

House Bill No. 667

An act relating to the Florida Statutes; amending ss. 632.635, 633.021, 633.025, 634.191, 634.281, 641.185, 641.225, 642.032, 642.043, 648.44, 651.095, 651.106, 655.50, 655.962, 663.02, 663.09, 663.14, 715.07, 718.103, 718.111, 718.112, 718.504, 784.075, 817.55, 828.1231, 849.086, 849.0931, 914.27, 921.0022, 943.08, 943.11, 943.125, 960.065, 984.03, 985.201, 985.215, 985.225, and 985.228, F.S.; and reenacting ss. 985.23 and 985.3141, F.S., pursuant to s. 11.242, F.S.; 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which have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replacing incorrect cross-references and citations; correcting grammatical, typographical, and like errors; removing inconsistencies, redundancies, and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; improving the clarity of the statutes and facilitating their correct interpretation; and confirming the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process.

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

Section 1. Section 632.635, Florida Statutes, is amended to read:

632.635 Unfair methods of competition and unfair and deceptive acts and practices.—Every society authorized to do business in this state shall be subject to the provisions of the Unfair Insurance Trade Practices Act as provided in part ~~IX~~ X of chapter 626; provided, however, that nothing in such provisions shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 626 necessitated by the transfer of sections comprising former part IX by ch. 98-89, Laws of Florida.

Section 2. Subsection (10) of section 633.021, Florida Statutes, is amended to read:

633.021 Definitions.—As used in this chapter:

(10) "Handling" means touching, holding, taking up, moving, controlling, or otherwise affecting with the hand or by any other agency. ~~As used in s. 633.01(3)(b), its meaning and application are limited to handling having a direct relationship to transportation.~~

Reviser's note.—Amended to conform to the repeal of s. 633.01(3)(b) by s. 1, ch. 90-359, Laws of Florida.

Section 3. Effective July 1, 2001, subsection (4) of section 633.025, Florida Statutes, as amended by section 59 of chapter 98-287, Laws of Florida,

as amended by sections 104 and 105 of chapter 2000-141, Laws of Florida, is amended to read:

633.025 Minimum firesafety standards.—

(4) Such codes shall be minimum codes and a municipality, county, or special district with firesafety responsibilities may adopt more stringent firesafety standards, subject to the requirements of this subsection. Such county, municipality, or special district may establish alternative requirements to those requirements which are required under the minimum firesafety standards on a case-by-case basis, in order to meet special situations arising from historic, geographic, or unusual conditions, if the alternative requirements result in a level of protection to life, safety, or property equal to or greater than the applicable minimum firesafety standards. For the purpose of this subsection, the term “historic” means that the building or structure is listed on the National Register of Historic Places of the United States Department of the Interior.

(a) The local governing body shall determine, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, if there is a need to strengthen the requirements of the minimum firesafety code adopted by such governing body. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates that local conditions justify more stringent requirements than those specified in the minimum firesafety code for the protection of life and property or justify requirements that meet special situations arising from historic, geographic, or unusual conditions.

(b) Such additional requirements shall not be discriminatory as to materials, products, or construction techniques of demonstrated capabilities.

(c) Paragraphs (a) and (b) apply solely to the local enforcing agency’s adoption of requirements more stringent than those specified in the Florida Fire Prevention Code and the Life Safety Code that have the effect of amending building construction standards. Upon request, the enforcing agency shall provide a person making application for a building permit, or any state agency or board with construction-related regulation responsibilities, a listing of all such requirements and codes.

(d) A local government which adopts amendments to the minimum firesafety code must provide a procedure by which the validity of such amendments may be challenged by any substantially affected party to test the amendment’s compliance with the provisions of this section.

1. Unless the local government agrees to stay enforcement of the amendment, or other good cause is shown, the challenging party shall be entitled to a hearing on the challenge within 45 days.

2. For purposes of such challenge, the burden of proof shall be on the challenging party, but the amendment shall not be presumed to be valid or invalid.

This subsection gives local government the authority to establish firesafety codes that exceed the minimum firesafety codes and standards adopted by the State Fire Marshal. The Legislature intends that local government give proper public notice and hold public hearings before adopting more stringent firesafety codes and standards. A substantially affected person may appeal, to the Department of Insurance, the local government's resolution of the challenge, and the department shall determine if the amendment complies with this section. Actions of the department are subject to judicial review pursuant to s. 120.68. The department shall consider reports of the Florida Building Commission, pursuant to part VII of chapter 553 533, when evaluating building code enforcement.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Chapter 533, which related to mining wastes, was not divided into parts and was repealed by s. 32, ch. 2000-211, Laws of Florida. Part VII of chapter 553 relates to the Florida Building Commission and state building codes.

Section 4. Subsection (5) of section 634.191, Florida Statutes, is amended to read:

634.191 Grounds for discretionary refusal, suspension, or revocation of license or appointment of salespersons.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any salesperson if it finds that as to the salesperson 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:

(5) If, in the conduct of business under the license or appointment, the salesperson 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 IX ~~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.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 626 necessitated by the transfer of sections comprising former part IX by ch. 98-89, Laws of Florida.

Section 5. Section 634.281, Florida Statutes, is amended to read:

634.281 Unfair trade practices.—Service agreement companies and their salespersons shall be subject to the provisions of part IX ~~X~~ of chapter 626.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 626 necessitated by the transfer of sections comprising former part IX by ch. 98-89, Laws of Florida.

Section 6. Paragraphs (d) and (l) of subsection (1) of section 641.185, Florida Statutes, are amended to read:

641.185 Health maintenance organization subscriber protections.—

(1) With respect to the provisions of this part and part III, the principles expressed in the following statements shall serve as standards to be followed by the Department of Insurance and the Agency for Health Care Administration in exercising their powers and duties, in exercising administrative discretion, in administrative interpretations of the law, in enforcing its provisions, and in adopting rules:

(d) A health maintenance organization subscriber should receive continuity of health care, even after the provider is no longer with the health maintenance organization pursuant to s. 641.51(8) ~~641.51(7)~~.

(l) A health maintenance organization subscriber shall be given a copy of the applicable health maintenance contract, certificate, or member handbook specifying: all the provisions, disclosure, and limitations required pursuant to s. 641.31(1) and (4); the covered services, including those services, medical conditions, and provider types specified in ss. 641.31, 641.31094, 641.31095, 641.31096, 641.51(11) ~~641.51(10)~~, and 641.513; and where and in what manner services may be obtained pursuant to s. 641.31(4).

Reviser's note.—Paragraph (1)(d) is amended to conform to the redesignation of s. 641.51(7) as s. 641.51(8) by s. 26, ch. 2000-256, Laws of Florida. Paragraph (1)(l) is amended to conform to the redesignation of s. 641.51(10) as s. 641.51(11) by s. 26, ch. 2000-256.

Section 7. Subsection (1) of section 641.225, Florida Statutes, is amended to read:

641.225 Surplus requirements.—

(1) Each health maintenance organization shall at all times maintain a minimum surplus in an amount that is the greater of \$1,500,000, or 10 percent of total liabilities, or 2 percent of total annualized premium. ~~All health maintenance organizations that have a valid certificate of authority before October 1, 1998, or an entity described in subsection (3), and that do not meet the minimum surplus requirement, shall increase their surplus as follows:~~

Date	Amount
September 30, 1998	\$800,000, or 10 percent of total liabilities, or 1 percent of annualized premium, whichever is greater
September 30, 1999	\$1,150,000, or 10 percent of total liabilities, or 1.25 percent of annualized premium, whichever is greater
September 30, 2000	\$1,500,000, or 10 percent of total liabilities, or 2 percent of annualized premium, whichever is greater

Reviser's note.—Amended to delete language that has served its purpose.

Section 8. Subsection (3) of section 642.032, Florida Statutes, is amended to read:

642.032 Provisions of general insurance law applicable to legal expense insurance corporations.—The following provisions of the Florida Insurance Code shall apply to legal expense insurance corporations, to the extent that they are not inconsistent with the provisions of ss. 642.011-642.049:

(3) Chapter 626, part IX ~~X~~, unfair insurance trade practices.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 626 necessitated by the transfer of sections comprising former part IX by ch. 98-89, Laws of Florida.

Section 9. Subsection (5) of section 642.043, Florida Statutes, is 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:

(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 IX ~~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.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 626 necessitated by the transfer of sections comprising former part IX by ch. 98-89, Laws of Florida.

Section 10. Paragraph (b) of subsection (6) of section 648.44, Florida Statutes, is amended to read:

648.44 Prohibitions; penalty.—

(6)

(b) Any misleading or false advertisement or deceptive trade practice is prohibited as provided in part IX ~~X~~ of chapter 626.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 626 necessitated by the transfer of sections comprising former part IX by ch. 98-89, Laws of Florida.

Section 11. Subsections (1) and (2) of section 651.095, Florida Statutes, are amended to read:

651.095 Advertisements; requirements; penalties.—

(1) Upon application for a provisional certificate of authority, the department shall require the applicant to submit for approval all advertising. Approval of the application constitutes approval of the advertising, unless

the department has otherwise notified the applicant. The department shall disapprove any document which is a violation of any provision of part IX X of chapter 626.

(2) After an application has been approved, a provider is not required to submit new advertising to the department for approval; however, a provider may not use, and may not have published, and a person may not use or may not have published, any advertisement which is a violation of any provision of part IX X of chapter 626 or which has previously been disapproved by the department.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 626 necessitated by the transfer of sections comprising former part IX by ch. 98-89, Laws of Florida.

Section 12. Subsection (15) of section 651.106, Florida Statutes, is amended to read:

651.106 Grounds for discretionary refusal, suspension, or revocation of certificate of authority.—The department, in its discretion, may deny, suspend, or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider if it finds that any one or more of the following grounds applicable to the applicant or provider exist:

(15) In the conduct of business under the license, engaging in unfair methods of competition or in unfair or deceptive acts or practices prohibited under part IX X of chapter 626.

Revocation of a certificate of authority under this section does not relieve a provider from the provider's obligation to residents under the terms and conditions of any continuing care contract between the provider and residents or the provisions of this chapter. The provider shall continue to file its annual statement and pay license fees to the department as required under this chapter as if the certificate of authority had continued in full force, but the provider shall not issue any new continuing care contracts. The department may seek an action in the circuit court of Leon County to enforce the department's order and the provisions of this section.

Reviser's note.—Amended to conform to the redesignation of parts of chapter 626 necessitated by the transfer of sections comprising former part IX by ch. 98-89, Laws of Florida.

Section 13. Paragraph (d) of subsection (10) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.—

(10)

(d) A financial institution as defined in s. 655.005 that ~~who~~ willfully violates this section is also liable for a civil penalty of not more than the

greater of the value of the financial transaction involved or \$25,000. However, the civil penalty may not exceed \$100,000.

Reviser's note.—Amended to improve clarity.

Section 14. Subsection (3) of section 655.962, Florida Statutes, is amended to read:

655.962 Lighting; mirrors; landscaping.—

(3) The operator, or other person responsible pursuant to ss. 655.960-655.965 for an automated teller machine, shall ensure that the height of any landscaping, vegetation, or other physical obstructions in the area required to be lighted pursuant to subsection (1) (2) for any open and operating automated teller machine shall not exceed 3 feet, except that trees trimmed to a height of 10 feet and whose diameters are less than 2 feet and manmade physical obstructions required by statute, law, code, ordinance, or other governmental regulation shall not be affected by this subsection.

Reviser's note.—Amended to conform to the redesignation of subsections necessitated by the repeal of former subsection (1) by s. 85, ch. 2000-158, Laws of Florida.

Section 15. Subsection (1) of section 663.02, Florida Statutes, is amended to read:

663.02 Applicability of state banking laws.—

(1) International banking corporations having offices in this state shall be subject to all the provisions of the financial institutions codes and chapter 655 as though such international banking corporations were state banks, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions shall be applicable to such banks or corporations: s. ~~655.031~~ 655.021, relating to administrative enforcement guidelines; s. ~~655.032~~ 655.025, relating to investigations, subpoenas, hearings, and witnesses; s. ~~655.0321~~ 655.029, relating to hearings, proceedings, and related documents and restricted access thereto; s. 655.033, relating to cease and desist orders; s. 655.037, relating to removal by the department of an officer, director, committee member, employee, or other person; s. 655.041, relating to administrative fines and enforcement; and s. 658.49, relating to loans by banks not exceeding \$50,000; ~~s. 658.76, relating to transactions with directors; and s. 658.77, relating to prohibited acts and practices.~~ International banking corporations shall not have the powers conferred on domestic banks by the provisions of s. 658.60, relating to deposits of public funds. International banking corporations shall not be subject to the provisions of s. 658.68, relating to liquidity. The provisions of chapter 687, relating to interest and usury, shall apply to all loans not subject to s. 658.49.

Reviser's note.—Amended to conform to the redesignation of s. 655.021 as s. 655.031; s. 655.025 as s. 655.032; and s. 655.029 as s. 655.0321 by ss.

11, 12, and 13, respectively, of ch. 92-303, Laws of Florida, and amended to conform to the repeal of ss. 658.76 and 658.77 by s. 189, ch. 92-303.

Section 16. Paragraph (b) of subsection (3) of section 663.09, Florida Statutes, is amended to read:

663.09 Reports; records.—

(3) Each international banking corporation which operates an office licensed under this part shall cause to be kept, at a location accepted by the department:

(b) Current copies of the charter and bylaws of the international banking corporation, relative to the operations of the office, and minutes of the proceedings of its directors, officers, or committees relative to the business of the office. Such records shall be kept pursuant to s. 655.91 ~~658.72~~ and shall be made available to the department, upon request, at any time during regular business hours of the office. Any failure to keep such records as aforesaid or any refusal to produce such records upon request by the department shall be grounds for suspension or revocation of any license issued under this part.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 658.72 was repealed by s. 189, ch. 92-303, Laws of Florida. Financial institution record retention is now addressed in s. 655.91.

Section 17. Section 663.14, Florida Statutes, is amended to read:

663.14 Foreign travel expenses.—If domestic or foreign travel is deemed necessary by the department to effectuate the purposes of this part, representatives of the department shall be reimbursed ~~in the manner set forth in s. 288.011~~ for actual, reasonable, and necessary expenses incurred in such domestic or foreign travel.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 288.011 was repealed by s. 154, ch. 96-320, Laws of Florida.

Section 18. Paragraph (a) of 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)(c) ~~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.

Reviser's note.—Amended to conform to the redesignation of s. 713.78(1)(b) as s. 713.78(1)(c) by s. 11, ch. 98-324, Laws of Florida.

Section 19. Subsection (30) of section 718.103, Florida Statutes, is amended to read:

718.103 Definitions.—As used in this chapter, the term:

(30) "Voting interests" means the voting rights distributed to the association members pursuant to s. ~~718.104(4)(j)~~ 718.104(4)(i). In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

Reviser's note.—Amended to conform to the redesignation of s. 718.104(4)(i) as s. 718.104(4)(j) necessitated by the creation of a new paragraph (h) by s. 49, ch. 2000-302, Laws of Florida.

Section 20. Subsection (10) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(10) EASEMENTS.—Unless prohibited by the declaration, the board of administration has the authority, without the joinder of any unit owner, to grant, modify, or move any easement if the easement constitutes part of or crosses the common elements or association property. This subsection does not authorize the board of administration to modify, move, or vacate any easement created in whole or in part for the use or benefit of anyone other than the unit owners, or crossing the property of anyone other than the unit owners, without the consent or approval of those other persons having the

use or benefit of the easement, as required by law or by the instrument creating the easement. Nothing in this subsection affects the minimum requirements of s. 718.104(4)(n) ~~718.104(4)(m)~~ or the powers enumerated in subsection (3).

Reviser's note.—Amended to conform to the redesignation of s. 718.104(4)(m) as s. 718.104(4)(n) necessitated by the creation of a new paragraph (h) by s. 49, ch. 2000-302, Laws of Florida.

Section 21. Paragraph (b) of subsection (2) of section 718.112, Florida Statutes, 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:

(b) Quorum; voting requirements; proxies.—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)3., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; ~~for votes taken to waive financial statement requirements as provided by s. 718.111(14);~~ for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this subparagraph, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

5. When any of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

Reviser's note.—Amended to conform to the deletion of former s. 718.111(14), which related to financial statement requirements, by s. 52, ch. 2000-302, Laws of Florida.

Section 22. Paragraph (p) of subsection (24) of section 718.504, Florida Statutes, is 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 and a copy of the financial information required by s. 718.111. 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:

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(p) A copy of the documents containing any restrictions on use of the property required by subsection (17) ~~(16)~~.

Reviser's note.—Amended to conform to the redesignation of subsection (16) as subsection (17) by s. 61, ch. 2000-302, Laws of Florida.

Section 23. Section 784.075, Florida Statutes, is amended to read:

784.075 Battery on detention or commitment facility staff or a juvenile probation officer.—A person who commits a battery on a juvenile probation officer, as defined in s. 984.03 or s. 985.03, on other staff of a detention center or facility as defined in s. 984.03(19) or s. ~~985.03(19)~~ 985.03(20), or on a staff member of a commitment facility as defined in s. 985.03(45), commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this section, a staff member of the facilities listed includes persons employed by the Department of Juvenile Justice, persons employed at facilities licensed by the Department of Juvenile Justice, and persons employed at facilities operated under a contract with the Department of Juvenile Justice.

Reviser's note.—Amended to conform to the redesignation of s. 985.03(20) as s. 985.03(19) by s. 18, ch. 2000-135, Laws of Florida.

Section 24. Subsection (2) of section 817.55, Florida Statutes, is amended to read:

817.55 Tourist attraction advertisement; misleading use of the word "free."—

(2) The state attorney for any county in which any violation of this act occurs ~~or the Division of Economic Development of the Department of Commerce~~ may enjoin the use of such word or words by temporary and permanent injunction by application to any court of competent jurisdiction.

Reviser's note.—Amended to delete language that has served its purpose. Section 20.17, which created the Department of Commerce, was repealed by s. 3, ch. 96-320, Laws of Florida.

Section 25. Subsection (3) of section 828.1231, Florida Statutes, is amended to read:

828.1231 Sale of garments or items of clothing containing dog or cat fur prohibited; sale of pelt of any dog or cat prohibited; penalty.—

(3) Any person who violates the provisions of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 ~~or~~ or s. 775.083, ~~or s. 775.084~~. Upon a second or subsequent conviction for a violation of this subsection, the offender 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 775.084 no longer provides for punishment of misdemeanors.

Section 26. Paragraph (f) of subsection (6) and paragraph (g) of subsection (13) of section 849.086, Florida Statutes, are amended to read:

849.086 Cardrooms authorized.—

(6) BUSINESS AND EMPLOYEE OCCUPATIONAL LICENSE REQUIRED; APPLICATION; FEES.—

(f) The division shall promulgate rules regarding cardroom occupational licenses. The provisions specified in s. ~~550.105(4), (5), (6), (7), (8), and (10)~~ 550.105(3), (4), (5), (6), (7), and (9) relating to licensure shall be applicable to cardroom occupational licenses.

(13) TAXES AND OTHER PAYMENTS.—

(g) All of the moneys deposited in the Pari-mutuel Wagering Trust Fund, except as set forth in paragraph (h), shall be utilized and distributed in the manner specified in s. ~~550.135(1) and (2)~~ 550.135(3) and (4). However, cardroom tax revenues shall be kept separate from pari-mutuel tax revenues and shall not be used for making the disbursement to counties provided in former s. 550.135(1).

Reviser's note.—Paragraph (6)(f) is amended to conform to the redesignation of subunits in s. 550.105 by s. 23, ch. 2000-354, Laws of Florida. Paragraph (13)(g) is amended to conform to the deletion of former s. 550.135(1) and (2) and the redesignation of s. 550.135(3) and (4) as s. 550.135(1) and (2) by s. 5, ch. 2000-354.

Section 27. Subsection (4) and paragraph (e) of subsection (11) of section 849.0931, Florida Statutes, are amended to read:

849.0931 Bingo authorized; conditions for conduct; permitted uses of proceeds; limitations.—

(4) The right of a condominium association, a cooperative association, a homeowners' association as defined in s. ~~720.301~~ 617.301, a mobile home owners' association, a group of residents of a mobile home park as defined in chapter 723, or a group of residents of a mobile home park or recreational vehicle park as defined in chapter 513 to conduct bingo is conditioned upon the return of the net proceeds from such games to players in the form of prizes after having deducted the actual business expenses for such games for articles designed for and essential to the operation, conduct, and playing of bingo. Any net proceeds remaining after paying prizes may be donated by the association to a charitable, nonprofit, or veterans' organization which is exempt from federal income tax under the provisions of s. 501(c) of the Internal Revenue Code to be used in such recipient organization's charitable, civic, community, benevolent, religious, or scholastic works or similar activities or, in the alternative, such remaining proceeds shall be used as specified in subsection (3).

(11) Bingo games may be held only on the following premises:

(e) With respect to bingo games conducted by a condominium association, a cooperative association, a homeowners' association as defined in s. ~~720.301~~ 617.301, a mobile home owners' association, a group of residents of a mobile home park as defined in chapter 723, or a group of residents of a mobile home park or recreational vehicle park as defined in chapter 513, property owned by the association, property owned by the residents of the mobile home park or recreational vehicle park, or property which is a common area located within the condominium, mobile home park, or recreational vehicle park.

Reviser's note.—Amended to conform to the redesignation of s. 617.301 as s. 720.301 by s. 44, ch. 2000-258, Laws of Florida.

Section 28. Effective July 1, 2001, subsection (4) of section 849.0931, Florida Statutes, as amended by section 59 of chapter 2000-258, Laws of Florida, is amended to read:

849.0931 Bingo authorized; conditions for conduct; permitted uses of proceeds; limitations.—

(4) The right of a condominium association, a cooperative association, a homeowners' association as defined in s. ~~720.301~~ 702.301, a mobile home owners' association, a group of residents of a mobile home park as defined in chapter 723, or a group of residents of a mobile home park or recreational vehicle park as defined in chapter 513 to conduct bingo is conditioned upon the return of the net proceeds from such games to players in the form of prizes after having deducted the actual business expenses for such games for articles designed for and essential to the operation, conduct, and playing of bingo. Any net proceeds remaining after paying prizes may be donated by the association to a charitable, nonprofit, or veterans' organization which is exempt from federal income tax under the provisions of s. 501(c) of the Internal Revenue Code to be used in such recipient organization's charitable, civic, community, benevolent, religious, or scholastic works or similar activities or, in the alternative, such remaining proceeds shall be used as specified in subsection (3).

Reviser's note.—Amended to correct an apparent error and facilitate correct interpretation. Section 702.301 does not exist. The former reference was to s. 617.301, which was redesignated as s. 720.301 by s. 44, ch. 2000-258, Laws of Florida.

Section 29. Subsections (1) and (4) of section 914.27, Florida Statutes, are amended to read:

914.27 Confidentiality of victim and witness information.—

(1) Information held by any state or local law enforcement agency, state attorney, the statewide prosecutor, the Victim and Witness Protection Review Committee created pursuant to s. ~~914.26~~ 943.031, or the Department of Law Enforcement which discloses:

(a) The identity or location of a victim or witness who has been identified or certified for protection or relocation by the state attorney or statewide prosecutor pursuant to s. 914.25;

(b) The identity or location of an immediate family member of a victim or witness who has been identified or certified pursuant to s. 914.25;

(c) Relocation sites, techniques, or procedures utilized or developed as a result of the victim and witness protection services afforded by s. 914.25; or

(d) The identity or relocation site of any victim, witness, or immediate family member of a victim or witness who has made a relocation of permanent residence by reason of the victim's or witness's involvement in the investigation or prosecution giving rise to certification for protection or relocation pursuant to s. 914.25;

is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be shared by law enforcement agencies, state attorneys, and the statewide prosecutor to facilitate the protection or relocation services provided pursuant to s. 914.25 and to support the prosecution efforts of the state attorneys and the statewide prosecutor. Any information so shared must remain confidential and exempt in the hands of any agency or entity to which the information is provided.

(4) The certifying state attorney or statewide prosecutor may state in writing to the Victim and Witness Protection Review Committee established pursuant to s. ~~943.031~~ 914.26 that even though certification for participation in the victim or witness protection program is about to expire, disclosure of information made confidential and exempt by paragraph (1)(a) or paragraph (1)(b) continues to constitute an unwarranted risk to, or jeopardizes the safety of, victims, witnesses, or family members of such victims or witnesses. Accordingly, the confidential and exempt status of such information shall continue until the certifying state attorney or statewide prosecutor determines that disclosure of the information would not constitute an unwarranted risk to, or jeopardize the safety of, any person, and provides written notification to that effect to the Victim and Witness Protection Review Committee.

This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

Reviser's note.—Amended to correct an apparent error. Section 914.26 does not exist. The Victim and Witness Protection Review Committee is created in s. 943.031 by s. 2, ch. 97-52, Laws of Florida.

Section 30. Paragraph (g) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(g) LEVEL 7
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.
409.920(2)	3rd	Medicaid provider fraud.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.053	3rd	Dispensing hearing aids without a license.

Florida Statute	Felony Degree	Description
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by money transmitter.
560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.

Florida Statute	Felony Degree	Description
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.

Florida Statute	Felony Degree	Description
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility or school.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than <u>25</u> 50 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(i)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less then 5 kilograms.

Florida Statute	Felony Degree	Description
893.135 (1)(j)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. The poundage was decreased to 25 pounds by s. 9, ch. 99-188, Laws of Florida.

Section 31. Subsection (3) of section 943.08, Florida Statutes, is amended to read:

943.08 Duties; Criminal and Juvenile Justice Information Systems Council.—

(3) The council shall develop and approve a strategic plan pursuant to the requirements set forth in s. ~~186.022~~ 186.022(9). Copies of the approved plan shall be transmitted, electronically or in writing, to the Executive Office of the Governor, the Speaker of the House of Representatives, the President of the Senate, and the council members.

Reviser's note.—Amended to conform to the deletion of subunits from s. 186.022 by s. 43, ch. 2000-371, Laws of Florida; the remaining language is similar to former subsection (9).

Section 32. Paragraph (c) of subsection (1) of section 943.11, Florida Statutes, is 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 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.~~

Reviser's note.—Amended to delete language that has served its purpose. Pursuant to s. 33, ch. 84-258, Laws of Florida, the referenced act was

effective October 1, 1984, and the text indicates commission terms are for 4 years.

Section 33. Subsection (3) of section 943.125, Florida Statutes, is amended to read:

943.125 Law enforcement agency accreditation.—

(3) ARREST AND SECURITY PROTOCOLS REPORT.—No later than October 1, 1996, the Florida Sheriffs Association and the Florida Police Chiefs Association, either jointly or separately, and in consultation with the Association of Voluntary Hospitals of Florida, Inc. and the Statutory Teaching Hospital Council, shall develop protocols establishing when injured apprehendees will be placed under arrest and how security will be provided during any hospitalization of such apprehendees, ~~and shall report to the Legislature by January 1, 1997, on the protocols that have been established. The report developed pursuant to this section shall also address the cost to hospitals of providing unreimbursed medical services to persons who are injured in the course of or at the time of apprehension.~~

Reviser's note.—Amends a provision to delete language that has served its purpose. Protocols relating to the arrest of injured apprehendees and provision of security during hospitalization were developed by October 1, 1996, and reported to the Legislature on December 31, 1996.

Section 34. Paragraph (d) of subsection (2) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(2) Any claim filed by or on behalf of a person who:

(d) Has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal under s. 775.084 ~~785.084~~; or

shall not be eligible for an award.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 785.084 does not exist. Section 775.084 relates to violent career criminals.

Section 35. Subsection (1) of section 984.03, Florida Statutes, is amended to read:

984.03 Definitions.—When used in this chapter, the term:

(1) "Abandoned" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the person responsible for the child's welfare, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If the efforts of such parent or legal custodian, or person primarily responsible for the child's welfare to support and communicate with the child are, in the

opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. The term “abandoned” does not include a “child in need of services” as defined in subsection (9) or a “family in need of services” as defined in subsection (25) (27). The incarceration of a parent, legal custodian, or person responsible for a child’s welfare does not constitute a bar to a finding of abandonment.

Reviser’s note.—Amended to conform to the redesignation of subsection (27) as subsection (25) by s. 13, ch. 2000-135, Laws of Florida.

Section 36. Paragraph (b) of subsection (3) of section 985.201, Florida Statutes, is amended to read:

985.201 Jurisdiction.—

(3)

(b) The jurisdiction to be exercised by the court when a child is taken into custody before the filing of a petition under s. ~~985.219(8)~~ 985.219(7) shall be exercised by the circuit court for the county in which the child is taken into custody, which court shall have personal jurisdiction of the child and the child’s parent or legal guardian. Upon the filing of a petition in the appropriate circuit court, the court that is exercising initial jurisdiction of the person of the child shall, if the child has been detained, immediately order the child to be transferred to the detention center or facility or other placement as ordered by the court having subject matter jurisdiction of the case.

Reviser’s note.—Amended to conform to the redesignation of s. 985.219(7) as s. 985.219(8) by s. 11, ch. 2000-134, Laws of Florida.

Section 37. Subsection (2) of section 985.215, Florida Statutes, is amended to read:

985.215 Detention.—

(2) Subject to the provisions of subsection (1), a child taken into custody and placed into nonsecure or home detention care or detained in secure detention care prior to a detention hearing may continue to be detained by the court if:

(a) The child is alleged to be an escapee or an absconder from a commitment program, a probation program, furlough, or conditional release supervision, or is alleged to have escaped while being lawfully transported to or from such program or supervision.

(b) The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28(1) and is detained as provided in s. 985.213(2)(b)3.

(e) The child is charged with possession or discharging a firearm on school property in violation of s. 790.115.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
 2. Has a record of law violations prior to court hearings;
 3. Has already been detained or has been released and is awaiting final disposition of the case;
 4. Has a record of violent conduct resulting in physical injury to others;
- or
5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.231(1)(a)1.c. If a consequence unit is not available, the child shall be placed on home detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, for an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(j) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

A child who meets any of these criteria and who is ordered to be detained pursuant to this subsection shall be given a hearing within 24 hours after being taken into custody. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law with which he or she is charged and the need for continued detention. Unless a child is detained under paragraph (d) or paragraph (e), the court shall utilize the results of the risk assessment performed by the juvenile probation officer and, based on the criteria in this subsection, shall determine the need for continued detention. A child placed into secure, nonsecure, or home detention care may continue to be so detained by the court pursuant to this subsection. If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement. Except as provided in s. 790.22(8) or in subparagraph (10)(a)2., paragraph (10)(b), paragraph (10)(c), or paragraph (10)(d), when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in paragraph (5)(b) or paragraph (5)(c), or subparagraph (10)(a)1., whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted pursuant to paragraph (5)(f) ~~(5)(d)~~.

Reviser's note.—Amended to conform to the redesignation of paragraph (5)(d) as paragraph (5)(f) by the reviser incident to the compilation of the Florida Statutes 2000.

Section 38. Subsection (1) of section 985.225, Florida Statutes, is amended to read:

985.225 Indictment of a juvenile.—

(1) A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the court as set forth in s. ~~985.219(8)~~ ~~985.219(7)~~ unless and until an indictment on the charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult:

(a) On the offense punishable by death or by life imprisonment; and

(b) On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or by life imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.

Reviser's note.—Amended to conform to the redesignation of s. 985.219(7) as s. 985.219(8) by s. 11, ch. 2000-134, Laws of Florida.

Section 39. Subsection (1) of section 985.228, Florida Statutes, is amended to read:

985.228 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(1) The adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations provided for in s. 985.215(5)(c) and (d) ~~985.215(5)(b) and (c)~~ apply.

Reviser's note.—Amended to conform to the redesignation of s. 985.215(5)(b) and (c) as s. 985.215(5)(c) and (d) by s. 9, ch. 2000-134, Laws of Florida.

Section 40. Section 985.23, Florida Statutes, is reenacted to read:

985.23 Disposition hearings in delinquency cases.—When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

(1) Before the court determines and announces the disposition to be imposed, it shall:

(a) State clearly, using common terminology, the purpose of the hearing and the right of persons present as parties to comment at the appropriate time on the issues before the court;

(b) Discuss with the child his or her compliance with any home release plan or other plan imposed since the date of the offense;

(c) Discuss with the child his or her feelings about the offense committed, the harm caused to the victim or others, and what penalty he or she should be required to pay for such transgression; and

(d) Give all parties present at the hearing an opportunity to comment on the issue of disposition and any proposed rehabilitative plan. Parties to the case shall include the parents, legal custodians, or guardians of the child; the child's counsel; the state attorney; representatives of the department; the victim if any, or his or her representative; representatives of the school system; and the law enforcement officers involved in the case.

(2) The first determination to be made by the court is a determination of the suitability or nonsuitability for adjudication and commitment of the child to the department. This determination shall include consideration of the recommendations of the department, which may include a predisposition report. The predisposition report shall include, whether as part of the child's multidisciplinary assessment, classification, and placement process components or separately, evaluation of the following criteria:

(a) The seriousness of the offense to the community. If the court determines that the child was a member of a criminal street gang at the time of the commission of the offense, which determination shall be made pursuant

to chapter 874, the seriousness of the offense to the community shall be given great weight.

(b) Whether the protection of the community requires adjudication and commitment to the department.

(c) Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.

(d) Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.

(e) The sophistication and maturity of the child.

(f) The record and previous criminal history of the child, including without limitations:

1. Previous contacts with the department, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, the Department of Corrections, other law enforcement agencies, and courts;

2. Prior periods of probation;

3. Prior adjudications of delinquency; and

4. Prior commitments to institutions.

(g) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if committed to a community services program or facility.

(h) The child's educational status, including, but not limited to, the child's strengths, abilities, and unmet and special educational needs. The report shall identify appropriate educational and vocational goals for the child. Examples of appropriate goals include:

1. Attainment of a high school diploma or its equivalent.

2. Successful completion of literacy course(s).

3. Successful completion of vocational course(s).

4. Successful attendance and completion of the child's current grade if enrolled in school.

5. Enrollment in an apprenticeship or a similar program.

At the time of disposition, the court may make recommendations to the department as to specific treatment approaches to be employed.

(3)(a) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing.

The determination shall include a specific finding of the reasons for the decision to adjudicate and to commit the child to the department, including any determination that the child was a member of a criminal street gang.

(b) If the court determines that commitment to the department is appropriate, the juvenile probation officer shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. If the court has determined that the child was a member of a criminal street gang, that determination shall be given great weight in identifying the most appropriate restrictiveness level for the child. The court shall consider the department's recommendation in making its commitment decision.

(c) The court shall commit the child to the department at the restrictiveness level identified or may order placement at a different restrictiveness level. The court shall state for the record the reasons which establish by a preponderance of the evidence why the court is disregarding the assessment of the child and the restrictiveness level recommended by the department. Any party may appeal the court's findings resulting in a modified level of restrictiveness pursuant to this paragraph.

(d) The court may also require that the child be placed in a probation program following the child's discharge from commitment. Community-based sanctions pursuant to subsection (4) may be imposed by the court at the disposition hearing or at any time prior to the child's release from commitment.

(e) The court shall be responsible for the fingerprinting of any child at the disposition hearing if the child has been adjudicated or had adjudication withheld for any felony in the case currently before the court.

(4) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to, participation in substance abuse treatment, a day-treatment probation program, restitution in money or in kind, a curfew, revocation or suspension of the driver's license of the child, community service, and appropriate educational programs as determined by the district school board.

(5) After appropriate sanctions for the offense are determined, the court shall develop, approve, and order a plan of probation which will contain rules, requirements, conditions, and rehabilitative programs, including the option of a day-treatment probation program, which are designed to encourage responsible and acceptable behavior and to promote both the rehabilitation of the child and the protection of the community.

(6) The court may receive and consider any other relevant and material evidence, including other written or oral reports or statements, in its effort to determine the appropriate disposition to be made with regard to the child. The court may rely upon such evidence to the extent of its probative value, even though such evidence may not be technically competent in an adjudicatory hearing.

(7) The court shall notify any victim of the offense, if such person is known and within the jurisdiction of the court, of the hearing and shall notify and summon or subpoena, if necessary, the parents, legal custodians, or guardians of the child to attend the disposition hearing if they reside in the state.

It is the intent of the Legislature that the criteria set forth in subsection (2) are general guidelines to be followed at the discretion of the court and not mandatory requirements of procedure. It is not the intent of the Legislature to provide for the appeal of the disposition made pursuant to this section.

Reviser's note.—Section 30, ch. 2000-135, Laws of Florida, purported to amend portions of s. 985.23, but failed to republish the flush left language at the end of the section. In the absence of affirmative evidence that the Legislature intended to repeal the flush left language, s. 985.23 is reenacted to confirm that the omission was not intended.

Section 41. Section 985.3141, Florida Statutes, is reenacted to read:

985.3141 Escapes from secure detention or residential commitment facility.—An escape from:

(1) Any secure detention facility maintained for the temporary detention of children, pending adjudication, disposition, or placement;

(2) Any residential commitment facility described in s. 985.03(45), maintained for the custody, treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or

(3) Lawful transportation to or from any such secure detention facility or residential commitment facility,

constitutes escape within the intent and meaning of s. 944.40 and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Reviser's note.—Section 41, ch. 2000-135, Laws of Florida, purported to amend subsection (2), but failed to republish the flush left language at the end of the section. In the absence of affirmative evidence that the Legislature intended to repeal the flush left language, s. 985.3141 is reenacted to confirm that the omission was not intended.

Approved by the Governor May 25, 2001.

Filed in Office Secretary of State May 25, 2001.