide information relevant to: the insurer's size, market concentration, and general financial condition; the portion of the insurer's business in this state represented by condominium association residential property insurance; the reasonableness of assumptions with respect to size, frequency, severity, and path of hurricanes; and the reinsurance available to the insurer and potential recoveries from the Florida Hurricane Catastrophe

Fund. In the implementation of exposure reductions under this sub-subparagraph, the department and the insurer shall consider such factors as policyholder longevity, the use of voluntary incentives to accomplish the exposure reduction, and geographic distribution.

c. A policy shall not be counted as having been canceled or nonrenewed for purposes of this subsection if any of the following apply:

(I) The policy was canceled or nonrenewed for an underwriting reason unrelated to the risk of loss from hurricane exposure, nonpayment of premium, or any other lawful reason that is unrelated to the risk of loss from hurricane exposure. The department shall consider the reason specified in the notice of cancellation or nonrenewal to be the reason for the cancellation or nonrenewal unless the department finds by a preponderance of the evidence that the stated reason was not the insurer's actual reason for the cancellation or nonrenewal.

(II) The cancellation or nonrenewal was initiated by the insured.

(III) The insurer has offered the policyholder replacement or alternative coverage at approved rates.

(IV) The risk is transferred from one admitted insurer to another admitted insurer, unless the terms of the new or replacement policy place the policyholder in default of a mortgage obligation.

(V) The hurricane deductible applicable to the policy is increased unless the new deductible exceeds statutory limits or places the policyholder in default of a mortgage obligation.

(VI) Any other lawful change in coverage that does not place the policyholder in default of a mortgage obligation is made.

d. In addition to any other cancellations or nonrenewals subject to the limitations in this subsection, a policy shall be considered as having been canceled or nonrenewed for purposes of this subsection if:

(I) The insurer implements a rate increase under the use-and-file provisions of s. 627.062(2)(a)2., which rate increase exceeds 150 percent of the increase ultimately approved by the department, and, while the rate filing was pending, the policyholder voluntarily canceled or nonrenewed the policy and obtained replacement coverage from another insurer, including the Residential Property and Casualty Joint Underwriting Association; or

(II) The insurer reduces the commission to an agent by more than 25 percent and the agent thereafter places the risk with another insurer, including the Residential Property and Casualty Joint Underwriting Association.

e. The department must approve or disapprove an application for a waiver within 90 days after the department receives the application for waiver.

3. Notwithstanding any provisions of this section to the contrary, this section does not apply to any insurer that, prior to August 24, 1992, filed notice of such insurer's intent to discontinue writing insurance in this state under s. 624.430, and for which a finding has been made by the department, the Division of Administrative Hearings of the Department of Management Services, or a court that such notice satisfied all requirements of s. 624.430. This section also does not apply to any insurer that:

a. Collects at least 75 percent of its Florida premiums from policies that include hurricane coverage provided to condominium associations in coastal counties.

b. Collects at least 80 percent of its Florida premiums from policies that include hurricane coverage provided to condominium associations in Broward, Dade, and Palm Beach Counties.

c. Has, annually since 1992:

(I) Increased its aggregate Florida premium volume from policies that include hurricane coverage provided to condominium associations in coastal counties.

(II) Increased its aggregate Florida premium volume from policies that include hurricane coverage provided to condominium associations in Broward, Dade, and Palm Beach Counties.

(III) Increased its aggregate Florida exposure from policies that include hurricane coverage provided to condominium associations in coastal counties.

(IV) Increased its aggregate Florida exposure from policies that include hurricane coverage provided to condominium associations in Broward, Dade, and Palm Beach Counties.

d. Has surplus as to policyholders of no more than $200 million as reflected in its annual statement for 1995.

4. In order to assure fair and effective enforcement of this subsection, each insurer shall, no later than October 1, 1996, report to the department the policy number of each policy subject to this subsection, arranged by county. The report shall include the policy number for each condominium association policy that was in force on the effective date of this section. Beginning October 1, 1996, each insurer shall also report, on a monthly basis, all cancellations and nonrenewals of policies included in such policy list and the reasons for the cancellations and nonrenewals.

5. An insurer that <u>has</u> ~~as~~ an overconcentration of wind risk in areas eligible for coverage under the Florida Windstorm Underwriting Association may submit to the department for approval an accelerated exposure reduction plan. The plan, if approved, shall allow the insurer to nonrenew additional policies for reasons of reducing hurricane loss, beyond the amounts authorized elsewhere in this paragraph, subject to the following conditions:

a. All additional nonrenewals under this subparagraph shall consist of nonrenewals of only the windstorm portion of a policy, and shall be allowed only if the Florida Windstorm Underwriting Association provides windstorm coverage to replace the nonrenewed windstorm coverage.

b. At the conclusion of the accelerated exposure reduction plan, which shall be no later than 12 months after the date of the first nonrenewal under such plan, the insurer is prohibited from any further nonrenewals for purposes of reducing hurricane loss until the expiration of this subsection.

c. The total number of nonrenewals statewide for purposes of reduction of hurricane loss, under this subparagraph taken together with the other provisions of this paragraph, shall not exceed the total number of nonrenewals that would have been allowed statewide under subparagraph 1. between June 1, 1996, and the expiration of this subsection.

d. Notwithstanding the provisions of s. 627.4133, the insurer must give the policyholder 45 days' advance notice of the nonrenewal of windstorm coverage under this subparagraph and the availability of such coverage through the Florida Windstorm Underwriting Association.

e. The first nonrenewal under an accelerated exposure reduction program under this subparagraph may not take effect earlier than February 1, 1997.

f. In reviewing the proposed accelerated exposure reduction plan, the department shall consider:

(I) The degree to which the exposure reduction plan is necessary to address the insurer's overconcentration.

(II) Prior levels of participation in writing voluntary wind coverage in areas eligible for coverage through the Florida Windstorm Underwriting Association.

(III) The availability of wind coverage in the voluntary market for the subject risks.

(IV) The capacity of the Florida Windstorm Underwriting Association to absorb the risks proposed to be covered by the association.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 29. Paragraph (a) of subsection (9) of section 648.44, Florida Statutes (1996 Supplement), is amended to read:

648.44 Prohibitions; penalty.—

(9)(a) Any person who violates any provisions of paragraph (1)(d), paragraph (1)(e), paragraph (1)(f), paragraph (1)(i), or paragraph (1)(m) or subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 30. Paragraph (e) of subsection (3) of section 648.45, Florida Statutes (1996 Supplement), is amended to read:

648.45 Actions against a licensee; suspension or revocation of eligibility to hold a license.—

(3) The department may deny, suspend, revoke, or refuse to renew any license or appointment issued under this chapter or the insurance code, or it may suspend or revoke the eligibility of any person to hold a license or appointment under this chapter or the insurance code, for any violation of the laws of this state relating to bail or any violation of the insurance code or for any of the following causes:

(e) Being found to be a source of injury or loss to the public or detrimental to the public interest or being found by the department to be no longer carrying on the bail bond business in good faith.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 31. Subsection (3) of section 717.124, Florida Statutes (1996 Supplement), is amended to read:

717.124 Filing of claim with department.—

(3) The department may require an affidavit swearing to the authenticity of the claim, lack of documentation, and an agreement to allow the department to provide the name and address of the claimant to subsequent claimants coming forward with substantiated proof to claim the account. This shall apply to claims equal to or ~~to~~ less than $250.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 32. Paragraph (k) 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:

(k) Recall of board members.—Subject to the provisions of s. 718.301, 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 unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests 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 will 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 a member or members of the board, 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 proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall a member or 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 meeting, file with the division a petition for arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, 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 or members of the board, the recall will 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. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their 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 <u>within</u> ~~with~~ 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 subsection. 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 subsection. 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.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 33. Paragraph (b) of subsection (3) of section 766.105, Florida Statutes (1996 Supplement), is 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 chairman of the board and another member to serve as vice 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 chairman an alternate to act in the member's absence or incapacity. A member of the board, or his alternate, may be reimbursed from the assets of the fund for expenses incurred by him as a member, or alternate member, of the board and for committee work, but he may not otherwise be compensated by the fund for his 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.

Reviser's note.—Amended to delete provisions that have served their purpose.

Section 34. Subsection (19) of section 768.28, Florida Statutes (1996 Supplement), is 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.—

(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 his employment with the municipality or its agency, but <u>does</u> 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.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 35. Paragraph (b) of subsection (1) of section 796.08, Florida Statutes (1996 Supplement), is amended to read:

796.08 Screening for HIV and sexually transmissible diseases; providing penalties.—

(1)

(b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health and Rehabilitative Services shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control <u>and Prevention</u> and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section.

Reviser's note.—Amended to conform to Pub. L. No. 102-531, which renamed the Centers for Disease Control as the Centers for Disease Control and Prevention.

Section 36. Paragraph (c) of subsection (3) of section 944.801, Florida Statutes (1996 Supplement), is amended to read:

944.801 Education for state prisoners.—

(3) The responsibilities of the Correctional Education Program shall be to:

(c) In cooperation with the Department of Education, pursuant to s. 229.8075, develop complete and reliable statistics on the educational histories, the city/intracity area and school district where the inmate was domiciled prior to incarceration, the participation in state educational and training programs, and the occupations of inmates confined to state correctional facilities. The compiled statistics shall be summarized and analyzed in the annual report of correctional educational activities required by ~~to~~ paragraph (f).

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 37. Subsection (2) of section 946.509, Florida Statutes (1996 Supplement), is amended to read:

946.509 Insurance of property leased or acquired by the corporation.—

(2) Coverage under the State Property Insurance Trust Fund of property leased to or otherwise acquired by the corporation shall be secured and maintained through the existing policy and account of the Department of Corrections with the Division of Risk Management of the Department of Insurance. All matters, including premium calculations, assessments and payments, retrospective premium adjustments, reporting requirements, and other requirements, concerning coverage of such property under the State Property Insurance Trust Fund shall be conducted as if all such property were owned solely by the department. Except as required by chapter 284, if the corporation finds that it is more economical to do so, the corporation may secure private insurance coverage on all or a portion of the activities of or properties used by the corporation. If coverage through the State Property ~~Florida Fire~~ Insurance Trust Fund is not secured, the corporation must present documentation of insurance coverage to the Division of Risk Management equal to the coverage that could otherwise be provided by the State Property ~~Florida Fire~~ Insurance Trust Fund.

Reviser's note.—Amended to conform to s. 2, ch. 96-418, Laws of Florida, which redesignated the Florida Fire Insurance Trust Fund as the State Property Insurance Trust Fund.

Section 38. Subsection (1) of section 951.27, Florida Statutes (1996 Supplement), is amended to read:

951.27 Blood tests of inmates.—

(1) Each county and each municipal detention facility shall have a written procedure developed, in consultation with the facility medical provider, establishing conditions under which an inmate will be tested for infectious disease, including human immunodeficiency virus pursuant to s. 775.0877, which procedure is consistent with guidelines of the Centers for Disease Control and Prevention and recommendations of the Correctional Medical Authority. It is not unlawful for the person receiving the test results to divulge the test results to the sheriff or chief correctional officer.

Reviser's note.—Amended to conform to Pub. L. No. 102-531, which renamed the Centers for Disease Control as the Centers for Disease Control and Prevention.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.