CHAPTER 2003-261

Committee Substitute for Committee Substitute for Senate Bill No. 1712

An act relating to governmental reorganization; conforming the Florida Statutes to the amendment of Article IV, Section 4 of the State Constitution, in which the functions of the former positions of Comptroller and Treasurer were combined into the office of Chief Financial Officer, and chapter 2002-404, Laws of Florida, which reorganized certain executive-branch duties and functions to implement such constitutional amendment; amending ss. 11.12, 11.13, 11.147, 11.151, 11.40, 11.42, 14.057, 14.058, 14.203, 15.09, 16.10, 17.001, 17.002, 17.011, 17.02, 17.03, 17.031, 17.04, 17.0401, 17.041, 17.0415, 17.05, 17.075, 17.076, 17.08, 17.09, 17.10, 17.11, 17.12, 17.13, 17.14, 17.16, 17.17, 17.20, 17.21, 17.22, 17.25, 17.26, 17.27, 17.28, 17.29, 17.30, 17.32, 17.325, 17.41, 17.43, F.S.; transferring and amending ss. 18.01, 18.02, 18.021, 18.05, 18.06, 18.07, 18.08, 18.091, 18.10, 18.101, 18.103, 18.104, 18.125, 18.15, 18.17, 18.20, 18.23, 18.24, F.S.; amending ss. 20.04, 20.055, 20.121, 20.195, 20.425, 20.435, 24.105, 24.111, 24.112, 24.120, 25.241, 26.39, 27.08, 27.10, 27.11, 27.12, 27.13, 27.34, 27.3455, 27.703, 27.710, 27.711, 28.235, 28.24, 30.49, 30.52, 40.30, 40.31, 40.33, 40.34, 40.35, 43.16, 43.19, 48.151, 55.03, 57.091, 68.083, 68.084, 68.087, 68.092, 77.0305, 92.39, 99.097, 103.091, 107.11, 110.1127, 110.113, 110.114, 110.116, 110.1227, 110.1228, 110.123, 110.125, 110.181, 110.2037, 110.205, 112.061, 112.08, 112.191, 112.215, 112.3144, 112.3145, 112.3189, 112.31895, 112.3215, 112.63, 116.03, 116.04, 116.05, 116.06, 116.14, 120.52, 120.80, 121.051, 121.061, 121.133, 122.35, 125.0104, 129.201, 131.05, 137.09, 145.141, 154.02, 154.03, 154.05, 154.06, 154.209, 154.314, 163.01, 163.055, 163.3167, 166.111, 175.032, 175.101, 175.121, 175.151, 185.08, 185.10, 185.13, 189.4035, 189.412, 189.427, 190.007, 191.006, 192.091, 192.102, 193.092, 195.101, 198.29, 199.232, 203.01, 206.46, 210.16, 210.20, 210.50, 211.06, 211.31, 211.32, 212.08, 212.12, 212.20, 213.053, 213.054, 213.255, 213.67, 213.75, 215.02, 215.03, 215.04, 215.05, 215.11, 215.20, 215.22, 215.23, 215.24, 215.25, 215.26, 215.29, 215.31, 215.32, 215.3206, 215.3208, 215.322, 215.34, 215.35, 215.405, 215.42, 215.422, 215.50, 215.551, 215.552, 215.555, 215.559, 215.56005, 215.5601, 215.58, 215.684, 215.70, 215.91, 215.92, 215.93, 215.94, 215.965, 215.97, 216.0442, 216.102, 216.141, 216.177, 216.181, 216.183, 216.192, 216.212, 216.221, 216.222, 216.235, 216.237, 216.251, 216.271, 216.275, 216.292, 216.301, 217.07, 218.06, 218.23, 218.31, 218.321, 218.325, 220.151, 220.187, 220.62, 220.723, 238.11, 238.15, 238.172, 238.173, 250.22, 250.24, 250.25, 250.26, 250.34, 252.62, 252.87, 253.025, 255.03, 255.052, 255.258, 255.503, 255.521, 257.22, 258.014, 259.032, 259.041, 265.53, 265.55, 267.075, 272.18, 280.02, 280.04, 280.041, 280.05, 280.051, 280.052, 280.053, 280.054, 280.055, 280.06, 280.07, 280.071, 280.08, 280.085, 280.09, 280.10, 280.11, 280.13, 280.16, 280.17, 280.18, 280.19, 282.1095, 284.02, 284.04, 284.05, 284.06, 284.08, 284.14, 284.17, 284.30, 284.31,

284.32, 284.33, 284.34, 284.35, 284.37, 284.385, 284.39, 284.40, 284.41, 284.42, 284.44, 284.50, 287.042, 287.057, 287.058, 287.059, 287.063, 287.064, 287.09451, 287.115, 287.131, 287.175, 288.1045, 288.106, 288.109, 288.1253, 288.709, 288.712, 288.776, 288.778, 288.901, 288.99, 289.051, 289.081, 289.121, 292.085, 313.02, 314.02, 316.3025, 316.545, 320.02, 320.081, 320.20, 320.71, 320.781, 322.21, 324.032, 324.171, 326.006, 331.303, 331.309, 331.3101, 331.348, 331.419, 336.022, 337.25, 339.035, 339.081, 344.17, 350.06, 354.03, 365.173, 370.06, 370.16, 370.19, 370.20, 373.503, 373.59, 373.6065, 374.983, 374.986, 376.11, 376.123, 376.307, 376.3071, 376.3072, 376.3075, 376.3078, 376.3079, 376.40, 377.23, 377.2425, 377.705, 378.035, 378.037, 378.208, 381.765, 381.90, 385.207, 388.201, 388.301, 391.025, 391.221, 392.69, 393.002, 393.075, 394.482, 400.0238, 400.063, 400.071, 400.4174, 400.4298, 400.471, 400.962, 401.245, 401.25, 402.04, 402.17, 402.33, 403.1835, 403.1837, 403.706, 403.724, 403.8532, 404.111, 406.58, 408.040, 408.05, 408.08, 408.18, 408.50, 408.7056, 408.902, 408.909, 409.175, 409.25656, 409.25658, 409.2673, 409.8132, 409.817, 409.818, 409.910, 409.912, 409.9124, 409.915, 411.01, 413.32, 414.27, 414.28, 420.0005, 420.0006, 420.101, 420.123, 420.131, 420.141, 420.5092, 430.42, 430.703, 440.015, 440.02, 440.05, 440.09, 440.10, 440.1025, 440.103, 440.105, 440.1051, 440.106, 440.107, 440.13, 440.134, 440.14, 440.17, 440.20, 440.24, 440.38, 440.381, 440.385, 440.386, 440.40, 440.44, 440.49, 440.50, 440.51, 440.515, 440.52, 440.525, 440.591, 443.131, 443.191, 443.211, 445.0325, 447.12, 450.155, 468.392, 468.529, 473.3065, 475.045, 475.484, 475.485, 489.114, 489.144, 489.145, 489.510, 489.533, 494.001, 494.0011, 494.0012, 494.00125, 494.0013, 494.0014, 494.0016, 494.00165, 494.0017, 494.0021, 494.0025, 494.0028, 494.0029, 494.00295, 494.0031, 494.0032, 494.0033, 494.0034, 494.0035, 494.0036, 494.0038, 494.004, 494.0041, 494.00421, 494.0061, 494.0062, 494.0064, 494.0065, 494.0066, 494.0067, 494.0069, 494.0072, 494.00721, 494.0076, 494.0079, 494.00795, 494.00797, 497.005, 497.101, 497.105, 497.107, 497.109, 497.115, 497.117, 497.131, 497.201, 497.253, 497.313, 497.403, 498.025, 498.049, 499.057, 501.212, 507.03, 509.215, 513.055, 516.01, 516.02, 516.03, 516.031, 516.05, 516.07, 516.11, 516.12, 516.22, 516.221, 516.23, 516.32, 516.33, 516.35, 517.021, 517.03, 517.051, 517.061, 517.07, 517.075, 517.081, 517.082, 517.101, 517.111, 517.12, 517.1201, 517.1203, 517.1204, 517.121, 517.131, 517.141, 517.151, 517.161, 517.181, 517.191, 517.201, 517.2015, 517.221, 517.241, 517.301, 517.302, 517.313, 517.315, 517.32, 518.115, 518.116, 518.15, 518.151, 518.152, 519.101, 520.02, 520.03, 520.07, 520.31, 520.32, 520.34, 520.52, 520.61, 520.63, 520.73, 520.76, 520.81, 520.83, 520.90, 520.994, 520.995, 520.996, 520.9965, 520.997, 520.998, 526.141, 537.003, 537.004, 537.005, 537.006, 537.008, 537.009, 537.011, 537.013, 537.016, 537.017, 548.066, 548.077, 550.0251, 550.054, 550.0951, 550.125, 550.135, 550.1645, 552.081, 552.161, 552.21, 552.26, 553.72, 553.73, 553.74, 553.79, 553.88, 554.1021, 554.105, 554.111, 559.10, 559.543, 559.544, 559.545, 559.546, 559.548, 559.55, 559.553, 559.555, 559.563, 559.725, 559.730, 559.785, 559.928,

559.9232, 560.102, 560.103, 560.105, 560.106, 560.107, 560.1073, 560.108, 560.109, 560.111, 560.112, 560.113, 560.114, 560.115, 560.116, 560.117, 560.118, 560.119, 560.121, 560.123, 560.125, 560.126, 560.127, 560.128, 560.129, 560.202, 560.205, 560.206, 560.207, 560.208, 560.209, 560.210, 560.211, 560.302, 560.305, 560.306, 560.307, 560.308, 560.309, 560.310, 560.402, 560.403, 560.404, 560.4041, 560.407, 560.408, 561.051, 562.44, 567.08, 569.205, 569.215, 570.13, 570.195, 570.20, 574.03, 589.06, 597.010, 601.10, 601.15, 601.28, 607.0501, 607.14401, 609.05, 617.0501, 617.1440, 624.01, 624.05, 624.07, 624.09, 624.11, 624.124, 624.129, 624.155, 624.19, 624.302, 624.303, 624.307, 624.308, 624.310, 624.3102, 624.311, 624.312, 624.313, 624.314, 624.315, 624.316, 624.3161, 624.317, 624.318, 624.319, 624.320, 624.321, 624.322, 624.324, 624.33, 624.34, 624.401, 624.4031, 624.404, 624.4072, 624.4085, 624.40851, 624.4094, 624.4095, 624.410, 624.411, 624.412, 624.413, 624.4135, 624.414, 624.415, 624.416, 624.418, 624.420, 624.421, 624.4211, 624.422, 624.423, 624.424, 624.4241, 624.4243, 624.4245, 624.430, 624.4361, 624.437, 624.438, 624.439, 624.4392, 624.44, 624.441, 624.4411, 624.4412, 624.442, 624.443, 624.4431, 624.444, 624.445, F.S.; amending and renumbering s. 624.4435, F.S.; amending ss. 624.45, 624.4621, 624.4622, 624.464, 624.466, 624.468, 624.470, 624.473, 624.4741, 624.476, 624.477, 624.480, 624.482, 624.484, 624.486, 624.487, 624.501, 624.5015, 624.502, 624.506, 624.509, 624.5091, 624.5092, 624.516, 624.517, 624.519, 624.521, 624.523, 624.6012, 624.605, 624.607, 624.609, 624.610, 624.80, 624.81, 624.82, 624.83, 624.84, 624.85, 624.86, 624.87, 625.01115, 625.012, 625.041, 625.051, 625.061, 625.071, 625.081, 625.091, 625.101, 625.121, 625.131, 625.141, 625.151, 625.161, 625.172, 625.181, 625.303, 625.305, 625.317, 625.322, 625.324, 625.325, 625.326, 625.330, 625.331, 625.332, 625.333, 625.338, 625.52, 625.53, 625.55, 625.56, 625.57, 625.58, 625.62, 625.63, 625.75, 625.765, 625.78, 625.79, 625.80, 625.82, 625.83, 626.015, F.S.; creating s. 626.016, F.S.; prescribing powers and duties of the Department of Financial Services, Financial Services Commission, and Office of Insurance Regulation; amending ss. 626.025, 626.112, 626.161, 626.171, 626.181, 626.191, 626.201, 626.202, 626.211, 626.221, 626.231, 626.241, 626.251, 626.261, 626.266, 626.271, 626.281, 626.2815, 626.2817, 626.291, 626.292, 626.301, 626.322, 626.361, 626.371, 626.381, 626.431, 626.451, 626.461, 626.471, 626.511, 626.521, 626.541, 626.551, 626.561, 626.591, 626.592, 626.601, 626.611, 626.621, 626.631, 626.641, 626.661, 626.681, 626.691, 626.692, 626.7315, 626.732, 626.742, 626.7451, 626.7454, 626.7491, 626.7492, 626.752, 626.7845, 626.7851, 626.8305, 626.8311, 626.8427, 626.8463, 626.8467, 626.847, 626.8473, 626.8582, 626.8584, 626.859, 626.861, 626.863, 626.865, 626.866, 626.867, 626.869, 626.8695, 626.8696, 626.8697, 626.8698, 626.870, 626.871, 626.872, 626.873, 626.8732, 626.8734, 626.8736, 626.8738, 626.874, 626.878, 626.88, 626.8805, 626.8809, 626.8814, 626.884, 626.89, 626.891, 626.892, 626.894, 626.895, 626.896, 626.897, 626.898, 626.899, 626.901, 626.906, 626.907, 626.909, 626.910, 626.912, 626.914, 626.916, 626.917, 626.918,

626.919, 626.921, 626.931, 626.932, 626.936, 626.9361, 626.937, 626.938, 626.9511, 626.9541, 626.9545, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591, 626.9601, 626.9611, 626.9621, 626.9631, 626.9641, 626.9651, 626.989, 626.9892, 626.99, 626.9911, 626.9912, 626.9913, 626.9914, 626.9915, 626.9916, 626.9919, 626.9921, 626.9922, 626.99235, 626.99245, 626.9925, 626.9926, 626.9927, 626.99272, 626.99285, 626.99295, 627.031, 627.0612, 627.0613, 627.062, 627.0625, 627.0628, 627.0629, 627.0645, 627.06501, 627.0651, 627.0652, 627.0653, 627.06535, 627.066, 627.072, 627.091, 627.0915, 627.0916, 627.092, 627.096, 627.101, 627.111, 627.141, 627.151, 627.171, 627.192, 627.211, 627.212, 627.215, 627.221, 627.231, 627.241, 627.281, 627.291, 627.301, 627.311, F.S.; transferring and amending s. 627.3111, F.S.; amending ss. 627.314, 627.318, 627.331, 627.351, 627.3511, 627.3512, 627.3513, 627.3515, 627.3517, 627.357, 627.361, 627.371, 627.381, 627.4035, 627.410, 627.4101, 627.4105, 627.411, 627.412, 627.413, 627.4145, 627.417, 627.418, 627.4234, 627.4236, 627.4238, 627.427, 627.429, 627.452, 627.458, 627.462, 627.464, 627.476, 627.479, 627.480, 627.481, 627.482, 627.502, 627.503, 627.510, 627.5515, 627.5565, 627.558, 627.602, 627.604, 627.605, 627.6131, 627.618, 627.622, 627.623, 627.624, 627.625, 627.640, 627.6425, 627.643, 627.647, 627.6472, 627.6475, 627.6482, 627.6484, 627.6487, 627.6488, 627.649, 627.6494, 627.6498, 627.6499, 627.6515, 627.6561, 627.6571, 627.6675, 627.6685, 627.6692, 627.6699, 627.673, 627.6735, 627.674, 627.6741, 627.6742, 627.6744, 627.6745, 627.678, 627.6785, 627.682, 627.6844, 627.6845, 627.701, 627.7011, 627.7012, 627.7015, 627.7017, 627.702, 627.706, 627.727, 627.7275, 627.728, 627.7282, 627.7295, 627.736, 627.739, 627.7401, 627.744, 627.758, 627.7711, 627.777, 627.7773, 627.780, 627.782, 627.783, 627.7843, 627.7845, 627.786, 627.7865, 627.791, 627.793, 627.798, 627.805, 627.8055, 627.828, 627.829, 627.832, 627.833, 627.834, 627.836, 627.838, 627.840, 627.8405, 627.848, 627.849, 627.912, 627.9122, 627.9126, 627.913, 627.914, 627.915, 627.917, 627.9175, 627.918, 627.919, 627.9403, 627.9404, 627.9405, 627.9406, 627.9407, 627.94072, 627.94074, 627.9408, 627.942, 627.943, 627.944, 627.948, 627.950, 627.951, 627.952, 627.954, 627.971, 627.972, 627.973, 627.974, 627.986, 627.987, 628.051, 628.061, 62.071, 628.091, 628.101, 628.111, 628.152, 628.161, 628.171, 628.221, 628.251, 628.255, 628.261, 628.271, 628.281, 628.341, 628.351, 628.371, 628.391, 628.401, 628.411, 628.421, 628.431, 628.441, 628.451, 628.461, 628.4615, 628.471, 628.481, 628.491, 628.501, 628.511, 628.520, 628.525, 628.530, 628.535, 628.6013, 628.6014, 628.6017, 628.705, 628.707, 628.711, 628.713, 628.715, 628.717, 628.719, 628.721, 628.725, 628.729, 628.730, 628.733, 628.801, 628.802, 628.803, 628.905, 628.911, 628.913, 628.917, 629.081, 629.101, 629.121, 629.131, 629.161, 629.171, 629.181, 629.231, 629.241, 629.261, 629.281, 629.291, 629.301, 629.401, 629.520, 630.021, 630.031, 630.051, 630.071, 630.081, 630.091, 630.101, 630.131, 630.151, 630.161, 631.021, 631.025, 631.031, 631.051, 631.081, 631.152, 631.221, 631.231, 631.391, 631.392, 631.398, 631.54, 631.55, 631.56, 631.57, 631.59, 631.62,

631.66, 631.714, 631.72, 631.722, 631.723, 631.727, 631.813, 631.814, 631.818, 631.820, 631.821, 631.823, 631.825, 631.904, 631.911, 631.912, 631.917, 631.918, 631.931, 632.611, 632.612, 632.614, 632.615, 632.616, 632.621, 632.622, 632.627, 632.628, 632.629, 632.631, 632.632, 632.633, 632.637, 633.01, 633.022, 633.025, 633.052, 633.061, 633.081, 633.111, 633.161, 633.162, 633.30, 633.31, 633.353, 633.382, 633.43, 633.445, 633.45, 633.46, 633.461, 633.47, 633.50, 633.524, 633.802, 633.811, 633.814, 634.011, 634.021, 634.031, 634.041, 634.044, 634.045, 634.052, 634.053, 634.061, 634.081, 634.095, 634.101, 634.111, 634.121, 634.1213, 634.1216, 634.137, 634.141, 634.151, 634.161, 634.181, 634.191, 634.211, 634.221, 634.231, 634.242, 634.253, 634.261, 634.282, 634.283, 634.284, 634.285, 634.286, 634.287, 634.288, 634.289, 634.301, 634.302, 634.303, 634.304, 634.305, 634.306, 634.307, 634.3077, 634.3078, 634.308, 634.310, 634.311, 634.3112, 634.312, 634.3123, 634.3126, 634.313, 634.314, 634.320, 634.321, 634.324, 634.325, 634.327, 634.3284, 634.336, 634.337, 634.338, 634.339, 634.34, 634.341, 634.342, 634.343, 634.344, 634.345, 634.348, 634.401, 634.402, 634.403, 634.404, 634.405, 634.406, 634.4061, 634.4065, 634.407, 634.409, 634.411, 634.413, 634.414, 634.4145, 634.415, 634.416, 634.422, 634.423, 634.426, 634.427, 634.428, 634.430, 634.433, 634.437, 634.438, 634.439, 634.44, 634.441, 634.442, 634.443, 634.444, 635.011, 635.031, 635.041, 635.042, 635.071, 635.081, 636.003, 636.006, 636.007, 636.008, 636.009, 636.015, 636.016, 636.017, 636.018, 636.025, 636.029, 636.036, 636.037, 636.038, 636.039, 636.043, 636.045, 636.046, 636.047, 636.048, 636.049, 636.052, 636.053, 636.055, 636.056, 636.057, 636.058, 636.062, 636.063, 636.064, 636.067, 641.185, 641.19, 641.2017, 641.2018, 641.21, 641.215, 641.22, 641.225, 641.227, 641.228, 641.23, 641.234, 641.2342, 641.25, 641.255, 641.26, 641.27, 641.28, 641.281, 641.284, 641.285, 641.29, 641.3007, 641.305, 641.31, 641.3105, 641.31071, 641.31074, 641.315, 641.3154, 641.3155, 641.316, 641.35, 641.36, 641.365, 641.385, 641.39001, 641.3903, 641.3905, 641.3907, 641.3909, 641.3911, 641.3913, 641.3917, 641.3922, 641.402, 641.403, 641.405, 641.406, 641.4065, 641.407, 641.409, 641.41, 641.412, 641.418, 641.42, 641.421, 641.424, 641.437, 641.443, 641.444, 641.445, 641.446, 641.447, 641.448, 641.45, 641.452, 641.453, 641.454, 641.455, 641.457, 641.48, 641.49, 641.495, 641.511, 641.512, 641.52, 641.54, 641.55, 641.58, 642.015, 642.017, 642.021, 642.022, 642.023, 642.025, 642.027, 642.029, 642.0301, 642.0331, 642.0334, 642.0338, 642.041, 642.043, 642.047, 642.0475, 648.25, 648.26, 648.33, 648.34, 648.35, 648.355, 648.365, 648.386, 648.44, 648.442, 648.571, 650.06, 651.011, 651.012, 651.013, 651.014, 651.015, 651.018, 651.019, 651.021, 651.022, 651.023, 651.0235, 651.026, 651.0261, 651.028, 651.033, 651.035, 651.051, 651.055, 651.083, 651.085, 651.091, 651.095, 651.105, 651.106, 651.107, 651.108, 651.1081, 651.111, 651.114, 651.1151, 651.118, 651.119, 651.121, 651.123, 651.125, 651.134, 655.001, 655.005, 655.012, 655.015, 655.016, 655.031, 655.032, 655.0321, 655.0322, 655.033, 655.034, 655.037, 655.0385, 655.0386, 655.0391, 655.041, 655.043, 655.044, 655.045, 655.047,

655.049, 655.057, 655.059, 655.061, 655.071, 655.411, 655.412, 655.414, 655.416, 655.418, 655.50, 655.60, 655.762, 655.89, 655.90, 655.922, 655.942, 655.943, 655.948, 655.949, 655.963, 657.002, 657.005, 657.0061, 657.008, 657.021, 657.026, 657.028, 657.031, 657.033, 657.0335, 657.038, 657.042, 657.043, 657.053, 657.062, 657.063, 657.064, 657.065, 657.066, 657.068, 658.12, 658.16, 658.165, 658.19, 658.20, 658.21, 658.22, 658.23, 658.235, 658.24, 658.25, 658.26, 658.27, 658.28, 658.285, 658.295, 658.2953, 658.296, 658.32, 658.33, 658.34, 658.35, 658.36, 658.37, 658.39, 658.40, 658.41, 658.42, 658.43, 658.44, 658.45, 658.48, 658.53, 658.67, 658.68, 658.73, 658.79, 658.80, 658.81, 658.82, 658.83, 658.84, 658.90, 658.94, 658.95, 658.96, 658.995, 660.26, 660.265, 660.27, 660.28, 660.33, 660.40, 606.47, 660.48, 663.02, 663.04, 663.05, 663.055, 663.06, 663.061, 663.064, 663.065, 663.07, 663.08, 663.083, 663.09, 663.10, 663.11, 663.12, 663.13, 663.14, 663.16, 663.17, 663.171, 663.172, 663.173, 663.174, 663.175, 663.176, 663.177, 663.178, 663.18, 663.181, 663.301, 663.302, 663.303, 663.304, 663.305, 663.306, 663.308, 663.309, 663.311, 663.312, 663.316, 663.319, 665.012, 665.013, 665.0315, 665.033, 665.0335, 665.034, 665.0345, 665.0711, 665.1001, 667.002, 667.003, 667.005, 667.006, 667.007, 667.008, 667.013, 687.13, 687.14, 687.141, 687.143, 687.144, 687.145, 687.148, 697.05, 713.596, 716.02, 716.03, 716.04, 716.05, 716.06, 716.07, 717.101, 717.117, 717.135, 717.138, 718.501, 719.501, 721.24, 721.26, 723.006, 732.107, 733.816, 744.534, 766.105, 766.1115, 766.314, 766.315, 768.28, 790.001, 790.1612, 791.01, 791.015, 817.16, 817.234, 817.2341, 817.50, 839.06, 849.086, 849.33, 860.154, 860.157, 896.102, 896.104, 903.09, 903.101, 903.27, 925.037, 932.7055, 932.707, 938.27, 939.13, 943.031, 943.032, 944.516, 946.33, 946.509, 946.5095, 946.510, 946.517, 946.522, 946.525, 947.12, 950.002, 957.04, 985.406, 985.409, 1000.05, 1001.23, 1002.36, 1002.38, 1002.39, 1003.48, 1004.30, 1004.725, 1006.29, 1006.33, 1006.34, 1006.39, 1008.33, 1009.265, 1009.54, 1009.56, 1009.66, 1009.72, 1009.73, 1009.765, 1009.77, 1009.971, 1009.972, 1010.56, 1010.74, 1010.75, 1011.10, 1011.17, 1011.18, 1011.4105, 1011.57, 1011.94, 1012.59, 1012.79, 1013.79, F.S.; repealing s. 17.06, F.S., relating to items and accounts disallowed by the Comptroller; s. 18.03, F.S., relating to residence and office of the Treasurer; s. 18.09, F.S., relating to delivery to the Legislature of the annual report of the Treasurer; s. 18.22, F.S., relating to rulemaking authority of the Department of Banking and Finance; s. 20.12, F.S., relating to the Department of Banking and Finance; s. 20.13, F.S., relating to the Department of Insurance; s. 440.135, F.S., relating to pilot programs for medical and remedial care in workers' compensation; s. 624.305, F.S., relating to prohibited financial interests; s. 624.4071, F.S., relating to special purpose homeowner insurance companies; s. 624.463, F.S., relating to conversion of self-insurance funds; s. 627.0623, F.S., relating to restrictions on expenditures and solicitations of insurers and affiliates; s. 627.3516, F.S., relating to residential property insurance market coordinating council; s. 627.7825, F.S., relating to alternative rate adoption; s. 655.019, F.S., relating to campaign contribution limitations; s. 657.067, F.S., relating to conversion from federal to state charter and to requirements

for application approval; and ss. 657.25-657.269, relating to the Florida Credit Union Guaranty Corporation, Inc.; providing for retroactive applicability; providing that this act and chapter 2002-404, Laws of Florida, do not affect the validity of certain administrative or judicial action prior to or pending on January 7, 2003; providing that filings or actions approved or authorized by the Department of Insurance or the Department of Banking and Finance prior to that date may continue to be used or be effective until otherwise successor agencies otherwise prescribe; providing an effective date.

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

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

11.12 Salary, subsistence, and mileage of members and employees; expenses authorized by resolution; appropriation; preaudit ~~by Comptroller~~.—

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

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

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

11.13 Compensation of members.—

(5)

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

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

11.147 Office of Legislative Services.—

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

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

11.151 Annual legislative appropriation to contingency fund for use of Senate President and House Speaker.—There is established a legislative contingency fund consisting of $10,000 for the President of the Senate and $10,000 for the Speaker of the House of Representatives, which amounts shall be set aside annually from moneys appropriated for legislative expense. These funds shall be disbursed by the Chief Financial Officer ~~Comptroller~~ upon receipt of vouchers authorized by the President of the Senate or the Speaker of the House of Representatives. Such ~~Said~~ funds may be expended at the unrestricted discretion of the President of the Senate or the Speaker of the House of Representatives in carrying out their official duties during the entire period between the date of their election as such officers at the organizational meeting held pursuant to s. 3(a), Art. III of the State Constitution and the next general election.

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

11.40 Legislative Auditing Committee.—

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

(a) In the case of a local governmental entity or district school board, request the Department of Revenue and the Department of Financial Services ~~Banking and Finance~~ to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee, in its request, shall specify the date such

action shall begin, and the request must be received by the Department of Revenue and the Department of Financial Services ~~Banking and Finance~~ 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may ~~Banking and Finance are authorized to~~ implement the provisions of this paragraph.

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

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

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

11.42 The Auditor General.—

(6)

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

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

14.057 Governor-elect; establishment of operating fund.—

(1) There is established an operating fund for the use of the Governor-elect during the period dating from the certification of his or her election by the Elections Canvassing Commission to his or her inauguration as Governor. The Governor-elect during this period may allocate the fund to travel, expenses, his or her salary, and the salaries of the Governor-elect's staff as he or she determines. Such staff may include, but not be limited to, a chief administrative assistant, a legal adviser, a fiscal expert, and a public relations and information adviser. The salary of the Governor-elect and each member of the Governor-elect's staff during this period shall be determined by the Governor-elect, except that the total expenditures chargeable to the state under this section, including salaries, shall not exceed the amount appropriated to the operating fund. The Executive Office of the Governor shall supply to the Governor-elect suitable forms to provide for the expenditure of the fund and suitable forms to provide for the reporting of all expenditures therefrom. The Chief Financial Officer ~~Comptroller~~ shall release moneys from this fund upon the request of the Governor-elect properly filed.

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

14.058 Inauguration expense fund.—There is established an inauguration expense fund for the use of the Governor-elect in planning and conducting the inauguration ceremonies. The Governor-elect shall appoint an inauguration coordinator and such staff as necessary to plan and conduct the

inauguration. Salaries for the inauguration coordinator and the inauguration coordinator's staff shall be determined by the Governor-elect and shall be paid from the inauguration expense fund. The Executive Office of the Governor shall supply to the inauguration coordinator suitable forms to provide for the expenditure of the fund and suitable forms to provide for the reporting of all expenditures therefrom. The Chief Financial Officer ~~Comptroller~~ shall release moneys from this fund upon the request of the inauguration coordinator properly filed.

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

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

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

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

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

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

3. The total cost to the state agency of such state agency's performance of a service, including all indirect costs related to that state agency and costs of such agencies as the Chief Financial Officer ~~Comptroller, the Treasurer~~, the Attorney General, and other such support agencies to the extent such costs would not be incurred if a contract is awarded. Costs for the current provision of the service shall be considered only when such costs would actually be saved if the contract were awarded to another entity.

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

15.09 Fees.—

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

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

16.10 Receipt of Supreme Court reports for office.—The Clerk of the Supreme Court shall deliver to the Attorney General a copy of each volume, or part of volume, of the decisions of the Supreme Court, which may be in

the care or custody of said clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in her or his office at the capitol, and each retiring Attorney General shall take the receipt of her or his successor for the same and file such receipt in the Chief Financial Officer's ~~Treasurer's~~ office; provided that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said court.

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

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

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

17.002 Definition.—For the purposes of this chapter, the term "department" means the Department of Financial Services.

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

17.011 Assistant Chief Financial Officer ~~comptroller~~.—The Chief Financial Officer ~~Comptroller~~ of the state may appoint an Assistant Chief Financial Officer ~~comptroller~~ to hold office during the pleasure of the Chief Financial Officer ~~Comptroller~~.

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

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

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

17.03 To audit claims against the state.—

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

(2) The Chief Financial Officer ~~Comptroller~~ may establish dollar thresholds applicable to each invoice amount and other criteria for testing or sampling invoices on a preaudit and postaudit basis. The Chief Financial Officer ~~Comptroller~~ may revise such thresholds and other criteria for an agency or the unit of any agency as he or she deems appropriate.

(3) The Chief Financial Officer ~~Comptroller~~ may adopt and disseminate to the agencies procedural and documentation standards for payment re-

quests and may provide training and technical assistance to the agencies for these standards.

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

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

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

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

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

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

17.0401 Confidentiality of information relating to financial investigations.—Except as otherwise provided by this section, information relative to an investigation conducted by the Division of Accounting and Auditing ~~Financial Investigations~~ pursuant to s. 17.04, including any consumer complaint, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active. Any information relating to an investigation conducted by the division pursuant to s. 17.04 shall remain confidential and exempt

from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution after the division's investigation is completed or ceases to be active if the division submits the information to any law enforcement or prosecutorial agency for further investigation. Such information shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until that agency's investigation is completed or ceases to be active. For purposes of this section, an investigation shall be considered "active" so long as the division or any law enforcement or prosecutorial agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation may lead to the filing of an administrative, civil, or criminal proceeding. This section shall not be construed to prohibit disclosure of information that ~~which~~ is required by law to be filed with the Department of Financial Services or the Office of Financial Regulation ~~Banking and Finance~~ and that ~~which~~, but for the investigation, would otherwise be subject to public disclosure. Nothing in this section shall be construed to prohibit the division from providing information to any law enforcement or prosecutorial agency. Any law enforcement or prosecutorial agency receiving confidential information from the division in connection with its official duties shall maintain the confidentiality of the information as provided for in this section.

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

17.041 County and district accounts and claims.—

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

(2) On the failure of such officer, employee, or person to adjust and settle such account, or to yield up such property, funds, moneys, or other thing of value, the Chief Financial Officer ~~department~~ shall direct the attorney for the board of county commissioners, the district school board, or the district, as the case may be, entitled to such account, property, funds, moneys, or other thing of value to represent such county or district in enforcing settlement, payment or delivery of such account, property, funds, moneys, or other thing of value. The Chief Financial Officer ~~department~~ may enforce such settlement, payment, or delivery pursuant to s. 17.20.

(3) Should the attorney for the county or district aforesaid be disqualified or unable to act, and no other attorney be furnished by the county or district, or should the Chief Financial Officer ~~department~~ otherwise deem it advisable, such account or claim may be certified to the Department of Legal

Affairs by the Chief Financial Officer ~~department~~, to be prosecuted by the Department of Legal Affairs at county or district expense, as the case may be, including necessary per diem and travel expense in accordance with s. 112.061, as now or hereafter amended. Such expenses, when approved by the Chief Financial Officer ~~department~~, shall be paid forthwith by such county or district.

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

(5) No such account or claim, after it has been certified to the Chief Financial Officer ~~department~~, may be settled for less than the amount due according to law without the written consent of the Chief Financial Officer ~~department~~, and any attempt to make settlement in violation of this subsection shall be deemed null and void. A county or district board desiring to make such a settlement shall incorporate the proposed settlement into a resolution, stating that the proposed settlement is contingent upon the Chief Financial Officer's ~~Comptroller's~~ approval, and shall submit two copies of the resolution to the department. The Chief Financial Officer ~~department~~ shall return one copy with his or her ~~the Comptroller's~~ action endorsed thereon.

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

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

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

17.0415 Transfer and assignment of claims.—In order to facilitate their collection from third parties, the Chief Financial Officer ~~Comptroller~~ may authorize the assignment of claims among the state, its agencies, and its subdivisions, whether arising from criminal, civil, or other judgments in state or federal court. The state, its agencies, and its subdivisions, may assign claims under such terms as are mutually acceptable to the Chief

Financial Officer ~~Comptroller~~ and the assignee and assignor. The assigned claim may be enforced as a setoff to any claim against the state, its agencies, or its subdivisions, by garnishment or in the same manner as a judgment in a civil action. Claims against the state, its agencies, and its subdivisions resulting from the condemnation of property protected by the provisions of s. 4, Art. X of the State Constitution are not subject to setoff pursuant to this section.

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

17.05 Subpoenas; sworn statements; enforcement proceedings.—

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

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

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

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

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

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

person has fully complied with such subpoena and the Chief Financial Officer ~~Comptroller~~ or the department has completed the audit, examination, or investigation. The Chief Financial Officer ~~Comptroller~~ or the department is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the Chief Financial Officer ~~Comptroller~~ or the department to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena shall be charged against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

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

17.075 Form of state warrants and other payment orders; rules.—

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

(2) The Chief Financial Officer ~~department~~ shall adopt rules establishing accounting and recordkeeping procedures for all payments made by electronic transfer of funds or by any other means. Such procedures shall be consistent with the statutory requirements applicable to payments by state warrant.

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

17.076 Direct deposit of funds.—

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

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

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

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

(3) The Chief Financial Officer ~~department~~ may contract with an authorized financial institution for the services necessary to operate the program. In order to implement the provisions of this section, the Chief Financial Officer may ~~Comptroller is authorized to~~ deposit with that financial institu-

tion the funds payable to the beneficiaries, in lump sum, by Chief Financial Officer's ~~Comptroller's~~ warrant to make the authorized direct deposits.

(4) The written authorization of a beneficiary shall be filed with the department or its designee. Such authorization shall remain in effect until withdrawn in writing by the beneficiary or dishonored by the designated financial institution.

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

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

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

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

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

17.08 Accounts, etc., on which warrants drawn, to be filed.—All accounts, vouchers, and evidence, upon which warrants have heretofore been, or shall hereafter be, drawn upon the treasury by the Chief Financial Officer ~~Comptroller~~ shall be filed and deposited in the office of Chief Financial Officer ~~Comptroller~~ or the office of the Chief Financial Officer's ~~Comptroller's~~ designee, in accordance with requirements established by the Secretary of State.

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

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

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

17.10 Record of warrants and of state funds and securities ~~issued~~.—The Chief Financial Officer ~~Comptroller~~ shall cause to be entered in the warrant

register a record of the warrants issued during the previous month, and shall make such entry in the record so required to be kept as shall show the number of each warrant issued, in whose favor drawn, and the date it was issued. He or she shall account for all state funds and securities.

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

17.11 To report disbursements made.—

(1) The Chief Financial Officer ~~Comptroller~~ shall make in all his or her future annual reports an exhibit stated from the record of disbursements made during the fiscal year, and the several heads of expenditures under which such disbursements were made.

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

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

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

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

17.13 To duplicate warrants lost or destroyed.—

(1) The Chief Financial Officer ~~Comptroller~~ is required to duplicate any Chief Financial Officer's ~~Comptroller's~~ warrants that may have been lost or destroyed, or may hereafter be lost or destroyed, upon the owner thereof or the owner's agent or attorney presenting the Chief Financial Officer ~~Comptroller~~ the statement, under oath, reciting the number, date, and amount of any warrant or the best and most definite description in his or her knowledge and the circumstances of its loss; if the Chief Financial Officer ~~Comptroller~~ deems it necessary, the owner or the owner's agent or attorney shall file in the office of the Chief Financial Officer ~~Comptroller~~ a surety bond, or a bond with securities, to be approved by one of the judges of the circuit court or one of the justices of the Supreme Court, in a penalty of not less than twice

the amount of any warrants so duplicated, conditioned to indemnify the state and any innocent holders thereof from any damages that may accrue from such duplication.

(2) The Chief Financial Officer ~~Comptroller~~ is required to duplicate any Chief Financial Officer's ~~Comptroller's~~ warrant that may have been lost or destroyed, or may hereafter be lost or destroyed, when sent to any payee via any state agency when such warrant is lost or destroyed prior to being received by the payee and provided the director of the state agency to whom the warrant was sent presents to the Chief Financial Officer ~~Comptroller~~ a statement, under oath, reciting the number, date, and amount of the warrant lost or destroyed, the circumstances surrounding the loss or destruction of such warrant, and any additional information that the Chief Financial Officer ~~Comptroller~~ shall request in regard to such warrant.

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

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

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

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

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

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

17.17 Examination by Governor and report.—The office of Chief Financial Officer ~~Comptroller of the state~~, and the books, files, documents, records, and papers shall always be subject to the examination of the Governor of this state, or any person the Governor may authorize to examine the same; and on the first day of January of each and every year, or oftener if called for by the Governor, the Chief Financial Officer ~~Comptroller~~ shall make a full report of all his or her official acts and proceedings for the last fiscal year to the Governor, to be laid before the Legislature with the Governor's message, and shall make such further report as the constitution may require.

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

17.20 Assignment of claims for collection.—

(1) The Chief Financial Officer ~~Department of Banking and Finance~~ shall charge the state attorneys with the collection of all claims that are

placed in their hands for collection of money or property for the state or any county or special district, or that it otherwise requires them to collect. The charges are evidence of indebtedness of a state attorney against whom any charge is made for the full amount of the claim, until the charges have been collected and paid into the treasury of the state or of the county or special district or the legal remedies of the state have been exhausted, or until the state attorney demonstrates to the Chief Financial Officer ~~department~~ that the failure to collect the charges is not due to negligence and the Chief Financial Officer ~~department~~ has made a proper entry of satisfaction of the charge against the state attorney.

(2) The Chief Financial Officer ~~department~~ may assign the collection of any claim to a collection agent who is registered and in good standing pursuant to chapter 559, if the Chief Financial Officer ~~department~~ determines the assignation to be cost-effective. The Chief Financial Officer ~~department~~ may pay an agent from any amount collected under the claim a fee that the Chief Financial Officer ~~department~~ and the agent have agreed upon; may authorize the agent to deduct the fee from the amount collected; may require the appropriate state agency, county, or special district to pay the agent the fee from any amount collected by the agent on its behalf; or may authorize the agent to add the fee to the amount to be collected.

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

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

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

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

17.22 Notice to Department of Legal Affairs.—Whenever the Chief Financial Officer ~~Department of Banking and Finance~~ forwards any bond or account or claim for suit to any state attorney, he or she ~~it~~ shall advise the Department of Legal Affairs of the fact, giving it the amount of the claim and other necessary particulars for its full information upon the subject.

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

17.25 May certify copies.—The Chief Financial Officer ~~Comptroller of this state~~ may certify, under his or her seal of office, copies of any record,

paper, or document, by law placed in the Chief Financial Officer's ~~Comptroller's~~ custody, keeping, and care; and such certified copy shall have the same force and effect as evidence as the original would have.

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

17.26 Cancellation of state warrants not presented within 1 year.—

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

(3) When a warrant canceled under subsection (1) represents funds that are in whole or in part derived from federal contributions and disposition of the funds under chapter 717 would cause a loss of the federal contributions, the Governor shall certify to the Chief Financial Officer ~~Comptroller~~ that funds represented by such warrants are for that reason exempt from treatment as unclaimed property. Obligations represented by warrants are unenforceable after 1 year from the last day of the month in which the warrant was originally issued. An action may not be commenced thereafter on the obligation unless authorized by the federal program from which the original warrant was funded and unless payment of the obligation is authorized to be made from the current federal funding. When a payee or person entitled to a warrant subject to this paragraph requests payment, and payment from current federal funding is authorized by the federal program from which the original warrant was funded, the Chief Financial Officer ~~Comptroller~~ may, upon investigation, issue a new warrant to be paid out of the proper fund in the State Treasury, provided the payee or other person executes under oath the statement required by s. 17.13 or surrenders the canceled warrant.

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

17.27 Microfilming and destroying records and correspondence.—

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

(2) The Department of Financial Services ~~Banking and Finance~~ may photograph, microphotograph, or reproduce on film such documents and

records as it may select, in such manner that each page will be exposed in exact conformity with the original.

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

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

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

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

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

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

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

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

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

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

17.32 Annual report of trust funds; duties of Chief Financial Officer ~~Comptroller~~.—

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

(a) The fund code.

(b) The title.

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

(d) The statutory authority.

(e) The beginning cash balance.

(f) Direct revenues.

(g) Nonoperating revenues.

(h) Operating disbursements.

(i) Nonoperating disbursements.

(j) The ending cash balance.

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

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

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

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

17.325 Governmental efficiency hotline; duties of Chief Financial Officer ~~Comptroller~~.—

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

(2) The Chief Financial Officer ~~Comptroller~~ shall operate the hotline 24 hours a day. The Chief Financial Officer ~~Comptroller~~ shall advertise the availability of the hotline in newspapers of general circulation in this state and shall provide for the posting of notices in conspicuous places in state agency offices, city halls, county courthouses, and places in which there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gasoline stations, or restaurants. The Chief Financial Officer ~~Comptroller~~ shall use the slogan "Tell us where we can 'Get Lean'" for the hotline and in advertisements for the hotline.

(3) Each telephone call on the hotline shall be received by the office of the Chief Financial Officer ~~Comptroller~~, and the office of the Chief Financial Officer ~~Comptroller~~ shall conduct an evaluation to determine if it is appropriate for the telephone call to be processed as a "Get Lean" telephone call.

If it is determined that the telephone call should be processed as a "Get Lean" telephone call, a record of each suggestion or item of information received shall be entered into a log kept by the Chief Financial Officer ~~Comptroller~~. A caller on the hotline may remain anonymous, and, if the caller provides his or her name, the name shall be confidential. If a caller discloses that he or she is a state employee, the Chief Financial Officer ~~Comptroller~~, in addition to maintaining a record as required by this section, may refer any information or suggestion from the caller to an existing state awards program administered by the affected agency. The affected agency shall conduct a preliminary evaluation of the efficacy of any suggestion or item of information received through the hotline and shall provide the Chief Financial Officer ~~Comptroller~~ with a preliminary determination of the amount of revenues the state might save by implementing the suggestion or making use of the information.

(4) Any person who provides any information through the hotline shall be immune from liability for any use of such information and shall not be subject to any retaliation by any employee of the state for providing such information or making such suggestion.

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

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

17.41 Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund.—

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

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

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

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

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

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

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

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

17.43 Chief Financial Officer's ~~Comptroller's~~ Federal Equitable Sharing Trust Fund.—

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

(2) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

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

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

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

17.52 ~~18.02~~ Moneys paid on warrants.—The Division of Treasury ~~Treasurer~~ shall pay all warrants on the treasury drawn by the Chief Financial Officer or Comptroller and other orders by the Chief Financial Officer or Comptroller for the disbursement of state funds by electronic means or by

means of a magnetic tape or any other transfer medium. No moneys shall be paid out of the treasury except on such warrants or other orders of the Chief Financial Officer or Comptroller.

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

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

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

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

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

17.54 ~~18.05~~ Annual report to Governor.—The Chief Financial Officer ~~Treasurer~~ shall make a report in detail to the Governor, with a copy to the President of the Senate and the Speaker of the House of Representatives as soon after the 1st day of July of each year as it is practicable to prepare same of the transactions of the Division of Treasury ~~his or her office~~ for the preceding fiscal year, embracing a statement of the receipts and payments on account of each of the several funds of which he or she has the care and custody.

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

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

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

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

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

17.556 ~~18.091~~ Legislative sessions; additional employees.—

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

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

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

17.56 ~~18.08~~ Division of Treasury ~~Treasurer~~ to turn over to the Division of Accounting and Auditing ~~Comptroller~~ all warrants paid.—The Division of Treasury ~~Treasurer~~ shall turn over to the Division of Accounting and Auditing ~~Comptroller, through the data service center,~~ all warrants drawn by the Chief Financial Officer or the Comptroller and paid by the Division of Treasury ~~Treasurer~~. The ~~Said~~ warrants shall be turned over as soon as the Division of Treasury ~~Treasurer~~ shall have recorded such warrants and charged the same against the accounts upon which such warrants are drawn.

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

17.57 ~~18.10~~ Deposits and investments of state money.—

(1) The Chief Financial Officer ~~Treasurer~~, or other parties with the permission of the Chief Financial Officer ~~Treasurer~~, shall deposit the money of the state or any money in the State Treasury in such qualified public depositories of the state as will offer satisfactory collateral security for such deposits, pursuant to chapter 280. It is the duty of the Chief Financial Officer

~~Treasurer~~, consistent with the cash requirements of the state, to keep such money fully invested or deposited as provided herein in order that the state may realize maximum earnings and benefits.

(2) The Chief Financial Officer ~~Treasurer~~ shall make funds available to meet the disbursement needs of the state. Funds which are not needed for this purpose shall be placed in qualified public depositories that will pay rates established by the Chief Financial Officer ~~Treasurer~~ at levels not less than the prevailing rate for United States Treasury securities with a corresponding maturity. In the event money is available for interest-bearing time deposits or savings accounts as provided herein and qualified public depositories are unwilling to accept such money and pay thereon the rates established above, then such money which qualified public depositories are unwilling to accept shall be invested in:

(a) Direct United States Treasury obligations.

(b) Obligations of the Federal Farm Credit Banks.

(c) Obligations of the Federal Home Loan Bank and its district banks.

(d) Obligations of the Federal Home Loan Mortgage Corporation, including participation certificates.

(e) Obligations guaranteed by the Government National Mortgage Association.

(f) Obligations of the Federal National Mortgage Association.

(g) Commercial paper of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service.

(h) Time drafts or bills of exchange drawn on and accepted by a commercial bank, otherwise known as "bankers acceptances," which are accepted by a member bank of the Federal Reserve System having total deposits of not less than $400 million or which are accepted by a commercial bank which is not a member of the Federal Reserve System with deposits of not less than $400 million and which is licensed by a state government or the Federal Government, and whose senior debt issues are rated in one of the two highest rating categories by a nationally recognized rating service and which are held in custody by a domestic bank which is a member of the Federal Reserve System.

(i) Corporate obligations or corporate master notes of any corporation within the United States, if the long-term obligations of such corporation are rated by at least two nationally recognized rating services in any one of the four highest classifications. However, if such obligations are rated by only one nationally recognized rating service, then the obligations shall be rated in any one of the two highest classifications.

(j) Obligations of the Student Loan Marketing Association.

(k) Obligations of the Resolution Funding Corporation.

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

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

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

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

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

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

(r) Covered put and call options on investment instruments authorized in this subsection for the purpose of hedging transactions by investment managers to mitigate risk or to facilitate portfolio management.

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

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

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

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

These investments may be in varying maturities and may be in book-entry form. Investments made pursuant to this subsection may be under repur-

chase agreement. The Chief Financial Officer may ~~Treasurer is authorized to~~ hire registered investment advisers and other consultants to assist in investment management and to pay fees directly from investment earnings. Investment securities, proprietary investment services related to contracts, performance evaluation services, investment-related equipment or software used directly to assist investment trading or investment accounting operations including bond calculators, telerates, Bloombergs, special program calculators, intercom systems, and software used in accounting, communications, and trading, and advisory and consulting contracts made under this section are exempt from the provisions of chapter 287.

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

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

(5) The fact that a municipal officer or a state officer, including an officer of any municipal or state agency, board, bureau, commission, institution, or department, is a stockholder or an officer or director of a bank or savings and loan association will not bar such bank or savings and loan association from being a depository of funds coming under the jurisdiction of any such municipal officer or state officer if it shall appear in the records of the municipal or state office that the governing body of such municipality or state agency has investigated and determined that such municipal or state officer is not favoring such banks or savings and loan associations over other qualified banks or savings and loan associations.

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

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

17.57 Deposits and investments of state money.—

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

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

17.58 ~~18.101~~ Deposits of public money outside the State Treasury; revolving funds.—

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

(2) Revolving funds authorized by the Chief Financial Officer ~~Comptroller~~ for all state agencies, boards, bureaus, commissions, institutions, and departments may be deposited by such agencies, boards, bureaus, commissions, institutions, and departments in qualified public depositories designated by the Chief Financial Officer ~~Treasurer~~ for such revolving fund deposits; and the depositories in which such deposits are made shall pledge collateral security as provided in chapter 280.

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

(4) Each department shall furnish a statement to the Chief Financial Officer ~~Treasurer~~, on or before the 20th of the month following the end of each calendar quarter, listing each clearing account and revolving fund within that department's jurisdiction. Such statement shall report, as of the last day of the calendar quarter, the cash balance in each revolving fund and that portion of the cash balance in each clearing account that will eventually be deposited to the State Treasury as provided by law. The Chief Financial Officer ~~Treasurer~~ shall show the sum total of state funds in clearing accounts and revolving funds, as most recently reported to the Chief Financial Officer ~~Treasurer~~ by various departments, in his or her monthly statement to the Governor, pursuant to s. 17.55 ~~s. 18.06~~.

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

17.59 ~~18.103~~ Safekeeping services ~~of Treasurer~~.—

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

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

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

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

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

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

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

17.60 ~~18.104~~ Treasury Cash Deposit Trust Fund.—

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

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

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

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

(1) The Chief Financial Officer ~~Treasurer, acting with the approval of a majority of the State Board of Administration,~~ shall invest all general revenue funds and all the trust funds and all agency funds of each state agency, and of the judicial branch, as defined in s. 216.011, and may, upon request, invest funds of any statutorily created board, association, or entity, except for the funds required to be invested pursuant to ss. 215.44-215.53, by the procedure and in the authorized securities prescribed in s. 17.57 ~~s. 18.10~~; for this purpose, the Chief Financial Officer may ~~Treasurer shall be authorized to~~ open and maintain one or more demand and safekeeping accounts in any bank or savings association for the investment and reinvestment and the purchase, sale, and exchange of funds and securities in the accounts. Funds in such accounts used solely for investments and reinvestments shall be considered investment funds and not funds on deposit, and such funds shall be exempt from the provisions of chapter 280. In addition, the securities or investments purchased or held under the provisions of this section and s. 17.57 ~~s. 18.10~~ may be loaned to securities dealers and banks and may be registered by the Chief Financial Officer ~~Treasurer~~ in the name of a third-party nominee in order to facilitate such loans, provided the loan is collateralized by cash or United States government securities having a market value of at least 100 percent of the market value of the securities loaned. The Chief Financial Officer ~~Treasurer~~ shall keep a separate account, designated by name and number, of each fund. Individual transactions and totals of all investments, or the share belonging to each fund, shall be recorded in the accounts.

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

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

(b) Monthly, and more often as circumstances require, such agency or judicial branch shall notify the Chief Financial Officer ~~Treasurer~~ of the amount available for investment; and the moneys shall be invested by the Chief Financial Officer ~~Treasurer~~. Such notification shall include the name and number of the fund for which the investments are to be made and the life of the investment if the principal sum is to be required for meeting

obligations. This subsection, however, shall not be construed to make available for investment any funds other than those referred to in subsection (1).

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

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

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

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

b. The Community Resources Development Trust Fund.

c. The Refugee Assistance Trust Fund.

d. The Social Services Block Grant Trust Fund.

e. The Tobacco Settlement Trust Fund.

f. The Working Capital Trust Fund.

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

4. The Department of Corrections.

5. The Department of Elderly Affairs, except for:

a. The Federal Grants Trust Fund.

b. The Tobacco Settlement Trust Fund.

6. The Department of Health, except for:

a. The Federal Grants Trust Fund.

b. The Grants and Donations Trust Fund.

c. The Maternal and Child Health Block Grant Trust Fund.

d. The Tobacco Settlement Trust Fund.

7. The Department of Highway Safety and Motor Vehicles, only for:

a. The DUI Programs Coordination Trust Fund.

b. The Security Deposits Trust Fund.

8. The Department of Juvenile Justice.

9. The Department of Labor and Employment Security, only for the Administrative Trust Fund.

10. The Department of Law Enforcement.

11. The Department of Legal Affairs.

12. The Department of State, only for:

a. The Grants and Donations Trust Fund.

b. The Records Management Trust Fund.

13. The Executive Office of the Governor, only for:

a. The Economic Development Transportation Trust Fund.

b. The Economic Development Trust Fund.

14. The Florida Public Service Commission, only for the Florida Public Service Regulatory Trust Fund.

15. The Justice Administrative Commission.

16. The state courts system.

(d) Moneys in any trust funds of the agencies in paragraph (c) may be invested pursuant to the provisions of this section if:

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

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

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

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

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

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

(c) The moneys so received and deposited in the fund shall be used by the Chief Financial Officer ~~Treasurer~~ to defray the expense of his or her office

in the discharge of the administrative and investment powers and duties prescribed by this section and this chapter, including the maintaining of an office and necessary supplies therefor, essential equipment and other materials, salaries and expenses of required personnel, and all other legitimate expenses relating to the administrative and investment powers and duties imposed upon and charged to the Chief Financial Officer ~~Treasurer~~ under this section and this chapter. The unencumbered balance in the trust fund at the close of each quarter shall not exceed $750,000. Any funds in excess of this amount shall be transferred unallocated to the General Revenue Fund. However, fees received from deferred compensation participants pursuant to s. 112.215 shall not be transferred to the General Revenue Fund and shall be used to operate the deferred compensation program.

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

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

17.61 Chief Financial Officer; powers and duties in the investment of certain funds.—

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

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

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

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

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

17.63 ~~18.17~~ Chief Financial Officer ~~Treasurer~~ not to issue evidences of indebtedness.—It is not lawful for the Chief Financial Officer ~~Treasurer~~ of

this state to issue any treasury certificates, or any other evidences of indebtedness, for any purpose whatever, and the Chief Financial Officer ~~Treasurer~~ is prohibited from issuing the same.

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

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

~~(1) All vouchers or checks heretofore or hereafter drawn by appropriate court officials of the several counties of the state against money deposited with the Treasurer under the provisions of s. 43.17, and paid by the Treasurer, may be photographed, microphotographed, or reproduced on film by the Treasurer. Such photographic film shall be durable material and the device used to so reproduce such warrants, vouchers, or checks shall be one which accurately reproduces the originals thereof in all detail; and such photographs, microphotographs, or reproductions on film shall be placed in conveniently accessible and identified files and shall be preserved by the Treasurer as a part of the permanent records of office. When any such warrants, vouchers, or checks have been so photographed, microphotographed, or reproduced on film, and the photographs, microphotographs, or reproductions on film thereof have been placed in files as a part of the permanent records of the office of the Treasurer as aforesaid, the Treasurer is authorized to return such warrants, vouchers, or checks to the offices of the respective county officials who drew the same and such warrants, vouchers, or checks shall be retained and preserved in such offices to which returned as a part of the permanent records of such offices.~~

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

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

(3)~~(4)~~ Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly

certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

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

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

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

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

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

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

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

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

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

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

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

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

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

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

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

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

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

20.055 Agency inspectors general.—

(1) For the purposes of this section:

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

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

(5) In carrying out the auditing duties and responsibilities of this act, each inspector general shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the inspector general; however, the agency head may at any time direct the inspector general to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

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

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

20.121 Department of Financial Services.—There is created a Department of Financial Services.

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

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

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

1. The Bureau of Unclaimed Property.

2. The Office of Fiscal Integrity which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The office may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If during an investigation the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

(b) The Division of State Fire Marshal.

(c) The Division of Risk Management.

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

(e) The Division of Insurance Fraud.

(f) The Division of Rehabilitation and Liquidation.

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

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

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

a. Receive inquiries and complaints from consumers;

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

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

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

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

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

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

(i) The Division of Workers' Compensation.

(j) The Division of Administration.

(k) The Division of Legal Services.

(l) The Division of Information Systems.

(m) The Office of Insurance Consumer Advocate.

(3) FINANCIAL SERVICES COMMISSION.—Effective January 7, 2003, there is created within the Department of Financial Services the Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which shall for purposes of this section be referred to as the commission. Commission members shall serve as agency head of the Financial Services Commission. The commission shall be a separate budget entity and shall be exempt from the provisions of s. 20.052. Commission action shall be by majority vote consisting of at least three affirmative votes. The commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

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

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

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

(b) Organization.—The commission shall establish by rule any additional organizational structure of the offices. It is the intent of the Legislature to provide the commission with the flexibility to organize the offices in any manner they determine appropriate to promote both efficiency and accountability.

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

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

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

2. Prior to appointment as director, the Director of the Office of Financial ~~Institutions and Securities~~ Regulation must have had, within the previous 10 years, at least 5 years of responsible private sector experience working

full time in areas within the subject matter jurisdiction of the Office of Financial ~~Institutions and Securities~~ Regulation or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over financial institutions, finance companies, or securities companies.

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

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

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

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

20.195 Department of Children and Family Services Tobacco Settlement Trust Fund.—

(1) The Department of Children and Family Services Tobacco Settlement Trust Fund is created within that department. Funds to be credited to the trust fund shall consist of funds disbursed, by nonoperating transfer, from the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund in amounts equal to the annual appropriations made from this trust fund.

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

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

20.425 Agency for Health Care Administration Tobacco Settlement Trust Fund.—

(1) The Agency for Health Care Administration Tobacco Settlement Trust Fund is created within the agency. Funds to be credited to the trust fund shall consist of funds disbursed, by nonoperating transfer, from the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement

Clearing Trust Fund in amounts equal to the annual appropriations made from this trust fund.

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

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

20.435 Department of Health; trust funds.—

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

(g) Department of Health Tobacco Settlement Trust Fund.

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

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

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

24.105 Powers and duties of department.—The department shall:

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

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

24.111 Vendors; disclosure and contract requirements.—

(5) Each vendor in a major procurement in excess of $25,000, and any other vendor if the department deems it necessary to protect the state's financial interest, shall, at the time of executing the contract with the department, post an appropriate bond with the department in an amount determined by the department to be adequate to protect the state's interests,

but not higher than the full amount estimated to be paid annually to the vendor under the contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, file with the department an irrevocable letter of credit acceptable to the department in an amount determined by the department to be adequate to protect the state's interests or deposit and maintain with the Chief Financial Officer ~~Treasurer~~ securities that are interest bearing or accruing and that, with the exception of those specified in paragraphs (a) and (b), are rated in one of the four highest classifications by an established nationally recognized investment rating service. Securities eligible under this subsection shall be limited to:

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

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

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

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

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

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

24.112 Retailers of lottery tickets.—

(9)

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

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

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

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

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

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

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

24.120 Financial matters; Administrative Trust Fund; interagency cooperation.—

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

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

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

25.241 Clerk of Supreme Court; compensation; assistants; filing fees, etc.—

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

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

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

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

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

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

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

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

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

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

27.12 Power to compromise.—

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

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

27.13 Completion of compromise.—The state attorney shall, on agreeing to any compromise or settlement, report the same to the Department of Financial Services ~~Banking and Finance~~ for its approval; and, on its approving such compromise or settlement, the ~~said~~ state attorney, on a compliance

with the terms of such compromise or settlement shall give a receipt to the collector of revenue, sheriff or other officer, or the sureties on their bonds, or to the legal representatives, which receipt shall be a discharge from all judgments, claims or demands of the state against such collector of revenue or other officer, or the sureties on their bonds.

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

27.34 Salaries and other related costs of state attorneys' offices; limitations.—

(4) Notwithstanding s. 27.25, the Chief Financial Officer ~~Insurance Commissioner~~ may contract with the state attorney of any judicial circuit of the state for the prosecution of criminal violations of the Workers' Compensation Law and related crimes and may contribute funds for such purposes. Such contracts may provide for the training, salary, and expenses of one or more assistant state attorneys used in the prosecution of such crimes.

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

27.3455 Annual statement of certain revenues and expenditures.—

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

(a) Medical examiner services.

(b) County victim witness programs.

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

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

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

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

(2)(a) Within 6 months of the close of the local government fiscal year, each county shall submit to the Chief Financial Officer ~~Comptroller~~ a statement of compliance from its independent certified public accountant, engaged pursuant to s. 218.39, that the certified statement of expenditures was in accordance with ss. 27.34(2), 27.54(3), and this section. All discrepancies noted by the independent certified public accountant shall be included

in the statement furnished by the county to the Chief Financial Officer ~~Comptroller~~.

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

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

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

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

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

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

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

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

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

(d) At the close of the local government fiscal year, funds remaining in the special trust fund after reimbursements have been made pursuant to paragraphs (a), (b), and (c) shall be used to reimburse the county for county costs incurred in the provision of office space, utilities, and custodial services

to the state attorney and public defender, for county expenditures on appellate filing fees in criminal cases in which an indigent defendant appeals a judgment of a county or circuit court to a district court of appeal or the Florida Supreme Court, and for county expenditures on court-related costs of the state attorney and public defender that were paid by the county, provided that such court-related costs were included in a judgment or order rendered by the trial court against the county. Where a state attorney or a public defender is provided space in a county-owned facility, responsibility for calculating county costs associated with the provision of such office space, utilities, and custodial services is ~~hereby~~ vested in the Chief Financial Officer ~~Comptroller~~ in consultation with the Legislative Committee on Intergovernmental Relations.

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

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

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

27.703 Conflict of interest and substitute counsel.—

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

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

27.710 Registry of attorneys applying to represent persons in postconviction capital collateral proceedings; certification of minimum requirements; appointment by trial court.—

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

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

27.711 Terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.—

(3) An attorney appointed to represent a capital defendant is entitled to payment of the fees set forth in this section only upon full performance by the attorney of the duties specified in this section and approval of payment by the trial court, and the submission of a payment request by the attorney, subject to the availability of sufficient funding specifically appropriated for this purpose. The Chief Financial Officer ~~Comptroller~~ shall notify the executive director and the court if it appears that sufficient funding has not been specifically appropriated for this purpose to pay any fees which may be incurred. The attorney shall maintain appropriate documentation, including a current and detailed hourly accounting of time spent representing the capital defendant. The fee and payment schedule in this section is the exclusive means of compensating a court-appointed attorney who represents a capital defendant. When appropriate, a court-appointed attorney must seek further compensation from the Federal Government, as provided in 18 U.S.C. s. 3006A or other federal law, in habeas corpus litigation in the federal courts.

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

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

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

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

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

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

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

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

(h) If, at any time, a death warrant is issued, the attorney is entitled to $100 per hour, up to a maximum of $5,000. This payment shall be full compensation for attorney's fees and costs for representing the capital defendant throughout the proceedings before the state courts of Florida.

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

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

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

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

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

(13) Prior to the filing of a motion for order approving payment of attorney's fees, costs, or related expenses, the assigned counsel shall deliver a copy of his intended billing, together with supporting affidavits and all other necessary documentation, to the Chief Financial Officer's ~~Comptroller's~~ named contract manager. The contract manager shall have 10 business days from receipt to review the billings, affidavit, and documentation for completeness and compliance with contractual and statutory requirements. If the contract manager objects to any portion of the proposed billing, the objection and reasons therefor shall be communicated to the assigned counsel. The assigned counsel may thereafter file his or her motion for order approving payment of attorney's fees, costs, or related expenses together with supporting affidavits and all other necessary documentation. The motion must specify whether the Chief Financial Officer's ~~Comptroller's~~ contract manager objects to any portion of the billing or the sufficiency of documentation and, if so, the reason therefor. A copy of the motion and attachments shall be served on the Chief Financial Officer's ~~Comptroller's~~ contract manager, who shall have standing to file pleadings and appear before the court to contest any motion for order approving payment. The fact that the Chief Financial Officer's ~~Comptroller's~~ contract manager has not objected to any portion of the billing or to the sufficiency of the documentation is not binding on the court, which retains primary authority and responsibility for determining the reasonableness of all billings for fees, costs, and related expenses, subject to statutory limitations.

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

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

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

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

Charges

(7) For making and reporting payrolls of jurors to Chief Financial Officer ~~State Comptroller~~, per page, per copy 5.00

(23) For paying of witnesses and making and reporting payroll to Chief Financial Officer ~~State Comptroller~~, per copy, per page 5.00

Section 91. Paragraph (b) of subsection (2) of section 30.49, Florida Statutes, is amended to read:

30.49 Budgets.—

(2)

(b) Within the appropriate fund and functional category, expenditures shall be itemized in accordance with the uniform chart of accounts prescribed by the Department of Financial Services ~~Banking and Finance~~, as follows:

1. Personal services.

2. Operating expenses.

3. Capital outlay.

4. Debt service.

5. Nonoperating disbursements and contingency reserves.

Section 92. Section 30.52, Florida Statutes, is amended to read:

30.52 Handling of public funds.—The sheriff shall keep public funds in his or her custody, either in his or her office in an amount not in excess of the burglary, theft, and robbery insurance provided, the cost of which is hereby authorized as an expense of the office, or in a depository in an amount not in excess of the security provided pursuant to s. 658.60 and the regulations of the Department of Financial Services ~~Banking and Finance~~. The title of the depository accounts shall include the word "sheriff" and the name of the county, and withdrawals from the accounts shall be made by checks signed by the duly qualified and acting sheriff of the county, or his or her designated deputy or agent.

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

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

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

40.31 State Courts Administrator may apportion appropriation.—If the State Courts Administrator shall have reason to believe that the amount appropriated by the Legislature is insufficient to meet the expenses of jurors and witnesses during the remaining part of the state fiscal year, he or she may apportion the money in the treasury for that purpose among the several counties, basing such apportionment upon the amount expended for the payment of jurors and witnesses in each county during the prior fiscal year. In such case, each county shall be paid by warrant, issued by the Chief Financial Officer ~~Comptroller~~, only the amount so apportioned to each county, and, when the amount so apportioned is insufficient to pay in full all the jurors and witnesses during a quarterly fiscal period, the clerk of the

court shall apportion the money received pro rata among the jurors and witnesses entitled to pay and shall give to each juror or witness a certificate of the amount of compensation still due, which certificate shall be held by the State Courts Administrator as other demands against the state.

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

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

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

40.34 Clerks to make triplicate payroll.—

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

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

40.35 Accounting and payment to the State Courts Administrator.—

(1) The clerk of the court shall, within 2 weeks after the last day of the quarterly fiscal period, render to the State Courts Administrator a full statement of accounts for moneys received and disbursed under the provisions of this chapter and refund to the State Courts Administrator any balance in the clerk's hands. If upon audit the State Courts Administrator shall determine a balance due the clerk of the court, the State Courts Administrator shall submit a request for payment to the Chief Financial Officer ~~Comptroller~~.

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

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

43.16 Justice Administrative Commission; membership, powers and duties.—

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

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

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

43.19 Money paid into court; unclaimed funds.—

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

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

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

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

48.151 Service on statutory agents for certain persons.—

(3) The Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ or his or her assistant or deputy or another person in charge of the office is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed ~~by the Department of Insurance~~ pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, ~~automobile inspection and~~ warranty associations

under chapter 634, prepaid limited health service organizations under chapter 636 ~~ambulance service associations~~, and persons required to file statements under s. 628.461.

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

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

55.03 Judgments; rate of interest, generally.—

(1) On December 1 of each year ~~beginning December 1, 1994~~, the Chief Financial Officer ~~Comptroller of the State of Florida~~ shall set the rate of interest that shall be payable on judgments or decrees for the year beginning January 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged federal discount rate. The Chief Financial Officer ~~Comptroller~~ shall inform the clerk of the courts and chief judge for each judicial circuit of the rate that has been established for the upcoming year. The ~~initial interest rate established by the Comptroller shall take effect on January 1, 1995, and the~~ interest rate established by the Chief Financial Officer ~~Comptroller in subsequent years~~ shall take effect on January 1 of each following year. Judgments obtained on or after January 1, 1995, shall use the previous statutory rate for time periods before January 1, 1995, for which interest is due and shall apply the rate set by the Chief Financial Officer ~~Comptroller~~ for time periods after January 1, 1995, for which interest is due. Nothing contained herein shall affect a rate of interest established by written contract or obligation.

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

57.091 Costs; refunded to counties in certain proceedings relating to state prisoners.—All lawful fees, costs, and expenses hereafter adjudged against, and paid by, any county in all competency proceedings and all criminal prosecutions against state prisoners imprisoned in a state correctional institution, and in all habeas corpus cases brought to test the legality of the imprisonment of state prisoners of such correctional institutions, shall be refunded to the county paying the sum from the General Revenue Fund in the State Treasury in the manner and to the extent herein provided, to wit: between the 1st and 15th of the month next succeeding the month in which the fees, costs, and expenses have been allowed and paid by the county, the clerk of the court shall make requisition on the Department of Corrections for the fees, costs, and expenses so allowed and paid during the preceding month, giving the style of the cases in which fees, costs, and expenses were incurred and the amount and items of cost in each case; providing a certified copy of the judgment adjudging the fees, costs, and expenses against the county and showing that the amount represented thereby has been approved by the presiding judge, paid by the county, and verified by the clerk; and attaching a certified copy of the bill as approved

and allowed by the board of county commissioners of the county. If the Department of Corrections finds the bills legal and adjudged against and paid by the county, the department shall submit a request to the Chief Financial Officer ~~Comptroller~~ to draw a warrant in the amount thereof, or in the amount the department finds legal and adjudged against and paid by the county, in favor of the county paying the fees, costs, and expenses, which shall be paid by the Chief Financial Officer ~~State Treasurer~~ from the general revenue funds of the state.

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

68.083 Civil actions for false claims.—

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

(3) The complaint shall be identified on its face as a qui tam action and shall be filed in the circuit court of the Second Judicial Circuit, in and for Leon County. Immediately upon the filing of the complaint, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General, as head of the department, and on the Chief Financial Officer ~~Comptroller,~~ as head of the Department of Financial Services ~~Banking and Finance~~, by registered mail, return receipt requested. The department, or the Department of Financial Services ~~Banking and Finance~~ under the circumstances specified in subsection (4), may elect to intervene and proceed with the action, on behalf of the state, within 90 days after it receives both the complaint and the material evidence and information.

(4) If a person brings an action under subsection (2) and the action is based upon the facts underlying a pending investigation by the Department of Financial Services ~~Banking and Finance~~, the Department of Financial Services ~~Banking and Finance~~, instead of the department, may take over the action on behalf of the state. In order to take over the action, the Department of Financial Services ~~Banking and Finance~~ must give the department written notification within 20 days after the action is filed that the Department of Financial Services ~~Banking and Finance~~ is conducting an investigation of the facts of the action and that the Department of Financial Services ~~Banking and Finance~~, instead of the department, will take over the action filed under subsection (2). If the Department of Financial Services ~~Banking and Finance~~ takes over the action under this subsection, the word "department" as used in this act means the Department of Financial Services ~~Banking and Finance~~, and that department, for purposes of that action, shall have all rights and standing granted the department under this act.

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

68.084 Rights of the parties in civil actions.—

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

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

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

68.087 Exemptions to civil actions.—

(3) No court shall have jurisdiction over an action brought under this act based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, inspector general, or Auditor General, Chief Financial Officer ~~Comptroller~~, or Department of Financial Services ~~Banking and Finance~~ report, hearing, audit, or investigation; or from the news media, unless the action is brought by the department, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the department before filing an action under this act based on the information.

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

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

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

77.0305 Continuing writ of garnishment against salary or wages.—Notwithstanding any other provision of this chapter, if salary or wages are to be garnished to satisfy a judgment, the court shall issue a continuing writ of garnishment to the judgment debtor's employer which provides for the periodic payment of a portion of the salary or wages of the judgment debtor as the salary or wages become due until the judgment is satisfied or until otherwise provided by court order. A debtor's status as an employee of the state or its agencies or political subdivisions does not preclude a judgment creditor's right to garnish the debtor's wages. For the purposes of this section, the state includes the judicial branch and the legislative branch as

defined in s. 216.011. The state, for itself and for its agencies and subdivisions, waives sovereign immunity for the express and limited purpose necessary to carry out this section. The court shall allow the judgment debtor's employer to collect up to $5 against the salary or wages of the judgment debtor to reimburse the employer for administrative costs for the first deduction from the judgment debtor's salary or wages and up to $2 for each deduction thereafter. The funds collected by the state under this section must be deposited in the Department of Financial Services ~~Banking and Finance~~ Administrative Trust Fund for purposes of carrying out this section.

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

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

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

99.097 Verification of signatures on petitions.—

(4) The supervisor shall be paid in advance the sum of 10 cents for each signature checked or the actual cost of checking such signature, whichever is less, by the candidate or, in the case of a petition to have an issue placed on the ballot, by the person or organization submitting the petition. However, if a candidate, person, or organization seeking to have an issue placed upon the ballot cannot pay such charges without imposing an undue burden on personal resources or upon the resources otherwise available to such candidate, person, or organization, such candidate, person, or organization shall, upon written certification of such inability given under oath to the supervisor, be entitled to have the signatures verified at no charge. In the event a candidate, person, or organization submitting a petition to have an issue placed upon the ballot is entitled to have the signatures verified at no charge, the supervisor of elections of each county in which the signatures are verified at no charge shall submit the total number of such signatures checked in the county to the Chief Financial Officer ~~Comptroller~~ no later than December 1 of the general election year, and the Chief Financial Officer ~~Comptroller~~ shall cause such supervisor of elections to be reimbursed from the General Revenue Fund in an amount equal to 10 cents for each name checked or the actual cost of checking such signatures, whichever is less. In no event shall such reimbursement of costs be deemed or applied as extra compensation for the supervisor. Petitions shall be retained by the supervisors for a period of 1 year following the election for which the petitions were circulated.

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

103.091 Political parties.—

(6)(a)1. In addition to the members provided for in subsection (1), each county executive committee shall include all members of the Legislature who are residents of the county and members of their respective political party and who shall be known as at-large committeemen and committeewomen.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

k.n. Each member of the United States House of Representatives representing the state: a number equal to 1 percent of the votes cast by state executive committeemen and committeewomen.

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

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

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

107.11 Appropriation for expenses.—For the purpose of defraying the expenses of preparing for, conducting, holding and declaring the result of the election provided for by this chapter and also for the purpose of defraying the expenses allowed by this chapter for the holding of sessions of the convention as herein provided, to be audited by the Chief Financial Officer ~~Comptroller~~, there is appropriated out of the General Revenue Fund of the State of Florida a sufficient sum of money for the payment of all amounts necessary to be expended under the terms of this chapter, which sums of money shall be disbursed by the State of Florida pursuant to warrants drawn by the Chief Financial Officer ~~Comptroller upon the Treasurer~~ for the payment of same.

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

110.1127 Employee security checks.—

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

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

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

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

110.113 Pay periods for state officers and employees; salary payments by direct deposit.—

(1) The normal pay period for salaries of state officers and employees shall be 1 month. The Department of Financial Services ~~Banking and Finance~~ shall issue either monthly or biweekly salary payments by state warrants or by direct deposit pursuant to s. 17.076 or make semimonthly salary payments by direct deposit pursuant to s. 17.076, as requested by the head of each state agency and approved by the Executive Office of the Governor and the Department of Financial Services ~~Banking and Finance~~.

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

110.114 Employee wage deductions.—

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

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

110.116 Personnel information system; payroll procedures.—

(1) The Department of Management Services shall establish and maintain, in coordination with the payroll system of the Department of Financial Services ~~Banking and Finance~~, a complete personnel information system for

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

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

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

(3) The Department of Management Services and the department shall, in consultation with public employers and employees and representatives from unions and associations representing state, university, local government, and other public employees, establish and supervise the implementation and administration of a self-funded or fully insured long-term-care plan entitled "Florida Employee Long-Term-Care Plan."

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

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

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

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

110.1228 Participation by small counties, small municipalities, and district school boards located in small counties.—

(5) If the department determines that a small county, small municipality, or district school board is eligible to enroll, the small county, small

municipality, or district school board must agree to the following terms and conditions:

(f) If a small county, small municipality, or district school board employer fails to make the payments required by this section to fully reimburse the state, the Department of Revenue or the Department of Financial Services ~~Banking and Finance~~ shall, upon the request of the Department of Management Services, deduct the amount owed by the employer from any funds not pledged to bond debt service satisfaction that are to be distributed by it to the small county, small municipality, or district school board. The amounts so deducted shall be transferred to the Department of Management Services for further distribution to the trust funds in accordance with this chapter.

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

110.123 State group insurance program.—

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

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

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

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

(c) Contract on a competitive proposal basis with an insurance carrier or carriers, or professional administrator, determined by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ to be fully qualified, financially sound, and capable of meeting all servicing requirements. Alternatively, the department may self-insure any plan or plans contained in the state group insurance program subject to approval based on actuarial soundness by the Office of Insurance Regulation ~~Department of Insurance~~. The department may contract with an insurance company or professional administrator qualified and approved by the Office of Insurance Regulation ~~Department of Insurance~~ to administer such plan. Before entering into any contract, the department shall advertise for competitive proposals, and such contract shall be let upon the consideration of

the benefits provided in relationship to the cost of such benefits. In determining which entity to contract with, the department shall, at a minimum, consider: the entity's previous experience and expertise in administering group insurance programs of the type it proposes to administer; the entity's ability to specifically perform its contractual obligations in this state and other governmental jurisdictions; the entity's anticipated administrative costs and claims experience; the entity's capability to adequately provide service coverage and sufficient number of experienced and qualified personnel in the areas of claims processing, recordkeeping, and underwriting, as determined by the department; the entity's accessibility to state employees and providers; the financial solvency of the entity, using accepted business sector measures of financial performance. The department may contract for medical services which will improve the health or reduce medical costs for employees who participate in the state group insurance plan.

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

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

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

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

110.181 Florida State Employees' Charitable Campaign.—

(1) CREATION AND ORGANIZATION OF CAMPAIGN.—

(a) The Department of Management Services shall establish and maintain, in coordination with the payroll system of the Department of Financial Services ~~Banking and Finance~~, an annual Florida State Employees' Charitable Campaign. Except as provided in subsection (5), this annual fundraising drive is the only authorized charitable fundraising drive directed toward

state employees within work areas during work hours, and for which the state will provide payroll deduction.

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

110.2037 Alternative benefits; tax-sheltered annual leave and sick leave payments and special compensation payments.—

(1) The Department of Management Services has authority to adopt tax-sheltered plans under s. 401(a) of the Internal Revenue Code for state employees who are eligible for payment for accumulated leave. The department, upon adoption of the plans, shall contract for a private vendor or vendors to administer the plans. These plans shall be limited to state employees who are over age 55 and who are: eligible for accumulated leave and special compensation payments and separating from employment with 10 years of service in accordance with the Internal Revenue Code, or who are participating in the Deferred Retirement Option Program on or after July 1, 2001. The plans must provide benefits in a manner that minimizes the tax liability of the state and participants. The plans must be funded by employer contributions of payments for accumulated leave or special compensation payments, or both, as specified by the department. The plans must have received all necessary federal and state approval as required by law, must not adversely impact the qualified status of the Florida Retirement System defined benefit or defined contribution plans or the pretax benefits program, and must comply with the provisions of s. 112.65. Adoption of any plan is contingent on: the department receiving appropriate favorable rulings from the Internal Revenue Service; the department negotiating under the provisions of chapter 447, where applicable; and the Chief Financial Officer ~~Comptroller~~ making appropriate changes to the state payroll system. The department's request for proposals by vendors for such plans may require that the vendors provide market-risk or volatility ratings from recognized rating agencies for each of their investment products. The department shall provide for a system of continuous quality assurance oversight to ensure that the program objectives are achieved and that the program is prudently managed.

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

110.205 Career service; exemptions.—

(6) EXEMPTION OF CHIEF INSPECTOR OF BOILER SAFETY PROGRAM, DEPARTMENT OF FINANCIAL SERVICES ~~INSURANCE~~.—In addition to those positions exempted from this part, there is hereby exempted from the Career Service System the chief inspector of the boiler inspection program of the Department of Financial Services ~~Insurance~~. The salary range of this position shall be established by the Department of Management Services in accordance with the classification and pay plan established for the Selected Exempt Service.

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

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

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

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

1. Breakfast—When travel begins before 6 a.m. and extends beyond 8 a.m.

2. Lunch—When travel begins before 12 noon and extends beyond 2 p.m.

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

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

(7) TRANSPORTATION.—

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

(8) OTHER EXPENSES.—

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

(9) RULES ~~AND REGULATIONS~~.—

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

(b) Each state agency shall adopt ~~promulgate~~ such additional specific rules ~~and regulations~~ and specific criteria to be used by it to predetermine justification for attendance by state officers and employees and authorized persons at conventions and conferences, not in conflict with the rules ~~and regulations~~ of the Department of Financial Services ~~Banking and Finance~~ or with the general criteria to be used by a state agency to predetermine justification for attendance by state officers and employees and authorized persons at conventions, as may be necessary to effectuate the purposes of this section.

(11) TRAVEL AUTHORIZATION AND VOUCHER FORMS.—

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

(b) Voucher forms.—

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

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

(13) DIRECT PAYMENT OF EXPENSES BY AGENCY.—Whenever an agency requires an employee to incur either Class A or Class B travel on emergency notice to the traveler, such traveler may request the agency to pay his or her expenses for meals and lodging directly to the vendor, and the agency may pay the vendor the actual expenses for meals and lodging during the travel period, limited to an amount not to exceed that authorized pursuant to this section. In emergency situations, the agency head or his or her designee may authorize an increase in the amount paid for a specific meal, provided that the total daily cost of meals does not exceed the total amount authorized for meals each day. The agency head or his or her designee may also grant prior approval for a state agency to make direct payments of travel expenses in other situations that result in cost savings to the state, and such cost savings shall be documented in the voucher submitted to the Chief Financial Officer ~~Comptroller~~ for the direct payment of travel expenses. The provisions of this subsection shall not be deemed to apply to any legislator or to any employee of the Legislature.

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

112.08 Group insurance for public officers, employees, and certain volunteers; physical examinations.—

(2)(a) Every local governmental unit is authorized to provide and pay out of its available funds for all or part of the premium for life, health, accident, hospitalization, legal expense, or annuity insurance, or all or any kinds of such insurance, for the officers and employees of the local governmental unit and for health, accident, hospitalization, and legal expense insurance for the dependents of such officers and employees upon a group insurance plan and, to that end, to enter into contracts with insurance companies or professional administrators to provide such insurance. Before entering any contract for insurance, the local governmental unit shall advertise for competitive bids; and such contract shall be let upon the basis of such bids. If a contracting health insurance provider becomes financially impaired as determined by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ or otherwise fails or refuses to provide the contracted-for coverage or coverages, the local government may purchase insurance, enter into risk management programs, or contract with third-party administrators and may make such acquisitions by advertising for competitive bids or by direct negotiations and contract. The local governmental unit may undertake simultaneous negotiations with those companies which have submitted reasonable and timely bids and are found by the local governmental unit to be fully qualified and capable of meeting all servicing requirements. Each local governmental unit may self-insure any plan for health, accident, and hospitalization coverage or enter into a risk management consortium to provide such coverage, subject to approval based on actuarial soundness by the Office of Insurance Regulation ~~Department of Insurance~~; and each shall contract with an insurance company or professional administrator qualified and approved by the office ~~Department of Insurance~~ to administer such a plan.

(b) In order to obtain approval from the Office of Insurance Regulation ~~Department of Insurance~~ of any self-insured plan for health, accident, and

hospitalization coverage, each local governmental unit or consortium shall submit its plan along with a certification as to the actuarial soundness of the plan, which certification is prepared by an actuary who is a member of the Society of Actuaries or the American Academy of Actuaries. The Office of Insurance Regulation ~~Department of Insurance~~ shall not approve the plan unless it determines that the plan is designed to provide sufficient revenues to pay current and future liabilities, as determined according to generally accepted actuarial principles. After implementation of an approved plan, each local governmental unit or consortium shall annually submit to the Office of Insurance Regulation ~~Department of Insurance~~ a report which includes a statement prepared by an actuary who is a member of the Society of Actuaries or the American Academy of Actuaries as to the actuarial soundness of the plan. The report is due 90 days after the close of the fiscal year of the plan. The report shall consist of, but is not limited to:

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

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

3. A description and explanation of actuarial assumptions.

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

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

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

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

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

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

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

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

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

112.191 Firefighters; death benefits.—

(2)

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

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

112.215 Government employees; deferred compensation program.—

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

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

(c) The Chief Financial Officer ~~Treasurer~~, with the approval of the State Board of Administration, may delegate responsibility for administration of the plan to a person the Chief Financial Officer ~~Treasurer~~ determines to be qualified, compensate such person, and, directly or through such person or pursuant to a collective bargaining agreement, contract with a private corporation or institution to provide such services as may be part of any such plan or as may be deemed necessary or proper by the Chief Financial Officer

~~Treasurer~~ or such person, including, but not limited to, providing consolidated billing, individual and collective recordkeeping and accountings, asset purchase, control, and safekeeping, and direct disbursement of funds to employees or other beneficiaries. The Chief Financial Officer ~~Treasurer~~ may authorize a person, private corporation, or institution to make direct disbursement of funds under the plan to an employee or other beneficiary ~~only upon the order of the Comptroller to the Treasurer~~.

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

(6)(a) No deferred compensation plan of the state shall become effective until approved by the State Board of Administration and the Chief Financial Officer ~~Treasurer~~ is satisfied by opinion from such federal agency or agencies as may be deemed necessary that the compensation deferred thereunder and/or the investment products purchased pursuant to the plan will not be included in the employee's taxable income under federal or state law until it is actually received by such employee under the terms of the plan, and that such compensation will nonetheless be deemed compensation at the time of deferral for the purposes of social security coverage, for the purposes of the state retirement system, and for any other retirement, pension, or benefit program established by law.

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

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

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

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

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

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

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

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

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

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

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

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

(10)

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

a. All amounts of compensation deferred thereunder;

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

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

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

(11) With respect to any funds held pursuant to a deferred compensation plan, any plan provider which is a bank or savings association and which provides time deposit accounts and certificates of deposit as an investment product to the plan participants may, with the approval of the State Board of Administration for providers in the state plan, or with the approval of the appropriate official or body designated under subsection (5) for a plan of a county, municipality, other political subdivision, or constitutional county

officer, be exempt from the provisions of chapter 280 requiring it to be a qualified public depository, provided:

(a) The bank or savings association shall, to the extent that the time deposit accounts or certificates of deposit are not insured by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation~~, deposit or issue ~~pledge~~ collateral with the Chief Financial Officer ~~Treasurer~~ for all state funds held by it under a deferred compensation plan, or with such other appropriate official for all public funds held by it under a deferred compensation plan of a county, municipality, other political subdivision, or constitutional county officer, in an amount which equals at least 150 percent of all uninsured deferred compensation funds then held.

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

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

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

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

112.3144 Full and public disclosure of financial interests.—

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

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

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

112.3145 Disclosure of financial interests and clients represented before agencies.—

(6) Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission

and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

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

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

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

(9)

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

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

112.31895 Investigative procedures in response to prohibited personnel actions.—

(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

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

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

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

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

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

112.3215 Lobbyists before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(5)

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

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

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

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

b. When the report is postmarked.

c. When the certificate of mailing is dated.

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

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

4. A fine shall not be assessed against a lobbyist the first time any reports for which the lobbyist is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbyist is responsible must be filed within 30 days after the notice that any reports have not been

timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

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

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

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

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

112.63 Actuarial reports and statements of actuarial impact; review.—

(4) Upon receipt, pursuant to subsection (2), of an actuarial report, or upon receipt, pursuant to subsection (3), of a statement of actuarial impact, the Department of Management Services shall acknowledge such receipt, but shall only review and comment on each retirement system's or plan's actuarial valuations at least on a triennial basis. If the department finds that the actuarial valuation is not complete, accurate, or based on reasonable assumptions, or if the department does not receive the actuarial report or statement of actuarial impact, the department shall notify the local government and request appropriate adjustment. If, after a reasonable period of time, a satisfactory adjustment is not made, the affected local government or the department may petition for a hearing under the provisions of ss. 120.569 and 120.57. If the administrative law judge recommends in favor of the department, the department shall perform an actuarial review or prepare the statement of actuarial impact. The cost to the department of performing such actuarial review or preparing such statement shall be charged to the governmental entity of which the employees are covered by the retirement system or plan. If payment of such costs is not received by the department within 60 days after receipt by the governmental entity of the request for payment, the department shall certify to the Chief Financial Officer ~~Comptroller~~ the amount due, and the Chief Financial Officer ~~Comptroller~~ shall pay such amount to the department from any funds payable to the governmental entity of which the employees are covered by the retirement

system or plan. If the administrative law judge recommends in favor of the local retirement system and the department performs an actuarial review, the cost to the department of performing the actuarial review shall be paid by the department.

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

116.03 Officers to report fees collected.—Each state and county officer who receives all or any part of his or her compensation in fees or commissions, or other remuneration, shall keep a complete report of all fees and commissions, or other remuneration collected, and shall make a report to the Department of Financial Services ~~Banking and Finance~~ of all such fees and commissions, or other remuneration, annually on December 31 of each and every year. Such report shall be made upon forms to be prescribed from time to time by the department, and shall show in detail the source, character and amount of all his or her official expenses and the net amount that the office has paid up to the time of making such report. All officers shall make out, fill in and subscribe and properly forward to the department such reports, and swear to the accuracy and competency of such reports.

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

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

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

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

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

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

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

116.14 Receipts required from purchasers of state property.—Upon the sale of any state property by the superintendent and presidents of state

institutions as provided by law, they shall take receipt for the same from the purchaser, which receipt shall be forwarded, together with the proceeds of the sale, to the Chief Financial Officer ~~State Treasurer~~.

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

120.52 Definitions.—As used in this act:

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

(c) The preparation or modification of:

1. Agency budgets.

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

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

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

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

120.80 Exceptions and special requirements; agencies.—

(3) OFFICE OF FINANCIAL REGULATION ~~DEPARTMENT OF BANKING AND FINANCE~~.—

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

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

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation ~~Department of Banking and Finance~~ or an applicant may request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission ~~Department of Banking and Finance~~ shall by rule provide for participation by the general public.

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

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

4. In the case of every application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of every application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation ~~Department of Banking and Finance~~ shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of any such foreign national to appear personally at the hearing shall be grounds for denial of the application. Notwithstanding the provisions of s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

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

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

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

121.051 Participation in the system.—

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

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

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

(1)

(e) Effective January 1, 1991, participation in the Senior Management Service Class shall be compulsory for the number of senior managers who have policymaking authority with the State Board of Administration, as determined by the Governor, Chief Financial Officer ~~Treasurer~~, and Attorney General ~~Comptroller~~ acting as the State Board of Administration, unless such member elects to participate in the Senior Management Service Optional Annuity Program as established in subsection (6) in lieu of participation in the Senior Management Service Class. Such election shall be made in writing and filed with the division and the personnel officer of the State Board of Administration within 90 days after becoming eligible for membership in the Senior Management Service Class.

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

121.061 Funding.—

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

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

121.133 Cancellation of uncashed warrants.—Notwithstanding the provisions of s. 17.26 or s. 717.123 to the contrary, ~~effective July 1, 1998,~~ if any state warrant issued by the Chief Financial Officer ~~Comptroller~~ for the payment of retirement benefits from the Florida Retirement System Trust Fund, or any other pension trust fund administered by the department, is not presented for payment within 1 year after the last day of the month in which it was originally issued, the Chief Financial Officer ~~Comptroller~~ shall cancel the benefit warrant and credit the amount of the warrant to the Florida Retirement System Trust Fund or other pension trust fund administered by the department, as appropriate. The department may provide for issuance of a replacement warrant when deemed appropriate.

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

122.35 Funding.—

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

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

1. Each county shall receive each fiscal year ending June 30 an allocation in an amount equal to 55 percent of the total net intangible taxes collected and remitted to the Department of Revenue by the tax collector of the county during the prior fiscal year.

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

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

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

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

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(11) INTEREST PAID ON DISTRIBUTIONS.—

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

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

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

129.201 Budget of supervisor of elections; manner and time of preparation and presentation.—

(2)

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

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

131.05 Disposition of proceeds of sale.—In the event refunding bonds are issued under the provisions of this chapter prior to the date of maturity or option date of the obligations proposed to be refunded, the proceeds of said refunding bonds shall be deposited in a bank or trust company within the

state, which depository shall give a surety bond, or other such bonds as are authorized by law to be accepted for securing county and city funds, satisfactory to the Department of Financial Services ~~Banking and Finance~~ for the full amount of money so deposited, and the funds so deposited shall only be withdrawn with the approval of the department, for the purpose of paying the obligations to refund which said bonds were issued.

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

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

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

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

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

154.02 County Health Department Trust Fund.—

(1) To enable counties to provide public health services and maintain public health equipment and facilities, each county in the state with a population exceeding 100,000, according to the last state census, may levy an annual tax not exceeding 0.5 mill; each county in the state with a population exceeding 40,000 and not exceeding 100,000, according to the last state census, may levy an annual tax not exceeding 1 mill; and each county in the state with a population not exceeding 40,000, according to the last state census, may levy an annual tax not exceeding 2 mills, on the dollar on all taxable property in such county, the proceeds of which tax, if so contracted with the state, shall be paid to the Chief Financial Officer ~~Treasurer~~. However, the board of county commissioners may elect to pay in 12 equal monthly installments. Such funds in the hands of the Chief Financial Officer ~~Treasurer~~ shall be placed in the county health department trust funds of the county by which such funds were raised, and such funds shall be expended by the Department of Health solely for the purpose of carrying out the intent and object of the public health contract.

(2) The Chief Financial Officer ~~Treasurer~~ shall maintain a full-time County Health Department Trust Fund which shall contain all state and

local funds to be expended by county health departments. Such funds shall be expended by the Department of Health solely for the purposes of carrying out the intent and purpose of this part. Federal funds may be deposited in the trust fund.

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

154.03 Cooperation with Department of Health and United States Government.—

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

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

154.05 Cooperation and agreements between counties.—Two or more counties may combine in the establishment and maintenance of a single full-time county health department for the counties which combine for that purpose; and, pursuant to such combination or agreement, such counties may cooperate with one another and the Department of Health and contribute to a joint fund in carrying out the purpose and intent of this chapter. The duration and nature of such agreement shall be evidenced by resolutions of the boards of county commissioners of such counties and shall be submitted to and approved by the department. In the event of any such agreement, a full-time county health department shall be established and maintained by the department in and for the benefit of the counties which have entered into such an agreement; and, in such case, the funds raised by taxation pursuant to this chapter by each such county shall be paid to the Chief Financial Officer ~~Treasurer~~ for the account of the department and shall be known as the full-time county health department trust fund of the counties so cooperating. Such trust funds shall be used and expended by the department for the purposes specified in this chapter in each county which has entered into such agreement. In case such an agreement is entered into between two or more counties, the work contemplated by this chapter shall be done by a single full-time county health department in the counties so cooperating; and the nature, extent, and location of such work shall be under the control and direction of the department.

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

154.06 Fees and services rendered; authority.—

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

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

154.209 Powers of authority.—The purpose of the authority shall be to assist health facilities in the acquisition, construction, financing, and refinancing of projects in any corporated or unincorporated area within the geographical limits of the local agency. For this purpose, the authority is authorized and empowered:

(17) To issue special obligation revenue bonds for the purpose of establishing and maintaining the self-insurance pool and to provide reserve funds in connection therewith, such bonds to be payable from funds available in the pool from time to time or from assessments against participating health facilities for the purpose of providing required contributions to the fund. With respect to the issuance of such bonds or notes the following provisions shall apply:

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

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

Section 155. Section 154.314, Florida Statutes, is amended to read:

154.314 Certification of the State of Florida.—

(1) In the event payment for the costs of services rendered by a participating hospital or a regional referral hospital is not received from the responsible county within 90 days of receipt of a statement for services rendered to a qualified indigent who is a certified resident of the county, or if the payment is disputed and said payment is not received from the county determined to be responsible within 60 days of the date of exhaustion of all administrative and legal remedies, the hospital shall certify to the Chief Financial Officer ~~Comptroller~~ the amount owed by the county.

(2) The Chief Financial Officer ~~Comptroller~~ shall have no longer than 45 days from the date of receiving the hospital's certified notice to forward the amount delinquent to the appropriate hospital from any funds due to the county under any revenue-sharing or tax-sharing fund established by the state, except as otherwise provided by the State Constitution. The Chief Financial Officer ~~Comptroller~~ shall provide the Governor and the fiscal committees in the House of Representatives and the Senate with a quarterly accounting of the amounts certified by hospitals as owed by counties and the amount paid to hospitals out of any revenue or tax sharing funds due to the county.

Section 156. Paragraph (e) of subsection (7) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(7)

(e)1. Notwithstanding the provisions of paragraph (c), any separate legal entity, created pursuant to the provisions of this section and controlled by counties or municipalities of this state, the membership of which consists or is to consist only of public agencies of this state, may, for the purpose of financing acquisition of liability coverage contracts from one or more local government liability pools to provide liability coverage for counties, municipalities, or other public agencies of this state, exercise all powers in connection with the authorization, issuance, and sale of bonds. All of the privileges, benefits, powers, and terms of s. 125.01 relating to counties and s. 166.021 relating to municipalities shall be fully applicable to such entity and such entity shall be considered a unit of local government for all of the privileges, benefits, powers, and terms of part I of chapter 159. Bonds issued by such entity shall be deemed issued on behalf of counties, municipalities, or public agencies which enter into loan agreements with such entity as provided in this paragraph. Proceeds of bonds issued by such entity may be loaned to counties, municipalities, or other public agencies of this state, whether or not such counties, municipalities, or other public agencies are also members of the entity issuing the bonds, and such counties, municipalities, or other public agencies may in turn deposit such loan proceeds with a separate local government liability pool for purposes of acquiring liability coverage contracts.

2. Counties or municipalities of this state are authorized pursuant to this section, in addition to the authority provided by s. 125.01, part II of chapter 166, and other applicable law, to issue bonds for the purpose of acquiring liability coverage contracts from a local government liability pool. Any individual county or municipality may, by entering into interlocal agreements with other counties, municipalities, or public agencies of this state, issue bonds on behalf of itself and other counties, municipalities, or other public agencies, for purposes of acquiring a liability coverage contract or contracts from a local government liability pool. Counties, municipalities, or other public agencies are also authorized to enter into loan agreements with any entity created pursuant to subparagraph 1., or with any county or municipality issuing bonds pursuant to this subparagraph, for the purpose of obtaining bond proceeds with which to acquire liability coverage contracts from a local government liability pool. No county, municipality, or other public agency shall at any time have more than one loan agreement outstanding for the purpose of obtaining bond proceeds with which to acquire liability coverage contracts from a local government liability pool. Obligations of any county, municipality, or other public agency of this state pursuant to a loan agreement as described above may be validated as provided in chapter 75. Prior to the issuance of any bonds pursuant to subparagraph 1. or this subparagraph for the purpose of acquiring liability coverage contracts from a local government liability pool, the reciprocal insurer or the manager of any self-insurance program shall demonstrate to the satisfaction of the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ that excess liability coverage for counties, municipalities, or other public agencies is reasonably unobtainable in the amounts provided by such pool or that the liability coverage obtained through acquiring contracts from a local government liability pool, after taking into account costs of issuance of bonds and any other administrative fees, is less expensive to counties, municipalities, or special districts than similar commercial coverage then reasonably available.

3. Any entity created pursuant to this section or any county or municipality may also issue bond anticipation notes, as provided by s. 215.431, in connection with the authorization, issuance, and sale of such bonds. In addition, the governing body of such legal entity or the governing body of such county or municipality may also authorize bonds to be issued and sold from time to time and may delegate, to such officer, official, or agent of such legal entity as the governing body of such legal entity may select, the power to determine the time; manner of sale, public or private; maturities; rate or rates of interest, which may be fixed or may vary at such time or times and in accordance with a specified formula or method of determination; and other terms and conditions as may be deemed appropriate by the officer, official, or agent so designated by the governing body of such legal entity. However, the amounts and maturities of such bonds and the interest rate or rates of such bonds shall be within the limits prescribed by the governing body of such legal entity and its resolution delegating to such officer, official, or agent the power to authorize the issuance and sale of such bonds. Any series of bonds issued pursuant to this paragraph shall mature no later than 7 years following the date of issuance thereof.

4. Bonds issued pursuant to subparagraph 1. may be validated as provided in chapter 75. The complaint in any action to validate such bonds shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 shall be published in Leon County and in each county which is an owner of the entity issuing the bonds, or in which a member of the entity is located, and the complaint and order of the circuit court shall be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county or municipality which is an owner of the entity issuing the bonds or in which a member of the entity is located.

5. Bonds issued pursuant to subparagraph 2. may be validated as provided in chapter 75. The complaint in any action to validate such bonds shall be filed in the circuit court of the county or municipality which will issue the bonds. The notice required to be published by s. 75.06 shall be published only in the county where the complaint is filed, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in the county or municipality which will issue the bonds.

6. The participation by any county, municipality, or other public agency of this state in a local government liability pool shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered regarding such a local government liability pool be required to contain any provision for waiver.

Section 157. Subsections (4), (5), (6), (7), (8), and (9) of section 163.055, Florida Statutes, are amended to read:

163.055 Local Government Financial Technical Assistance Program.—

(4) The Chief Financial Officer ~~Comptroller~~ shall enter into contracts with program providers who shall:

(a) Be a public agency or private, nonprofit corporation, association, or entity.

(b) Use existing resources, services, and information that are available from state or local agencies, universities, or the private sector.

(c) Seek and accept funding from any public or private source.

(d) Annually submit information to assist the Legislative Committee on Intergovernmental Relations in preparing a performance review that will include an analysis of the effectiveness of the program.

(e) Assist municipalities and independent special districts in developing alternative revenue sources.

(f) Provide for an annual independent financial audit of the program, if the program receives funding.

(g) Provide assistance to municipalities and special districts in the areas of financial management, accounting, investing, budgeting, and debt issuance.

(h) Develop a needs assessment to determine where assistance should be targeted, and to establish a priority system to deliver assistance to those jurisdictions most in need through the most economical means available.

(i) Provide financial emergency assistance upon direction from the Executive Office of the Governor pursuant to s. 218.503.

(5)(a) The Chief Financial Officer ~~Comptroller~~ shall issue a request for proposals to provide assistance to municipalities and special districts. At the request of the Chief Financial Officer ~~Comptroller~~, the Legislative Committee on Intergovernmental Relations shall assist in the preparation of the request for proposals.

(b) The Chief Financial Officer ~~Comptroller~~ shall review each contract proposal submitted.

(c) The Legislative Committee on Intergovernmental Relations shall review each contract proposal and submit to the Chief Financial Officer ~~Comptroller~~, in writing, advisory comments and recommendations, citing with specificity the reasons for its recommendations.

(d) The Chief Financial Officer ~~Comptroller~~ and the Legislative Committee on Intergovernmental Relations shall consider the following factors in reviewing contract proposals:

1. The demonstrated capacity of the provider to conduct needs assessments and implement the program as proposed.

2. The number of municipalities and special districts to be served under the proposal.

3. The cost of the program as specified in a proposed budget.

4. The short-term and long-term benefits of the assistance to municipalities and special districts.

5. The form and extent to which existing resources, services, and information that are available from state and local agencies, universities, and the private sector will be used by the provider under the contract.

(6) A decision of the Chief Financial Officer ~~Comptroller~~ to award a contract under this section is final and shall be in writing with a copy provided to the Legislative Committee on Intergovernmental Relations.

(7) The Chief Financial Officer ~~Comptroller~~ may enter into contracts and agreements with other state and local agencies and with any person, association, corporation, or entity other than the program providers, for the purpose of administering this section.

(8) The Chief Financial Officer ~~Comptroller~~ shall provide fiscal oversight to ensure that funds expended for the program are used in accordance with the contracts entered into pursuant to subsection (4).

(9) The Legislative Committee on Intergovernmental Relations shall annually conduct a performance review of the program. The findings of the

review shall be presented in a report submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer ~~Comptroller~~ by January 15 of each year.

Section 158. Subsection (6) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(6) When a regional planning agency is required to prepare or amend a comprehensive plan, or element or portion thereof, pursuant to subsections (3) and (4), the regional planning agency and the local government may agree to a method of compensating the regional planning agency for any verifiable, direct costs incurred. If an agreement is not reached within 6 months after the date the regional planning agency assumes planning responsibilities for the local government pursuant to subsections (3) and (4) or by the time the plan or element, or portion thereof, is completed, whichever is earlier, the regional planning agency shall file invoices for verifiable, direct costs involved with the governing body. Upon the failure of the local government to pay such invoices within 90 days, the regional planning agency may, upon filing proper vouchers with the Chief Financial Officer ~~State Comptroller~~, request payment by the Chief Financial Officer ~~State Comptroller~~ from unencumbered revenue or other tax sharing funds due such local government from the state for work actually performed, and the Chief Financial Officer ~~State Comptroller~~ shall pay such vouchers; however, the amount of such payment shall not exceed 50 percent of such funds due such local government in any one year.

Section 159. Section 166.111, Florida Statutes, is amended to read:

166.111 Authority to borrow.—

~~(1)~~ The governing body of every municipality may borrow money, contract loans, and issue bonds as defined in s. 166.101 from time to time to finance the undertaking of any capital or other project for the purposes permitted by the State Constitution and may pledge the funds, credit, property, and taxing power of the municipality for the payment of such debts and bonds.

~~(2)(a) The Legislature finds:~~

~~1. The widespread and massive damage to persons and property caused by the August 24, 1992, storm known as Hurricane Andrew has generated insurance claims of such a nature as to render numerous insurers operating within this state insolvent, and therefore unable to satisfy covered claims.~~

~~2. The inability of insureds within this state to receive payment of covered claims or to receive such payment on a timely basis creates financial and other hardships for such insureds and places undue burdens on the state, the affected units of local government, and the community at large.~~

~~3. In addition, the failure of insurers to pay covered claims or to pay such claims on a timely basis due to the insolvency of such insurers can under-~~

~~mine the public's confidence in insurers operating within this state, thereby adversely affecting the stability of the insurance industry in this state.~~

~~4. The state has previously taken action to address these problems by adopting the Florida Insurance Guaranty Association Act, which, among other things, provides a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.~~

~~5. In the wake of the unprecedented destruction caused by Hurricane Andrew, the resultant covered claims, and the number of insurers rendered insolvent thereby, it is evident that alternative programs must be developed to allow the Florida Insurance Guaranty Association to more expeditiously and effectively provide for the payment of covered claims.~~

~~6. It is therefore determined to be in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of the residents of this state, and for the protection and preservation of the economic stability of insurers operating in this state, and it is hereby declared to be an essential public purpose, to permit certain municipalities to take such actions as will provide relief to claimants and policyholders having covered claims against insolvent insurers operating in this state, by expediting the handling and payment of covered claims.~~

~~7. To achieve the foregoing purposes, it is proper to authorize municipalities of this state substantially affected by Hurricane Andrew to issue bonds to assist the Florida Insurance Guaranty Association in expediting the handling and payment of covered claims against insolvent insurers operating in this state.~~

~~8. In order to avoid the needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, it is proper to authorize a municipality severely affected by Hurricane Andrew to provide for the payment of covered claims beyond its territorial limits in the implementation of such programs.~~

~~(b) The governing body of any municipality the residents of which have been substantially affected by the August 24, 1992, storm known as Hurricane Andrew, or any county as defined in s. 125.011(1), may issue no more than $500 million, in aggregate principal amount, of bonds as defined in s. 166.101 from time to time to fund an assistance program, in conjunction with the Florida Insurance Guaranty Association, for the purpose of paying to claimants or policyholders covered claims, as such term is defined in s. 631.54(3), arising through the insolvency of an insurer occurring on or before March 31, 1993, which insolvency is determined by the Florida Insurance Guaranty Association to have been a result of Hurricane Andrew, regardless of whether such claimants or policyholders are residents of such municipality or the property to which such claim relates is located within or outside of the territorial jurisdiction of such municipality. A municipality issuing bonds for this purpose shall enter into such contracts with the Florida Insurance Guaranty Association or any entity acting on behalf of the Florida~~

~~Insurance Guaranty Association as are necessary to implement the assistance program. Any bonds issued by a municipality under this subsection shall be payable from and secured by moneys received by or on behalf of the municipality from assessments levied under s. 631.57(3)(e), and assigned and pledged under s. 631.57(3)(e) to or on behalf of the municipality for the benefit of the holders of such bonds in connection with such assistance program. The funds, credit, property, and taxing power of the municipality shall not be pledged for the payment of such bonds.~~

~~(c) The governing body of the municipality issuing bonds authorized by paragraph (b) shall require all firms, including, but not limited to, the financial advisers, legal counsel, and underwriters, providing professional services in the issuance of such bonds to include minority firms in the provision of such services. To meet such participation requirement, the minority firm must have full-time employees located in this state and a permanent place of business located in this state, and must be a firm which is at least 51 percent owned by minority persons as defined by s. 288.703(3), or any combination thereof, and whose management and daily operations are controlled by such persons. Minority firms must be offered participation in not less than 20 percent of the respective contracts for professional services.~~

Section 160. Paragraph (a) of subsection (8) of section 175.032, Florida Statutes, is amended to read:

175.032 Definitions.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the following words and phrases have the following meanings:

(8)(a) "Firefighter" means any person employed solely by a constituted fire department of any municipality or special fire control district who is certified as a firefighter as a condition of employment in accordance with the provisions of s. 633.35 and whose duty it is to extinguish fires, to protect life, or to protect property. However, for purposes of this chapter only, "firefighter" also includes public safety officers who are responsible for performing both police and fire services, who are certified as police officers or firefighters, and who are certified by their employers to the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as participating in this chapter prior to October 1, 1979. Effective October 1, 1979, public safety officers who have not been certified as participating in this chapter shall be considered police officers for retirement purposes and shall be eligible to participate in chapter 185. Any plan may provide that the fire chief shall have an option to participate, or not, in that plan.

Section 161. Subsection (1) of section 175.101, Florida Statutes, is amended to read:

175.101 State excise tax on property insurance premiums authorized; procedure.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) Each municipality or special fire control district in this state described and classified in s. 175.041, having a lawfully established firefighters' pension trust fund or municipal fund or special fire control district fund, by whatever name known, providing pension benefits to firefighters as provided under this chapter, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereinafter engage in or carry on, the business of property insurance as shown by the records of the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ an excise tax in addition to any lawful license or excise tax now levied by each of the municipalities or special fire control districts, respectively, amounting to 1.85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of such municipalities or within the legally defined boundaries of special fire control districts, respectively. Whenever the boundaries of a special fire control district that has lawfully established a firefighters' pension trust fund encompass a portion of the corporate territory of a municipality that has also lawfully established a firefighters' pension trust fund, that portion of the tax receipts attributable to insurance policies covering property situated both within the municipality and the special fire control district shall be given to the fire service provider. The agent shall identify the fire service provider on the property owner's application for insurance. Remaining revenues collected pursuant to this chapter shall be distributed to the municipality or special fire control district according to the location of the insured property.

This section also applies to any municipality consisting of a single consolidated government which is made up of a former county and one or more municipalities, consolidated pursuant to the authority in s. 3 or s. 6(e), Art. VIII of the State Constitution, and to property insurance policies covering property within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, provided the properties are being provided fire protection services by the consolidated government.

Section 162. Subsection (2) of section 175.121, Florida Statutes, is amended to read:

175.121 Department of Revenue and Division of Retirement to keep accounts of deposits; disbursements.—For any municipality or special fire control district having a chapter or local law plan established pursuant to this chapter:

(2) The Chief Financial Officer ~~Comptroller~~ shall, on or before July 1 of each year, and at such other times as authorized by the division, draw his or her warrants on the full net amount of money then on deposit in the Police and Firefighters' Premium Tax Trust Fund pursuant to this chapter, specifying the municipalities and special fire control districts to which the moneys must be paid and the net amount collected for and to be paid to each municipality or special fire control district, respectively, subject to the limitation on disbursement under s. 175.122. The sum payable to each municipality or special fire control district is appropriated annually out of the

Police and Firefighters' Premium Tax Trust Fund. The warrants of the Chief Financial Officer ~~Comptroller~~ shall be payable to the respective municipalities and special fire control districts entitled to receive them and shall be remitted annually by the division to the respective municipalities and special fire control districts. In lieu thereof, the municipality or special fire control district may provide authorization to the division for the direct payment of the premium tax to the board of trustees. In order for a municipality or special fire control district and its pension fund to participate in the distribution of premium tax moneys under this chapter, all the provisions shall be complied with annually, including state acceptance pursuant to part VII of chapter 112.

Section 163. Section 175.151, Florida Statutes, is amended to read:

175.151 Penalty for failure of insurers to comply with this act.—If ~~Should~~ any insurance company, corporation or other insurer fails ~~fail~~ to comply with the provisions of this act, on or before March 1 of each year as herein provided, the certificate of authority issued to said insurance company, corporation or other insurer to transact business in this state may be canceled and revoked by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, and it is unlawful for any such insurance company, corporation, or other insurer to transact business thereafter in this state unless such insurance company, corporation, or other insurer shall be granted a new certificate of authority to transact any business in this state, in compliance with provisions of law authorizing such certificate of authority to be issued. The division is responsible for notifying the Office of Insurance Regulation ~~Department of Insurance~~ regarding any such failure to comply.

Section 164. Subsection (1) of section 185.08, Florida Statutes, is amended to read:

185.08 State excise tax on casualty insurance premiums authorized; procedure.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) Each incorporated municipality in this state described and classified in s. 185.03, as well as each other city or town of this state which on July 31, 1953, had a lawfully established municipal police officers' retirement trust fund or city fund, by whatever name known, providing pension or relief benefits to police officers as provided under this chapter, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on, the business of casualty insurance as shown by records of the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, an excise tax in addition to any lawful license or excise tax now levied by each of the said municipalities, respectively, amounting to .85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of such municipalities, respectively.

Section 165. Subsection (2) of section 185.10, Florida Statutes, is amended to read:

185.10 Department of Revenue and Division of Retirement to keep accounts of deposits; disbursements.—For any municipality having a chapter plan or local law plan under this chapter:

(2) The Chief Financial Officer ~~Comptroller~~ shall, on or before July 1 of each year, and at such other times as authorized by the division, draw his or her warrants on the full net amount of money then on deposit pursuant to this chapter in the Police and Firefighters' Premium Tax Trust Fund, specifying the municipalities to which the moneys must be paid and the net amount collected for and to be paid to each municipality, respectively. The sum payable to each municipality is appropriated annually out of the Police and Firefighters' Premium Tax Trust Fund. The warrants of the Chief Financial Officer ~~Comptroller~~ shall be payable to the respective municipalities entitled to receive them and shall be remitted annually by the division to the respective municipalities. In lieu thereof, the municipality may provide authorization to the division for the direct payment of the premium tax to the board of trustees. In order for a municipality and its retirement fund to participate in the distribution of premium tax moneys under this chapter, all the provisions shall be complied with annually, including state acceptance pursuant to part VII of chapter 112.

Section 166. Section 185.13, Florida Statutes, is amended to read:

185.13 Failure of insurer to comply with chapter; penalty.—If ~~Should~~ any insurance company, corporation or other insurer fails ~~fail~~ to comply with the provisions of this chapter, on or before March 1 in each year as herein provided, the certificate of authority issued to said insurance company, corporation or other insurer to transact business in this state may be canceled and revoked by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, and it is unlawful for any such insurance company, corporation or other insurer to transact any business thereafter in this state unless such insurance company, corporation or other insurer shall be granted a new certificate of authority to transact business in this state, in compliance with provisions of law authorizing such certificate of authority to be issued. The division shall be responsible for notifying the Office of Insurance Regulation ~~Department of Insurance~~ regarding any such failure to comply.

Section 167. Subsections (2), (3), and (5) of section 189.4035, Florida Statutes, are amended to read:

189.4035 Preparation of official list of special districts.—

(2) The official list shall be produced by the department after the department has notified each special district that is currently reporting to the department, the Department of Financial Services ~~Banking and Finance~~ pursuant to s. 218.32, or the Auditor General pursuant to s. 218.39. Upon notification, each special district shall submit, within 60 days, its determination of its status. The determination submitted by a special district shall be consistent with the status reported in the most recent local government audit of district activities submitted to the Auditor General pursuant to s. 218.39.

(3) The Department of Financial Services ~~Banking and Finance~~ shall provide the department with a list of dependent special districts reporting pursuant to s. 218.32 for inclusion on the official list of special districts.

(5) The official list of special districts shall be distributed by the department on October 1 of each year to the President of the Senate, the Speaker of the House of Representatives, the Auditor General, the Department of Revenue, the Department of Financial Services ~~Banking and Finance~~, the Department of Management Services, the State Board of Administration, counties, municipalities, county property appraisers, tax collectors, and supervisors of elections and to all interested parties who request the list.

Section 168. Subsection (1) of section 189.412, Florida Statutes, is amended to read:

189.412 Special District Information Program; duties and responsibilities.—The Special District Information Program of the Department of Community Affairs is created and has the following special duties:

(1) The collection and maintenance of special district compliance status reports from the Auditor General, the Department of Financial Services ~~Banking and Finance~~, the Division of Bond Finance of the State Board of Administration, the Department of Management Services, the Department of Revenue, and the Commission on Ethics for the reporting required in ss. 112.3144, 112.3145, 112.3148, 112.3149, 112.63, 200.068, 218.32, 218.38, 218.39, and 280.17 and chapter 121 and from state agencies administering programs that distribute money to special districts. The special district compliance status reports must consist of a list of special districts used in that state agency and a list of which special districts did not comply with the reporting statutorily required by that agency.

Section 169. Section 189.427, Florida Statutes, is amended to read:

189.427 Fee schedule; Operating Trust Fund.—The Department of Community Affairs, by rule, shall establish a schedule of fees to pay one-half of the costs incurred by the department in administering this act, except that the fee may not exceed $175 per district per year. The fees collected under this section shall be deposited in the Operating Trust Fund, which shall be administered by the Department of Community Affairs. Any fee rule must consider factors such as the dependent and independent status of the district and district revenues for the most recent fiscal year as reported to the Department of Financial Services ~~Banking and Finance~~. The department may assess fines of not more than $25, with an aggregate total not to exceed $50, as penalties against special districts that fail to remit required fees to the department. It is the intent of the Legislature that general revenue funds will be made available to the department to pay one-half of the cost of administering this act.

Section 170. Subsection (3) of section 190.007, Florida Statutes, is amended to read:

190.007 Board of supervisors; general duties.—

(3) The board is authorized to select as a depository for its funds any qualified public depository as defined in s. 280.02 which meets all the requirements of chapter 280 and has been designated by the Chief Financial Officer ~~Treasurer~~ as a qualified public depository, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the board may deem just and reasonable.

Section 171. Subsection (16) of section 191.006, Florida Statutes, is amended to read:

191.006 General powers.—The district shall have, and the board may exercise by majority vote, the following powers:

(16) To select as a depository for its funds any qualified public depository as defined in s. 280.02 which meets all the requirements of chapter 280 and has been designated by the Chief Financial Officer ~~State Treasurer~~ as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.

Section 172. Subsection (4) of section 192.091, Florida Statutes, is amended to read:

192.091 Commissions of property appraisers and tax collectors.—

(4) The commissions for collecting taxes assessed for or levied by the state shall be audited, ~~and~~ allowed, ~~by the Comptroller~~ and ~~shall be~~ paid by the Chief Financial Officer ~~Treasurer~~ as other ~~Comptroller's~~ warrants are paid; and commissions for collecting the county taxes shall be audited and paid by the boards of county commissioners of the several counties of this state. The commissions for collecting all special school district taxes shall be audited by the school board of each respective district and taken out of the funds of the respective special school district under its control and allowed and paid to the tax collectors for collecting such taxes; and the commissions for collecting all other district taxes, whether special or not, shall be audited and paid by the governing board or commission having charge of the financial obligations of such district. All commissions for collecting special tax district taxes shall be paid at the time and in the manner now, or as may hereafter be, provided for the payment of the commissions for the collection of county taxes. All amounts paid as compensation to any tax collector under the provisions of this or any other law shall be a part of the general income or compensation of such officer for the year in which received, and nothing contained in this section shall be held or construed to affect or increase the maximum salary as now provided by law for any such officer.

Section 173. Subsection (3) of section 192.102, Florida Statutes, is amended to read:

192.102 Payment of property appraisers' and collectors' commissions.—

(3) The Chief Financial Officer ~~Comptroller of the state~~ shall issue to each of the county property appraisers and collectors of taxes, on the first Monday of January, April, July, and October, on demand of such county

property appraisers and collectors of taxes after approval by the Department of Revenue, and shall pay, his or her warrant~~, which shall be paid by the Treasurer of the state,~~ for an amount equal to one-fourth of four-fifths of the total amount of commissions received by such county property appraisers and collectors of taxes or their predecessors in office from the state during and for the preceding year, and the balance of the commissions earned by such county property appraiser and collector of taxes, respectively, during each year, over and above the amount of such installment payments herein provided for, shall be payable when a report of errors and double assessments is approved by the county commissioners and a copy thereof filed with the Department of Revenue.

Section 174. Subsection (1) of section 193.092, Florida Statutes, is amended to read:

193.092 Assessment of property for back taxes.—

(1) When it shall appear that any ad valorem tax might have been lawfully assessed or collected upon any property in the state, but that such tax was not lawfully assessed or levied, and has not been collected for any year within a period of 3 years next preceding the year in which it is ascertained that such tax has not been assessed, or levied, or collected, then the officers authorized shall make the assessment of taxes upon such property in addition to the assessment of such property for the current year, and shall assess the same separately for such property as may have escaped taxation at and upon the basis of valuation applied to such property for the year or years in which it escaped taxation, noting distinctly the year when such property escaped taxation and such assessment shall have the same force and effect as it would have had if it had been made in the year in which the property shall have escaped taxation, and taxes shall be levied and collected thereon in like manner and together with taxes for the current year in which the assessment is made. But no property shall be assessed for more than 3 years' arrears of taxation, and all property so escaping taxation shall be subject to such taxation to be assessed in whomsoever's hands or possession the same may be found, except that property acquired by a bona fide purchaser who was without knowledge of the escaped taxation shall not be subject to assessment for taxes for any time prior to the time of such purchase, but it is the duty of the property appraiser making such assessment to serve upon the previous owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county. Any property owned by such previous owner which is situated in this state is subject to the lien of such assessment in the same manner as a recorded judgment. Before any such lien may be recorded, the owner so notified must be given 30 days to pay the taxes, penalties, and interest. Once recorded, such lien may be recorded in any county in this state and shall constitute a lien on any property of such person in such county in the same manner as a recorded judgment, and may be enforced by the tax collector using all remedies pertaining to same; provided, that the county property appraiser shall not assess any lot or parcel of land certified or sold to the state for any previous years unless such lot or parcel of lands so certified or sold shall be included in the list furnished by the Chief Financial Officer ~~Comptroller~~ to

the county property appraiser as provided by law; provided, if real or personal property be assessed for taxes, and because of litigation delay ensues and the assessment be held invalid the taxing authorities, may reassess such property within the time herein provided after the termination of such litigation; provided further, that personal property acquired in good faith by purchase shall not be subject to assessment for taxes for any time prior to the time of such purchase, but the individual or corporation liable for any such assessment shall continue personally liable for same. As used in this subsection, the term "bona fide purchaser" means a purchaser for value, in good faith, before certification of such assessment of back taxes to the tax collector for collection.

Section 175. Section 195.101, Florida Statutes, is amended to read:

195.101 Withholding of state funds.—

(1) The Department of Revenue is hereby directed to determine each year whether the several counties of this state are assessing the real and tangible personal property within their jurisdiction in accordance with law. If the Department of Revenue determines that any county is assessing property at less than that prescribed by law, the Chief Financial Officer ~~Comptroller~~ shall withhold from such county a portion of any state funds to which the county may be entitled equal to the difference of the amount assessed and the amount required to be assessed by law.

(2) The Department of Revenue is hereby directed to determine each year whether the several municipalities of this state are assessing the real and tangible personal property within their jurisdiction in accordance with law. If the Department of Revenue determines that any municipality is assessing property at less than that prescribed by law, the Chief Financial Officer ~~Comptroller~~ shall withhold from such municipality a portion of any state funds to which that municipality may be entitled equal to the difference of the amount assessed and the amount required to be assessed by law.

Section 176. Subsection (1) of section 198.29, Florida Statutes, is amended to read:

198.29 Refunds of excess tax paid.—

(1) Whenever it appears, upon the examination of any return made under this chapter or upon proof submitted to the department by the personal representative, that an amount of estate tax has been paid in excess of the tax legally due under this chapter, the amount of such overpayment, together with any overpayment of interest thereon shall be refunded to the personal representative and paid by ~~upon the warrant of~~ the Chief Financial Officer ~~Comptroller, drawn upon the Treasurer who shall honor and pay the same~~; such refund shall be made by the department as a matter of course regardless of whether or not the personal representative has filed a written claim therefor, except that upon request of the department, the personal representative shall file with the department a conformed copy of any written claim for refund of federal estate tax which has theretofore been filed with the United States.

Section 177. Paragraph (a) of subsection (7) of section 199.232, Florida Statutes, is amended to read:

199.232 Powers of department.—

(7)(a) If it appears, upon examination of an intangible tax return made under this chapter or upon proof submitted to the department by the taxpayer, that an amount of intangible personal property tax has been paid in excess of the amount due, the department shall refund the amount of the overpayment to the taxpayer by a warrant of the Chief Financial Officer ~~Comptroller, drawn upon the Treasurer~~. The department shall refund the overpayment without regard to whether the taxpayer has filed a written claim for a refund; however, the department may request that the taxpayer file a statement affirming that the taxpayer made the overpayment.

Section 178. Paragraph (a) of subsection (1) of section 203.01, Florida Statutes, is amended to read:

203.01 Tax on gross receipts for utility and communications services.—

(1)(a)1. Every person that receives payment for any utility service shall report by the last day of each month to the Department of Revenue, under oath of the secretary or some other officer of such person, the total amount of gross receipts derived from business done within this state, or between points within this state, for the preceding month and, at the same time, shall pay into the State Treasury an amount equal to a percentage of such gross receipts at the rate set forth in paragraph (b). Such collections shall be certified by the Chief Financial Officer ~~Comptroller~~ upon the request of the State Board of Education.

2. A tax is levied on communications services as defined in s. 202.11(3). Such tax shall be applied to the same services and transactions as are subject to taxation under chapter 202, and to communications services that are subject to the exemption provided in s. 202.125(1). Such tax shall be applied to the sales price of communications services when sold at retail and to the actual cost of operating substitute communications systems, as such terms are defined in s. 202.11, shall be due and payable at the same time as the taxes imposed pursuant to chapter 202, and shall be administered and collected pursuant to the provisions of chapter 202.

Section 179. Subsection (1) of section 206.46, Florida Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(1) All moneys in the State Transportation Trust Fund, which is hereby created, shall be used for transportation purposes, as provided by law, under the direction of the Department of Transportation, which department may from time to time make requisition on the Chief Financial Officer ~~Comptroller~~ for such funds. Moneys from such fund shall be drawn by the Chief Financial Officer ~~Comptroller~~ by warrant upon the State Treasury pursuant to vouchers and shall be paid in like manner as other state warrants are paid out of the appropriated fund against which the warrants are drawn. All

sums of money necessary to provide for the payment of the warrants by the Chief Financial Officer ~~Comptroller~~ drawn upon such fund are appropriated annually out of the fund for the purpose of making such payments from time to time.

Section 180. Subsection (4) of section 210.16, Florida Statutes, is amended to read:

210.16 Revocation or suspension of permit.—

(4) In lieu of the suspension or revocation of permits, the division may impose civil penalties against holders of permits for violations of this part or rules and regulations relating thereto. No civil penalty so imposed shall exceed $1,000 for each offense, and all amounts collected shall be deposited with the Chief Financial Officer ~~State Treasurer~~ to the credit of the General Revenue Fund. If the holder of the permit fails to pay the civil penalty, his or her permit shall be suspended for such period of time as the division may specify.

Section 181. Subsection (2) of section 210.20, Florida Statutes, is amended to read:

210.20 Employees and assistants; distribution of funds.—

(2) As collections are received by the division from such cigarette taxes, it shall pay the same into a trust fund in the State Treasury designated "Cigarette Tax Collection Trust Fund" which shall be paid and distributed as follows:

(a) The division shall from month to month certify to the Chief Financial Officer ~~Comptroller~~ the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying the amounts to be transferred from the Cigarette Tax Collection Trust Fund and credited on the basis of 2.9 percent of the net collections to the Revenue Sharing Trust Fund for Counties and 29.3 percent of the net collections for the funding of indigent health care to the Public Medical Assistance Trust Fund.

(b)1. Beginning January 1, 1999, and continuing for 10 years thereafter, the division shall from month to month certify to the Chief Financial Officer ~~Comptroller~~ the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 2.59 percent of the net collections, and that amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the Chief Financial Officer ~~Comptroller~~ upon the State Treasury. These funds are hereby appropriated monthly out of the Cigarette Tax Collection Trust Fund, to be used for the purpose of constructing, furnishing, and equipping a cancer research facility at the University of South Florida adjacent to the

H. Lee Moffitt Cancer Center and Research Institute. In fiscal years 1999-2000 and thereafter with the exception of fiscal year 2008-2009, the appropriation to the H. Lee Moffitt Cancer Center and Research Institute authorized by this subparagraph shall not be less than the amount that would have been paid to the H. Lee Moffitt Cancer Center and Research Institute for fiscal year 1998-1999 had payments been made for the entire fiscal year rather than for a 6-month period thereof.

2. Beginning July 1, 2002, and continuing through June 30, 2004, the division shall, in addition to the distribution authorized in subparagraph 1., from month to month certify to the Chief Financial Officer ~~Comptroller~~ the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 0.2632 percent of the net collections, and that amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the Chief Financial Officer ~~Comptroller~~. Beginning July 1, 2004, and continuing through June 30, 2016, the division shall, in addition to the distribution authorized in subparagraph 1., from month to month certify to the Chief Financial Officer ~~Comptroller~~ the amount derived from the cigarette tax imposed by s. 210.02, less the service charges provided for in s. 215.20 and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, specifying an amount equal to 1.47 percent of the net collections, and that amount shall be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, established under s. 1004.43, by warrant drawn by the Chief Financial Officer ~~Comptroller~~. These funds are appropriated monthly out of the Cigarette Tax Collection Trust Fund, to be used for the purpose of constructing, furnishing, and equipping a cancer research facility at the University of South Florida adjacent to the H. Lee Moffitt Cancer Center and Research Institute. In fiscal years 2004-2005 and thereafter, the appropriation to the H. Lee Moffitt Cancer Center and Research Institute authorized by this subparagraph shall not be less than the amount that would have been paid to the H. Lee Moffitt Cancer Center and Research Institute in fiscal year 2001-2002, had this subparagraph been in effect.

Section 182. Subsection (4) of section 210.50, Florida Statutes, is amended to read:

210.50 Revocation or suspension of license.—

(4) In lieu of the suspension or revocation of licenses, the division may impose civil penalties against holders of licenses for violations of this part or rules relating thereto. No civil penalty so imposed shall exceed $1,000 for each offense, and all amounts collected shall be deposited with the Chief Financial Officer ~~State Treasurer~~ to the credit of the General Revenue Fund. If the holder of the license fails to pay the civil penalty, his or her license shall be suspended for such period of time as the division may specify.

Section 183. Subsection (1) of section 211.06, Florida Statutes, is amended to read:

211.06 Oil and Gas Tax Trust Fund; distribution of tax proceeds.—All taxes, interest, and penalties imposed under this part shall be collected by the department and placed in a special fund designated the "Oil and Gas Tax Trust Fund."

(1) There is hereby annually appropriated a sufficient amount from the Oil and Gas Tax Trust Fund for the Chief Financial Officer ~~Comptroller~~ to refund any overpayments that ~~which~~ have been properly approved.

Section 184. Subsection (3) of section 211.31, Florida Statutes, is amended to read:

211.31 Levy of tax on severance of certain solid minerals; rate, basis, and distribution of tax.—

(3) Interest earned on funds within any trust fund created under this part shall be invested and reinvested to the credit of such trust fund in accordance with s. 17.61 ~~s. 18.125~~.

Section 185. Paragraph (d) of subsection (1) of section 211.32, Florida Statutes, is amended to read:

211.32 Tax on solid minerals; Land Reclamation Trust Fund; refund for restoration and reclamation.—

(1)

(d) The Chief Financial Officer ~~Comptroller~~ shall, upon written verification of compliance with paragraph (a), paragraph (b), or paragraph (c) by the Department of Environmental Protection, and upon verification of the cost of the restoration and reclamation program or, if paragraph (c) is elected, the fair market value of the land, grant refunds, to be paid from the Land Reclamation Trust Fund, of the taxes paid under this part, in an amount equal to 100 percent of the costs incurred in complying with paragraph (a) or paragraph (b), or 100 percent of the fair market value of the land transferred in complying with paragraph (c), subject to the following limitations:

1. A taxpayer shall not be entitled to refunds in excess of the amount of taxes paid by the taxpayer under this part which are deposited in the Land Reclamation Trust Fund.

2. A taxpayer shall not be entitled to the payment of a refund for costs incurred in connection with a particular restoration and reclamation program unless and until the taxpayer is accomplishing the program in reasonable compliance with the criteria established by the Department of Environmental Protection.

Section 186. Paragraph (m) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state

of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(m) Educational materials purchased by certain child care facilities.—Educational materials, such as glue, paper, paints, crayons, unique craft items, scissors, books, and educational toys, purchased by a child care facility that meets the standards delineated in s. 402.305, is licensed under s. 402.308, holds a current Gold Seal Quality Care designation pursuant to s. 402.281, and provides basic health insurance to all employees are exempt from the taxes imposed by this chapter. For purposes of this paragraph, the term "basic health insurance" shall be defined and promulgated in rules developed jointly by the Department of Children and Family Services, the Agency for Health Care Administration, and the Financial Services Commission ~~Department of Insurance~~.

Section 187. Paragraph (c) of subsection (6) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(6)

(c)1. If the records of a dealer are adequate but voluminous in nature and substance, the department may sample such records, except for fixed assets, and project the audit findings derived therefrom over the entire audit period to determine the proportion that taxable retail sales bear to total retail sales or the proportion that taxable purchases bear to total purchases. In order to conduct such a sample, the department must first make a good faith effort to reach an agreement with the dealer, which agreement provides for the means and methods to be used in the sampling process. In the event that no agreement is reached, the dealer is entitled to a review by the executive director.

2. For the purposes of sampling pursuant to subparagraph 1., the department shall project any deficiencies and overpayments derived therefrom over the entire audit period. In determining the dealer's compliance, the department shall reduce any tax deficiency as derived from the sample by the amount of any overpayment derived from the sample. In the event the department determines from the sample results that the dealer has a net tax overpayment, the department shall provide the findings of this overpayment to the Chief Financial Officer ~~Comptroller~~ for repayment of funds paid into the State Treasury through error pursuant to s. 215.26.

3.a. A taxpayer is entitled, both in connection with an audit and in connection with an application for refund filed independently of any audit, to establish the amount of any refund or deficiency through statistical sampling when the taxpayer's records, other than those regarding fixed assets, are adequate but voluminous. Alternatively, a taxpayer is entitled to establish any refund or deficiency through any other sampling method agreed

upon by the taxpayer and the department when the taxpayer's records, other than those regarding fixed assets, are adequate but voluminous. Whether done through statistical sampling or any other sampling method agreed upon by the taxpayer and the department, the completed sample must reflect both overpayments and underpayments of taxes due. The sample shall be conducted through:

(I) A taxpayer request to perform the sampling through the certified audit program pursuant to s. 213.285;

(II) Attestation by a certified public accountant as to the adequacy of the sampling method utilized and the results reached using such sampling method; or

(III) A sampling method that has been submitted by the taxpayer and approved by the department before a refund claim is submitted. This sub-sub-subparagraph does not prohibit a taxpayer from filing a refund claim prior to approval by the department of the sampling method; however, a refund claim submitted before the sampling method has been approved by the department cannot be a complete refund application pursuant to s. 213.255 until the sampling method has been approved by the department.

b. The department shall prescribe by rule the procedures to be followed under each method of sampling. Such procedures shall follow generally accepted auditing procedures for sampling. The rule shall also set forth other criteria regarding the use of sampling, including, but not limited to, training requirements that must be met before a sampling method may be utilized and the steps necessary for the department and the taxpayer to reach agreement on a sampling method submitted by the taxpayer for approval by the department.

Section 188. Subsection (1) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(1) The department shall pay over to the Chief Financial Officer ~~Treasurer~~ of the state all funds received and collected by it under the provisions of this chapter, to be credited to the account of the General Revenue Fund of the state.

Section 189. Subsections (4) and (6), paragraph (e) of subsection (7) and subsection (13) of section 213.053, Florida Statutes, are amended to read:

213.053 Confidentiality and information sharing.—

(4) Nothing contained in this section shall prevent the department from publishing statistics so classified as to prevent the identification of particular accounts, reports, declarations, or returns or prevent the department from disclosing to the Chief Financial Officer ~~Comptroller~~ the names and addresses of those taxpayers who have claimed an exemption pursuant to s. 199.185(1)(i) or a deduction pursuant to s. 220.63(5).

(6) Any information received by the Department of Revenue in connection with the administration of taxes, including, but not limited to, information contained in returns, reports, accounts, or declarations filed by persons subject to tax, shall be made available by the department to the Auditor General or his or her authorized agent, the director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent, the Chief Financial Officer ~~Comptroller~~ or his or her authorized agent, the Director of the Office of Insurance Regulation of the Financial Services Commission ~~Insurance Commissioner~~ or his or her authorized agent, ~~the Treasurer or his or her authorized agent,~~ or a property appraiser or tax collector or their authorized agents pursuant to s. 195.084(1), in the performance of their official duties, or to designated employees of the Department of Education solely for determination of each school district's price level index pursuant to s. 1011.62(2); however, no information shall be disclosed to the Auditor General or his or her authorized agent, the director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent, the Chief Financial Officer ~~Comptroller~~ or his or her authorized agent, the Director of the Office of Insurance Regulation ~~Insurance Commissioner~~ or his or her authorized agent, ~~the Treasurer or his or her authorized agent,~~ or to a property appraiser or tax collector or their authorized agents, or to designated employees of the Department of Education if such disclosure is prohibited by federal law. The Auditor General or his or her authorized agent, the director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent, the Chief Financial Officer ~~Comptroller~~ or his or her authorized agent, the Director of the Office of Insurance Regulation ~~Treasurer~~ or his or her authorized agent, and the property appraiser or tax collector and their authorized agents, or designated employees of the Department of Education shall be subject to the same requirements of confidentiality and the same penalties for violation of the requirements as the department. For the purpose of this subsection, "designated employees of the Department of Education" means only those employees directly responsible for calculation of price level indices pursuant to s. 1011.62(2). It does not include the supervisors of such employees or any other employees or elected officials within the Department of Education.

(7) Notwithstanding any other provision of this section, the department may provide:

(e) Names, addresses, taxpayer identification numbers, and outstanding tax liabilities to the Department of the Lottery and the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~ in the conduct of their official duties.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

(13) Notwithstanding the provisions of s. 896.102(2), the department may allow full access to the information and documents required to be filed with it under s. 896.102(1) to federal, state, and local law enforcement and prosecutorial agencies, and to the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~, and any of those agencies may use the information and documents in any civil or criminal investigation and in any court proceedings.

Section 190. Section 213.054, Florida Statutes, is amended to read:

213.054 Persons claiming tax exemptions or deductions; annual report.—The Department of Revenue shall be responsible for monitoring the utilization of tax exemptions and tax deductions authorized pursuant to chapter 81-179, Laws of Florida. On or before September 1 of each year, the department shall report to the Chief Financial Officer ~~Comptroller~~ the names and addresses of all persons who have claimed an exemption pursuant to s. 199.185(1)(i) or a deduction pursuant to s. 220.63(5).

Section 191. Subsection (6) of section 213.255, Florida Statutes, is amended to read:

213.255 Interest.—Interest shall be paid on overpayments of taxes, payment of taxes not due, or taxes paid in error, subject to the following conditions:

(6) Interest shall be paid until a date determined by the department which shall be no more than 7 days prior to the date of the issuance of the refund warrant by the Chief Financial Officer ~~Comptroller~~.

Section 192. Subsection (9) of section 213.67, Florida Statutes, is amended to read:

213.67 Garnishment.—

(9) The department shall provide notice to the Chief Financial Officer ~~Comptroller~~, in electronic or other form specified by the Chief Financial Officer ~~Comptroller~~, listing the taxpayers for which tax warrants are outstanding. Pursuant to subsection (1), the Chief Financial Officer ~~Comptroller~~ shall, upon notice from the department, withhold all payments to any person or business, as defined in s. 212.02, which provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state. The department may levy upon the withheld payments in accordance with subsection (3). The provisions of s. 215.422 do not apply from the date the notice is filed with the Chief Financial Officer ~~Comptroller~~ until the date the department notifies the Chief Financial Officer ~~Comptroller~~ of its consent to make payment to the person or 60 days after receipt of the department's notice in accordance with subsection (1), whichever occurs earlier.

Section 193. Subsection (4) of section 213.75, Florida Statutes, is amended to read:

213.75 Application of payments.—

(4) Any surplus proceeds remaining after the application of subsection (3) shall, upon application and satisfactory proof thereof, be refunded by the Chief Financial Officer ~~Comptroller~~ to the person or persons legally entitled thereto pursuant to s. 215.26.

Section 194. Section 215.02, Florida Statutes, is amended to read:

215.02 Manner of paying money into the Treasury.—Whenever any officer of this state or other person desires to pay any money into the Treasury of the state on account of his or her indebtedness to the state, the person shall first go to ~~into~~ the Department of Financial Services ~~Banking and Finance~~, ~~and there~~ ascertain from the department's books the amount of his or her indebtedness to the state, and ~~thereupon the department shall give that person a memorandum or certificate of the amount of such indebtedness, and on what account. Second, the person shall take said certificate with him or her to the Department of Insurance and deliver the same and~~ pay over to the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ the amount ascertained ~~called for in said certificate~~. ~~Third,~~ The Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall receive the money, make a proper entry thereof, ~~file the certificate of the Department of Banking and Finance,~~ and give ~~a certificate~~ to the party paying over the money~~, acknowledging the receipt of the money, and on what account; which certificate thus received, the party shall return to the Department of Banking and Finance, on receipt of which the department shall give the party~~ a receipt for the amount~~,~~ and enter a credit on the party's account in his or her books for the amount thus paid by him or her ~~to the Insurance Commissioner and Treasurer, and file the certificate received from the Insurance Commissioner and Treasurer~~.

Section 195. Section 215.03, Florida Statutes, is amended to read:

215.03 Party to be reimbursed on reversal of judgment for state.—Whenever upon appeal in civil cases, any judgment in favor of the state has been or shall be reversed and set aside, which may have been paid in part by the appellant, the Chief Financial Officer ~~Comptroller~~ shall issue his or her warrant ~~upon the Treasurer~~ to reimburse the appellant for all sums paid in discharge of such judgment and cost, provided the appellant shall adduce satisfactory evidence to the Chief Financial Officer ~~Comptroller~~ of the sums paid as aforesaid.

Section 196. Section 215.04, Florida Statutes, is amended to read:

215.04 Department of Financial Services ~~Banking and Finance~~ to report delinquents.—The Department of Financial Services ~~Banking and Finance~~ shall report to the state attorney of the proper circuit the name of any delinquent officer whose delinquency concerns the department, so soon as such delinquency shall occur; and the state attorney shall proceed forthwith against such delinquent.

Section 197. Section 215.05, Florida Statutes, is amended to read:

215.05 Department of Financial Services ~~Banking and Finance~~ to certify accounts of delinquents.—When any revenue officer or other person account-

able for public money shall neglect or refuse to pay into the treasury the sum or balance reported to be due to the state, upon the adjustment of that person's account, the Department of Financial Services ~~Banking and Finance~~ shall immediately hand over to the state attorney of the proper circuit the statement of the sum or balance certified under its seal of office, so due; and the state attorney shall institute suit for the recovery of the same, adding to the sum or balance stated to be due on such account the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment is obtained thereon, and an interest of 8 percent per annum from the time of the delinquent's receiving the money until it shall be paid into the State Treasury.

Section 198. Section 215.11, Florida Statutes, is amended to read:

215.11 Defaulting officers; Department of Financial Services ~~Banking and Finance~~ to report to clerk.—The Department of Financial Services ~~Banking and Finance~~ shall, within 90 days after the expiration of the term of office of any tax collector, sheriff, clerk of the circuit or county court, treasurer, or any other officer of any county who has the collection, custody, and control of any state funds, who shall be in arrears in his or her accounts with the state, make up and forward to the clerk of the circuit court of such county a statement of his or her accounts with the state.

Section 199. Paragraphs (d), (n), and (o) of subsection (4) of section 215.20, Florida Statutes, are amended, and paragraphs (p) through (y) of that subsection are renumbered as paragraphs (o) through (x), respectively, to read:

215.20 Certain income and certain trust funds to contribute to the General Revenue Fund.—

(4) The income of a revenue nature deposited in the following described trust funds, by whatever name designated, is that from which the appropriations authorized by subsection (3) shall be made:

(d) Within the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~:

1. The Administrative Trust Fund.

2. The Anti-Fraud Trust Fund.

3. The Financial Institutions' Regulatory Trust Fund.

4. The Mortgage Brokerage Guaranty Fund.

5. The Regulatory Trust Fund.

(n) Within the Department of Financial Services ~~Insurance~~:

1. The Agents and Solicitors County Tax Trust Fund.

2. The Insurance ~~Commissioner's~~ Regulatory Trust Fund.

~~(o) Within the Department of Labor and Employment Security or, if such department is terminated, within the agency or department to which the named trust fund has been transferred:~~

3.~~1.~~ The Special Disability Trust Fund.

4.~~2.~~ The Special Employment Security Administration Trust Fund.

5.~~3.~~ The Workers' Compensation Administration Trust Fund.

(o)~~(p)~~ Within the Department of Legal Affairs, the Crimes Compensation Trust Fund.

(p)~~(q)~~ Within the Department of Management Services:

1. The Administrative Trust Fund.
2. The Architects Incidental Trust Fund.
3. The Bureau of Aircraft Trust Fund.
4. The Florida Facilities Pool Working Capital Trust Fund.
5. The Grants and Donations Trust Fund.
6. The Motor Vehicle Operating Trust Fund.
7. The Police and Firefighters' Premium Tax Trust Fund.
8. The Public Employees Relations Commission Trust Fund.
9. The State Personnel System Trust Fund.
10. The Supervision Trust Fund.
11. The Working Capital Trust Fund.

(q)~~(r)~~ Within the Department of Revenue:

1. The Additional Court Cost Clearing Trust Fund.
2. The Administrative Trust Fund.
3. The Apalachicola Bay Oyster Surcharge Clearing Trust Fund.
4. The Certification Program Trust Fund.
5. The Fuel Tax Collection Trust Fund.
6. The Land Reclamation Trust Fund.
7. The Local Alternative Fuel User Fee Clearing Trust Fund.
8. The Local Option Fuel Tax Trust Fund.
9. The Motor Vehicle Rental Surcharge Clearing Trust Fund.

10. The Motor Vehicle Warranty Trust Fund.

11. The Oil and Gas Tax Trust Fund.

12. The Secondhand Dealer and Secondary Metals Recycler Clearing Trust Fund.

13. The Severance Tax Solid Mineral Trust Fund.

14. The State Alternative Fuel User Fee Clearing Trust Fund.

15. All taxes levied on motor fuels other than gasoline levied pursuant to the provisions of s. 206.87(1)(a).

(r)~~(s)~~ Within the Department of State:

1. The Division of Licensing Trust Fund.

2. The Records Management Trust Fund.

3. The trust funds administered by the Division of Historical Resources.

(s)~~(t)~~ Within the Department of Transportation, all income derived from outdoor advertising and overweight violations which is deposited in the State Transportation Trust Fund.

(t)~~(u)~~ Within the Department of Veterans' Affairs:

1. The Grants and Donations Trust Fund.

2. The Operations and Maintenance Trust Fund.

3. The State Homes for Veterans Trust Fund.

(u)~~(v)~~ Within the Division of Administrative Hearings, the Administrative Trust Fund.

(v)~~(w)~~ Within the Fish and Wildlife Conservation Commission:

1. The Conservation and Recreation Lands Program Trust Fund.

2. The Florida Panther Research and Management Trust Fund.

3. The Land Acquisition Trust Fund.

4. The Marine Resources Conservation Trust Fund, with the exception of those fees collected for recreational saltwater fishing licenses as provided in s. 372.57.

(w)~~(x)~~ Within the Florida Public Service Commission, the Florida Public Service Regulatory Trust Fund.

(x)~~(y)~~ Within the Justice Administrative Commission, the Indigent Criminal Defense Trust Fund.

The enumeration of the foregoing moneys or trust funds shall not prohibit the applicability thereto of s. 215.24 should the Governor determine that for the reasons mentioned in s. 215.24 the money or trust funds should be exempt herefrom, as it is the purpose of this law to exempt income from its force and effect when, by the operation of this law, federal matching funds or contributions or private grants to any trust fund would be lost to the state.

Section 200. Effective July 1, 2003, paragraph (cc) of subsection (4) of section 215.20, Florida Statutes, is amended to read:

215.20 Certain income and certain trust funds to contribute to the General Revenue Fund.—

(4) The income of a revenue nature deposited in the following described trust funds, by whatever name designated, is that from which the deductions authorized by subsection (3) shall be made:

(cc) The Insurance ~~Commissioner's~~ Regulatory Trust Fund created by s. 624.523.

The enumeration of the foregoing moneys or trust funds shall not prohibit the applicability thereto of s. 215.24 should the Governor determine that for the reasons mentioned in s. 215.24 the money or trust funds should be exempt herefrom, as it is the purpose of this law to exempt income from its force and effect when, by the operation of this law, federal matching funds or contributions or private grants to any trust fund would be lost to the state.

Section 201. Paragraphs (e) and (g) of subsection (1) of section 215.22, Florida Statutes, are amended to read:

215.22 Certain income and certain trust funds exempt.—

(1) The following income of a revenue nature or the following trust funds shall be exempt from the appropriation required by s. 215.20(1):

(e) State, agency, or political subdivision investments by the Chief Financial Officer ~~Treasurer~~.

(g) Self-insurance programs administered by the Chief Financial Officer ~~Treasurer~~.

Section 202. Effective July 1, 2003, paragraphs (e) and (g) of subsection (1) of section 215.22, Florida Statutes, are amended to read:

215.22 Certain income and certain trust funds exempt.—

(1) The following income of a revenue nature or the following trust funds shall be exempt from the deduction required by s. 215.20(1):

(e) State, agency, or political subdivision investments by the Chief Financial Officer ~~Treasurer~~.

(g) Self-insurance programs administered by the Chief Financial Officer ~~Treasurer~~.

Section 203. Section 215.23, Florida Statutes, is amended to read:

215.23 When contributions to be made.—The deductions required by s. 215.20 shall be paid into the appropriate fund ~~by the Department of Banking and Finance or~~ by the Chief Financial Officer ~~State Treasurer, as the case may be,~~ for quarterly periods ending March 31, June 30, September 30, and December 31 of each year, and when so paid shall thereupon become a part of that fund to be accounted for and disbursed as provided by law.

Section 204. Section 215.24, Florida Statutes, is amended to read:

215.24 Exemptions where federal contributions or private grants.—

(1) Should any state fund be the recipient of federal contributions or private grants, either by the matching of state funds or by a general donation to state funds, and the payment of moneys into the General Revenue Fund under s. 215.20 should cause such fund to lose federal or private assistance, the Governor shall certify to the Chief Financial Officer ~~Department of Banking and Finance and to the State Treasurer~~ that said income is for that reason exempt from the force and effect of s. 215.20.

(2) Should it be determined by the Governor that by reason of payments already made into the General Revenue Fund by any fund under this law, such fund is subject to the loss of federal or private assistance, then the Governor shall certify to the Chief Financial Officer ~~Department of Banking and Finance and to the State Treasurer~~ that the income from such assistance is exempt from the provisions of this law, and the Chief Financial Officer ~~Department of Banking and Finance or the State Treasurer, as the case may be,~~ shall thereupon refund and pay over to such fund any amount previously paid into the General Revenue Fund from such income.

Section 205. Section 215.25, Florida Statutes, is amended to read:

215.25 Manner of contributions; rules and regulations.—The Chief Financial Officer is ~~Department of Banking and Finance and the State Treasurer are hereby~~ authorized to ascertain and determine the manner in which the required amounts shall be deducted and paid and to adopt and effectuate such rules and procedure as may be necessary for carrying out the provisions of this law. Such rules and procedure shall be approved by the Executive Office of the Governor.

Section 206. Subsections (1), (2), and (5) of section 215.26, Florida Statutes, are amended to read:

215.26 Repayment of funds paid into State Treasury through error.—

(1) The Chief Financial Officer ~~Comptroller of the state~~ may refund to the person who paid same, or his or her heirs, personal representatives, or assigns, any moneys paid into the State Treasury which constitute:

(a) An overpayment of any tax, license, or account due;

(b) A payment where no tax, license, or account is due; and

(c) Any payment made into the State Treasury in error;

and if any such payment has been credited to an appropriation, such appropriation shall at the time of making any such refund, be charged therewith. There are appropriated from the proper respective funds from time to time such sums as may be necessary for such refunds.

(2) Application for refunds as provided by this section must be filed with the Chief Financial Officer ~~Comptroller~~, except as otherwise provided in this subsection, within 3 years after the right to the refund has accrued or else the right is barred. Except as provided in chapter 198 and s. 220.23, an application for a refund of a tax enumerated in s. 72.011, which tax was paid after September 30, 1994, and before July 1, 1999, must be filed with the Chief Financial Officer ~~Comptroller~~ within 5 years after the date the tax is paid, and within 3 years after the date the tax was paid for taxes paid on or after July 1, 1999. The Chief Financial Officer ~~Comptroller~~ may delegate the authority to accept an application for refund to any state agency, or the judicial branch, vested by law with the responsibility for the collection of any tax, license, or account due. The application for refund must be on a form approved by the Chief Financial Officer ~~Comptroller~~ and must be supplemented with additional proof the Chief Financial Officer ~~Comptroller~~ deems necessary to establish the claim; provided, the claim is not otherwise barred under the laws of this state. Upon receipt of an application for refund, the judicial branch or the state agency to which the funds were paid shall make a determination of the amount due. If an application for refund is denied, in whole or in part, the judicial branch or such state agency shall notify the applicant stating the reasons therefor. Upon approval of an application for refund, the judicial branch or such state agency shall furnish the Chief Financial Officer ~~Comptroller~~ with a properly executed voucher authorizing payment.

(5) When a taxpayer has pursued administrative remedies before the Department of Revenue pursuant to s. 213.21 and has failed to comply with the time limitations and conditions provided in ss. 72.011 and 120.80(14)(b), a claim of refund under subsection (1) shall be denied by the Chief Financial Officer ~~Comptroller~~. However, the Chief Financial Officer ~~Comptroller~~ may entertain a claim for refund under this subsection when the taxpayer demonstrates that his or her failure to pursue remedies under chapter 72 was not due to neglect or for the purpose of delaying payment of lawfully imposed taxes and can demonstrate reasonable cause for such failure.

Section 207. Section 215.29, Florida Statutes, is amended to read:

215.29 Classification of Chief Financial Officer's ~~Comptroller's~~ warrants; report.—All disbursements made by the state upon Chief Financial Officer's ~~Comptroller's~~ warrants shall be classified according to officers, offices, bureaus, divisions, boards, commissions, institutions, other agencies and undertakings, or the judicial branch, and shall be further classified according to personal services, contractual services, commodities, current charges, current obligations, capital outlays, debt payments, or investments or such additional classifications as may be prescribed or authorized by law. Such

detail classifications shall be printed in the Chief Financial Officer's ~~Comptroller's~~ annual reports.

Section 208. Section 215.31, Florida Statutes, is amended to read:

215.31 State funds; deposit in State Treasury.—Revenue, including licenses, fees, imposts, or exactions collected or received under the authority of the laws of the state by each and every state official, office, employee, bureau, division, board, commission, institution, agency, or undertaking of the state or the judicial branch shall be promptly deposited in the State Treasury, and immediately credited to the appropriate fund as herein provided, properly accounted for by the Department of Financial Services ~~Banking and Finance~~ as to source and no money shall be paid from the State Treasury except as appropriated and provided by the annual General Appropriations Act, or as otherwise provided by law.

Section 209. Section 215.32, Florida Statutes, is amended to read:

215.32 State funds; segregation.—

(1) All moneys received by the state shall be deposited in the State Treasury unless specifically provided otherwise by law and shall be deposited in and accounted for by the Chief Financial Officer ~~Treasurer and the Department of Banking and Finance~~ within the following funds, which funds are hereby created and established:

(a) General Revenue Fund.

(b) Trust funds.

(c) Working Capital Fund.

(d) Budget Stabilization Fund.

(2) The source and use of each of these funds shall be as follows:

(a) The General Revenue Fund shall consist of all moneys received by the state from every source whatsoever, except as provided in paragraphs (b) and (c). Such moneys shall be expended pursuant to General Revenue Fund appropriations acts or transferred as provided in paragraph (c). Annually, at least 5 percent of the estimated increase in General Revenue Fund receipts for the upcoming fiscal year over the current year General Revenue Fund effective appropriations shall be appropriated for state-level capital outlay, including infrastructure improvement and general renovation, maintenance, and repairs.

(b)1. The trust funds shall consist of moneys received by the state which under law or under trust agreement are segregated for a purpose authorized by law. The state agency or branch of state government receiving or collecting such moneys shall be responsible for their proper expenditure as provided by law. Upon the request of the state agency or branch of state government responsible for the administration of the trust fund, the Chief Financial Officer ~~Comptroller~~ may establish accounts within the trust fund at a level considered necessary for proper accountability. Once an account is

established within a trust fund, the Chief Financial Officer ~~Comptroller~~ may authorize payment from that account only upon determining that there is sufficient cash and releases at the level of the account.

2. In order to maintain a minimum number of trust funds in the State Treasury, each state agency or the judicial branch may consolidate, if permitted under the terms and conditions of their receipt, the trust funds administered by it; provided, however, the agency or judicial branch employs effectively a uniform system of accounts sufficient to preserve the integrity of such trust funds; and provided, further, that consolidation of trust funds is approved by the Governor or the Chief Justice.

3. All such moneys are hereby appropriated to be expended in accordance with the law or trust agreement under which they were received, subject always to the provisions of chapter 216 relating to the appropriation of funds and to the applicable laws relating to the deposit or expenditure of moneys in the State Treasury.

4.a. Notwithstanding any provision of law restricting the use of trust funds to specific purposes, unappropriated cash balances from selected trust funds may be authorized by the Legislature for transfer to the Budget Stabilization Fund and Working Capital Fund in the General Appropriations Act.

b. This subparagraph does not apply to trust funds required by federal programs or mandates; trust funds established for bond covenants, indentures, or resolutions whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body; the State Transportation Trust Fund; the trust fund containing the net annual proceeds from the Florida Education Lotteries; the Florida Retirement System Trust Fund; trust funds under the management of the Board of Regents, where such trust funds are for auxiliary enterprises, self-insurance, and contracts, grants, and donations, as those terms are defined by general law; trust funds that serve as clearing funds or accounts for the Chief Financial Officer ~~Comptroller~~ or state agencies; trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and other trust funds authorized by the State Constitution.

(c)1. The Budget Stabilization Fund shall consist of amounts equal to at least 5 percent of net revenue collections for the General Revenue Fund during the last completed fiscal year. The Budget Stabilization Fund's principal balance shall not exceed an amount equal to 10 percent of the last completed fiscal year's net revenue collections for the General Revenue Fund. As used in this paragraph, the term "last completed fiscal year" means the most recently completed fiscal year prior to the regular legislative session at which the Legislature considers the General Appropriations Act for the year in which the transfer to the Budget Stabilization Fund must be made under this paragraph.

2. By September 15 of each year, the Governor shall authorize the Chief Financial Officer ~~Comptroller~~ to transfer, and the Chief Financial Officer

~~Comptroller~~ shall transfer pursuant to appropriations made by law, to the Budget Stabilization Fund the amount of money needed for the balance of that fund to equal the amount specified in subparagraph 1., less any amounts expended and not restored. The moneys needed for this transfer may be appropriated by the Legislature from any funds.

3. Unless otherwise provided in this subparagraph, an expenditure from the Budget Stabilization Fund must be restored pursuant to a restoration schedule that provides for making five equal annual transfers from the General Revenue Fund, beginning in the fiscal year following that in which the expenditure was made. For any Budget Stabilization Fund expenditure, the Legislature may establish by law a different restoration schedule and such change may be made at any time during the restoration period. Moneys are hereby appropriated for transfers pursuant to this subparagraph.

4. The Budget Stabilization Fund and the Working Capital Fund may be used as revolving funds for transfers as provided in s. 17.61 ~~s. 18.125~~; however, any interest earned must be deposited in the General Revenue Fund.

5. The Chief Financial Officer ~~Comptroller~~ and the Department of Management Services shall transfer funds to water management districts to pay eligible water management district employees for all benefits due under s. 373.6065, as long as funds remain available for the program described under s. 100.152.

(d) The Working Capital Fund shall consist of moneys in the General Revenue Fund which are in excess of the amount needed to meet General Revenue Fund appropriations for the current fiscal year. Each year, no later than the publishing date of the annual financial statements for the state by the Chief Financial Officer ~~Comptroller~~ under s. 216.102, funds shall be transferred between the Working Capital Fund and the General Revenue Fund to establish the balance of the Working Capital Fund for that fiscal year at the amount determined pursuant to this paragraph.

Section 210. Subsections (2) and (3) of section 215.3206, Florida Statutes, are amended to read:

215.3206 Trust funds; termination or re-creation.—

(2) If the trust fund is terminated and not immediately re-created, all cash balances and income of the trust fund shall be deposited into the General Revenue Fund. The agency or Chief Justice shall pay any outstanding debts of the trust fund as soon as practicable, and the Chief Financial Officer ~~Comptroller~~ shall close out and remove the trust fund from the various state accounting systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities. No appropriation or budget amendment shall be construed to authorize any encumbrance of funds from a trust fund after the date on which the trust fund is terminated or is judicially determined to be invalid.

(3) On or before September 1 of each year, the Chief Financial Officer ~~Comptroller~~ shall submit to the Executive Office of the Governor, the Presi-

dent of the Senate, and the Speaker of the House of Representatives a list of trust funds that are scheduled to terminate within 12 months after that date and also, beginning September 1, 1996, a list of all trust funds that are exempt from automatic termination pursuant to the provisions of s. 19(f)(3), Art. III of the State Constitution, listing revenues of the trust funds by major revenue category for each of the last 4 fiscal years.

Section 211. Paragraph (a) of subsection (2) of section 215.3208, Florida Statutes, is amended to read:

215.3208 Trust funds; legislative review.—

(2)(a) When the Legislature terminates a trust fund, the agency or branch of state government that administers the trust fund shall pay any outstanding debts or obligations of the trust fund as soon as practicable, and the Chief Financial Officer ~~Comptroller~~ shall close out and remove the trust fund from the various state accounting systems, using generally accepted accounting principles concerning assets, liabilities, and warrants outstanding.

Section 212. Subsections (2), (3), and (4) of section 215.322, Florida Statutes, are amended to read:

215.322 Acceptance of credit cards, charge cards, or debit cards by state agencies, units of local government, and the judicial branch.—

(2) A state agency as defined in s. 216.011, or the judicial branch, may accept credit cards, charge cards, or debit cards in payment for goods and services with the prior approval of the Chief Financial Officer ~~Treasurer~~. When the Internet or other related electronic methods are to be used as the collection medium, the State Technology Office shall review and recommend to the Chief Financial Officer ~~Treasurer~~ whether to approve the request with regard to the process or procedure to be used.

(3) The Chief Financial Officer ~~Treasurer~~ shall adopt rules governing the establishment and acceptance of credit cards, charge cards, or debit cards by state agencies or the judicial branch, including, but not limited to, the following:

(a) Utilization of a standardized contract between the financial institution or other appropriate intermediaries and the agency or judicial branch which shall be developed by the Chief Financial Officer ~~Treasurer~~ or approval by the Chief Financial Officer ~~Treasurer~~ of a substitute agreement.

(b) Procedures which permit an agency or officer accepting payment by credit card, charge card, or debit card to impose a convenience fee upon the person making the payment. However, the total amount of such convenience fees shall not exceed the total cost to the state agency. A convenience fee is not refundable to the payor. Notwithstanding the foregoing, this section shall not be construed to permit surcharges on any other credit card purchase in violation of s. 501.0117.

(c) All service fees payable pursuant to this section when practicable shall be invoiced and paid by state warrant or such other manner that is

satisfactory to the Chief Financial Officer ~~Comptroller~~ in accordance with the time periods specified in s. 215.422.

(d) Submission of information to the Chief Financial Officer ~~Treasurer~~ concerning the acceptance of credit cards, charge cards, or debit cards by all state agencies or the judicial branch.

(e) A methodology for agencies to use when completing the cost-benefit analysis referred to in subsection (1). The methodology must consider all quantifiable cost reductions, other benefits to the agency, and potential impact on general revenue. The methodology must also consider nonquantifiable benefits such as the convenience to individuals and businesses that would benefit from the ability to pay for state goods and services through the use of credit cards, charge cards, and debit cards.

(4) The Chief Financial Officer may ~~Treasurer is authorized to~~ establish contracts with one or more financial institutions, credit card companies, or other entities which may lawfully provide such services, in a manner consistent with chapter 287, for processing credit card, charge card, or debit card collections for deposit into the State Treasury or another qualified public depository. Any state agency, or the judicial branch, which accepts payment by credit card, charge card, or debit card shall use at least one of the contractors established by the Chief Financial Officer ~~Treasurer~~ unless the state agency or judicial branch obtains authorization from the Chief Financial Officer ~~Treasurer~~ to use another contractor which is more advantageous to such state agency or the judicial branch. Such contracts may authorize a unit of local government to use the services upon the same terms and conditions for deposit of credit card, charge card, or debit card transactions into its qualified public depositories.

Section 213. Subsections (1) and (2) of section 215.34, Florida Statutes, are amended to read:

215.34 State funds; noncollectible items; procedure.—

(1) Any check, draft, or other order for the payment of money in payment of any licenses, fees, taxes, commissions, or charges of any sort authorized to be made under the laws of the state and deposited in the State Treasury as provided herein, which may be returned for any reason by the bank or other payor upon which same shall have been drawn shall be forthwith returned by the Chief Financial Officer ~~State Treasurer~~ for collection to the state officer, the state agency, or the entity of the judicial branch making the deposit. In such case, the Chief Financial Officer may ~~Treasurer is hereby authorized to~~ issue a debit memorandum charging an account of the agency, officer, or entity of the judicial branch which originally received the payment. The original of the debit memorandum shall state the reason for the return of the check, draft, or other order and shall accompany the item being returned to the officer, agency, or entity of the judicial branch being charged~~,~~ ~~and a copy of the debit memorandum shall be sent to the Comptroller~~. The officer, agency, or entity of the judicial branch receiving the charged-back item shall prepare a journal transfer which shall debit the charge against the fund or account to which the same shall have been originally credited. Such procedure for handling noncollectible items shall not be construed as

paying funds out of the State Treasury without an appropriation, but shall be considered as an administrative procedure for the efficient handling of state records and accounts.

(2) Whenever a check, draft, or other order for the payment of money is returned by the Chief Financial Officer ~~State Treasurer~~, or by a qualified public depository as defined in s. 280.02, to a state officer, a state agency, or the judicial branch for collection, the officer, agency, or judicial branch shall add to the amount due a service fee of $15 or 5 percent of the face amount of the check, draft, or order, whichever is greater. An agency or the judicial branch may adopt a rule which prescribes a lesser maximum service fee, which shall be added to the amount due for the dishonored check, draft, or other order tendered for a particular service, license, tax, fee, or other charge, but in no event shall the fee be less than $15. The service fee shall be in addition to all other penalties imposed by law, except that when other charges or penalties are imposed by an agency related to a noncollectible item, the amount of the service fee shall not exceed $150. Proceeds from this fee shall be deposited in the same fund as the collected item. Nothing in this section shall be construed as authorization to deposit moneys outside the State Treasury unless specifically authorized by law.

Section 214. Section 215.35, Florida Statutes, is amended to read:

215.35 State funds; warrants and their issuance.—All warrants issued by the Chief Financial Officer ~~Comptroller~~ shall be numbered in chronological order commencing with number one in each fiscal year and each warrant shall refer to the Chief Financial Officer's ~~Comptroller's~~ voucher by the number thereof, which voucher shall also be numbered as above set forth. Each warrant shall state the name of the payee thereof and the amount allowed, and said warrant shall be stated in words at length. No warrant shall issue until same has been authorized by an appropriation made by law but such warrant need not state or set forth such authorization. The Chief Financial Officer ~~Comptroller~~ shall register and maintain a record of each warrant in his or her office. The record shall show the funds, accounts, purposes, and departments involved in the issuance of each warrant. In those instances where the expenditure of funds of regulatory boards or commissions has been provided for by laws other than the annual appropriations bill, warrants shall be issued upon requisition to the Chief Financial Officer ~~State Comptroller~~ by the governing body of such board or commission.

Section 215. Section 215.405, Florida Statutes, is amended to read:

215.405 State agencies and the judicial branch authorized to collect costs of fingerprinting.—Any state agency, or the judicial branch, exercising regulatory authority and authorized to take fingerprints of persons within or seeking to come within such agency's or the judicial branch's regulatory power may collect from the person or entity on whose behalf the fingerprints were submitted the actual costs of processing such fingerprints including, but not limited to, any charges imposed by the Department of Law Enforcement or any agency or branch of the United States Government. This provision shall constitute express authority for state agencies and the judicial

branch to collect the actual costs of processing the fingerprints either prior to or subsequent to the actual processing and shall supersede any other law to the contrary. To administer the provisions of this section, a state agency, or the judicial branch, electing to collect the cost of fingerprinting is empowered to promulgate and adopt rules to establish the amounts and the methods of payment needed to collect such costs. Collections made under these provisions shall be deposited with the Chief Financial Officer ~~Treasurer~~ to an appropriate trust fund account to be designated by the Executive Office of the Governor.

Section 216. Section 215.42, Florida Statutes, is amended to read:

215.42 Purchases from appropriations, proof of delivery.—The Chief Financial Officer ~~State Comptroller~~ may require proof, as he or she deems necessary, of delivery and receipt of purchases before honoring any voucher for payment from appropriations made in the General Appropriations Act or otherwise provided by law.

Section 217. Section 215.422, Florida Statutes, is amended to read:

215.422 Warrants, vouchers, and invoices; processing time limits; dispute resolution; agency or judicial branch compliance.—

(1) The voucher authorizing payment of an invoice submitted to an agency of the state or the judicial branch, required by law to be filed with the Chief Financial Officer ~~Comptroller~~, shall be filed with the Chief Financial Officer ~~Comptroller~~ not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the voucher shall contain a statement of the dispute and authorize payment only in the amount not disputed. The Chief Financial Officer ~~Comptroller~~ may establish dollar thresholds and other criteria for all invoices and may delegate to a state agency or the judicial branch responsibility for maintaining the official vouchers and documents for invoices which do not exceed the thresholds or which meet the established criteria. Such records shall be maintained in accordance with the requirements established by the Secretary of State. The electronic payment request transmission to the Chief Financial Officer ~~Comptroller~~ shall constitute filing of a voucher for payment of invoices for which the Chief Financial Officer ~~Comptroller~~ has delegated to an agency custody of official records. Approval and inspection of goods or services shall take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise. If a voucher filed within the 20-day period is returned by the Department of Financial Services ~~Banking and Finance~~ because of an error, it shall nevertheless be deemed timely filed. The 20-day filing requirement may be waived in whole or in part by the Department of Financial Services ~~Banking and Finance~~ on a showing of exceptional circumstances in accordance with rules and regulations of the department. For the purposes of determining the receipt of invoice date, the agency or the judicial branch is deemed to receive an invoice on the date on which a proper invoice is first received at the place designated by the agency or the judicial branch. The agency or the judicial branch is deemed to receive an invoice on the date of the invoice if the agency or the judicial branch has failed to annotate the

invoice with the date of receipt at the time the agency or the judicial branch actually received the invoice or failed at the time the order is placed or contract made to designate a specific location to which the invoice must be delivered.

(2) The warrant in payment of an invoice submitted to an agency of the state or the judicial branch shall be issued not later than 10 days after filing of the voucher authorizing payment. However, this requirement may be waived in whole or in part by the Department of Financial Services ~~Banking and Finance~~ on a showing of exceptional circumstances in accordance with rules and regulations of the department. If the 10-day period contains fewer than 6 working days, the Department of Financial Services ~~Banking and Finance~~ shall be deemed in compliance with this subsection if the warrant is issued within 6 working days without regard to the actual number of calendar days. For purposes of this section, a payment is deemed to be issued on the first working day that payment is available for delivery or mailing to the vendor.

(3)(a) Each agency of the state or the judicial branch which is required by law to file vouchers with the Chief Financial Officer ~~Comptroller~~ shall keep a record of the date of receipt of the invoice; dates of receipt, inspection, and approval of the goods or services; date of filing of the voucher; and date of issuance of the warrant in payment thereof. If the voucher is not filed or the warrant is not issued within the time required, an explanation in writing by the agency head or the Chief Justice shall be submitted to the Department of Financial Services ~~Banking and Finance~~ in a manner prescribed by it. Agencies and the judicial branch shall continue to deliver or mail state payments promptly.

(b) If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency or judicial branch shall pay to the vendor, in addition to the amount of the invoice, interest at a rate as established pursuant to s. 55.03(1) on the unpaid balance from the expiration of such 40-day period until such time as the warrant is issued to the vendor. Such interest shall be added to the invoice at the time of submission to the Chief Financial Officer ~~Comptroller~~ for payment whenever possible. If addition of the interest penalty is not possible, the agency or judicial branch shall pay the interest penalty payment within 15 days after issuing the warrant. The provisions of this paragraph apply only to undisputed amounts for which payment has been authorized. Disputes shall be resolved in accordance with rules developed and adopted by the Chief Justice for the judicial branch, and rules adopted by the Department of Financial Services ~~Banking and Finance~~ or in a formal administrative proceeding before an administrative law judge of the Division of Administrative Hearings for state agencies, provided that, for the purposes of ss. 120.569 and 120.57(1), no party to a dispute involving less than $1,000 in interest penalties shall be deemed to be substantially affected by the dispute or to have a substantial interest in the decision resolving the dispute. In the case of an error on the part of the vendor, the 40-day period shall begin to run upon receipt by the agency or the judicial branch of a corrected invoice or other remedy of the error. The provisions of this paragraph do not apply when the filing requirement under subsection

(1) or subsection (2) has been waived in whole by the Department of Financial Services ~~Banking and Finance~~. The various state agencies and the judicial branch shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. The budget request submitted to the Legislature shall specifically disclose the amount of any interest paid by any agency or the judicial branch pursuant to this subsection. The temporary unavailability of funds to make a timely payment due for goods or services does not relieve an agency or the judicial branch from the obligation to pay interest penalties under this section.

(c) An agency or the judicial branch may make partial payments to a contractor upon partial delivery of goods or services or upon partial completion of construction when a request for such partial payment is made by the contractor and approved by the agency. Provisions of this section and rules of the Department of Financial Services ~~Banking and Finance~~ shall apply to partial payments in the same manner as they apply to full payments.

(4) If the terms of the invoice provide a discount for payment in less than 30 days, agencies of the state and the judicial branch shall preferentially process it and use all diligence to obtain the saving by compliance with the invoice terms.

(5) All purchasing agreements between a state agency or the judicial branch and a vendor, applicable to this section, shall include a statement of the vendor's rights and the state's responsibilities under this section. The vendor's rights shall include being provided with the telephone number of the vendor ombudsman within the Department of Financial Services ~~Banking and Finance~~, which information shall also be placed on all agency or judicial branch purchase orders.

(6) The Department of Financial Services ~~Banking and Finance~~ shall monitor each agency's and the judicial branch's compliance with the time limits and interest penalty provisions of this section. The department shall provide a report to an agency or to the judicial branch if the department determines that the agency or the judicial branch has failed to maintain an acceptable rate of compliance with the time limits and interest penalty provisions of this section. The department shall establish criteria for determining acceptable rates of compliance. The report shall also include a list of late vouchers or payments, the amount of interest owed or paid, and any corrective actions recommended. The department shall perform monitoring responsibilities, pursuant to this section, using the Management Services and Purchasing Subsystem or the Florida Accounting Information Resource Subsystem provided in s. 215.94. Each agency and the judicial branch shall be responsible for the accuracy of information entered into the Management Services and Purchasing Subsystem and the Florida Accounting Information Resource Subsystem for use in this monitoring.

(7) There is created a vendor ombudsman within the Department of Financial Services ~~Banking and Finance~~ who shall be responsible for the following functions:

(a) Performing the duties of the department pursuant to subsection (6).

(b) Reviewing requests for waivers due to exceptional circumstances.

(c) Disseminating information relative to the prompt payment policies of this state and assisting vendors in receiving their payments in a timely manner.

(d) Performing such other duties as determined by the department.

(8) The Department of Financial Services ~~Banking and Finance~~ is authorized and directed to adopt and promulgate rules and regulations to implement this section and for resolution of disputes involving amounts of less than $1,000 in interest penalties for state agencies. No agency or the judicial branch shall adopt any rule or policy that is inconsistent with this section or the Department of Financial Services' ~~Banking and Finance's~~ rules or policies.

(9) Each agency and the judicial branch shall include in the official position description of every officer or employee who is responsible for the approval or processing of vendors' invoices or distribution of warrants to vendors that the requirements of this section are mandatory.

(10) Persistent failure to comply with this section by any agency of the state or the judicial branch shall constitute good cause for discharge of employees duly found responsible, or predominantly responsible, for failure to comply.

(11) Travel and other reimbursements to state officers and employees must be the same as payments to vendors under this section, except payment of Class C travel subsistence. Class C travel subsistence shall be paid in accordance with the schedule established by the Chief Financial Officer ~~Comptroller~~ pursuant to s. 112.061(5)(b). This section does not apply to payments made to state agencies, the judicial branch, or the legislative branch.

(12) In the event that a state agency or the judicial branch contracts with a third party, uses a revolving fund, or pays from a local bank account to process and pay invoices for goods or services, all requirements for financial obligations and time processing set forth in this section shall be applicable and the state agency or the judicial branch shall be responsible for paying vendors the interest assessed for untimely payment. The state agency or the judicial branch may, through its contract with a third party, require the third party to pay interest from the third party's funds.

(13) Notwithstanding the provisions of subsections (3) and (12), in order to alleviate any hardship that may be caused to a health care provider as a result of delay in receiving reimbursement for services, any payment or payments for hospital, medical, or other health care services which are to be reimbursed by a state agency or the judicial branch, either directly or indirectly, shall be made to the health care provider not more than 35 days from the date eligibility for payment of such claim is determined. If payment is not issued to a health care provider within 35 days after the date eligibility

for payment of the claim is determined, the state agency or the judicial branch shall pay the health care provider interest at a rate of 1 percent per month calculated on a calendar day basis on the unpaid balance from the expiration of such 35-day period until such time as payment is made to the health care provider, unless a waiver in whole has been granted by the Department of Financial Services ~~Banking and Finance~~ pursuant to subsection (1) or subsection (2).

(14) The Chief Financial Officer ~~Comptroller~~ may adopt rules to authorize advance payments for goods and services, including, but not limited to, maintenance agreements and subscriptions. Such rules shall provide objective criteria for determining when it is in the best interest of the state to make payments in advance and shall also provide for adequate protection to ensure that such goods or services will be provided.

(15) Nothing contained in this section shall be construed to be an appropriation. Any interest which becomes due and owing pursuant to this section shall only be payable from the appropriation charged for such goods or services.

(16) Notwithstanding the provisions of s. 24.120(3), applicable to warrants issued for payment of invoices submitted by the Department of the Lottery, the Chief Financial Officer ~~Comptroller~~ may, by written agreement with the Department of the Lottery, establish a shorter time requirement than the 10 days provided in subsection (2) for warrants issued for payment. Pursuant to such written agreement, the Department of the Lottery shall reimburse the Chief Financial Officer ~~Comptroller~~ for costs associated with processing invoices under the agreement.

Section 218. Section 215.50, Florida Statutes, is amended to read:

215.50 Custody of securities purchased; income.—

(1) All securities purchased or held may, with the approval of the board, be in the custody of the Chief Financial Officer ~~Treasurer~~ or the Chief Financial Officer ~~Treasurer~~ as treasurer ex officio of the board, or be deposited with a bank or trust company to be held in safekeeping by such bank or trust company for the collection of principal and interest or of the proceeds of the sale thereof.

(2) It shall be the duty of the board or of the Chief Financial Officer ~~Treasurer~~, as custodian of the securities of the board, to collect the interest or other income on, and the principal of, such securities in their custody as the sums become due and payable and to pay the same, when so collected, into the investment account of the fund to which the investments belong.

(3) The Chief Financial Officer ~~Treasurer~~, as custodian of securities owned by the Florida Retirement System Trust Fund and the Florida Survivor Benefit Trust Fund, shall collect the interest, dividends, prepayments, maturities, proceeds from sales, and other income accruing from such assets. As such income is collected by the Chief Financial Officer ~~Treasurer~~, it shall be deposited directly into a commercial bank to the credit of the State Board of Administration. Such bank accounts as may be required for this purpose

shall offer satisfactory collateral security as provided by chapter 280. In the event funds so deposited according to the provisions of this section are required for the purpose of paying benefits or other operational needs, the State Board of Administration shall remit to the Florida Retirement System Trust Fund in the State Treasury such amounts as may be requested by the Department of Management Services.

(4) Securities that the board selects to use for options operations under s. 215.45 or for lending under s. 215.47(16) shall be registered by the Chief Financial Officer ~~Treasurer~~ in the name of a third-party nominee in order to facilitate such operations.

Section 219. Section 215.551, Florida Statutes, is amended to read:

215.551 Federal Use of State Lands Trust Fund; county distribution.—

(1) The Chief Financial Officer ~~Comptroller~~ may make distribution of the Federal Use of State Lands Trust Fund, when so requested by the counties in interest, of such amounts as may be accumulated in that fund.

(2) The Chief Financial Officer ~~Comptroller~~ shall ascertain, from the records of the General Land Office or other departments in Washington, D.C., the number of acres of land situated in the several counties in which the Apalachicola, Choctawhatchee, Ocala, and Osceola Forest Reserves are located, the number of acres of land of such forest reserve embraced in each of the counties in each of the reserves, and, also, the amount of money received by the United States Government from each of the reserves, respectively. The Chief Financial Officer ~~Comptroller~~ shall apportion the money on hand to each county in each reserve, respectively and separately; such distribution shall be based upon the number of acres of land embraced in the Apalachicola Forest, Choctawhatchee Forest, Ocala Forest, and Osceola Forest, respectively, in each county and shall be further based upon the amount collected by the United States from each of such forests, so that such distribution, when made, will include for each county the amount due each county, based upon the receipts for the particular forest and the acreage in the particular county in which such forest is located. The Chief Financial Officer ~~Comptroller~~ shall issue two warrants ~~on the Treasurer~~ in each case, the sum of which shall be the amount due each of such counties from the fund. One warrant shall be payable to the county for the county general road fund, and one warrant, of equal amount, shall be payable to such county's district school board for the district school fund.

(3) In the event that actual figures of receipts from different reserves cannot be obtained by counties, so as to fully comply with subsections (1) and (2), the Chief Financial Officer ~~Comptroller~~ may adjust the matter according to the United States statutes, or as may appear to him or her to be just and fair, and with the approval of all counties in interest.

(4) The moneys that may be received and credited to the Federal Use of State Lands Trust Fund are appropriated for the payment of the warrants of the Chief Financial Officer ~~Comptroller drawn on the Treasurer~~ in pursuance of this section.

Section 220. Section 215.552, Florida Statutes, is amended to read:

215.552 Federal Use of State Lands Trust Fund; land within military installations; county distribution.—The Chief Financial Officer ~~Comptroller~~ shall distribute moneys from the Federal Use of State Lands Trust Fund when so requested by the counties so affected. The Chief Financial Officer ~~Comptroller~~ shall apportion the money on hand equal to the percentage of land in each county within each military installation, and the amount so apportioned to each county shall be applied by such counties equally divided between the district school fund and the general road fund of such counties.

Section 221. Paragraph (c) of subsection (2), paragraph (d) of subsection (4), and paragraphs (a), (b), and (c) of subsection (6) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner's, mobile home owner's, farm owner's, condominium association, condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including the Citizens Property Insurance Corporation and any joint underwriting association or similar entity created pursuant to law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowner's policy, if such policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created pursuant to s. 627.351(6), or from the Florida Windstorm Underwriting Association, created pursuant to s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and ~~either~~ such association. Each assumption agreement between the ~~either~~ association and such authorized insurer must be approved by the Florida Department of Insurance or the Office of Insurance Regulation prior to the effective date of the assumption, and the Department of Insurance or the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer.

(4) REIMBURSEMENT CONTRACTS.—

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as

directed by the board. The contract shall require the insurer to report to the board no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the board to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the board to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

2. In determining reimbursements pursuant to this subsection, the contract shall provide that the board shall:

a. First reimburse insurers writing covered policies, which insurers are in full compliance with this section and have petitioned the Office of Insurance Regulation ~~Department of Insurance~~ and qualified as limited apportionment companies under s. 627.351(2)(b)3. The amount of such reimbursement shall be the lesser of $10 million or an amount equal to 10 times the insurer's reimbursement premium for the current year. The amount of reimbursement paid under this sub-subparagraph may not exceed the full amount of reimbursement promised in the reimbursement contract. This sub-subparagraph does not apply with respect to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds $2 billion. Only one member of any insurer group may receive reimbursement under this sub-subparagraph.

b. Next pay to each insurer such insurer's projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year; provided, entities created pursuant to s. 627.351 shall be further reimbursed in accordance with sub-subparagraph c.

c. Thereafter, establish, based on reimbursable losses, the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient to reimburse entities created pursuant to s. 627.351 for losses exceeding the amounts payable pursuant to sub-subparagraph b. for the current contract year.

(6) REVENUE BONDS.—

(a) General provisions.—

1. Upon the occurrence of a hurricane and a determination that the moneys in the fund are or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the board may take the necessary steps under paragraph (b) or paragraph (c) for the issuance of revenue bonds for the benefit of the fund. The proceeds of such revenue bonds may be used to make reimbursement payments under reimbursement contracts; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds,

costs of printing the official statement, costs of publishing notices of sale of the bonds, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the board may determine. The term of the bonds may not exceed 30 years. The board may pledge or authorize the corporation to pledge all or a portion of all revenues under subsection (5) and under subparagraph 3. to secure such revenue bonds and the board may execute such agreements between the board and the issuer of any revenue bonds and providers of other financing arrangements under paragraph (7)(b) as the board deems necessary to evidence, secure, preserve, and protect such pledge. If reimbursement premiums received under subsection (5) or earnings on such premiums are used to pay debt service on revenue bonds, such premiums and earnings shall be used only after the use of the moneys derived from assessments under subparagraph 3. The funds, credit, property, or taxing power of the state or political subdivisions of the state shall not be pledged for the payment of such bonds. The board may also enter into agreements under paragraph (b) or paragraph (c) for the purpose of issuing revenue bonds in the absence of a hurricane upon a determination that such action would maximize the ability of the fund to meet future obligations.

2. The Legislature finds and declares that the issuance of bonds under this subsection is for the public purpose of paying the proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policyholders to assure that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies after the occurrence of a hurricane. Revenue bonds may not be issued under this subsection until validated under chapter 75. The validation of at least the first obligations incurred pursuant to this subsection shall be appealed to the Supreme Court, to be handled on an expedited basis.

3. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds, the board shall direct the Office of Insurance Regulation ~~Department of Insurance~~ to levy an emergency assessment on each insurer writing property and casualty business in this state. Pursuant to the emergency assessment, each such insurer shall pay to the corporation by July 1 of each year an amount set by the board not exceeding 2 percent of its gross direct written premium for the prior year from all property and casualty business in this state except for workers' compensation, except that, if the Governor has declared a state of emergency under s. 252.36 due to the occurrence of a covered event, the amount of the assessment for the contract year may be increased to an amount not exceeding 4 percent of such premium. Any assessment authority not used for the contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds for that contract year, the board shall direct the Office of Insurance Regulation ~~Department of Insurance~~ to levy an emergency assessment up to an amount not exceeding the amount of unused assessment

authority from a previous contract year or years, plus an additional 2 percent if the Governor has declared a state of emergency under s. 252.36 due to the occurrence of a covered event. Any assessment authority not used for the contract year may be used for a subsequent contract year. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required by s. 624.424 and any rules adopted under such section, except for those lines identified as accident and health insurance. The annual assessments under this subparagraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing issuance of the bonds. An insurer shall not at any time be subject to aggregate annual assessments under this subparagraph of more than 2 percent of premium, except that in the case of a declared emergency, an insurer shall not at any time be subject to aggregate annual assessments under this subparagraph of more than 6 percent of premium; provided, no more than 4 percent may be assessed for any one contract year. Any rate filing or portion of a rate filing reflecting a rate change attributable entirely to the assessment levied under this subparagraph shall be deemed approved when made, subject to the authority of the Office of Insurance Regulation ~~Department of Insurance~~ to require actuarial justification as to the adequacy of any rate at any time. If the rate filing reflects only a rate change attributable to the assessment under this paragraph, the filing may consist of a certification so stating. The assessments otherwise payable to the corporation pursuant to this subparagraph shall be paid instead to the fund unless and until the Office of Insurance Regulation ~~Department of Insurance~~ has received from the corporation and the fund a notice, which shall be conclusive and upon which the Office of Insurance Regulation ~~Department of Insurance~~ may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments pursuant to paragraph (b). On or after the date of such notice and until such date as the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreements with the corporation.

(b) Revenue bond issuance through counties or municipalities.—

1. If the board elects to enter into agreements with local governments for the issuance of revenue bonds for the benefit of the fund, the board shall enter into such contracts with one or more local governments, including agreements providing for the pledge of revenues, as are necessary to effect such issuance. The governing body of a county or municipality is authorized to issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the Florida Hurricane Catastrophe Fund, for the purposes set forth in this section or for the purpose of paying the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane by assuring that policyholders located in this state are able to recover claims under property insurance policies after a covered event.

2. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any local government may provide for the payment of fund reimbursements, regardless of whether or not the losses for which reimbursement is made occurred within or outside of the territorial jurisdiction of the local government.

3. The state hereby covenants with holders of bonds issued under this paragraph that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation ~~Department of Insurance~~ to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. There shall be no liability on the part of, and no cause of action shall arise against any members or employees of the governing body of a local government for any actions taken by them in the performance of their duties under this paragraph.

(c) Florida Hurricane Catastrophe Fund Finance Corporation.—

1. In addition to the findings and declarations in subsection (1), the Legislature also finds and declares that:

a. The public benefits corporation created under this paragraph will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane damage.

b. The purpose of such bonds is to fund reimbursements through the Florida Hurricane Catastrophe Fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane.

c. The efficacy of the financing mechanism will be enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders.

2.a. There is created a public benefits corporation, which is an instrumentality of the state, to be known as the Florida Hurricane Catastrophe Fund Finance Corporation.

b. The corporation shall operate under a five-member board of directors consisting of the Governor or a designee, the Chief Financial Officer ~~Comptroller~~ or a designee, the Attorney General ~~Treasurer~~ or a designee, the director of the Division of Bond Finance of the State Board of Administration, and the senior employee of the State Board of Administration responsible for operations ~~chief operating officer~~ of the Florida Hurricane Catastrophe Fund.

c. The corporation has all of the powers of corporations under chapter 607 and under chapter 617, subject only to the provisions of this subsection.

d. The corporation may issue bonds and engage in such other financial transactions as are necessary to provide sufficient funds to achieve the purposes of this section.

e. The corporation may invest in any of the investments authorized under s. 215.47.

f. There shall be no liability on the part of, and no cause of action shall arise against, any board members or employees of the corporation for any actions taken by them in the performance of their duties under this paragraph.

3.a. In actions under chapter 75 to validate any bonds issued by the corporation, the notice required by s. 75.06 shall be published only in Leon County and in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the State Attorney of the Second Judicial Circuit.

b. The state hereby covenants with holders of bonds of the corporation that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation ~~Department of Insurance~~ to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. The bonds of the corporation are not a debt of the state or of any political subdivision, and neither the state nor any political subdivision is liable on such bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision. The credit, revenues, or taxing power of the state or of any political subdivision shall not be deemed to be pledged to the payment of any bonds of the corporation.

5.a. The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this paragraph and interest on such bonds are exempt from taxation by the state and any political subdivision, including the intangibles tax under chapter 199 and the income tax under chapter 220. This exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the Florida Hurricane Catastrophe Fund Finance Corporation.

b. All bonds of the corporation shall be and constitute legal investments without limitation for all public bodies of this state; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and associations and other persons carrying on an insurance business; and for all other persons who are

now or may hereafter be authorized to invest in bonds or other obligations of the state and shall be and constitute eligible securities to be deposited as collateral for the security of any state, county, municipal, or other public funds. This sub-subparagraph shall be considered as additional and supplemental authority and shall not be limited without specific reference to this sub-subparagraph.

6. The corporation and its corporate existence shall continue until terminated by law; however, no such law shall take effect as long as the corporation has bonds outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the state.

Section 222. Subsection (5) of section 215.559, Florida Statutes, is amended to read:

215.559 Hurricane Loss Mitigation Program.—

(5) Except for the program set forth in subsection (3), the Department of Community Affairs shall develop the programs set forth in this section in consultation with an advisory council consisting of a representative designated by the Chief Financial Officer ~~Department of Insurance~~, a representative designated by the Florida Home Builders Association, a representative designated by the Florida Insurance Council, a representative designated by the Federation of Manufactured Home Owners, a representative designated by the Florida Association of Counties, and a representative designated by the Florida Manufactured Housing Association.

Section 223. Paragraph (c) of subsection (1), paragraph (b) of subsection (2), and paragraph (a) of subsection (3) of section 215.56005, Florida Statutes, are amended to read:

215.56005 Tobacco Settlement Financing Corporation.—

(1) DEFINITIONS.—As used in this section:

(c) "Department" means the Department of Financial Services ~~Banking and Finance~~ or its successor.

(2) CORPORATION CREATION AND AUTHORITY.—

(b) The corporation shall be governed by a board of directors consisting of the Governor, the Chief Financial Officer or the Chief Financial Officer's designee ~~Treasurer, the Comptroller~~, the Attorney General, two directors appointed from the membership of the Senate by the President of the Senate, and two directors appointed from the membership of the House of Representatives by the Speaker of the House of Representatives. ~~On January 7, 2003, the board shall include the Chief Financial Officer or the Chief Financial Officer's designee, in place of the Treasurer and the Comptroller or their designees.~~ The executive director of the State Board of Administration shall be the chief executive officer of the corporation and shall direct and

supervise the administrative affairs and operation of the corporation. The corporation shall also have such other officers as may be determined by the board of directors.

(3) POWERS OF THE DEPARTMENT.—

(a) The department is authorized, on behalf of the state, to do all things necessary or desirable to assist the corporation in the execution of the corporation's responsibilities, including, but not limited to, processing budget amendments against the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund, subject to the requirements of s. 216.177, for the costs and expenses of administration of the corporation in an amount not to exceed $500,000; entering into one or more purchase agreements to sell to the corporation any or all of the state's right, title, and interest in and to the tobacco settlement agreement; executing any administrative agreements with the corporation to fund the administration, operation, and expenses of the corporation from moneys appropriated for such purpose; and executing and delivering any and all other documents and agreements necessary or desirable in connection with the sale of any or all of the state's right, title, and interest in and to the tobacco settlement agreement to the corporation or the issuance of the bonds by the corporation. The department's authority to sell any or all of the state's right, title, and interest in and to the tobacco settlement agreement is subject to approval by the Legislature in a regular, extended, or special session.

Section 224. Subsection (3) and paragraph (a) of subsection (5) of section 215.5601, Florida Statutes, are amended to read:

215.5601 Lawton Chiles Endowment Fund.—

(3) LAWTON CHILES ENDOWMENT FUND; CREATION; PRINCIPAL.—

(a) There is created the Lawton Chiles Endowment Fund, to be administered by the State Board of Administration. The endowment shall serve as a clearing trust fund, not subject to termination under s. 19(f), Art. III of the State Constitution. The endowment fund shall be exempt from the service charges imposed by s. 215.20.

(b) The endowment shall receive moneys from the sale of the state's right, title, and interest in and to the tobacco settlement agreement as defined in s. 215.56005, including the right to receive payments under such agreement, and from accounts transferred from the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund established under s. 17.41. Amounts to be transferred from the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund to the endowment shall be in the following amounts for the following fiscal years:

1. For fiscal year 1999-2000, $1.1 billion;

2. For fiscal year 2000-2001, $200 million;

3. For fiscal year 2001-2002, $200 million;

4. For fiscal year 2002-2003, $200 million; and

(c) Amounts to be transferred under subparagraphs (b)2., 3., and 4. may be reduced by an amount equal to the lesser of $200 million or the amount the endowment receives in that fiscal year from the sale of the state's right, title, and interest in and to the tobacco settlement agreement.

(d) For fiscal year 2001-2002, $150 million of the existing principal in the endowment shall be reserved and accounted for within the endowment, the income from which shall be used solely for the funding for biomedical research activities as provided in s. 215.5602. The income from the remaining principal shall be used solely as the source of funding for health and human services programs for children and elders as provided in subsection (5). The separate account for biomedical research shall be dissolved and the entire principal in the endowment shall be used exclusively for health and human services programs when cures have been found for tobacco-related cancer, heart, and lung disease.

(5) AVAILABILITY OF FUNDS; USES.—

(a) Funds from the endowment which are available for legislative appropriation shall be transferred by the board to the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund, created in s. 17.41, and disbursed in accordance with the legislative appropriation.

1. Appropriations by the Legislature to the Department of Health from endowment earnings from the principal set aside for biomedical research shall be from a category called the Florida Biomedical Research Program and shall be deposited into the Biomedical Research Trust Fund in the Department of Health established in s. 20.435.

2. Appropriations by the Legislature to the Department of Children and Family Services, the Department of Health, or the Department of Elderly Affairs for health and human services programs shall be from a category called the Lawton Chiles Endowment Fund Programs and shall be deposited into each department's respective Tobacco Settlement Trust Fund as appropriated.

Section 225. Section 215.58, Florida Statutes, is amended to read:

215.58 Definitions relating to State Bond Act.—The following words or terms when used in this act shall have the following meanings:

(1) "Governor" means ~~shall mean~~ the Governor of the state or any Acting Governor or other person then exercising the duties of the office of Governor.

~~(2) "Treasurer" shall mean the Insurance Commissioner and Treasurer.~~

~~(3) "Comptroller" shall mean the State Comptroller.~~

(2)~~(4)~~ "State" means ~~shall mean~~ the State of Florida.

(3)~~(5)~~ "Division" means ~~shall mean~~ the Division of Bond Finance.

(4)~~(6)~~ "Board" means ~~shall mean~~ the governing board of the ~~said~~ division, which shall be composed of the Governor and Cabinet.

(5)~~(7)~~ "Director" means ~~shall mean~~ the chief administrator of the division, who shall act on behalf of the division when authorized by the board, as provided by this act.

(6)~~(8)~~ "State agency" means ~~shall mean~~ any board, commission, authority, or other state agency heretofore or hereafter created by the constitution or statutes of the state.

(7)~~(9)~~ "Bonds" means ~~shall mean~~ state bonds, or any revenue bonds, certificates or other obligations heretofore or hereafter authorized to be issued by said division or by any state agency.

(8)~~(10)~~ "State bonds" means ~~shall mean~~ bonds pledging the full faith and credit of the State of Florida.

(9)~~(11)~~ "Legislature" means ~~shall mean~~ the State Legislature.

(10)~~(12)~~ "Constitution" means ~~shall mean~~ the existing constitution of the state, or any constitution hereafter adopted by the people of the state, together with all amendments thereof.

(11)~~(13)~~ "Original issue discount" means the amount by which the par value of a bond exceeds its public offering price at the time it is originally offered to an investor.

(12)~~(14)~~ "Governmental agency" means ~~shall mean~~:

(a) The state or any department, commission, agency, or other instrumentality thereof.

(b) Any county or municipality or any department, commission, agency, or other instrumentality thereof.

(c) Any school board or special district, authority, or governmental entity.

Section 226. Subsections (2), (3), (4), (5), and (8) of section 215.684, Florida Statutes, are amended to read:

215.684 Limitation on engaging services of securities broker or bond underwriter convicted of fraud.—

(2) Upon notification under chapter 517 that a person or firm has been convicted or has pleaded as provided in subsection (1), the Chief Financial Officer ~~Comptroller~~ shall issue a notice of intent to take action to disqualify such person or firm, which notice must state that:

(a) Such person or firm is considered a disqualified securities broker or bond underwriter;

(b) A state agency may not enter into a contract with such person or firm as a securities broker or bond underwriter for any new business for a period of 2 years;

(c) The substantial rights of such person or firm as a securities broker or bond underwriter are being affected and the person or firm has the rights accorded pursuant to ss. 120.569 and 120.57; and

(d) Such person or firm may petition to mitigate the duration of his or her disqualification, based on the criteria established in subsection (3) and may request that such mitigation be considered as part of any hearing under ss. 120.569 and 120.57.

(3) The Chief Financial Officer ~~Comptroller~~ shall decide, based on the following criteria, whether or not to mitigate the duration of the disqualification:

(a) The nature and details of the crime;

(b) The degree of culpability of the person or firm proposed to be requalified;

(c) Prompt or voluntary payment of any damages or penalty as a result of the conviction and disassociation from any other person or firm involved in the crimes of fraud;

(d) Cooperation with state or federal investigation or prosecution of the crime of fraud;

(e) Prior or future self-policing by the person or firm to prevent crimes of fraud; and

(f) Reinstatement or clemency in any jurisdiction in relation to the crime at issue in the proceeding.

(4) If the Chief Financial Officer ~~Comptroller~~ in his or her sole discretion decides to mitigate the duration of the disqualification based on the foregoing, the duration of disqualification shall be for any period the Chief Financial Officer ~~Comptroller~~ specifies up to 2 years from the date of the person's or firm's conviction or plea. If the Chief Financial Officer ~~Comptroller~~ refuses to mitigate the duration of the disqualification, such person or firm may again file for mitigation no sooner than 9 months after denial by the Chief Financial Officer ~~Comptroller~~.

(5) Notwithstanding subsection (4), a firm or person at any time may petition the Chief Financial Officer ~~Comptroller~~ for termination of the disqualification based upon a reversal of the conviction of the firm or person by an appellate court or a pardon.

(8) Except when otherwise provided by law for crimes of fraud with respect to the transaction of business with any public entity or with an

agency or political subdivision of any other state or with the United States, this act constitutes the sole authorization for determining when a person or firm convicted or having pleaded guilty or nolo contendere to the crime of fraud may not be engaged to provide services as a securities broker or bond underwriter with the state. Nothing in this act shall be construed to affect the authority granted the Chief Financial Officer ~~Comptroller~~ under chapter 517 to revoke or suspend the license of such securities dealer or bond underwriter.

Section 227. Subsection (4) of section 215.70, Florida Statutes, is amended to read:

215.70 State Board of Administration to act in case of defaults.—

(4) Whenever it becomes necessary for state funds to be appropriated for the payment of principal or interest on bonds which have been issued by the Division of Bond Finance on behalf of any local government or authority and for which the full faith and credit of the state has been pledged, any state shared revenues otherwise earmarked for the local government or authority shall be used by the Chief Financial Officer ~~Comptroller~~ to reimburse the state, until the local government or authority has reimbursed the state in full.

Section 228. Subsection (4) of section 215.91, Florida Statutes, is amended to read:

215.91 Florida Financial Management Information System; board; council.—

(4) The council shall provide ongoing counsel to the board and act to resolve problems among or between the functional owner subsystems. The board, through the coordinating council, shall direct and manage the development, implementation, and operation of the information subsystems that together are the Florida Financial Management Information System. The coordinating council shall approve the information subsystems' designs prior to the development, implementation, and operation of the subsystems and shall approve subsequent proposed design modifications to the information subsystems subject to the guidelines issued by the council. The coordinating council shall ensure that the information subsystems' operations support the exchange of unified and coordinated data between information subsystems. The coordinating council shall establish the common data codes for financial management, and it shall require and ensure the use of common data codes by the information subsystems that together constitute the Florida Financial Management Information System. The Chief Financial Officer ~~Comptroller~~ shall adopt a chart of accounts consistent with the common financial management data codes established by the coordinating council. The board, through the coordinating council, shall establish the financial management policies and procedures for the executive branch of state government. The coordinating council shall notify in writing the chairs of the legislative fiscal committees and the Chief Justice of the Supreme Court regarding the adoption of, or modification to, a proposed financial management policy or procedure. The notice shall solicit comments from the

chairs of the legislative fiscal committees and the Chief Justice of the Supreme Court at least 14 consecutive days before the final action by the coordinating council.

Section 229. Subsection (5) of section 215.92, Florida Statutes, is amended to read:

215.92 Definitions relating to Florida Financial Management Information System Act.—For the purposes of ss. 215.90-215.96:

(5) "Design and coordination staff" means the personnel responsible for providing administrative and clerical support to the board, coordinating council, and secretary to the board. The design and coordination staff shall function as the agency clerk for the board and the coordinating council. For administrative purposes, the design and coordination staff are assigned to the Department of Financial Services ~~Banking and Finance~~ but they are functionally assigned to the board.

Section 230. Subsection (3) of section 215.93, Florida Statutes, is amended to read:

215.93 Florida Financial Management Information System.—

(3) The Florida Financial Management Information System shall include financial management data and utilize the chart of accounts approved by the Chief Financial Officer ~~Comptroller~~. Common financial management data shall include, but not be limited to, data codes, titles, and definitions used by one or more of the functional owner subsystems. The Florida Financial Management Information System shall utilize common financial management data codes. The council shall recommend and the board shall adopt policies regarding the approval and publication of the financial management data. The Chief Financial Officer ~~Comptroller~~ shall adopt policies regarding the approval and publication of the chart of accounts. The Chief Financial Officer's ~~Comptroller's~~ chart of accounts shall be consistent with the common financial management data codes established by the coordinating council. Further, all systems not a part of the Florida Financial Management Information System which provide information to the system shall use the common data codes from the Florida Financial Management Information System and the Chief Financial Officer's ~~Comptroller's~~ chart of accounts. Data codes that cannot be supplied by the Florida Financial Management Information System and the Chief Financial Officer's ~~Comptroller's~~ chart of accounts and that are required for use by the information subsystems shall be approved by the board upon recommendation of the coordinating council. However, board approval shall not be required for those data codes specified by the Auditor General under the provisions of s. 215.94(6)(c).

Section 231. Subsections (2) and (3) and paragraph (a) of subsection (5) of section 215.94, Florida Statutes, are amended to read:

215.94 Designation, duties, and responsibilities of functional owners.—

(2) The Department of Financial Services ~~Banking and Finance~~ shall be the functional owner of the Florida Accounting Information Resource Subsystem established pursuant to ss. 17.03, 215.86, 216.141, and 216.151 and

further developed in accordance with the provisions of ss. 215.90-215.96. The subsystem shall include, but shall not be limited to, the following functions:

(a) Accounting and reporting so as to provide timely data for producing financial statements for the state in accordance with generally accepted accounting principles.

(b) Auditing and settling claims against the state.

(3) The Chief Financial Officer ~~Treasurer~~ shall be the functional owner of the Cash Management Subsystem. The Chief Financial Officer ~~Treasurer~~ shall design, implement, and operate the subsystem in accordance with the provisions of ss. 215.90-215.96. The subsystem shall include, but shall not be limited to, functions for:

(a) Recording and reconciling credits and debits to treasury fund accounts.

(b) Monitoring cash levels and activities in state bank accounts.

(c) Monitoring short-term investments of idle cash.

(d) Administering the provisions of the Federal Cash Management Improvement Act of 1990.

(5) The Department of Management Services shall be the functional owner of the Cooperative Personnel Employment Subsystem. The department shall design, implement, and operate the subsystem in accordance with the provisions of ss. 110.116 and 215.90-215.96. The subsystem shall include, but shall not be limited to, functions for:

(a) Maintenance of employee and position data, including funding sources and percentages and salary lapse. The employee data shall include, but not be limited to, information to meet the payroll system requirements of the Department of Financial Services ~~Banking and Finance~~ and to meet the employee benefit system requirements of the Department of Management Services.

Section 232. Section 215.965, Florida Statutes, is amended to read:

215.965 Disbursement of state moneys.—Except as provided in s. 17.076, s. 253.025(14), s. 259.041(18), s. 717.124(5), s. 732.107(5), or s. 733.816(5), all moneys in the State Treasury shall be disbursed by state warrant, drawn by the Chief Financial Officer ~~Comptroller~~ upon the State Treasury and payable to the ultimate beneficiary. This authorization shall include electronic disbursement.

Section 233. Paragraphs (a), (c), (j), (n), (p), and (s) of subsection (2), subsections (3) and (4), paragraphs (a) and (b) of subsection (5), paragraphs (a) and (d) of subsection (6), paragraphs (a) and (c) of subsection (7), paragraphs (e) and (g) of subsection (8), paragraph (e) of subsection (9), and paragraphs (d) and (f) of subsection (10) of section 215.97, Florida Statutes, are amended to read:

215.97 Florida Single Audit Act.—

(2) Definitions; as used in this section, the term:

(a) "Audit threshold" means the amount to use in determining when a state single audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $300,000 in any fiscal year of such nonstate entity shall be required to have a state single audit for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Chief Financial Officer ~~Comptroller~~, and all state agencies that provide state financial assistance to nonstate entities, shall review the amount for requiring audits under this section and may adjust such dollar amount consistent with the purpose of this section.

(c) "Catalog of State Financial Assistance" means a comprehensive listing of state projects. The Catalog of State Financial Assistance shall be issued by the Executive Office of the Governor after conferring with the Chief Financial Officer ~~Comptroller~~ and all state agencies that provide state financial assistance to nonstate entities. The Catalog of State Financial Assistance shall include for each listed state project: the responsible state agency; standard state project number identifier; official title; legal authorization; and description of the state project, including objectives, restrictions, application and awarding procedures, and other relevant information determined necessary.

(j) "Major state project" means any state project meeting the criteria as stated in the rules of the Executive Office of the Governor. Such criteria shall be established after consultation with the Chief Financial Officer ~~Comptroller~~ and appropriate state agencies that provide state financial assistance and shall consider the amount of state project expenditures or expenses or inherent risks. Each major state project shall be audited in accordance with the requirements of this section.

(n) "Schedule of State Financial Assistance" means a document prepared in accordance with the rules of the Chief Financial Officer ~~Comptroller~~ and included in each financial reporting package required by this section.

(p) "State financial assistance" means financial assistance from state resources, not including federal financial assistance and state matching, provided to nonstate entities to carry out a state project. "State financial assistance" includes all types of state assistance as stated in the rules of the Executive Office of the Governor established in consultation with the Chief Financial Officer ~~Comptroller~~ and appropriate state agencies that provide state financial assistance. It includes state financial assistance provided directly by state awarding agencies or indirectly by recipients of state awards or subrecipients. It does not include procurement contracts used to buy goods or services from vendors. Audits of such procurement contracts with vendors are outside of the scope of this section. Also, audits of contracts to operate state-government-owned and contractor-operated facilities are excluded from the audit requirements of this section.

(s) "State Projects Compliance Supplement" means a document issued by the Executive Office of the Governor, in consultation with the Chief Financial Officer ~~Comptroller~~ and all state agencies that provide state financial assistance. The State Projects Compliance Supplement shall identify state projects, the significant compliance requirements, eligibility requirements, matching requirements, suggested audit procedures, and other relevant information determined necessary.

(3) The Executive Office of the Governor shall:

(a) Upon conferring with the Chief Financial Officer ~~Comptroller~~ and all state awarding agencies, adopt rules necessary to provide appropriate guidance to state awarding agencies, recipients and subrecipients, and independent auditors of state financial assistance relating to the requirements of this section, including:

1. The types or classes of financial assistance considered to be state financial assistance which would be subject to the requirements of this section. This would include guidance to assist in identifying when the state agency or recipient has contracted with a vendor rather than with a recipient or subrecipient.

2. The criteria for identifying a major state project.

3. The criteria for selecting state projects for audits based on inherent risk.

(b) Be responsible for coordinating the initial preparation and subsequent revisions of the Catalog of State Financial Assistance after consultation with the Chief Financial Officer ~~Comptroller~~ and all state awarding agencies.

(c) Be responsible for coordinating the initial preparation and subsequent revisions of the State Projects Compliance Supplement, after consultation with the Chief Financial Officer ~~Comptroller~~ and all state awarding agencies.

(4) The Chief Financial Officer ~~Comptroller~~ shall:

(a) Make enhancements to the state's accounting system to provide for the:

1. Recording of state financial assistance and federal financial assistance appropriations and expenditures within the state awarding agencies' operating funds.

2. Recording of state project number identifiers, as provided in the Catalog of State Financial Assistance, for state financial assistance.

3. Establishment and recording of an identification code for each financial transaction, including state agencies' disbursements of state financial assistance and federal financial assistance, as to the corresponding type or organization that is party to the transaction (e.g., other governmental agencies, nonprofit organizations, and for-profit organizations), and disburse-

ments of federal financial assistance, as to whether the party to the transaction is or is not a recipient or subrecipient.

(b) Upon conferring with the Executive Office of the Governor and all state awarding agencies, adopt rules necessary to provide appropriate guidance to state awarding agencies, recipients and subrecipients, and independent auditors of state financial assistance relating to the format for the Schedule of State Financial Assistance.

(c) Perform any inspections, reviews, investigations, or audits of state financial assistance considered necessary in carrying out the Chief Financial Officer's ~~Comptroller's~~ legal responsibilities for state financial assistance or to comply with the requirements of this section.

(5) Each state awarding agency shall:

(a) Provide to a recipient information needed by the recipient to comply with the requirements of this section, including:

1. The audit and accountability requirements for state projects as stated in this section and applicable rules of the Executive Office of the Governor, rules of the Chief Financial Officer ~~Comptroller~~, and rules of the Auditor General.

2. Information from the Catalog of State Financial Assistance, including the standard state project number identifier; official title; legal authorization; and description of the state project including objectives, restrictions, and other relevant information determined necessary.

3. Information from the State Projects Compliance Supplement, including the significant compliance requirements, eligibility requirements, matching requirements, suggested audit procedures, and other relevant information determined necessary.

(b) Require the recipient, as a condition of receiving state financial assistance, to allow the state awarding agency, the Chief Financial Officer ~~Comptroller~~, and the Auditor General access to the recipient's records and the recipient's independent auditor's working papers as necessary for complying with the requirements of this section.

(6) As a condition of receiving state financial assistance, each recipient that provides state financial assistance to a subrecipient shall:

(a) Provide to a subrecipient information needed by the subrecipient to comply with the requirements of this section, including:

1. Identification of the state awarding agency.

2. The audit and accountability requirements for state projects as stated in this section and applicable rules of the Executive Office of the Governor, rules of the Chief Financial Officer ~~Comptroller~~, and rules of the Auditor General.

3. Information from the Catalog of State Financial Assistance, including the standard state project number identifier; official title; legal authorization; and description of the state project, including objectives, restrictions, and other relevant information.

4. Information from the State Projects Compliance Supplement including the significant compliance requirements, eligibility requirements, matching requirements, and suggested audit procedures, and other relevant information determined necessary.

(d) Require subrecipients, as a condition of receiving state financial assistance, to permit the independent auditor of the recipient, the state awarding agency, the Chief Financial Officer ~~Comptroller~~, and the Auditor General access to the subrecipient's records and the subrecipient's independent auditor's working papers as necessary to comply with the requirements of this section.

(7) Each recipient or subrecipient of state financial assistance shall comply with the following:

(a) Each nonstate entity that receives state financial assistance and meets audit threshold requirements, in any fiscal year of the nonstate entity, as stated in the rules of the Auditor General, shall have a state single audit conducted for such fiscal year in accordance with the requirements of this act and with additional requirements established in rules of the Executive Office of the Governor, rules of the Chief Financial Officer ~~Comptroller~~, and rules of the Auditor General. If only one state project is involved in a nonstate entity's fiscal year, the nonstate entity may elect to have only a state project-specific audit of the state project for that fiscal year.

(c) Regardless of the amount of the state financial assistance, the provisions of this section do not exempt a nonstate entity from compliance with provisions of law relating to maintaining records concerning state financial assistance to such nonstate entity or allowing access and examination of those records by the state awarding agency, the Chief Financial Officer ~~Comptroller~~, or the Auditor General.

(8) The independent auditor when conducting a state single audit of recipients or subrecipients shall:

(e) Report on the results of any audit conducted pursuant to this section in accordance with the rules of the Executive Office of the Governor, rules of the Chief Financial Officer ~~Comptroller~~, and rules of the Auditor General. Audit reports shall include summaries of the auditor's results regarding the nonstate entity's financial statements; Schedule of State Financial Assistance; internal controls; and compliance with laws, rules, and guidelines.

(g) Upon notification by the nonstate entity, make available the working papers relating to the audit conducted pursuant to the requirements of this section to the state awarding agency, the Chief Financial Officer ~~Comptroller~~, or the Auditor General for review or copying.

(9) The independent auditor, when conducting a state project-specific audit of recipients or subrecipients, shall:

(e) Upon notification by the nonstate entity, make available the working papers relating to the audit conducted pursuant to the requirements of this section to the state awarding agency, the Chief Financial Officer ~~Comptroller~~, or the Auditor General for review or copying.

(10) The Auditor General shall:

(d) Provide technical advice upon request of the Chief Financial Officer ~~Comptroller~~, Executive Office of the Governor, and state agencies relating to financial reporting and audit responsibilities contained in this section.

(f) Perform ongoing reviews of a sample of financial reporting packages filed pursuant to the requirements of this section to determine compliance with the reporting requirements of this section and applicable rules of the Executive Office of the Governor, rules of the Chief Financial Officer ~~Comptroller~~, and rules of the Auditor General.

Section 234. Paragraph (a) of subsection (2) of section 216.0442, Florida Statutes, is amended to read:

216.0442 Truth in bonding; definitions; summary of state debt; statement of proposed financing; truth-in-bonding statement.—

(2) When required by statute to support the proposed debt financing of fixed capital outlay projects or operating capital outlay requests or to explain the issuance of a debt or obligation, one or more of the following documents shall be developed:

(a) A summary of outstanding state debt as furnished by the Chief Financial Officer ~~Comptroller~~ pursuant to s. 216.102.

Section 235. Section 216.102, Florida Statutes, is amended to read:

216.102 Filing of financial information; handling by Chief Financial Officer ~~Comptroller~~; penalty for noncompliance.—

(1) By September 30 of each year, each agency supported by any form of taxation, licenses, fees, imposts, or exactions, the judicial branch, and, for financial reporting purposes, each component unit of the state as determined by the Chief Financial Officer ~~Comptroller~~ shall prepare, using generally accepted accounting principles, and file with the Chief Financial Officer ~~Comptroller~~ the financial and other information necessary for the preparation of annual financial statements for the State of Florida as of June 30. In addition, each such agency and the judicial branch shall prepare financial statements showing the financial position and results of agency or branch operations as of June 30 for internal management purposes.

(a) Each state agency and the judicial branch shall record the receipt and disbursement of funds from federal sources in a form and format prescribed by the Chief Financial Officer ~~Comptroller~~. The access to federal funds by the administering agencies or the judicial branch may not be authorized until:

1. The deposit has been recorded in the Florida Accounting Information Resource Subsystem using proper, consistent codes that designate deposits as federal funds.

2. The deposit and appropriate recording required by this paragraph have been verified by the Office of the Chief Financial Officer ~~Treasurer~~.

(b) The Chief Financial Officer ~~Comptroller~~ shall publish a statewide policy detailing the requirements for recording receipt and disbursement of federal funds into the Florida Accounting Information Resource Subsystem and provide technical assistance to the agencies and the judicial branch to implement the policy.

(2) Financial information must be contained within the Florida Accounting Information Resource Subsystem. Other information must be submitted in the form and format prescribed by the Chief Financial Officer ~~Comptroller~~.

(a) Each component unit shall file financial information and other information necessary for the preparation of annual financial statements with the agency or branch designated by the Chief Financial Officer ~~Comptroller~~ by the date specified by the Chief Financial Officer ~~Comptroller~~.

(b) The state agency or branch designated by the Chief Financial Officer ~~Comptroller~~ to receive financial information and other information from component units shall include the financial information in the Florida Accounting Information Resource Subsystem and shall include the component units' other information in its submission to the Chief Financial Officer ~~Comptroller~~.

(3) The Chief Financial Officer ~~Comptroller~~ shall:

(a) Prepare and furnish to the Auditor General annual financial statements for the state on or before December 31 of each year, using generally accepted accounting principles.

(b) Prepare and publish a comprehensive annual financial report for the state in accordance with generally accepted accounting principles on or before February 28 of each year.

(c) Furnish the Governor, the President of the Senate, and the Speaker of the House of Representatives with a copy of the comprehensive annual financial report prepared pursuant to paragraph (b).

(d) Notify each agency and the judicial branch of the data that is required to be recorded to enhance accountability for tracking federal financial assistance.

(e) Provide reports, as requested, to executive or judicial branch entities, the President of the Senate, the Speaker of the House of Representatives, and the members of the Florida Congressional Delegation, detailing the federal financial assistance received and disbursed by state agencies and the judicial branch.

(f) Consult with and elicit comments from the Executive Office of the Governor on changes to the Florida Accounting Information Resource Subsystem which clearly affect the accounting of federal funds, so as to ensure consistency of information entered into the Federal Aid Tracking System by state executive and judicial branch entities. While efforts shall be made to ensure the compatibility of the Florida Accounting Information Resource Subsystem and the Federal Aid Tracking System, any successive systems serving identical or similar functions shall preserve such compatibility.

The Chief Financial Officer ~~Comptroller~~ may furnish and publish in electronic form the financial statements and the comprehensive annual financial report required under paragraphs (a), (b), and (c).

(4) If any agency or the judicial branch fails to comply with subsection (1) or subsection (2), the Chief Financial Officer ~~Comptroller~~ may refuse to honor salary claims for agency or branch fiscal and executive staff until the agency or branch corrects its deficiency.

(5) The Chief Financial Officer ~~Comptroller~~ may withhold any funds payable to a component unit that does not comply with subsection (1) or subsection (2) until the component unit corrects its deficiency.

(6) The Chief Financial Officer ~~Comptroller~~ may adopt rules to administer this section.

Section 236. Subsections (1) and (3) of section 216.141, Florida Statutes, are amended to read:

216.141 Budget system procedures; planning and programming by state agencies.—

(1) The Executive Office of the Governor, in consultation with the appropriations committees of the Senate and House of Representatives, and by utilizing the Florida Financial Management Information System management data and the Chief Financial Officer's ~~Comptroller's~~ chart of accounts, shall prescribe a planning and budgeting system, pursuant to s. 215.94(1), to provide for continuous planning and programming and for effective management practices for the efficient operations of all state agencies and the judicial branch. The Legislature may contract with the Executive Office of the Governor to develop the planning and budgeting system and to provide services to the Legislature for the support and use of the legislative appropriations system. The contract shall include the policies and procedures for combining the legislative appropriations system with the planning and budgeting information system established pursuant to s. 215.94(1). At a minimum, the contract shall require the use of common data codes. The combined legislative appropriations and planning and budgeting information subsystem shall support the legislative appropriations and legislative oversight functions without data code conversion or modification.

(3) The Chief Financial Officer ~~Comptroller~~, as chief fiscal officer, shall use the Florida Accounting Information Resource Subsystem developed pursuant to s. 215.94(2) for account purposes in the performance of and account-

ing for all of his or her constitutional and statutory duties and responsibilities. However, state agencies and the judicial branch continue to be responsible for maintaining accounting records necessary for effective management of their programs and functions.

Section 237. Subsection (1) of section 216.177, Florida Statutes, is amended to read:

216.177 Appropriations acts, statement of intent, violation, notice, review and objection procedures.—

(1) When an appropriations act is delivered to the Governor after the Legislature has adjourned sine die, as soon as practicable, but no later than the 10th day before the end of the period allowed by law for veto consideration in any year in which an appropriation is made, the chairs of the legislative appropriations committees shall jointly transmit:

(a) The official list of General Revenue Fund appropriations determined in consultation with the Executive Office of the Governor to be nonrecurring; and

(b) The documents set forth in s. 216.0442(2)(a) and (c),

to the Executive Office of the Governor, the Chief Financial Officer ~~Comptroller~~, the Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Chief Justice of the Supreme Court, and each state agency. A request for additional explanation and direction regarding the legislative intent of the General Appropriations Act during the fiscal year may be made to the chair and vice chair of the Legislative Budget Commission or the President of the Senate and the Speaker of the House of Representatives only by and through the Executive Office of the Governor for state agencies, and by and through the Chief Justice of the Supreme Court for the judicial branch, as is deemed necessary. However, the Chief Financial Officer ~~Comptroller~~ may also request further clarification of legislative intent pursuant to the Chief Financial Officer's ~~Comptroller's~~ responsibilities related to his or her preaudit function of expenditures.

Section 238. Subsections (6), (12), and (14) and paragraph (b) of subsection (16) of section 216.181, Florida Statutes, are amended to read:

216.181 Approved budgets for operations and fixed capital outlay.—

(6)(a) The Executive Office of the Governor or the Chief Justice of the Supreme Court may require the submission of a detailed plan from the agency or entity of the judicial branch affected, consistent with the General Appropriations Act, special appropriations acts, and the statement of intent before transferring and releasing the balance of a lump-sum appropriation. The provisions of this paragraph are subject to the notice and review procedures set forth in s. 216.177.

(b) The Executive Office of the Governor and the Chief Justice of the Supreme Court may amend, without approval of the Legislative Budget Commission, state agency and judicial branch entity budgets, respectively,

to reflect the transferred funds based on the approved plans for lump-sum appropriations.

The Executive Office of the Governor shall transmit to each state agency and the Chief Financial Officer ~~Comptroller~~, and the Chief Justice shall transmit to each judicial branch component and the Chief Financial Officer ~~Comptroller~~, any approved amendments to the approved operating budgets.

(12) There is appropriated nonoperating budget for refunds, payments to the United States Treasury, payments of the service charge to the General Revenue Fund, and transfers of funds specifically required by law. Such authorized budget, together with related releases, shall be transmitted by the state agency or by the judicial branch to the Chief Financial Officer ~~Comptroller~~ for entry in his or her ~~the Comptroller's~~ records in the manner and format prescribed by the Executive Office of the Governor in consultation with the Chief Financial Officer ~~Comptroller~~. A copy of such authorized budgets shall be furnished to the Executive Office of the Governor or the Chief Justice, the chairs of the legislative committees responsible for developing the general appropriations acts, and the Auditor General. The Governor may withhold approval of nonoperating investment authority for certain trust funds when deemed in the best interest of the state. The Governor for the executive branch, and the Chief Justice for the judicial branch, may establish nonoperating budgets for transfers, purchase of investments, special expenses, distributions, and any other nonoperating budget categories they deem necessary and in the best interest of the state and consistent with legislative intent and policy. The provisions of this subsection are subject to the notice, review, and objection procedures set forth in s. 216.177. For purposes of this section, the term "nonoperating budgets" means nonoperating disbursement authority for purchase of investments, refunds, payments to the United States Treasury, transfers of funds specifically required by law, distributions of assets held by the state in a trustee capacity as an agent of fiduciary, special expenses, and other nonoperating budget categories as determined necessary by the Executive Office of the Governor, not otherwise appropriated in the General Appropriations Act.

(14) The Executive Office of the Governor and the Chief Justice of the Supreme Court shall certify the amounts approved for operations and fixed capital outlay, together with any relevant supplementary materials or information, to the Chief Financial Officer ~~Comptroller~~; and such certification shall be the Chief Financial Officer's ~~Comptroller's~~ guide with reference to the expenditures of each state agency pursuant to s. 216.192.

(16)

(b) Any agency, or the judicial branch, that has been authorized by the General Appropriations Act or expressly authorized by other law to make advances for program startup or advances for contracted services, in total or periodically, shall limit such disbursements to other governmental entities and not-for-profit corporations. The amount which may be advanced shall not exceed the expected cash needs of the contractor or recipient within the initial 3 months. Thereafter, disbursements shall only be made on a reimbursement basis. Any agreement that provides for advancements may

contain a clause that permits the contractor or recipient to temporarily invest the proceeds, provided that any interest income shall either be returned to the agency or be applied against the agency's obligation to pay the contract amount. This paragraph does not constitute lawful authority to make any advance payment not otherwise authorized by laws relating to a particular agency or general laws relating to the expenditure or disbursement of public funds. The Chief Financial Officer ~~Comptroller~~ may, after consultation with the legislative appropriations committees, advance funds beyond a 3-month requirement if it is determined to be consistent with the intent of the approved operating budget.

Section 239. Section 216.183, Florida Statutes, is amended to read:

216.183 Entities using performance-based program budgets; chart of accounts.—State agencies and the judicial branch for which a performance-based program budget has been appropriated shall utilize the chart of accounts used by the Florida Accounting Information Resource Subsystem in the manner described in s. 215.93(3). The chart of accounts for state agencies and the judicial branch for which a performance-based program budget has been appropriated shall be developed and amended, if necessary, in consultation with the Department of Financial Services ~~Banking and Finance~~, the Executive Office of the Governor, and the chairs of the Legislative Budget Commission.

Section 240. Subsections (1) and (4) of section 216.192, Florida Statutes, are amended to read:

216.192 Release of appropriations; revision of budgets.—

(1) Unless otherwise provided in the General Appropriations Act, on July 1 of each fiscal year, up to 25 percent of the original approved operating budget of each agency and of the judicial branch may be released until such time as annual plans for quarterly releases for all appropriations have been developed, approved, and furnished to the Chief Financial Officer ~~Comptroller~~ by the Executive Office of the Governor for state agencies and by the Chief Justice of the Supreme Court for the judicial branch. The plans, including appropriate plans of releases for fixed capital outlay projects that correspond with each project schedule, shall attempt to maximize the use of trust funds and shall be transmitted to the Chief Financial Officer ~~Comptroller~~ by August 1 of each fiscal year. Such releases shall at no time exceed the total appropriations available to a state agency or to the judicial branch, or the approved budget for such agency or the judicial branch if less. The Chief Financial Officer ~~Comptroller~~ shall enter such releases in his or her records in accordance with the release plans prescribed by the Executive Office of the Governor and the Chief Justice, unless otherwise amended as provided by law. The Executive Office of the Governor and the Chief Justice shall transmit a copy of the approved annual releases to the head of the state agency, the chair and vice chair of the Legislative Budget Commission, and the Auditor General. The Chief Financial Officer ~~Comptroller~~ shall authorize all expenditures to be made from the appropriations on the basis of such releases and in accordance with the approved budget, and not otherwise. Expenditures shall be authorized only in accordance with legislative authorizations. Nothing herein precludes periodic reexamination and revision by

the Executive Office of the Governor or by the Chief Justice of the annual plans for release of appropriations and the notifications of the parties of all such revisions.

(4) The legislative appropriations committees may advise the Chief Financial Officer ~~Comptroller~~, the Executive Office of the Governor, or the Chief Justice relative to the release of any funds under this section.

Section 241. Subsection (1) of section 216.212, Florida Statutes, is amended to read:

216.212 Budgets for federal funds; restrictions on expenditure of federal funds.—

(1) The Executive Office of the Governor and~~,~~ the office of the Chief Financial Officer ~~Comptroller, and the office of the Treasurer~~ shall develop and implement procedures for accelerating the drawdown of, and minimizing the payment of interest on, federal funds. The Executive Office of the Governor shall establish a clearinghouse for federal programs and activities. The clearinghouse shall develop the capacity to respond to federal grant opportunities and to coordinate the use of federal funds in the state.

(a) Every state agency, when making a request or preparing a budget to be submitted to the Federal Government for funds, equipment, material, or services, shall submit such request or budget to the Executive Office of the Governor for review before submitting it to the proper federal authority. However, the Executive Office of the Governor may specifically authorize any agency to submit specific types of grant proposals directly to the Federal Government.

(b) Every office or court of the judicial branch, when making a request or preparing a budget to be submitted to the Federal Government for funds, equipment, material, or services, shall submit such request or budget to the Chief Justice of the Supreme Court for approval before submitting it to the proper federal authority. However, the Chief Justice may specifically authorize any court to submit specific types of grant proposals directly to the Federal Government.

Section 242. Subsections (8), (9), and (10) of section 216.221, Florida Statutes, are amended to read:

216.221 Appropriations as maximum appropriations; adjustment of budgets to avoid or eliminate deficits.—

(8) The Chief Financial Officer ~~Comptroller~~ also has the duty to ensure that revenues being collected will be sufficient to meet the appropriations and that no deficit occurs in any fund of the state.

(9) If, in the opinion of the Chief Financial Officer ~~Comptroller~~, after consultation with the Revenue Estimating Conference, a deficit will occur, he or she ~~the Comptroller~~ shall report his or her opinion to the Governor in writing. In the event the Governor does not certify a deficit within 10 days after the Chief Financial Officer's ~~Comptroller's~~ report, the Chief Financial

Officer ~~Comptroller~~ shall report his or her findings and opinion to the commission and the Chief Justice of the Supreme Court.

(10) When advised by the Revenue Estimating Conference, the Chief Financial Officer ~~Comptroller~~, or any agency responsible for a trust fund that a deficit will occur with respect to the appropriations from a specific trust fund in the current fiscal year, the Governor for the executive branch, or the Chief Justice for the judicial branch, shall develop a plan of action to eliminate the deficit. Before implementing the plan of action, the Governor or the Chief Justice must comply with the provisions of s. 216.177(2). In developing the plan of action, the Governor or the Chief Justice shall, to the extent possible, preserve legislative policy and intent, and, absent any specific directions to the contrary in the General Appropriations Act, any reductions in appropriations from the trust fund for the fiscal year shall be prorated among the specific appropriations made from the trust fund for the current fiscal year.

Section 243. Subsection (1) of section 216.222, Florida Statutes, is amended to read:

216.222 Budget Stabilization Fund; criteria for withdrawing moneys.—Moneys in the Budget Stabilization Fund may be transferred to the General Revenue Fund for:

(1)(a) Offsetting a deficit in the General Revenue Fund. A deficit is deemed to occur when the official estimate of funds available in the General Revenue Fund for a fiscal year falls below the total amount appropriated from the General Revenue Fund for that fiscal year. Such a transfer must be made pursuant to s. 216.221, or pursuant to an appropriation by law.

(b) Notwithstanding the requirements of s. 216.221, if, after consultation with the Revenue Estimating Conference, the Chief Financial Officer ~~Comptroller~~ believes that a deficit will occur in the General Revenue Fund and if:

1. Fewer than 30 but more than 4 days are left in the fiscal year, the Legislature is not in session, and neither the Legislature nor the Legislative Budget Commission is scheduled to meet before the end of the fiscal year, or

2. Fewer than 5 days are left in the fiscal year and the Governor and the Chief Justice, the Legislature, or the Legislative Budget Commission have not implemented measures to resolve the deficit,

the Chief Financial Officer ~~Comptroller~~ shall certify the deficit to the Governor, the Chief Justice, the President of the Senate, and the Speaker of the House of Representatives, and may thereafter withdraw funds from the Budget Stabilization Fund to offset the projected deficit in the General Revenue Fund. The Chief Financial Officer ~~Comptroller~~ shall consult with the Governor and the chair and vice chair of the Legislative Budget Commission before any funds may be withdrawn from the Budget Stabilization Fund. At the beginning of the next fiscal year, the Chief Financial Officer

~~Comptroller~~ shall promptly determine the General Revenue Fund balance to be carried forward. The Chief Financial Officer ~~Comptroller~~ shall immediately repay the Budget Stabilization Fund for the withdrawn amount, up to the amount of the balance. If the General Revenue Fund balance carried forward is not sufficient to fully repay the Budget Stabilization Fund, the repayment of the remainder of the withdrawn funds shall be as provided in s. 215.32(2)(c)3.

Section 244. Paragraph (d) of subsection (4) of section 216.235, Florida Statutes, is amended to read:

216.235 Innovation Investment Program.—

(4) There is hereby created the State Innovation Committee, which shall have final approval authority as to which innovative investment projects submitted under this section shall be funded. Such committee shall be comprised of seven members. Appointed members shall serve terms of 1 year and may be reappointed. The committee shall include:

(d) The Chief Financial Officer ~~Comptroller~~.

Section 245. Section 216.237, Florida Statutes, is amended to read:

216.237 Availability of any remaining funds; agency maintenance of accounting records.—Any remaining funds from the General Revenue Fund and trust fund spending authority not awarded to agencies pursuant to s. 216.236 shall be available to agencies for innovative projects which generate a cost savings, increase revenue, or improve service delivery. Innovative projects which generate a cost savings shall receive greater consideration when awarding innovation investment funds. Any trust fund authority granted under this program shall be utilized in a manner consistent with the statutory authority for the use of said trust fund. Any savings realized as a result of implementing the innovative project shall be used by the agency to establish an internal innovations fund. State agencies which are awarded funds for innovative projects shall utilize the chart of accounts used by the Florida Accounting Information Resource Subsystem in the manner described in s. 215.93(3). Such chart of accounts shall be developed and amended in consultation with the Department of Financial Services ~~Banking and Finance~~ and the Executive Office of the Governor to separate and account for the savings that result from the implementation of the innovative projects and to keep track of how the innovative funds are reinvested by the state agency to fund additional innovative projects, which may include, but not be limited to, expenditures for training and information technology resources. Guidelines for the establishment of such internal innovations fund shall be provided by the Department of Management Services. Any agency awarded funds under this section shall maintain detailed accounting records showing all expenses, loan transfers, savings, or other financial actions concerning the project. Any savings realized as a result of implementing the innovative project shall be quantified, validated, and verified by the agency. A final report of the results of the implementation of each innovative project shall be submitted by each participating agency to the Governor's Office of Planning and Budgeting and the legislative appropria-

tions committees by June 30 of the fiscal year in which the funds were received and ensuing fiscal years for the life of the project.

Section 246. Paragraph (b) of subsection (2) of section 216.251, Florida Statutes, is amended to read:

216.251 Salary appropriations; limitations.—

(2)

(b) Salary payments shall be made only to employees filling established positions included in the agency's or in the judicial branch's approved budgets and amendments thereto as may be provided by law; provided, however:

1. Reclassification of established positions may be accomplished when justified in accordance with the established procedures for reclassifying positions; or

2. When the Division of Risk Management of the Department of Financial Services ~~Insurance~~ has determined that an employee is entitled to receive a temporary partial disability benefit or a temporary total disability benefit pursuant to the provisions of s. 440.15 and there is medical certification that the employee cannot perform the duties of the employee's regular position, but the employee can perform some type of work beneficial to the agency, the agency may return the employee to the payroll, at his or her regular rate of pay, to perform such duties as the employee is capable of performing, even if there is not an established position in which the employee can be placed. Nothing in this subparagraph shall abrogate an employee's rights under chapter 440 or chapter 447, nor shall it adversely affect the retirement credit of a member of the Florida Retirement System in the membership class he or she was in at the time of, and during, the member's disability.

Section 247. Section 216.271, Florida Statutes, is amended to read:

216.271 Revolving funds.—

(1) No revolving fund may be established or increased in amount pursuant to s. 17.58(2) ~~s. 18.101(2)~~, unless approved by the Chief Financial Officer ~~Comptroller~~. The purpose and uses of a revolving fund may not be changed without the prior approval of the Chief Financial Officer ~~Comptroller~~. As used in this section, the term "revolving fund" means a cash fund maintained within or outside the State Treasury and established from an appropriation, to be used by an agency or the judicial branch in making authorized expenditures.

(2) When the Chief Financial Officer ~~Comptroller~~ approves a revolving or petty cash fund for making refunds or other payments, such fund shall be established from an account within the appropriate fund to be known as "payments for revolving funds from funds not otherwise appropriated." Reimbursements made from revolving or petty cash funds shall be made in strict accordance with the provisions of s. 215.26(2). The Chief Financial Officer ~~Comptroller~~ may restrict the types of uses of any revolving fund established pursuant to this section.

(3) Vouchers for reimbursement of expenditures from revolving funds established under this section shall be presented in a routine manner to the Chief Financial Officer ~~Comptroller~~ for approval and payment, the proceeds of which shall be returned to the revolving or petty cash fund involved.

(4) The revolving or petty cash fund authorized herein shall be properly maintained and accounted for by the agency or by the judicial branch requesting the fund and, upon the expiration of the need therefor, shall be returned in the amount originally established to the appropriate fund for credit to the payments for revolving funds account therein.

(5) Reimbursement to the revolving fund for uninsured losses and theft may be made from the fund in which the responsible operating department is budgeted. Such reimbursement shall be submitted consistent with procedures specified by the Chief Financial Officer ~~Comptroller~~.

Section 248. Section 216.275, Florida Statutes, is amended to read:

216.275 Clearing accounts.—No clearing account may be established outside the State Treasury pursuant to s. 17.58(2) ~~s. 18.101(1)~~ unless approved by the Chief Financial Officer ~~Treasurer~~ during the fiscal year. Each agency, or the judicial branch, desiring to maintain a clearing account outside the State Treasury shall submit a written request to do so to the Chief Financial Officer ~~Treasurer~~ in accordance with the format and manner prescribed by the Chief Financial Officer ~~Treasurer~~. The Chief Financial Officer ~~Treasurer~~ shall maintain a listing of all clearing accounts approved during the fiscal year.

Section 249. Subsections (2), (3), (6), (8), (9), and (10) of section 216.292, Florida Statutes, are amended to read:

216.292 Appropriations nontransferable; exceptions.—

(2) A lump sum appropriated for a performance-based program must be distributed by the Governor for state agencies or the Chief Justice for the judicial branch into the traditional expenditure categories in accordance with s. 216.181(6)(b). At any time during the year, the agency head or Chief Justice may transfer funds between those categories with no limit on the amount of the transfer. Authorized revisions of the original approved operating budget, together with related changes, if any, must be transmitted by the state agency or by the judicial branch to the Executive Office of the Governor or the Chief Justice, the chair and vice chair of the Legislative Budget Commission, the Office of Program Policy Analysis and Government Accountability, and the Auditor General. Such authorized revisions shall be consistent with the intent of the approved operating budget, shall be consistent with legislative policy and intent, and shall not conflict with specific spending policies specified in the General Appropriations Act. The Executive Office of the Governor shall forward a copy of the revisions within 7 working days to the Chief Financial Officer ~~Comptroller~~ for entry in his or her records in the manner and format prescribed by the Executive Office of the Governor in consultation with the Chief Financial Officer ~~Comptroller~~. Such authorized revisions shall be consistent with the intent of the approved operating budget, shall be consistent with legislative policy and intent, and shall not

conflict with specific spending policies specified in the General Appropriations Act.

(3) The head of each department or the Chief Justice of the Supreme Court, whenever it is deemed necessary by reason of changed conditions, may transfer appropriations funded from identical funding sources, except appropriations for fixed capital outlay, and transfer the amounts included within the total original approved budget and releases as furnished pursuant to ss. 216.181 and 216.192, as follows:

(a) Between categories of appropriations within a budget entity, if no category of appropriation is increased or decreased by more than 5 percent of the original approved budget or $150,000, whichever is greater, by all action taken under this subsection.

(b) Additionally, between budget entities within identical categories of appropriations, if no category of appropriation is increased or decreased by more than 5 percent of the original approved budget or $150,000, whichever is greater, by all action taken under this subsection.

(c) Such authorized revisions must be consistent with the intent of the approved operating budget, must be consistent with legislative policy and intent, and must not conflict with specific spending policies specified in the General Appropriations Act.

Such authorized revisions, together with related changes, if any, in the plan for release of appropriations, shall be transmitted by the state agency or by the judicial branch to the Chief Financial Officer ~~Comptroller~~ for entry in the Chief Financial Officer's ~~Comptroller's~~ records in the manner and format prescribed by the Executive Office of the Governor in consultation with the Chief Financial Officer ~~Comptroller~~. A copy of such revision shall be furnished to the Executive Office of the Governor or the Chief Justice, the chair and vice chair of the Legislative Budget Commission, the Auditor General, and the director of the Office of Program Policy Analysis and Government Accountability.

(6) Upon request of a department to, and approval by, the Chief Financial officer ~~Comptroller~~, funds appropriated may be transferred to accounts established for disbursement purposes upon release of such appropriation. Such transfer may only be made to the same appropriation category and the same funding source from which the funds are transferred.

(8)(a) Should any state agency or the judicial branch become more than 90 days delinquent on reimbursements due to the Unemployment Compensation Trust Fund, the Department of Labor and Employment Security shall certify to the Chief Financial Officer ~~Comptroller~~ the amount due; and the Chief Financial Officer ~~Comptroller~~ shall transfer the amount due to the Unemployment Compensation Trust Fund from any funds of the agency available.

(b) Should any state agency or the judicial branch become more than 90 days delinquent in paying the Division of Risk Management of the Department of Financial Services ~~Insurance~~ for insurance coverage, the division

~~Department of Insurance~~ may certify to the Chief Financial Officer ~~Comptroller~~ the amount due; and the Chief Financial Officer ~~Comptroller~~ shall transfer the amount due to the Division of Risk Management from any funds of the agency or the judicial branch available.

(9) Moneys appropriated in the General Appropriations Act for the purpose of paying for services provided by the state communications system in the Department of Management Services shall be paid by the user agencies, or the judicial branch, within 45 days after the billing date. Billed amounts not paid by the user agencies, or by the judicial branch, shall be transferred by the Chief Financial Officer ~~Comptroller~~ from the user agencies to the Communications Working Capital Trust Fund.

(10) The Chief Financial Officer ~~Comptroller~~ shall report all such transfers and the reasons for such transfers to the legislative appropriations committees and the Executive Office of the Governor.

Section 250. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and subsection (3) of section 216.301, Florida Statutes, are amended to read:

216.301 Appropriations; undisbursed balances.—

(1)(a) Any balance of any appropriation, except an appropriation for fixed capital outlay, which is not disbursed but which is expended or contracted to be expended shall, at the end of each fiscal year, be certified by the head of the affected state agency or the judicial or legislative branches, on or before August 1 of each year, to the Executive Office of the Governor, showing in detail the obligees to whom obligated and the amounts of such obligations. On or before September 1 of each year, the Executive Office of the Governor shall review and approve or disapprove, consistent with legislative policy and intent, any or all of the items and amounts certified by the head of the affected state agency and shall approve all items and amounts certified by the Chief Justice of the Supreme Court for the judicial branch and by the legislative branch and shall furnish the Chief Financial Officer ~~Comptroller~~, the legislative appropriations committees, and the Auditor General a detailed listing of the items and amounts approved as legal encumbrances against the undisbursed balance of such appropriation. The review shall assure that trust funds have been fully maximized. Any such encumbered balance remaining undisbursed on December 31 of the same calendar year in which such certification was made shall revert to the fund from which appropriated and shall be available for reappropriation by the Legislature. In the event such certification is not made and an obligation is proven to be legal, due, and unpaid, then the obligation shall be paid and charged to the appropriation for the current fiscal year of the state agency or the legislative or judicial branch affected.

(2)(a) Any balance of any appropriation for fixed capital outlay not disbursed but expended or contracted or committed to be expended shall, at the end of each fiscal year, be certified by the head of the affected state agency or the legislative or judicial branch, on or before August 1 of each year, to the Executive Office of the Governor, showing in detail the commitment or to whom obligated and the amount of such commitment or obligation. On or

before September 1 of each year, the Executive Office of the Governor shall review and approve or disapprove, consistent with legislative policy and intent, any or all of the items and amounts certified by the head of the affected state agency and shall approve all items and amounts certified by the Chief Justice of the Supreme Court and by the legislative branch and shall furnish the Chief Financial Officer ~~Comptroller~~, the legislative appropriations committees, and the Auditor General a detailed listing of the items and amounts approved as legal encumbrances against the undisbursed balances of such appropriations. In the event such certification is not made and the balance of the appropriation has reverted and the obligation is proven to be legal, due, and unpaid, then the same shall be presented to the Legislature for its consideration.

(3) Notwithstanding the provisions of subsection (2), the unexpended balance of any appropriation for fixed capital outlay subject to but not under the terms of a binding contract or a general construction contract prior to February 1 of the second fiscal year, or the third fiscal year if it is for an educational facility as defined in chapter 1013 or a construction project of a state university, of the appropriation shall revert on February 1 of such year to the fund from which appropriated and shall be available for reappropriation. The Executive Office of the Governor shall, not later than February 20 of each year, furnish the Chief Financial Officer ~~Comptroller~~, the legislative appropriations committees, and the Auditor General a report listing in detail the items and amounts reverting under the authority of this subsection, including the fund to which reverted and the agency affected.

Section 251. Section 217.07, Florida Statutes, is amended to read:

217.07 Transfer of surplus property assets to department.—The Chief Financial Officer ~~State Treasurer~~ is authorized to transfer to the department any funds unexpended in the Surplus Property Revolving Trust Fund account in the State Treasury. This revolving fund shall remain in existence as a separate trust fund as long as the surplus property program exists. Upon termination of the program any remaining funds shall be disposed of as provided by federal law.

Section 252. Section 218.06, Florida Statutes, is amended to read:

218.06 Transfer of funds by county commissioners with relation to public works grants.—

(1) Boards of county commissioners of the several counties of the state, whenever it may be necessary to meet the requirements of the United States Government with reference to obtaining grants of federal funds in connection with the program of the Public Works Administration, may by resolution of such board, transfer and expend such sums of money as may be necessary to obtain said grant, from any fund to such other fund as may be necessary to meet said requirements and carry out the intent and purposes of the said transfer; provided, however, that no such transfer may be made by any county of the state without first having obtained the approval of the Department of Financial Services ~~Banking and Finance~~ thereto, and in the counties of the state where there is provision for a budget commission,

without first having also obtained the approval of said budget commission to said transfer.

(2) The Department of Financial Services ~~Banking and Finance~~ and the budget commissions of the several counties of the state in which there are provisions for such budget commissions, may approve such transfers whenever in their opinion such transfers are necessary and proper.

Section 253. Paragraph (a) of subsection (1) of section 218.23, Florida Statutes, is amended to read:

218.23 Revenue sharing with units of local government.—

(1) To be eligible to participate in revenue sharing beyond the minimum entitlement in any fiscal year, a unit of local government is required to have:

(a) Reported its finances for its most recently completed fiscal year to the Department of Financial Services ~~Banking and Finance~~, pursuant to s. 218.32.

Additionally, to receive its share of revenue sharing funds, a unit of local government shall certify to the Department of Revenue that the requirements of s. 200.065, if applicable, were met. The certification shall be made annually within 30 days of adoption of an ordinance or resolution establishing a final property tax levy or, if no property tax is levied, not later than November 1. The portion of revenue sharing funds which, pursuant to this part, would otherwise be distributed to a unit of local government which has not certified compliance or has otherwise failed to meet the requirements of s. 200.065 shall be deposited in the General Revenue Fund for the 12 months following a determination of noncompliance by the department.

Section 254. Subsection (4) of section 218.31, Florida Statutes, is amended to read:

218.31 Definitions.—As used in this part, except where the context clearly indicates a different meaning:

(4) "Department" means the Department of Financial Services ~~Banking and Finance~~.

Section 255. Subsections (1) and (4) of section 218.321, Florida Statutes, are amended to read:

218.321 Annual financial statements; local governmental entities.—

(1) Each local governmental entity shall complete its financial statements for the previous fiscal year in compliance with generally accepted accounting principles and the uniform chart of accounts prescribed by the department ~~of Banking and Finance~~.

(4) The failure by any local governmental entity to complete its annual financial statements shall, in addition to any other penalties provided by law, authorize the department to employ personnel or send department

personnel to such local governmental entity in order to complete such annual financial statements. The expenses related to the completion of the annual financial statements shall be charged to the local governmental entity. Upon failure by the local governmental entity to pay the charge within 15 days after billing, the department shall so certify to the Chief Financial Officer ~~Comptroller~~, who shall forward the amount so certified to the department from any funds due to the local governmental entity under any revenue-sharing or tax-sharing fund established by the state, except as otherwise provided by the State Constitution.

Section 256. Section 218.325, Florida Statutes, is amended to read:

218.325 Uniform chart of accounts and financial reporting for court and justice system costs and revenues.—

(1)(a) The Uniform Chart of Accounts Development Committee is hereby created to develop and implement a uniform chart of accounts. The committee shall work with the representatives of the designated end-user groups identified in subsection (3) in order to determine the specific financial data related to the operations of the circuit and county courts and justice-related agencies of the executive branch which must be accounted for and reported. The committee shall then work with the department ~~of Banking and Finance~~ to develop the necessary rules required to implement the uniform chart of accounts. The committee shall include:

1. The Chief Financial Officer ~~Comptroller~~ or his or her ~~the Comptroller's~~ designee.

2. Three clerks of the circuit court or deputy clerks, appointed by the president of the Florida Association of Court Clerks.

3. Three elected county commissioners or county finance staff, appointed by the Florida Association of Counties.

4. Three elected sheriffs or their designees, appointed by the president of the Florida Sheriffs Association.

(b) The Chief Financial Officer ~~Comptroller~~ or his or her ~~the Comptroller's~~ designee shall serve as chairperson of the committee. The committee shall use the staff of the Department of Financial Services ~~Banking and Finance~~ for staff support and may also appoint technical support staff as designated by the Florida Association of Court Clerks, the Florida Association of Counties, and the Florida Sheriffs Association as needed for technical assistance and support. ~~Members of the committee must be appointed within 30 days after June 18, 1995. Within 60 days after the appointment of the membership, the committee shall meet to establish procedures for the conduct of its business.~~

(c) Members of the committee shall serve without compensation.

(2) The Uniform Chart of Accounts Development Committee shall make an analysis of the requirements for implementing a detailed, uniform chart of accounts and financial reporting system for court and justice-related

agency expenditures and revenues. The Chief Financial Officer ~~Comptroller~~ shall make a report to the Chief Justice of the Florida Supreme Court, the Governor, the Speaker of the House of Representatives, and the President of the Senate on such requirements, including a timetable for implementation and an assessment of fiscal impact, by January 1, 1996. The proposed uniform chart of accounts and financial reporting system must provide that all revenues received and expenditures incurred by county governments, clerks of court, the courts or other judicial entities that are related to the operations of the circuit courts and county courts, and other components of the justice system can be accounted for in sufficient detail to permit reporting for both discrete functions and organizational units.

(3) For purposes of this section, the collection of representatives of end-user groups, which shall assist the Uniform Chart of Accounts Development Committee on the process and procedures for implementing new accounting and reporting requirements and provide oversight and guidance for implementing activities, shall be formed by one representative each from the Office of the Governor, the Speaker of the House of Representatives, the President of the Senate, the Office of the Chief Financial Officer ~~Comptroller~~, the Office of the State Courts Administrator, the Florida Prosecuting Attorneys Association, the Florida Public Defenders Association, the Legislative Committee on Intergovernmental Relations, the Information Resource Committee, and The Florida Bar.

Section 257. Paragraph (a) of subsection (1) of section 220.151, Florida Statutes, is amended to read:

220.151 Apportionment; methods for special industries.—

(1)(a) Except as provided in paragraph (b), the tax base of an insurance company for a taxable year or period shall be apportioned to this state by multiplying such base by a fraction the numerator of which is the direct premiums written for insurance upon properties and risks in this state and the denominator of which is the direct premiums written for insurance upon properties and risks everywhere. For purposes of this paragraph, the term "direct premiums written" means the total amount of direct premiums written, assessments, and annuity considerations, as reported for the taxable year or period on the annual statement filed by the company with the Office of Insurance Regulation of the Financial Services Commission ~~commissioner of insurance~~ in the form approved by the National Convention of Insurance Commissioners or such other form as may be prescribed in lieu thereof.

Section 258. Subsection (7) of section 220.187, Florida Statutes, is amended to read:

220.187 Credits for contributions to nonprofit scholarship-funding organizations.—

(7) DEPOSITS OF ELIGIBLE CONTRIBUTIONS.—All eligible contributions received by an eligible nonprofit scholarship-funding organization shall be deposited in a manner consistent with s. 17.57(2) ~~s. 18.10(2)~~.

Section 259. Subsection (3) of section 220.62, Florida Statutes, is amended to read:

220.62 Definitions.—For purposes of this part:

(3) The term "international banking facility" means a set of asset and liability accounts segregated on the books and records of a banking organization that includes only international banking facility deposits, borrowings, and extensions of credit, as those terms are defined by the Financial Services Commission ~~Department of Banking and Finance~~, taking into account all transactions in which international banking facilities are permitted to engage by regulations of the Board of Governors of the Federal Reserve System, as from time to time amended. When providing such definitions, the Financial Services Commission ~~Department of Banking and Finance~~ shall also consider the public interest, including the need to maintain a sound and competitive banking system, as well as the purpose of this act, which is to create an environment conducive to the conduct of an international banking business in the state.

Section 260. Subsection (2) of section 220.723, Florida Statutes, is amended to read:

220.723 Overpayments; interest.—

(2) Interest shall accrue from the date upon which the taxpayer files a written notice advising the department of the overpayment. Interest shall be paid until such date as determined by the department, which shall be no more than 7 days prior to the date of the issuance by the Chief Financial Officer ~~Comptroller~~ of the refund warrant.

Section 261. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 238.11, Florida Statutes, are amended to read:

238.11 Collection of contributions.—

(1) The collection of contributions shall be as follows:

(b) Each employer shall transmit monthly to the Department of Management Services a warrant for the total amount of such deductions. Each employer shall also transmit monthly to the department a warrant for such employer contribution set aside as provided for in paragraph (a) of this subsection. The department, after making records of all such warrants, shall transmit them to the Department of Financial Services ~~Banking and Finance~~ for delivery to the Chief Financial Officer, ~~Treasurer of the state~~ who shall collect them.

(2) The collection of the state contribution shall be made as follows:

(b) The Department of Management Services shall certify one-fourth of the amount so ascertained for each year to the Chief Financial Officer ~~Comptroller~~ on or before the last day of July, October, January, and April of each year. The Chief Financial Officer ~~Comptroller~~ shall, on or before the first day of August, November, February, and May of each year, ~~draw his~~

~~or her warrant or warrants on the Treasurer for the respective amounts due the several funds of the retirement system. On the receipt of the warrant or warrants of the Comptroller, the Treasurer shall~~ immediately transfer to the several funds of the retirement system the amounts due.

Section 262. Section 238.15, Florida Statutes, is amended to read:

238.15 Exemption of funds from taxation, execution, and assignment.—The pensions, annuities or any other benefits accrued or accruing to any person under the provisions of this chapter and the accumulated contributions and cash securities in the funds created under this chapter are exempted from any state, county or municipal tax of the state, and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable, except:

(1) That any teacher who has retired shall have the right and power to authorize in writing the Department of Management Services to deduct from his or her monthly retirement allowance money for the payment of the premiums on group insurance for hospital, medical and surgical benefits, under a plan or plans for such benefits approved in writing by the Chief Financial Officer ~~Insurance Commissioner and Treasurer of the state~~, and upon receipt of such request the department shall make the monthly payments as directed; and

(2) As may be otherwise specifically provided for in this chapter.

Section 263. Section 238.172, Florida Statutes, is amended to read:

238.172 Proof required.—For any person to obtain the allowance as set forth in s. 238.171 the ~~said~~ person shall make such proof of the facts and conditions entitling him or her to the ~~said~~ allowance as shall reasonably be required by the state board, and when such proof has been submitted to the satisfaction of the state board, the Chief Financial Officer ~~State Treasurer~~ shall pay to such person the monthly allowance herein provided for ~~on warrants drawn by the Comptroller~~.

Section 264. Section 238.173, Florida Statutes, is amended to read:

238.173 Monthly allowance to widows or widowers of pensioners.—When any teacher, drawing pension under s. 238.171, shall die leaving surviving a widow or widower to whom such pensioner has been married for a continuous period of at least 10 years immediately prior to his or her death, and from whom no dissolution of marriage is obtained, such widow or widower, upon proof of marriage to and continuation of marriage for the minimum period with, and death of, said pensioner, shall be granted a pension payable from the date of the death of said pensioner, and at the same time and rate as other pensions paid under s. 238.171. The Chief Financial Officer ~~Comptroller~~ is ~~hereby~~ authorized and directed to draw his or her warrants in payment of such pensions so long as such widow or widower shall remain unmarried and continue to be a resident of the state; provided, however, that nothing herein contained shall be so construed as to allow such pension to be paid to any widow or widower where such widow or widower of a deceased

pensioner under this section receives a like pension in his or her own right as a retired school teacher.

Section 265. Subsection (3) of section 250.22, Florida Statutes, is amended to read:

250.22 Retirement.—

(3) Sufficient money to meet the requirements of this section is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, and payments under this section will be made to those eligible to receive the same on the first day of each calendar month from the General Revenue Fund by the Chief Financial Officer ~~Comptroller~~ upon prescribed pay vouchers certified to by the Adjutant General of the state.

Section 266. Subsections (3), (4), and (5) of section 250.24, Florida Statutes, are amended to read:

250.24 Pay and expenses; appropriation; procedures.—

(3) Notwithstanding the provision of s. 216.271, moneys for pay and allowances of the troops ordered out in active service of the state shall be deposited in a separate revolving fund, which shall be approved by the Chief Financial Officer ~~Comptroller~~ and shall be subject to the provisions of s. 17.58(2) ~~s. 18.101(2)~~. The Department of Military Affairs shall administer the fund. Frequency of payments to such troops shall be at the discretion of the Adjutant General. The Department of Military Affairs shall present to the Chief Financial Officer ~~Comptroller~~ audit documentation of such payments. The Department of Military Affairs shall maintain all employee records relating to payments made pursuant to this subsection and shall furnish to the Chief Financial Officer ~~Comptroller~~ the information necessary to update the payroll master record of each employee.

(4) The fund balance remaining in this separate revolving fund after a final accounting of all expenditures for pay and allowances of the troops shall be returned for deposit to the State Treasury within 45 days after the termination of active duty of the troops, except that an operating balance in an amount mutually agreed upon by the Chief Financial Officer ~~Comptroller~~ and the Department of Military Affairs shall be retained in the fund.

(5) Vouchers for expenditures other than such pay and allowances shall be presented to the Chief Financial Officer ~~Comptroller~~ for approval and payment as prescribed by law.

Section 267. Section 250.25, Florida Statutes, is amended to read:

250.25 Governor and Chief Financial Officer ~~Comptroller~~ authorized to borrow money.—When there is no state appropriation available for the pay and expenses of troops called out in active service to preserve the peace or in aid of civil authorities, and funds are not immediately available for this purpose, the Governor and Chief Financial Officer ~~Comptroller~~ may borrow money to make such payments, in such sum or sums as may from time to time be required, and any such loans, so obtained, shall be promptly repaid out of the first funds that become available for such use.

Section 268. Section 250.26, Florida Statutes, is amended to read:

250.26 Transfer of funds.—Where the available funds are not sufficient for the purposes specified in ss. 250.23, 250.24, and 250.34, the Governor and Chief Financial Officer ~~Comptroller~~ may transfer from any available fund in the State Treasury, such sum as may be necessary to meet such emergency, and the said moneys, so transferred, shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

Section 269. Subsection (3) of section 250.34, Florida Statutes, is amended to read:

250.34 Injury or death in active service.—

(3) After the expiration of 1 year from the date of injury or disability, such individual shall be provided hospitalization, medical services and supplies, and compensation for wages and compensation for disability based on the average weekly wages of such injured individual on pay status in the active service of the state or in his or her civilian occupation or employment, whichever is greater, in amounts provided under chapter 440 [F. S. 1973], as if such individual were covered under the Workers' Compensation Law, except that payments made during the first year after such injury shall not be duplicated after the expiration of that year. The Division of Risk Management of the Department of Financial Services ~~Insurance~~ is responsible for processing all claims for benefits under this subsection.

Section 270. Section 252.62, Florida Statutes, is amended to read:

252.62 Director of Office of Financial Regulation ~~Comptroller's~~ powers in a state of emergency.—

(1) It is the purpose and intent of this section to provide the Director of the Office of Financial Regulation of the Financial Services Commission ~~Comptroller, as head of the Department of Banking and Finance,~~ the authority to make temporary modifications to or suspensions of the financial institutions codes in order to expedite the recovery of communities affected by a disaster or other emergency and in order to encourage financial institutions to meet the credit, deposit, and other financial needs of such communities.

(2)(a) When the Governor declares a state of emergency pursuant to s. 252.36, the Director of the Office of Financial Regulation ~~Comptroller~~ may issue:

1. One or more general orders applicable to all financial institutions that are subject to the financial institutions codes and that serve any portion of the area of the state under the state of emergency; or

2. One or more specific orders to particular financial institutions that are subject to the financial institution codes and that normally derive more than 60 percent of their deposits from persons in the area of the state under the state of emergency,

which orders may modify or suspend, as to those institutions, all or any part of the financial institutions codes, as defined in s. 655.005, or any applicable rule, consistent with the stated purposes of the financial institutions codes and with maintaining the safety and soundness of the financial institutions system in this state.

(b) An order issued by the director ~~Comptroller~~ under this section becomes effective upon issuance and continues for 120 days unless it is terminated by the director ~~Comptroller~~. The director ~~Comptroller~~ may extend an order for one additional period of 120 days if he or she ~~the Comptroller~~ determines that the emergency conditions that gave rise to the ~~Comptroller's~~ initial order still exist. The Legislature, by concurrent resolution, may terminate any order issued under this section.

(3) The director ~~Comptroller~~ shall publish, in the next available publication of the Florida Administrative Weekly, a copy of the text of any order issued under this section, together with a statement describing the modification or suspension and explaining how the modification or suspension will facilitate recovery from the emergency and maintain the safety and soundness of financial institutions in this state.

Section 271. Subsection (7) of section 252.87, Florida Statutes, is amended to read:

252.87 Supplemental state reporting requirements.—

(7) The department shall avoid duplicative reporting requirements by utilizing the reporting requirements of other state agencies that regulate hazardous materials to the extent feasible and shall request the information authorized under EPCRA. With the advice and consent of the State Emergency Response Commission for Hazardous Materials, the department may require by rule that the maximum daily amount entry on the chemical inventory report required under s. 312 of EPCRA provide for reporting in estimated actual amounts. The department may also require by rule an entry for the Federal Employer Identification Number on this report. To the extent feasible, the department shall encourage and accept required information in a form initiated through electronic data interchange and shall describe by rule the format, manner of execution, and method of electronic transmission necessary for using such form. To the extent feasible, the Department of Financial Services ~~Insurance~~, the Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Public Service Commission, the Department of Revenue, the Department of Labor and Employment Security, and other state agencies which regulate hazardous materials shall coordinate with the department in order to avoid duplicative requirements contained in each agency's respective reporting or registration forms. The other state agencies that inspect facilities storing hazardous materials and suppliers and distributors of covered substances shall assist the department in informing the facility owner or operator of the requirements of this part. The department shall provide the other state agencies with the necessary information and materials to inform the owners and operators of the requirements of this part to ensure that the budgets of these agencies are not adversely affected.

Section 272. Subsection (14) of section 253.025, Florida Statutes, is amended to read:

253.025 Acquisition of state lands for purposes other than preservation, conservation, and recreation.—

(14) Any agency that acquires land on behalf of the board of trustees is authorized to request disbursement of payments for real estate closings in accordance with a written authorization from an ultimate beneficiary to allow a third party authorized by law to receive such payment provided the Chief Financial Officer ~~Comptroller~~ determines that such disbursement is consistent with good business practices and can be completed in a manner minimizing costs and risks to the state.

Section 273. Subsection (1) of section 255.03, Florida Statutes, is amended to read:

255.03 Proceeds of insurance to be paid into State Treasury; disbursement of funds.—

(1) The proceeds from the insurance of any state building or state property covered by insurance which may be destroyed in whole or in part by fire, or other damage, shall be paid into the State Treasury and constitute a fund for the rebuilding or replacing of such property, and the Chief Financial Officer ~~Comptroller~~ may draw his or her warrant ~~on the State Treasurer~~ for such amounts, not to exceed the proceeds so paid in, as may be approved by the board or persons having the direct supervision and control of such buildings or property for the purpose of rebuilding or replacing the same.

Section 274. Subsections (1) and (2) of section 255.052, Florida Statutes, are amended to read:

255.052 Substitution of securities for amounts retained on public contracts.—

(1) Under any contract made or awarded by the state or any county, city, or political subdivision thereof, or other public authority, the contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the contractor pursuant to the terms of the contract, upon depositing with the Chief Financial Officer ~~State Treasurer~~:

(a) United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;

(b) Bonds or notes of the State of Florida; or

(c) Bonds of any political subdivision in the state; or

(d) Cash delivered to the State Treasury for the Treasury Cash Deposit Trust Fund; or

(e) Certificates of deposit from state or national banks or state or federal savings and loan associations in the state. Certificates of deposit shall possess the eligibility characteristics defined in s. 625.52.

No amount shall be withdrawn in excess of the market value of the securities listed in paragraphs (a), (b), and (c) at the time of withdrawal or of the par value of such securities, whichever is lower.

(2) The Chief Financial Officer ~~Treasurer~~ shall regularly, ~~on a regular basis~~, collect all interest or income on the obligations so deposited, and shall pay the same, when and as collected, to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the Chief Financial Officer ~~Treasurer~~ shall deliver each coupon as it matures to the contractor.

Nothing in this section shall be construed to require the state or any county, city, or political subdivision thereof, or other public authority, to allow the contractor to withdraw the whole or any portion of the amount retained for payments to the contractor except pursuant to the terms of the contract.

Section 275. Subsection (2) of section 255.258, Florida Statutes, is amended to read:

255.258 Shared savings financing of energy conservation in state-owned buildings.—

(2) Except as noted in subsection (4), state agency shared savings contracts shall be developed in accordance with a model contract to be developed by the department in cooperation with the Attorney General, the Chief Financial Officer ~~Comptroller~~, and the Department of Community Affairs. The model contract shall include the methodology for calculating base line energy costs, a procedure for revising these costs should the state institute additional energy conservation features or building use change, a requirement for a performance bond guaranteeing that the facility will be restored to the original condition in the event of default, a provision for early buy-out, a clause specifying who will be responsible for maintaining the equipment, and a provision allowing the disposal of equipment at the end of the contract. No agency shall substantially alter the provisions described in the model without the permission of the department.

Section 276. Subsection (8) of section 255.503, Florida Statutes, is amended to read:

255.503 Powers of the Department of Management Services.—The Department of Management Services shall have all the authority necessary to carry out and effectuate the purposes and provisions of this act, including, but not limited to, the authority to:

(8) Create and establish funds and accounts for the purpose of debt service reserves, for the matching of the timing and the amount of available funds and debt service charges, for sinking funds, for capital depreciation reserves, for operating reserves, for capitalized interest and moneys not required for immediate disbursement to acquire all or a portion of any facility, and for any other reserves, funds, or accounts reasonably necessary to carry out the provisions of this act and to invest in authorized investments any moneys held in such funds and accounts, provided such investments will be made on behalf of the Department of Management Services by the State

Board of Administration or the Chief Financial Officer ~~Treasurer~~, as appropriate.

Section 277. Section 255.521, Florida Statutes, is amended to read:

255.521 Failure of payment.—Should an agency fail to make a timely payment of the pool pledged rentals or charges as required by this act, the Chief Financial Officer ~~Comptroller~~ shall withhold general revenues of the agency in an amount sufficient to pay the rentals and charges due and unpaid from such agency. The Chief Financial Officer ~~Comptroller~~ shall forward such ~~said~~ general revenue amounts to the Department of Management Services in payment of such rents.

Section 278. Section 257.22, Florida Statutes, is amended to read:

257.22 Division of Library and Information Services; allocation of funds.—Any moneys that may be appropriated for use by a county, a municipality, a special district, or a special tax district for the maintenance of a library or library service shall be administered and allocated by the Division of Library and Information Services in the manner prescribed by law. On or before December 1 of each year, the division shall certify to the Chief Financial Officer ~~Comptroller~~ the amount to be paid to each county, municipality, special district, or special tax district, and the Chief Financial Officer ~~Comptroller~~ shall issue warrants to the respective boards of county commissioners or chief municipal executive authorities for the amount so allocated.

Section 279. Subsection (2) of section 258.014, Florida Statutes, is amended to read:

258.014 Fees for use of state parks.—

(2) Any moneys received in trust by the division by gift, devise, appropriation, or otherwise shall, subject to the terms of such trust, be deposited with the Chief Financial Officer ~~State Treasurer~~ in a fund to be known as the "State Park Trust Fund," and shall be subject to withdrawal upon application of such ~~said~~ division for expenditure or investment in accordance with the terms of the ~~said~~ trust. Unless prohibited by the terms of the trust by which the ~~said~~ moneys are derived, all of such moneys may be invested as provided by law.

Section 280. Subsection (6) and paragraph (e) of subsection (12) of section 259.032, Florida Statutes, are amended to read:

259.032 Conservation and Recreation Lands Trust Fund; purpose.—

(6) Moneys in the fund not needed to meet obligations incurred under this section shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the fund and may be invested in the manner provided by law. Interest received on such investments shall be credited to the Conservation and Recreation Lands Trust Fund.

(12)

(e) Payment in lieu of taxes pursuant to this subsection shall be made annually to qualifying counties and local governments after certification by the Department of Revenue that the amounts applied for are reasonably appropriate, based on the amount of actual taxes paid on the eligible property, and after the Department of Environmental Protection has provided supporting documents to the Chief Financial Officer ~~Comptroller~~ and has requested that payment be made in accordance with the requirements of this section.

For the purposes of this subsection, "local government" includes municipalities, the county school board, mosquito control districts, and any other local government entity which levies ad valorem taxes, with the exception of a water management district.

Section 281. Subsection (18) of section 259.041, Florida Statutes, is amended to read:

259.041 Acquisition of state-owned lands for preservation, conservation, and recreation purposes.—

(18) Any agency authorized to acquire lands on behalf of the board of trustees is authorized to request disbursement of payments for real estate closings in accordance with a written authorization from an ultimate beneficiary to allow a third party authorized by law to receive such payment provided the Chief Financial Officer ~~Comptroller~~ determines that such disbursement is consistent with good business practices and can be completed in a manner minimizing costs and risks to the state.

Section 282. Subsection (2) of section 265.53, Florida Statutes, is amended to read:

265.53 Application for indemnity agreement.—

(2) The Department of Financial Services ~~Insurance~~ shall determine whether applicants qualify for indemnity coverage under ss. 265.51-265.56. Qualification criteria, which shall be set by rule, shall include factors such as:

(a) Physical security of an applicant's exhibition facilities and of the means of transportation of the eligible items from the borrower to the lender.

(b) Experience and qualifications of an applicant's director, curator, registrar, or other staff.

(c) Eligibility of an applicant's exhibition facilities for commercial insurance coverage of works of art displayed there.

(d) Availability of proper equipment to protect works of art from damage from extremes of temperature or humidity or exposure to glare, dust, or corrosion.

The department may consult with such private insurance and art experts as reasonably necessary to carry out the intent of this subsection.

Section 283. Subsections (1) and (3) of section 265.55, Florida Statutes, are amended to read:

265.55 Claims.—

(1) The Division of Risk Management of the Department of Financial Services ~~Insurance~~ may prescribe rules providing for prompt adjustment of valid claims for losses which are covered by an indemnity agreement made pursuant to the provisions of ss. 265.51-265.56, including rules providing for the employment of consultants and for the arbitration of issues relating to the dollar value of damages involving less than total loss or destruction of such covered objects.

(3) The authorization for payment delineated in subsection (2) shall be forwarded to the Chief Financial Officer ~~Comptroller~~. The Chief Financial Officer ~~Comptroller~~ shall take appropriate action to execute authorized payment of the claim from the Working Capital Fund, as defined in s. 215.32.

Section 284. Paragraph (d) of subsection (3) of section 267.075, Florida Statutes, is amended to read:

267.075 The Grove Advisory Council; creation; membership; purposes.—

(3)

(d) Members of the council shall serve without compensation or honorarium but shall be entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061. All expenses of the council shall be paid from appropriations to be made by the Legislature to the Department of State. All vouchers shall be approved by the Division of Historical Resources before being submitted to the Chief Financial Officer ~~Comptroller~~ for payment.

Section 285. Paragraph (c) of subsection (2) of section 272.18, Florida Statutes, is amended to read:

272.18 Governor's Mansion Commission.—

(2)

(c) Members of the commission shall serve without compensation or honorarium but shall be entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061. All expenses of the commission shall be paid from appropriations to be made by the Legislature to the Department of Management Services for that purpose. The commission shall submit its budgetary requests to the Department of Management Services for approval and inclusion in the legislative budget request of the department. All vouchers shall be approved by the secretary of the Department of Management Services before being submitted to the Chief Financial Officer ~~Comptroller~~ for payment.

Section 286. Subsections (9), (11), (17), (18), (19), and (24), paragraph (f) of subsection (26), and subsections (29), (30), and (31) of section 280.02, Florida Statutes, are amended to read:

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

(9) "Custodian" means the Chief Financial Officer ~~Treasurer~~ or any bank, savings association, or trust company that:

(a) Is organized and existing under the laws of this state, any other state, or the United States;

(b) Has executed all forms required under this chapter or any rule adopted hereunder;

(c) Agrees to be subject to the jurisdiction of the courts of this state, or of courts of the United States which are located within this state, for the purpose of any litigation arising out of this chapter; and

(d) Has been approved by the Chief Financial Officer ~~Treasurer~~ to act as a custodian.

(11) "Effective date of notice of withdrawal or order of discontinuance" pursuant to s. 280.11(3) means that date which is set out as such in any notice of withdrawal or order of discontinuance from the Chief Financial Officer ~~Treasurer~~.

(17) "Operating subsidiary" means the qualified public depository's 100-percent owned corporation that has ownership of pledged collateral. The operating subsidiary may have no powers beyond those that its parent qualified public depository may itself exercise. The use of an operating subsidiary is at the discretion of the qualified public depository and must meet the Chief Financial Officer's ~~Treasurer's~~ requirements.

(18) "Oversight board" means the qualified public depository oversight board created in s. 280.071 for the purpose of safeguarding the integrity of the public deposits program and preventing the realization of loss assessments through standards, policies, and recommendations for actions to the Chief Financial Officer ~~Treasurer~~.

(19) "Pledged collateral" means securities or cash held separately and distinctly by an eligible custodian for the benefit of the Chief Financial Officer ~~Treasurer~~ to be used as security for Florida public deposits. This includes maturity and call proceeds.

(24) "Public depositor" means the official custodian of funds for a governmental unit who is ~~Treasurer or other Chief Financial Officer or designee~~ responsible for handling public deposits.

(26) "Qualified public depository" means any bank, savings bank, or savings association that:

(f) Has been designated by the Chief Financial Officer ~~Treasurer~~ as a qualified public depository.

~~(29) "Treasurer" means the Treasurer of the State of Florida.~~

(29)~~(30)~~ "Chief Financial Officer's ~~"Treasurer's~~ custody" is a collateral arrangement governed by a contract between a designated Chief Financial

Officer's ~~Treasurer's~~ custodian and the Chief Financial Officer ~~Treasurer~~. This arrangement requires collateral to be in the Chief Financial Officer's ~~Treasurer's~~ name in order to perfect the security interest.

(30)~~(31)~~ "Triggering events" are events set out in s. 280.041 which give the Chief Financial Officer ~~Treasurer~~ the right to:

(a) Instruct the custodian to transfer securities pledged, interest payments, and other proceeds of pledged collateral not previously credited to the pledgor.

(b) Demand payment under letters of credit.

Section 287. Subsections (1), (2), (5), (6), (7), and (9) of section 280.04, Florida Statutes, are amended to read:

280.04 Collateral for public deposits; general provisions.—

(1) The Chief Financial Officer ~~Treasurer~~ shall determine the collateral requirements and collateral pledging level for each qualified public depository following procedures established by rule. These procedures shall include numerical parameters for 25-percent, 50-percent, 125-percent, and 200-percent pledge levels based on nationally recognized financial rating services information and established financial performance guidelines.

(2) A qualified public depository may not accept or retain any public deposit which is required to be secured unless it has deposited with the Chief Financial Officer ~~Treasurer~~ eligible collateral at least equal to the greater of:

(a) The average daily balance of public deposits that does not exceed the lesser of its capital account or 20 percent of the pool figure multiplied by the depository's collateral-pledging level, plus the greater of:

1. One hundred twenty-five percent of the average daily balance of public deposits in excess of capital accounts; or

2. One hundred twenty-five percent of the average daily balance of public deposits in excess of 20 percent of the pool figure.

(b) Twenty-five percent of the average monthly balance of public deposits.

(c) One hundred twenty-five percent of the average daily balance of public deposits if the qualified public depository:

1. Has been established for less than 3 years;

2. Has experienced material decreases in its capital accounts; or

3. Has an overall financial condition that is materially deteriorating.

(d) Two hundred percent of an established maximum amount of public deposits that has been mutually agreed upon by and between the Chief Financial Officer ~~Treasurer~~ and the qualified public depository.

(e) Minimum required collateral of $100,000.

(f) An amount as required in special instructions from the Chief Financial Officer ~~Treasurer~~ to protect the integrity of the public deposits program.

(5) Additional collateral of 20 percent of required collateral is necessary if a valuation date other than the close of business as described below has been approved for the qualified public depository and the required collateral is found to be insufficient based on the Chief Financial Officer's ~~Treasurer's~~ valuation.

(6) Each qualified public depository shall value its collateral in the following manner; it must:

(a) Use a nationally recognized source.

(b) Use market price, quality ratings, and pay-down factors as of the close of business on the last banking day in the reported month, or as of a date approved by the Chief Financial Officer ~~Treasurer~~.

(c) Report any material decline in value that occurs before the date of mailing the monthly report, required in s. 280.16, to the Chief Financial Officer ~~Treasurer~~.

(d) Use 100 percent of the maximum amount available under Federal Home Loan Bank letters of credit as market value.

(7) A qualified public depository shall pledge, deposit, or issue additional eligible collateral between filing periods of the monthly report required in s. 280.16 when notified by the Chief Financial Officer ~~Treasurer~~ that current market value of collateral does not meet required collateral. The pledge, deposit, or issuance of such additional collateral shall be made within 2 business days after the Chief Financial Officer's ~~Treasurer's~~ notification.

(9) The Chief Financial Officer ~~Treasurer~~ shall adopt rules for the establishment of collateral requirements, collateral pledging levels, required collateral calculations, and market value and clarifying terms.

Section 288. Section 280.041, Florida Statutes, is amended to read:

280.041 Collateral arrangements; agreements, provisions, and triggering events.—

(1) Eligible collateral listed in s. 280.13 may be pledged, deposited, or issued using the following collateral arrangements as approved by the Chief Financial Officer ~~Treasurer~~ for a qualified public depository or operating subsidiary, if one is used, to meet required collateral:

(a) Regular custody arrangement for collateral pledged to the Chief Financial Officer ~~Treasurer~~ pursuant to subsection (2).

(b) Federal Reserve Bank custody arrangement for collateral pledged to the Chief Financial Officer ~~Treasurer~~ pursuant to subsection (3).

(c) Chief Financial Officer's ~~Treasurer's~~ custody arrangement for collateral deposited in the Chief Financial Officer's ~~Treasurer's~~ name pursuant to subsection (4).

(d) Federal Home Loan Bank letter of credit arrangement for collateral issued with the Chief Financial Officer ~~Treasurer~~ as beneficiary pursuant to subsection (5).

(e) Cash arrangement for collateral held by the Chief Financial Officer ~~Treasurer~~ or a custodian.

(2) With the approval of the Chief Financial Officer ~~Treasurer~~, a qualified public depository or operating subsidiary, as pledgor, may deposit eligible collateral with a custodian. A qualified public depository shall not act as its own custodian. Except in the case of using a Federal Reserve Bank as custodian, the following are necessary for the Chief Financial Officer's ~~Treasurer's~~ approval:

(a) A completed collateral agreement in a form prescribed by the Chief Financial Officer ~~Treasurer~~ in which the pledgor agrees to the following provisions:

1. The pledgor shall own the pledged collateral and acknowledge that the Chief Financial Officer ~~Treasurer~~ has a perfected security interest. The pledged collateral shall be eligible collateral and shall be at least equal to the amount of required collateral.

2. The pledgor shall grant to the Chief Financial Officer ~~Treasurer~~ an interest in pledged collateral for the purposes of this section. The pledgor shall not enter into or execute any other agreement related to the pledged collateral that would create an interest in or lien on that collateral in any manner in favor of any third party without the written consent of the Chief Financial Officer ~~Treasurer~~.

3. The pledgor shall not grant the custodian any lien that attaches to the collateral in favor of the custodian that is superior or equal to the security interest of the Chief Financial Officer ~~Treasurer~~.

4. The pledgor shall agree that the Chief Financial Officer ~~Treasurer~~ may, without notice to or consent by the pledgor, require the custodian to comply with and perform any and all requests and orders directly from the Chief Financial Officer ~~Treasurer~~. These include, but are not limited to, liquidating all collateral and submitting the proceeds directly to the Chief Financial Officer ~~Treasurer~~ in the name of the Chief Financial Officer ~~Treasurer~~ only or transferring all collateral into an account designated solely by the Chief Financial Officer ~~Treasurer~~.

5. The pledgor shall acknowledge that the Chief Financial Officer ~~Treasurer~~ may, without notice to or consent by the pledgor, require the custodian to hold principal payments and income for the benefit of the Chief Financial Officer ~~Treasurer~~.

6. The pledgor shall initiate collateral transactions on forms prescribed by the Chief Financial Officer ~~Treasurer~~ in the following manner:

a. A deposit transaction of eligible collateral may be made without prior approval from the Chief Financial Officer ~~Treasurer~~ provided: security types that have restrictions have been approved in advance of the transaction by the Chief Financial Officer ~~Treasurer~~ and simultaneous notification is given to the Chief Financial Officer ~~Treasurer~~; and the custodian has not received notice from the Chief Financial Officer ~~Treasurer~~ prohibiting deposits without prior approval.

b. A substitution transaction of eligible collateral may be made without prior approval from the Chief Financial Officer ~~Treasurer~~ provided: security types that have restrictions have been approved in advance of the transaction by the Chief Financial Officer ~~Treasurer~~; the market value of the securities to be substituted is at least equal to the amount withdrawn; simultaneous notification is given to the Chief Financial Officer ~~Treasurer~~; and the custodian has not received notice from the Chief Financial Officer ~~Treasurer~~ prohibiting substitution.

c. A transfer of collateral between accounts at a custodian requires the Chief Financial Officer's ~~Treasurer's~~ prior approval. The collateral shall be released subject to redeposit in the new account with a pledge to the Chief Financial Officer ~~Treasurer~~ intact.

d. A transfer of collateral from a custodian to another custodian requires the Chief Financial Officer's ~~Treasurer's~~ prior approval and a valid collateral agreement with the new custodian. The collateral shall be released subject to redeposit at the new custodian with a pledge to the Chief Financial Officer ~~Treasurer~~ intact.

e. A withdrawal transaction requires the Chief Financial Officer's ~~Treasurer's~~ prior approval. The market value of eligible collateral remaining after the withdrawal shall be at least equal to the amount of required collateral. A withdrawal transaction shall be executed for any release of collateral including maturity or call proceeds.

f. Written notice shall be sent to the Chief Financial Officer ~~Treasurer~~ to remove from the inventory of pledged collateral a pay-down security that has paid out with zero principal remaining.

7. If pledged collateral includes definitive (physical) securities in registered form which are in the name of the pledgor or a nominee, the pledgor shall deliver the following documents when requested by the Chief Financial Officer ~~Treasurer~~:

a. A separate certified power of attorney in a form prescribed by the Chief Financial Officer ~~Treasurer~~ for each issue of securities.

b. Separate bond assignment forms as required by the bond agent or trustee.

c. Certified copies of resolutions adopted by the pledgor's governing body authorizing execution of these documents.

8. The pledgor shall be responsible for all costs necessary to the functioning of the collateral agreement or associated with confirmation of pledged

collateral to the Chief Financial Officer ~~Treasurer~~ and acknowledges that these costs shall not be a charge against the Chief Financial Officer ~~Treasurer~~ or his or her interests in the pledged collateral.

9. The pledgor, if notified by the Chief Financial Officer ~~Treasurer~~, shall not be allowed to use a custodian if that custodian fails to complete the collateral agreement, releases pledged collateral without the Chief Financial Officer's ~~Treasurer's~~ approval, fails to properly complete confirmations of pledged collateral, fails to honor a request for examination of definitive pledged collateral and records of book-entry securities, or fails to provide requested documents on definitive securities. The period for disallowing the use of a custodian shall be 1 year.

10. The pledgor shall be subject to the jurisdiction of the courts of the State of Florida, or of courts of the United States located within the State of Florida, for the purpose of any litigation arising out of the act.

11. The pledgor is responsible and liable to the Chief Financial Officer ~~Treasurer~~ for any action of agents the pledgor uses to execute collateral transactions or submit reports to the Chief Financial Officer ~~Treasurer~~.

12. The pledgor shall agree that any information, forms, or reports electronically transmitted to the Chief Financial Officer ~~Treasurer~~ shall have the same enforceability as a signed writing.

13. The pledgor shall submit proof that authorized individuals executed the collateral agreement on behalf of the pledgor.

14. The pledgor shall agree by resolution of the board of directors that collateral agreements entered into for purposes of this section have been formally accepted and constitute official records of the pledgor.

15. The pledgor shall be bound by any other provisions found necessary for a perfected security interest in collateral under the Uniform Commercial Code.

(b) A completed collateral agreement in a form prescribed by the Chief Financial Officer ~~Treasurer~~ in which the custodian agrees to the following provisions:

1. The custodian shall have no responsibility to ascertain whether the pledged securities are at least equal to the amount of required collateral nor whether the pledged securities are eligible collateral.

2. The custodian shall hold pledged collateral in a custody account for the Chief Financial Officer ~~Treasurer~~ for purposes of this section. The custodian shall not enter into or execute any other agreement related to the collateral that would create an interest in or lien on that collateral in any manner in favor of any third party without the written consent of the Chief Financial Officer ~~Treasurer~~.

3. The custodian shall agree that any lien that attaches to the collateral in favor of the custodian shall not be superior or equal to the security interest of the Chief Financial Officer ~~Treasurer~~.

4. The custodian shall, without notice to or consent by the pledgor, comply with and perform any and all requests and orders directly from the Chief Financial Officer ~~Treasurer~~. These include, but are not limited to, liquidating all collateral and submitting the proceeds directly to the Chief Financial Officer ~~Treasurer~~ in the name of the Chief Financial Officer ~~Treasurer~~ only or transferring all collateral into an account designated solely by the Chief Financial Officer ~~Treasurer~~.

5. The custodian shall consider principal payments on pay-down securities and income paid on pledged collateral as the property of the pledgor and shall pay thereto provided the custodian has not received written notice from the Chief Financial Officer ~~Treasurer~~ to hold such principal payments and income for the benefit of the Chief Financial Officer ~~Treasurer~~.

6. The custodian shall process collateral transactions on forms prescribed by the Chief Financial Officer ~~Treasurer~~ in the following manner:

a. A deposit transaction of eligible collateral may be made without prior approval from the Chief Financial Officer ~~Treasurer~~ unless the custodian has received notice from the Chief Financial Officer ~~Treasurer~~ requiring the Chief Financial Officer's ~~Treasurer's~~ prior approval.

b. A substitution transaction of eligible collateral may be made without prior approval from the Chief Financial Officer ~~Treasurer~~ provided the pledgor certifies the market value of the securities to be substituted is at least equal to the market value amount of the securities to be withdrawn and the custodian has not received notice from the Chief Financial Officer ~~Treasurer~~ prohibiting substitution.

c. A transfer of collateral between accounts at a custodian requires the Chief Financial Officer's ~~Treasurer's~~ prior approval. The collateral shall be released subject to redeposit in the new account with a pledge to the Chief Financial Officer ~~Treasurer~~ intact. Confirmation from the custodian to the Chief Financial Officer ~~Treasurer~~ must be received within 5 business days of the redeposit.

d. A transfer of collateral from a custodian to another custodian requires the Chief Financial Officer's ~~Treasurer's~~ prior approval. The collateral shall be released subject to redeposit at the new custodian with a pledge to the Chief Financial Officer ~~Treasurer~~ intact. Confirmation from the new custodian to the Chief Financial Officer ~~Treasurer~~ must be received within 5 business days of the redeposit.

e. A withdrawal transaction requires the Chief Financial Officer's ~~Treasurer's~~ prior approval. A withdrawal transaction shall be executed for the release of any pledged collateral including maturity or call proceeds.

7. If pledged collateral includes definitive (physical) securities in registered form, which are in the name of the custodian or a nominee, the custodian shall deliver the following documents when requested by the Chief Financial Officer ~~Treasurer~~:

a. A separate certified power of attorney in a form prescribed by the Chief Financial Officer ~~Treasurer~~ for each issue of securities.

b. Separate bond assignment forms as required by the bond agent or trustee.

c. Certified copies of resolutions adopted by the custodian's governing body authorizing execution of these documents.

8. The custodian shall acknowledge that the pledgor is responsible for all costs necessary to the functioning of the collateral agreement or associated with confirmation of securities pledged to the Chief Financial Officer ~~Treasurer~~ and that these costs shall not be a charge against the Chief Financial Officer ~~Treasurer~~ or his or her interests in the pledged collateral.

9. The custodian shall agree to provide confirmation of pledged collateral upon request from the Chief Financial Officer ~~Treasurer~~. This confirmation shall be provided within 15 working days after the request, in a format prescribed by the Chief Financial Officer ~~Treasurer~~, and shall require no identification other than the pledgor name and location, unless the special identification is provided in the collateral agreement.

10. The custodian shall be subject to the jurisdiction of the courts of the State of Florida, or of courts of the United States located within the State of Florida, for the purpose of any litigation arising out of the act.

11. The custodian shall be responsible and liable to the Chief Financial Officer ~~Treasurer~~ for any action of agents the custodian uses to hold and service collateral pledged to the Chief Financial Officer ~~Treasurer~~.

12. The custodian shall agree that any information, forms, or reports electronically transmitted to the Chief Financial Officer ~~Treasurer~~ shall have the same enforceability as a signed writing.

13. The Chief Financial Officer ~~Treasurer~~ shall have the right to examine definitive pledged collateral and records of book-entry securities during the regular business hours of the custodian without cost to the Chief Financial Officer ~~Treasurer~~.

14. The responsibilities of the custodian for the safekeeping of the pledged collateral shall be limited to the diligence and care usually exercised by a banking or trust institution toward its own property.

15. If there is any change in the Uniform Commercial Code, as adopted by law in this state, which affects the requirements for a perfected security interest in collateral, the Chief Financial Officer ~~Treasurer~~ shall notify the custodian of such change. The custodian shall have a period of 180 calendar days after such notice to withdraw as custodian if the custodian cannot provide the required custodial services.

(3) With the approval of the Chief Financial Officer ~~Treasurer~~, a pledgor may deposit eligible collateral pursuant to an agreement with a Federal Reserve Bank. The Federal Reserve Bank agreement may require terms not consistent with subsection (2) but may not subject the Chief Financial Officer ~~Treasurer~~ to any costs or indemnification requirements.

(4) The Chief Financial Officer ~~Treasurer~~ may require deposit or transfer of collateral into a custodial account established in the Chief Financial Officer's ~~Treasurer's~~ name at a designated custodian. This requirement for Chief Financial Officer's ~~Treasurer's~~ custody shall have the following characteristics:

(a) One or more triggering events must have occurred.

(b) The custodian used must be a Chief Financial Officer's ~~Treasurer's~~ approved custodian that must:

1. Meet the definition of custodian.

2. Not be an affiliate of the qualified public depository.

3. Be bound under a distinct Chief Financial Officer's ~~Treasurer's~~ custodial contract.

(c) All deposit transactions require the approval of the Chief Financial Officer ~~Treasurer~~.

(d) All collateral must be in book-entry form.

(e) The qualified public depository shall be responsible for all costs necessary to the functioning of the contract or associated with the confirmation of securities in the name of the Chief Financial Officer ~~Treasurer~~ and acknowledges that these costs shall not be a charge against the Chief Financial Officer ~~Treasurer~~ and may be deducted from the collateral or income earned if unpaid.

(5) With the approval of the Chief Financial Officer ~~Treasurer~~, a qualified public depository may use Federal Home Loan Bank letters of credit to meet collateral requirements. A completed agreement that includes the following provisions is necessary for the Chief Financial Officer's ~~Treasurer's~~ approval:

(a) The letter of credit shall meet the definition of eligible collateral.

(b) The qualified public depository shall agree that the Chief Financial Officer ~~Treasurer~~, as beneficiary, may, without notice to or consent by the qualified public depository, demand payment under the letter of credit if any of the triggering events listed in this section occur.

(c) The qualified public depository shall agree that funds received by the Chief Financial Officer ~~Treasurer~~ due to the occurrence of one or more triggering events may be deposited in the Treasury Cash Deposit Trust Fund for purposes of eligible collateral.

(d) The qualified public depository shall arrange for the issue of letters of credit which meet the requirements of s. 280.13 and delivery to the Chief Financial Officer ~~Treasurer~~. All transactions involving letters of credit require the Chief Financial Officer's ~~Treasurer's~~ approval.

(e) The qualified public depository shall be responsible for all costs necessary in the use or confirmation of letters of credit issued on behalf of the

Chief Financial Officer ~~Treasurer~~ and acknowledges that these costs shall not be a charge against the Chief Financial Officer ~~Treasurer~~.

(f) The qualified public depository shall be subject to the jurisdiction of the courts of this state, or of courts of the United States which are located within this state, for the purpose of any litigation arising out of the act.

(g) The qualified public depository shall agree that any information, form, or report electronically transmitted to the Chief Financial Officer ~~Treasurer~~ shall have the same enforceability as a signed writing.

(h) The qualified public depository shall submit proof that authorized individuals executed the letters of credit agreement on its behalf.

(i) The qualified public depository shall agree by resolution of the board of directors that the letters of credit agreements entered into for purposes of this section have been formally accepted and constitute official records of the qualified public depository.

(6) The Chief Financial Officer ~~Treasurer~~ may demand payment under a letter of credit or direct a custodian to deposit or transfer collateral and proceeds of securities not previously credited upon the occurrence of one or more triggering events provided that, to the extent not incompatible with the protection of public deposits, as determined in the Chief Financial Officer's ~~Treasurer's~~ sole and absolute discretion, the Chief Financial Officer ~~Treasurer~~ shall provide a custodian and the qualified public depository with 48 hours' advance notice before directing such deposit or transfer. These events include:

(a) The Chief Financial Officer ~~Treasurer~~ determines that an immediate danger to the public health, safety, or welfare exists.

(b) The qualified public depository fails to have adequate procedures and practices for the accurate identification, classification, reporting, and collateralization of public deposits.

(c) The custodian fails to provide or allow inspection and verification of documents, reports, records, or other information dealing with the pledged collateral or financial information.

(d) The qualified public depository or its operating subsidiary fails to provide or allow inspection and verification of documents, reports, records, or other information dealing with Florida public deposits, pledged collateral, or financial information.

(e) The custodian fails to hold income and principal payments made on securities held as collateral or fails to deposit or transfer such payments pursuant to the Chief Financial Officer's ~~Treasurer's~~ instructions.

(f) The qualified public depository defaults or becomes insolvent.

(g) The qualified public depository fails to pay an assessment.

(h) The qualified public depository fails to pay an administrative penalty.

(i) The qualified public depository fails to meet financial condition standards.

(j) The qualified public depository charges a withdrawal penalty to public depositors when the qualified public depository is suspended, disqualified, or withdrawn from the public deposits program.

(k) The qualified public depository does not provide, as required, the public depositor with annual confirmation information on all open Florida public deposit accounts.

(l) The qualified public depository pledges, deposits, or has issued insufficient or unacceptable collateral to meet required collateral within the required time.

(m) Collateral, other than a proper substitution, is released without the prior approval of the Chief Financial Officer ~~Treasurer~~.

(n) The qualified public depository, custodian, operating subsidiary, or agent violates any provision of the act and the Chief Financial Officer ~~Treasurer~~ determines that such violation may be remedied by a move of collateral.

(o) The qualified public depository, custodian, operating subsidiary, or agent fails to timely cooperate in resolving problems by the date established in written communication from the Chief Financial Officer ~~Treasurer~~.

(p) The custodian fails to provide sufficient confirmation information.

(q) The Federal Home Loan Bank or the qualified public depository gives notification that a letter of credit will not be extended or renewed and other eligible collateral equal to required collateral has not been deposited within 30 days after the notice or 30 days before expiration of the letter of credit.

(r) The qualified public depository, if involved in a merger, acquisition, consolidation, or other organizational change, fails to notify the Chief Financial Officer ~~Treasurer~~ or ensure that required collateral is properly maintained by the depository holding the Florida public deposits.

(s) Events that would bring about an administrative or legal action by the Chief Financial Officer ~~Treasurer~~.

(7) The Chief Financial Officer ~~Treasurer~~ shall adopt rules to identify forms and establish procedures for collateral agreements and transactions, furnish confirmation requirements, establish procedures for using an operating subsidiary and agents, and clarify terms.

Section 289. Section 280.05, Florida Statutes, is amended to read:

280.05 Powers and duties of the Chief Financial Officer ~~Treasurer~~.—In fulfilling the requirements of this act, the Chief Financial Officer ~~Treasurer~~ has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

(1) Identify representative qualified public depositories and furnish notification for the qualified public depository oversight board selection pursuant to s. 280.071.

(2) Provide data for the qualified public depository oversight board duties pursuant to s. 280.071 regarding:

(a) Establishing standards for qualified public depositories and custodians.

(b) Evaluating requests for exceptions to standards and alternative participation agreements.

(c) Reviewing and recommending action for qualified public depository or custodian violations.

(3) Review, implement, monitor, evaluate, and modify all or any part of the standards, policies, or recommendations of the qualified public depository oversight board.

(4) Perform financial analysis of any qualified public depositories.

(5) Require collateral, or increase the collateral-pledging level, of any qualified public depository.

(6) Decline to accept, or reduce the reported value of, collateral in order to ensure the pledging or depositing of sufficient marketable collateral and acceptable letters of credit.

(7) Maintain perpetual inventory of collateral and perform monthly market valuations and quality ratings.

(8) Monitor and confirm collateral with custodians and letter of credit issuers.

(9) Move collateral into an account established in the Chief Financial Officer's ~~Treasurer's~~ name upon the occurrence of one or more triggering events.

(10) Issue notice to a qualified public depository that use of a custodian will be disallowed when the custodian has failed to follow collateral agreement terms.

(11) Furnish written notice to custodians of collateral to hold interest and principal payments made on securities held as collateral and to deposit or transfer such payments pursuant to the Chief Financial Officer's ~~Treasurer's~~ instructions.

(12) Release collateral held in the Chief Financial Officer's ~~Treasurer's~~ name, subject to sale and transfer of funds directly from the custodian to public depositors of a withdrawing depository.

(13) Demand payment under letters of credit for any of the triggering events listed in s. 280.041 and deposit the funds in:

(a) The Public Deposits Trust Fund for purposes of paying losses to public depositors.

(b) The Treasury ~~Treasurer's~~ Administrative and Investment Trust Fund for receiving payment of administrative penalties.

(c) The Treasury Cash Deposit Trust Fund for purposes of eligible collateral.

(14) Sell securities for the purpose of paying losses to public depositors not covered by deposit insurance.

(15) Transfer funds directly from the custodian to public depositors or the receiver in order to facilitate prompt payment of claims.

(16) Require the filing of the following reports which the Chief Financial Officer ~~Treasurer~~ shall process as provided:

(a) Qualified public depository monthly reports and schedules. The Chief Financial Officer ~~Treasurer~~ shall review the reports of each qualified public depository for material changes in capital accounts or changes in name, address, or type of institution; record the average daily balances of public deposits held; and monitor the collateral-pledging levels and required collateral.

(b) Quarterly regulatory reports from qualified public depositories. The Chief Financial Officer ~~Treasurer~~ shall analyze qualified public depositories ranked in the lowest category based on established financial condition criteria.

(c) Qualified public depository annual reports and public depositor annual reports. The Chief Financial Officer ~~Treasurer~~ shall compare public deposit information reported by qualified public depositories and public depositors. Such comparison shall be conducted for qualified public depositories which are ranked in the lowest category based on established financial condition criteria of record on September 30. Additional comparison processes may be performed as public deposits program resources permit.

(d) Any related documents, reports, records, or other information deemed necessary by the Chief Financial Officer ~~Treasurer~~ in order to ascertain compliance with this chapter.

(17) Verify the reports of any qualified public depository relating to public deposits it holds when necessary to protect the integrity of the public deposits program.

(18) Confirm public deposits, to the extent possible under current law, when needed.

(19) Require at his or her discretion the filing of any information or forms required under this chapter to be by electronic data transmission. Such filings of information or forms shall have the same enforceability as a signed writing.

(20) Suspend or disqualify or disqualify after suspension any qualified public depository that has violated any of the provisions of this chapter or of rules adopted hereunder.

(a) Any qualified public depository that is suspended or disqualified pursuant to this subsection is subject to the provisions of s. 280.11(2) governing withdrawal from the public deposits program and return of pledged collateral. Any suspension shall not exceed a period of 6 months. Any qualified public depository which has been disqualified may not reapply for qualification until after the expiration of 1 year from the date of the final order of disqualification or the final disposition of any appeal taken therefrom.

(b) In lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository as provided in s. 280.054.

(c) If the Chief Financial Officer ~~Treasurer~~ has reason to believe that any qualified public depository or any other financial institution holding public deposits is or has been violating any of the provisions of this chapter or of rules adopted hereunder, he or she may issue to the qualified public depository or other financial institution an order to cease and desist from the violation or to correct the condition giving rise to or resulting from the violation. If any qualified public depository or other financial institution violates a cease-and-desist or corrective order, the Chief Financial Officer ~~Treasurer~~ may impose an administrative penalty upon the qualified public depository or other financial institution as provided in s. 280.054 or s. 280.055. In addition to the administrative penalty, the Chief Financial Officer ~~Treasurer~~ may suspend or disqualify any qualified public depository for violation of any order issued pursuant to this paragraph.

Section 290. Section 280.051, Florida Statutes, is amended to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer ~~Treasurer~~ determines that the qualified public depository has:

(1) Violated any of the provisions of this chapter or any rule adopted by the Chief Financial Officer ~~Treasurer~~ pursuant to this chapter.

(2) Submitted reports containing inaccurate or incomplete information regarding public deposits or collateral for such deposits, capital accounts, or the calculation of required collateral.

(3) Failed to maintain required collateral.

(4) Grossly misstated the market value of the securities pledged as collateral.

(5) Failed to pay any administrative penalty.

(6) Failed to furnish the Chief Financial Officer ~~Treasurer~~ with prompt and accurate information, or failed to allow inspection and verification of any information, dealing with public deposits or dealing with the exact

status of its capital accounts, or any other financial information that the Chief Financial Officer ~~Treasurer~~ determines necessary to verify compliance with this chapter or any rule adopted pursuant to this chapter.

(7) Failed to furnish the Chief Financial Officer ~~Treasurer~~, when the Chief Financial Officer ~~Treasurer~~ requested, with a power of attorney or bond power or other bond assignment form required by the bond agent, bond trustee, or other transferor for each issue of registered certificated securities pledged.

(8) Failed to furnish any agreement, report, form, or other information required to be filed pursuant to s. 280.16, or when requested by the Chief Financial Officer ~~Treasurer~~.

(9) Submitted reports signed by an unauthorized individual.

(10) Submitted reports without a certified or verified signature, or both, if required by law.

(11) Released a security without notice or approval.

(12) Failed to execute or have the custodian execute a public depository pledge agreement prior to using a custodian.

(13) Failed to give notification as required by s. 280.10.

Section 291. Section 280.052, Florida Statutes, is amended to read:

280.052 Order of suspension or disqualification; procedure.—

(1) The suspension or disqualification of a bank or savings association as a qualified public depository must be by order of the Chief Financial Officer ~~Treasurer~~ and must be mailed to the qualified public depository by registered or certified mail.

(2) The Chief Financial Officer ~~Treasurer~~ shall notify, by first-class mail, all public depositors that have complied with s. 280.17 of any such disqualification or suspension.

(3) The procedures for suspension or disqualification shall be as set forth in chapter 120 and in the rules of the Chief Financial Officer ~~Treasurer~~ adopted pursuant to this section.

(4) Whenever the Chief Financial Officer ~~Treasurer~~ determines that an immediate danger to the public health, safety, or welfare exists, the Chief Financial Officer ~~Treasurer~~ may take any appropriate action available to her or him under the provisions of chapter 120.

Section 292. Paragraphs (a) and (c) of subsection (1) and paragraph (c) of subsection (2) of section 280.053, Florida Statutes, is amended to read:

280.053 Period of suspension or disqualification; obligations during period; reinstatement.—

(1)(a) The Chief Financial Officer ~~Treasurer~~ may suspend a qualified public depository for any period that is fixed in the order of suspension, not exceeding 6 months. For the purposes of this section and ss. 280.051 and 280.052, the effective date of suspension or disqualification is that date which is set out as such in any order of suspension or disqualification.

(c) Upon expiration of the suspension period, the bank or savings association may, by order of the Chief Financial Officer ~~Treasurer~~, be reinstated as a qualified public depository, unless the cause of the suspension has not been corrected or the bank or savings association is otherwise not in compliance with this chapter or any rule adopted pursuant to this chapter.

(2)

(c) Upon expiration of the disqualification period, the bank or savings association may reapply for qualification as a qualified public depository. If a disqualified bank or savings association is purchased or otherwise acquired by new owners, it may reapply to the Chief Financial Officer ~~Treasurer~~ to be a qualified public depository prior to the expiration date of the disqualification period. Redesignation as a qualified public depository may occur only after the Chief Financial Officer ~~Treasurer~~ has determined that all requirements for holding public deposits under the law have been met.

Section 293. Section 280.054, Florida Statutes, is amended to read:

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer ~~Treasurer~~ finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer ~~Treasurer~~ may, in lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(a) With respect to any nonwillful violation, such penalty may not exceed $250 for each violation, exclusive of any restitution found to be due. If a qualified public depository discovers a nonwillful violation, the qualified public depository shall correct the violation; and, if restitution is due, the qualified public depository shall make restitution upon the order of the Chief Financial Officer ~~Treasurer~~ and shall pay interest on such amount at the legal rate from the date of the violation. Each day a violation continues constitutes a separate violation.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Chief Financial Officer ~~Treasurer~~ may impose a penalty upon the qualified public depository in an amount not exceeding $1,000 for each violation. If restitution is due, the qualified public depository shall make restitution upon the order of the Chief Financial Officer ~~Treasurer~~ and shall pay interest on such amount at the legal rate. Each day a violation continues constitutes a separate violation.

(2) The failure of a qualified public depository to make restitution when due as required under this section constitutes a willful violation of this

chapter. However, if a qualified public depository in good faith is uncertain whether any restitution is due or as to the amount of restitution due, it shall promptly notify the Chief Financial Officer ~~Treasurer~~ of the circumstances. The failure to make restitution pending a determination of whether restitution is due or the amount of restitution due does not constitute a violation of this chapter.

(3) A qualified public depository is subject to an administrative penalty in an amount not exceeding the greater of $1,000 or 10 percent of the amount of withdrawal, not exceeding $10,000, if the depository fails to provide required collateral using eligible collateral and prescribed collateral agreements or withdraws collateral without the Chief Financial Officer's ~~Treasurer's~~ approval.

Section 294. Section 280.055, Florida Statutes, is amended to read:

280.055 Cease and desist order; corrective order; administrative penalty.—

(1) The Chief Financial Officer ~~Treasurer~~ may issue a cease and desist order and a corrective order upon determining that:

(a) A qualified public depository has requested and obtained a release of pledged collateral without approval of the Chief Financial Officer ~~Treasurer~~;

(b) A bank, savings association, or other financial institution is holding public deposits without a certificate of qualification issued by the Chief Financial Officer ~~Treasurer~~;

(c) A qualified public depository pledges, deposits, or arranges for the issuance of unacceptable collateral;

(d) A custodian has released pledged collateral without approval of the Chief Financial Officer ~~Treasurer~~;

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer ~~Treasurer~~, when the Chief Financial Officer ~~Treasurer~~ requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian; or

(f) A qualified public depository; a bank, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Chief Financial Officer ~~Treasurer~~ determines may be remedied by a cease and desist order or corrective order.

(2) Any qualified public depository or other bank, savings association, or financial institution or custodian that violates a cease and desist order or corrective order of the Chief Financial Officer ~~Treasurer~~ is subject to an administrative penalty not exceeding $1,000 for each violation of the order. Each day the violation of the order continues constitutes a separate violation.

Section 295. Subsections (1) and (2) of section 280.06, Florida Statutes, are amended to read:

280.06 Penalty for violation of law, rule, or order to cease and desist or other lawful order.—

(1) The violation of any provision of this chapter, or any order or rule of the Chief Financial Officer ~~Treasurer~~, or any order to cease and desist or other lawful order is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, to knowingly and willfully give false information on any form made under oath and filed pursuant to this chapter with the intent to mislead the Chief Financial Officer ~~Treasurer~~ in the administration or enforcement of this chapter.

Section 296. Section 280.07, Florida Statutes, is amended to read:

280.07 Mutual responsibility and contingent liability.—Any bank or savings association that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other qualified public depositories. Each qualified public depository shall execute a form prescribed by the Chief Financial Officer ~~Treasurer~~ for such guarantee which shall be approved by the board of directors and shall become an official record of the institution.

Section 297. Subsections (1), (2), (3), and (5), paragraph (e) of subsection (9), paragraphs (b), (c), (d), and (e) of subsection (10), paragraphs (a) and (b) of subsection (11), and subsection (12) of section 280.071, Florida Statutes, are amended to read:

280.071 Qualified Public Depository Oversight Board; purpose; identifying representative qualified public depositories; member selection; responsibilities.—A Qualified Public Depository Oversight Board is created comprised of six members and six alternate members who represent the interests of all qualified public depositories in safeguarding the integrity of the public deposits program and preventing the realization of loss assessments.

(1) On July 31 of each year and as vacancies occur, the Chief Financial Officer ~~Treasurer~~ shall initiate the selection of oversight board representation in the following manner:

(a) Categorize eligible qualified public depositories into three groups according to average asset size. Eligible qualified public depositories must be in compliance with all requirements and shall not be suspended, disqualified, withdrawn, or under an alternative participation agreement in the public deposits program.

(b) Identify the two qualified public depositories in each of the three groups that have the greatest shares of contingent liability based on the average monthly balances of public deposits reported pursuant to s. 280.16.

(c) Send notification to the six qualified public depositories that have been identified.

(2) Each of the six representative qualified public depositories shall select a member and alternate member for the oversight board and give the Chief Financial Officer ~~Treasurer~~ written information on the selections within 30 calendar days of the Chief Financial Officer's ~~Treasurer's~~ notice.

(3) If an identified qualified public depository declines to select a member, does not respond within 30 calendar days, or becomes ineligible, the Chief Financial Officer ~~Treasurer~~ shall furnish notice to the Florida Bankers Association which shall select a member and alternate member to represent that average asset category within 30 calendar days.

(5) The oversight board members and alternate members shall be subject to the Chief Financial Officer's ~~Treasurer's~~ approval.

(9) The oversight board shall organize, communicate, and conduct meetings as follows:

(e) Take no official action in the absence of a quorum.

1. A quorum shall consist of the majority of voting members of the oversight board.

2. Each member shall have one vote.

3. A member shall not vote on issues directly related to the qualified public depository he or she represents.

4. The Chief Financial Officer ~~Treasurer~~ or his or her representative shall vote as a member of the oversight board in the absence of a quorum.

(10) The oversight board has the power and responsibility to safeguard the integrity of the public deposits program and prevent the realization of loss assessments by:

(b) Recommending approval or rejection to the Chief Financial Officer ~~Treasurer~~ for exceptions that do not meet established standards. These requests for exceptions may be:

1. Referred by the Chief Financial Officer ~~Treasurer~~; or

2. Submitted directly by the qualified public depository seeking exception.

(c) Issuing approvals or rejections for alternative participation agreements referred by the Chief Financial Officer ~~Treasurer~~.

(d) Reviewing program violations and recommending that the Chief Financial Officer ~~Treasurer~~ impose penalties and fines or issue corrective actions and administrative orders.

(e) Studying public deposit program areas referred by the Chief Financial Officer ~~Treasurer~~.

(11) Official actions of the oversight board regarding the establishment of standards, exception and alternate participation agreement decisions, and recommendations concerning violations shall be:

(a) Communicated to the Chief Financial Officer ~~Treasurer~~ in writing.

(b) Subject to approval of the Chief Financial Officer ~~Treasurer~~.

(12) The Chief Financial Officer ~~Treasurer~~ may adopt rules to establish procedures and forms for oversight board member and alternate member selection and oversight board functions.

Section 298. Section 280.08, Florida Statutes, is amended to read:

280.08 Procedure for payment of losses.—When the Chief Financial Officer ~~Treasurer~~ determines that a default or insolvency has occurred, he or she shall provide notice as required in s. 280.085 and implement the following procedures:

(1) The Division of Treasury ~~Treasurer~~, in cooperation with the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~ or the receiver of the qualified public depository in default, shall ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit insurance applicable to such deposits.

(2) The potential loss to public depositors shall be calculated by compiling claims received from such depositors. The Chief Financial Officer ~~Treasurer~~ shall validate claims on public deposit accounts which meet the requirements of s. 280.17 and are confirmed as provided in subsection (1).

(3)(a) The loss to public depositors shall be satisfied, insofar as possible, first through any applicable deposit insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The Chief Financial Officer ~~Treasurer~~ may assess qualified public depositories as provided in paragraph (b) for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

(b) The Chief Financial Officer ~~Treasurer~~ shall provide coverage of any remaining loss by assessment against the other qualified public depositories. The Chief Financial Officer ~~Treasurer~~ shall determine such assessment for each qualified public depository by multiplying the total amount of any remaining loss to all public depositors by a percentage which represents the average monthly balance of public deposits held by each qualified public depository during the previous 12 months divided by the total average monthly balances of public deposits held by all qualified public depositories, excluding the defaulting depository, during the same period. The assessment calculation shall be computed to six decimal places.

(4) Each qualified public depository shall pay its assessment to the Chief Financial Officer ~~Treasurer~~ within 7 business days after it receives notice of the assessment. If a depository fails to pay its assessment when due, the

Chief Financial Officer ~~Treasurer~~ shall satisfy the assessment by demanding payment under letters of credit or selling collateral pledged or deposited by that depository.

(5) The Chief Financial Officer ~~Treasurer~~ shall distribute the funds to the public depositors of the qualified public depository in default according to their validated claims. The Chief Financial Officer ~~Treasurer~~, at his or her discretion, may make partial payments to public depositors that have experienced a loss of public funds which payments are critical to the immediate operations of the public entity. The public depositor requesting partial payment of a claim shall provide the Chief Financial Officer ~~Treasurer~~ with written documentation justifying the need for partial payment.

(6) Public depositors receiving payment under the provisions of this section shall assign to the Chief Financial Officer ~~Treasurer~~ any interest they may have in funds that may subsequently be made available to the qualified public depository in default. If the qualified public depository in default or its receiver provides the funds to the Chief Financial Officer ~~Treasurer~~, the Chief Financial Officer ~~Treasurer~~ shall distribute the funds, plus all accrued interest which has accumulated from the investment of the funds, if any, to the depositories which paid assessments on the same pro rata basis as the assessments were paid.

(7) Expenses incurred by the Chief Financial Officer ~~Treasurer~~ in connection with a default or insolvency which are not normally incurred by the Chief Financial Officer ~~Treasurer~~ in the administration of this act must be paid out of the amount paid under letters of credit or proceeds from the sale of collateral.

Section 299. Subsection (1) of section 280.085, Florida Statutes, is amended to read:

280.085 Notice to claimants.—

(1) Upon determining the default or insolvency of a qualified public depository, the Chief Financial Officer ~~Treasurer~~ shall notify, by first-class mail, all public depositors that have complied with s. 280.17 of such default or insolvency. The notice shall direct all public depositors having claims or demands against the Public Deposits Trust Fund occasioned by the default or insolvency to file their claims with the Chief Financial Officer ~~Treasurer~~ within 30 days after the date of the notice.

Section 300. Section 280.09, Florida Statutes, is amended to read:

280.09 Public Deposits Trust Fund.—

(1) In order to facilitate the administration of this chapter, there is created the Public Deposits Trust Fund, hereafter in this section designated "the fund." The proceeds from the sale of securities or draw on letters of credit held as collateral or from any assessment pursuant to s. 280.08 shall be deposited into the fund. Any administrative penalty collected pursuant to this chapter shall be deposited into the Treasury ~~Treasurer's~~ Administrative and Investment Trust Fund.

(2) The Chief Financial Officer ~~Treasurer~~ is authorized to pay any losses to public depositors from the fund, and there are hereby appropriated from the fund such sums as may be necessary from time to time to pay the losses. The term "losses," for purposes of this chapter, shall also include losses of interest or other accumulations to the public depositor as a result of penalties for early withdrawal required by Depository Institution Deregulatory Commission Regulations or applicable successor federal laws or regulations because of suspension or disqualification of a qualified public depository by the Chief Financial Officer ~~Treasurer~~ pursuant to s. 280.05 or because of withdrawal from the public deposits program pursuant to s. 280.11. In that event, the Chief Financial Officer ~~Treasurer~~ is authorized to assess against the suspended, disqualified, or withdrawing public depository, in addition to any amount authorized by any other provision of this chapter, an administrative penalty equal to the amount of the early withdrawal penalty and to pay that amount over to the public depositor as reimbursement for such loss. Any money in the fund estimated not to be needed for immediate cash requirements shall be invested pursuant to s. 17.61 ~~s. 18.125~~.

Section 301. Paragraphs (d) and (e) of subsection (1) and subsections (2), (3), (4), (5), and (6) of section 280.10, Florida Statutes, are amended to read:

280.10 Effect of merger, acquisition, or consolidation; change of name or address.—

(1) When a qualified public depository is merged into, acquired by, or consolidated with a bank, savings bank, or savings association that is not a qualified public depository:

(d) The resulting institution shall, within 90 calendar days after the effective date of the merger, acquisition, or consolidation, deliver to the Chief Financial Officer ~~Treasurer~~:

1. Documentation in its name as required for participation in the public deposits program; or

2. Written notice of intent to withdraw from the program as provided in s. 280.11 and a proposed effective date of withdrawal which shall be within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(e) If the resulting institution does not meet qualifications to become a qualified public depository or does not submit required documentation within 90 calendar days after the effective date of the merger, acquisition, or consolidation, the Chief Financial Officer ~~Treasurer~~ shall initiate mandatory withdrawal actions as provided in s. 280.11 and shall set an effective date of withdrawal that is within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(2) When a qualified public depository disposes of any of its Florida public deposits or collateral securing such deposits in a manner not covered by subsection (1), the qualified public depository originally holding the public deposits shall be responsible for:

(a) Ensuring the institution receiving such public deposits becomes a qualified public depository and meets collateral requirements with the Chief Financial Officer ~~Treasurer~~ as part of the transaction.

(b) Notifying the Chief Financial Officer ~~Treasurer~~ within 30 calendar days after the final approval by the appropriate regulator.

A qualified public depository that fails to meet such responsibilities shall continue to collateralize and report such public deposits until the receiving institution becomes a qualified public depository and collateralizes the deposits or the deposits are returned to the governmental unit.

(3) The qualified public depository shall notify the Chief Financial Officer ~~Treasurer~~ of any acquisition or merger within 30 calendar days after the final approval of the acquisition or merger by its appropriate regulator.

(4) Collateral subject to a collateral agreement may not be released by the Chief Financial Officer ~~Treasurer~~ or the custodian until the assumed liability is evidenced by the deposit of collateral pursuant to the collateral agreement of the successor entity. The reporting requirement and pledge of collateral will remain in force until the Chief Financial Officer ~~Treasurer~~ determines that the liability no longer exists. The surviving or new qualified public depository shall be responsible and liable for all of the liabilities and obligations of each qualified public depository merged with or acquired by it.

(5) Each qualified public depository shall report any change of name and address to the Chief Financial Officer ~~Treasurer~~ on a form provided by the Chief Financial Officer ~~Treasurer~~ regardless of whether the name change is a result of an acquisition, merger, or consolidation. Notification of such change must be made within 30 calendar days after the effective date of the change.

(6) The Chief Financial Officer ~~Treasurer~~ shall adopt rules establishing procedures for mergers, acquisitions, consolidations, and changes in name and address, providing forms, and clarifying terms.

Section 302. Section 280.11, Florida Statutes, is amended to read:

280.11 Withdrawal from public deposits program; return of pledged collateral.—

(1) A qualified public depository may withdraw from the public deposits program by giving written notice to the Chief Financial Officer ~~Treasurer~~. The contingent liability, required collateral, and reporting requirements of the depository withdrawing from the program shall continue for a period of 12 months after the effective date of the withdrawal, except that the filing of reports may no longer be required when the average monthly balance of public deposits is equal to zero. Notice of withdrawal shall be mailed or delivered in sufficient time to be received by the Chief Financial Officer ~~Treasurer~~ at least 30 days before the effective date of withdrawal. The Chief Financial Officer ~~Treasurer~~ shall timely publish the withdrawal notice in

the Florida Administrative Weekly which shall constitute notice to all depositors. The withdrawing depository shall not receive or retain public deposits after the effective date of the withdrawal until such time as it again becomes a qualified public depository. The Chief Financial Officer ~~Treasurer~~ shall, upon request, return to the depository that portion of the collateral pledged that is in excess of the required collateral as reported on the current public depository monthly report. Losses of interest or other accumulations, if any, because of withdrawal under this section shall be assessed and paid as provided in s. 280.09.

(2) A qualified public depository which has been disqualified pursuant to s. 280.051 shall not receive or retain public deposits after the effective date of the disqualification. Notice of and procedures for disqualification shall be made in accordance with ss. 280.052 and 280.053. The Chief Financial Officer ~~Treasurer~~ shall, upon request, return to the depository that portion of the collateral pledged that is in excess of the required collateral as reported on the current public depository monthly report. Losses of interest or other accumulation, if any, because of disqualification shall be paid as provided in s. 280.09(2).

(3) A qualified public depository which is required to withdraw from the public deposits program pursuant to s. 280.05(1)(b) shall not receive or retain public deposits after the effective date of withdrawal. The contingent liability, required collateral, and reporting requirements of the withdrawing depository shall continue until the effective date of withdrawal. Notice of withdrawal (order of discontinuance) from the Chief Financial Officer ~~Treasurer~~ shall be mailed to the qualified public depository by registered or certified mail. Penalties incurred because of withdrawal from the public deposits program shall be the responsibility of the withdrawing depository.

Section 303. Subsection (2), paragraphs (a), (b), (d), and (f) of subsection (5), and subsections (6), (7), and (8) of section 280.13, Florida Statutes, are amended to read:

280.13 Eligible collateral.—

(2) In addition to the securities listed in subsection (1), the Chief Financial Officer ~~Treasurer~~ may, in his or her discretion, allow the pledge of the following types of securities. The Chief Financial Officer ~~Treasurer~~ shall, by rule, define any restrictions, specific criteria, or circumstances for which these instruments will be acceptable.

(a) Securities of, or other interests in, any open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided the portfolio of such investment company is limited to direct obligations of the United States Government and to repurchase agreements fully collateralized by such direct obligations of the United States Government and provided such investment company takes delivery of such collateral either directly or through an authorized custodian.

(b) Collateralized Mortgage Obligations.

(c) Real Estate Mortgage Investment Conduits.

(5) Letters of credit issued by a Federal Home Loan Bank are eligible as collateral under this section provided that:

(a) The letter of credit has been delivered to the Chief Financial Officer ~~Treasurer~~ in the standard format approved by the Chief Financial Officer ~~Treasurer~~.

(b) The letter of credit meets required conditions of:

1. Being irrevocable.

2. Being clean and unconditional and containing a statement that it is not subject to any agreement, condition, or qualification outside of the letter of credit and providing that a beneficiary need only present the original letter of credit with any amendments and the demand form to promptly obtain funds, and that no other document need be presented.

3. Being issued, presentable, and payable at a Federal Home Loan Bank in United States dollars. Presentation may be made by the beneficiary submitting the original letter of credit, including any amendments, and the demand in writing, by overnight delivery.

4. Containing a statement that identifies and defines the Chief Financial Officer ~~Treasurer~~ as beneficiary.

5. Containing an issue date and a date of expiration.

6. Containing a term of at least 1 year and an evergreen clause that provides at least 60 days written notice to the beneficiary prior to expiration date for nonrenewal.

7. Containing a statement that it is subject to and governed by the laws of the State of Florida and that, in the event of any conflict with other laws, the laws of the State of Florida will control.

8. Containing a statement that the letter of credit is an obligation of the Federal Home Loan Bank and is in no way contingent upon reimbursement.

9. Any other provision found necessary under the Uniform Commercial Code—Letters of Credit.

(d) The Federal Home Loan Bank issuing the letter of credit agrees to provide confirmation upon request from the Chief Financial Officer ~~Treasurer~~. Such confirmation shall be provided within 15 working days after the request, in a format prescribed by the Chief Financial Officer ~~Treasurer~~, and shall require no identification other than the qualified public depository's name and location.

(f) The qualified public depository, if notified by the Chief Financial Officer ~~Treasurer~~, shall not be allowed to use letters of credit if the Federal Home Loan Bank fails to pay a draw request as provided for in the letters of credit or fails to properly complete a confirmation of such letters of credit.

(6) Cash held by the Chief Financial Officer ~~Treasurer~~ in the Treasury Cash Deposit Trust Fund or by a custodian is eligible as collateral under this section. Interest earned on cash deposits that is in excess of required collateral shall be paid to the qualified public depository upon request.

(7) The Chief Financial Officer ~~Treasurer~~ may disapprove any security or letter of credit that does not meet the requirements of this section or any rule adopted pursuant to this section or any security for which no current market price can be obtained from a nationally recognized source deemed acceptable to the Chief Financial Officer ~~Treasurer~~ or cannot be converted to cash.

(8) The Chief Financial Officer ~~Treasurer~~ shall adopt rules defining restrictions and special requirements for eligible collateral and clarifying terms.

Section 304. Paragraphs (a), (b), (d), and (e) of subsection (1) and subsection (3) of section 280.16, Florida Statutes, are amended to read:

280.16 Requirements of qualified public depositories; confidentiality.—

(1) In addition to any other requirements specified in this chapter, qualified public depositories shall:

(a) Take the following actions for each public deposit account:

1. Identify the account as a "Florida public deposit" on the deposit account record with the name of the public depositor or provide a unique code for the account for such designation.

2. When the form prescribed by the Chief Financial Officer ~~Treasurer~~ for acknowledgment of receipt of each public deposit account is presented to the qualified public depository by the public depositor opening an account, the qualified public depository shall execute and return the completed form to the public depositor.

3. When the acknowledgment of receipt form is presented to the qualified public depository by the public depositor due to a change of account name, account number, or qualified public depository name on an existing public deposit account, the qualified public depository shall execute and return the completed form to the public depositor within 45 calendar days after such presentation.

4. When the acknowledgment of receipt form is presented to the qualified public depository by the public depositor on an account existing before July 1, 1998, the qualified public depository shall execute and return the completed form to the public depositor within 45 calendar days after such presentation.

(b) Within 15 days after the end of each calendar month, or when requested by the Chief Financial Officer ~~Treasurer~~, submit to the Chief Financial Officer ~~Treasurer~~ a written report, under oath, indicating the average daily balance of all public deposits held by it during the reported month,

required collateral, a detailed schedule of all securities pledged as collateral, selected financial information, and any other information that the Chief Financial Officer ~~Treasurer~~ determines necessary to administer this chapter.

(d) Submit to the Chief Financial Officer ~~Treasurer~~ annually, not later than November 30, a report of all public deposits held for the credit of all public depositors at the close of business on September 30. Such annual report shall consist of public deposit information in a report format prescribed by the Chief Financial Officer ~~Treasurer~~. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Treasurer.

(e) Submit to the Chief Financial Officer ~~Treasurer~~ not later than the date required to be filed with the federal agency:

1. A copy of the quarterly Consolidated Reports of Condition and Income, and any amended reports, required by the Federal Deposit Insurance Act, 12 U.S.C. ss. 1811 et seq., if such depository is a bank; or

2. A copy of the Thrift Financial Report, and any amended reports, required to be filed with the Office of Thrift Supervision if such depository is a savings and loan association.

(3) Any information contained in a report of a qualified public depository required under this chapter or any rule adopted under this chapter, together with any information required of a financial institution that is not a qualified public depository, shall, if made confidential by any law of the United States or of this state, be considered confidential and exempt from the provisions of s. 119.07(1) and not subject to dissemination to anyone other than the Chief Financial Officer ~~Treasurer~~ under the provisions of this chapter; however, it is the responsibility of each qualified public depository and each financial institution from which information is required to inform the Chief Financial Officer ~~Treasurer~~ of information that is confidential and the law providing for the confidentiality of that information, and the Chief Financial Officer ~~Treasurer~~ does not have a duty to inquire into whether information is confidential.

Section 305. Paragraphs (b) and (c) of subsection (2), subsections (3), (4), and (6), and paragraph (c) of subsection (7) of section 280.17, Florida Statutes, are amended to read:

280.17 Requirements for public depositors; notice to public depositors and governmental units; loss of protection.—In addition to any other requirement specified in this chapter, public depositors shall comply with the following:

(2) Beginning July 1, 1998, each public depositor shall take the following actions for each public deposit account:

(b) Execute a form prescribed by the Chief Financial Officer ~~Treasurer~~ for identification of each public deposit account and obtain acknowledgment of receipt on the form from the qualified public depository at the time of

opening the account. Such public deposit identification and acknowledgment form shall be replaced with a current form as required in subsection (3). A public deposit account existing before July 1, 1998, must have a form completed before September 30, 1998.

(c) Maintain the current public deposit identification and acknowledgment form as a valuable record. Such form is mandatory for filing a claim with the Chief Financial Officer ~~Treasurer~~ upon default or insolvency of a qualified public depository.

(3) Each public depositor shall review the Chief Financial Officer's ~~Treasurer's~~ published list of qualified public depositories and ascertain the status of depositories used. A public depositor shall, for status changes of depositories:

(a) Execute a replacement public deposit identification and acknowledgment form, as described in subsection (2), for each public deposit account when there is a merger, acquisition, name change, or other event which changes the account name, account number, or name of the qualified public depository.

(b) Move and close public deposit accounts when an institution is not included in the authorized list of qualified public depositories or is shown as withdrawing.

(4) Whenever public deposits are in a qualified public depository that has been declared to be in default or insolvent, each public depositor shall:

(a) Notify the Chief Financial Officer ~~Treasurer~~ immediately by telecommunication after receiving notice of the default or insolvency from the receiver of the depository with subsequent written confirmation and a copy of the notice.

(b) Submit to the Chief Financial Officer ~~Treasurer~~ for each public deposit, within 30 days after the date of official notification from the Chief Financial Officer ~~Treasurer~~, the following:

1. A claim form and agreement, as prescribed by the Chief Financial Officer ~~Treasurer~~, executed under oath, accompanied by proof of authority to execute the form on behalf of the public depositor.

2. A completed public deposit identification and acknowledgment form, as described in subsection (2).

3. Evidence of the insurance afforded the deposit pursuant to the Federal Deposit Insurance Act.

(6) Each public depositor shall submit, not later than November 30, an annual report to the Chief Financial Officer ~~Treasurer~~ which shall include:

(a) The official name, mailing address, and federal employer identification number of the public depositor.

(b) Verification that confirmation of public deposit information as of September 30, as described in subsection (5), has been completed.

(c) Public deposit information in a report format prescribed by the Chief Financial Officer ~~Treasurer~~. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Chief Financial Officer ~~Treasurer~~.

(d) Confirmation that a current public deposit identification and acknowledgment form, as described in subsection (2), has been completed for each public deposit account and is in the possession of the public depositor.

(7) Notices relating to the public deposits program shall be mailed to public depositors and governmental units from a list developed annually from:

(c) Governmental units established during the year that filed an annual report as a new governmental unit or otherwise furnished in writing to the Chief Financial Officer ~~Treasurer~~ its official name, address, and federal employer identification number.

Section 306. Subsection (2) of section 280.18, Florida Statutes, is amended to read:

280.18 Protection of public depositors; liability of the state.—

(2) The liability of the state, the Chief Financial Officer ~~Treasurer~~, or any state agency, or any employee or agent of the state, the Chief Financial Officer ~~Treasurer~~, or a state agency, for any action taken in the performance of their powers and duties under this chapter shall be limited to that as a public depositor.

Section 307. Section 280.19, Florida Statutes, is amended to read:

280.19 Rules.—The Chief Financial Officer ~~Treasurer~~ shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this chapter.

Section 308. Paragraph (a) of subsection (2) of section 282.1095, Florida Statutes, is amended to read:

282.1095 State agency law enforcement radio system.—

(2)(a) The Joint Task Force on State Agency Law Enforcement Communications shall consist of eight members, as follows:

1. A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who shall be appointed by the secretary of the department.

2. A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who shall be appointed by the executive director of the department.

3. A representative of the Department of Law Enforcement who shall be appointed by the executive director of the department.

4. A representative of the Fish and Wildlife Conservation Commission who shall be appointed by the executive director of the commission.

5. A representative of the Division of Law Enforcement of the Department of Environmental Protection who shall be appointed by the secretary of the department.

6. A representative of the Department of Corrections who shall be appointed by the secretary of the department.

7. A representative of the Division of State Fire Marshal of the Department of Financial Services ~~Insurance~~ who shall be appointed by the State Fire Marshal.

8. A representative of the Department of Transportation who shall be appointed by the secretary of the department.

Section 309. Subsections (2) and (3) of section 284.02, Florida Statutes, are amended to read:

284.02 Payment of premiums by each agency; handling of funds; payment of losses and expenses.—

(2) All premiums paid into the fund and all moneys received by the fund from investment or any other source pursuant to said program shall be held by the Department of Financial Services ~~Insurance~~ and used for the purpose of paying losses, expenses incurred in adjustment of losses, premiums for reinsurance, and operating expenses.

(3) The Department of Financial Services ~~Insurance~~ is authorized to employ a director of the fund and necessary administrative and clerical personnel, actuaries, consultants, and adjusters to maintain, operate, and administer the fund and to underwrite all certificates of insurance issued by the fund. All salaries and expenses of administration and operation shall be paid from the fund.

Section 310. Section 284.04, Florida Statutes, is amended to read:

284.04 Notice and information required by Department of Financial Services ~~Insurance~~ of all newly erected or acquired state property subject to insurance.—The Department of Management Services and all agencies in charge of state property shall notify the Department of Financial Services ~~Insurance~~ of all newly erected or acquired property subject to coverage as soon as erected or acquired, giving its value, type of construction, location, whether inside or outside of corporate limits, occupancy, and any other information the Department of Financial Services ~~Insurance~~ may require in connection with such property. Such department or agency shall also notify the Department of Financial Services ~~Insurance~~ immediately of any change in value or occupancy of any property covered by the fund. Unless the above data is submitted in writing within a reasonable time following such erection, acquisition, or change, the Department of Financial Services ~~Insurance~~

shall provide insurance coverage to the extent shown by the last notification in writing to the fund or in accordance with the last valuation shown by fund records. In case of disagreement between the Department of Financial Services ~~Insurance~~ and the agency or person in charge of any covered state property as to its true value, the amount of the insurance to be carried thereon, the proper premium rate or rates, or amount of loss settlement, the matter in disagreement shall be determined by the Department of Management Services.

Section 311. Section 284.05, Florida Statutes, is amended to read:

284.05 Inspection of insured state property.—The Department of Financial Services ~~Insurance~~ shall inspect all permanent buildings insured by the State Risk Management Trust Fund, and whenever conditions are found to exist which, in the opinion of the Department of Financial Services ~~Insurance~~, are hazardous from the standpoint of destruction by fire or other loss, the Department of Financial Services ~~Insurance~~ may order the same repaired or remedied, and the agency, board, or person in charge of such property is required to have such dangerous conditions immediately repaired or remedied upon written notice from the Department of Financial Services ~~Insurance~~ of such hazardous conditions. Such amounts as may be necessary to comply with such notice or notices shall be paid by the Department of Management Services or by the agency, board, or person in charge of such property out of any moneys appropriated for the maintenance of the respective agency or for the repairs or permanent improvement of such properties or from any incidental or contingent funds they may have on hand. In the event of a disagreement between the Department of Financial Services ~~Insurance~~ and the agency, board, or person having charge of such property as to the necessity of the repairs or remedies ordered, the matter in disagreement shall be determined by the Department of Management Services.

Section 312. Section 284.06, Florida Statutes, is amended to read:

284.06 Annual report to Governor.—The Department of Financial Services ~~Insurance~~ shall report annually to the Governor the investigations which have been made and the actions which have been taken to decrease the fire hazard of the various insurable properties of the state, together with its recommendations as to further safeguards and improvements.

Section 313. Section 284.08, Florida Statutes, is amended to read:

284.08 Reinsurance on excess coverage and approval by Department of Management Services.—The Department of Financial Services ~~Insurance~~ shall determine what excess coverage is necessary and may purchase reinsurance thereon upon approval by the Department of Management Services.

Section 314. Section 284.14, Florida Statutes, is amended to read:

284.14 State Risk Management Trust Fund; leasehold interest.—In the event the state or any department or agency thereof has acquired or hereafter acquires a leasehold interest in any improved real property and by the terms and provisions of said lease it is obligated to insure such premises

against loss by fire or other hazard to such premises, it shall insure such premises in the State Risk Management Trust Fund as required by the terms of said lease or as required by the provisions of this chapter. No state agency shall enter into or acquire any such leasehold interest until the coverages required to be maintained by the provisions of the lease are approved in writing by the Department of Financial Services ~~Insurance~~.

Section 315. Section 284.17, Florida Statutes, is amended to read:

284.17 Rules.—The Department of Financial Services ~~Insurance~~ has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

Section 316. Section 284.30, Florida Statutes, is amended to read:

284.30 State Risk Management Trust Fund; coverages to be provided.—A state self-insurance fund, designated as the "State Risk Management Trust Fund," is created to be set up by the Department of Financial Services ~~Insurance~~ and administered with a program of risk management, which fund is to provide insurance, as authorized by s. 284.33, for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. A party to a suit in any court, to be entitled to have his or her attorney's fees paid by the state or any of its agencies, must serve a copy of the pleading claiming the fees on the Department of Financial Services ~~Insurance~~; and thereafter the department shall be entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.

Section 317. Section 284.31, Florida Statutes, is amended to read:

284.31 Scope and types of coverages; separate accounts.—The Insurance Risk Management Trust Fund shall, unless specifically excluded by the Department of Financial Services ~~Insurance~~, cover all departments of the State of Florida and their employees, agents, and volunteers and shall provide separate accounts for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. Unless specifically excluded by the Department of Financial Services ~~Insurance~~, the insurance risk management trust fund shall provide fleet automotive liability coverage to motor vehicles titled to the state, or to any department of the state, when such motor vehicles are used by community transportation coordinators performing, under contract to the appropriate department of the state, services for the transportation disadvantaged under part I of chapter 427. Such fleet automotive liability coverage shall be primary and shall be subject to the provisions of s. 768.28 and parts II and III of chapter 284, and applicable rules adopted thereunder, and the terms and conditions of the certificate of coverage issued by the Department of Financial Services ~~Insurance~~.

Section 318. Section 284.32, Florida Statutes, is amended to read:

284.32 Department of Financial Services ~~Insurance~~ to implement and consolidate.—The Department of Financial Services ~~Insurance~~ is ~~hereby~~ authorized to effect a consolidation and combination of all insurance coverages provided herein into one insurance program in accordance with the provisions of part I of chapter 287.

Section 319. Subsection (1) of section 284.33, Florida Statutes, is amended to read:

284.33 Purchase of insurance, reinsurance, and services.—

(1) The Department of Financial Services ~~Insurance~~ is authorized to provide insurance, specific excess insurance, and aggregate excess insurance through the Department of Management Services, pursuant to the provisions of part I of chapter 287, as necessary to provide insurance coverages authorized by this part, consistent with market availability. However, the Department of Financial Services ~~Insurance~~ may directly purchase annuities by using a structured settlement insurance consulting firm selected by the department to assist in the settlement of claims being handled by the Division of Risk Management. The selection of the structured settlement insurance services consultant shall be made by using competitive sealed proposals. The consulting firm shall act as an agent of record for the department in procuring the best annuity products available to facilitate structured settlement of claims, considering price, insurer financial strength, and the best interests of the state risk management program. Purchase of annuities by the department using a structured settlement method is excepted from competitive sealed bidding or proposal requirements. The Department of Financial Services ~~Insurance~~ is further authorized to purchase such risk management services, including, but not limited to, risk and claims control; safety management; and legal, investigative, and adjustment services, as may be required and pay claims. The department may contract with a service organization for such services and advance money to such service organization for deposit in a special checking account for paying claims made against the state under the provisions of this part. The special checking account shall be maintained in this state in a bank or savings association organized under the laws of this state or of the United States. The department may replenish such account as often as necessary upon the presentation by the service organization of documentation for payments of claims equal to the amount of the requested reimbursement.

Section 320. Section 284.34, Florida Statutes, is amended to read:

284.34 Professional medical liability of the university boards of trustees and nuclear energy liability excluded.—Unless specifically authorized by the Department of Financial Services ~~Insurance~~, no coverages shall be provided by this fund for professional medical liability insurance for the university boards of trustees or the physicians, officers, employees, or agents of any board or for liability related to nuclear energy which is ordinarily subject to the standard nuclear energy liability exclusion of conventional liability insurance policies. This section does not affect the self-insurance programs of the university boards of trustees established pursuant to s. 1004.24.

Section 321. Section 284.35, Florida Statutes, is amended to read:

284.35 Administrative personnel; expenses to be paid from fund.—The Department of Financial Services ~~Insurance~~ is ~~hereby~~ authorized, in accordance with current budget and personnel requirements, to employ necessary administrative and clerical personnel and actuarial consultants, as necessary to maintain, operate, and administer the fund. All salaries and expenses of administration and operation shall be paid from the fund.

Section 322. Section 284.37, Florida Statutes, is amended to read:

284.37 Premium and investment accruals used for fund purposes.—All premiums paid into the fund and all moneys from investments or any other source pursuant to said program shall be held by the Department of Financial Services ~~Insurance~~ and used for the purpose of paying losses, premiums for insurance, risk and claims management services, and operating expenses.

Section 323. Section 284.385, Florida Statutes, is amended to read:

284.385 Reporting and handling of claims.—All departments covered by the State Risk Management Trust Fund under this part shall immediately report all known or potential claims to the Department of Financial Services ~~Insurance~~ for handling, except employment complaints which have not been filed with the Florida Human Relations Commission, Equal Employment Opportunity Commission, or any similar agency. When deemed necessary, the Department of Financial Services ~~Insurance~~ shall assign or reassign the claim to counsel. The assigned counsel shall report regularly to the Department of Financial Services ~~Insurance~~ or to the covered department on the status of any such claims or litigation as required by the Department of Financial Services ~~Insurance~~. No such claim shall be compromised or settled for monetary compensation without the prior approval of the Department of Financial Services ~~Insurance~~ and prior notification to the covered department. All departments shall cooperate with the Department of Financial Services ~~Insurance~~ in its handling of claims. The Department of Financial Services and ~~Insurance,~~ the Department of Management Services, ~~and the Department of Banking and Finance,~~ with the cooperation of the state attorneys and the clerks of the courts, shall develop a system to coordinate the exchange of information concerning claims for and against the state, its agencies, and its subdivisions, to assist in collection of amounts due to them. The covered department shall have the responsibility for the settlement of any claim for injunctive or affirmative relief under 42 U.S.C. s. 1983 or similar federal or state statutes. The payment of a settlement or judgment for any claim covered and reported under this part shall be made only from the State Risk Management Trust Fund.

Section 324. Section 284.39, Florida Statutes, is amended to read:

284.39 Adoption ~~Promulgation~~ of rules.—The Department of Financial Services may adopt ~~Insurance is authorized to promulgate~~ rules ~~and regulations~~ for the proper management and maintenance of the fund.

Section 325. Subsections (1) and (2) of section 284.40, Florida Statutes, are amended to read:

284.40 Division of Risk Management.—

(1) It shall be the responsibility of the Division of Risk Management of the Department of Financial Services ~~Insurance~~ to administer this part and the provisions of s. 287.131.

(2) The claim files maintained by the Division of Risk Management shall be confidential, shall be only for the usage by the Department of Financial Services ~~Insurance~~ in fulfilling its duties and responsibilities under this part, and shall be exempt from the provisions of s. 119.07(1).

Section 326. Subsection (1) of section 284.41, Florida Statutes, is amended to read:

284.41 Transfer of personnel and funds to the Division of Risk Management.—

(1) All personnel and funds otherwise allocated to the Department of Financial Services ~~Insurance~~ for this purpose are transferred to the Division of Risk Management.

Section 327. Subsection (1) of section 284.42, Florida Statutes, is amended to read:

284.42 Reports on state insurance program.—

(1) The Department of Financial Services ~~Insurance~~, with the Department of Management Services, shall make an analysis of the state insurance program annually, which shall include:

(a) Complete underwriting information as to the nature of the risks accepted for self-insurance and those risks that are transferred to the insurance market.

(b) The funds allocated to the Florida Casualty Risk Management Trust Fund and premiums paid for insurance through the market.

(c) The method of handling legal matters and the cost allocated.

(d) The method and cost of handling inspection and engineering of risks.

(e) The cost of risk management service purchased.

(f) The cost of managing the State Insurance Program by the Department of Financial Services ~~Insurance~~ and the Department of Management Services.

Section 328. Subsections (4) and (7) of section 284.44, Florida Statutes, are amended to read:

284.44 Salary indemnification costs of state agencies.—

(4) For the purpose of administering this section, the Division of Risk Management of the Department of Financial Services ~~Insurance~~ shall continue to pay all claims, but shall be periodically reimbursed from funds of state agencies for initial salary indemnification costs for which they are responsible.

(7) If a state agency fails to pay casualty increase premiums or salary indemnification reimbursements within 30 days after being billed, the Division of Risk Management shall advise the Chief Financial Officer ~~Comptroller~~. After verifying the accuracy of the billing, the Chief Financial Officer ~~Comptroller~~ shall transfer the appropriate amount from any available funds of the delinquent state agency to the State Risk Management Trust Fund.

Section 329. Subsection (1) of section 284.50, Florida Statutes, is amended to read:

284.50 Loss prevention program; safety coordinators; Interagency Advisory Council on Loss Prevention; employee recognition program.—

(1) The head of each department of state government, except the Legislature, shall designate a safety coordinator. Such safety coordinator must be an employee of the department and must hold a position which has responsibilities comparable to those of an employee in the Senior Management System. The Department of Financial Services ~~Insurance~~ shall provide appropriate training to the safety coordinators to permit them to effectively perform their duties within their respective departments. Each safety coordinator shall, at the direction of his or her department head:

(a) Develop and implement the loss prevention program, a comprehensive departmental safety program which shall include a statement of safety policy and responsibility.

(b) Provide for regular and periodic facility and equipment inspections.

(c) Investigate job-related employee accidents of his or her department.

(d) Establish a program to promote increased safety awareness among employees.

Section 330. Subsection (8) and paragraph (c) of subsection (15) of section 287.042, Florida Statutes, are amended to read:

287.042 Powers, duties, and functions.—The department shall have the following powers, duties, and functions:

(8) To provide any commodity and contractual service purchasing rules to the Chief Financial Officer ~~Comptroller~~ and all agencies through an electronic medium or other means. Agencies may not approve any account or request any payment of any account for the purchase of any commodity or the procurement of any contractual service covered by a purchasing or contractual service rule except as authorized therein. The department shall furnish copies of rules adopted by the department to any county, municipality, or other local public agency requesting them.

(15)

(c) Agencies that sign such joint agreements are financially obligated for their portion of the agreed-upon funds. If any agency becomes more than 90 days delinquent in paying such funds, the department shall certify to the Chief Financial Officer ~~Comptroller~~ the amount due, and the Chief Financial Officer ~~Comptroller~~ shall transfer the amount due to the Grants and Donations Trust Fund of the department from any of the agency's available funds. The Chief Financial Officer ~~Comptroller~~ shall report all such transfers and the reasons for such transfers to the Executive Office of the Governor and the legislative appropriations committees.

Section 331. Paragraph (a) of subsection (5) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

(5) When the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, no purchase of commodities or contractual services may be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

(a) The agency head determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the state requires emergency action. After the agency head makes such a written determination, the agency may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies. However, such emergency procurement shall be made by obtaining pricing information from at least two prospective vendors, which must be retained in the contract file, unless the agency determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the state. The agency shall furnish copies of all written determinations certified under oath and any other documents relating to the emergency action to the department. A copy of the statement shall be furnished to the Chief Financial Officer ~~Comptroller~~ with the voucher authorizing payment. The individual purchase of personal clothing, shelter, or supplies which are needed on an emergency basis to avoid institutionalization or placement in a more restrictive setting is an emergency for the purposes of this paragraph, and the filing with the department of such statement is not required in such circumstances. In the case of the emergency purchase of insurance, the period of coverage of such insurance shall not exceed a period of 30 days, and all such emergency purchases shall be reported to the department.

Section 332. Subsections (2) and (5) of section 287.058, Florida Statutes, are amended to read:

287.058 Contract document.—

(2) The written agreement shall be signed by the agency head and the contractor prior to the rendering of any contractual service the value of which is in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO, except in the case of a valid emergency as certified by the agency head. The certification of an emergency shall be prepared within 30 days after the contractor begins rendering the service and shall state the particular facts and circumstances which precluded the execution of the written agreement prior to the rendering of the service. If the agency fails to have the contract signed by the agency head and the contractor prior to rendering the contractual service, and if an emergency does not exist, the agency head shall, no later than 30 days after the contractor begins rendering the service, certify the specific conditions and circumstances to the department as well as describe actions taken to prevent recurrence of such noncompliance. The agency head may delegate the certification only to other senior management agency personnel. A copy of the certification shall be furnished to the Chief Financial Officer ~~Comptroller~~ with the voucher authorizing payment. The department shall report repeated instances of noncompliance by an agency to the Auditor General. Nothing in this subsection shall be deemed to authorize additional compensation prohibited by s. 215.425. The procurement of contractual services shall not be divided so as to avoid the provisions of this section.

(5) Unless otherwise provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act, the Chief Financial Officer ~~Comptroller~~ may waive the requirements of this section for services which are included in s. 287.057(5)(f).

Section 333. Paragraph (a) of subsection (2) of section 287.059, Florida Statutes, is amended to read:

287.059 Private attorney services.—

(2) No agency shall contract for private attorney services without the prior written approval of the Attorney General, except that such written approval is not required for private attorney services:

(a) Procured by the Executive Office of the Governor, offices under the jurisdiction of the Financial Services Commission, or any department under the exclusive jurisdiction of a single Cabinet officer.

Section 334. Subsections (1) and (2) of section 287.063, Florida Statutes, are amended to read:

287.063 Deferred-payment commodity contracts; preaudit review.—

(1)(a) When any commodity contract requires deferred payments and the payment of interest, such contract shall be submitted to the Chief Financial Officer ~~Comptroller~~ for the purpose of preaudit review and approval prior to acceptance by the state.

(b) Contracts executed pursuant to this subsection may bear interest at a rate not to exceed an average net interest cost rate which shall be computed by adding 150 basis points to the 20 “bond buyer” average yield index

published immediately preceding the first day of the calendar month in which the contract is submitted to the Chief Financial Officer ~~Comptroller~~ for preaudit review and approval.

(2)(a) No funds appropriated shall be used to acquire equipment through a lease or deferred-payment purchase arrangement unless approved by the Chief Financial Officer ~~Comptroller~~ as economically prudent and cost-effective.

(b) The Chief Financial Officer ~~Comptroller~~ shall establish, by rule, criteria for approving purchases made under deferred-payment contracts which require the payment of interest. Criteria shall include, but not be limited to, the following provisions:

1. No contract shall be approved in which interest exceeds the statutory ceiling contained in this section. However, the interest component of any master equipment financing agreement entered into for the purpose of consolidated financing of a deferred-payment, installment sale, or lease-purchase shall be deemed to comply with the interest rate limitation of this section so long as the interest component of every interagency agreement under such master equipment financing agreement complies with the interest rate limitation of this section.

2. No deferred-payment purchase for less than $30,000 shall be approved, unless it can be satisfactorily demonstrated and documented to the Chief Financial Officer ~~Comptroller~~ that failure to make such deferred-payment purchase would adversely affect an agency in the performance of its duties. However, the Chief Financial Officer ~~Comptroller~~ may approve any deferred-payment purchase if the Chief Financial Officer ~~Comptroller~~ determines that such purchase is economically beneficial to the state.

3. No agency shall obligate an annualized amount of payments for deferred-payment purchases in excess of current operating capital outlay appropriations, unless specifically authorized by law or unless it can be satisfactorily demonstrated and documented to the Chief Financial Officer ~~Comptroller~~ that failure to make such deferred-payment purchase would adversely affect an agency in the performance of its duties.

4. No contract shall be approved which extends payment beyond 5 years, unless it can be satisfactorily demonstrated and documented to the Chief Financial Officer ~~Comptroller~~ that failure to make such deferred-payment purchase would adversely affect an agency in the performance of its duties.

(c) The Chief Financial Officer ~~Comptroller~~ shall require written justification based on need, usage, size of the purchase, and financial benefit to the state for deferred-payment purchases made pursuant to this subsection.

Section 335. Section 287.064, Florida Statutes, is amended to read:

287.064 Consolidated financing of deferred-payment purchases.—

(1) The Division of Bond Finance of the State Board of Administration and the Chief Financial Officer ~~Comptroller~~ shall plan and coordinate deferred-payment purchases made by or on behalf of the state or its agencies

or by or on behalf of state community colleges participating under this section pursuant to s. 1001.64(26). The Division of Bond Finance shall negotiate and the Chief Financial Officer ~~Comptroller~~ shall execute agreements and contracts to establish master equipment financing agreements for consolidated financing of deferred-payment, installment sale, or lease purchases with a financial institution or a consortium of financial institutions. As used in this act, the term "deferred-payment" includes installment sale and lease-purchase.

(a) The period during which equipment may be acquired under any one master equipment financing agreement shall be limited to not more than 3 years.

(b) Repayment of the whole or a part of the funds drawn pursuant to the master equipment financing agreement may continue beyond the period established pursuant to paragraph (a).

(c) The interest rate component of any master equipment financing agreement shall be deemed to comply with the interest rate limitation imposed in s. 287.063 so long as the interest rate component of every interagency or community college agreement entered into under such master equipment financing agreement complies with the interest rate limitation imposed in s. 287.063. Such interest rate limitation does not apply when the payment obligation under the master equipment financing agreement is rated by a nationally recognized rating service in any one of the three highest classifications, which rating services and classifications are determined pursuant to rules adopted by the Chief Financial Officer ~~Comptroller~~.

(2) Unless specifically exempted by the Chief Financial Officer ~~Comptroller~~, all deferred-payment purchases, including those made by a community college that is participating under this section, shall be acquired by funding through master equipment financing agreements. The Chief Financial Officer ~~Comptroller~~ is authorized to exempt any purchases from consolidated financing when, in his or her judgment, alternative financing would be cost-effective or otherwise beneficial to the state.

(3) The Chief Financial Officer ~~Comptroller~~ may require agencies to enter into interagency agreements and may require participating community colleges to enter into systemwide agreements for the purpose of carrying out the provisions of this act.

(a) The term of any interagency or systemwide agreement shall expire on June 30 of each fiscal year but shall automatically be renewed annually subject to appropriations and deferred-payment schedules. The period of any interagency or systemwide agreement shall not exceed the useful life of the equipment for which the agreement was made as determined by the Chief Financial Officer ~~Comptroller~~.

(b) The interagency or systemwide agreements may include, but are not limited to, equipment costs, terms, and a pro rata share of program and issuance expenses.

(4) Each community college may choose to have its purchasing agreements involving administrative and instructional materials consolidated under this section.

(5) The Chief Financial Officer ~~Comptroller~~ is authorized to automatically debit each agency's funds and each community college's portion of the Community College Program Fund consistently with the deferred-payment schedules.

(6) There is created the Consolidated Payment Trust Fund in the Chief Financial Officer's ~~Comptroller's~~ office for the purpose of implementing the provisions of this act. All funds debited from each agency and each community college may be deposited in the trust fund and shall be used to meet the financial obligations incurred pursuant to this act. Any income from the investment of funds may be used to fund administrative costs associated with this program.

(7) The Chief Financial Officer ~~Comptroller~~ may borrow sufficient amounts from trust funds to pay issuance expenses for the purposes of administering this section. Such amounts shall be subject to approval of the Executive Office of the Governor and subject to the notice, review, and objection procedures of s. 216.177. The amounts approved pursuant to this subsection are hereby appropriated for transfer to the Consolidated Payment Trust Fund and appropriated from the Consolidated Payment Trust Fund to pay issuance expenses. Amounts loaned shall be repaid as soon as practicable not to exceed the length of time obligations are issued to establish the master equipment financing agreement.

(8) The State Board of Administration and the Chief Financial Officer ~~Comptroller~~, individually, shall adopt rules to implement their respective responsibilities under this section.

(9) For purposes of this section, deferred-payment commodity contracts for replacing the state accounting and cash management systems may include equipment, accounting software, and implementation and project management services.

Section 336. Paragraph (d) of subsection (4) of section 287.09451, Florida Statutes, is amended to read:

287.09451 Office of Supplier Diversity; powers, duties, and functions.—

(4) The Office of Supplier Diversity shall have the following powers, duties, and functions:

(d) To monitor the degree to which agencies procure services, commodities, and construction from minority business enterprises in conjunction with the Department of Financial Services ~~Banking and Finance~~ as specified in s. 17.11.

Section 337. Section 287.115, Florida Statutes, is amended to read:

287.115 Chief Financial Officer ~~Comptroller~~; annual report.—The Chief Financial Officer ~~Comptroller~~ shall submit to the office of the Auditor Gen-

eral an annual report on those contractual service contracts disallowed by the Chief Financial Officer ~~Comptroller~~, which report shall include, but is not limited to, the name of the user agency, the name of the firm or individual from which the contractual service was to be acquired, a description of the contractual service, the financial terms of the contract, and the reason for rejection.

Section 338. Section 287.131, Florida Statutes, is amended to read:

287.131 Assistance of Department of Financial Services ~~Insurance~~.—The Department of Financial Services ~~Insurance~~ shall provide the Department of Management Services with technical assistance in all matters pertaining to the purchase of insurance for all agencies, and shall make surveys of the insurance needs of the state and all departments thereof, including the benefits, if any, of self-insurance.

Section 339. Section 287.175, Florida Statutes, is amended to read:

287.175 Penalties.—A violation of this part or a rule adopted hereunder, pursuant to applicable constitutional and statutory procedures, constitutes misuse of public position as defined in s. 112.313(6), and is punishable as provided in s. 112.317. The Chief Financial Officer ~~Comptroller~~ shall report incidents of suspected misuse to the Commission on Ethics, and the commission shall investigate possible violations of this part or rules adopted hereunder when reported by the Chief Financial Officer ~~Comptroller~~, notwithstanding the provisions of s. 112.324. Any violation of this part or a rule adopted hereunder shall be presumed to have been committed with wrongful intent, but such presumption is rebuttable. Nothing in this section is intended to deny rights provided to career service employees by s. 110.227.

Section 340. Paragraph (f) of subsection (5) of section 288.1045, Florida Statutes, is amended to read:

288.1045 Qualified defense contractor tax refund program.—

(5) ANNUAL CLAIM FOR REFUND FROM A QUALIFIED DEFENSE CONTRACTOR.—

(f) Upon approval of the tax refund pursuant to paragraphs (c) and (d), the Chief Financial Officer ~~Comptroller~~ shall issue a warrant for the amount included in the written order. In the event of any appeal of the written order, the Comptroller may not issue a warrant for a refund to the qualified applicant until the conclusion of all appeals of the written order.

Section 341. Paragraph (h) of subsection (5) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(5) ANNUAL CLAIM FOR REFUND.—

(h) Upon approval of the tax refund under paragraphs (c), (d), and (e), the Chief Financial Officer ~~Comptroller~~ shall issue a warrant for the amount specified in the written order. If the written order is appealed, the Chief

Financial Officer ~~Comptroller~~ may not issue a warrant for a refund to the qualified target industry business until the conclusion of all appeals of that order.

Section 342. Subsection (5) of section 288.109, Florida Statutes, is amended to read:

288.109 One-Stop Permitting System.—

(5) By January 1, 2001, the following state agencies, and the programs within such agencies which require the issuance of licenses, permits, and approvals to businesses, must also be integrated into the One-Stop Permitting System:

(a) The Department of Agriculture and Consumer Services.

(b) The Department of Business and Professional Regulation.

(c) The Department of Health.

(d) The Department of Financial Services ~~Insurance~~.

(e) The Office of Insurance Regulation of the Financial Services Commission.

(f)~~(e)~~ The Department of Labor.

(g)~~(f)~~ The Department of Revenue.

(h)~~(g)~~ The Department of State.

(i)~~(h)~~ The Fish and Wildlife Conservation Commission.

(j)~~(i)~~ Other state agencies.

Section 343. Paragraphs (b) and (d) of subsection (1) and subsection (2) of section 288.1253, Florida Statutes, are amended to read:

288.1253 Travel and entertainment expenses.—

(1) As used in this section:

(b) "Entertainment expenses" means the actual, necessary, and reasonable costs of providing hospitality for business clients or guests, which costs are defined and prescribed by rules adopted by the Office of Tourism, Trade, and Economic Development, subject to approval by the Chief Financial Officer ~~Comptroller~~.

(d) "Travel expenses" means the actual, necessary, and reasonable costs of transportation, meals, lodging, and incidental expenses normally incurred by a traveler, which costs are defined and prescribed by rules adopted by the Office of Tourism, Trade, and Economic Development, subject to approval by the Chief Financial Officer ~~Comptroller~~.

(2) Notwithstanding the provisions of s. 112.061, the Office of Tourism, Trade, and Economic Development shall adopt rules by which it may make

expenditures by advancement or reimbursement, or a combination thereof, to:

(a) The Governor, the Lieutenant Governor, security staff of the Governor or Lieutenant Governor, the Commissioner of Film and Entertainment, or staff of the Office of Film and Entertainment for travel expenses or entertainment expenses incurred by such individuals solely and exclusively in connection with the performance of the statutory duties of the Office of Film and Entertainment.

(b) The Governor, the Lieutenant Governor, security staff of the Governor or Lieutenant Governor, the Commissioner of Film and Entertainment, or staff of the Office of Film and Entertainment for travel expenses or entertainment expenses incurred by such individuals on behalf of guests, business clients, or authorized persons as defined in s. 112.061(2)(e) solely and exclusively in connection with the performance of the statutory duties of the Office of Film and Entertainment.

(c) Third-party vendors for the travel or entertainment expenses of guests, business clients, or authorized persons as defined in s. 112.061(2)(e) incurred solely and exclusively while such persons are participating in activities or events carried out by the Office of Film and Entertainment in connection with that office's statutory duties.

The rules shall be subject to approval by the Chief Financial Officer ~~Comptroller~~ prior to promulgation. The rules shall require the submission of paid receipts, or other proof of expenditure prescribed by the Chief Financial Officer ~~Comptroller~~, with any claim for reimbursement and shall require, as a condition for any advancement of funds, an agreement to submit paid receipts or other proof of expenditure and to refund any unused portion of the advancement within 15 days after the expense is incurred or, if the advancement is made in connection with travel, within 10 working days after the traveler's return to headquarters. However, with respect to an advancement of funds made solely for travel expenses, the rules may allow paid receipts or other proof of expenditure to be submitted, and any unused portion of the advancement to be refunded, within 10 working days after the traveler's return to headquarters. Operational or promotional advancements, as defined in s. 288.35(4), obtained pursuant to this section shall not be commingled with any other state funds.

Section 344. Subsection (9) of section 288.709, Florida Statutes, is amended to read:

288.709 Powers of the Florida Black Business Investment Board, Inc.—The board shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ss. 288.707-288.714, including, but not limited to, the power to:

(9) Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be authorized for trust funds under s. 215.47; however, such investments will be made on behalf of the board by the Chief Financial Officer ~~Office of State Treasurer~~ or by another trustee appointed for that purpose.

Section 345. Paragraph (b) of subsection (4) of section 288.712, Florida Statutes, is amended to read:

288.712 Florida guarantor funds.—

(4)

(b) If the board of the corporation chooses to establish a loan guaranty program, it shall use the Black Business Loan Guaranty Trust Fund in the State Treasury, consisting of moneys deposited or credited to the Black Business Loan Guaranty Trust Fund pursuant to appropriation made by law; any grants, gifts, and contributions received pursuant to ss. 288.707-288.714; all moneys recovered following defaults; and any other moneys obtained by the corporation for this purpose. The Black Business Loan Guaranty Trust Fund shall be administered by the corporation in trust for the purposes of this section and shall at no time be part of general public funds under the following procedures:

1. The corporation shall utilize the Black Business Loan Guaranty Program Administrative and Loss Reserve Fund in the State Treasury, consisting of all premiums charged and collected in accordance with this section and any income earned from the moneys in the account. All expenses of the corporation in carrying out the purposes of this subsection shall be paid from the Black Business Loan Guaranty Program Administrative and Loss Reserve Fund. Any moneys to the credit of the Black Business Loan Guaranty Program Administrative and Loss Reserve Fund in excess of the amount necessary to fund the corporation's activity shall be held as a loss reserve to pay claims arising from defaults on loans underwritten in accordance with this section.

2. Any claims against the state arising from defaults shall be payable initially from the Black Business Loan Guaranty Program Administrative and Loss Reserve Fund and, secondarily, from the Black Business Loan Guaranty Trust Fund.

3. The corporation as loan guarantor may exercise all rights and powers of a company authorized by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ to guarantee loans but shall not be subject to any requirements of an insurance company under the Florida Insurance Code, nor to any rules of the Financial Services Commission ~~Department of Insurance~~; however, the corporation shall refer to the insurance code and rules thereunder when designing and administering such program. The corporation shall follow sound actuarial principles when administering this program. The corporation shall establish a premium for the loan guaranty and such rules as may be necessary to carry out the purposes of this section.

4. The corporation may guarantee no more than 20 percent of the principal of a loan to a black business enterprise.

Section 346. Paragraph (a) of subsection (1) of section 288.776, Florida Statutes, is amended to read:

288.776 Board of directors; powers and duties.—

(1)(a) The corporation shall have a board of directors consisting of 15 members representing all geographic areas of the state. Minority and gender representation must be considered when making appointments to the board. The board membership must include:

1. A representative of the following businesses, all of which must be registered to do business in this state: a foreign bank, a state bank, a federal bank, an insurance company involved in covering trade financing risks, and a small or medium-sized exporter.

2. The following persons or their designee: the President of Enterprise Florida, Inc., the Chief Financial Officer ~~Comptroller~~, the Secretary of State, a senior official of the United States Department of Commerce, and the chair of the Florida Black Business Investment Board.

Section 347. Section 288.778, Florida Statutes, is amended to read:

288.778 Office of Financial Institutions and Securities Regulation ~~Department of Banking and Finance~~.—The Office of Financial Regulation ~~Department of Banking and Finance~~ shall review the corporation's activities once every 24 months to determine compliance with this part and other related laws and rules and to evaluate the corporation's operations. The office ~~department~~ shall prepare a report based on its review and evaluation with recommendation for any corrective action. The president shall submit to the office ~~department~~ regular reports on the corporation's activities. The content and frequency of such reports shall be determined by the office ~~department~~. The office ~~department~~ shall charge a fee for conducting the review and evaluation and preparing the related report, which fee shall not be in excess of the examination fee paid by financial institutions chartered or licensed under the financial institutions code of this state.

Section 348. Subsection (3) of section 288.901, Florida Statutes, is amended to read:

288.901 Enterprise Florida, Inc.; creation; membership; organization; meetings; disclosure.—

(3) Enterprise Florida, Inc., shall be governed by a board of directors. The board of directors shall consist of the following members:

(a) The Governor or the Governor's designee.

(b) The Commissioner of Education or the commissioner's designee.

(c) The Chief Financial Officer ~~Secretary of Labor and Employment Security~~ or his or her ~~the secretary's~~ designee.

(d) A member of the Senate, who shall be appointed by the President of the Senate as an ex officio member of the board and serve at the pleasure of the President.

(e) A member of the House of Representatives, who shall be appointed by the Speaker of the House of Representatives as an ex officio member of the board and serve at the pleasure of the Speaker.

(f) The chairperson of the board of directors of Workforce Florida, Inc.

(g) Twelve members from the private sector, six of whom shall be appointed by the Governor, three of whom shall be appointed by the President of the Senate, and three of whom shall be appointed by the Speaker of the House of Representatives. All appointees are subject to Senate confirmation. In making such appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives shall ensure that the composition of the board is reflective of the diversity of Florida's business community, and to the greatest degree possible shall include, but not be limited to, individuals representing large companies, small companies, minority companies, and individuals representing municipal, county, or regional economic development organizations. Of the 12 members from the private sector, 7 must have significant experience in international business, with expertise in the areas of transportation, finance, law, and manufacturing. The Governor, the President of the Senate, and the Speaker of the House of Representatives shall also consider whether the current board members, together with potential appointees, reflect the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population of the state.

(h) The Secretary of State or the secretary's designee.

Section 349. Paragraphs (c) and (e) through (p) of subsection (3), paragraphs (a), (b), (c), (d), (g), and (h) of subsection (4), paragraph (b) of subsection (5), subsection (7), paragraphs (a) and (c) of subsection (8), paragraph (b) of subsection (9), paragraphs (a) through (e), (h), and (j) of subsection (10), subsections (12), (13), and (14), paragraphs (a), (c), (d), (e), and (g) of subsection (15), and subsection (17) of section 288.99, Florida Statutes, are amended to read:

288.99 Certified Capital Company Act.—

(3) DEFINITIONS.—As used in this section, the term:

(c) "Certified capital company" means a corporation, partnership, or limited liability company which:

1. Is certified by the office ~~department~~ in accordance with this act.

2. Receives investments of certified capital from two or more unaffiliated certified investors.

3. Makes qualified investments as its primary activity.

(e) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

~~(f) "Director" means the director of the Office of Tourism, Trade, and Economic Development.~~

(f)~~(g)~~ "Early stage technology business" means a qualified business that is:

1. Involved, at the time of the certified capital company's initial investment in such business, in activities related to developing initial product or service offerings, such as prototype development or the establishment of initial production or service processes;

2. Less than 2 years old and has, together with its affiliates, less than $3 million in annual revenues for the fiscal year immediately preceding the initial investment by the certified capital company on a consolidated basis, as determined in accordance with generally accepted accounting principles;

3. The Florida Black Business Investment Board;

4. Any entity that is majority owned by the Florida Black Business Investment Board; or

5. Any entity in which the Florida Black Business Investment Board holds a majority voting interest on the board of directors.

(g)~~(h)~~ "Office" means the Office of Financial Regulation of the commission ~~Tourism, Trade, and Economic Development~~.

(h)~~(i)~~ "Premium tax liability" means any liability incurred by an insurance company under the provisions of ss. 624.509 and 624.5091.

(i)~~(j)~~ "Principal" means an executive officer of a corporation, partner of a partnership, manager of a limited liability company, or any other person with equivalent executive functions.

(j)~~(k)~~ "Qualified business" means the Digital Divide Trust Fund established under the State of Florida Technology Office or a business that meets the following conditions as evidenced by documentation required by commission ~~department~~ rule:

1. The business is headquartered in this state and its principal business operations are located in this state or at least 75 percent of the employees are employed in the state.

2. At the time a certified capital company makes an initial investment in a business, the business would qualify for investment under 13 C.F.R. s. 121.301(c), which is involved in manufacturing, processing or assembling products, conducting research and development, or providing services.

3. At the time a certified capital company makes an initial investment in a business, the business certifies in an affidavit that:

a. The business is unable to obtain conventional financing, which means that the business has failed in an attempt to obtain funding for a loan from a bank or other commercial lender or that the business cannot reasonably be expected to qualify for such financing under the standards of commercial lending;

b. The business plan for the business projects that the business is reasonably expected to achieve in excess of $25 million in sales revenue within 5 years after the initial investment, or the business is located in a designated Front Porch community, enterprise zone, urban high crime area, rural job tax credit county, or nationally recognized historic district;

c. The business will maintain its headquarters in this state for the next 10 years and any new manufacturing facility financed by a qualified investment will remain in this state for the next 10 years, or the business is located in a designated Front Porch community, enterprise zone, urban high crime area, rural job tax credit county, or nationally recognized historic district; and

d. The business has fewer than 200 employees and at least 75 percent of the employees are employed in this state. For purposes of this subsection, the term also includes the Florida Black Business Investment Board, any entity majority owned by the Florida Black Business Investment Board, or any entity in which the Florida Black Business Investment Board holds a majority voting interest on the board of directors.

4. The term does not include:

a. Any business predominantly engaged in retail sales, real estate development, insurance, banking, lending, or oil and gas exploration.

b. Any business predominantly engaged in professional services provided by accountants, lawyers, or physicians.

c. Any company that has no historical revenues and either has no specific business plan or purpose or has indicated that its business plan is solely to engage in a merger or acquisition with any unidentified company or other entity.

d. Any company that has a strategic plan to grow through the acquisition of firms with substantially similar business which would result in the planned net loss of Florida-based jobs over a 12-month period after the acquisition as determined by the office ~~department~~.

(k)~~(l)~~ "Qualified debt instrument" means a debt instrument, or a hybrid of a debt instrument, issued by a certified capital company, at par value or a premium, with an original maturity date of at least 5 years after the date of issuance, a repayment schedule which is no faster than a level principal amortization over a 5-year period, and interest, distribution, or payment features which are not related to the profitability of the certified capital company or the performance of the certified capital company's investment portfolio.

(l)~~(m)~~ "Qualified distribution" means any distribution or payment by a certified capital company for:

1. Reasonable costs and expenses, including, but not limited to, professional fees, of forming and syndicating the certified capital company, if no such costs or expenses are paid to a certified investor, except as provided in

subparagraph (4)(f)2., and the total cash, cash equivalents, and other current assets permitted by sub-subparagraph (5)(b)3.g. that can be converted into cash within 5 business days available to the certified capital company at the time of receipt of certified capital from certified investors, after deducting the costs and expenses of forming and syndicating the certified capital company, including any payments made over time for obligations incurred at the time of receipt of certified capital but excluding other future qualified distributions and payments made under paragraph (9)(a), are an amount equal to or greater than 50 percent of the total certified capital allocated to the certified capital pursuant to subsection (7);

2. Reasonable costs of managing and operating the certified capital company, not exceeding 5 percent of the certified capital in any single year, including an annual management fee in an amount that does not exceed 2.5 percent of the certified capital of the certified capital company;

3. Reasonable and necessary fees in accordance with industry custom for professional services, including, but not limited to, legal and accounting services, related to the operation of the certified capital company; or

4. Any projected increase in federal or state taxes, including penalties and interest related to state and federal income taxes, of the equity owners of a certified capital company resulting from the earnings or other tax liability of the certified capital company to the extent that the increase is related to the ownership, management, or operation of a certified capital company.

(m)~~(n)~~1. "Qualified investment" means the investment of cash by a certified capital company in a qualified business for the purchase of any debt, equity, or hybrid security, including a debt instrument or security that has the characteristics of debt but which provides for conversion into equity or equity participation instruments such as options or warrants.

2. The term does not include:

a. Any investment made after the effective date of this act the contractual terms of which require the repayment of any portion of the principal in instances, other than default as determined by commission ~~department~~ rule, within 12 months following the initial investment by the certified capital company unless such investment has a repayment schedule no faster than a level principal amortization of at least 2 years;

b. Any "follow-on" or "add-on" investment except for the amount by which the new investment is in addition to the amount of the certified capital company's initial investment returned to it other than in the form of interest, dividends, or other types of profit participation or distributions; or

c. Any investment in a qualified business or affiliate of a qualified business that exceeds 15 percent of certified capital.

(n)~~(o)~~ "Program One" means the $150 million in premium tax credits issued under this section in 1999, the allocation of such credits under this section, and the regulation of certified capital companies and investments made by them hereunder.

(o)~~(p)~~ "Program Two" means the $150 million in premium tax credits to be issued under subsection (17), the allocation of such credits under this section, and the regulation of certified capital companies and investments made by them hereunder.

(4) CERTIFICATION; GROUNDS FOR DENIAL OR DECERTIFICATION.—

(a) To operate as a certified capital company, a corporation, partnership, or limited liability company must be certified by the Department of Banking and Finance or the office pursuant to this act.

(b) An applicant for certification as a certified capital company must file a verified application with the Department of Banking and Finance on or before December 1, 1998, a date determined in rules adopted pursuant to subsection (17) in the case of applicants for Program Two, in a form which the commission ~~department~~ may prescribe by rule. The applicant shall submit a nonrefundable application fee of $7,500 to the office ~~department~~. The applicant shall provide:

1. The name of the applicant and the address of its principal office and each office in this state.

2. The applicant's form and place of organization and the relevant organizational documents, bylaws, and amendments or restatements of such documents, bylaws, or amendments.

3. Evidence from the Department of State that the applicant is registered with the Department of State as required by law, maintains an active status with the Department of State, and has not been dissolved or had its registration revoked, canceled, or withdrawn.

4. The applicant's proposed method of doing business.

5. The applicant's financial condition and history, including an audit report on the financial statements prepared in accordance with generally accepted accounting principles. The applicant must have, at the time of application for certification, an equity capitalization of at least $500,000 in the form of cash or cash equivalents. The applicant must maintain this equity capitalization until the applicant receives an allocation of certified capital pursuant to this act. If the date of the application is more than 90 days after preparation of the applicant's fiscal year-end financial statements, the applicant may file financial statements reviewed by an independent certified public accountant for the period subsequent to the audit report, together with the audited financial statement for the most recent fiscal year. If the applicant has been in business less than 12 months, and has not prepared an audited financial statement, the applicant may file a financial statement reviewed by an independent certified public accountant.

6. Copies of any offering materials used or proposed to be used by the applicant in soliciting investments of certified capital from certified investors.

(c) Within 60 days after receipt of a verified application, the office ~~department~~ shall grant or deny certification as a certified capital company. If the office ~~department~~ denies certification within the time period specified, the office ~~department~~ shall inform the applicant of the grounds for the denial. If the office ~~department~~ has not granted or denied certification within the time specified, the application shall be deemed approved. The office ~~department~~ shall approve the application if the office ~~department~~ finds that:

1. The applicant satisfies the requirements of paragraph (b).

2. No evidence exists that the applicant has committed any act specified in paragraph (d).

3. At least two of the principals have a minimum of 5 years of experience making venture capital investments out of private equity funds, with not less than $20 million being provided by third-party investors for investment in the early stage of operating businesses. At least one full-time manager or principal of the certified capital company who has such experience must be primarily located in an office of the certified capital company which is based in this state.

4. The applicant's proposed method of doing business and raising certified capital as described in its offering materials and other materials submitted to the office ~~department~~ conforms with the requirements of this section.

(d) The office ~~department~~ may deny certification or decertify a certified capital company if the grounds for decertification are not removed or corrected within 90 days after the notice of such grounds is received by the certified capital company. The office ~~department~~ may deny certification or decertify a certified capital company if the certified capital company fails to maintain common stock or paid-in capital of at least $500,000, or if the office ~~department~~ determines that the applicant, or any principal or director of the certified capital company, has:

1. Violated any provision of this section;

2. Made a material misrepresentation or false statement or concealed any essential or material fact from any person during the application process or with respect to information and reports required of certified capital companies under this section;

3. Been convicted of, or entered a plea of guilty or nolo contendere to, a crime against the laws of this state or any other state or of the United States or any other country or government, including a fraudulent act in connection with the operation of a certified capital company, or in connection with the performance of fiduciary duties in another capacity;

4. Been adjudicated liable in a civil action on grounds of fraud, embezzlement, misrepresentation, or deceit; or

5.a. Been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any

court of competent jurisdiction, administrative law judge, or any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a material violation of any federal or state securities or commodities law or any rule or regulation adopted under such law, or any rule or regulation of any national securities, commodities, or options exchange, or national securities, commodities, or options association; or

b. Been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers, or other related or similar industries.

(g) On or before December 31 of each year, each certified capital company shall pay to the office ~~department~~ an annual, nonrefundable renewal certification fee of $5,000. If a certified capital company fails to pay its renewal fee by the specified deadline, the company must pay a late fee of $5,000 in addition to the renewal fee on or by January 31 of each year in order to continue its certification in the program. On or before April 30 of each year, each certified capital company shall file audited financial statements with the office ~~department~~. No renewal fees shall be required within 6 months after the date of initial certification.

(h) The commission and office ~~department~~ shall administer and provide for the enforcement of certification requirements for certified capital companies as provided in this act. The commission ~~department~~ may adopt any rules necessary to carry out its duties, obligations, and powers related to certification, renewal of certification, or decertification of certified capital companies and the commission and office may perform any other acts necessary for the proper administration and enforcement of such duties, obligations, and powers.

(5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.—

(b) All capital not invested in qualified investments by the certified capital company:

1. Must be held in a financial institution as defined by s. 655.005(1)(h) or held by a broker-dealer registered under s. 517.12, except as set forth in sub-subparagraph 3.g.

2. Must not be invested in a certified investor of the certified capital company or any affiliate of the certified investor of the certified capital company, except for an investment permitted by sub-subparagraph 3.g., provided repayment terms do not permit the obligor to directly or indirectly manage or control the investment decisions of the certified capital company.

3. Must be invested only in:

a. Any United States Treasury obligations;

b. Certificates of deposit or other obligations, maturing within 3 years after acquisition of such certificates or obligations, issued by any financial

institution or trust company incorporated under the laws of the United States;

c. Marketable obligations, maturing within 10 years or less after the acquisition of such obligations, which are rated "A" or better by any nationally recognized credit rating agency;

d. Mortgage-backed securities, with an average life of 5 years or less, after the acquisition of such securities, which are rated "A" or better by any nationally recognized credit rating agency;

e. Collateralized mortgage obligations and real estate mortgage investment conduits that are direct obligations of an agency of the United States Government; are not private-label issues; are in book-entry form; and do not include the classes of interest only, principal only, residual, or zero;

f. Interests in money market funds, the portfolio of which is limited to cash and obligations described in sub-subparagraphs a.-d.; or

g. Obligations that are issued by an insurance company that is not a certified investor of the certified capital company making the investment, that has provided a guarantee indemnity bond, insurance policy, or other payment undertaking in favor of the certified capital company's certified investors as permitted by subparagraph (3)(l)1. ~~(3)(m)1.~~ or an affiliate of such insurance company as defined by subparagraph (3)(a)3. that is not a certified investor of the certified capital company making the investment, provided that such obligations are:

(I) Issued or guaranteed as to principal by an entity whose senior debt is rated "AA" or better by Standard & Poor's Ratings Group or such other nationally recognized credit rating agency as the commission ~~department~~ may by rule determine.

(II) Not subordinated to other unsecured indebtedness of the issuer or the guarantor.

(III) Invested by such issuing entity in accordance with sub-subparagraphs 3.a.-f.

(IV) Readily convertible into cash within 5 business days for the purpose of making a qualified investment unless such obligations are held to provide a guarantee, indemnity bond, insurance policy, or other payment undertaking in favor of the certified capital company's certified investors as permitted by subparagraph (3)(l)1. ~~(3)(m)1.~~

(7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION PROCESS.—

(a) The total amount of tax credits which may be allocated by the Office of Tourism, Trade, and Economic Development shall not exceed $150 million with respect to Program One and $150 million with respect to Program Two. The total amount of tax credits which may be used by certified investors under this act shall not exceed $15 million annually with respect to credits

earned under Program One and $15 million annually with respect to credits earned under Program Two.

(b) The Office of Tourism, Trade, and Economic Development shall be responsible for allocating premium tax credits as provided for in this act to certified capital companies.

(c) Each certified capital company must apply to the Office of Tourism, Trade, and Economic Development for an allocation of premium tax credits for potential certified investors on a form developed by the Office of Tourism, Trade, and Economic Development with the cooperation of the Department of Revenue. The form shall be accompanied by an affidavit from each potential certified investor confirming that the potential certified investor has agreed to make an investment of certified capital in a certified capital company up to a specified amount, subject only to the receipt of a premium tax credit allocation pursuant to this subsection. No certified capital company shall submit premium tax allocation claims on behalf of certified investors that in the aggregate would exceed the total dollar amount appropriated by the Legislature for the specific program. No allocation shall be made to the potential investors of a certified capital company under Program Two unless such certified capital company has filed premium tax allocation claims of not less than $15 million in the aggregate.

(d) The Office of Tourism, Trade, and Economic Development shall inform each certified capital company of its share of total premium tax credits available for allocation to each of its potential investors.

(e) If a certified capital company does not receive certified capital equaling the amount of premium tax credits allocated to a potential certified investor for which the investor filed a premium tax allocation claim within 10 business days after the investor received a notice of allocation, the certified capital company shall notify the Office of Tourism, Trade, and Economic Development by overnight common carrier delivery service of the company's failure to receive the capital. That portion of the premium tax credits allocated to the certified capital company shall be forfeited. If the Office of Tourism, Trade, and Economic Development must make a pro rata allocation under paragraph (f), that ~~the~~ office shall reallocate such available credits among the other certified capital companies on the same pro rata basis as the initial allocation.

(f) If the total amount of capital committed by all certified investors to certified capital companies in premium tax allocation claims under Program Two exceeds the aggregate cap on the amount of credits that may be awarded under Program Two, the premium tax credits that may be allowed to any one certified investor under Program Two shall be allocated using the following ratio:

A/B = X/>$150,000,000

where the letter "A" represents the total amount of certified capital certified investors have agreed to invest in any one certified capital company under Program Two, the letter "B" represents the aggregate amount of certified capital that all certified investors have agreed to invest in all certified

capital companies under Program Two, the letter "X" is the numerator and represents the total amount of premium tax credits and certified capital that may be allocated to a certified capital company on a date determined by rule adopted by the commission ~~department~~ pursuant to subsection (17), and $150 million is the denominator and represents the total amount of premium tax credits and certified capital that may be allocated to all certified investors under Program Two. Any such premium tax credits are not first available for utilization until annual filings are made in 2001 for calendar year 2000 in the case of Program One, and the tax credits may be used at a rate not to exceed 10 percent annually per program.

(g) The maximum amount of certified capital for which premium tax allocation claims may be filed on behalf of any certified investor and its affiliates by one or more certified capital companies may not exceed $15 million for Program One and $22.5 million for Program Two.

(h) To the extent that less than $150 million in certified capital is raised in connection with the procedure set forth in paragraphs (c)-(g), the commission ~~department~~ may adopt rules to allow a subsequent allocation of the remaining premium tax credits authorized under this section.

(i) The Office of Tourism, Trade, and Economic Development shall issue a certification letter for each certified investor, showing the amount invested in the certified capital company under each program. The applicable certified capital company shall attest to the validity of the certification letter.

(8) ANNUAL TAX CREDIT; CLAIM PROCESS.—

(a) On an annual basis, on or before January 31, each certified capital company shall file with the office ~~department~~ and the Office of Tourism, Trade, and Economic Development, in consultation with the office ~~department~~, on a form prescribed by the Office of Tourism, Trade, and Economic Development, for each calendar year:

1. The total dollar amount the certified capital company received from certified investors, the identity of the certified investors, and the amount received from each certified investor during the immediately preceding calendar year.

2. The total dollar amount the certified capital company invested and the amount invested in qualified businesses, together with the identity and location of those businesses and the amount invested in each qualified business during the immediately preceding calendar year.

3. For informational purposes only, the total number of permanent, full-time jobs either created or retained by the qualified business during the immediately preceding calendar year, the average wage of the jobs created or retained, the industry sectors in which the qualified businesses operate, and any additional capital invested in qualified businesses from sources other than certified capital companies.

(c) The Office of Tourism, Trade, and Economic Development shall review the form, and any supplemental documentation, submitted by each certified capital company for the purpose of verifying:

1. That the businesses in which certified capital has been invested by the certified capital company are in fact qualified businesses, and that the amount of certified capital invested by the certified capital company is as represented in the form.

2. The amount of certified capital invested in the certified capital company by the certified investors.

3. The amount of premium tax credit available to certified investors.

(9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE PARTICIPATION.—

(b) Cumulative distributions from a certified capital company from funds related to a particular program to its certified investors and equity holders under such program, other than qualified distributions, in excess of the certified capital company's original certified capital raised under such program and any additional capital contributions to the certified capital company with respect to such program may be audited by a nationally recognized certified public accounting firm acceptable to the office ~~department~~, at the expense of the certified capital company, if the office ~~department~~ directs such audit be conducted. The audit shall determine whether aggregate cumulative distributions from the funds related to a particular program made by the certified capital company to all certified investors and equity holders under such program, other than qualified distributions, have equaled the sum of the certified capital company's original certified capital raised under such program and any additional capital contributions to the certified capital company with respect to such program. If at the time of any such distribution made by the certified capital company, such distribution taken together with all other such distributions from the funds related to such program made by the certified capital company, other than qualified distributions, exceeds in the aggregate the sum of the certified capital company's original certified capital raised under such program and any additional capital contributions to the certified capital company with respect to such program, as determined by the audit, the certified capital company shall pay to the Department of Revenue 10 percent of the portion of such distribution in excess of such amount. Payments to the Department of Revenue by a certified capital company pursuant to this paragraph shall not exceed the aggregate amount of tax credits used by all certified investors in such certified capital company for such program.

(10) DECERTIFICATION.—

(a) The office ~~department~~ shall conduct an annual review of each certified capital company to determine if the certified capital company is abiding by the requirements of certification, to advise the certified capital company as to the eligibility status of its qualified investments, and to ensure that no investment has been made in violation of this act. The cost of the annual review shall be paid by each certified capital company.

(b) Nothing contained in this subsection shall be construed to limit the Chief Financial Officer's or the office's ~~Comptroller's~~ authority to conduct audits of certified capital companies as deemed appropriate and necessary.

(c) Any material violation of this section, or a finding that the certified capital company or any principal or director thereof has committed any act specified in paragraph (4)(d), shall be grounds for decertification of the certified capital company. If the office ~~department~~ determines that a certified capital company is no longer in compliance with the certification requirements of this act, the office ~~department~~ shall, by written notice, inform the officers of such company that the company may be subject to decertification 90 days after the date of mailing of the notice, unless the deficiencies are corrected and such company is again found to be in compliance with all certification requirements.

(d) At the end of the 90-day grace period, if the certified capital company is still not in compliance with the certification requirements, the office ~~department~~ may issue a notice to revoke or suspend the certification or to impose an administrative fine. The office ~~department~~ shall advise each respondent of the right to an administrative hearing under chapter 120 prior to final action by the office ~~department~~.

(e) If the office ~~department~~ revokes a certification, such revocation shall also deny, suspend, or revoke the certifications of all affiliates of the certified capital company.

(h) The Office of Tourism, Trade, and Economic Development shall send written notice to the address of each certified investor whose premium tax credit has been subject to recapture or forfeiture, using the address last shown on the last premium tax filing.

(j) The certified investor shall file with the Department of Revenue an amended return or such other report as the commission ~~department~~ may prescribe by rule ~~regulation~~ and pay any required tax, not later than 60 days after such decertification has been agreed to or finally determined, whichever shall first occur.

(12) REPORTING REQUIREMENTS.—The Office of Tourism, Trade, and Economic Development shall report on an annual basis to the Governor, the President of the Senate, and the Speaker of the House of Representatives on or before April 1:

(a) The total dollar amount each certified capital company received from all certified investors and any other investor, the identity of the certified investors, and the total amount of premium tax credit used by each certified investor for the previous calendar year.

(b) The total dollar amount invested by each certified capital company and that portion invested in qualified businesses, the identity and location of those businesses, the amount invested in each qualified business, and the total number of permanent, full-time jobs created or retained by each qualified business.

(c) The return for the state as a result of the certified capital company investments, including the extent to which:

1. Certified capital company investments have contributed to employment growth.

2. The wage level of businesses in which certified capital companies have invested exceed the average wage for the county in which the jobs are located.

3. The investments of the certified capital companies in qualified businesses have contributed to expanding or diversifying the economic base of the state.

(13) FEES.—All fees and charges of any nature collected by the office ~~department~~ pursuant to this act shall be paid into the State Treasury and credited to the General Revenue Fund.

(14) RULEMAKING AUTHORITY.—

(a) The Department of Revenue may by rule prescribe forms and procedures for the tax credit filings, audits, and forfeiture of premium tax credits described in this section, and for certified capital company payments under paragraph (9)(b).

(b) The commission and the Office of Tourism, Trade, and Economic Development may adopt any rules necessary to carry out their respective ~~its~~ duties, obligations, and powers related to the administration, review, and reporting provisions of this section and may perform any other acts necessary for the proper administration and enforcement of such duties, obligations, and powers.

(15)(a) CONFIDENTIALITY OF INVESTIGATION AND REVIEW INFORMATION.—Except as otherwise provided by this section, any information relating to an investigation or office ~~department~~ review of a certified capital company, including any consumer complaint, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or review is complete or ceases to be active. Such information shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution after the investigation or review is complete or ceases to be active if the information is submitted to any law enforcement or administrative agency for further investigation, and shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until that agency's investigation is complete or ceases to be active. For purposes of this subsection, an investigation or review shall be considered "active" so long as the office ~~department~~, a law enforcement agency, or an administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation may lead to the filing of an administrative, civil, or criminal proceeding. This section shall not be construed to prohibit disclosure of information which is required by law to be filed with the office ~~department~~ and which, but for the investigation, would otherwise be subject to s. 119.07(1).

(c) Nothing in this section shall be construed to prohibit the office ~~department~~ from providing information to any law enforcement or administrative agency. Any law enforcement or administrative agency receiving confidential information in connection with its official duties shall maintain the

confidentiality of the information so long as it would otherwise be confidential.

(d) In the event office ~~department~~ personnel are or have been involved in an investigation or review of such nature as to endanger their lives or physical safety or that of their families, the home addresses, telephone numbers, places of employment, and photographs of such personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the names and locations of schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).

(e) All information obtained by the office ~~department~~ from any person which is only made available to the office ~~department~~ on a confidential or similarly restricted basis shall be confidential and exempt from s. 119.07(1). This exemption shall not be construed to prohibit disclosure of information which is specifically required by law to be filed with the office ~~department~~ or which is otherwise subject to s. 119.07(1).

(g) A privilege against civil liability is granted to a person with regard to information or evidence furnished to the office ~~department~~, unless such person acts in bad faith or with malice in providing such information or evidence.

(17) Notwithstanding the limitations set forth in paragraph (7)(a), in the first fiscal year in which the total insurance premium tax collections as determined by the Revenue Estimating Conference exceed collections for fiscal year 2000-2001 by more than the total amount of tax credits issued pursuant to this section which were used by certified investors in that year, the Office of Tourism, Trade, and Economic Development may allocate to certified investors in accordance with paragraph (7)(a) tax credits for Program Two. The commission ~~department~~ shall establish, by rule, a date and procedures by which certified capital companies must file applications for allocations of such additional premium tax credits, which date shall be no later than 180 days from the date of determination by the Revenue Estimating Conference. With respect to new certified capital invested and premium tax credits earned pursuant to this subsection, the schedule specified in subparagraphs (5)(a)1.-4. is satisfied by investments by December 31 of the 2nd, 3rd, 4th, and 5th calendar year, respectively, after the date established by the commission ~~department~~ for applications of additional premium tax credits. The commission ~~department~~ shall adopt rules by which an entity not already certified as a certified capital company may apply for certification as a certified capital company for participation in this additional allocation. The insurance premium tax credit authorized by Program Two may not be used by certified investors until the annual return due March 1, 2004, and may be used on all subsequent returns and estimated payments; however, notwithstanding the provisions of s. 624.5092(2)(b), the installments of taxes due and payable on April 15, 2004, and June 15, 2004, shall be based on the net tax due in 2003 not taking into account credits granted pursuant to this section for Program Two.

Section 350. Paragraph (c) of subsection (1) of section 289.051, Florida Statutes, is amended to read:

289.051 Membership of financial institutions; loans to corporation, limitations.—

(1) Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so, on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(c) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

1. Twenty percent of the total amount then outstanding on loans to the corporation by all members, including, in said total amount outstanding, amounts validly called for loan but not yet loaned.

2. The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~: 2.5 percent of the capital and surplus of commercial banks and trust companies; 0.5 percent of the total outstanding loans made by savings and loan associations and building and loan associations; 2.5 percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; 2.5 percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; 0.1 percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

Section 351. Subsection (1) of section 289.081, Florida Statutes, is amended to read:

289.081 Amendments to articles of incorporation.—

(1) The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled. No amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein, or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~ to examine the corporation or the obligation of the corporation to make reports as provided in s. 289.121, shall be made. No amendment of the articles of incorporation which increases the obligation

of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each member affected by such amendment.

Section 352. Section 289.121, Florida Statutes, is amended to read:

289.121 Periodic examinations; reports.—The corporation shall be examined at least once annually by the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~ and shall make reports of its condition not less than annually to that office ~~said department~~ and more frequently upon call of the office ~~department~~, which in turn shall make copies of such reports available to the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ and the Governor; and the corporation shall also furnish such other information as may from time to time be required by the Office of Financial Regulation ~~Department of Banking and Finance~~ and Department of State. The corporation shall pay the actual cost of ~~said~~ examinations. The office ~~Department of Banking and Finance~~ shall exercise the same power and authority over corporations organized under this act as is exercised over financial institutions under the provisions of the financial institutions codes, when such codes are not in conflict with this act.

Section 353. Section 292.085, Florida Statutes, is amended to read:

292.085 Department of Veterans' Affairs Tobacco Settlement Trust Fund.—

(1) The Department of Veterans' Affairs Tobacco Settlement Trust Fund is created within that department. Funds to be credited to the trust fund shall consist of funds disbursed, by nonoperating transfer, from the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund in amounts equal to the annual appropriations made from this trust fund.

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

Section 354. Section 313.02, Florida Statutes, is amended to read:

313.02 Bond.—Every harbormaster appointed for any port shall give an approved bond in the sum of $500, payable to the Governor of the state, for the faithful performance of the harbormaster's duty, such bond to be approved by the county commissioners of the county in which the port is situated, and by the Department of Financial Services ~~Banking and Finance~~, and to be filed with the Department of State.

Section 355. Section 314.02, Florida Statutes, is amended to read:

314.02 Bond.—Each harbormaster so appointed shall enter into a bond in the penal sum of $2,000, with two or more sureties, payable to the Governor of the state and the Governor's successors in office, conditioned for the faithful discharge of the duties of the harbormaster's office, by the harbormaster and his or her deputies, and for the payment of any damage any person may sustain in consequence of any wrongful act of such officer or deputy under color of the harbormaster's office; such bond to be approved by the county commissioners of the county in which is situated said port and by the Department of Financial Services ~~Banking and Finance~~, and to be filed with the Department of State.

Section 356. Paragraph (b) of subsection (5) of section 316.3025, Florida Statutes, is amended to read:

316.3025 Penalties.—

(5)

(b) All penalties imposed and collected under this section by any state agency having jurisdiction shall be paid to the Chief Financial Officer ~~Treasurer~~, who shall credit the total amount collected to the State Transportation Trust Fund for use in repairing and maintaining the roads of this state.

Section 357. Subsection (6) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(6) Any officer or agent collecting the penalties herein imposed shall give to the owner or driver of the vehicle an official receipt for all penalties collected. Such officers or agents of the state departments shall cooperate with the owners or drivers of motor vehicles so as not to delay unduly the vehicles. All penalties imposed and collected under this section by any state agency having jurisdiction shall be paid to the Chief Financial Officer ~~Treasurer~~, who shall credit the total amount thereof to the State Transportation Trust Fund, which shall be used to repair and maintain the roads of this state and to enforce this section.

Section 358. Paragraph (c) of subsection (5) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(5)

(c) For purposes of providing proof of purchase of required insurance coverage under this subsection, the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ shall require that uniform proof-of-purchase cards specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers writing motor vehicle liability insurance in this state. Any person altering or counterfeiting such a card or making a false affidavit in order to furnish false proof or to know-

ingly permit another person to furnish false proof is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 359. Subsection (5) of section 320.081, Florida Statutes, is amended to read:

320.081 Collection and distribution of annual license tax imposed on the following type units.—

(5) The department shall keep records showing the total number of stickers issued to each type unit governed by this section, the total amount of license taxes collected, and the county or city wherein each such unit is located and shall from month to month certify to the Chief Financial Officer ~~Comptroller~~ the amount derived from license taxes in each county and each city within the county. Such amount, less the amount of $1.50 collected on each license, shall be paid to the counties and cities within the counties wherein the unit or units are located as follows: one-half to the district school board and the remainder either to the board of county commissioners, for units which are located within the unincorporated areas of the county, or to any city within such county, for units which are located within its corporate limits. Payment shall be by warrant drawn by the Chief Financial Officer ~~Comptroller~~ upon the treasury, which amount is hereby appropriated monthly out of the License Tax Collection Trust Fund.

Section 360. Paragraphs (b) and (c) of subsection (5) of section 320.20, Florida Statutes, are amended to read:

320.20 Disposition of license tax moneys.—The revenue derived from the registration of motor vehicles, including any delinquent fees and excluding those revenues collected and distributed under the provisions of s. 320.081, must be distributed monthly, as collected, as follows:

(5)

(b) The Chief Financial Officer ~~State Comptroller~~ each month shall deposit in the State Transportation Trust Fund an amount, drawn from other funds in the State Treasury which are not immediately needed or are otherwise in excess of the amount necessary to meet the requirements of the State Treasury, which when added to such remaining revenues each month will equal one-twelfth of the amount of the anticipated annual revenues to be deposited in the State Transportation Trust Fund under paragraph (a) as estimated by the most recent revenue estimating conference held pursuant to s. 216.136(3). The transfers required hereunder may be suspended by action of the Legislative Budget Commission in the event of a significant shortfall of state revenues.

(c) In any month in which the remaining revenues derived from the registration of motor vehicles exceed one-twelfth of those anticipated annual remaining revenues as determined by the revenue estimating conference, the excess shall be credited to those state funds in the State Treasury from which the amount was originally drawn, up to the amount which was deposited in the State Transportation Trust Fund under paragraph (b). A final adjustment must be made in the last months of a fiscal year so that the total

revenue deposited in the State Transportation Trust Fund each year equals the amount derived from the registration of motor vehicles, less the amount distributed under subsection (1). For the purposes of this paragraph and paragraph (b), the term "remaining revenues" means all revenues deposited into the State Transportation Trust Fund under paragraph (a) and subsections (2) and (3). In order that interest earnings continue to accrue to the General Revenue Fund, the Department of Transportation may not invest an amount equal to the cumulative amount of funds deposited in the State Transportation Trust Fund under paragraph (b) less funds credited under this paragraph as computed on a monthly basis. The amounts to be credited under this and the preceding paragraph must be calculated and certified to the Chief Financial Officer ~~Comptroller~~ by the Executive Office of the Governor.

Section 361. Subsection (1) of section 320.71, Florida Statutes, is amended to read:

320.71 Nonresident motor vehicle, mobile home, or recreational vehicle dealer's license.—

(1) Any person who is a nonresident of the state, who does not have a dealer's contract from the manufacturer or manufacturer's distributor of motor vehicles, mobile homes, or recreational vehicles authorizing the sale thereof in definite Florida territory, and who sells or engages in the business of selling said vehicles at retail within the state shall register with the Department of Revenue for a sales tax dealer registration number and comply with chapter 212, and pay a license tax of $2,000 per annum in each county where such sales are made; $1,250 of said tax shall be transmitted to the Department of Financial Services ~~Banking and Finance~~ to be deposited in the General Revenue Fund of the state, and $750 thereof shall be returned to the county. The license tax shall cover the period from January 1 to the following December 31, and no such license shall be issued for any fractional part of a year.

Section 362. Subsection (2) of section 320.781, Florida Statutes, is amended to read:

320.781 Mobile Home and Recreational Vehicle Protection Trust Fund.—

(2) Beginning October 1, 1990, the department shall charge and collect an additional fee of $1 for each new mobile home and new recreational vehicle title transaction for which it charges a fee. This additional fee shall be deposited into the trust fund. The Department of Highway Safety and Motor Vehicles shall charge a fee of $40 per annual dealer and manufacturer license and license renewal, which shall be deposited into the trust fund. The sums deposited in the trust fund shall be used exclusively for carrying out the purposes of this section. These sums may be invested and reinvested by the Chief Financial Officer ~~Treasurer~~ under the same limitations as apply to investment of other state funds, with all interest from these investments deposited to the credit of the trust fund.

Section 363. Subsection (5) of section 322.21, Florida Statutes, is amended to read:

322.21 License fees; procedure for handling and collecting fees.—

(5) The department shall collect and transmit all fees received by it under this section to the Chief Financial Officer ~~Treasurer~~ to be placed in the General Revenue Fund of the state, and sufficient funds for the necessary expenses of the department shall be included in the appropriations act. The fees shall be used for the maintenance and operation of the department.

Section 364. Paragraph (b) of subsection (1) of section 324.032, Florida Statutes, is amended to read:

324.032 Manner of proving financial responsibility; for-hire passenger transportation vehicles.—

(1) Notwithstanding the provisions of s. 324.031, a person who is either the owner or a lessee required to maintain insurance under s. 324.021(9)(b) and who operates at least 300 taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may prove financial responsibility by satisfying the following:

(b) Complying with the provisions of s. 324.171, such compliance to be demonstrated by maintaining at its principal place of business an audited financial statement, prepared in accordance with generally accepted accounting principles, and providing to the department a certification issued by a certified public accountant that the applicant's net worth is at least equal to the requirements of s. 324.171 as determined by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, including claims liabilities in an amount certified as adequate by a Fellow of the Casualty Actuarial Society.

Upon request by the department, the applicant must provide the department at the applicant's principal place of business in this state access to the applicant's underlying financial information and financial statements that provide the basis of the certified public accountant's certification. The applicant shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is $300,000 and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation ~~Department of Insurance~~. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with paragraph (a) is obtained.

Section 365. Paragraph (b) of subsection (1) of section 324.171, Florida Statutes, is amended to read:

324.171 Self-insurer.—

(1) Any person may qualify as a self-insurer by obtaining a certificate of self-insurance from the department which may, in its discretion and upon application of such a person, issue said certificate of self-insurance when

such person has satisfied the requirements of this section to qualify as a self-insurer under this section:

(b) A person, including any firm, partnership, association, corporation, or other person, other than a natural person, shall:

1. Possess a net unencumbered worth of at least $40,000 for the first motor vehicle and $20,000 for each additional motor vehicle; or

2. Maintain sufficient net worth, as determined annually by the department, pursuant to rules promulgated by the department, with the assistance of the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, to be financially responsible for potential losses. The rules shall take into consideration excess insurance carried by the applicant. The department's determination shall be based upon reasonable actuarial principles considering the frequency, severity, and loss development of claims incurred by casualty insurers writing coverage on the type of motor vehicles for which a certificate of self-insurance is desired.

Section 366. Paragraph (d) of subsection (2) of section 326.006, Florida Statutes, is amended to read:

326.006 Powers and duties of division.—

(2) The division has the power to enforce and ensure compliance with the provisions of this chapter and rules adopted under this chapter relating to the sale and ownership of yachts and ships. In performing its duties, the division has the following powers and duties:

(d) Notwithstanding any remedies available to a yacht or ship purchaser, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule adopted under this chapter has occurred, the division may institute enforcement proceedings in its own name against any broker or salesperson or any of his or her assignees or agents, or against any unlicensed person or any of his or her assignees or agents, as follows:

1. The division may permit a person whose conduct or actions are under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the broker or salesperson or any of his or her assignees or agents, or requiring any unlicensed person or any of his or her assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter.

3. The division may bring an action in circuit court on behalf of a class of yacht or ship purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a broker or salesperson or any of his or her assignees or agents, or against an unlicensed person

or any of his or her assignees or agents, for any violation of this chapter or a rule adopted under this chapter. A penalty may be imposed for each day of continuing violation, but in no event may the penalty for any offense exceed $10,000. All amounts collected must be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a broker, salesperson, or unlicensed person working for a broker, fails to pay the civil penalty, the division shall thereupon issue an order suspending the broker's license until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. The order imposing the civil penalty or the order of suspension may not become effective until 20 days after the date of such order. Any action commenced by the division must be brought in the county in which the division has its executive offices or in the county where the violation occurred.

Section 367. Subsections (8) and (25) of section 331.303, Florida Statutes, are amended to read:

331.303 Definitions.—

(8) "Entertainment expenses" means the actual, necessary, and reasonable costs of providing hospitality for business clients or guests, which costs are defined and prescribed by rules adopted by the authority, subject to approval by the Chief Financial Officer ~~Comptroller~~.

(25) "Travel expenses" means the actual, necessary, and reasonable costs of transportation, meals, lodging, and incidental expenses normally incurred by a traveler, which costs are defined and prescribed by rules adopted by the authority, subject to approval by the Chief Financial Officer ~~Comptroller~~.

Section 368. Subsection (2) of section 331.309, Florida Statutes, is amended to read:

331.309 Treasurer; depositories; fiscal agent.—

(2) The board is authorized to select as depositories in which the funds of the board and of the authority shall be deposited any qualified public depository as defined in s. 280.02, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the board may deem just and reasonable. Funds of the authority may also be deposited with the Florida Commercial Space Financing Corporation created by s. 331.407. The funds of the authority may be kept in or removed from the State Treasury upon written notification from the chair of the board to the Chief Financial Officer ~~State Comptroller~~.

Section 369. Subsection (2) of section 331.3101, Florida Statutes, is amended to read:

331.3101 Florida Space Authority; travel and entertainment expenses.—

(2) The rules shall be subject to approval by the Chief Financial Officer ~~Comptroller~~ prior to promulgation. The rules shall require the submission

of paid receipts, or other proof prescribed by the Chief Financial Officer ~~Comptroller~~, with any claim for reimbursement, and shall require, as a condition for any advancement, an agreement to submit paid receipts or other proof and to refund any unused portion of the advancement within 15 days after the expense is incurred or, if the advancement is made in connection with travel, within 15 days after completion of the travel. However, with respect to an advancement made solely for travel expenses, the rules may allow paid receipts or other proof to be submitted, and any unused portion of the advancement to be refunded, within 30 days after completion of the travel.

Section 370. Section 331.348, Florida Statutes, is amended to read:

331.348 Investment of funds.—The board may in its discretion invest funds of the authority through the Chief Financial Officer ~~Treasurer~~ or in:

(1) Direct obligations of or obligations guaranteed by the United States or for the payment of the principal and interest of which the faith and credit of the United States is pledged;

(2) Bonds or notes issued by any of the following federal agencies: Bank for Cooperatives; federal intermediate credit banks; federal home loan bank system; federal land banks; or the Federal National Mortgage Association (including debentures or participating certificates issued by such association);

(3) Public housing bonds issued by public housing authorities and secured by a pledge or annual contributions under an annual contribution contract or contracts with the United States;

(4) Bonds or other interest-bearing obligations of any county, district, city, or town located in the state for which the full faith and credit of such political subdivision is pledged;

(5) Any investment authorized for insurers by ss. 625.306-625.316 and amendments thereto; or

(6) Any investment authorized under s. 17.57 ~~s. 18.10~~ and amendments thereto.

Section 371. Subsection (3) of section 331.419, Florida Statutes, is amended to read:

331.419 Reports and audits.—

(3) The Office of Financial Regulation of the Financial Services Commission ~~Division of Banking of the Department of Banking and Finance~~ shall review the corporation's activities once every 24 months to determine compliance with this part and related laws and rules and to evaluate the corporation's operations. The office ~~division~~ shall prepare a report based on its review and evaluation with recommendation for any corrective action. The president shall submit to the office ~~division~~ regular reports on the corporation's activities. The content and frequency of such reports shall be deter-

mined by the office ~~division~~. The office ~~division~~ may charge a fee for conducting the review and evaluation and preparing the related report, which fee shall not be in excess of the examination fee paid by chartered or licensed financial institutions.

Section 372. Subsection (1) of section 336.022, Florida Statutes, is amended to read:

336.022 County transportation trust fund; controls and administrative remedies.—

(1) Each county shall establish and maintain a transportation trust fund for all transportation-related revenues and expenditures. All funds received by a county for transportation shall be deposited into this fund. No expenditures other than transportation expenditures authorized by law shall be made from such fund. Each county shall use a uniform accounts classification system approved by the Chief Financial Officer ~~Comptroller~~.

Section 373. Subsection (9) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(9) The department, with the approval of the Chief Financial Officer ~~State Comptroller~~, is authorized to disburse state funds for real estate closings in a manner consistent with good business practices and in a manner minimizing costs and risks to the state.

Section 374. Section 339.035, Florida Statutes, is amended to read:

339.035 Expenditures.—All expenditures by the department shall be made upon vouchers issued and certified by the department in such manner as the department may, by rule or internal management memorandum as required by chapter 120, provide and shall be paid by warrants issued by the Chief Financial Officer ~~Comptroller upon the Treasurer~~.

Section 375. Section 339.081, Florida Statutes, is amended to read:

339.081 Department trust funds.—The Chief Financial Officer ~~Comptroller~~ shall maintain within the State Treasury the following trust funds for the department:

(1) The State Transportation Trust Fund, to which shall be credited the proceeds of the gas tax as authorized by chapter 83-3, Laws of Florida, and such other funds which accrue to the department which are not required to be maintained in separate trust funds.

(2) Such other funds as may be authorized by bond resolutions or agreements with any other public bodies or agencies.

Section 376. Section 344.17, Florida Statutes, is amended to read:

344.17 Depositories and investments.—All moneys received by the Chief Financial Officer as treasurer of the State Board of Administration, a body

corporate under s. 9, Art. XII of the State Constitution, shall be deposited by the treasurer in a solvent bank or banks, to be approved and accepted for such purposes by the board. In making such deposits, he or she shall follow the method for the deposit of state funds. Each bank receiving any portion of such funds shall be required to deposit with such treasurer satisfactory bonds or treasury certificates of the United States; bonds of the several states; special tax school district bonds; bonds of any municipality eligible to secure state deposits as provided by law; bonds of any county or special road and bridge district of this state entitled to participate under the provisions of s. 16, Art. IX of the State Constitution of 1885, as adopted by the 1968 revised constitution, and of s. 9, Art. XII of that revision; bonds issued under the provisions of s. 18, Art. XII of the State Constitution of 1885, as adopted by s. 9, Art. XII of the 1968 revised constitution; or bonds, notes, or certificates issued by the Florida State Improvement Commission or its successors, the Florida Development Commission and the Division of Bond Finance of the State Board of Administration, which contain a pledge of the 80-percent surplus 2-cent constitutional gasoline tax accruing under s. 16, Art. IX of the State Constitution of 1885, as adopted by the 1968 revised constitution, and under s. 9, Art. XII of that revision, which shall be equal to the amount deposited with such bank. Such security shall be in the possession of such treasurer; or the treasurer is authorized to accept, in lieu of the actual depositing with him or her of such security, trust or safekeeping receipts issued by any Federal Reserve Bank, or member bank thereof, or by any bank incorporated under the laws of the United States; provided the member bank or bank incorporated under the laws of the United States has been previously approved and accepted for such purposes by the State Board of Administration and the trust or safekeeping receipts are in substantially the same form as that which the Chief Financial Officer ~~State Treasurer~~ is authorized to accept in lieu of securities given to cover deposits of state funds.

Section 377. Subsections (2) and (9) of section 350.06, Florida Statutes, are amended to read:

350.06 Place of meeting; expenditures; employment of personnel; records availability and fees.—

(2) All sums of money authorized to be paid on account of said commissioners shall be paid out of the State Treasury only on the order of the Chief Financial Officer ~~Comptroller~~.

(9) The commission shall keep a book in which all fees collected by it as provided for herein shall be recorded, together with the amount and purpose for which collected. This book shall be a public record. The commission shall prepare a statement of these fees in duplicate each month and remit one copy of the statement, together with all fees collected by it, to the Chief Financial Officer ~~Treasurer~~. All moneys collected pursuant to this section by the commission shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund.

Section 378. Section 354.03, Florida Statutes, is amended to read:

354.03 Bond.—Before entering into the performance of his or her duties every such special officer shall enter into a good and sufficient bond payable to the Governor of Florida, and the Governor's successors, in the penal sum of $5,000, with some surety company authorized to do business in this state as surety thereon, conditioned for the faithful performance of his or her duties, and to pay any and all damage done by any illegal act committed by him or her, to be approved by the Department of Financial Services ~~Banking and Finance~~.

Section 379. Subsection (1) of section 365.173, Florida Statutes, is amended to read:

365.173 Wireless Emergency Telephone System Fund.—

(1) All revenues derived from the E911 fee levied on subscribers under s. 365.172 must be paid into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Wireless Emergency Telephone System Fund, a fund created in the State Technology Office and must be invested by the Chief Financial Officer ~~State Treasurer~~ pursuant to s. 17.61 ~~s. 18.125~~. All moneys in such fund are to be expended by the State Technology Office for the purposes provided in this section and s. 365.172. These funds are not subject to s. 215.20.

Section 380. Subsection (8) of section 370.06, Florida Statutes, is amended to read:

370.06 Licenses.—

(8) COLLECTION OF LICENSES, FEES.—Unless otherwise provided by law, all license taxes or fees provided for in this chapter shall be collected by the commission or its duly authorized agents or deputies to be deposited by the Chief Financial Officer ~~Comptroller~~ in the Marine Resources Conservation Trust Fund. The commission may by rule establish a reasonable processing fee for any free license or permit required under this chapter. The commission is authorized to accept payment by credit card for fees, fines, and civil penalties levied pursuant to this chapter.

Section 381. Subsection (6) of section 370.16, Florida Statutes, is amended to read:

370.16 Noncultured shellfish harvesting.—

(6) SEIZURE OF VESSELS AND CARGOES VIOLATING OYSTER AND CLAM LAWS, ETC.—Vessels, with their cargoes, violating the provisions of the laws relating to oysters and clams may be seized by anyone duly and lawfully authorized to make arrests under this section or by any sheriff or the sheriff's deputies, and taken into custody, and when not arrested by the sheriff or the sheriff's deputies, delivered to the sheriff of the county in which the seizure is made, and shall be liable to forfeiture, on appropriate proceedings being instituted by the Fish and Wildlife Conservation Commission, before the courts of that county. In such case the cargo shall at once be disposed of by the sheriff, for account of whom it may concern. Should the

master or any of the crew of said vessel be found guilty of using dredges or other instruments in fishing oysters on natural reefs contrary to law, or fishing on the natural oyster or clam reefs out of season, or unlawfully taking oysters or clams belonging to a lessee, such vessel shall be declared forfeited by the court, and ordered sold and the proceeds of the sale shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the General Revenue Fund; any person guilty of such violations shall not be permitted to have any license provided for in this chapter within a period of 1 year from the date of conviction. Pending proceedings such vessel may be released upon the owner furnishing bond, with good and solvent security in double the value of the vessel, conditioned upon its being returned in good condition to the sheriff to abide the judgment of the court.

Section 382. Paragraph (b) of subsection (5) and subsection (6) of section 370.19, Florida Statutes, are amended to read:

370.19 Atlantic States Marine Fisheries Compact; implementing legislation.—

(5) ACCOUNTS TO BE KEPT BY COMMISSION; EXAMINATION.—

(b) The Department of Financial Services ~~Banking and Finance~~ is ~~hereby~~ authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such department deems ~~may deem~~ proper and to report the results of such examination to the governor of such state.

(6) APPROPRIATION FOR EXPENSES OF COMMISSION.—The sum of $600, annually, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, for the expenses of the commission created by the compact authorized by this law. The moneys hereby appropriated shall be paid out of the State Treasury on the audit and warrant of the Chief Financial Officer ~~Comptroller~~ upon vouchers certified by the chair of the commission in the manner prescribed by law.

Section 383. Subsection (5) of section 370.20, Florida Statutes, is amended to read:

370.20 Gulf States Marine Fisheries Compact; implementing legislation.—

(5) ACCOUNTS TO BE KEPT BY COMMISSION; EXAMINATION.—The commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the Legislature of the State of Florida on or before the 10th day of December in each year, setting forth in detail the transactions conducted by it during the 12 months preceding December 1 of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Florida which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The Department of Financial Services ~~Banking and Finance~~ is ~~hereby~~ authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such department deems ~~may deem~~ proper and to report the results of such examination to the governor of such state.

Section 384. Subsection (5) of section 373.503, Florida Statutes, is amended to read:

373.503 Manner of taxation.—

(5) Each water management district created under this chapter which does not receive state shared revenues under part II of chapter 218 shall, before January 1 of each year, certify compliance or noncompliance with s. 200.065 to the Department of Financial Services ~~Banking and Finance~~. Specific grounds for noncompliance shall be stated in the certification. In its annual report required by s. 218.32(2), the Department of Financial Services ~~Banking and Finance~~ shall report to the Governor and the Legislature those water management districts certifying noncompliance or not reporting.

Section 385. Paragraph (e) of subsection (10) of section 373.59, Florida Statutes, is amended to read:

373.59 Water Management Lands Trust Fund.—

(10)

(e) Payment in lieu of taxes pursuant to this subsection shall be made annually to qualifying counties and local governments after certification by the Department of Revenue that the amounts applied for are reasonably appropriate, based on the amount of actual taxes paid on the eligible property, and after the water management districts have provided supporting documents to the Chief Financial Officer ~~Comptroller~~ and have requested that payment be made in accordance with the requirements of this section.

Section 386. Subsection (2) of section 373.6065, Florida Statutes, is amended to read:

373.6065 Adoption benefits for water management district employees.—

(2) The Chief Financial Officer ~~Comptroller~~ and the Department of Management Services shall transfer funds to water management districts to pay eligible water management district employees for these child adoption monetary benefits in accordance with s. 215.32(1)(c)5., as long as funds remain available for the program described under s. 110.152.

Section 387. Subsection (2) of section 374.983, Florida Statutes, is amended to read:

374.983 Governing body.—

(2) The present board of commissioners of the district shall continue to hold office until their respective terms shall expire. Thereafter the members

of the board shall continue to be appointed by the Governor for a term of 4 years and until their successors shall be duly appointed. Specifically, commencing on January 10, 1997, the Governor shall appoint the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties and on January 10, 1999, the Governor shall appoint the commissioners from Brevard, Dade, Duval, Flagler, Palm Beach, and St. Lucie Counties. Each new appointee must be confirmed by the Senate. Whenever a vacancy occurs among the commissioners, the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the commissioner whose place he or she is selected to fill. Each commissioner under this act before he or she assumes office shall be required to give a good and sufficient surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of his or her office, such ~~said~~ bond to be approved by and filed with the Chief Financial Officer ~~Comptroller~~. Any and all premiums upon such ~~said~~ surety bonds shall be paid by the board of commissioners of such ~~said~~ district as a necessary expense of the district.

Section 388. Subsection (2) of section 374.986, Florida Statutes, is amended to read:

374.986 Taxing authority.—

(2) The board may annually assess and levy against the taxable property in the district a tax not to exceed one-tenth mill on the dollar for each year, and the proceeds from such tax shall be used by the district for all expenses of the district including the purchase price of right-of-way and other property. The board shall, on or before the 31st day of July of each year, prepare a tentative annual written budget of the district's expected income and expenditures. In addition, the board shall compute a proposed millage rate to be levied as taxes for that year upon the taxable property in the district for the purposes of said district. The proposed budget shall be submitted to the Department of Environmental Protection for its approval. Prior to adopting a final budget, the district shall comply with the provisions of s. 200.065, relating to the method of fixing millage, and shall fix the final millage rate by resolution of the district and shall also, by resolution, adopt a final budget pursuant to chapter 200. Copies of such resolutions executed in the name of the board by its chair, and attested by its secretary, shall be made and delivered to the county officials specified in s. 200.065 of each and every county in the district, to the Department of Revenue, and to the Chief Financial Officer ~~Comptroller~~. Thereupon, it shall be the duty of the property assessor of each of said counties to assess, and the tax collector of each of said counties to collect, a tax at the rate fixed by said resolution of the board upon all of the real and personal taxable property in said counties for said year (and such officers shall perform such duty) and said levy shall be included in the warrant of the tax assessors of each of said counties and attached to the assessment roll of taxes for each of said counties. The tax collectors of each of said counties shall collect such taxes so levied by the board in the same manner as other taxes are collected, and shall pay the same within the time and in the manner prescribed by law, to the treasurer of the board. It shall be the duty of the Chief Financial Officer ~~Comptroller~~ to assess and levy on all railroad lines and railroad property and telegraph

lines and telegraph property in the district a tax at the rate prescribed by resolution of the board, and to collect the tax thereon in the same manner as he or she is required by law to assess and collect taxes for state and county purposes and to remit the same to the treasurer of the board. All such taxes shall be held by the treasurer of the district for the credit of the district and paid out by him or her as provided herein. The tax assessor and property appraiser of each of said counties shall be entitled to payment as provided for by general laws.

Section 389. Subsection (3) of section 376.11, Florida Statutes, is amended to read:

376.11 Florida Coastal Protection Trust Fund.—

(3) Moneys in the fund that are not needed currently to meet the obligations of the department in the exercise of its responsibilities under ss. 376.011-376.21 shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the fund and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the fund, except as otherwise specified herein.

Section 390. Subsection (5) of section 376.123, Florida Statutes, is amended to read:

376.123 Claims against the Florida Coastal Protection Trust Fund.—

(5) The secretary shall establish the amount to be awarded and shall certify the amount of the award and the name of the claimant to the Chief Financial Officer ~~State Treasurer~~, who shall pay the award from the fund, subject to the provisions of subsection (12). If the claimant agrees with the established amount of award, the settlement shall be binding upon both parties as to all issues and cannot be further attacked, collaterally or by separate action, in the future.

Section 391. Subsection (6) of section 376.307, Florida Statutes, is amended to read:

376.307 Water Quality Assurance Trust Fund.—

(6) Moneys in the fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the fund and may be invested in such manner as is provided for by statute. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between this trust fund and the Inland Protection Trust Fund, in the discretion of the department.

Section 392. Subsection (8) and paragraph (k) of subsection (12) of section 376.3071, Florida Statutes, are amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(8) INVESTMENTS; INTEREST.—Moneys in the fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section and s. 376.3073 shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the fund and may be invested in such manner as is provided for by statute. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between this trust fund and the Water Quality Assurance Trust Fund, in the discretion of the department.

(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as provided in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.

(k) Audits.—

1. The department is authorized to perform financial and technical audits in order to certify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayments based on the findings of these audits. The department must commence any audit within 5 years after the date of reimbursement, except in cases where the department alleges specific facts indicating fraud.

2. Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of disallowed costs within 60 days of notification of the applicant.

3. In the event the applicant does not make payment to the department within 60 days of receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover reimbursement overpayments made to the person responsible for conducting site rehabilitation, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.

4. In addition to the amount of any overpayment, the applicant shall be liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of overpayment, from the date of overpayment by the department until the applicant satisfies the department's request for repayment pursuant to this paragraph. The calculation of interest shall be tolled during the pendency of any litigation.

5. Financial and technical audits frequently are conducted under this section many years after the site rehabilitation activities were performed and the costs examined in the course of the audit were incurred by the person responsible for site rehabilitation. During the intervening span of years, the department's rule requirements and its related guidance and other nonrule policy directives may have changed significantly. The Legislature finds that it may be appropriate for the department to provide relief to persons subject to such requirements in financial and technical audits conducted pursuant to this section.

a. The department is authorized to grant variances and waivers from the documentation requirements of subparagraph (e)2. and from the requirements of rules applicable in technical and financial audits conducted under this section. Variances and waivers shall be granted when the person responsible for site rehabilitation demonstrates to the department that application of a financial or technical auditing requirement would create a substantial hardship or would violate principles of fairness. For purposes of this subsection, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this subsection, "principles of fairness" are violated when the application of a requirement affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are affected by the requirement or when the requirement is being applied retroactively without due notice to the affected parties.

b. A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify:

(I) The requirement from which a variance or waiver is requested.

(II) The type of action requested.

(III) The specific facts which would justify a waiver or variance.

(IV) The reason or reasons why the requested variance or waiver would serve the purposes of this section.

c. Within 90 days after receipt of a written request for variance or waiver under this subsection, the department shall grant or deny the request. If the request is not granted or denied within 90 days of receipt, the request shall be deemed approved. An order granting or denying the request shall be in writing and shall contain a statement of the relevant facts and reasons supporting the department's action. The department's decision to grant or deny the petition shall be supported by competent substantial evidence and

is subject to ss. 120.569 and 120.57. Once adopted, model rules promulgated by the Administration Commission under s. 120.542 shall govern the processing of requests under this provision.

6. The Chief Financial Officer ~~Comptroller~~ may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and completeness of audits performed by the department pursuant to this paragraph. The Chief Financial Officer ~~Comptroller~~ may contract with entities or persons to perform audits pursuant to this subparagraph. The Chief Financial Officer ~~Comptroller~~ shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Chief Financial Officer ~~Comptroller~~ alleges specific facts indicating fraud.

Section 393. Paragraphs (b) and (c) of subsection (5) of section 376.3072, Florida Statutes, are amended to read:

376.3072 Florida Petroleum Liability and Restoration Insurance Program.—

(5)

(b) The Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ shall offer assistance as requested by the department to implement the program.

(c) Any insurance company, reinsurance company, or other entity contracted with by the department shall be subject to the same rules and regulations of the Office of Insurance Regulation ~~Department of Insurance~~ applicable to other insurers, reinsurers, and other entities.

Section 394. Subsection (2) of section 376.3075, Florida Statutes, is amended to read:

376.3075 Inland Protection Financing Corporation.—

(2) The corporation shall be governed by a board of directors consisting of the Governor or the Governor's designee, the Chief Financial Officer ~~Comptroller~~ or the Chief Financial Officer's ~~Comptroller's~~ designee, ~~the Treasurer or the Treasurer's designee,~~ the chair of the Florida Black Business Investment Board, and the secretary of the Department of Environmental Protection. The executive director of the State Board of Administration shall be the chief executive officer of the corporation and shall direct and supervise the administrative affairs of the corporation and shall control, direct, and supervise the operation of the corporation. The corporation shall also have such other officers as may be determined by the board of directors.

Section 395. Subsection (10) of section 376.3078, Florida Statutes, is amended to read:

376.3078 Drycleaning facility restoration; funds; uses; liability; recovery of expenditures.—

(10) INSURANCE REQUIREMENTS.—The owner or operator of an operating drycleaning facility or wholesale supply facility shall, by January 1, 1999, have purchased third-party liability insurance for $1 million of coverage for each operating facility. The owner or operator shall maintain such insurance while operating as a drycleaning facility or wholesale supply facility and provide proof of such insurance to the department upon registration renewal each year thereafter. Such requirement applies only if such insurance becomes available to the owner or operator at a reasonable rate and covers liability for contamination subsequent to the effective date of the policy and prior to the effective date, retroactive to the commencement of operations at the drycleaning facility or wholesale supply facility. Such insurance may be offered in group coverage policies with a minimum coverage of $1 million for each member of the group per year. For the purposes of this subsection, reasonable rate means the rate developed based on exposure to loss and underwriting and administrative costs as determined by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, in consultation with representatives of the drycleaning industry.

Section 396. Paragraphs (b) and (c) of subsection (4) of section 376.3079, Florida Statutes, are amended to read:

376.3079 Third-party liability insurance.—

(4)

(b) The Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ shall offer assistance as requested by the department to implement the program.

(c) Any insurance company, reinsurance company, or other entity contracted with by the department shall be subject to the same rules of the Office of Insurance Regulation ~~Department of Insurance~~ applicable to other insurers, reinsurers, and other entities.

Section 397. Subsection (6) of section 376.40, Florida Statutes, is amended to read:

376.40 Petroleum exploration and production; purposes; funding.—

(6) INVESTMENTS; INTEREST.—Moneys in the trust fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the trust fund and may be invested as provided by law.

Section 398. Section 377.23, Florida Statutes, is amended to read:

377.23 Monthly reports to division.—Every producer of oil or gas in the state shall submit to the division, on forms prescribed by the division, a monthly report of the actual production from each and every oil and gas well operated by him or her. Such ~~Said~~ producer shall submit a duplicate copy of such ~~said~~ report at the same time to the Department of Financial Services

~~Banking and Finance~~; and such ~~said~~ reports shall be submitted through the medium of the United States mails, and it shall be unlawful for the same to be transmitted or received in any other way.

Section 399. Paragraph (a) of subsection (1) of section 377.2425, Florida Statutes, is amended to read:

377.2425 Manner of providing security for geophysical exploration, drilling, and production.—

(1) Prior to granting a permit to conduct geophysical operations; drilling of exploratory, injection, or production wells; producing oil and gas from a wellhead; or transporting oil and gas through a field-gathering system, the department shall require the applicant or operator to provide surety that these operations will be conducted in a safe and environmentally compatible manner.

(a) The applicant for a drilling, production, or injection well permit or a geophysical permit may provide the following types of surety to the department for this purpose:

1. A deposit of cash or other securities made payable to the Minerals Trust Fund. Such cash or securities so deposited shall be held at interest by the Chief Financial Officer ~~Comptroller~~ to satisfy safety and environmental performance provisions of this chapter. The interest shall be credited to the Minerals Trust Fund. Such cash or other securities shall be released by the Chief Financial Officer ~~Comptroller~~ upon request of the applicant and certification by the department that all safety and environmental performance provisions established by the department for permitted activities have been fulfilled.

2. A bond of a surety company authorized to do business in the state in an amount as provided by rule.

3. A surety in the form of an irrevocable letter of credit in an amount as provided by rule guaranteed by an acceptable financial institution.

Section 400. Paragraph (c) of subsection (4) of section 377.705, Florida Statutes, is amended to read:

377.705 Solar Energy Center; development of solar energy standards.—

(4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE DISCLOSURE, SET TESTING FEES.—

(c) The center shall be entitled to receive a testing fee sufficient to cover the costs of such testing. All testing fees shall be transmitted by the center to the Chief Financial Officer ~~State Treasurer~~ to be deposited in the Solar Energy Center Testing Trust Fund, which is hereby created in the State Treasury, and disbursed for the payment of expenses incurred in testing solar energy systems.

Section 401. Paragraph (a) of subsection (2) of section 378.035, Florida Statutes, is amended to read:

378.035 Department responsibilities and duties with respect to Nonmandatory Land Reclamation Trust Fund.—

(2)(a) The department shall verify that reclamation activities or portions thereof have been accomplished in accordance with the reclamation contract and shall certify the cost of such reclamation activities to the Chief Financial Officer ~~Comptroller~~ for reimbursement.

Section 402. Section 378.037, Florida Statutes, is amended to read:

378.037 Chief Financial Officer ~~Comptroller~~; responsibilities and duties with respect to reimbursement of reclamation costs.—

(1) The Chief Financial Officer ~~Comptroller~~ shall reimburse approved reclamation costs, less any amount reasonably retained to ensure completion of the approved reclamation program, subject to the following limitations:

(a) A landowner shall not be entitled to payments in excess of the funds available in the Nonmandatory Land Reclamation Trust Fund.

(b) Cost reimbursement shall not exceed the least of:

1. The amount actually expended and reasonably necessary to effect the reclamation consistent with the standards of the approved master reclamation plan;

2. The reclamation contract amount; or

3. The amount allowed based on prereclamation land form, to include mined-out areas at $4,000 per reclaimed acre and clay settling areas and other land forms at $2,500 per reclaimed acre adjusted annually by the appropriate inflationary index for construction.

(2) The Chief Financial Officer ~~Comptroller~~ shall adopt rules to implement the payment provisions of the master reclamation plan and this section, including, but not limited to, periodic reimbursements and competitive procurement of services and commodities to the extent practicable, unless a landowner elects to utilize his or her own personnel and equipment. The landowner may select a method of reimbursement from the alternatives adopted by the Chief Financial Officer ~~Comptroller~~.

Section 403. Subsection (3) of section 378.208, Florida Statutes, is amended to read:

378.208 Financial responsibility.—

(3) The amount of financial responsibility shall be established by the secretary and shall not exceed $4,000 per acre for each reclamation program, adjusted annually by the appropriate inflationary index for construction. The Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ shall be available to assist the secretary in making this determination. In establishing the amount of financial responsibility, the secretary shall consider:

(a) The amount and type of reclamation involved.

(b) The probable cost of proper reclamation.

(c) Inflation rates.

(d) Changes in mining operations.

Section 404. Subsection (2) of section 381.765, Florida Statutes, is amended to read:

381.765 Retention of title to and disposal of equipment.—

(2) The department may offer for sale any surplus items acquired in operating the brain and spinal cord injury program when they are no longer necessary or exchange them for necessary items that may be used to greater advantage. When any such surplus equipment is sold or exchanged, a receipt for the equipment shall be taken from the purchaser showing the consideration given for such equipment and forwarded to the Chief Financial Officer ~~Treasurer~~, and any funds received by the brain and spinal cord injury program pursuant to any such transaction shall be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund and shall be available for expenditure for any purpose consistent with this part.

Section 405. Subsection (3) of section 381.90, Florida Statutes, is amended to read:

381.90 Health Information Systems Council; legislative intent; creation, appointment, duties.—

(3) The council shall be composed of the following members or their senior executive-level designees:

(a) The secretary of the Department of Health;

(b) The secretary of the Department of Business and Professional Regulation;

(c) The secretary of the Department of Children and Family Services;

(d) The Secretary of Health Care Administration;

(e) The secretary of the Department of Corrections;

(f) The Attorney General;

(g) The executive director of the Correctional Medical Authority;

(h) Two members representing county health departments, one from a small county and one from a large county, appointed by the Governor;

(i) A representative from the Florida Association of Counties;

(j) The Chief Financial Officer ~~State Treasurer and Insurance Commissioner~~;

(k) A representative from the Florida Healthy Kids Corporation;

(l) A representative from a school of public health chosen by the Board of Regents;

(m) The Commissioner of Education;

(n) The secretary of the Department of Elderly Affairs; and

(o) The secretary of the Department of Juvenile Justice.

Representatives of the Federal Government may serve without voting rights.

Section 406. Effective July 1, 2003, subsection (3) of section 385.207, Florida Statutes, is amended to read:

385.207 Care and assistance of persons with epilepsy; establishment of programs in epilepsy control.—

(3) Revenue for statewide implementation of programs for epilepsy prevention and education pursuant to this section shall be derived pursuant to the provisions of s. 318.21(6) and shall be deposited in the Epilepsy Services Trust Fund, which is hereby established to be administered by the Department of Health. All funds deposited into the trust fund shall be invested pursuant to the provisions of s. 17.61 ~~s. 18.125~~. Interest income accruing to such invested funds shall increase the total funds available under this subsection.

Section 407. Subsection (5) of section 388.201, Florida Statutes, is amended to read:

388.201 District budgets; hearing.—

(5) County commissioners' mosquito and arthropod control budgets shall be made and adopted as prescribed by subsections (1) and (2); summary figures shall be incorporated into the county budgets as prescribed by the Department of Financial Services ~~Banking and Finance~~.

Section 408. Section 388.301, Florida Statutes, is amended to read:

388.301 Payment of state funds; supplies and services.—State funds shall be payable quarterly, in accordance with the rules of the department, upon requisition by the department to the Chief Financial Officer ~~Comptroller~~. The department is authorized to furnish insecticides, chemicals, materials, equipment, vehicles, and personnel in lieu of state funds where mass purchasing may save funds for the state, or where it would be more practical and economical to use equipment, supplies, and services between two or more counties or districts.

Section 409. Subsection (3) of section 391.025, Florida Statutes, is amended to read:

391.025 Applicability and scope.—

(3) The Children's Medical Services program shall not be deemed an insurer and is not subject to the licensing requirements of the Florida Insurance Code or the rules adopted thereunder ~~of the Department of Insurance~~, when providing services to children who receive Medicaid benefits, other Medicaid-eligible children with special health care needs, and children participating in the Florida Kidcare program.

Section 410. Subsection (2) of section 391.221, Florida Statutes, is amended to read:

391.221 Statewide Children's Medical Services Network Advisory Council.—

(2) The council shall be composed of 12 members representing the private health care provider sector, families with children who have special health care needs, the Agency for Health Care Administration, the Chief Financial Officer ~~Department of Insurance~~, the Florida Chapter of the American Academy of Pediatrics, an academic health center pediatric program, and the health insurance industry. Members shall be appointed for 4-year, staggered terms. In no case shall an employee of the Department of Health serve as a member or as an ex officio member of the advisory council. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment. A member may not be appointed to more than two consecutive terms. However, a member may be reappointed after being off the council for at least 2 years.

Section 411. Subsection (2) of section 392.69, Florida Statutes, is amended to read:

392.69 Appropriation, sinking, and maintenance trust funds; additional powers of the department.—

(2) All moneys required to be paid by the several counties and patients for the care and maintenance of patients hospitalized by the department for tuberculosis shall be paid to the department, and the department shall immediately transmit these moneys to the Chief Financial Officer ~~Treasurer~~, who shall deposit the moneys in the Operations and Maintenance Trust Fund, which shall contain all moneys appropriated by the Legislature or received from patients or other third parties and shall be expended for the operation and maintenance of the state-operated tuberculosis hospital.

Section 412. Subsection (5) of section 393.002, Florida Statutes, is amended to read:

393.002 Transfer of Florida Developmental Disabilities Council as formerly created in this chapter to private nonprofit corporation.—

(5) Pursuant to the applicable provisions of chapter 284, the Division of Risk Management of the Department of Financial Services ~~Insurance~~ is authorized to insure this nonprofit corporation under the same general terms and conditions as the Florida Developmental Disabilities Council was

insured in the Department of Children and Family Services by the division prior to the transfer of its functions authorized by this section.

Section 413. Subsection (2) of section 393.075, Florida Statutes, is amended to read:

393.075 General liability coverage.—

(2) The Division of Risk Management of the Department of Financial Services ~~Insurance~~ shall provide coverage through the Department of Children and Family Services to any person who owns or operates a foster care facility or group home facility solely for the Department of Children and Family Services, who cares for children placed by developmental services staff of the department, and who is licensed pursuant to s. 393.067 to provide such supervision and care in his or her place of residence. The coverage shall be provided from the general liability account of the State Risk Management Trust Fund. The coverage is limited to general liability claims arising from the provision of supervision and care of children in a foster care facility or group home facility pursuant to an agreement with the department and pursuant to guidelines established through policy, rule, or statute. Coverage shall be subject to the limits provided in ss. 284.38 and 284.385, and the exclusions set forth therein, together with other exclusions as may be set forth in the certificate of coverage issued by the trust fund. A person covered under the general liability account pursuant to this subsection shall immediately notify the Division of Risk Management of the Department of Financial Services ~~Insurance~~ of any potential or actual claim.

Section 414. Section 394.482, Florida Statutes, is amended to read:

394.482 Payment of financial obligations imposed by compact.—The compact administrator, subject to the approval of the Chief Financial Officer ~~Comptroller~~, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

Section 415. Paragraphs (a) and (c) of subsection (4) of section 400.0238, Florida Statutes, are amended to read:

400.0238 Punitive damages; limitation.—

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be equally divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer ~~State Treasurer~~ by certified mail. In the final judgment, the court shall order the percentages of the award, payable as provided herein.

(c) The Department of Financial Services ~~Banking and Finance~~ shall collect or cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer ~~Comptroller~~ and deposited in the appropriate fund specified in this subsection.

Section 416. Subsection (2) of section 400.063, Florida Statutes, is amended to read:

400.063 Resident Protection Trust Fund.—

(2) The agency is authorized to establish for each facility, subject to intervention by the agency, a separate bank account for the deposit to the credit of the agency of any moneys received from the Resident Protection Trust Fund or any other moneys received for the maintenance and care of residents in the facility, and the agency is authorized to disburse moneys from such account to pay obligations incurred for the purposes of this section. The agency is authorized to requisition moneys from the Resident Protection Trust Fund in advance of an actual need for cash on the basis of an estimate by the agency of moneys to be spent under the authority of this section. Any bank account established under this section need not be approved in advance of its creation as required by s. 17.58 ~~s. 18.101~~, but shall be secured by depository insurance equal to or greater than the balance of such account or by the pledge of collateral security in conformance with criteria established in s. 18.11. The agency shall notify the Chief Financial Officer ~~Treasurer and the Comptroller~~ of any such account so established and shall make a quarterly accounting to the Chief Financial Officer ~~Comptroller~~ for all moneys deposited in such account.

Section 417. Paragraph (c) of subsection (4) of section 400.071, Florida Statutes, is amended to read:

400.071 Application for license.—

(4) Each applicant for licensure must comply with the following requirements:

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Financial Services Commission and the Office of Insurance Regulation ~~Department of Insurance~~ pursuant to chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community is acceptable in fulfillment of the Department of Law Enforcement and Federal Bureau of Investigation background check.

Section 418. Paragraph (b) of subsection (1) of section 400.4174, Florida Statutes, is amended to read:

400.4174 Background screening; exemptions.—

(1)

(b) Proof of compliance with level 2 screening standards which has been submitted within the previous 5 years to meet any facility or professional licensure requirements of the agency or the Department of Health satisfies

the requirements of this subsection, provided that such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435. Proof of compliance with the background screening requirements of the Financial Services Commission and the Office of Insurance Regulation ~~Department of Insurance~~ for applicants for a certificate of authority to operate a continuing care retirement community under chapter 651, submitted within the last 5 years, satisfies the Department of Law Enforcement and Federal Bureau of Investigation portions of a level 2 background check.

Section 419. Paragraphs (a) and (c) of subsection (4) of section 400.4298, Florida Statutes, are amended to read:

400.4298 Punitive damages; limitation.—

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be equally divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer ~~State Treasurer~~ by certified mail. In the final judgment, the court shall order the percentages of the award, payable as provided herein.

(c) The Department of Financial Services ~~Banking and Finance~~ shall collect or cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer ~~Comptroller~~ and deposited in the appropriate fund specified in this subsection.

Section 420. Paragraph (c) of subsection (4) of section 400.471, Florida Statutes, is amended to read:

400.471 Application for license; fee; provisional license; temporary permit.—

(4) Each applicant for licensure must comply with the following requirements:

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Financial Services Commission and the Office of Insurance Regulation ~~Department of Insurance~~ pursuant to chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community is acceptable in fulfillment of the Department of Law Enforcement and Federal Bureau of Investigation background check.

Section 421. Paragraph (c) of subsection (10) of section 400.962, Florida Statutes, is amended to read:

400.962 License required; license application.—

(10)

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other licensure requirements under this chapter satisfies the requirements of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Financial Services Commission and the Office of Insurance Regulation ~~Department of Insurance~~ under chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community satisfies the requirements for the Department of Law Enforcement and Federal Bureau of Investigation background checks.

Section 422. Paragraph (b) of subsection (2) of section 401.245, Florida Statutes, is amended to read:

401.245 Emergency Medical Services Advisory Council.—

(2)

(b) Representation on the Emergency Medical Services Advisory Council shall include: two licensed physicians who are "medical directors" as defined in s. 401.23(15) or whose medical practice is closely related to emergency medical services; two emergency medical service administrators, one of whom is employed by a fire service; two certified paramedics, one of whom is employed by a fire service; two certified emergency medical technicians, one of whom is employed by a fire service; one emergency medical services educator; one emergency nurse; one hospital administrator; one representative of air ambulance services; one representative of a commercial ambulance operator; and two laypersons who are in no way connected with emergency medical services, one of whom is a representative of the elderly. Ex officio members of the advisory council from state agencies shall include, but shall not be limited to, representatives from the Department of Education, the Department of Management Services, the State Fire Marshal ~~Department of Insurance~~, the Department of Highway Safety and Motor Vehicles, the Department of Transportation, and the Department of Community Affairs.

Section 423. Paragraph (c) of subsection (2) of section 401.25, Florida Statutes, is amended to read:

401.25 Licensure as a basic life support or an advanced life support service.—

(2) The department shall issue a license for operation to any applicant who complies with the following requirements:

(c) The applicant has furnished evidence of adequate insurance coverage for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable. The applicant must provide insurance

in such sums and under such terms as required by the department. In lieu of such insurance, the applicant may furnish a certificate of self-insurance evidencing that the applicant has established an adequate self-insurance plan to cover such risks and that the plan has been approved by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~.

Section 424. Section 402.04, Florida Statutes, is amended to read:

402.04 Award of scholarships and stipends; disbursement of funds; administration.—The award of scholarships or stipends provided for herein shall be made by the Department of Children and Family Services, hereinafter referred to as the department. The department shall handle the administration of the scholarship or stipend and the Department of Education shall, for and on behalf of the department, handle the notes issued for the payment of the scholarships or stipends provided for herein and the collection of same. The department shall prescribe regulations governing the payment of scholarships or stipends to the school, college, or university for the benefit of the scholarship or stipend holders. All scholarship awards, expenses and costs of administration shall be paid from moneys appropriated by the Legislature and shall be paid upon vouchers approved by the department and properly certified by the Chief Financial Officer ~~Comptroller~~.

Section 425. Paragraph (b) of subsection (1) and subsection (4) of section 402.17, Florida Statutes, are amended to read:

402.17 Claims for care and maintenance; trust property.—The Department of Children and Family Services shall protect the financial interest of the state with respect to claims which the state may have for the care and maintenance of clients of the department. The department shall, as trustee, hold in trust and administer money of clients and property designated for the personal benefit of clients. The department shall act as trustee of clients' money and property entrusted to it in accordance with the usual fiduciary standards applicable generally to trustees, and shall act to protect both the short-term and long-term interests of the clients for whose benefit it is holding such money and property.

(1) CLAIMS FOR CARE AND MAINTENANCE.—

(b) The Department of Children and Family Services may charge off accounts if it certifies that the accounts are uncollectible after diligent efforts have been made to collect them. If the department certifies an account to the Department of Financial Services ~~Banking and Finance~~, setting forth the circumstances upon which it predicates the uncollectibility, and if, pursuant to s. 17.04, the Department of Financial Services ~~Banking and Finance~~ concurs, the account shall be charged off.

(4) DISPOSITION OF UNCLAIMED TRUST FUNDS.—Upon the death of any client affected by the provisions of this section, any unclaimed money held in trust by the department or by the Chief Financial Officer ~~Treasurer~~ for him or her shall be applied first to the payment of any unpaid claim of the state against the client, and any balance remaining unclaimed for a

period of 1 year shall escheat to the state as unclaimed funds held by fiduciaries.

Section 426. Paragraph (a) of subsection (8) of section 402.33, Florida Statutes, is amended to read:

402.33 Department authority to charge fees for services provided.—

(8)(a) Unpaid fees for services provided by the department to a client constitute a lien on any property owned by the client or the client's responsible party which property is not exempt by s. 4, Art. X of the State Constitution. If fees are not paid within 6 months after they are billed, the department shall charge interest on the unpaid balance at a rate equal to the average rate of interest earned by the State Treasury on state funds deposited in commercial banks as reported by the Chief Financial Officer ~~Treasurer~~ for the previous year. The department is authorized to negotiate and settle any delinquent account, and to charge off any delinquent account even though the claim of the department may be against the client, a responsible party, or a payor of third-party benefits, either directly for the department or as a fiduciary for the client or responsible party.

Section 427. Paragraph (a) of subsection (8) of section 403.1835, Florida Statutes, is amended to read:

403.1835 Water pollution control financial assistance.—

(8)(a) If a local governmental agency becomes delinquent on its loan, the department shall so certify to the Chief Financial Officer ~~Comptroller~~, who shall forward the amount delinquent to the department from any unobligated funds due to the local governmental agency under any revenue-sharing or tax-sharing fund established by the state, except as otherwise provided by the State Constitution. Certification of delinquency shall not limit the department from pursuing other remedies available for default on a loan. The department may impose a penalty for delinquent loan payments in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

Section 428. Subsection (2) of section 403.1837, Florida Statutes, is amended to read:

403.1837 Florida Water Pollution Control Financing Corporation.—

(2) The corporation shall be governed by a board of directors consisting of the Governor's Budget Director or the budget director's designee, the Chief Financial Officer ~~Comptroller~~ or the Chief Financial Officer's ~~Comptroller's~~ designee, ~~the Treasurer or the Treasurer's designee,~~ and the Secretary of Environmental Protection or the secretary's designee~~, until January 7, 2003, at which time the board shall include the Chief Financial Officer or the Chief Financial Officer's designee in place of the Treasurer and Comptroller~~. The executive director of the State Board of Administration shall be the chief executive officer of the corporation; shall direct and supervise the

administrative affairs of the corporation; and shall control, direct, and supervise operation of the corporation. The corporation shall have such other officers as may be determined by the board of directors.

Section 429. Subsection (20) of section 403.706, Florida Statutes, is amended to read:

403.706 Local government solid waste responsibilities.—

(20) In addition to any other penalties provided by law, a local government that does not comply with the requirements of subsections (2) and (4) shall not be eligible for grants from the Solid Waste Management Trust Fund, and the department may notify the Chief Financial Officer ~~State Treasurer~~ to withhold payment of all or a portion of funds payable to the local government by the department from the General Revenue Fund or by the department from any other state fund, to the extent not pledged to retire bonded indebtedness, unless the local government demonstrates that good faith efforts to meet the requirements of subsections (2) and (4) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries.

Section 430. Subsection (3) of section 403.724, Florida Statutes, is amended to read:

403.724 Financial responsibility.—

(3) The amount of financial responsibility required shall be approved by the department upon each issuance, renewal, or modification of a hazardous waste facility permit. Such factors as inflation rates and changes in operation may be considered when approving financial responsibility for the duration of the permit. The Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ shall be available to assist the department in making this determination. In approving or modifying the amount of financial responsibility, the department shall consider:

(a) The amount and type of hazardous waste involved;

(b) The probable damage to human health and the environment;

(c) The danger and probable damage to private and public property near the facility;

(d) The probable time that the hazardous waste and facility involved will endanger the public health, safety, and welfare or the environment; and

(e) The probable costs of properly closing the facility.

Section 431. Paragraph (a) of subsection (15) of section 403.8532, Florida Statutes, is amended to read:

403.8532 Drinking water state revolving loan fund; use; rules.—

(15)(a) If a local governmental agency defaults under the terms of its loan agreement, the department shall so certify to the Chief Financial Officer

~~Comptroller~~, who shall forward the amount delinquent to the department from any unobligated funds due to the local governmental agency under any revenue-sharing or tax-sharing fund established by the state, except as otherwise provided by the State Constitution. Certification of delinquency shall not limit the department from pursuing other remedies available for default on a loan, including accelerating loan repayments, eliminating all or part of the interest rate subsidy on the loan, and court appointment of a receiver to manage the public water system.

Section 432. Paragraphs (a), (b), (c), and (e) of subsection (2) of section 404.111, Florida Statutes, are amended to read:

404.111 Surety requirements.—

(2) In lieu of posting a bond as required under subsection (1), a licensee may:

(a) Deposit with the Chief Financial Officer ~~Treasurer~~ securities of the type eligible for deposit by insurers under s. 625.52, which securities must have at all times a market value of not less than the amount of the bond required under subsection (1).

(b) Whenever the market value of the securities deposited with the Chief Financial Officer ~~Treasurer~~ is less than 95 percent of the amount required by the department, the licensee shall deposit additional securities or otherwise increase the deposit to the amount required.

(c) The state is responsible for the safekeeping of all securities deposited with the Chief Financial Officer ~~Treasurer~~ under this section. Such securities are not, on account of being in this state, subject to taxation but shall be held exclusively and solely to guarantee the faithful performance by the licensee of its obligations.

(e) Such deposit shall be maintained unimpaired so long as the licensee continues in business in this state. Whenever the licensee ceases to do business in this state and furnishes the department satisfactory proof that it has discharged or otherwise adequately provided for all its obligations in this state, the Chief Financial Officer ~~Treasurer~~ shall release the deposit securities to the parties entitled thereto, on the receipt of authorization from the department.

Section 433. Subsection (2) of section 406.58, Florida Statutes, is amended to read:

406.58 Fees; authority to accept additional funds; annual audit.—

(2) The anatomical board is hereby empowered to receive money from public or private sources in addition to the fees collected from the institution or association to which the bodies are distributed to be used to defray the costs of embalming, handling, shipping, storage, cremation, and other costs relating to the obtaining and use of such bodies as described in this chapter; the anatomical board is empowered to pay the reasonable expenses incurred by any person delivering the bodies as described in this chapter to the

anatomical board and is further empowered to enter into contracts and perform such other acts as are necessary to the proper performance of its duties; a complete record of all fees and other financial transactions of said anatomical board shall be kept and audited annually by the Department of Financial Services ~~Banking and Finance~~, and a report of such audit shall be made annually to the University of Florida.

Section 434. Paragraph (b) of subsection (2) of section 408.040, Florida Statutes, is amended to read:

408.040 Conditions and monitoring.—

(2)

(b) A certificate of need issued to an applicant holding a provisional certificate of authority under chapter 651 shall terminate 1 year after the applicant receives a valid certificate of authority from the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~.

Section 435. Paragraph (a) of subsection (8) of section 408.05, Florida Statutes, is amended to read:

408.05 State Center for Health Statistics.—

(8) STATE COMPREHENSIVE HEALTH INFORMATION SYSTEM ADVISORY COUNCIL.—

(a) There is established in the agency the State Comprehensive Health Information System Advisory Council to assist the center in reviewing the comprehensive health information system and to recommend improvements for such system. The council shall consist of the following members:

1. An employee of the Executive Office of the Governor, to be appointed by the Governor.

2. An employee of the Department of Financial Services ~~Department of Insurance~~, to be appointed by the Chief Financial Officer ~~Insurance Commissioner~~.

3. An employee of the Department of Education, to be appointed by the Commissioner of Education.

4. Ten persons, to be appointed by the Secretary of Health Care Administration, representing other state and local agencies, state universities, the Florida Association of Business/Health Coalitions, local health councils, professional health-care-related associations, consumers, and purchasers.

Section 436. Subsection (4) of section 408.08, Florida Statutes, is amended to read:

408.08 Inspections and audits; violations; penalties; fines; enforcement.—

(4) If a health insurer does not comply with the requirements of s. 408.061, the agency shall report a health insurer's failure to comply to the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, which shall take into account the failure by the health insurer to comply in conjunction with its approval authority under s. 627.410. The agency shall adopt any rules necessary to carry out its responsibilities required by this subsection.

Section 437. Paragraph (a) of subsection (4) and subsection (9) of section 408.18, Florida Statutes, are amended to read:

408.18 Health Care Community Antitrust Guidance Act; antitrust no-action letter; market-information collection and education.—

(4)(a) Members of the health care community who seek antitrust guidance may request a review of their proposed business activity by the Attorney General's office. In conducting its review, the Attorney General's office may seek whatever documentation, data, or other material it deems necessary from the Agency for Health Care Administration, the State Center for Health Statistics, and the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~.

(9) When the member of the health care community seeking the no-action letter is regulated by the Office of Insurance Regulation ~~Department of Insurance~~, the office ~~Department of Insurance~~ shall make available to the Attorney General's office, as needed, any information it maintains in its regulatory capacity.

Section 438. Subsection (1) of section 408.50, Florida Statutes, is amended to read:

408.50 Prospective payment arrangements.—

(1) Hospitals as defined in s. 395.002, and health insurers regulated pursuant to parts VI and VII of chapter 627, shall establish prospective payment arrangements that provide hospitals with financial incentives to contain costs. Each hospital shall enter into a rate agreement with each health insurer which represents 10 percent or more of the private-pay patients of the hospital to establish a prospective payment arrangement. Hospitals and health insurers regulated pursuant to this section shall report annually the results of each specific prospective payment arrangement adopted by each hospital and health insurer to the board. The agency shall report a health insurer's failure to comply to the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, which shall take into account the failure by the health insurer to comply in conjunction with its approval authority under s. 627.410. The agency shall adopt any rules necessary to carry out its responsibilities required by this section.

Section 439. Section 408.7056, Florida Statutes, is amended to read:

408.7056 Statewide Provider and Subscriber Assistance Program.—

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

(a) "Agency" means the Agency for Health Care Administration.

(b) "Department" means the Department of Financial Services ~~Insurance~~.

(c) "Grievance procedure" means an established set of rules that specify a process for appeal of an organizational decision.

(d) "Health care provider" or "provider" means a state-licensed or state-authorized facility, a facility principally supported by a local government or by funds from a charitable organization that holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, a licensed practitioner, a county health department established under part I of chapter 154, a prescribed pediatric extended care center defined in s. 400.902, a federally supported primary care program such as a migrant health center or a community health center authorized under s. 329 or s. 330 of the United States Public Health Services Act that delivers health care services to individuals, or a community facility that receives funds from the state under the Community Alcohol, Drug Abuse, and Mental Health Services Act and provides mental health services to individuals.

(e) "Managed care entity" means a health maintenance organization or a prepaid health clinic certified under chapter 641, a prepaid health plan authorized under s. 409.912, or an exclusive provider organization certified under s. 627.6472.

(f) "Office" means the Office of Insurance Regulation of the Financial Services Commission.

(g)~~(f)~~ "Panel" means a statewide provider and subscriber assistance panel selected as provided in subsection (11).

(2) The agency shall adopt and implement a program to provide assistance to subscribers and providers, including those whose grievances are not resolved by the managed care entity to the satisfaction of the subscriber or provider. The program shall consist of one or more panels that meet as often as necessary to timely review, consider, and hear grievances and recommend to the agency or the office ~~department~~ any actions that should be taken concerning individual cases heard by the panel. The panel shall hear every grievance filed by subscribers and providers on behalf of subscribers, unless the grievance:

(a) Relates to a managed care entity's refusal to accept a provider into its network of providers;

(b) Is part of an internal grievance in a Medicare managed care entity or a reconsideration appeal through the Medicare appeals process which does not involve a quality of care issue;

(c) Is related to a health plan not regulated by the state such as an administrative services organization, third-party administrator, or federal employee health benefit program;

(d) Is related to appeals by in-plan suppliers and providers, unless related to quality of care provided by the plan;

(e) Is part of a Medicaid fair hearing pursued under 42 C.F.R. ss. 431.220 et seq.;

(f) Is the basis for an action pending in state or federal court;

(g) Is related to an appeal by nonparticipating providers, unless related to the quality of care provided to a subscriber by the managed care entity and the provider is involved in the care provided to the subscriber;

(h) Was filed before the subscriber or provider completed the entire internal grievance procedure of the managed care entity, the managed care entity has complied with its timeframes for completing the internal grievance procedure, and the circumstances described in subsection (6) do not apply;

(i) Has been resolved to the satisfaction of the subscriber or provider who filed the grievance, unless the managed care entity's initial action is egregious or may be indicative of a pattern of inappropriate behavior;

(j) Is limited to seeking damages for pain and suffering, lost wages, or other incidental expenses, including accrued interest on unpaid balances, court costs, and transportation costs associated with a grievance procedure;

(k) Is limited to issues involving conduct of a health care provider or facility, staff member, or employee of a managed care entity which constitute grounds for disciplinary action by the appropriate professional licensing board and is not indicative of a pattern of inappropriate behavior, and the agency, office, or department has reported these grievances to the appropriate professional licensing board or to the health facility regulation section of the agency for possible investigation; or

(l) Is withdrawn by the subscriber or provider. Failure of the subscriber or the provider to attend the hearing shall be considered a withdrawal of the grievance.

(3) The agency shall review all grievances within 60 days after receipt and make a determination whether the grievance shall be heard. Once the agency notifies the panel, the subscriber or provider, and the managed care entity that a grievance will be heard by the panel, the panel shall hear the grievance either in the network area or by teleconference no later than 120 days after the date the grievance was filed. The agency shall notify the parties, in writing, by facsimile transmission, or by phone, of the time and place of the hearing. The panel may take testimony under oath, request certified copies of documents, and take similar actions to collect information and documentation that will assist the panel in making findings of fact and a recommendation. The panel shall issue a written recommendation, supported by findings of fact, to the provider or subscriber, to the managed care entity, and to the agency or the office ~~department~~ no later than 15 working days after hearing the grievance. If at the hearing the panel requests additional documentation or additional records, the time for issuing a recommendation is tolled until the information or documentation requested has

been provided to the panel. The proceedings of the panel are not subject to chapter 120.

(4) If, upon receiving a proper patient authorization along with a properly filed grievance, the agency requests medical records from a health care provider or managed care entity, the health care provider or managed care entity that has custody of the records has 10 days to provide the records to the agency. Failure to provide requested medical records may result in the imposition of a fine of up to $500. Each day that records are not produced is considered a separate violation.

(5) Grievances that the agency determines pose an immediate and serious threat to a subscriber's health must be given priority over other grievances. The panel may meet at the call of the chair to hear the grievances as quickly as possible but no later than 45 days after the date the grievance is filed, unless the panel receives a waiver of the time requirement from the subscriber. The panel shall issue a written recommendation, supported by findings of fact, to the office ~~department~~ or the agency within 10 days after hearing the expedited grievance.

(6) When the agency determines that the life of a subscriber is in imminent and emergent jeopardy, the chair of the panel may convene an emergency hearing, within 24 hours after notification to the managed care entity and to the subscriber, to hear the grievance. The grievance must be heard notwithstanding that the subscriber has not completed the internal grievance procedure of the managed care entity. The panel shall, upon hearing the grievance, issue a written emergency recommendation, supported by findings of fact, to the managed care entity, to the subscriber, and to the agency or the office ~~department~~ for the purpose of deferring the imminent and emergent jeopardy to the subscriber's life. Within 24 hours after receipt of the panel's emergency recommendation, the agency or office ~~department~~ may issue an emergency order to the managed care entity. An emergency order remains in force until:

(a) The grievance has been resolved by the managed care entity;

(b) Medical intervention is no longer necessary; or

(c) The panel has conducted a full hearing under subsection (3) and issued a recommendation to the agency or the office ~~department~~, and the agency or office ~~department~~ has issued a final order.

(7) After hearing a grievance, the panel shall make a recommendation to the agency or the office ~~department~~ which may include specific actions the managed care entity must take to comply with state laws or rules regulating managed care entities.

(8) A managed care entity, subscriber, or provider that is affected by a panel recommendation may within 10 days after receipt of the panel's recommendation, or 72 hours after receipt of a recommendation in an expedited grievance, furnish to the agency or office ~~department~~ written evidence in opposition to the recommendation or findings of fact of the panel.

(9) No later than 30 days after the issuance of the panel's recommendation and, for an expedited grievance, no later than 10 days after the issuance of the panel's recommendation, the agency or the office ~~department~~ may adopt the panel's recommendation or findings of fact in a proposed order or an emergency order, as provided in chapter 120, which it shall issue to the managed care entity. The agency or office ~~department~~ may issue a proposed order or an emergency order, as provided in chapter 120, imposing fines or sanctions, including those contained in ss. 641.25 and 641.52. The agency or the office ~~department~~ may reject all or part of the panel's recommendation. All fines collected under this subsection must be deposited into the Health Care Trust Fund.

(10) In determining any fine or sanction to be imposed, the agency and the office ~~department~~ may consider the following factors:

(a) The severity of the noncompliance, including the probability that death or serious harm to the health or safety of the subscriber will result or has resulted, the severity of the actual or potential harm, and the extent to which provisions of chapter 641 were violated.

(b) Actions taken by the managed care entity to resolve or remedy any quality-of-care grievance.

(c) Any previous incidents of noncompliance by the managed care entity.

(d) Any other relevant factors the agency or office ~~department~~ considers appropriate in a particular grievance.

(11) The panel shall consist of the Insurance Consumer Advocate, or designee thereof, established by s. 627.0613; two members employed by the agency and two members employed by the department, chosen by their respective agencies; a consumer appointed by the Governor; a physician appointed by the Governor, as a standing member; and physicians who have expertise relevant to the case to be heard, on a rotating basis. The agency may contract with a medical director and a primary care physician who shall provide additional technical expertise to the panel. The medical director shall be selected from a health maintenance organization with a current certificate of authority to operate in Florida.

(12) Every managed care entity shall submit a quarterly report to the agency, the office, and the department listing the number and the nature of all subscribers' and providers' grievances which have not been resolved to the satisfaction of the subscriber or provider after the subscriber or provider follows the entire internal grievance procedure of the managed care entity. The agency shall notify all subscribers and providers included in the quarterly reports of their right to file an unresolved grievance with the panel.

(13) Any information which would identify a subscriber or the spouse, relative, or guardian of a subscriber and which is contained in a report obtained by the office or department ~~of Insurance~~ pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(14) A proposed order issued by the agency or office ~~department~~ which only requires the managed care entity to take a specific action under subsection (7) is subject to a summary hearing in accordance with s. 120.574, unless all of the parties agree otherwise. If the managed care entity does not prevail at the hearing, the managed care entity must pay reasonable costs and attorney's fees of the agency or the office ~~department~~ incurred in that proceeding.

(15)(a) Any information which would identify a subscriber or the spouse, relative, or guardian of a subscriber which is contained in a document, report, or record prepared or reviewed by the panel or obtained by the agency pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Meetings of the panel shall be open to the public unless the provider or subscriber whose grievance will be heard requests a closed meeting or the agency or the department ~~of Insurance~~ determines that information of a sensitive personal nature which discloses the subscriber's medical treatment or history; or information which constitutes a trade secret as defined by s. 812.081; or information relating to internal risk management programs as defined in s. 641.55(5)(c), (6), and (8) may be revealed at the panel meeting, in which case that portion of the meeting during which such sensitive personal information, trade secret information, or internal risk management program information is discussed shall be exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. All closed meetings shall be recorded by a certified court reporter.

This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2003, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 440. Subsection (1) of section 408.902, Florida Statutes, is amended to read:

408.902 MedAccess program; creation; program title.—

(1) Effective July 1, 1994, there is hereby created the MedAccess program to be administered by the Agency for Health Care Administration. The MedAccess program shall not be subject to the requirements of the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ or chapter 627. The secretary of the agency shall appoint an administrator of the MedAccess program.

Section 441. Paragraph (b) of subsection (2) and subsections (3), (6), and (9) of section 408.909, Florida Statutes, are amended to read:

408.909 Health flex plans.—

(2) DEFINITIONS.—As used in this section, the term:

(b) "Office" means the Office of Insurance Regulation of the Financial Services Commission ~~"Department" means the Department of Insurance~~.

(3) PILOT PROGRAM.—The agency and the office ~~department~~ shall each approve or disapprove health flex plans that provide health care coverage for eligible participants who reside in the three areas of the state that have the highest number of uninsured persons, as identified in the Florida Health Insurance Study conducted by the agency and in Indian River County. A health flex plan may limit or exclude benefits otherwise required by law for insurers offering coverage in this state, may cap the total amount of claims paid per year per enrollee, may limit the number of enrollees, or may take any combination of those actions.

(a) The agency shall develop guidelines for the review of applications for health flex plans and shall disapprove or withdraw approval of plans that do not meet or no longer meet minimum standards for quality of care and access to care.

(b) The office ~~department~~ shall develop guidelines for the review of health flex plan applications and shall disapprove or shall withdraw approval of plans that:

1. Contain any ambiguous, inconsistent, or misleading provisions or any exceptions or conditions that deceptively affect or limit the benefits purported to be assumed in the general coverage provided by the health flex plan;

2. Provide benefits that are unreasonable in relation to the premium charged or contain provisions that are unfair or inequitable or contrary to the public policy of this state, that encourage misrepresentation, or that result in unfair discrimination in sales practices; or

3. Cannot demonstrate that the health flex plan is financially sound and that the applicant is able to underwrite or finance the health care coverage provided.

(c) The agency and the Financial Services Commission ~~department~~ may adopt rules as needed to administer this section.

(6) RECORDS.—Each health flex plan shall maintain enrollment data and reasonable records of its losses, expenses, and claims experience and shall make those records reasonably available to enable the office ~~department~~ to monitor and determine the financial viability of the health flex plan, as necessary. Provider networks and total enrollment by area shall be reported to the agency biannually to enable the agency to monitor access to care.

(9) PROGRAM EVALUATION.—The agency and the office ~~department~~ shall evaluate the pilot program and its effect on the entities that seek approval as health flex plans, on the number of enrollees, and on the scope of the health care coverage offered under a health flex plan; shall provide an assessment of the health flex plans and their potential applicability in other settings; and shall, by January 1, 2004, jointly submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 442. Paragraph (f) of subsection (6) and paragraph (a) of subsection (15) of section 409.175, Florida Statutes, are amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies.—

(6)

(f) All residential child-caring agencies must meet firesafety standards for such agencies adopted by the Division of State Fire Marshal of the Department of Financial Services ~~Insurance~~ and must be inspected annually. At the request of the department, firesafety inspections shall be conducted by the Division of State Fire Marshal or a local fire department official who has been certified by the division as having completed the training requirements for persons inspecting such agencies. Inspection reports shall be furnished to the department within 30 days of a request.

(15)(a) The Division of Risk Management of the Department of Financial Services ~~Insurance~~ shall provide coverage through the Department of Children and Family Services to any person who owns or operates a family foster home solely for the Department of Children and Family Services and who is licensed to provide family foster home care in her or his place of residence. The coverage shall be provided from the general liability account of the State Risk Management Trust Fund, and the coverage shall be primary. The coverage is limited to general liability claims arising from the provision of family foster home care pursuant to an agreement with the department and pursuant to guidelines established through policy, rule, or statute. Coverage shall be limited as provided in ss. 284.38 and 284.385, and the exclusions set forth therein, together with other exclusions as may be set forth in the certificate of coverage issued by the trust fund, shall apply. A person covered under the general liability account pursuant to this subsection shall immediately notify the Division of Risk Management of the Department of Financial Services ~~Insurance~~ of any potential or actual claim.

Section 443. Subsection (10) of section 409.25656, Florida Statutes, is amended to read:

409.25656 Garnishment.—

(10) The department shall provide notice to the Chief Financial Officer ~~Comptroller~~, in electronic or other form specified by the Chief Financial Officer ~~Comptroller~~, listing the obligors for whom warrants are outstanding. Pursuant to subsection (1), the Chief Financial Officer ~~Comptroller~~ shall, upon notice from the department, withhold all payments to any obligor who provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state. The department may levy upon the withheld payments in accordance with subsection (3). Section 215.422 does not apply from the date the notice is filed with the Chief Financial Officer ~~Comptroller~~ until the date the department notifies the Chief Financial Officer ~~Comptroller~~ of its consent to make payment to the person or 60 days after receipt of the department's notice in accordance with subsection (1), whichever occurs earlier.

Section 444. Subsections (1), (2), (3), and (4) of section 409.25658, Florida Statutes, are amended to read:

409.25658 Use of unclaimed property for past due support.—

(1) In a joint effort to facilitate the collection and payment of past due support, the Department of Revenue, in cooperation with the Department of Financial Services ~~Banking and Finance~~, shall identify persons owing support collected through a court who are presumed to have unclaimed property held by the Department of Financial Services ~~Banking and Finance~~.

(2) The department shall periodically provide the Department of Financial Services ~~Banking and Finance~~ with an electronic file of support obligors who owe past due support. The Department of Financial Services ~~Banking and Finance~~ shall conduct a data match of the file against all apparent owners of unclaimed property under chapter 717 and provide the resulting match list to the department.

(3) Upon receipt of the data match list, the department shall provide to the Department of Financial Services ~~Banking and Finance~~ the obligor's last known address. The Department of Financial Services ~~Banking and Finance~~ shall follow the notification procedures under s. 717.118.

(4) Prior to paying an obligor's approved claim, the Department of Financial Services ~~Banking and Finance~~ shall notify the department that such claim has been approved. Upon confirmation that the Department of Financial Services ~~Banking and Finance~~ has approved the claim, the department shall immediately send a notice by certified mail to the obligor, with a copy to the Department of Financial Services ~~Banking and Finance~~, advising the obligor of the department's intent to intercept the approved claim up to the amount of the past due support, and informing the obligor of the obligor's right to request a hearing under chapter 120. The Department of Financial Services ~~Banking and Finance~~ shall retain custody of the property until a final order has been entered and any appeals thereon have been concluded. If the obligor fails to request a hearing, the department shall enter a final order instructing the Department of Financial Services ~~Banking and Finance~~ to transfer to the department the property in the amount stated in the final order. Upon such transfer, the Department of Financial Services ~~Banking and Finance~~ shall be released from further liability related to the transferred property.

Section 445. Subsections (4) and (7) of section 409.2673, Florida Statutes, are amended to read:

409.2673 Shared county and state health care program for low-income persons.—

(4) The levels of financial participation by counties and the state for this program shall be determined as follows:

(a) If on July 1, 1988, a county funded inpatient hospital services for those who would have been eligible for the program, the county shall fund

35 percent of the cost of this program and the state shall provide the remaining 65 percent of the funding required for this program. A county participating at this level shall use that portion of its budget that previously would have funded these inpatient hospital services and that, under this program, has been offset by state funding for funding other health programs.

(b) If a county has not reached its maximum ad valorem millage rate as authorized by law and certified to the Department of Revenue and the county does not currently fund inpatient hospital services for those who would be eligible for this program, the county:

1. Shall provide 35 percent of the cost for this program from within the county's existing budget, and the state shall provide the remaining 65 percent of the funding required for this program; however, under no circumstances will county funding which had been used for funding the county health department under chapter 154 be utilized for funding the county's portion of this program; or

2. Shall levy an additional ad valorem millage to fund the county's portion of this program. The state shall provide the remaining portion of program funding if:

a. A county levies additional ad valorem millage up to the maximum authorized by law and certified to the Department of Revenue and still does not have sufficient funds to meet its 35 percent of the funding of this program; and

b. A county has exhausted all revenue sources which can statutorily be used as possible funding sources for this program.

(c) A county will be eligible for 100-percent state funding of this program if:

1. On July 1, 1988, the county did not fund inpatient hospital services for those who would have been eligible for this program;

2. The county has reached its maximum ad valorem millage as authorized by law and certified to the Department of Revenue; and

3. The county has exhausted all revenue sources which can statutorily be used as possible funding sources for this program.

Reporting forms specifically designed to capture the information necessary to determine the above levels of participation will be developed as part of the joint rulemaking required for the shared county and state program. For purposes of this program, the counties will be required to report necessary information to the Department of Financial Services ~~Banking and Finance~~.

(7) A county that participates in the program at any level may not reduce its total per capita expenditures being devoted to health care if any of these funds were previously utilized for the provision of inpatient hospital services to those persons made eligible for the shared county and state program. It is the intent of the Legislature that, as a result of the shared county and

state program, local funds which were previously used for the provision of inpatient hospital services to persons made eligible by the program be used by counties for funding other health care programs which, for purposes of this section, are health expenditures as reported annually to the Department of Financial Services ~~Banking and Finance~~ pursuant to s. 218.32, provided that this subsection does not apply to reductions in county funding resulting from the expiration of special sales taxes levied pursuant to chapter 84-373, Laws of Florida.

Section 446. Subsection (3) of section 409.8132, Florida Statutes, is amended to read:

409.8132 Medikids program component.—

(3) INSURANCE LICENSURE NOT REQUIRED.—The Medikids program component shall not be subject to the licensing requirements of the Florida Insurance Code or rules adopted thereunder ~~of the Department of Insurance~~.

Section 447. Section 409.817, Florida Statutes, is amended to read:

409.817 Approval of health benefits coverage; financial assistance.—In order for health insurance coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.820, the health benefits coverage must:

(1) Be certified by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ under s. 409.818 as meeting, exceeding, or being actuarially equivalent to the benchmark benefit plan;

(2) Be guarantee issued;

(3) Be community rated;

(4) Not impose any preexisting condition exclusion for covered benefits; however, group health insurance plans may permit the imposition of a preexisting condition exclusion, but only insofar as it is permitted under s. 627.6561;

(5) Comply with the applicable limitations on premiums and cost-sharing in s. 409.816;

(6) Comply with the quality assurance and access standards developed under s. 409.820; and

(7) Establish periodic open enrollment periods, which may not occur more frequently than quarterly.

Section 448. Paragraph (c) of subsection (2), paragraphs (a) and (f) of subsection (3), and subsections (4) and (6) of section 409.818, Florida Statutes, are amended to read:

409.818 Administration.—In order to implement ss. 409.810-409.820, the following agencies shall have the following duties:

(2) The Department of Health shall:

(c) Chair a state-level coordinating council to review and make recommendations concerning the implementation and operation of the program. The coordinating council shall include representatives from the department, the Department of Children and Family Services, the agency, the Florida Healthy Kids Corporation, the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, local government, health insurers, health maintenance organizations, health care providers, families participating in the program, and organizations representing low-income families.

(3) The Agency for Health Care Administration, under the authority granted in s. 409.914(1), shall:

(a) Calculate the premium assistance payment necessary to comply with the premium and cost-sharing limitations specified in s. 409.816. The premium assistance payment for each enrollee in a health insurance plan participating in the Florida Healthy Kids Corporation shall equal the premium approved by the Florida Healthy Kids Corporation and the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ pursuant to ss. 627.410 and 641.31, less any enrollee's share of the premium established within the limitations specified in s. 409.816. The premium assistance payment for each enrollee in an employer-sponsored health insurance plan approved under ss. 409.810-409.820 shall equal the premium for the plan adjusted for any benchmark benefit plan actuarial equivalent benefit rider approved by the Office of Insurance Regulation ~~Department of Insurance~~ pursuant to ss. 627.410 and 641.31, less any enrollee's share of the premium established within the limitations specified in s. 409.816. In calculating the premium assistance payment levels for children with family coverage, the agency shall set the premium assistance payment levels for each child proportionately to the total cost of family coverage.

(f) Approve health benefits coverage for participation in the program, following certification by the Office of Insurance Regulation ~~Department of Insurance~~ under subsection (4).

The agency is designated the lead state agency for Title XXI of the Social Security Act for purposes of receipt of federal funds, for reporting purposes, and for ensuring compliance with federal and state regulations and rules.

(4) The Office of Insurance Regulation ~~Department of Insurance~~ shall certify that health benefits coverage plans that seek to provide services under the Florida Kidcare program, except those offered through the Florida Healthy Kids Corporation or the Children's Medical Services network, meet, exceed, or are actuarially equivalent to the benchmark benefit plan and that health insurance plans will be offered at an approved rate. In determining actuarial equivalence of benefits coverage, the Office of Insurance Regulation ~~Department of Insurance~~ and health insurance plans must comply with the requirements of s. 2103 of Title XXI of the Social Security Act. The department shall adopt rules necessary for certifying health benefits coverage plans.

(6) The agency, the Department of Health, the Department of Children and Family Services, the Florida Healthy Kids Corporation, and the Office of Insurance Regulation ~~Department of Insurance~~, after consultation with and approval of the Speaker of the House of Representatives and the President of the Senate, are authorized to make program modifications that are necessary to overcome any objections of the United States Department of Health and Human Services to obtain approval of the state's child health insurance plan under Title XXI of the Social Security Act.

Section 449. Subsection (20) of section 409.910, Florida Statutes, is amended to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(20) Entities providing health insurance as defined in s. 624.603, and health maintenance organizations and prepaid health clinics as defined in chapter 641, shall provide such records and information as are necessary to accomplish the purpose of this section, unless such requirement results in an unreasonable burden.

(a) The director of the agency and the director of the Office of Insurance Regulation of the Financial Services Commission ~~Insurance Commissioner~~ shall enter into a cooperative agreement for requesting and obtaining information necessary to effect the purpose and objective of this section.

1. The agency shall request only that information necessary to determine whether health insurance as defined pursuant to s. 624.603, or those health services provided pursuant to chapter 641, could be, should be, or have been claimed and paid with respect to items of medical care and services furnished to any person eligible for services under this section.

2. All information obtained pursuant to subparagraph 1. is confidential and exempt from s. 119.07(1).

3. The cooperative agreement or rules adopted under this subsection may include financial arrangements to reimburse the reporting entities for reasonable costs or a portion thereof incurred in furnishing the requested information. Neither the cooperative agreement nor the rules shall require the automation of manual processes to provide the requested information.

(b) The agency and the Financial Services Commission ~~Department of Insurance~~ jointly shall adopt rules for the development and administration of the cooperative agreement. The rules shall include the following:

1. A method for identifying those entities subject to furnishing information under the cooperative agreement.

2. A method for furnishing requested information.

3. Procedures for requesting exemption from the cooperative agreement based on an unreasonable burden to the reporting entity.

Section 450. Paragraphs (a) and (h) of subsection (3), subsections (5), (15), and (18), and paragraph (a) of subsection (36) of section 409.912, Florida Statutes, as amended by sections 8 and 9 of chapter 2001-377, Laws of Florida, are amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency may establish prior authorization requirements for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization.

(3) The agency may contract with:

(a) An entity that provides no prepaid health care services other than Medicaid services under contract with the agency and which is owned and operated by a county, county health department, or county-owned and operated hospital to provide health care services on a prepaid or fixed-sum basis to recipients, which entity may provide such prepaid services either directly or through arrangements with other providers. Such prepaid health care services entities must be licensed under parts I and III by January 1, 1998, and until then are exempt from the provisions of part I of chapter 641. An entity recognized under this paragraph which demonstrates to the satisfaction of the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ that it is backed by the full faith and credit of the county in which it is located may be exempted from s. 641.225.

(h) An entity authorized in s. 430.205 to contract with the agency and the Department of Elderly Affairs to provide health care and social services on a prepaid or fixed-sum basis to elderly recipients. Such prepaid health care services entities are exempt from the provisions of part I of chapter 641 for the first 3 years of operation. An entity recognized under this paragraph that demonstrates to the satisfaction of the Office of Insurance Regulation ~~Department of Insurance~~ that it is backed by the full faith and credit of one or more counties in which it operates may be exempted from s. 641.225.

(5) The agency may contract on a prepaid or fixed-sum basis with any health insurer that:

(a) Pays for health care services provided to enrolled Medicaid recipients in exchange for a premium payment paid by the agency;

(b) Assumes the underwriting risk; and

(c) Is organized and licensed under applicable provisions of the Florida Insurance Code and is currently in good standing with the Office of Insurance Regulation ~~Department of Insurance~~.

(15) An entity contracting on a prepaid or fixed-sum basis shall, in addition to meeting any applicable statutory surplus requirements, also maintain at all times in the form of cash, investments that mature in less than 180 days allowable as admitted assets by the Office of Insurance Regulation ~~Department of Insurance~~, and restricted funds or deposits controlled by the agency or the Office of Insurance Regulation ~~Department of Insurance~~, a surplus amount equal to one-and-one-half times the entity's monthly Medicaid prepaid revenues. As used in this subsection, the term "surplus" means the entity's total assets minus total liabilities. If an entity's surplus falls below an amount equal to one-and-one-half times the entity's monthly Medicaid prepaid revenues, the agency shall prohibit the entity from engaging in marketing and preenrollment activities, shall cease to process new enrollments, and shall not renew the entity's contract until the required balance is achieved. The requirements of this subsection do not apply:

(a) Where a public entity agrees to fund any deficit incurred by the contracting entity; or

(b) Where the entity's performance and obligations are guaranteed in writing by a guaranteeing organization which:

1. Has been in operation for at least 5 years and has assets in excess of $50 million; or

2. Submits a written guarantee acceptable to the agency which is irrevocable during the term of the contracting entity's contract with the agency and, upon termination of the contract, until the agency receives proof of satisfaction of all outstanding obligations incurred under the contract.

(18) When a merger or acquisition of a Medicaid prepaid contractor has been approved by the Office of Insurance Regulation ~~Department of Insurance~~ pursuant to s. 628.4615, the agency shall approve the assignment or transfer of the appropriate Medicaid prepaid contract upon request of the surviving entity of the merger or acquisition if the contractor and the other entity have been in good standing with the agency for the most recent 12-month period, unless the agency determines that the assignment or transfer would be detrimental to the Medicaid recipients or the Medicaid program. To be in good standing, an entity must not have failed accreditation or committed any material violation of the requirements of s. 641.52 and must meet the Medicaid contract requirements. For purposes of this section, a merger or acquisition means a change in controlling interest of an entity, including an asset or stock purchase.

(36) The Agency for Health Care Administration is directed to issue a request for proposal or intent to negotiate to implement on a demonstration basis an outpatient specialty services pilot project in a rural and urban county in the state. As used in this subsection, the term "outpatient specialty

services" means clinical laboratory, diagnostic imaging, and specified home medical services to include durable medical equipment, prosthetics and orthotics, and infusion therapy.

(a) The entity that is awarded the contract to provide Medicaid managed care outpatient specialty services must, at a minimum, meet the following criteria:

1. The entity must be licensed by the Office of Insurance Regulation ~~Department of Insurance~~ under part II of chapter 641.

2. The entity must be experienced in providing outpatient specialty services.

3. The entity must demonstrate to the satisfaction of the agency that it provides high-quality services to its patients.

4. The entity must demonstrate that it has in place a complaints and grievance process to assist Medicaid recipients enrolled in the pilot managed care program to resolve complaints and grievances.

Section 451. Subsections (2) and (3) of section 409.9124, Florida Statutes, are amended to read:

409.9124 Managed care reimbursement.—

(2) The agency shall by rule prescribe those items of financial information which each managed care plan shall report to the agency, in the time periods prescribed by rule. In prescribing items for reporting and definitions of terms, the agency shall consult with the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ wherever possible.

(3) The agency shall quarterly examine the financial condition of each managed care plan, and its performance in serving Medicaid patients, and shall utilize examinations performed by the Office of Insurance Regulation ~~Department of Insurance~~ wherever possible.

Section 452. Subsections (5) and (6) of section 409.915, Florida Statutes, are amended to read:

409.915 County contributions to Medicaid.—Although the state is responsible for the full portion of the state share of the matching funds required for the Medicaid program, in order to acquire a certain portion of these funds, the state shall charge the counties for certain items of care and service as provided in this section.

(5) The Department of Financial Services ~~Banking and Finance~~ shall withhold from the cigarette tax receipts or any other funds to be distributed to the counties the individual county share that has not been remitted within 60 days after billing.

(6) In any county in which a special taxing district or authority is located which will benefit from the medical assistance programs covered by this

section, the board of county commissioners may divide the county's financial responsibility for this purpose proportionately, and each such district or authority must furnish its share to the board of county commissioners in time for the board to comply with the provisions of subsection (3). Any appeal of the proration made by the board of county commissioners must be made to the Department of Financial Services ~~Banking and Finance~~, which shall then set the proportionate share of each party.

Section 453. Paragraph (c) of subsection (7) of section 411.01, Florida Statutes, is amended to read:

411.01 Florida Partnership for School Readiness; school readiness coalitions.—

(7) PARENTAL CHOICE.—

(c) The Office of the Chief Financial Officer ~~Comptroller~~ shall establish an electronic transfer system for the disbursement of funds in accordance with this subsection. School readiness coalitions shall fully implement the electronic funds transfer system within 2 years after plan approval unless a waiver is obtained from the partnership.

Section 454. Subsection (2) of section 413.32, Florida Statutes, is amended to read:

413.32 Retention of title to and disposal of equipment.—

(2) The division is authorized to offer for sale any surplus items acquired in the operation of the program when they are no longer necessary or to exchange them for necessary items which may be used to greater advantage. When any such surplus equipment is sold or exchanged a receipt for same shall be taken from the purchaser showing the consideration given for such equipment and forwarded to the Chief Financial Officer ~~treasurer~~, and any funds received by the division pursuant to any such transactions shall be deposited in the State Treasury in the appropriate federal or state rehabilitation funds and shall be available for expenditure for any purpose consistent with this part.

Section 455. Section 414.27, Florida Statutes, is amended to read:

414.27 Temporary cash assistance; payment on death.—

(1) Upon the death of any person receiving temporary cash assistance through the Department of Children and Family Services, all temporary cash accrued to such person from the date of last payment to the date of death shall be paid to the person who shall have been designated by her or him on a form prescribed by the department and filed with the department during the lifetime of the person making such designation. If no designation is made, or the person so designated is no longer living or cannot be found, then payment shall be made to such person as may be designated by the circuit judge of the county where the recipient of temporary cash assistance resided. Designation by the circuit judge may be made on a form provided by the department or by letter or memorandum to the Chief Financial

Officer ~~Comptroller~~. No filing or recording of the designation shall be required, and the circuit judge shall receive no compensation for such service. If a warrant has not been issued and forwarded prior to notice by the department of the recipient's death, upon notice thereof, the department shall promptly requisition the Chief Financial Officer ~~Comptroller~~ to issue a warrant in the amount of the accrued temporary cash assistance payable to the person designated to receive it and shall attach to the requisition the original designation of the deceased recipient, or if none, the designation made by the circuit judge, as well as a notice of death. The Chief Financial Officer ~~Comptroller~~ shall issue a warrant in the amount payable.

(2) If a warrant has been issued and not cashed by the recipient payee prior to her or his death, such warrant shall be promptly returned to the department, together with notice of the death of the recipient. The original warrant shall be endorsed on the back by an authorized employee of the department. The endorsement must be on a form prescribed by the department and approved by the Chief Financial Officer ~~Comptroller~~ which must contain the name of the deceased recipient, a statement of the recipient's death, and the date thereof and state that it is payable to the order of the designated beneficiary, without recourse. The form shall be signed by the authorized employee or employees of the department, and thereupon such warrant shall be payable to the designated beneficiary as fully and completely as if made payable to her or him when issued. The department shall furnish to the Chief Financial Officer ~~Comptroller~~ each month a list of such deceased recipients, the designated beneficiaries or persons to whom such warrants are endorsed, and a description of such warrants as herein provided. The department shall cause all persons receiving temporary cash assistance to make the designations as soon as conveniently may be, and shall preserve such designations in a safe place for use.

Section 456. Subsection (8) of section 414.28, Florida Statutes, is amended to read:

414.28 Public assistance payments to constitute debt of recipient.—

(8) DISPOSITION OF FUNDS RECOVERED.—All funds collected under this section shall be deposited with the Department of Financial Services ~~Banking and Finance~~ and a report of such deposit made to the department. After payment of costs the sums so collected shall be credited to the department and used by it.

Section 457. Section 420.0005, Florida Statutes, is amended to read:

420.0005 State Housing Trust Fund; State Housing Fund.—There is hereby established in the State Treasury a separate trust fund to be named the "State Housing Trust Fund." There shall be deposited in the fund all moneys appropriated by the Legislature, or moneys received from any other source, for the purpose of this chapter, and all proceeds derived from the use of such moneys. The fund shall be administered by the Florida Housing Finance Corporation on behalf of the department, as specified in this chapter. Money deposited to the fund and appropriated by the Legislature must, notwithstanding the provisions of chapter 216 or s. 420.504(3), be transferred quarterly in advance, to the extent available, or, if not so available,

as soon as received into the State Housing Trust Fund, and subject to the provisions of s. 420.5092(6)(a) and (b) by the Chief Financial Officer ~~Comptroller~~ to the corporation upon certification by the Secretary of Community Affairs that the corporation is in compliance with the requirements of s. 420.0006. The certification made by the secretary shall also include the split of funds among programs administered by the corporation and the department as specified in chapter 92-317, Laws of Florida, as amended. Moneys advanced by the Chief Financial Officer ~~Comptroller~~ must be deposited by the corporation into a separate fund established with a qualified public depository meeting the requirements of chapter 280 to be named the "State Housing Fund" and used for the purposes of this chapter. Administrative and personnel costs incurred in implementing this chapter may be paid from the State Housing Fund, but such costs may not exceed 5 percent of the moneys deposited into such fund. To the State Housing Fund shall be credited all loan repayments, penalties, and other fees and charges accruing to such fund under this chapter. It is the intent of this chapter that all loan repayments, penalties, and other fees and charges collected be credited in full to the program account from which the loan originated. Moneys in the State Housing Fund which are not currently needed for the purposes of this chapter shall be invested in such manner as is provided for by statute. The interest received on any such investment shall be credited to the State Housing Fund.

Section 458. Section 420.0006, Florida Statutes, is amended to read:

420.0006 Authority to contract with corporation; contract requirements; nonperformance.—The secretary of the department shall contract, notwithstanding the provisions of part I of chapter 287, with the Florida Housing Finance Corporation on a multiyear basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required by s. 420.511 and must be consistent with the provisions of the corporation's strategic plan prepared in accordance with s. 420.511 and compatible with s. 216.0166. The contract must provide that, in the event the corporation fails to comply with any of the performance measures required by s. 420.511, the secretary shall notify the Governor and shall refer the nonperformance to the department's inspector general for review and determination as to whether such failure is due to forces beyond the corporation's control or whether such failure is due to inadequate management of the corporation's resources. Advances shall continue to be made pursuant to s. 420.0005 during the pendency of the review by the department's inspector general. If such failure is due to outside forces, it shall not be deemed a violation of the contract. If such failure is due to inadequate management, the department's inspector general shall provide recommendations regarding solutions. The Governor is authorized to resolve any differences of opinion with respect to performance under the contract and may request that advances continue in the event of a failure under the contract due to inadequate management. The Chief Financial Officer ~~Comptroller~~ shall approve the request absent a finding by the Chief Financial Officer ~~Comptroller~~ that continuing such advances would adversely impact the state; however, in any event the Chief Financial Officer ~~Comptroller~~ shall provide advances sufficient to meet the debt service requirements of the corporation and sufficient to fund contracts committing funds from the State

Housing Trust Fund so long as such contracts are in accordance with the laws of this state. The department inspector general shall perform for the corporation the functions set forth in s. 20.055 and report to the secretary of the department. The corporation shall be deemed an agency for the purposes of s. 20.055.

Section 459. Paragraph (d) of subsection (1) of section 420.101, Florida Statutes, is amended to read:

420.101 Housing Development Corporation of Florida; creation, membership, and purposes.—

(1) Twenty-five or more persons, a majority of whom shall be residents of this state, who may desire to create a housing development corporation under the provisions of this part for the purpose of promoting and developing housing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the Department of State, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(d) The names and post office addresses of the members of the first board of directors. The first board of directors shall be elected by and from the stockholders of the corporation and shall consist of 21 members. However, five of such members shall consist of the following persons, who shall be nonvoting members: the secretary of the Department of Community Affairs or her or his designee; the head of the Department of Financial Services ~~Banking and Finance~~ or her or his designee with expertise in banking matters; a designee of the head of the Department of Financial Services with expertise in insurance matters ~~Insurance or her or his designee~~; one state senator appointed by the President of the Senate; and one representative appointed by the Speaker of the House of Representatives.

Section 460. Subsection (1) of section 420.123, Florida Statutes, is amended to read:

420.123 Stockholders; loan requirement.—

(1) Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as the board of directors may require, and membership shall become effective upon acceptance of the application in the manner designated by the board. Each member stockholder of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, except that the total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed the following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership or, in the case of an insurance company, its last annual statement to the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~: 5 percent of the capital and surplus of commercial

banks and trust companies; 5 percent of the total outstanding loans made by savings and loan associations and building and loan associations; 5 percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; 5 percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; 0.2 percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

Section 461. Subsection (1) of section 420.131, Florida Statutes, is amended to read:

420.131 Articles of incorporation; method of amending.—

(1) The articles of incorporation may be amended by the vote of the stockholders of the corporation, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled. However, no amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein or which eliminates or curtails the right of the Department of Financial Services ~~Banking and Finance~~ to examine the corporation or the obligation of the corporation to make reports as provided in s. 420.141(2) shall be made.

Section 462. Subsection (2) of section 420.141, Florida Statutes, is amended to read:

420.141 Housing Development Corporation of Florida; deposits and examination.—

(2) The corporation shall be examined at least once annually by the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~ and shall make reports of its condition not less than annually to the office ~~said department~~, and more frequently upon call of the office ~~department~~, which in turn shall make copies of such reports available to the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ and the Governor; and the corporation shall also furnish such other information as may from time to time be required by the Office of Financial Regulation ~~Department of Banking and Finance~~ and the Department of State. The Office of Financial Regulation ~~Department of Banking and Finance~~ shall exercise the same power and authority over the corporation organized pursuant to this part as is exercised over financial institutions under the provisions of the financial institutions codes, when such codes are not in conflict with this chapter.

Section 463. Subsection (6) of section 420.5092, Florida Statutes, is amended to read:

420.5092 Florida Affordable Housing Guarantee Program.—

(6)(a) If the primary revenue sources to be used for repayment of revenue bonds used to establish the guarantee fund are insufficient for such repayment, the annual principal and interest due on each series of revenue bonds shall be payable from funds in the annual debt service reserve. The corporation shall, before June 1 of each year, perform a financial audit to determine

whether at the end of the state fiscal year there will be on deposit in the guarantee fund an annual debt service reserve from interest earned pursuant to the investment of the guarantee fund, fees, charges, and reimbursements received from issued affordable housing guarantees and other revenue sources available to the corporation. Based upon the findings in such guarantee fund financial audit, the corporation shall certify to the Chief Financial Officer ~~Comptroller~~ the amount of any projected deficiency in the annual debt service reserve for any series of outstanding bonds as of the end of the state fiscal year and the amount necessary to maintain such annual debt service reserve. Upon receipt of such certification, the Chief Financial Officer ~~Comptroller~~ shall transfer to the annual debt service reserve, from the first available taxes distributed to the State Housing Trust Fund pursuant to s. 201.15(9)(a) and (10)(a) during the ensuing state fiscal year, the amount certified as necessary to maintain the annual debt service reserve.

(b) If the claims payment obligations under affordable housing guarantees from amounts on deposit in the guarantee fund would cause the claims paying rating assigned to the guarantee fund to be less than the third-highest rating classification of any nationally recognized rating service, which classifications being consistent with s. 215.84(3) and rules adopted thereto by the State Board of Administration, the corporation shall certify to the Chief Financial Officer ~~Comptroller~~ the amount of such claims payment obligations. Upon receipt of such certification, the Chief Financial Officer ~~Comptroller~~ shall transfer to the guarantee fund, from the first available taxes distributed to the State Housing Trust Fund pursuant to s. 201.15(9)(a) and (10)(a) during the ensuing state fiscal year, the amount certified as necessary to meet such obligations, such transfer to be subordinate to any transfer referenced in paragraph (a) and not to exceed 50 percent of the amounts distributed to the State Housing Trust Fund pursuant to s. 201.15(9)(a) and (10)(a) during the preceding state fiscal year.

Section 464. Section 430.42, Florida Statutes, is amended to read:

430.42 Department of Elderly Affairs Tobacco Settlement Trust Fund.—

(1) The Department of Elderly Affairs Tobacco Settlement Trust Fund is created within that department. Funds to be credited to the trust fund shall consist of funds disbursed, by nonoperating transfer, from the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund in amounts equal to the annual appropriations made from this trust fund.

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

Section 465. Subsection (6) of section 430.703, Florida Statutes, is amended to read:

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

(6) "Managed care organization" means an entity that meets the requirements of the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ for operation as a health maintenance organization and meets the qualifications for participation as a managed care organization established by the agency and the office ~~department~~.

Section 466. Section 440.015, Florida Statutes, is amended to read:

440.015 Legislative intent.—It is the intent of the Legislature that the Workers' Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits. The workers' compensation system in Florida is based on a mutual renunciation of common-law rights and defenses by employers and employees alike. In addition, it is the intent of the Legislature that the facts in a workers' compensation case are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Additionally, the Legislature hereby declares that disputes concerning the facts in workers' compensation cases are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand, and the laws pertaining to workers' compensation are to be construed in accordance with the basic principles of statutory construction and not liberally in favor of either employee or employer. It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The department, agency, the Office of Insurance Regulation, the Department of Education, and the Division of Administrative Hearings shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

Section 467. Subsections (12) and (14) of section 440.02, Florida Statutes, are amended, and subsection (43) is added to that section, to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(12) "Department" means the Department of Financial Services; the term does not include the Financial Services Commission or any office of the commission ~~Insurance~~.

(14) "Division" means the Division of Workers' Compensation of the Department of Financial Services ~~Insurance~~.

(43) "Office of Insurance Regulation" means the Office of Insurance Regulation of the Financial Services Commission.

Section 468. Subsections (6), (10), (11), (12), and (13) of section 440.05, Florida Statutes, are amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(6) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for 2 years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the department. The construction industry certificate must expire at midnight, 2 years from its issue date, as noted on the face of the exemption certificate. Any person who has received from the department ~~division~~ a construction industry certificate of election to be exempt which is in effect on December 31, 1998, shall file a new notice of election to be exempt by the last day in his or her birth month following December 1, 1998. A construction industry certificate of election to be exempt may be revoked before its expiration by the sole proprietor, partner, or officer for whom it was issued or by the department for the reasons stated in this section. At least 60 days prior to the expiration date of a construction industry certificate of exemption issued after December 1, 1998, the department shall send notice of the expiration date and an application for renewal to the certificateholder at the address on the certificate.

(10) Each sole proprietor, partner, or officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter shall maintain business records as specified by the department ~~division~~ by rule, which rules must include the provision that any corporation with exempt officers and any partnership actively engaged in the construction industry with exempt partners must maintain written statements of those exempted persons affirmatively acknowledging each such individual's exempt status.

(11) Any sole proprietor or partner actively engaged in the construction industry claiming an exemption under this section shall maintain a copy of his or her federal income tax records for each of the immediately previous 3 years in which he or she claims an exemption. Such federal income tax records must include a complete copy of the following for each year in which an exemption is claimed:

(a) For sole proprietors, a copy of Federal Income Tax Form 1040 and its accompanying Schedule C;

(b) For partners, a copy of the partner's Federal Income Tax Schedule K-1 (Form 1065) and Federal Income Tax Form 1040 and its accompanying Schedule E.

A sole proprietor or partner shall produce, upon request by the department ~~division~~, a copy of those documents together with a statement by the sole proprietor or partner that the tax records provided are true and accurate copies of what the sole proprietor or partner has filed with the federal Internal Revenue Service. The statement must be signed under oath by the sole proprietor or partner and must be notarized. The department ~~division~~ shall issue a stop-work order under s. 440.107(5) to any sole proprietor or partner who fails or refuses to produce a copy of the tax records and affidavit required under this paragraph to the department ~~division~~ within 3 business days after the request is made.

(12) For those sole proprietors or partners that have not been in business long enough to provide the information required of an established business, the department ~~division~~ shall require such sole proprietor or partner to provide copies of the most recently filed Federal Income Tax Form 1040. The department ~~division~~ shall establish by rule such other criteria to show that the sole proprietor or partner intends to engage in a legitimate enterprise within the construction industry and is not otherwise attempting to evade the requirements of this section. The department ~~division~~ shall establish by rule the form and format of financial information required to be submitted by such employers.

(13) Any corporate officer claiming an exemption under this section must be listed on the records of this state's Secretary of State, Division of Corporations, as a corporate officer. If the person who claims an exemption as a corporate officer is not so listed on the records of the Secretary of State, the individual must provide to the department ~~division~~, upon request by the department ~~division~~, a notarized affidavit stating that the individual is a bona fide officer of the corporation and stating the date his or her appointment or election as a corporate officer became or will become effective. The statement must be signed under oath by both the officer and the president or chief operating officer of the corporation and must be notarized. The department ~~division~~ shall issue a stop-work order under s. 440.107(1) to any corporation who employs a person who claims to be exempt as a corporate officer but who fails or refuses to produce the documents required under this subsection to the department ~~division~~ within 3 business days after the request is made.

Section 469. Subsection (5) of section 440.09, Florida Statutes, is amended to read:

440.09 Coverage.—

(5) If injury is caused by the knowing refusal of the employee to use a safety appliance or observe a safety rule required by statute or lawfully adopted by the department ~~division~~, and brought prior to the accident to the employee's knowledge, or if injury is caused by the knowing refusal of the employee to use a safety appliance provided by the employer, the compensation as provided in this chapter shall be reduced 25 percent.

Section 470. Paragraph (f) of subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)

(f) If an employer fails to secure compensation as required by this chapter, the department may assess against the employer a penalty not to exceed $5,000 for each employee of that employer who is classified by the employer as an independent contractor but who is found by the department to not meet the criteria for an independent contractor that are set forth in s. 440.02. The department ~~division~~ shall adopt rules to administer the provisions of this paragraph.

Section 471. Section 440.1025, Florida Statutes, is amended to read:

440.1025 Consideration of public employer workplace safety program in rate-setting; program requirements; rulemaking.—For a public employer to be eligible for receipt of specific identifiable consideration under s. 627.0915 for a workplace safety program in the setting of rates, the public employer must have a workplace safety program. At a minimum, the program must include a written safety policy and safety rules, and make provision for safety inspections, preventative maintenance, safety training, first-aid, accident investigation, and necessary recordkeeping. For purposes of this section, "public employer" means any agency within state, county, or municipal government employing individuals for salary, wages, or other remuneration. The department ~~division~~ may adopt ~~promulgate~~ rules for insurers to utilize in determining public employer compliance with the requirements of this section.

Section 472. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Except as otherwise provided in this chapter, every employer shall, as a condition to receiving a building permit, show proof that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department or the former Division of Workers' Compensation of the Department of Labor and Employment Security, or a copy of the employer's authority to self-insure and shall be presented each time the employer applies for a building permit. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221 ~~by the department~~. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 473. Paragraph (a) of subsection (3) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(3) Whoever violates any provision of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(a) It shall be unlawful for any employer to knowingly fail to update applications for coverage as required by s. 440.381(1) and the Financial Services Commission ~~Department of Insurance~~ rules, or to post notice of coverage pursuant to s. 440.40.

Section 474. Subsections (1) and (2) of section 440.1051, Florida Statutes, are amended to read:

440.1051 Fraud reports; civil immunity; criminal penalties.—

(1) The Bureau of Workers' Compensation Insurance Fraud of the Division of Insurance Fraud of the department ~~of Insurance~~ shall establish a toll-free telephone number to receive reports of workers' compensation fraud committed by an employee, employer, insurance provider, physician, attorney, or other person.

(2) Any person who reports workers' compensation fraud to the Division of Insurance Fraud under subsection (1) is immune from civil liability for doing so, and the person or entity alleged to have committed the fraud may not retaliate against him or her for providing such report, unless the person making the report knows it to be false.

Section 475. Subsections (3) and (4) of section 440.106, Florida Statutes, are amended to read:

440.106 Civil remedies; administrative penalties.—

(3) Whenever any group or individual self-insurer, carrier, rating bureau, or agent or other representative of any carrier or rating bureau is determined to have violated s. 440.105, the agency responsible for licensure or certification ~~department~~ may revoke or suspend the authority or certification of the ~~any~~ group or individual self-insurer, carrier, agent, or broker.

(4) The department or the Office of Insurance Regulation shall report any contractor determined in violation of requirements of this chapter to the appropriate state licensing board for disciplinary action.

Section 476. Subsections (5), (7), and (12) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(5) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to do so, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations at the place of employment or job site. If the department ~~division~~ makes such a determination, the department ~~division~~ shall issue a stop-work order within 72 hours. The order shall take effect upon the date of service upon the employer, unless the employer provides evidence satisfactory to the department of having secured any necessary insurance or self-insurance and pays a civil penalty to the department, to be deposited by the department into the Workers' Compensation Administration Trust Fund, in the amount of $100 per day for each day the employer was not in compliance with this chapter.

(7) In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer, who has failed to secure the payment of compensation as required by this chapter, a penalty in the following amount:

(a) An amount equal to at least the amount that the employer would have paid or up to twice the amount the employer would have paid during periods it illegally failed to secure payment of compensation in the preceding 3-year period based on the employer's payroll during the preceding 3-year period; or

(b) One thousand dollars, whichever is greater.

Any penalty assessed under this subsection is due within 30 days after the date on which the employer is notified, except that, if the department has posted a stop-work order or obtained injunctive relief against the employer, payment is due, in addition to those conditions set forth in this section, as a condition to relief from a stop-work order or an injunction. Interest shall accrue on amounts not paid when due at the rate of 1 percent per month. The department ~~division~~ shall adopt rules to administer this section.

(12) If the department ~~division~~ finds that an employer who is certified or registered under part I or part II of chapter 489 and who is required to secure payment of the compensation provided for by this chapter to his or her employees has failed to do so, the department ~~division~~ shall immediately notify the Department of Business and Professional Regulation.

Section 477. Subsections (11) and (12) of section 440.13, Florida Statutes, are amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(11) AUDITS ~~BY AGENCY FOR HEALTH CARE ADMINISTRATION AND THE DEPARTMENT OF INSURANCE; JURISDICTION~~.—

(a) The Agency for Health Care Administration may investigate health care providers to determine whether providers are complying with this chapter and with rules adopted by the agency, whether the providers are engaging in overutilization, and whether providers are engaging in improper billing practices. If the agency finds that a health care provider has improperly billed, overutilized, or failed to comply with agency rules or the requirements of this chapter it must notify the provider of its findings and may determine that the health care provider may not receive payment from the carrier or may impose penalties as set forth in subsection (8) or other sections of this chapter. If the health care provider has received payment from a carrier for services that were improperly billed or for overutilization, it must return those payments to the carrier. The agency may assess a penalty not to exceed $500 for each overpayment that is not refunded within 30 days after notification of overpayment by the agency or carrier.

(b) The department shall monitor carriers as provided in this chapter and the Office of Insurance Regulation shall ~~and~~ audit insurers and group self-insurance funds ~~carriers~~ as provided in s. 624.3161, to determine if medical bills are paid in accordance with this section and ~~department~~ rules of the department and Financial Services Commission, respectively. Any employer, if self-insured, or carrier found by the department or Office of

Insurance Regulation ~~division~~ not to be within 90 percent compliance as to the payment of medical bills after July 1, 1994, must be assessed a fine not to exceed 1 percent of the prior year's assessment levied against such entity under s. 440.51 for every quarter in which the entity fails to attain 90-percent compliance. The department shall fine or otherwise discipline an employer or carrier, pursuant to this chapter~~, the insurance code,~~ or rules adopted by the department, and the Office of Insurance Regulation shall fine or otherwise discipline an insurer or group self-insurance fund pursuant to the insurance code or rules adopted by the Financial Services Commission, for each late payment of compensation that is below the minimum 90-percent performance standard. Any carrier that is found to be not in compliance in subsequent consecutive quarters must implement a medical-bill review program approved by the department or office ~~division~~, and an insurer or group self-insurance fund ~~the carrier~~ is subject to disciplinary action by the Office of Insurance Regulation ~~Department of Insurance~~.

(c) The agency has exclusive jurisdiction to decide any matters concerning reimbursement, to resolve any overutilization dispute under subsection (7), and to decide any question concerning overutilization under subsection (8), which question or dispute arises after January 1, 1994.

(d) The following agency actions do not constitute agency action subject to review under ss. 120.569 and 120.57 and do not constitute actions subject to s. 120.56: referral by the entity responsible for utilization review; a decision by the agency to refer a matter to a peer review committee; establishment by a health care provider or entity of procedures by which a peer review committee reviews the rendering of health care services; and the review proceedings, report, and recommendation of the peer review committee.

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer ~~Insurance Commissioner~~, or the Chief Financial Officer's ~~Insurance Commissioner's~~ designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the agency. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges. Until the three-member panel approves a schedule of per diem rates for inpatient hospital care and it becomes effective, all compensable charges for hospital inpatient care must be reimbursed

at 75 percent of their usual and customary charges. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. However, the maximum percentage of increase in the individual reimbursement allowance may not exceed the percentage of increase in the Consumer Price Index for the previous year. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program shall be reimbursed either the usual and customary charge for treatment, care, and attendance, the agreed-upon contract price, or the maximum reimbursement allowance in the appropriate schedule, whichever is less.

(b) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price times 1.2 plus $4.18 for the dispensing fee, except where the carrier has contracted for a lower amount. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower.

(c) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. Until the three-member panel approves a uniform schedule of maximum reimbursement allowances and it becomes effective, all compensable charges for treatment, care, and attendance provided by physicians, ambulatory surgical centers, work-hardening programs, or pain programs shall be reimbursed at the lowest maximum reimbursement allowance across all 1992 schedules of maximum reimbursement allowances for the services provided regardless of the place of service. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers;

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as de-

fined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers; and

4. The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under chapter 408.

(d) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to certified health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey certified health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 1, 2003, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The agency and the department, as requested, ~~division~~ shall provide data to the panel, including but not limited to, utilization trends in the workers' compensation health care delivery system. The agency ~~division~~ shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to s. 440.13(8). The department ~~division~~ shall provide administrative support and service to the panel to the extent requested by the panel.

Section 478. Subsections (21), (23), and (24) of section 440.134, Florida Statutes, are amended to read:

440.134 Workers' compensation managed care arrangement.—

(21) Upon expiration of the suspension period, the insurer's authorization shall automatically be reinstated unless the agency finds that the causes of the suspension have not been rectified or that the insurer is otherwise not in compliance with the requirements of this chapter ~~part~~. If not so automatically reinstated, the authorization shall be deemed to have expired as of the end of the suspension period.

(23) The agency shall immediately notify the office ~~department~~ whenever it issues an administrative complaint or an order or otherwise initiates legal proceedings resulting in, or which may result in, suspension or revocation of an insurer's authorization.

(24) Nothing in this chapter ~~part~~ shall be deemed to authorize any entity to transact any insurance business, assume risk, or otherwise engage in any other type of insurance unless it is authorized as an insurer or a health maintenance organization under a certificate of authority issued ~~by the Department of Insurance~~ under the provisions of the Florida Insurance Code.

Section 479. Paragraph (b) of subsection (5) of section 440.14, Florida Statutes, is amended to read:

440.14 Determination of pay.—

(5)

(b) The employee waives any entitlement to interest, penalties, and attorney's fees during the period in which the employee has not provided information concerning the loss of earnings from concurrent employment. Carriers are not subject to penalties ~~by the division~~ under s. 440.20(8)(b) and (c) for unpaid compensation related to concurrent employment during the period in which the employee has not provided information concerning the loss of earnings from concurrent employment.

Section 480. Section 440.17, Florida Statutes, is amended to read:

440.17 Guardian for minor or incompetent.—Prior to the filing of a claim, the department ~~division~~, and after the filing of a claim, a judge of compensation claims, may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter; however, the judge of compensation claims, in the judge of compensation claims' discretion, may designate in the compensation award a person to whom payment of compensation may be paid for a minor or incompetent, in which event payment to such designated person shall discharge all liability for such compensation.

Section 481. Paragraph (c) of subsection (8) and subsections (10), (15), (16), and (17) of section 440.20, Florida Statutes, are amended to read:

440.20 Time for payment of compensation; penalties for late payment.—

(8) In addition to any other penalties provided by this chapter for late payment, if any installment of compensation is not paid when it becomes due, the employer, carrier, or servicing agent shall pay interest thereon at the rate of 12 percent per year from the date the installment becomes due until it is paid, whether such installment is payable without an order or under the terms of an order. The interest payment shall be the greater of the amount of interest due or $5.

(c) In order to ensure carrier compliance under this chapter and provisions of the Florida Insurance Code, the office ~~department~~ shall monitor the performance of carriers by conducting market conduct examinations, as provided in s. 624.3161, and conducting investigations, as provided in s. 624.317. The department shall establish by rule minimum performance standards for carriers to ensure that a minimum of 90 percent of all compensation benefits are timely paid. The department shall fine a carrier as provided in s. 440.13(11)(b) up to $50 for each late payment of compensation that is below the minimum 90 percent performance standard. This paragraph does not affect the imposition of any penalties or interest due to the claimant. If a carrier contracts with a servicing agent to fulfill its administrative responsibilities under this chapter, the payment practices of the servicing agent are deemed the payment practices of the carrier for the purpose of assessing penalties against the carrier.

(10) Whenever the department deems it advisable, it may require any employer to make a deposit with the Chief Financial Officer ~~Treasurer~~ to secure the prompt and convenient payments of such compensation; and payments therefrom upon any awards shall be made upon order of the department or judge of compensation claims.

(15)(a) The office ~~department~~ shall examine on an ongoing basis claims files in accordance with s. 624.3161 and may impose fines pursuant to s. 624.310(5) and this chapter in order to identify questionable claims-handling techniques, questionable patterns or practices of claims, or a pattern of repeated unreasonably controverted claims by carriers, as defined in s. 440.02, providing services to employees pursuant to this chapter. If the office ~~department~~ finds such questionable techniques, patterns, or repeated unreasonably controverted claims as constitute a general business practice of a carrier, as defined in s. 440.02, the office ~~department~~ shall take appropriate action so as to bring such general business practices to a halt pursuant to s. 440.38(3) or may impose penalties pursuant to s. 624.4211. The department and office may initiate investigations of questionable techniques, patterns, practices, or repeated unreasonably controverted claims. The Financial Services Commission ~~department~~ may by rule establish forms and procedures for corrective action plans and for auditing carriers.

(b) As to any examination, investigation, or hearing being conducted under this chapter, the department and office ~~Insurance Commissioner or his or her designee~~:

1. May administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence; and

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

(c) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which she or he may be lawfully interrogated, the Circuit Court of Leon County or of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such

person resides, may, on the application of the department or the office, issue an order requiring such person to comply with the subpoena and to testify.

(d) Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees, costs, and reasonable travel expenses, if claimed, shall be allowed the same as for testimony in a circuit court.

(e) The department shall publish annually a report which indicates the promptness of first payment of compensation records of each carrier or self-insurer so as to focus attention on those carriers or self-insurers with poor payment records for the preceding year. The department and the office shall take appropriate steps so as to cause such poor carrier payment practices to halt pursuant to s. 440.38(3). In addition, the department shall take appropriate action so as to halt such poor payment practices of self-insurers. "Poor payment practice" means a practice of late payment sufficient to constitute a general business practice.

(f) The Financial Services Commission, in consultation with the department, shall adopt ~~promulgate~~ rules providing guidelines to carriers, as defined in s. 440.02, self-insurers, and employers to indicate behavior that may be construed as questionable claims-handling techniques, questionable patterns of claims, repeated unreasonably controverted claims, or poor payment practices.

(16) No penalty assessed under this section may be recouped by any carrier or self-insurer in the rate base, the premium, or any rate filing. The office ~~Department of Insurance~~ shall enforce this subsection.

(17) The Financial Services Commission ~~department~~ may by rule establish audit procedures and set standards for the Automated Carrier Performance System.

Section 482. Subsections (2) and (3) of section 440.24, Florida Statutes, is amended to read:

440.24 Enforcement of compensation orders; penalties.—

(2) In any case where the employer is insured and the carrier fails to comply with any compensation order of a judge of compensation claims or court within 10 days after such order becomes final, the department shall notify the office of such failure and the office shall ~~thereupon~~ suspend the license of such carrier to do an insurance business in this state, until such carrier has complied with such order.

(3) In any case where the employer is a self-insurer and fails to comply with any compensation order of a judge of compensation claims or court within 10 days after such order becomes final, the department ~~of Insurance~~ may suspend or revoke any authorization previously given to the employer to be a self-insurer, and the Florida Self-Insurers Guaranty Association, Incorporated, may call or sue upon the surety bond or exercise its rights under the letter of credit deposited by the self-insurer with the association as a qualifying security deposit as may be necessary to satisfy the order.

Section 483. Subsections (1), (2), (3), and (4) of section 440.38, Florida Statutes, are amended to read:

440.38 Security for compensation; insurance carriers and self-insurers.—

(1) Every employer shall secure the payment of compensation under this chapter:

(a) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association or exchange, authorized to do business in the state;

(b) By furnishing satisfactory proof to the Florida Self-Insurers Guaranty Association, Incorporated, created in s. 440.385, that it has the financial strength necessary to ensure timely payment of all current and future claims individually and on behalf of its subsidiary and affiliated companies with employees in this state and receiving an authorization from the department ~~of Insurance~~ to pay such compensation directly. The association shall review the financial strength of applicants for membership, current members, and former members and make recommendations to the department ~~of Insurance~~ regarding their qualifications to self-insure in accordance with this section and ss. 440.385 and 440.386. The department shall act in accordance with the recommendations unless it finds by clear and convincing evidence that the recommendations are erroneous.

1. As a condition of authorization under paragraph (a), the association may recommend that the department ~~of Insurance~~ require an employer to deposit with the association a qualifying security deposit. The association shall recommend the type and amount of the qualifying security deposit and shall prescribe conditions for the qualifying security deposit, which shall include authorization for the association to call the qualifying security deposit in the case of default to pay compensation awards and related expenses of the association. As a condition to authorization to self-insure, the employer shall provide proof that the employer has provided for competent personnel with whom to deliver benefits and to provide a safe working environment. The employer shall also provide evidence that it carries reinsurance at levels that will ensure the financial strength and actuarial soundness of such employer in accordance with rules adopted by the department ~~of Insurance~~. The department ~~of Insurance~~ may by rule require that, in the event of an individual self-insurer's insolvency, such qualifying security deposits and reinsurance policies are payable to the association. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer and shall be classed as a carrier of her or his own insurance. The employer shall, if requested, provide the association an actuarial report signed by a member of the American Academy of Actuaries providing an opinion of the appropriate present value of the reserves, using a 4-percent discount rate, for current and future compensation claims. If any member or former member of the association refuses to timely provide such a report, the association may obtain an order from a circuit court requiring the member to produce such a report and ordering any other relief that the court determines is appropriate. The association may recover all reasonable costs and attorney's fees in such proceedings.

2. If the employer fails to maintain the foregoing requirements, the association shall recommend to the department ~~of Insurance~~ that the department revoke the employer's authority to self-insure, unless the employer provides to the association the certified opinion of an independent actuary who is a member of the American Academy of Actuaries as to the actuarial present value of the employer's determined and estimated future compensation payments based on cash reserves, using a 4-percent discount rate, and a qualifying security deposit equal to 1.5 times the value so certified. The employer shall thereafter annually provide such a certified opinion until such time as the employer meets the requirements of subparagraph 1. The qualifying security deposit shall be adjusted at the time of each such annual report. Upon the failure of the employer to timely provide such opinion or to timely provide a security deposit in an amount equal to 1.5 times the value certified in the latest opinion, the association shall provide that information to the department ~~of Insurance~~ along with a recommendation, and the department ~~of Insurance~~ shall then revoke such employer's authorization to self-insure. Failure to comply with this subparagraph constitutes an immediate serious danger to the public health, safety, or welfare sufficient to justify the summary suspension of the employer's authorization to self-insure pursuant to s. 120.68.

3. Upon the suspension or revocation of the employer's authorization to self-insure, the employer shall provide to the association the certified opinion of an independent actuary who is a member of the American Academy of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the employer for claims incurred while the member exercised the privilege of self-insurance, using a discount rate of 4 percent. The employer shall provide such an opinion at 6-month intervals thereafter until such time as the latest opinion shows no remaining value of claims. With each such opinion, the employer shall deposit with the association a qualifying security deposit in an amount equal to the value certified by the actuary. The association has a cause of action against an employer, and against any successor of the employer, who fails to timely provide such opinion or who fails to timely maintain the required security deposit with the association. The association shall recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the employer for claims incurred while the employer exercised the privilege of self-insurance, together with attorney's fees. For purposes of this section, the successor of an employer means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the employer.

4. A qualifying security deposit shall consist, at the option of the employer, of:

a. Surety bonds, in a form and containing such terms as prescribed by the association, issued by a corporation surety authorized to transact surety business by the <u>office</u> ~~Department of Insurance~~, and whose policyholders' and financial ratings, as reported in A.M. Best's Insurance Reports, Property-Liability, are not less than "A" and "V", respectively.

b. Irrevocable letters of credit in favor of the association issued by financial institutions located within this state, the deposits of which are insured through the Federal Deposit Insurance Corporation.

5. The qualifying security deposit shall be held by the association exclusively for the benefit of workers' compensation claimants. The security shall not be subject to assignment, execution, attachment, or any legal process whatsoever, except as necessary to guarantee the payment of compensation under this chapter. No surety bond may be terminated, and no letter of credit may be allowed to expire, without 90 days' prior written notice to the association and deposit by the self-insuring employer of some other qualifying security deposit of equal value within 10 business days after such notice. Failure to provide such written notice or failure to timely provide qualifying replacement security after such notice shall constitute grounds for the association to call or sue upon the surety bond or to exercise its rights under a letter of credit. Current self-insured employers must comply with this section on or before December 31, 2001, or upon the maturity of existing security deposits, whichever occurs later. The department ~~of Insurance~~ may specify by rule the amount of the qualifying security deposit required prior to authorizing an employer to self-insure and the amount of net worth required for an employer to qualify for authorization to self-insure;

(c) By entering into a contract with a public utility under an approved utility-provided self-insurance program as set forth in s. 624.46225 in effect as of July 1, 1983. The department ~~division~~ shall adopt rules to implement this paragraph;

(d) By entering into an interlocal agreement with other local governmental entities to create a local government pool pursuant to s. 624.4622; or

~~(e) In accordance with s. 440.135, an employer, other than a local government unit, may elect coverage under the Workers' Compensation Law and retain the benefit of the exclusiveness of liability provided in s. 440.11 by obtaining a 24-hour health insurance policy from an authorized property and casualty insurance carrier or an authorized life and health insurance carrier, or by participating in a fully or partially self-insured 24-hour health plan that is established or maintained by or for two or more employers, so long as the law of this state is not preempted by the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, or any amendment to that law, which policy or plan must provide, for at least occupational injuries and illnesses, medical benefits that are comparable to those required by this chapter. A local government unit, as a single employer, in accordance with s. 440.135, may participate in the 24-hour health insurance coverage plan referenced in this paragraph. Disputes and remedies arising under policies issued under this section are governed by the terms and conditions of the policies and under the applicable provisions of the Florida Insurance Code and rules adopted under the insurance code and other applicable laws of this state. The 24-hour health insurance policy may provide for health care by a health maintenance organization or a preferred provider organization. The premium for such 24-hour health insurance policy shall be paid entirely by the employer. The 24-hour health insurance policy may use deductibles and coinsurance provisions that require the employee to pay a portion of the~~

~~actual medical care received by the employee. If an employer obtains a 24-hour health insurance policy or self-insured plan to secure payment of compensation as to medical benefits, the employer must also obtain an insurance policy or policies that provide indemnity benefits as follows:~~

~~1. If indemnity benefits are provided only for occupational-related disability, such benefits must be comparable to those required by this chapter.~~

~~2. If indemnity benefits are provided for both occupational-related and nonoccupational-related disability, such benefits must be comparable to those required by this chapter, except that they must be based on 60 percent of the average weekly wages.~~

~~3. The employer shall provide for each of its employees life insurance with a death benefit of $100,000.~~

~~4. Policies providing coverage under this subsection must use prescribed and acceptable underwriting standards, forms, and policies approved by the Department of Insurance. If any insurance policy that provides coverage under this section is canceled, terminated, or nonrenewed for any reason, the cancellation, termination, or nonrenewal is ineffective until the self-insured employer or insurance carrier or carriers notify the division and the Department of Insurance of the cancellation, termination, or nonrenewal, and until the division has actually received the notification. The division must be notified of replacement coverage under a workers' compensation and employer's liability insurance policy or plan by the employer prior to the effective date of the cancellation, termination, or nonrenewal; or~~

(e)~~(f)~~ By entering into a contract with an individual self-insurer under an approved individual self-insurer-provided self-insurance program as set forth in s. 624.46225. The department ~~division~~ may adopt rules to administer this subsection.

(2)(a) The department ~~of Insurance~~ shall adopt rules by which businesses may become qualified to provide underwriting claims-adjusting, loss control, and safety engineering services to self-insurers.

(b) The department ~~of Insurance~~ shall adopt rules requiring self-insurers to file any reports necessary to fulfill the requirements of this chapter. Any self-insurer who fails to file any report as prescribed by the rules adopted by the department ~~of Insurance~~ shall be subject to a civil penalty.

(3)(a) The license of any stock company or mutual company or association or exchange authorized to do insurance business in the state shall for good cause, upon recommendation of the department ~~division~~, be suspended or revoked by the office ~~Department of Insurance~~. No suspension or revocation shall affect the liability of any carrier already incurred.

(b) The department ~~of Insurance~~ shall suspend or revoke any authorization to a self-insurer for failure to comply with this section or for good cause, as defined by rule of the department ~~of Insurance~~. No suspension or revocation shall affect the liability of any self-insurer already incurred.

(c) Violation of s. 440.381 by a self-insurance fund shall result in the imposition of a fine not to exceed $1,000 per audit if the self-insurance fund fails to act on said audits by correcting errors in employee classification or accepted applications for coverage where it knew employee classifications were incorrect. Such fines shall be levied by the department ~~division~~ and deposited into the Workers' Compensation Administration Trust Fund.

(4)(a) A carrier of insurance, including the parties to any mutual, reciprocal, or other association, may not write any compensation insurance under this chapter without a certificate of authority ~~permit~~ from the office ~~Department of Insurance~~. Such certificate of authority ~~permit~~ shall be given, upon application therefor, to any insurance or mutual or reciprocal insurance association upon the office's ~~department's~~ being satisfied of the solvency of such corporation or association and its ability to perform all its undertakings. The office ~~Department of Insurance~~ may revoke any certificate of authority ~~permit~~ so issued for violation of any provision of this chapter.

(b) A carrier of insurance, including the parties to any mutual, reciprocal, or other association, may not write any compensation insurance under this chapter unless such carrier has a claims adjuster, either in-house or under contract, situated within this state. Self-insurers whose compensation payments are administered through a third party and carriers of insurance shall maintain a claims adjuster within this state during any period for which there are any open claims against such self-insurer or carrier arising under the compensation insurance written by the self-insurer or carrier. Individual self-insurers whose compensation payments are administered by employees of the self-insurer shall not be required to have their claims adjuster situated within this state. Individual self-insurers shall not be required to have their claims adjusters situated within this state.

Section 484. Subsections (1) and (3) of section 440.381, Florida Statutes, are amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(1) Applications by an employer to a carrier for coverage required by s. 440.38 must be made on a form prescribed by the Financial Services Commission ~~Department of Insurance~~. The Financial Services Commission ~~Department of Insurance~~ shall adopt rules for applications for coverage required by s. 440.38. The rules must provide that an application include information on the employer, the type of business, past and prospective payroll, estimated revenue, previous workers' compensation experience, employee classification, employee names, and any other information necessary to enable a carrier to accurately underwrite the applicant. The rules must include a provision that a carrier or self-insurance fund may require that an employer update an application monthly to reflect any change in the required application information.

(3) The Financial Services Commission, in consultation with the department, shall establish by rule minimum requirements for audits of payroll and classifications in order to ensure that the appropriate premium is charged for workers' compensation coverage. The rules shall ensure that

audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors have been reviewed and that the accuracy of classification of employees has been verified. The rules shall provide that employers in all classes other than the construction class be audited not less frequently than biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. In no event shall employers in the construction class, generating more than the amount of premium required to be experience rated, be audited less than annually. The annual audits required for construction classes shall consist of physical onsite audits. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

Section 485. Section 440.385, Florida Statutes, is amended to read:

440.385 Florida Self-Insurers Guaranty Association, Incorporated.—

(1) CREATION OF ASSOCIATION.—

(a) There is created a nonprofit corporation to be known as the "Florida Self-Insurers Guaranty Association, Incorporated," hereinafter referred to as "the association." Upon incorporation of the association, all individual self-insurers as defined in ss. 440.02(23)(a) and 440.38(1)(b), other than individual self-insurers which are public utilities or governmental entities, shall be members of the association as a condition of their authority to individually self-insure in this state. The association shall perform its functions under a plan of operation as established and approved under subsection (5) and shall exercise its powers and duties through a board of directors as established under subsection (2). The association shall have those powers granted or permitted corporations not for profit, as provided in chapter 617. The activities of the association shall be subject to review by the department ~~of Insurance~~. The department ~~of Insurance~~ shall have oversight responsibility as set forth in this section. The association is specifically authorized to enter into agreements with this state to perform specified services.

(b) A member may voluntarily withdraw from the association when the member voluntarily terminates the self-insurance privilege and pays all assessments due to the date of such termination. However, the withdrawing member shall continue to be bound by the provisions of this section relating to the period of his or her membership and any claims charged pursuant thereto. The withdrawing member who is a member on or after January 1, 1991, shall also be required to provide to the association upon withdrawal, and at 12-month intervals thereafter, satisfactory proof, including, if requested by the association, a report of known and potential claims certified by a member of the American Academy of Actuaries, that it continues to meet the standards of s. 440.38(1)(b)1. in relation to claims incurred while

the withdrawing member exercised the privilege of self-insurance. Such reporting shall continue until the withdrawing member demonstrates to the association that there is no remaining value to claims incurred while the withdrawing member was self-insured. If a withdrawing member fails or refuses to timely provide an actuarial report to the association, the association may obtain an order from a circuit court requiring the member to produce such a report and ordering any other relief that the court determines appropriate. The association is entitled to recover all reasonable costs and attorney's fees expended in such proceedings. If during this reporting period the withdrawing member fails to meet the standards of s. 440.38(1)(b)1., the withdrawing member who is a member on or after January 1, 1991, shall thereupon, and at 6-month intervals thereafter, provide to the association the certified opinion of an independent actuary who is a member of the American Academy of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the member for claims incurred while the member was a self-insurer, using a discount rate of 4 percent. With each such opinion, the withdrawing member shall deposit with the association security in an amount equal to the value certified by the actuary and of a type that is acceptable for qualifying security deposits under s. 440.38(1)(b). The withdrawing member shall continue to provide such opinions and to provide such security until such time as the latest opinion shows no remaining value of claims. The association has a cause of action against a withdrawing member, and against any successor of a withdrawing member, who fails to timely provide the required opinion or who fails to maintain the required deposit with the association. The association shall be entitled to recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred during the time that the withdrawing member exercised the privilege of self-insurance, together with reasonable attorney's fees. The association is also entitled to recover reasonable attorney's fees in any action to compel production of any actuarial report required by this section. For purposes of this section, the successor of a withdrawing member means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the withdrawing member.

(2) BOARD OF DIRECTORS.—The board of directors of the association shall consist of nine persons and shall be organized as established in the plan of operation. All board members shall be experienced in self-insurance in this state. Each director shall serve for a 4-year term and may be reappointed. Appointments after January 1, 2002, shall be made by the department ~~of Insurance~~ upon recommendation of members of the association. Any vacancy on the board shall be filled for the remaining period of the term in the same manner as appointments other than initial appointments are made. Each director shall be reimbursed for expenses incurred in carrying out the duties of the board on behalf of the association.

(3) POWERS AND DUTIES.—

(a) Upon creation of the Insolvency Fund pursuant to the provisions of subsection (4), the association is obligated for payment of compensation

under this chapter to insolvent members' employees resulting from incidents and injuries existing prior to the member becoming an insolvent member and from incidents and injuries occurring within 30 days after the member has become an insolvent member, provided the incidents giving rise to claims for compensation under this chapter occur during the year in which such insolvent member is a member of the guaranty fund and was assessable pursuant to the plan of operation, and provided the employee makes timely claim for such payments according to procedures set forth by a court of competent jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Such obligation includes only that amount due the injured worker or workers of the insolvent member under this chapter. In no event is the association obligated to a claimant in an amount in excess of the obligation of the insolvent member. The association shall be deemed the insolvent employer for purposes of this chapter to the extent of its obligation on the covered claims and, to such extent, shall have all rights, duties, and obligations of the insolvent employer as if the employer had not become insolvent. However, in no event shall the association be liable for any penalties or interest.

(b) The association may:

1. Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

2. Borrow funds necessary to effect the purposes of this section in accord with the plan of operation.

3. Sue or be sued.

4. Negotiate and become a party to such contracts as are necessary to carry out the purposes of this section.

5. Purchase such reinsurance as is determined necessary pursuant to the plan of operation.

6. Review all applicants for membership in the association to determine whether the applicant is qualified for membership under the law. The association shall recommend to the department ~~of Insurance~~ that the application be accepted or rejected based on the criteria set forth in s. 440.38(1)(b). The department ~~of Insurance~~ shall approve or disapprove the application as provided in paragraph (6)(a).

7. Collect and review financial information from employers and make recommendations to the department ~~of Insurance~~ regarding the appropriate security deposit and reinsurance amounts necessary for an employer to demonstrate that it has the financial strength necessary to ensure the timely payment of all current and future claims. The association may audit and examine an employer to verify the financial strength of its current and former members. If the association determines that a current or former self-insured employer does not have the financial strength necessary to ensure the timely payment of all current and estimated future claims, the association may recommend to the department ~~of Insurance~~ that the department:

a. Revoke the employer's self-insurance privilege.

b. Require the employer to provide a certified opinion of an independent actuary who is a member of the American Academy of Actuaries as to the actuarial present value of the employer's estimated current and future compensation payments, using a 4-percent discount rate.

c. Require an increase in the employer's security deposit in an amount determined by the association to be necessary to ensure payment of compensation claims. The department ~~of Insurance~~ shall act on such recommendations as provided in paragraph (6)(a). The association has a cause of action against an employer, and against any successor of an employer, who fails to provide an additional security deposit required by the department ~~of Insurance~~. The association shall file an action in circuit court to recover a judgment in the amount of the requested additional security deposit together with reasonable attorney's fees. For the purposes of this section, the successor of an employer is any person, business entity, or group of persons or business entities which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the employer.

8. Charge fees to any member of the association to cover the actual costs of examining the financial and safety conditions of that member.

9. Charge an applicant for membership in the association a fee sufficient to cover the actual costs of examining the financial condition of the applicant.

10. Implement any procedures necessary to ensure compliance with regulatory actions taken by the department ~~of Insurance~~.

(c)1. To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the association, subject to approval by the department ~~of Insurance~~, shall levy assessments based on the annual written premium each employer would have paid had the employer not been self-insured. Every assessment shall be made as a uniform percentage of the figure applicable to all individual self-insurers, provided that the assessment levied against any self-insurer in any one year shall not exceed 1 percent of the annual written premium during the calendar year preceding the date of the assessment. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each employer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. The association shall levy assessments against any newly admitted member of the association so that the basis of contribution of any newly admitted member is the same as previously admitted members, provision for which shall be contained in the plan of operation.

2. If, in any one year, funds available from such assessments, together with funds previously raised, are not sufficient to make all the payments or reimbursements then owing, the funds available shall be prorated, and the unpaid portion shall be paid as soon thereafter as sufficient additional funds become available.

3. Funds may be allocated or paid from the Workers' Compensation Administration Trust Fund to contract with the association to perform services required by law. However, no state funds of any kind shall be allocated or paid to the association or any of its accounts for payment of covered claims or related expenses except those state funds accruing to the association by and through the assignment of rights of an insolvent employer. The department ~~of Insurance~~ may not levy any assessment on the association.

(4) INSOLVENCY FUND.—Upon the adoption of a plan of operation, there shall be created an Insolvency Fund to be managed by the association.

(a) The Insolvency Fund is created for purposes of meeting the obligations of insolvent members incurred while members of the association and after the exhaustion of any security deposit, as required under this chapter. However, if such security deposit or reinsurance policy is payable to the association, the association shall commence to provide benefits out of the Insolvency Fund and be reimbursed from the security deposit or reinsurance policy. The method of operation of the Insolvency Fund shall be defined in the plan of operation as provided in subsection (5).

(b) The department ~~of Insurance~~ shall have the authority to audit the financial soundness of the Insolvency Fund annually.

(c) The department ~~of Insurance~~ may offer certain amendments to the plan of operation to the board of directors of the association for purposes of assuring the ongoing financial soundness of the Insolvency Fund and its ability to meet the obligations of this section.

(5) PLAN OF OPERATION.—The association shall operate pursuant to a plan of operation approved by the board of directors. The plan of operation in effect on January 1, 2002, and approved by the Department of Labor and Employment Security shall remain in effect. However, any amendments to the plan shall not become effective until approved by the Department of Financial Services ~~Insurance~~.

(a) The purpose of the plan of operation shall be to provide the association and the board of directors with the authority and responsibility to establish the necessary programs and to take the necessary actions to protect against the insolvency of a member of the association. In addition, the plan shall provide that the members of the association shall be responsible for maintaining an adequate Insolvency Fund to meet the obligations of insolvent members provided for under this act and shall authorize the board of directors to contract and employ those persons with the necessary expertise to carry out this stated purpose. By January 1, 2003, the board of directors shall submit to the department ~~of Insurance~~ a proposed plan of operation for the administration of the association. The department ~~of Insurance~~ shall approve the plan by order, consistent with this section. The department ~~of Insurance~~ shall approve any amendments to the plan, consistent with this section, which are determined appropriate to carry out the duties and responsibilities of the association.

(b) All member employers shall comply with the plan of operation.

(c) The plan of operation shall:

1. Establish the procedures whereby all the powers and duties of the association under subsection (3) will be performed.

2. Establish procedures for handling assets of the association.

3. Establish the amount and method of reimbursing members of the board of directors under subsection (2).

4. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent employer shall be deemed notice to the association or its agent, and a list of such claims shall be submitted periodically to the association or similar organization in another state by the receiver or liquidator.

5. Establish regular places and times for meetings of the board of directors.

6. Establish procedures for records to be kept of all financial transactions of the association and its agents and the board of directors.

7. Provide that any member employer aggrieved by any final action or decision of the association may appeal to the department ~~of Insurance~~ within 30 days after the action or decision.

8. Establish the procedures whereby recommendations of candidates for the board of directors shall be submitted to the department ~~of Insurance~~.

9. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all of the powers and duties of the association, except those specified under subparagraphs (c)1. and 2., be delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation of powers or duties under this subsection shall take effect only with the approval of both the board of directors and the department ~~of Insurance~~ and may be made only to a corporation, association, or organization which extends protection which is not substantially less favorable and effective than the protection provided by this section.

(6) POWERS AND DUTIES OF DEPARTMENT ~~OF INSURANCE~~.—The department ~~of Insurance~~ shall:

(a) Review recommendations of the association concerning whether current or former self-insured employers or members of the association have the financial strength necessary to ensure the timely payment of all current and estimated future claims. If the association determines an employer does not have the financial strength necessary to ensure the timely payment of

all current and future claims and recommends action pursuant to paragraph (3)(b), the department shall take such action as necessary to order the employer to comply with the recommendation, unless the department finds by clear and convincing evidence that the recommendation is erroneous.

(b) Contract with the association for services, which may include, but are not limited to:

1. Processing applications for self-insurance.

2. Collecting and reviewing financial statements and loss reserve information from individual self-insurers.

3. Collecting and maintaining files for original security deposit documents and reinsurance policies from individual self-insurers and, if necessary, perfecting security interests in security deposits.

4. Processing compliance documentation for individual self-insurers and providing copies of such documentation to the department.

5. Collecting all data necessary to calculate annual premium for all individual self-insurers, including individual self-insurers that are public utilities or governmental entities, and providing such calculated annual premium to the department ~~division~~ for assessment purposes.

6. Inspecting and auditing annually, if necessary, the payroll and other records of each individual self-insurer, including individual self-insurers that are public utilities or governmental entities, in order to determine the wages paid by each individual self-insurer, the premium such individual self-insurer would have to pay if insured, and all payments of compensation made by such individual self-insurer during each prior period with the results of such audit provided to the department ~~division~~. For purposes of this section, the payroll records of each individual self-insurer shall be open to inspection and audit by the association and the department, or their authorized representatives, during regular business hours.

7. Processing applications and making recommendations with respect to the qualification of a business to be approved to provide or continue to provide services to individual self-insurers in the areas of underwriting, claims adjusting, loss control, and safety engineering.

8. Providing legal representation to implement the administration and audit of individual self-insurers and making recommendations regarding prosecution of any administrative or legal proceedings necessitated by the regulation of the individual self-insurers by the department.

(c) Contract with an attorney or attorneys recommended by the association for representation of the department in any administrative or legal proceedings necessitated by the recommended regulation of the individual self-insurers.

(d) Direct the association to require from each individual self-insurer, at such time and in accordance with such regulations as the department pre-

scribes, reports relating to wages paid, the amount of premiums such individual self-insurer would have to pay if insured, and all payments of compensation made by such individual self-insurer during each prior period and to determine the amounts paid by each individual self-insurer and the amounts paid by all individual self-insurers during such period. For purposes of this section, the payroll records of each individual self-insurer shall be open to annual inspection and audit by the association and the department, or their authorized representative, during regular business hours, and if any audit of such records of an individual self-insurer discloses a deficiency in the amount reported to the association or in the amounts paid to the department ~~division~~ by an individual self-insurer for its assessment for the Workers' Compensation Administration Trust Fund, the department or the association may assess the cost of such audit against the individual self-insurer.

(e) Require that the association notify the member employers and any other interested parties of the determination of insolvency and of their rights under this section. Such notification shall be by mail at the last known address thereof when available; but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(f) Suspend or revoke the authority of any member employer failing to pay an assessment when due or failing to comply with the plan of operation to self-insure in this state. As an alternative, the department may levy a fine on any member employer failing to pay an assessment when due. Such fine shall not exceed 5 percent of the unpaid assessment per month, except that no fine shall be less than $100 per month.

(g) Revoke the designation of any servicing facility if the department finds that claims are being handled unsatisfactorily.

(7) EFFECT OF PAID CLAIMS.—

(a) Any person who recovers from the association under this section shall be deemed to have assigned his or her rights to the association to the extent of such recovery. Every claimant seeking the protection of this section shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent member. The association shall have no cause of action against the employee of the insolvent member for any sums the association has paid out, except such causes of action as the insolvent member would have had if such sums had been paid by the insolvent member. In the case of an insolvent member operating on a plan with assessment liability, payments of claims by the association shall not operate to reduce the liability of the insolvent member to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator, or statutory successor of an insolvent member shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority against the assets of the insolvent member equal to that to which the claimant would have been entitled in the absence of this

section. The expense of the association or similar organization in handling claims shall be accorded the same priority as the expenses of the liquidator.

(c) The association shall file periodically with the receiver or liquidator of the insolvent member statements of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the rights of the association against the assets of the insolvent member.

(8) NOTIFICATION OF INSOLVENCIES.—To aid in the detection and prevention of employer insolvencies: Upon determination by majority vote that any member employer may be insolvent or in a financial condition hazardous to the employees thereof or to the public, it shall be the duty of the board of directors to notify the department ~~of Insurance~~ of any information indicating such condition.

(9) EXAMINATION OF THE ASSOCIATION.—The association shall be subject to examination and regulation by the department ~~of Insurance~~. No later than March 30 of each year, the board of directors shall submit an audited financial statement for the preceding calendar year in a form approved by the department.

(10) IMMUNITY.—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member employer, the association or its agents or employees, the board of directors, or the department ~~of Insurance~~ or its representatives for any action taken by them in the performance of their powers and duties under this section.

(11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT JUDGMENTS.—All proceedings in which an insolvent employer is a party, or is obligated to defend a party, in any court or before any quasi-judicial body or administrative board in this state shall be stayed for up to 6 months, or for such additional period from the date the employer becomes an insolvent member, as is deemed necessary by a court of competent jurisdiction to permit proper defense by the association of all pending causes of action as to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent member. The association, either on its own behalf or on behalf of the insolvent member, may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits. If requested by the association, the stay of proceedings may be shortened or waived.

(12) LIMITATION ON CERTAIN ACTIONS.—Notwithstanding any other provision of this chapter, a covered claim, as defined herein, with respect to which settlement is not effected and pursuant to which suit is not instituted against the insured of an insolvent member or the association within 1 year after the deadline for filing claims with the receiver of the insolvent member, or any extension of the deadline, shall thenceforth be barred as a claim against the association.

(13) CORPORATE INCOME TAX CREDIT.—Any sums acquired by a member by refund, dividend, or otherwise from the association shall be payable within 30 days of receipt to the Department of Revenue for deposit with the Chief Financial Officer ~~Treasurer~~ to the credit of the General Revenue Fund. All provisions of chapter 220 relating to penalties and interest on delinquent corporate income tax payments apply to payments due under this subsection.

Section 486. Subsections (2), (3), and (4) of section 440.386, Florida Statutes, are amended to read:

440.386 Individual self-insurers' insolvency; conservation; liquidation.—

(2) COMMENCEMENT OF DELINQUENCY PROCEEDING.—The department ~~of Insurance~~ or the Florida Self-Insurers Guaranty Association, Incorporated, may commence a delinquency proceeding by application to the court for an order directing the individual self-insurer to show cause why the department or association should not have the relief sought. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the claimants, creditors, stockholders, members, subscribers, or public may require. The department and the association shall give reasonable written notice to each other of all hearings which pertain to an adjudication of insolvency of a member individual self-insurer.

(3) GROUNDS FOR LIQUIDATION.—The department ~~of Insurance~~ or the association may apply to the court for an order appointing a receiver and directing the receiver to liquidate the business of a domestic individual self-insurer if such individual self-insurer is insolvent.

(4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL SELF-INSURERS.—

(a) The department ~~of Insurance~~ or the association may apply to the court for an order appointing a receiver or ancillary receiver, and directing the receiver to conserve the assets within this state, of a foreign individual self-insurer if such individual self-insurer is insolvent.

(b) An order to conserve the assets of an individual self-insurer shall require the receiver forthwith to take possession of the property of the receiver within the state and to conserve it, subject to the further direction of the court.

Section 487. Subsection (2) of section 440.40, Florida Statutes, is amended to read:

440.40 Compensation notice.—Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about her or his place or places of business typewritten or printed notices, in accordance with a form prescribed by the department, the following:

(2) A notice stating: "Anti-Fraud Reward Program.—Rewards of up to $25,000 may be paid to persons providing information to the Department of Financial Services ~~Insurance~~ leading to the arrest and conviction of persons committing insurance fraud, including employers who illegally fail to obtain workers' compensation coverage. Persons may report suspected fraud to the department at ...(Phone No.).... A person is not subject to civil liability for furnishing such information, if such person acts without malice, fraud, or bad faith."

Section 488. Subsections (3), (4), and (6) of section 440.44, Florida Statutes, are amended to read:

440.44 Workers' compensation; staff organization.—

(3) EXPENDITURES.—The department, the agency, the office, the Department of Education, and the director of the Division of Administrative Hearings shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere, for law books; for telephone services and WATS lines; for books of reference, periodicals, equipment, and supplies; and for printing and binding as may be necessary in the administration of this chapter. All expenditures in the administration of this chapter shall be allowed and paid as provided in s. 440.50 upon the presentation of itemized vouchers therefor approved by the department, the agency, the office, the Department of Education, or the director of the Division of Administrative Hearings.

(4) PERSONNEL ADMINISTRATION.—Subject to the other provisions of this chapter, the department, the agency, the office, the Department of Education, and the Division of Administrative Hearings may appoint, and prescribe the duties and powers of, bureau chiefs, attorneys, accountants, medical advisers, technical assistants, inspectors, claims examiners, and such other employees as may be necessary in the performance of their duties under this chapter.

(6) SEAL.—The department and the judges of compensation claims shall have a seal upon which shall be inscribed the words "State of Florida Department of Financial Services ~~Insurance~~—Seal" and "Division of Administrative Hearings—Seal," respectively.

Section 489. Subsections (8) and (9) of section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(8) PREFERRED WORKER PROGRAM.—The Department of Education or administrator shall issue identity cards to preferred workers upon request by qualified employees and the Department of Financial Services ~~Insurance~~ shall reimburse an employer, from the Special Disability Trust Fund, for the cost of workers' compensation premium related to the preferred workers payroll for up to 3 years of continuous employment upon satisfactory evidence of placement and issuance of payroll and classification

records and upon the employee's certification of employment. The Department of Financial Services and the Department of Education may by rule prescribe definitions, forms, and procedures for the administration of the preferred worker program. The Department of Education may by rule prescribe the schedule for submission of forms for participation in the program.

(9) SPECIAL DISABILITY TRUST FUND.—

(a) There is established in the State Treasury a special fund to be known as the "Special Disability Trust Fund," which shall be available only for the purposes stated in this section; and the assets thereof may not at any time be appropriated or diverted to any other use or purpose. The Chief Financial Officer ~~Treasurer~~ shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Chief Financial Officer ~~Treasurer~~ and shall not be the money or property of the state. The Chief Financial Officer ~~Treasurer~~ is authorized to disburse moneys from such fund only when approved by the department or corporation ~~and upon the order of the Comptroller~~. The Chief Financial Officer ~~Treasurer~~ shall deposit any moneys paid into such fund into such depository banks as the department may designate and is authorized to invest any portion of the fund which, in the opinion of the department, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposits of state funds by such Chief Financial Officer ~~Treasurer~~. All interest earned by such portion of the fund as may be invested by the Chief Financial Officer ~~Treasurer~~ shall be collected by her or him and placed to the credit of such fund.

(b)1. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state, the commercial self-insurers under ss. 624.462 and 624.4621, the assessable mutuals as defined in s. 628.6011 ~~under s. 628.601~~, and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. The department shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund and shall make such assessment in the manner hereinafter provided.

2. The annual assessment shall be calculated to produce during the ensuing fiscal year an amount which, when combined with that part of the balance in the fund on June 30 of the current fiscal year which is in excess of $100,000, is equal to the average of:

a. The sum of disbursements from the fund during the immediate past 3 calendar years, and

b. Two times the disbursements of the most recent calendar year.

Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers. Provided however, for those carriers that have excluded ceded reinsurance premiums from their assessments on or before January 1, 2000, no assessments on

ceded reinsurance premiums shall be paid by those carriers until such time as the former Division of Workers' Compensation of the Department of Labor and Employment Security or the department advises each of those carriers of the impact that the inclusion of ceded reinsurance premiums has on their assessment. The department may not recover any past underpayments of assessments levied against any carrier that on or before January 1, 2000, excluded ceded reinsurance premiums from their assessment prior to the point that the former Division of Workers' Compensation of the Department of Labor and Employment Security or the department advises of the appropriate assessment that should have been paid.

3. The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund in accordance with such regulations as the department prescribes.

4. The Chief Financial Officer ~~Treasurer~~ is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(c) Notwithstanding the Special Disability Trust Fund assessment rate calculated pursuant to this section, the rate assessed shall not exceed 4.52 percent.

(d) The Special Disability Trust Fund shall be supplemented by a $250 notification fee on each notice of claim filed or refiled after July 1, 1997, and a $500 fee on each proof of claim filed in accordance with subsection (7). Revenues from the fee shall be deposited into the Special Disability Trust Fund and are exempt from the deduction required by s. 215.20. The fees provided in this paragraph shall not be imposed upon any insurer which is in receivership with the department ~~of Insurance~~.

(e) The department or administrator shall report annually on the status of the Special Disability Trust Fund. The report shall update the estimated undiscounted and discounted fund liability, as determined by an independent actuary, change in the total number of notices of claim on file with the fund in addition to the number of newly filed notices of claim, change in the number of proofs of claim processed by the fund, the fee revenues refunded and revenues applied to pay down the liability of the fund, the average time required to reimburse accepted claims, and the average administrative costs per claim. The department or administrator shall submit its report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1 of each year.

Section 490. Subsections (1), (2), and (3) of section 440.50, Florida Statutes, are amended to read:

440.50 Workers' Compensation Administration Trust Fund.—

(1)(a) There is established in the State Treasury a special fund to be known as the "Workers' Compensation Administration Trust Fund" for the purpose of providing for the payment of all expenses in respect to the administration of this chapter, including the vocational rehabilitation of injured employees as provided in s. 440.49 and the payments due under s. 440.15(1)(f), the funding of the fixed administrative expenses of the plan, and the funding of the Bureau of Workers' Compensation Fraud within the Department of Financial Services ~~Insurance~~. Such fund shall be administered by the department.

(b) The department is authorized to transfer as a loan an amount not in excess of $250,000 from such special fund to the Special Disability Trust Fund established by s. 440.49(9), which amount shall be repaid to said special fund in annual payments equal to not less than 10 percent of moneys received for such Special Disability Trust Fund.

(2) The Chief Financial Officer ~~Treasurer~~ is authorized to disburse moneys from such fund only when approved by the department ~~and upon the order of the Comptroller~~.

(3) The Chief Financial Officer ~~Treasurer~~ shall deposit any moneys paid into such fund into such depository banks as the department may designate and is authorized to invest any portion of the fund which, in the opinion of the department, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such Chief Financial Officer ~~Treasurer~~. All interest earned by such portion of the fund as may be invested by the Chief Financial Officer ~~Treasurer~~ shall be collected by him or her and placed to the credit of such fund.

Section 491. Paragraph (a) of subsection (1) and subsection (3) of section 440.51, Florida Statutes, are amended to read:

440.51 Expenses of administration.—

(1) The department shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner.

(a) The department shall, by July 1 of each year, notify carriers and self-insurers of the assessment rate, which shall be based on the anticipated expenses of the administration of this chapter for the next calendar year. Such assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the office ~~Department of Insurance~~ which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly.

(3) If any carrier fails to pay the amounts assessed against him or her under the provisions of this section within 60 days from the time such notice is served upon him or her, the office, upon being notified by the department, may suspend or revoke the authorization to insure compensation in accordance with the procedure in s. 440.38(3)(a). The department may permit a carrier to remit any underpayment of assessments for assessments levied after January 1, 2001.

Section 492. Section 440.515, Florida Statutes, is amended to read:

440.515 Reports from self-insurers; confidentiality.—The department ~~of Insurance~~ shall maintain the reports filed in accordance with s. 440.51(6)(b) as confidential and exempt from the provisions of s. 119.07(1), and such reports shall be released only for bona fide research or educational purposes or after receipt of consent from the employer.

Section 493. Subsections (3) and (4) of section 440.52, Florida Statutes, are amended to read:

440.52 Registration of insurance carriers; notice of cancellation or expiration of policy; suspension or revocation of authority.—

(3) If the department finds, after due notice and a hearing at which the insurance carrier is entitled to be heard in person or by counsel and present evidence, that the insurance carrier has repeatedly failed to comply with its obligations under this chapter, the department may request the office to suspend or revoke the authorization of such insurance carrier to write workers' compensation insurance under this chapter. Such suspension or revocation shall not affect the liability of any such insurance carrier under policies in force prior to the suspension or revocation.

(4) In addition to the penalties prescribed in subsection (3), violation of s. 440.381 by an insurance carrier shall result in the imposition of a fine not to exceed $1,000 per audit, if the insurance carrier fails to act on said audits by correcting errors in employee classification or accepted applications for coverage where it knew employee classifications were incorrect. Such fines shall be levied by the office ~~Department of Insurance~~ and deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 494. Section 440.525, Florida Statutes, is amended to read:

440.525 Examination of carriers.—The department and office may examine each carrier as often as is warranted to ensure that carriers are fulfilling their obligations under this chapter ~~the law~~. The examination may cover any period of the carrier's operations since the last previous examination.

Section 495. Section 440.591, Florida Statutes, is amended to read:

440.591 Administrative procedure; rulemaking authority.—The department, the Financial Services Commission, the agency, and the Department of Education may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it.

Section 496. Paragraph (a) of subsection (5) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(5) FINANCING BENEFITS PAID TO EMPLOYEES OF THE STATE AND POLITICAL SUBDIVISIONS OF THE STATE.—Benefits paid to employees of this state or any instrumentality of this state, or to employees of any political subdivision of this state or any instrumentality thereof, based

upon service defined in s. 443.036(21)(b), shall be financed in accordance with this subsection.

(a)1. Unless an election is made as provided in paragraph (c), the state or any political subdivision of the state shall pay into the Unemployment Compensation Trust Fund an amount equivalent to the amount of regular benefits, short-time compensation benefits, and extended benefits paid to individuals, based on wages paid by the state or the political subdivision for service defined in s. 443.036(21)(b).

2. If ~~Should~~ any state agency becomes ~~become~~ more than 120 days delinquent on reimbursements due to the Unemployment Compensation Trust Fund, the division shall certify to the Chief Financial Officer ~~Comptroller~~ the amount due and the Chief Financial Officer ~~Comptroller~~ shall transfer the amount due to the Unemployment Compensation Trust Fund from the funds of such agency that may legally be used for such purpose. In the event any political subdivision of the state or any instrumentality thereof becomes more than 120 days delinquent on reimbursements due to the Unemployment Compensation Trust Fund, then, upon request by the division after a hearing, the Department of Revenue or the Department of Financial Services ~~Banking and Finance~~, as the case may be, shall deduct the amount owed by the political subdivision or instrumentality from any funds to be distributed by it to the county, city, special district, or consolidated form of government for further distribution to the trust fund in accordance with this chapter. Should any employer for whom the city or county tax collector collects taxes fail to make the reimbursements to the Unemployment Compensation Trust Fund required by this chapter, the tax collector after a hearing, at the request of the division and upon receipt of a certificate showing the amount owed by the employer, shall deduct the amount so certified from any taxes collected for the employer and remit same to the Department of Labor and Employment Security for further distribution to the trust fund in accordance with this chapter. This subparagraph does not apply to those amounts due for benefits paid prior to October 1, 1979. This subparagraph does not apply to amounts owed by a political subdivision for benefits erroneously paid where the claimant is required to repay to the division under s. 443.151(6)(a) or (b) any sum as benefits received.

Section 497. Subsections (2), (3), and (4) of section 443.191, Florida Statutes, are amended to read:

443.191 Unemployment Compensation Trust Fund; establishment and control.—

(2) The Chief Financial Officer ~~Treasurer~~ is the ex officio treasurer and custodian of the fund and shall administer the fund in accordance with the directions of the division. All payments from the fund must be approved by the division or by a duly authorized agent ~~and must be made by the Treasurer upon warrants issued by the Comptroller, except as hereinafter provided~~. The Chief Financial Officer ~~Treasurer~~ shall maintain within the fund three separate accounts:

(a) A clearing account;

(b) An Unemployment Compensation Trust Fund account; and

(c) A benefit account.

All moneys payable to the fund, including moneys received from the United States as reimbursement for extended benefits paid by the division, upon receipt thereof by the division, must be forwarded to the Chief Financial Officer ~~Treasurer~~, who shall immediately deposit them in the clearing account. Refunds payable under s. 443.141 may be paid from the clearing account ~~upon warrants issued by the Comptroller~~. After clearance, all other moneys in the clearing account must be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the Unemployment Compensation Trust Fund established and maintained under s. 904 of the Social Security Act, as amended, any provisions of the law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the Unemployment Compensation Trust Fund. Except as otherwise provided, moneys in the clearing and benefit accounts may be deposited by the Chief Financial Officer ~~Treasurer~~, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium may be paid out of the fund. If any warrant issued against the clearing account or the benefit account is not presented for payment within 1 year after issuance thereof, the Chief Financial Officer ~~Comptroller~~ must cancel the same and credit without restriction the amount of such warrant to the account upon which it is drawn. When the payee or person entitled to any warrant so canceled requests payment thereof, the Chief Financial Officer ~~Comptroller~~, upon direction of the division, must issue a new warrant therefor, to be paid out of the account against which the canceled warrant had been drawn.

(3) Moneys shall be requisitioned from the state's account in the Unemployment Compensation Trust Fund solely for the payment of benefits and extended benefits and in accordance with rules prescribed by the division, except that money credited to this state's account pursuant to s. 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection (5). The division, through the Chief Financial Officer ~~Treasurer~~, shall from time to time requisition from the Unemployment Compensation Trust Fund such amounts, not exceeding the amounts standing to this state's account therein, as it deems necessary for the payment of benefits and extended benefits for a reasonable future period. Upon receipt thereof, the Chief Financial Officer ~~Treasurer~~ shall deposit such moneys in the benefit account in the State Treasury and warrants for the payment of benefits and extended benefits shall be drawn ~~by the Comptroller~~ upon the order of the division against such benefit account. All warrants for benefits and extended benefits shall be payable directly to the ultimate beneficiary. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued for the payment of benefits and refunds

shall bear the signature of the Chief Financial Officer ~~Comptroller~~ as above set forth. Any balance of moneys requisitioned from the Unemployment Compensation Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and extended benefits during succeeding periods, or, in the discretion of the division, shall be redeposited with the Secretary of the Treasury of the United States, to the credit of this state's account in the Unemployment Compensation Trust Fund, as provided in subsection (2).

(4) The provisions of subsections (1), (2), and (3), to the extent that they relate to the Unemployment Compensation Trust Fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such Unemployment Compensation Trust Fund, from which no other state is permitted to make withdrawals. If and when such Unemployment Compensation Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the Unemployment Compensation Trust Fund of this state shall be transferred to the treasurer of the Unemployment Compensation Trust Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the division in accordance with the provisions of this chapter; however, such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest-bearing obligations of the United States or of the state. Further, such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the Unemployment Compensation Trust Fund only under the direction of the division.

Section 498. Subsections (1) and (2) of section 443.211, Florida Statutes, are amended to read:

443.211 Employment Security Administration Trust Fund; appropriation; reimbursement.—

(1) EMPLOYMENT SECURITY ADMINISTRATION TRUST FUND.—There is created in the State Treasury a special fund to be known as the "Employment Security Administration Trust Fund." All moneys that are deposited into this fund remain continuously available to the division for expenditure in accordance with the provisions of this chapter and do not lapse at any time and may not be transferred to any other fund. All moneys in this fund which are received from the Federal Government or any agency thereof or which are appropriated by this state for the purposes described in ss. 443.171 and 443.181, except money received under s. 443.191(5)(c), must be expended solely for the purposes and in the amounts found necessary by the authorized cooperating federal agencies for the proper and efficient administration of this chapter. The fund shall consist of all moneys

appropriated by this state; all moneys received from the United States or any agency thereof; all moneys received from any other source for such purpose; any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Trust Fund or by reason of damage to equipment or supplies purchased from moneys in such fund; and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this chapter. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund under s. 443.191(5)(c) remains part of the Unemployment Compensation Trust Fund and must be used only in accordance with the conditions specified in s. 443.191(5). All moneys in this fund must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Such moneys must be secured by the depositary in which they are held to the same extent and in the same manner as required by the general depositary law of the state, and collateral pledged must be maintained in a separate custody account. All payments from the Employment Security Administration Trust Fund must be approved by the division or by a duly authorized agent and must be made by the Chief Financial Officer ~~Treasurer upon warrants issued by the Comptroller~~. Any balances in this fund do not lapse at any time and must remain continuously available to the division for expenditure consistent with this chapter.

(2) SPECIAL EMPLOYMENT SECURITY ADMINISTRATION TRUST FUND.—There is created in the State Treasury a special fund, to be known as the "Special Employment Security Administration Trust Fund," into which shall be deposited or transferred all interest on contributions, penalties, and fines or fees collected under this chapter. Interest on contributions, penalties, and fines or fees deposited during any calendar quarter in the clearing account in the Unemployment Compensation Trust Fund shall, as soon as practicable after the close of such calendar quarter and upon certification of the division, be transferred to the Special Employment Security Administration Trust Fund. However, there shall be withheld from any such transfer the amount certified by the division to be required under this chapter to pay refunds of interest on contributions, penalties, and fines or fees collected and erroneously deposited into the clearing account in the Unemployment Compensation Trust Fund. Such amounts of interest and penalties so certified for transfer shall be deemed to have been erroneously deposited in the clearing account, and the transfer thereof to the Special Employment Security Administration Trust Fund shall be deemed to be a refund of such erroneous deposits. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury. These moneys shall not be expended or be available for expenditure in any manner which would permit their substitution for, or permit a corresponding reduction in, federal funds which would, in the absence of these moneys, be available to finance expenditures for the administration of the Unemployment Compensation Law. But nothing in this section shall prevent these moneys from being used as a revolving fund to

cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The moneys in this fund, with the approval of the Executive Office of the Governor, shall be used by the Division of Unemployment Compensation and the Agency for Workforce Innovation for the payment of costs of administration which are found not to have been properly and validly chargeable against funds obtained from federal sources. All moneys in the Special Employment Security Administration Trust Fund shall be continuously available to the division for expenditure in accordance with the provisions of this chapter and shall not lapse at any time. All payments from the Special Employment Security Administration Trust Fund shall be approved by the division or by a duly authorized agent thereof and shall be made by the Chief Financial Officer ~~Treasurer upon warrants issued by the Comptroller~~. The moneys in this fund are hereby specifically made available to replace, as contemplated by subsection (3), expenditures from the Employment Security Administration Trust Fund, established by subsection (1), which have been found by the Bureau of Employment Security, or other authorized federal agency or authority, because of any action or contingency, to have been lost or improperly expended. The Chief Financial Officer ~~Treasurer~~ shall be liable on her or his official bond for the faithful performance of her or his duties in connection with the Special Employment Security Administration Trust Fund.

Section 499. Subsection (4) of section 445.0325, Florida Statutes, is amended to read:

445.0325 Welfare Transition Trust Fund.—

(4) All funds transferred to and retained in the trust fund shall be invested pursuant to s. 17.61 ~~s. 18.125~~. Any interest accruing to the trust fund shall be for the benefit of the welfare transition program. Notwithstanding s. 216.301 and pursuant to s. 216.351, any undisbursed balance remaining in the trust fund and interest accruing to the trust fund not distributed at the end of the fiscal year shall remain in the trust fund and shall increase the total funds available to implement the welfare transition program.

Section 500. Section 447.12, Florida Statutes, is amended to read:

447.12 Fees for registration.—All fees collected by the department under this part shall be paid to the Chief Financial Officer ~~Treasurer~~ and credited to the General Revenue Fund.

Section 501. Subsection (1) of section 450.155, Florida Statutes, is amended to read:

450.155 Child Labor Law Trust Fund.—

(1) There is created in the State Treasury an account to be known as the Child Labor Law Trust Fund. Subject to such appropriations as the Legislature may make therefor from time to time, disbursements from this account may be made by the division, subject to the approval of the department, in order to carry out the proper responsibilities of administering the Child

Labor Law, to protect the working youth of the state, and to provide education about the Child Labor Law to employers, public school employees, the general public, and working youth. The Child Labor Law Trust Fund and the moneys deposited therein shall be under the direct supervision and control of the department, and such moneys may be disbursed by the Chief Financial Officer ~~Treasurer~~ from time to time as determined by the department.

Section 502. Subsections (1) and (2) of section 468.392, Florida Statutes, are amended to read:

468.392 Auctioneer Recovery Fund.—There is created the Auctioneer Recovery Fund as a separate account in the Professional Regulation Trust Fund. The fund shall be administered by the Florida Board of Auctioneers.

(1) The Chief Financial Officer ~~Treasurer~~ shall invest the money not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited to the credit of the Auctioneer Recovery Fund and shall be available for the same purposes as other moneys deposited in the Auctioneer Recovery Fund.

(2) All payments and disbursements from the Auctioneer Recovery Fund shall be made by the Chief Financial Officer ~~Treasurer~~ upon a voucher signed by the Secretary of Business and Professional Regulation or the secretary's designee. Amounts transferred to the Auctioneer Recovery Fund shall not be subject to any limitation imposed by an appropriation act of the Legislature.

Section 503. Subsection (3) of section 468.529, Florida Statutes, is amended to read:

468.529 Licensee's insurance; employment tax; benefit plans.—

(3) A licensed employee leasing company shall within 30 days of initiation or termination notify its workers' compensation insurance carrier, the Division of Workers' Compensation of the Department of Financial Services, and the Division of Unemployment Compensation of the Department of Labor and Employment Security of both the initiation or the termination of the company's relationship with any client company.

Section 504. Subsection (2) of section 473.3065, Florida Statutes, is amended to read:

473.3065 Certified Public Accountant Education Minority Assistance Program; advisory council.—

(2) All moneys used to provide scholarships under the program shall be funded by a portion of existing license fees, as set by the board, not to exceed $10 per license. Such moneys shall be deposited into the Professional Regulation Trust Fund in a separate account maintained for that purpose. The department is authorized to spend up to $100,000 per year for the program from this program account, but may not allocate overhead charges to it.

Moneys for scholarships shall be disbursed annually upon recommendation of the advisory council and approval by the board, based on the adopted eligibility criteria and comparative evaluation of all applicants. Funds in the program account may be invested by the Chief Financial Officer ~~Treasurer~~ under the same limitations as apply to investment of other state funds, and all interest earned thereon shall be credited to the program account.

Section 505. Subsection (7) of section 475.045, Florida Statutes, is amended to read:

475.045 Florida Real Estate Commission Education and Research Foundation.—

(7) The Chief Financial Officer ~~Treasurer~~ shall invest $3 million from the portion of the Professional Regulation Trust Fund credited to the real estate profession, under the same limitations as applied to investments of other state funds, and the income earned thereon shall be available to the foundation to fund the activities and projects authorized under this section. However, any balance of such interest in excess of $1 million shall revert to the portion of the Professional Regulation Trust Fund credited to the real estate profession. In the event the foundation is abolished, the funds in the trust fund shall revert to such portion of the Professional Regulation Trust Fund.

Section 506. Subsection (6) of section 475.484, Florida Statutes, is amended to read:

475.484 Payment from the fund.—

(6) All payments and disbursements from the Real Estate Recovery Fund shall be made by the Chief Financial Officer ~~Treasurer~~ upon a voucher signed by the secretary of the department. Amounts transferred to the Real Estate Recovery Fund shall not be subject to any limitation imposed by an appropriation act of the Legislature.

Section 507. Section 475.485, Florida Statutes, is amended to read:

475.485 Investment of the fund.—The funds in the Real Estate Recovery Fund may be invested by the Chief Financial Officer ~~Treasurer~~ under the same limitations as apply to investment of other state funds, and the interest earned thereon shall be deposited to the credit of the Real Estate Recovery Fund and shall be available for the same purposes as other moneys deposited in the Real Estate Recovery Fund.

Section 508. Section 489.114, Florida Statutes, is amended to read:

489.114 Evidence of workers' compensation coverage.—Except as provided in s. 489.115(5)(d), any person, business organization, or qualifying agent engaged in the business of contracting in this state and certified or registered under this part shall, as a condition precedent to the issuance or renewal of a certificate, registration, or certificate of authority of the contractor, provide to the Construction Industry Licensing Board, as provided by board rule, evidence of workers' compensation coverage pursuant to chapter 440. In the event that the Division of Workers' Compensation of the

Department of Financial Services ~~Labor and Employment Security~~ receives notice of the cancellation of a policy of workers' compensation insurance insuring a person or entity governed by this section, the Division of Workers' Compensation shall certify and identify all persons or entities by certification or registration license number to the department after verification is made by the Division of Workers' Compensation that persons or entities governed by this section are no longer covered by workers' compensation insurance. Such certification and verification by the Division of Workers' Compensation may result from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section or an investigation completed by the Division of Workers' Compensation. The department shall notify the persons or entities governed by this section who have been determined to be in noncompliance with chapter 440, and the persons or entities notified shall provide certification of compliance with chapter 440 to the department and pay an administrative fine in the amount of $500. The failure to maintain workers' compensation coverage as required by law shall be grounds for the board to revoke, suspend, or deny the issuance or renewal of a certificate, registration, or certificate of authority of the contractor under the provisions of s. 489.129.

Section 509. Section 489.144, Florida Statutes, is amended to read:

489.144 Investment of the fund.—The funds in the Construction Industries Recovery Fund may be invested by the Chief Financial Officer ~~Treasurer~~ under the same limitations as apply to the investment of other state funds, and the interest earned thereon shall be deposited to the credit of the Construction Industries Recovery Fund and shall be available for the same purposes as other moneys deposited in the Construction Industries Recovery Fund.

Section 510. Subsection (6) of section 489.145, Florida Statutes, is amended to read:

489.145 Guaranteed energy performance savings contracting.—

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The Department of Management Services, with the assistance of the Office of the Chief Financial Officer ~~Comptroller~~, may, within available resources, provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy performance contracting by state agencies. The Office of the Chief Financial Officer ~~Comptroller~~, with the assistance of the Department of Management Services, may, within available resources, develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy performance savings contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the Office of the Chief Financial Officer ~~Comptroller~~ for review and approval.

Section 511. Section 489.510, Florida Statutes, is amended to read:

489.510 Evidence of workers' compensation coverage.—Except as provided in s. 489.515(3)(b), any person, business organization, or qualifying agent engaged in the business of contracting in this state and certified or registered under this part shall, as a condition precedent to the issuance or renewal of a certificate or registration of the contractor, provide to the Electrical Contractors' Licensing Board, as provided by board rule, evidence of workers' compensation coverage pursuant to chapter 440. In the event that the Division of Workers' Compensation of the Department of Financial Services ~~Labor and Employment Security~~ receives notice of the cancellation of a policy of workers' compensation insurance insuring a person or entity governed by this section, the Division of Workers' Compensation shall certify and identify all persons or entities by certification or registration license number to the department after verification is made by the Division of Workers' Compensation that persons or entities governed by this section are no longer covered by workers' compensation insurance. Such certification and verification by the Division of Workers' Compensation may result from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section or an investigation completed by the Division of Workers' Compensation. The department shall notify the persons or entities governed by this section who have been determined to be in noncompliance with chapter 440, and the persons or entities notified shall provide certification of compliance with chapter 440 to the department and pay an administrative fine in the amount of $500. The failure to maintain workers' compensation coverage as required by law shall be grounds for the board to revoke, suspend, or deny the issuance or renewal of a certificate or registration of the contractor under the provisions of s. 489.533.

Section 512. Subsection (5) of section 489.533, Florida Statutes, is amended to read:

489.533 Disciplinary proceedings.—

(5) When the board imposes administrative fines pursuant to subsection (2) resulting from violation of chapter 633 or violation of the rules of the State Fire Marshal, 50 percent of the fine shall be paid into the Insurance ~~Commissioner's~~ Regulatory Trust Fund to help defray the costs of investigating the violations and obtaining the corrective action. The State Fire Marshal may participate at its discretion, but not as a party, in any proceedings before the board relating to violation of chapter 633 or the rules of the State Fire Marshal, in order to make recommendations as to the appropriate penalty in such case. However, the State Fire Marshal shall not have standing to bring disciplinary proceedings regarding certification.

Section 513. Subsection (8) of section 494.001, Florida Statutes, is amended, present subsections (9) through (29) of that section are renumbered as (10) through (30), respectively, and a new subsection (9) is added to that subsection to read:

494.001 Definitions.—As used in ss. 494.001-494.0077, the term:

(8) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(9) "Office" means the Office of Financial Regulation of the commission.

Section 514. Section 494.0011, Florida Statutes, is amended to read:

494.0011 Powers and duties of the commission and office ~~department~~.—

(1) The office ~~department~~ shall be responsible for the administration and enforcement of ss. 494.001-494.0077.

(2) The commission ~~department~~ has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ss. 494.001-494.0077. The commission ~~department~~ may adopt rules to allow electronic submission of any forms, documents, or fees required by this act. The commission ~~department~~ may also adopt rules to accept certification of compliance with requirements of this act in lieu of requiring submission of documents.

(3) All fees, charges, and fines collected ~~by the department~~ pursuant to ss. 494.001-494.0077 shall be deposited in the State Treasury to the credit of the Regulatory Trust Fund under the office ~~department~~.

(4)(a) The office ~~department~~ has the power to issue and to serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an examination or investigation. The office ~~department~~, or its duly authorized representative, has the power to administer oaths and affirmations to any person.

(b) The office ~~department~~ may, in its discretion, seek subpoenas or subpoenas duces tecum from any court of competent jurisdiction commanding the appearance of witnesses and the production of books, accounts, records, and other documents or materials at a time and place named in the subpoenas; and any authorized representative of the office ~~department~~ may serve any subpoena.

(5)(a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office ~~department~~, the office ~~department~~ may petition the circuit court or any other court of competent jurisdiction of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, accounts, records, and other documents as are specified in the subpoena duces tecum. The court may grant injunctive relief restraining the person from advertising, promoting, soliciting, entering into, offering to enter into, continuing, or completing any mortgage loan transaction or mortgage loan servicing transaction. The court may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of the person's assets or any concealment, alteration, destruction, or other disposition of books, accounts, records, or other documents and materials as the court deems appropriate, until the person has fully complied with the subpoena duces tecum and the office ~~department~~ has completed its investigation or examination. In addition, the court may order the refund of any fees collected in a mortgage loan transaction whenever books and documents substantiating the transaction

are not produced or cannot be produced. The office ~~department~~ is entitled to the summary procedure provided in s. 51.011, and the court shall advance such cause on its calendar. Attorney's fees and any other costs incurred by the office ~~department~~ to obtain an order granting, in whole or part, a petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order is a contempt of court.

(b) When it appears to the office ~~department~~ that the compliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office ~~department~~ pursuant to this section is essential and otherwise unavailable to an investigation or examination, the office ~~department~~, in addition to the other remedies provided for in this section, may apply to the circuit court or any other court of competent jurisdiction of the county in which the subpoenaed person resides or has its principal place of business for a writ of ne exeat. The court shall thereupon direct the issuance of the writ against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the writ a suitable amount of bond upon the payment of which the person named in the writ shall be freed, having a due regard to the nature of the case.

(c) Alternatively, the office ~~department~~ may seek a writ of attachment from the court having jurisdiction over the person who has refused to obey a subpoena, who has refused to give testimony, or who has refused to produce the matters described in the subpoena duces tecum.

Section 515. Section 494.0012, Florida Statutes, is amended to read:

494.0012 Investigations; complaints; examinations.—

(1) The office ~~department~~ may conduct an investigation of any person whenever the office ~~department~~ has reason to believe, either upon complaint or otherwise, that any violation of ss. 494.001-494.0077 has been committed or is about to be committed.

(2) Any person having reason to believe that a provision of this act has been violated may file a written complaint with the office ~~department~~ setting forth details of the alleged violation.

(3)(a) The office ~~department~~ may, at intermittent periods, conduct examinations of any licensee or other person under the provisions of ss. 494.001-494.0077.

(b) The office ~~department~~ shall conduct all examinations at a convenient location in this state unless the office ~~department~~ determines that it is more effective or cost-efficient to perform an examination at the licensee's out-of-state location. For an examination performed at the licensee's out-of-state location, the licensee shall pay the travel expense and per diem subsistence at the rate provided by law for up to thirty 8-hour days per year for each office ~~department~~ examiner who participates in such an examination. However, if the examination involves or reveals fraudulent conduct by the li-

censee, the licensee shall pay the travel expense and per diem subsistence provided by law, without limitation, for each participating examiner.

Section 516. Section 494.00125, Florida Statutes, is amended to read:

494.00125 Confidentiality of information relating to investigations and examinations.—

(1)(a) Except as otherwise provided by this section, information relative to an investigation or examination by the office ~~department~~ pursuant to this chapter, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) until the investigation or examination is completed or ceases to be active. The information compiled by the office ~~department~~ in such an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the office's ~~department's~~ investigation or examination is completed or ceases to be active if the office ~~department~~ submits the information to any law enforcement or administrative agency for further investigation. Such information shall remain confidential and exempt from s. 119.07(1) until that agency's investigation is completed or ceases to be active. For purposes of this section, an investigation or examination shall be considered "active" so long as the office ~~department~~ or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license. This section shall not be construed to prohibit disclosure of information which is required by law to be filed with the office ~~department~~ and which, but for the investigation or examination, would be subject to s. 119.07(1).

(b) Except as necessary for the office ~~department~~ to enforce the provisions of this chapter, a consumer complaint and other information relative to an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the investigation or examination is completed or ceases to be active to the extent disclosure would:

1. Jeopardize the integrity of another active investigation or examination.

2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder.

3. Disclose the identity of a confidential source.

4. Disclose investigative techniques or procedures.

5. Reveal a trade secret as defined in s. 688.002.

(c) In the event that office ~~department~~ personnel are or have been involved in an investigation or examination of such nature as to endanger their lives or physical safety or that of their families, then the home addresses, telephone numbers, places of employment, and photographs of such

personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the names and locations of schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).

(d) Nothing in this section shall be construed to prohibit the office ~~department~~ from providing information to any law enforcement or administrative agency. Any law enforcement or administrative agency receiving confidential information in connection with its official duties shall maintain the confidentiality of the information so long as it would otherwise be confidential.

(e) All information obtained by the office ~~department~~ from any person which is only made available to the office ~~department~~ on a confidential or similarly restricted basis shall be confidential and exempt from s. 119.07(1). This exemption shall not be construed to prohibit disclosure of information which is required by law to be filed with the office ~~department~~ or which is otherwise subject to s. 119.07(1).

(2) If information subject to subsection (1) is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may, in her or his discretion, prevent the disclosure of information which would be confidential pursuant to paragraph (1)(b).

(3) A privilege against civil liability is granted to a person who furnishes information or evidence to the office ~~department~~, unless such person acts in bad faith or with malice in providing such information or evidence.

Section 517. Section 494.0013, Florida Statutes, is amended to read:

494.0013 Injunction to restrain violations.—

(1) The office ~~department~~ may bring action through its own counsel in the name and on behalf of the state against any person who has violated or is about to violate any provision of ss. 494.001-494.0077 or any rule of the commission or order of the office ~~department~~ issued under ss. 494.001-494.0077 to enjoin the person from continuing in or engaging in any act in furtherance of the violation.

(2) In any injunctive proceeding, the court may, on due showing by the office ~~department~~, issue a subpoena or subpoena duces tecum requiring the attendance of any witness and requiring the production of any books, accounts, records, or other documents and materials that appear necessary to the expeditious resolution of the application for injunction.

(3) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceeding, the court has the power and jurisdiction, upon application of the office ~~department~~, to impound, and to appoint a receiver or administrator for, the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, has all powers and duties as to custody,

collection, administration, winding up, and liquidation of the property and business as are from time to time conferred upon him or her by the court. In any such action, the court may issue an order staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the property, assets, and business, or the court, in its discretion and with the consent of the chief judge of the circuit, may require that all such suits be assigned to the circuit court judge who appoints the receiver or administrator.

Section 518. Section 494.0014, Florida Statutes, is amended to read:

494.0014 Cease and desist orders; refund orders.—

(1) The office ~~department~~ has the power to issue and serve upon any person an order to cease and desist and to take corrective action whenever it has reason to believe the person is violating, has violated, or is about to violate any provision of ss. 494.001-494.0077, any rule or order ~~of the department~~ issued under ss. 494.001-494.0077, or any written agreement between the person and the office ~~department~~. All procedural matters relating to issuance and enforcement of such a cease and desist order are governed by the Administrative Procedure Act.

(2) The office ~~department~~ has the power to order the refund of any fee directly or indirectly assessed and charged on a mortgage loan transaction which is unauthorized or exceeds the maximum fee specifically authorized in ss. 494.001-494.0077.

(3) The office ~~department~~ may prohibit the association by a mortgage broker business, or the employment by a mortgage lender or correspondent mortgage lender, of any person who has engaged in a pattern of misconduct while an associate of a mortgage brokerage business or an employee of a mortgage lender or correspondent mortgage lender. For the purpose of this subsection, the term "pattern of misconduct" means the commission of three or more violations of ss. 494.001-494.0077 or the provisions of chapter 494 in effect prior to October 1, 1991, during any 1-year period or any criminal conviction for violating ss. 494.001-494.0077 or the provisions of chapter 494 in effect prior to October 1, 1991.

Section 519. Section 494.0016, Florida Statutes, is amended to read:

494.0016 Books, accounts, and records; maintenance; examinations by the office ~~department~~.—

(1) Each licensee shall maintain, at the principal place of business designated on the license, all books, accounts, records, and documents necessary to determine the licensee's compliance with ss. 494.001-494.0077.

(2) The office ~~department~~ may authorize maintenance of records at a location other than a principal place of business. The office ~~department~~ may require books, accounts, and records to be produced and available at a reasonable and convenient location in this state.

(3) All books, accounts, records, documents, and receipts for expenses paid by the licensee on behalf of the borrower, including each closing state-

ment signed by a borrower, shall be preserved and kept available for examination by the office ~~department~~ for at least 3 years after the date of original entry.

(4) The commission ~~department~~ may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of licensees so that such records will enable the office ~~department~~ to determine the licensee's compliance with ss. 494.001-494.0077.

Section 520. Subsection (2) of section 494.00165, Florida Statutes, is amended to read:

494.00165 Prohibited advertising; record requirements.—

(2) Each person required to be licensed under this chapter shall maintain a record of samples of each of its advertisements, including commercial scripts of each radio or television broadcast, for examination by the office ~~department~~ for a period of 2 years after the date of publication or broadcast.

Section 521. Section 494.0017, Florida Statutes, is amended to read:

494.0017 Mortgage Brokerage Guaranty Fund.—

(1) The office ~~department~~ shall make transfers from the Regulatory Trust Fund to the Mortgage Brokerage Guaranty Fund to pay valid claims arising under former ss. 494.042, 494.043, and 494.044, as provided in former s. 494.00171.

(2) Any money paid to the Mortgage Brokerage Guaranty Fund in excess of any liability to claimants against the Mortgage Brokerage Guaranty Fund shall be transferred to the Regulatory Trust Fund.

(3) The Mortgage Brokerage Guaranty Fund shall be disbursed as provided in former s. 494.044, upon approval by the office ~~department~~, to any party to a mortgage financing transaction who:

(a) Is adjudged by a court of competent jurisdiction of this state to have suffered monetary damages as a result of any violation of chapter 494 in effect prior to October 1, 1991, committed by a licensee or registrant;

(b) Has filed a claim for recovery prior to January 1, 1992; and

(c) Has suffered monetary damages as a result of an act occurring prior to October 1, 1991.

(4) Notwithstanding s. 215.965, the office ~~department~~ may disburse funds to a court or court-appointed person for distribution, if the conditions precedent for recovery exist and the distribution would be the fairest and most equitable manner of distributing the funds.

Section 522. Section 494.0021, Florida Statutes, is amended to read:

494.0021 Public records.—All audited financial statements submitted pursuant to ss. 494.001-494.0077 are confidential and exempt from the

requirements of s. 119.07(1), except that office ~~department~~ employees may have access to such information in the administration and enforcement of ss. 494.001-494.0077 and such information may be used by office ~~department~~ personnel in the prosecution of violations under ss. 494.001-494.0077.

Section 523. Subsections (1), (2), (3), (5), and (7) of section 494.0025, Florida Statutes, are amended to read:

494.0025 Prohibited practices.—It is unlawful for any person:

(1) To act as a mortgage lender in this state without a current, active license issued by the office ~~department~~ pursuant to ss. 494.006-494.0077.

(2) To act as a correspondent mortgage lender in this state without a current, active license issued by the office ~~department~~ pursuant to ss. 494.006-494.0077.

(3) To act as a mortgage broker in this state without a current, active license issued by the office ~~department~~ pursuant to ss. 494.003-494.0043.

(5) In any matter within the jurisdiction of the office ~~department~~, to knowingly and willfully falsify, conceal, or cover up by a trick, scheme, or device a material fact, make any false or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false or fraudulent statement or entry.

(7) Who is required to be licensed under ss. 494.006-494.0077, to fail to report to the office ~~department~~ the failure to meet the net worth requirements of s. 494.0061, s. 494.0062, or s. 494.0065 within 48 hours after the person's knowledge of such failure or within 48 hours after the person should have known of such failure.

Section 524. Subsection (3) of section 494.0028, Florida Statutes, is amended to read:

494.0028 Arbitration.—

(3) All agreements subject to this section shall provide the noninstitutional investor or borrower with the option to elect arbitration before the American Arbitration Association or other independent nonindustry arbitration forum. Any other nonindustry arbitration forum may apply to the office ~~department~~ to allow such forum to provide arbitration services. The office ~~department~~ shall grant the application if the applicant's fees, practices, and procedures do not materially differ from those of the American Arbitration Association.

Section 525. Section 494.0029, Florida Statutes, is amended to read:

494.0029 Mortgage business schools.—

(1) Each person, school, or institution, except accredited colleges, universities, community colleges, and area technical centers in this state, which offers or conducts mortgage business training as a condition precedent to licensure as a mortgage broker or lender or a correspondent mortgage lender

shall obtain a permit from the office ~~department~~ and abide by the regulations imposed upon such person, school, or institution by this chapter and rules adopted pursuant to this chapter. The commission ~~department~~ shall, by rule, recertify the permits annually with initial and renewal permit fees that do not exceed $500 plus the cost of accreditation.

(2) All such schools shall maintain curriculum and training materials necessary to determine the school's compliance with this chapter and rules adopted pursuant to this chapter. Any school that offers or conducts mortgage business training shall at all times maintain an operation of training, materials, and curriculum which is open to review by the office ~~department~~ to determine compliance and competency as a mortgage business school.

(3)(a) It is unlawful for any such person, school, or institution to offer or conduct mortgage business courses, regardless of the number of pupils, without first procuring a permit or to guarantee that the pupils will pass any mortgage business examination given on behalf of the office ~~department~~ or to represent that the issuance of a permit is any recommendation or endorsement of the person, school, or institution to which it is issued or of any course of instruction given thereunder. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) The location of classes and the frequency of class meetings shall be in the discretion of the school offering the courses, if such courses conform to this chapter and related rules adopted by the commission ~~department~~.

(c) A mortgage business school may not use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a mortgage business school, or of its representative, shall be based upon relevant facts and supported by evidence establishing their truth.

(d) A representative of a mortgage business school subject to the provisions of this chapter may not promise or guarantee employment or placement of any pupil or prospective pupil, using information, training, or skill purported to be provided or otherwise enhanced by a course or school as inducement to enroll in the school, unless such person offers the pupil or prospective pupil a bona fide contract of employment.

(e) A school shall advertise only as a school and under the permitted name of such school as recognized by the office ~~department~~.

(f) Reference may not be made in any publication or communication medium as to a pass/fail ratio on mortgage business examinations by any school permitted by the office ~~department~~.

Section 526. Subsections (1) and (3) of section 494.00295, Florida Statutes, are amended to read:

494.00295 Professional education.—

(1) Each mortgage broker, mortgage lender, and correspondent mortgage lender must certify to the office ~~department~~ at the time of renewal that

during the 2 years prior to an application for license renewal, all mortgage brokers and the principal representative, loan originators, and associates of a mortgage lender or correspondent mortgage lender have successfully completed at least 14 hours of professional education programs covering primary and subordinate mortgage financing transactions and the provisions of this chapter. Licensees shall maintain records documenting compliance with this subsection for a period of 4 years.

(3) The commission ~~department~~ shall adopt rules necessary to administer this section, including rules governing qualifying hours for professional education programs and standards for electronically transmitted or distance education courses, including course completion requirements.

Section 527. Subsections (1), (2), (4), and (5) of section 494.0031, Florida Statutes, are amended to read:

494.0031 Licensure as a mortgage brokerage business.—

(1) The office ~~department~~ shall issue a mortgage brokerage business license to each person who:

(a) Has submitted a completed application form and a nonrefundable application fee of $425; and

(b) Has a qualified principal broker pursuant to s. 494.0035.

(2) The commission ~~department~~ may require that each officer, director, and ultimate equitable owner of a 10-percent or greater interest in the mortgage brokerage business submit a complete set of fingerprints taken by an authorized law enforcement officer.

(4) A mortgage brokerage business or branch office license may be canceled if it was issued through mistake or inadvertence of the office ~~department~~. A notice of cancellation must be issued by the office ~~department~~ within 90 days after the issuance of the license. A notice of cancellation shall be effective upon receipt. The notice of cancellation shall provide the applicant with notification of the right to request a hearing within 21 days after the applicant's receipt of the notice of cancellation. A license shall be reinstated if the applicant can demonstrate that the requirements for obtaining the license pursuant to this chapter have been satisfied.

(5) If an initial mortgage brokerage business or branch office license has been issued but the check upon which the license is based is returned due to insufficient funds, the license shall be deemed canceled. A license deemed canceled pursuant to this subsection shall be reinstated if the office ~~department~~ receives a certified check for the appropriate amount within 30 days after the date the check was returned due to insufficient funds.

Section 528. Section 494.0032, Florida Statutes, is amended to read:

494.0032 Renewal of mortgage brokerage business license or branch office license.—

(1) The office ~~department~~ shall renew a mortgage brokerage business license upon receipt of a completed renewal form and payment of a nonrefundable renewal fee of $375. Each licensee shall pay at the time of renewal a nonrefundable renewal fee of $225 for the renewal of each branch office license.

(2) The commission ~~department~~ shall adopt rules establishing a procedure for the biennial renewal of mortgage brokerage business licenses and branch office licenses. The commission ~~department~~ may prescribe the form for renewal and may require an update of all information provided in the licensee's initial application.

(3) A mortgage brokerage business or branch office license that is not renewed by the end of the biennium established by the commission ~~department~~ shall revert from active to inactive status. An inactive license may be reactivated within 6 months after becoming inactive by filing a completed reactivation form with the office ~~department~~, payment of the renewal fee, and payment of a nonrefundable reactivation fee of $100. A license that is not renewed within 6 months after the end of the biennial period automatically expires.

Section 529. Subsections (2), (3), (6), and (7) of section 494.0033, Florida Statutes, are amended to read:

494.0033 Mortgage broker's license.—

(2) Each initial application for a mortgage broker's license must be in the form prescribed by rule of the commission ~~department~~. The commission ~~department~~ may require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The office ~~department~~ shall issue an initial license to any natural person who:

(a) Is at least 18 years of age;

(b) Has passed a written test adopted by the office ~~department~~ which is designed to determine competency in primary and subordinate mortgage financing transactions as well as to test knowledge of ss. 494.001-494.0077 and the rules adopted pursuant thereto;

(c) Has submitted a completed application and a nonrefundable application fee of $200. The commission ~~department~~ may set by rule an additional fee for a retake of the examination; and

(d) Has filed a complete set of fingerprints, taken by an authorized law enforcement officer, for submission by the office ~~department~~ to the Department of Law Enforcement or the Federal Bureau of Investigation for processing.

(3) Any person applying after July 1, 1992, must have completed 24 hours of classroom education on primary and subordinate financing transactions and the laws and rules of ss. 494.001-494.0077 to be eligible for licensure. The commission ~~department~~ may adopt rules regarding qualifying hours.

(6) A mortgage broker license may be canceled if it was issued through mistake or inadvertence of the office ~~department~~. A notice of cancellation must be issued by the office ~~department~~ within 90 days after the issuance of the license. A notice of cancellation shall be effective upon receipt. The notice of cancellation shall provide the applicant with notification of the right to request a hearing within 21 days after the applicant's receipt of the notice of cancellation. A license shall be reinstated if the applicant can demonstrate that the requirements for obtaining the license pursuant to this chapter have been satisfied.

(7) If an initial mortgage broker license has been issued but the check upon which the license is based is returned due to insufficient funds, the license shall be deemed canceled. A license deemed canceled pursuant to this subsection shall be reinstated if the office ~~department~~ receives a certified check for the appropriate amount within 30 days after the date the check was returned due to insufficient funds.

Section 530. Section 494.0034, Florida Statutes, is amended to read:

494.0034 Renewal of mortgage broker's license.—

(1) The office ~~department~~ shall renew a mortgage broker license upon receipt of the completed renewal form, certification of compliance with continuing education requirements of s. 494.00295, and payment of a nonrefundable renewal fee of $150.

(2) The commission ~~department~~ shall adopt rules establishing a procedure for the biennial renewal of mortgage broker's licenses. The commission ~~department~~ may prescribe the form of the renewal application and may require an update of information since the licensee's last renewal.

(3) A license that is not renewed by the end of the biennium prescribed by the commission ~~department~~ shall revert from active to inactive status. An inactive license may be reactivated within 2 years after becoming inactive by filing a completed reactivation form with the office ~~department~~, payment of the renewal fee, and payment of a nonrefundable reactivation fee of $100. A license that is not renewed within 2 years after becoming inactive automatically expires.

Section 531. Section 494.0035, Florida Statutes, is amended to read:

494.0035 Principal broker and branch broker requirements.—

(1) Each mortgage brokerage business must have a principal broker who shall operate the business under such broker's full charge, control, and supervision. The principal broker must have been a licensed mortgage broker pursuant to s. 494.0033 for at least 1 year prior to being designated as a principal broker, or shall demonstrate to the satisfaction of the office ~~department~~ that such principal broker has been actively engaged in a mortgage-related business for at least 1 year prior to being designated as a principal broker. Each mortgage brokerage business shall maintain a form as prescribed by the commission ~~department~~ indicating the business's designation of principal broker and the individual's acceptance of such responsibility. If the form is unavailable, inaccurate, or incomplete, it is deemed that

the business was operated in the full charge, control, and supervision by each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage brokerage business, or any other person in a similar capacity.

(2) Each branch office of a mortgage brokerage business must have a designated branch broker who shall operate the business under such broker's full charge, control, and supervision. The designated branch broker must be a licensed mortgage broker pursuant to s. 494.0033. Each branch office shall maintain a form as prescribed by the commission ~~department~~ logging the branch's designation of a branch broker and the individual's acceptance of such responsibility. If the form is unavailable, inaccurate, or incomplete, it is deemed that the branch was operated in the full charge, control, and supervision by each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage brokerage business, or any other person in a similar capacity.

Section 532. Subsection (2) of section 494.0036, Florida Statutes, is amended to read:

494.0036 Mortgage brokerage business branch offices.—

(2) The office ~~department~~ shall issue a mortgage brokerage business branch office license upon receipt of a completed application in a form as prescribed by commission ~~department~~ rule and payment of an initial nonrefundable branch office license fee of $225. Branch office licenses must be renewed in conjunction with the renewal of the mortgage brokerage business license. The branch office license shall be issued in the name of the mortgage brokerage business that maintains the branch office.

Section 533. Paragraph (c) of subsection (1) of section 494.0038, Florida Statutes, is amended to read:

494.0038 Mortgage broker disclosures.—

(1)

(c) The commission ~~department~~ may prescribe by rule the form of disclosure of brokerage fees.

Section 534. Subsections (2), (3), (4), and (6) of section 494.004, Florida Statutes, are amended to read:

494.004 Requirements of licensees.—

(2) Each licensee under ss. 494.003-494.0043 shall report, in a form prescribed by rule of the commission ~~department~~, any conviction of, or plea of nolo contendere to, regardless of whether adjudication is withheld, any felony committed by the licensee or any natural person named in s. 494.0031(3), not later than 30 days after the date of conviction or the date the plea of nolo contendere is entered.

(3) Each licensee under ss. 494.003-494.0043 shall report any action in bankruptcy, voluntary or involuntary, to the office ~~department~~ not later than 7 business days after the action is instituted.

(4) Each licensee under ss. 494.003-494.0043 shall report any change in the form of business organization or any change of a person named, pursuant to s. 494.0031(3), to the office ~~department~~ in writing not later than 30 days after the change is effective.

(6) On or before April 30, 2000, each mortgage brokerage business shall file an initial report stating the name, social security number, date of birth, mortgage broker license number, date of hire and, if applicable, date of termination for each person who was an associate of the mortgage brokerage business during the immediate preceding quarter. Thereafter, a mortgage brokerage business shall file a quarterly report only if a person became an associate or ceased to be an associate of the mortgage brokerage business during the immediate preceding quarter. Such report shall be filed within 30 days after the last day of each calendar quarter and shall contain the name, social security number, date of birth, mortgage broker license number, date of hire and, if applicable, the date of termination of each person who became or ceased to be an associate of the mortgage brokerage business during the immediate preceding quarter. The commission ~~department~~ shall prescribe, by rule, the procedures for filing reports required by this subsection.

Section 535. Subsection (1) and paragraphs (j), (m), and (n) of subsection (2) of section 494.0041, Florida Statutes, are amended to read:

494.0041 Administrative penalties and fines; license violations.—

(1) Whenever the office ~~department~~ finds a person in violation of an act specified in subsection (2), it may enter an order imposing one or more of the following penalties against the person:

(a) Revocation of a license or registration.

(b) Suspension of a license or registration subject to reinstatement upon satisfying all reasonable conditions that the office ~~department~~ specifies.

(c) Placement of the licensee, registrant, or applicant on probation for a period of time and subject to all reasonable conditions that the office ~~department~~ specifies.

(d) Issuance of a reprimand.

(e) Imposition of a fine in an amount not exceeding $5,000 for each count or separate offense.

(f) Denial of a license or registration.

(2) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (1) may be taken:

(j) Failure to comply with any ~~department~~ order or rule made or issued under ss. 494.001-494.0077.

(m) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by ss. 494.001-494.0077 and the rules of the commission ~~department~~.

(n) Refusal to permit an investigation or examination of books and records, or refusal to comply with an office ~~a department~~ subpoena or subpoena duces tecum.

Section 536. Subsection (7) of section 494.00421, Florida Statutes, is amended to read:

494.00421 Fees earned upon obtaining a bona fide commitment.—Notwithstanding the provisions of ss. 494.001-494.0077, any mortgage brokerage business which contracts to receive from a borrower a mortgage brokerage fee upon obtaining a bona fide commitment shall accurately disclose in the mortgage brokerage agreement:

(7)(a) The following statement, in no less than 12-point boldface type immediately above the signature lines for the borrowers:

"You are entering into a contract with a mortgage brokerage business to obtain a bona fide mortgage loan commitment under the same terms and conditions as stated hereinabove or in a separate executed good faith estimate form. If the mortgage brokerage business obtains a bona fide commitment under the same terms and conditions, you will be obligated to pay the mortgage brokerage business fees, including, but not limited to, a mortgage brokerage fee, even if you choose not to complete the loan transaction. If the provisions of s. 494.00421, Florida Statutes, are not met, the mortgage brokerage fee can only be earned upon the funding of the mortgage loan. The borrower may contact the Department of Financial Services ~~Banking and Finance~~, Tallahassee, Florida, regarding any complaints that the borrower may have against the mortgage broker or the mortgage brokerage business. The telephone number of the department ~~as set by rule of the department~~ is: ...[insert telephone number]...."

(b) Paragraph (a) does not apply to nonresidential mortgage loan commitments in excess of $1 million.

Section 537. Subsections (1), (3), (6), (7), (8), (9), and (10) of section 494.0061, Florida Statutes, are amended to read:

494.0061 Mortgage lender's license requirements.—

(1) The commission or office ~~department~~ may require each applicant for a mortgage lender license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The office ~~department~~ shall issue an initial mortgage lender license to any person that submits:

(a) A completed application form;

(b) A nonrefundable application fee of $575;

(c) Audited financial statements, which documents disclose that the applicant has a bona fide and verifiable net worth, pursuant to generally accepted accounting principles, of at least $250,000, which must be continuously maintained as a condition of licensure;

(d) A surety bond in the amount of $10,000, payable to the state and conditioned upon compliance with ss. 494.001-494.0077, which inures to the office ~~department~~ and which must be continuously maintained thereafter in full force;

(e) Documentation that the applicant is duly incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state of the United States; and

(f) For applications submitted after October 1, 2001, proof that the applicant's principal representative has completed 24 hours of classroom instruction in primary and subordinate financing transactions and in the provisions of this chapter and rules adopted under this chapter.

(3) Each initial application for a mortgage lender's license must be in a form prescribed by the commission ~~department~~. The commission or office ~~department~~ may require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The commission or office ~~department~~ may require that each officer, director, and ultimate equitable owner of a 10-percent or greater interest in the applicant submit a complete set of fingerprints taken by an authorized law enforcement officer.

(6) A mortgage lender or branch office license may be canceled if it was issued through mistake or inadvertence of the office ~~department~~. A notice of cancellation must be issued by the office ~~department~~ within 90 days after the issuance of the license. A notice of cancellation shall be effective upon receipt. The notice of cancellation shall provide the applicant with notification of the right to request a hearing within 21 days after the applicant's receipt of the notice of cancellation. A license shall be reinstated if the applicant can demonstrate that the requirements for obtaining the license pursuant to this chapter have been satisfied.

(7) If an initial mortgage lender or branch office license has been issued but the check upon which the license is based is returned due to insufficient funds, the license shall be deemed canceled. A license deemed canceled pursuant to this subsection shall be reinstated if the office ~~department~~ receives a certified check for the appropriate amount within 30 days after the date the check was returned due to insufficient funds.

(8) Each lender, regardless of the number of branches it operates, shall designate a principal representative who exercises control of the licensee's business and shall maintain a form prescribed by the commission ~~department~~ designating the principal representative. If the form is not accurately maintained, the business is considered to be operated by each officer, director, or equitable owner of a 10-percent or greater interest in the business.

(9) After October 1, 2001, an applicant's principal representative must pass a written test prescribed by the commission ~~department~~ which covers primary and subordinate mortgage financing transactions and the provisions of this chapter and rules adopted under this chapter.

(10) A lender shall notify the office ~~department~~ of the name and address of any new principal representative and shall document that the person has completed the educational and testing requirements of this section upon the designation of a new principal representative.

Section 538. Subsections (1), (3), (9), (10), (11), (12), and (13) of section 494.0062, Florida Statutes, are amended to read:

494.0062 Correspondent mortgage lender's license requirements.—

(1) The office ~~department~~ shall issue an initial correspondent mortgage lender license to any person who submits:

(a) A completed application form;

(b) A nonrefundable application fee of $500;

(c) Audited financial statements, which document that the application has a bona fide and verifiable net worth pursuant to generally accepted accounting principles of $25,000 or more, which must be continuously maintained as a condition of licensure;

(d) A surety bond in the amount of $10,000, payable to the State of Florida and conditioned upon compliance with ss. 494.001-494.0077, which inures to the office ~~department~~ and which must be continuously maintained, thereafter, in full force;

(e) Documentation that the applicant is duly incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state of the United States; and

(f) For applications filed after October 1, 2001, proof that the applicant's principal representative has completed 24 hours of classroom instruction in primary and subordinate financing transactions and in the provisions of this chapter and rules enacted under this chapter.

(3) Each initial application for a correspondent mortgage lender's license must be in a form prescribed by the commission ~~department~~. The commission or office ~~department~~ may require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The commission or office ~~department~~ may require that each officer, director, and ultimate equitable owner of a 10-percent or greater interest submit a complete set of fingerprints taken by an authorized law enforcement officer.

(9) A correspondent mortgage lender or branch office license may be canceled if it was issued through mistake or inadvertence of the office ~~department~~. A notice of cancellation must be issued by the office ~~department~~ within 90 days after the issuance of the license. A notice of cancellation shall be effective upon receipt. The notice of cancellation shall provide the applicant with notification of the right to request a hearing within 21 days after the applicant's receipt of the notice of cancellation. A license shall be rein-

stated if the applicant can demonstrate that the requirements for obtaining the license pursuant to this chapter have been satisfied.

(10) If an initial correspondent mortgage lender or branch office license has been issued but the check upon which the license is based is returned due to insufficient funds, the license shall be deemed canceled. A license deemed canceled pursuant to this subsection shall be reinstated if the office ~~department~~ receives a certified check for the appropriate amount within 30 days after the date the check was returned due to insufficient funds.

(11) Each correspondent lender shall designate a principal representative who exercises control over the business and shall maintain a form prescribed by the commission ~~department~~ designating the principal representative. If the form is not accurately maintained, the business is considered to be operated by each officer, director, or equitable owner of a 10-percent or greater interest in the business.

(12) After October 1, 2001, an applicant's principal representative must pass a written test prescribed by the commission ~~department~~ which covers primary and subordinate mortgage financing transactions and the provisions of this chapter and rules adopted under this chapter.

(13) A correspondent lender shall notify the office ~~department~~ of the name and address of any new principal representative and shall document that such person has completed the educational and testing requirements of this section upon the lender's designation of a new principal representative.

Section 539. Section 494.0064, Florida Statutes, is amended to read:

494.0064 Renewal of mortgage lender's license; branch office license renewal.—

(1)(a) The office ~~department~~ shall renew a mortgage lender license upon receipt of a completed renewal form and the nonrefundable renewal fee of $575. The office ~~department~~ shall renew a correspondent lender license upon receipt of a completed renewal form and a nonrefundable renewal fee of $475. Each licensee shall pay at the time of renewal a nonrefundable fee of $325 for the renewal of each branch office license.

(b) A licensee shall also submit, as part of the renewal form, certification that during the preceding 2 years the licensee's principal representative, loan originators, and associates have completed the education requirements of s. 494.00295.

(2) The commission ~~department~~ shall adopt rules establishing a procedure for the biennial renewal of mortgage lender's licenses, correspondent lender's licenses, and branch office permits. The commission ~~department~~ may prescribe the form for renewal and may require an update of all information provided in the licensee's initial application.

(3) The license of a mortgage lender, correspondent mortgage lender, or branch office that is not renewed by the end of the biennium prescribed by

the commission ~~department~~ automatically reverts to inactive status. An inactive license may be reactivated within 6 months after becoming inactive by filing a completed reactivation form with the office ~~department~~, payment of the appropriate renewal fee, and payment of a nonrefundable reactivation fee of $100. A license that is not renewed within 6 months after the end of the biennial period automatically expires.

(4) The commission ~~department~~ may adopt rules setting forth the evidence or documentation of minimum net worth to be submitted for renewal of a license.

Section 540. Paragraph (a) of subsection (1) and subsections (2), (3), (5), and (8) of section 494.0065, Florida Statutes, are amended to read:

494.0065 Saving clause.—

(1)(a) Any person in good standing who holds an active registration pursuant to former s. 494.039 or license pursuant to former s. 521.205, or any person who acted solely as a mortgage servicer on September 30, 1991, is eligible to apply to the office ~~department~~ for a mortgage lender's license and is eligible for licensure if the applicant:

1. For at least 12 months during the period of October 1, 1989, through September 30, 1991, has engaged in the business of either acting as a seller or assignor of mortgage loans or as a servicer of mortgage loans, or both;

2. Has documented a minimum net worth of $25,000 in audited financial statements; and

3. Has applied for licensure pursuant to this section by January 1, 1992, and paid an application fee of $100.

(2) A licensee issued a license pursuant to subsection (1) may renew its mortgage lending license if it documents a minimum net worth of $25,000, according to generally accepted accounting principles, which must be continuously maintained as a condition to licensure. The office ~~department~~ shall require an audited financial statement which documents such net worth.

(3) The commission ~~department~~ may prescribe by rule forms and procedures for application for licensure, and amendment and withdrawal of application for licensure, or transfer, including any existing branch offices, in accordance with subsections (4) and (5), and for renewal of licensure of licensees under this section.

(5) The commission or office ~~department~~ may require each applicant for any transfer to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The office ~~department~~ shall issue the transfer of licensure to any person who submits the following documentation at least 90 days prior to the anticipated transfer:

(a) A completed application form.

(b) A nonrefundable fee set by rule of the commission ~~department~~ in the amount of $500.

(c) Audited financial statements that substantiate that the applicant has a bona fide and verifiable net worth, according to generally accepted accounting principles, of at least $25,000, which must be continuously maintained as a condition of licensure.

(d) Documentation that the applicant is incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state of the United States.

The commission or office ~~department~~ may require that each officer, director, and ultimate equitable owner of a 10-percent or greater interest in the applicant submit a complete set of fingerprints taken by an authorized law enforcement officer.

(8) ~~The department shall require~~ Each person applying for a transfer of any branch office pursuant to subsection (4) must ~~of this section to~~ comply with the requirements of s. 494.0066.

Section 541. Subsection (2) of section 494.0066, Florida Statutes, is amended to read:

494.0066 Branch offices.—

(2) The office ~~department~~ shall issue a branch office license upon receipt of a completed application form as prescribed by rule by the commission ~~department~~ and an initial nonrefundable branch office license fee of $325. The branch office application must include the name and license number of the licensee under ss. 494.006-494.0077, the name of the licensee's employee in charge of the branch office, and the address of the branch office. The branch office license shall be issued in the name of the licensee under ss. 494.006-494.0077 and must be renewed in conjunction with the license renewal.

Section 542. Subsections (4), (5), (6), (8), and (9) of section 494.0067, Florida Statutes, are amended to read:

494.0067 Requirements of licensees under ss. 494.006-494.0077.—

(4) The commission or office ~~department~~ may require each licensee under ss. 494.006-494.0077 to report any change of address of the principal place of business, change of address of any branch office, or change of principal officer, director, or ultimate equitable owner of 10 percent or more of the licensed corporation to the office ~~department~~ in a form prescribed by rule of the commission ~~department~~ not later than 30 business days after the change is effective.

(5) Each licensee under ss. 494.006-494.0077 shall report in a form prescribed by rule by the commission ~~department~~ any indictment, information, charge, conviction, plea of nolo contendere, or plea of guilty to any crime or administrative violation that involves fraud, dishonest dealing, or any other act of moral turpitude, in any jurisdiction, by the licensee under ss. 494.006-494.0077 or any principal officer, director, or ultimate equitable owner of 10

percent or more of the licensed corporation, not later than 30 business days after the indictment, information, charge, conviction, or final administrative action.

(6) Each licensee under ss. 494.006-494.0077 shall report any action in bankruptcy, voluntary or involuntary, to the office ~~department~~, not later than 7 business days after the action is instituted.

(8) Each licensee under ss. 494.006-494.0077 shall provide an applicant for a mortgage loan a good faith estimate of the costs the applicant can reasonably expect to pay in obtaining a mortgage loan. The good faith estimate of costs shall be mailed or delivered to the applicant within a reasonable time after the licensee receives a written loan application from the applicant. The estimate of costs may be provided to the applicant by a person other than the licensee making the loan. The commission ~~department~~ may adopt rules that set forth the disclosure requirements of this section.

(9) On or before April 30, 2000, each mortgage lender or correspondent mortgage lender shall file an initial report stating the full legal name, residential address, social security number, date of birth, mortgage broker license number, date of hire, and, if applicable, date of termination for each person who acted as a loan originator or an associate of the mortgage lender or correspondent mortgage lender during the immediate preceding quarter. Thereafter, a mortgage lender or correspondent mortgage lender shall file a report only if a person became or ceased to be a loan originator or an associate of the mortgage lender or correspondent mortgage lender during the immediate preceding quarter. Such report shall be filed within 30 days after the last day of each calendar quarter and shall contain the full legal name, residential address, social security number, date of birth, date of hire and, if applicable, the mortgage broker license number and date of termination of each person who became or ceased to be a loan originator or an associate of the mortgage lender or correspondent mortgage lender during the immediate preceding quarter. The commission ~~department~~ shall prescribe, by rule, the procedures for filing reports required by this subsection.

Section 543. Subsection (6) of section 494.0069, Florida Statutes, is amended to read:

494.0069 Lock-in agreement.—

(6) The commission ~~department~~ may adopt by rule a form for required lock-in agreement disclosures.

Section 544. Subsection (1) and paragraphs (j), (m), and (n) of subsection (2) of section 494.0072, Florida Statutes, are amended to read:

494.0072 Administrative penalties and fines; license violations.—

(1) Whenever the office ~~department~~ finds a person in violation of an act specified in subsection (2), it may enter an order imposing one or more of the following penalties against that person:

(a) Revocation of a license or registration.

(b) Suspension of a license or registration, subject to reinstatement upon satisfying all reasonable conditions that the office ~~department~~ specifies.

(c) Placement of the licensee or applicant on probation for a period of time and subject to all reasonable conditions that the office ~~department~~ specifies.

(d) Issuance of a reprimand.

(e) Imposition of a fine in an amount not exceeding $5,000 for each count or separate offense.

(f) Denial of a license or registration.

(2) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (1) may be taken:

(j) Failure to comply with any ~~department~~ order or rule made or issued under the provisions of ss. 494.001-494.0077.

(m) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by ss. 494.001-494.0077 or the rules of the commission ~~department~~.

(n) Refusal to permit an investigation or examination of books and records, or refusal to comply with an office ~~a department~~ subpoena or subpoena duces tecum.

Section 545. Subsection (2) of section 494.00721, Florida Statutes, is amended to read:

494.00721 Net worth.—

(2) If a mortgage lender or correspondent mortgage lender fails to satisfy the net worth requirements, the mortgage lender or correspondent mortgage lender shall immediately cease taking any new mortgage loan applications. Thereafter, the mortgage lender or correspondent mortgage lender shall have up to 60 days within which to satisfy the net worth requirements. If the licensee makes the office ~~department~~ aware, prior to an examination, that the licensee no longer meets the net worth requirements, the mortgage lender or correspondent mortgage lender shall have 120 days within which to satisfy the net worth requirements. A mortgage lender or correspondent mortgage lender shall not resume acting as a mortgage lender or correspondent mortgage lender without written authorization from the office ~~department~~, which authorization shall be granted if the mortgage lender or correspondent mortgage lender provides the office ~~department~~ with documentation which satisfies the requirements of s. 494.0061(1)(c), s. 494.0062(1)(c), or s. 494.0065(2), whichever is applicable.

Section 546. Paragraph (b) of subsection (2) of section 494.0076, Florida Statutes, is amended to read:

494.0076 Servicing audits.—

(2)

(b) The commission may ~~department is authorized to~~ adopt rules to ensure that investors are adequately protected under this subsection.

Section 547. Subsection (5) of section 494.0079, Florida Statutes, is amended, present subsections (6) and (7) of that section are renumbered as (7) and (8), respectively, and a new subsection (6) is added to that section to read:

494.0079 Definitions.—As used in this act:

(5) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(6) "Office" means the Office of Financial Regulation of the commission.

Section 548. Section 494.00795, Florida Statutes, is amended to read:

494.00795 Powers and duties of the commission and office ~~Department of Banking and Finance~~; investigations; examinations; injunctions; orders.—

(1)(a) The commission and office are ~~department shall be~~ responsible for the administration and enforcement of this act.

(b) The commission ~~department~~ may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this act. The commission ~~department~~ may adopt rules to allow electronic submission of any forms, documents, or fees required by this act.

(2)(a) The office ~~department~~ may conduct an investigation of any person whenever the office ~~department~~ has reason to believe, upon complaint or otherwise, that any violation of the act has occurred.

(b) Any person having reason to believe that a provision of this act has been violated may file a written complaint with the office ~~department~~ setting forth the details of the alleged violation.

(c) The office ~~department~~ may conduct examinations of any person to determine compliance with this act.

(3)(a) The office ~~department~~ may bring action, through its own counsel in the name and on behalf of the state, against any person who has violated or is about to violate any provision of this act, or any rule or order ~~of the department~~ issued under the act, to enjoin the person from continuing in or engaging in any act in furtherance of the violation.

(b) In any injunctive proceeding, the court may, on due showing by the office ~~department~~, issue a subpoena or subpoena duces tecum requiring the attendance of any witness and requiring the production of any books, accounts, records, or other documents and materials that appear necessary to the expeditious resolution of the application for injunction.

(4) The office ~~department~~ may issue and serve upon any person an order to cease and desist and to take corrective action whenever the office ~~department~~ has reason to believe the person is violating, has violated, or is about

to violate any provision of this act, any rule or order ~~of the department~~ issued under this act, or any written agreement between the person and the office ~~department~~. All procedural matters relating to issuance and enforcement of cease and desist orders are governed by the Administrative Procedure Act.

(5) Whenever the office ~~department~~ finds a person in violation of this act, it may enter an order imposing a fine in an amount not exceeding $5,000 for each count or separate offense, provided that the aggregate fine for all violations of this act that could have been asserted at the time of the order imposing the fine shall not exceed $500,000.

(6) Any violation of this act shall also be deemed to be a violation of chapter 494, chapter 516, chapter 520, chapter 655, chapter 657, chapter 658, chapter 660, chapter 663, chapter 665, or chapter 667. The commission ~~department~~ may adopt rules to enforce this subsection.

Section 549. Section 494.00797, Florida Statutes, is amended to read:

494.00797 General rule.—All counties and municipalities of this state are prohibited from enacting and enforcing ordinances, resolutions, and rules regulating financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a city, county, or municipality based upon lending interest rates or imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices of persons or entities, and any subsidiaries or affiliates thereof, who:

(1) Are subject to the jurisdiction of the office ~~department~~, including for activities subject to this chapter, except entities licensed under s. 537.004;

(2) Are subject to the jurisdiction of the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(3) Originate, purchase, sell, assign, secure, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subsection (1) or subsection (2) to assist or facilitate such transactions;

(4) Are chartered by the United States Congress to engage in secondary market mortgage transactions; or

(5) Are created by the Florida Housing Finance Corporation.

Proof of noncompliance with this act can be used by a city, county, or municipality of this state to disqualify a vendor or contractor from doing business with a city, county, or municipality of this state.

Section 550. Subsection (16) of section 497.005, Florida Statutes, is amended to read:

497.005 Definitions.—As used in this chapter:

(16) "Department" means the Department of Financial Services ~~Banking and Finance~~.

Section 551. Subsection (1) of section 497.101, Florida Statutes, is amended to read:

497.101 Board of Funeral and Cemetery Services; membership; appointment; terms.—

(1) The Board of Funeral and Cemetery Services is created within the department ~~of Banking and Finance~~ and shall consist of seven members appointed by the Governor, from nominations made by the Chief Financial Officer ~~Comptroller~~, and confirmed by the Senate. The Chief Financial Officer ~~Comptroller~~ shall nominate three persons for each vacancy on the board, and the Governor shall fill each vacancy on the board by appointing one of the three persons nominated by the Chief Financial Officer ~~Comptroller~~ to fill that vacancy. If the Governor objects to each of the three nominations for a vacancy, she or he shall inform the Chief Financial Officer ~~Comptroller~~ in writing. Upon notification of an objection by the Governor, the Chief Financial Officer ~~Comptroller~~ shall submit three additional nominations for that vacancy until the vacancy is filled.

Section 552. Section 497.105, Florida Statutes, is amended to read:

497.105 Department ~~of Banking and Finance~~; powers and duties.—The department ~~of Banking and Finance~~ shall:

(1) Adopt rules establishing procedures for the renewal of licenses, registrations, and certificates of authority.

(2) Appoint the executive director of the Board of Funeral and Cemetery Services, subject to the approval of the board.

(3) With the advice of the board, submit a biennial budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on the board. The program shall familiarize such persons with the substantive and procedural laws and rules which relate to the regulation under this chapter and with the structure of the department.

(5) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it.

(6) Establish by rule procedures by which the department shall use the expert or technical advice of the board, for the purposes of investigation, inspection, audit, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.

(7) Require all proceedings of the board or panels thereof within the department and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to

licensing, registration, certification, or discipline to be electronically recorded in a manner sufficient to ensure the accurate transcription of all matters so recorded.

(8) Select only those investigators approved by the board. Such investigators shall report to and work in coordination with the executive director of the board and are responsible for all inspections and investigations other than financial examinations.

Section 553. Section 497.107, Florida Statutes, is amended to read:

497.107 Headquarters.—The Board of Funeral and Cemetery Services may be contacted through the headquarters of the department ~~of Banking and Finance~~ in the City of Tallahassee.

Section 554. Subsection (4) of section 497.109, Florida Statutes, is amended to read:

497.109 Board of Funeral and Cemetery Services; membership.—

(4) Unless otherwise provided by law, a board member shall be compensated $50 for each day the member attends an official meeting of the board and for each day the member participates in any other business involving the board. The board shall adopt rules defining the phrase "other business involving the board," but the phrase may not be defined to include telephone conference calls. A board member is entitled to reimbursement for expenses pursuant to s. 112.061, but travel out of state requires the prior approval of the Chief Financial Officer ~~Comptroller~~.

Section 555. Section 497.115, Florida Statutes, is amended to read:

497.115 Board rules; final agency action; challenges.—

(1) The Chief Financial Officer ~~Comptroller~~ shall have standing to challenge any rule or proposed rule of the board pursuant to s. 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the Chief Financial Officer ~~Comptroller~~, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the Chief Financial Officer ~~Comptroller~~ or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

Section 556. Section 497.117, Florida Statutes, is amended to read:

497.117 Legal and investigative services.—

(1) The Department of Legal Affairs shall provide legal services to the board within the Department of Financial Services ~~Banking and Finance~~, but the primary responsibility of the Department of Legal Affairs shall be to represent the interests of the citizens of the state by vigorously counseling the board with respect to its obligations under the laws of the state. Subject to the prior approval of the Attorney General, the board may retain independent legal counsel to provide legal advice to the board on a specific matter. Fees and costs of such counsel shall be paid from the Regulatory Trust Fund of the Department of Financial Services ~~Banking and Finance~~.

(2) The Department of Financial Services ~~Banking and Finance~~ may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or utilized by the department shall prosecute a matter or provide legal services to the board with respect to the same matter.

Section 557. Subsections (1), (4), and (8) of section 497.131, Florida Statutes, are amended to read:

497.131 Disciplinary proceedings.—

(1) The department shall cause to be investigated any complaint which is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts which show that a violation of this chapter, or of any rule promulgated by the department or board has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate or continue to investigate, and the department and the board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates her or his desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the alleged violations in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a person has violated a state statute, a rule of the department, or a rule of the board. When an investigation of any person is undertaken, the department shall promptly furnish to the person or her or his attorney a copy of the complaint or document which resulted in the initiation of the

investigation. The person may submit a written response to the information contained in such complaint or document within 20 days after service to the person of the complaint or document. The person's written response shall be considered by the probable cause panel. This right to respond shall not prohibit the department from issuing a summary emergency order if necessary to protect the public. However, if the Chief Financial Officer ~~Comptroller~~ or her or his designee and the chair of the board or the chair of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any person if the act under investigation is a criminal offense.

(4) The determination as to whether probable cause exists shall be made by majority vote of the probable cause panel of the board. The board shall provide, by rule, that the determination of probable cause shall be made by a panel of its members or by the department. The board may provide, by rule, for multiple probable cause panels composed of at least two members. The board may provide, by rule, that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All probable cause proceedings conducted pursuant to the provisions of this section are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The Chief Financial Officer ~~Comptroller~~ may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to the provisions of chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and

prosecute the complaint pursuant to the provisions of chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. A probable cause panel or the board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the department's Regulatory Trust Fund. All proceedings of the probable cause panel shall be exempt from the provisions of s. 120.525.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of a license, of a licensee pursuant to s. 120.60(6) shall be conducted by the Chief Financial Officer ~~Comptroller~~ or her or his designee, who shall issue the final summary order.

Section 558. Paragraph (f) of subsection (3) of section 497.201, Florida Statutes, is amended to read:

497.201 Cemetery companies; license; application; fee.—

(3) If the board finds that the applicant meets the criteria established in subsection (2), the department shall notify the applicant that a license will be issued when:

(f) The applicant has recorded, in the public records of the county in which the land is located, a notice which contains the following language:

NOTICE

The property described herein shall not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of the Department of Financial Services ~~Banking and Finance~~, as provided in the Florida Funeral and Cemetery Services Act.

Such notice shall be clearly printed in boldfaced type of not less than 10 points and may be included on the face of the deed of conveyance to the licensee or may be contained in a separate recorded instrument which contains a description of the property.

Section 559. Paragraph (d) of subsection (3) of section 497.253, Florida Statutes, is amended to read:

497.253 Minimum acreage; sale or disposition of cemetery lands.—

(3)

(d) Any deed, mortgage, or other conveyance by a cemetery company or other owner pursuant to subsections (a) and (c) above must contain a disclosure in the following or substantially similar form:

NOTICE: The property described herein was formerly used and dedicated as a cemetery. Conveyance of this property and its use for noncemetery

purposes was authorized by the Florida Department of Financial Services ~~Banking and Finance~~ by Order No. ...., dated .....

Section 560. Subsection (4) of section 497.313, Florida Statutes, is amended to read:

497.313 Other charges.—Other than the fees for the sale of burial rights, burial merchandise, and burial services, no other fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial merchandise, or burial service, except for:

(4) Charges for credit life and credit disability insurance, as requested by the purchaser, the premiums for which may not exceed the applicable premiums chargeable in accordance with the rates filed with the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~.

Section 561. Section 497.403, Florida Statutes, is amended to read:

497.403 Insurance business not authorized.—Nothing in the Florida Insurance Code or this chapter shall be deemed to authorize any preneed funeral merchandise or service contract business or any preneed burial merchandise or service business to transact any insurance business, other than that of preneed funeral merchandise or service insurance or preneed burial merchandise or service insurance, or otherwise to engage in any other type of insurance unless it is authorized under a certificate of authority issued ~~by the Department of Insurance~~ under the provisions of the Florida Insurance Code. Any insurance business transacted under this section must comply with the provisions of s. 626.785.

Section 562. Paragraphs (d) and (m) of subsection (1) of section 498.025, Florida Statutes, are amended to read:

498.025 Exemptions.—

(1) Except as provided in s. 498.022, the provisions of this chapter do not apply to:

(d) An offer or transfer of securities currently registered with the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~ or the United States Securities and Exchange Commission, except when s. 498.023(4) applies.

(m) The offer or disposition of an interest in subdivided lands to an accredited investor, as defined by rule of the Financial Services Commission ~~Florida Department of Banking and Finance~~ in accordance with Securities and Exchange Commission Regulation 230.501, 17 C.F.R. s. 230.501.

Section 563. Subsection (5) of section 498.049, Florida Statutes, is amended to read:

498.049 Suspension; revocation; civil penalties.—

(5) Each person who materially participates in any offer or disposition of any interest in subdivided lands in violation of this chapter or relevant rules involving fraud, deception, false pretenses, misrepresentation, or false advertising or the disposition, concealment, or diversion of any funds or assets of any person which adversely affects the interests of a purchaser of any interest in subdivided lands, and who directly or indirectly controls a subdivider or is a general partner, officer, director, agent, or employee of a subdivider shall also be liable under this subsection jointly and severally with and to the same extent as the subdivider, unless that person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts creating the alleged liability. Among these persons a right of contribution shall exist, except that a creditor of a subdivider shall not be jointly and severally liable unless the creditor has assumed managerial or fiduciary responsibility in a manner related to the basis for the liability of the subdivider under this subsection. Civil penalties shall be limited to $10,000 for each offense, and all amounts collected shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. No order requiring the payment of a civil penalty shall become effective until 20 days after the date of the order, unless otherwise agreed in writing by the person on whom the penalty is imposed.

Section 564. Section 499.057, Florida Statutes, is amended to read:

499.057 Expenses and salaries.—All expenses and salaries shall be paid out of the special fund hereby created in the office of the Chief Financial Officer ~~Treasurer~~, which fund is to be known as the "Florida Drug, Device, and Cosmetic Trust Fund."

Section 565. Subsection (4) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(4) Any person or activity regulated under laws administered by the Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ or banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~ or banks or savings and loan associations regulated by federal agencies.

Section 566. Subsection (3) of section 507.03, Florida Statutes, is amended to read:

507.03 Registration.—

(3) Registration fees shall be $300 per year per mover. All amounts collected shall be deposited by the Chief Financial Officer ~~Treasurer~~ to the credit of the General Inspection Trust Fund of the department for the sole purpose of administration of this act.

Section 567. Subsection (7) of section 509.215, Florida Statutes, is amended to read:

509.215 Firesafety.—

(7) The National Fire Protection Association publications referenced in this section are the ones most recently adopted by rule of the Division of State Fire Marshal of the Department of Financial Services ~~Insurance~~.

Section 568. Paragraph (a) of subsection (2) of section 513.055, Florida Statutes, is amended to read:

513.055 Revocation or suspension of permit; fines; procedure.—

(2)

(a) In lieu of such suspension or revocation of a permit, the department may impose a fine against a permittee for the permittee's failure to comply with the provisions described in paragraph (1)(a) or may place such licensee on probation. No fine so imposed shall exceed $500 for each offense, and all amounts collected in fines shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the County Health Department Trust Fund.

Section 569. Subsection (3) of section 516.01, Florida Statutes is amended, present subsections (4) through (6) of that section are renumbered as (5) through (7), respectively, and a new subsection (4) is added to that section to read:

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

(3) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(4) "Office" means the Office of Financial Regulation of the commission.

Section 570. Subsection (1) of section 516.02, Florida Statutes, is amended to read:

516.02 Loans; lines of credit; rate of interest; license.—

(1) A person must not engage in the business of making consumer finance loans unless she or he is authorized to do so under this chapter or other statutes and unless the person first obtains a license from the office ~~department~~.

Section 571. Section 516.03, Florida Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission ~~department~~, and shall contain the name, residence and business addresses of the applicant and, if the applicant is a copartnership or association, of every member thereof and, if a corporation, of each officer and director thereof, also the county and municipality with the street and number or approximate location where the business is to be conducted, and such further relevant information as the commission or office ~~department~~ may require. At the time

of making such application the applicant shall pay to the office ~~department~~ a biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by an investigation fee of $200. The commission ~~department~~ may adopt rules to allow electronic submission of any form, document, or fee required by this act.

(2) FEES.—Fees herein provided for shall be collected by the office ~~department~~ and shall be turned into the State Treasury to the credit of the regulatory trust fund under the office ~~department~~. The office ~~department~~ shall have full power to employ such examiners or clerks to assist the office ~~department~~ as may from time to time be deemed necessary and fix their compensation. The commission ~~department~~ may adopt rules to allow electronic submission of any fee required by this section.

Section 572. Subsection (2) of section 516.031, Florida Statutes, is amended to read:

516.031 Finance charge; maximum rates.—

(2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH IN LENDING ACT.—The annual percentage rate of finance charge which may be contracted for and received under any loan contract made by a licensee under this chapter may equal, but not exceed, the annual percentage rate which must be computed and disclosed as required by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. The maximum annual percentage rate of finance charge which may be contracted for and received is 12 times the maximum monthly rate, and the maximum monthly rate shall be computed on the basis of one-twelfth of the annual rate for each full month. The commission ~~department~~ shall by rule ~~regulation~~ establish the rate for each day in a fraction of a month when the period for which the charge is computed is more or less than 1 month.

Section 573. Section 516.05, Florida Statutes, is amended to read:

516.05 License.—

(1) Upon the filing of an application for a license and payment of all applicable fees, the office ~~department~~ shall, unless the application is to renew or reactivate an existing license, make an investigation of the facts concerning the applicant's proposed activities. If the office ~~department~~ determines that a license should be granted, it shall issue the license for a period not to exceed 2 years. Biennial licensure periods and procedures for renewal of licenses shall be established by the rule of the commission ~~department~~. If the office ~~department~~ determines that grounds exist under this chapter for denial of an application other than an application to renew a license, it shall deny such application, return to the applicant the sum paid as a license fee, and retain the investigation fee.

(2) A license that is not renewed at the end of the biennium established by the commission ~~department~~ shall automatically revert to inactive status. An inactive license may be reactivated upon submission of a completed reactivation application, payment of the biennial license fee, and payment

of a reactivation fee which shall equal the biennial license fee. A license expires on the date at which it has been inactive for 6 months.

(3) Only one place of business for the purpose of making loans under this chapter may be maintained under one license, but the office ~~department~~ may issue additional licenses to a licensee upon compliance with all the provisions of this chapter governing issuance of a single license.

(4) Prior to relocating his or her place of business, a licensee must file with the office ~~department~~, in the manner prescribed by commission ~~department~~ rule, notice of the relocation.

(5) A licensee may conduct the business of making loans under this chapter within a place of business in which other business is solicited or engaged in, unless the office ~~department~~ shall find that the conduct of such other business by the licensee results in an evasion of this chapter. Upon such finding, the office ~~department~~ shall order the licensee to desist from such evasion; provided, however, that no license shall be granted to or renewed for any person or organization engaged in the pawnbroker business.

(6) If any person purchases substantially all of the assets of any existing licensed place of business, the purchaser shall give immediate notice thereof to the office ~~department~~ and shall be granted a 90-day temporary license for the place of business within 10 days after the office's ~~department's~~ receipt of an application for a permanent license. Issuance of a temporary license for a place of business nullifies the existing license for the place of business, and the temporary licensee is subject to any disciplinary action provided for by this chapter.

(7) Licenses are not transferable or assignable. A licensee may invalidate any license by delivering it to the office ~~department~~ with a written notice of the delivery, but such delivery does not affect any civil or criminal liability or the authority to enforce this chapter for acts committed in violation thereof.

(8) The office ~~department~~ may refuse to process an initial application for a license if the applicant or any person with power to direct the management or policies of the applicant's business is the subject of a pending criminal prosecution in any jurisdiction until conclusion of such criminal prosecution.

(9) A licensee that is the subject of a voluntary or involuntary bankruptcy filing must report such filing to the office ~~department~~ within 7 business days after the filing date.

Section 574. Subsections (1), (2), and (3) of section 516.07, Florida Statutes, are amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(a) A material misstatement of fact in an application for a license;

(b) Failure to maintain liquid assets of at least $25,000 at all times for the operation of business at a licensed location or proposed location;

(c) Failure to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter;

(d) The violation, either knowingly or without the exercise of due care, of any provision of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the office ~~department~~;

(e) Any act of fraud, misrepresentation, or deceit, regardless of reliance by or damage to a borrower, or any illegal activity, where such acts are in connection with a loan under this chapter. Such acts include, but are not limited to:

1. Willful imposition of illegal or excessive charges; or

2. Misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower;

(f) The use of unreasonable collection practices or of false, deceptive, or misleading advertising, where such acts are in connection with the operation of a business to make consumer finance loans;

(g) Any violation of part III of chapter 817 or part II of chapter 559 or of any rule adopted under part II of chapter 559;

(h) Failure to maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this chapter, by any rule or order adopted under this chapter, or by any agreement entered into with the office ~~department~~;

(i) Refusal to permit inspection of books and records in an investigation or examination by the office ~~department~~ or refusal to comply with a subpoena issued by the office ~~department~~;

(j) Pleading nolo contendere to, or having been convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication is withheld;

(k) Paying money or anything else of value, directly or indirectly, to any person as compensation, inducement, or reward for referring loan applicants to a licensee;

(l) Allowing any person other than the licensee to use the licensee's business name, address, or telephone number in an advertisement;

(m) Accepting or advertising that the licensee accepts money on deposit or as consideration for the issuance or delivery of certificates of deposit,

savings certificates, or similar instruments, except to the extent permitted under chapter 517; or

(n) Failure to pay any fee, charge, or fine imposed or assessed pursuant to this chapter or any rule adopted under this chapter.

(2) Upon a finding by the office ~~department~~ that any person has committed any of the acts set forth in subsection (1), the office ~~department~~ may enter an order taking one or more of the following actions:

(a) Denying an application for a license;

(b) Revoking or suspending a license previously granted;

(c) Placing a licensee or an applicant for a license on probation for a period of time and subject to such conditions as the office ~~department~~ may specify;

(d) Placing permanent restrictions or conditions upon issuance or maintenance of a license;

(e) Issuing a reprimand; or

(f) Imposing an administrative fine not to exceed $1,000 for each such act.

(3) The office ~~department~~ may take any of the actions specified in subsection (2) against any partnership, corporation, or association, if the office ~~department~~ finds that any of the acts set forth in subsection (1) have been committed by any member of the partnership, any officer or director of the corporation or association, or any person with power to direct the management or policies of the partnership, corporation, or association.

Section 575. Section 516.11, Florida Statutes, is amended to read:

516.11 Investigations and complaints.—

(1) The office ~~department~~ shall, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with this chapter. For such purposes, the office ~~department~~ may examine the books, accounts, records, and other documents or matters of any licensee or other person and compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Examinations of a licensee may not be made more often than once a year unless the office ~~department~~ has reason to believe the licensee is not complying with this chapter.

(2) The office ~~department~~ shall conduct all examinations at a convenient location in this state unless the office ~~department~~ determines that it is more effective or cost-efficient to perform an examination at the licensee's out-of-state location. For an examination performed at the licensee's out-of-state location, the licensee shall pay the travel expense and per diem subsistence at the rate provided by law for up to thirty 8-hour days per year for each

examiner who participates in such an examination. However, if the examination involves or reveals possible fraudulent conduct of the licensee, the licensee shall pay the travel expenses and per diem subsistence provided by law, without limitation, for each participating examiner.

(3) Any person who has reason to believe that this chapter has been or will be violated may file a written complaint with the office ~~department~~.

Section 576. Section 516.12, Florida Statutes, is amended to read:

516.12 Records to be kept by licensee.—

(1) The licensee shall keep and use in her or his business such books, accounts, and records in accordance with sound and accepted accounting practices to enable the office ~~department~~ to determine whether such licensee is complying with the provisions of this chapter and with the rules ~~and regulations~~ lawfully made by the commission ~~department hereunder~~. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least 2 years after making the final entry on any loan recorded therein.

(2) A licensee, operating two or more licensed places of business in this state, may maintain the books, accounts, and records of all such offices at any one of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the office ~~department~~ designating in the written request the office at which such records are maintained. However, the licensee shall make all books, accounts, and records available at a convenient location in this state upon request of the office ~~department~~.

Section 577. Section 516.22, Florida Statutes, is amended to read:

516.22 Rules; certified copies.—

(1) RULES.—The commission may ~~department has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it.

(2) CERTIFIED COPIES OF OFFICIAL DOCUMENTS.—On application of any person and payment of the costs thereof, at the same rate and fees as allowed clerks of the circuit court by statute, the office ~~department~~ shall furnish a certified copy of any license, regulation, or order. In any court or proceeding, such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, or order.

Section 578. Section 516.221, Florida Statutes, is amended to read:

516.221 Liability when acting upon ~~department's~~ order, declaratory statement, or rule.—No person or licensee hereunder shall be deemed to be in violation of this chapter nor shall such person or licensee be subject to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, declaratory statement, or rule issued by the office or commission ~~department~~, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the order, declaratory statement, or rule.

Section 579. Section 516.23, Florida Statutes, is amended to read:

516.23 Subpoenas; enforcement actions; rules.—

(1) The office ~~department~~ may issue and serve subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter pertaining to this chapter. The office ~~department~~ may administer oaths and affirmations to any person whose testimony is required. If any person refuses to testify, produce books, records, and documents, or otherwise refuses to obey a subpoena issued under this section, the office ~~department~~ may enforce the subpoena in the same manner as subpoenas issued under the Administrative Procedure Act are enforced. Witnesses are entitled to the same fees and mileage as they are entitled to by law for attending as witnesses in the circuit court, unless such examination or investigation is held at the place of business or residence of the witness.

(2) In addition to any other powers conferred upon it to enforce or administer this chapter, the office ~~department~~ may:

(a) Bring an action in any court of competent jurisdiction to enforce or administer this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the office ~~department~~. In such action, the office ~~department~~ may seek any relief at law or equity including a temporary or permanent injunction, appointment of a receiver or administrator, or an order of restitution.

(b) Issue and serve upon a person an order requiring such person to cease and desist and take corrective action whenever the office ~~department~~ finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the office ~~department~~.

(c) Impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the office ~~department~~, in an amount not to exceed $1,000 for each violation.

(3) The commission may ~~department has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

Section 580. Section 516.32, Florida Statutes, is amended to read:

516.32 Consumer credit counseling.—The office ~~department~~ shall be responsible for promoting a consumer credit counseling service for the purpose of promoting and helping establish consumer credit counseling services for individuals in areas where a need has been established. The purposes of the consumer credit counseling service shall be to:

(1) Assist and educate individual consumers as to money management.

(2) Assist individual consumers in consolidating obligations when a situation exists in which the individual consumer is in need of such assistance.

(3) Work with consumer credit grantors in an effort to establish better relations with the individual consumer and with state and federal regulatory agencies.

Section 581. Section 516.33, Florida Statutes, is amended to read:

516.33 Public disclosures.—All findings of facts and orders filed with the commission or office ~~department~~ shall be a public record.

Section 582. Subsection (1) of section 516.35, Florida Statutes, is amended to read:

516.35 Credit insurance must comply with credit insurance act.—

(1) Tangible property offered as security may be reasonably insured against loss for a reasonable term, considering the circumstances of the loan. If such insurance is sold at standard rates through a person duly licensed by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ and if the policy is payable to the borrower or any member of her or his family, it shall not be deemed to be a collateral sale, purchase, or agreement even though a customary mortgagee clause is attached or the licensee is a coassured.

Section 583. Subsection (7) of section 517.021, Florida Statutes, is amended, present subsections (8) through (20) of that section are renumbered as (9) through (21), respectively, and a new subsection (8) is added to that section to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(7) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(8) "Office" means the Office of Financial Regulation of the commission.

Section 584. Section 517.03, Florida Statutes, is amended to read:

517.03 Rulemaking; immunity for acts in conformity with rules.—

(1) The office ~~Department of Banking and Finance~~ shall administer and provide for the enforcement of all the provisions of this chapter. The commission may ~~department has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon the office ~~it~~, including, without limitation, adopting rules and forms governing reports. The commission ~~department~~ shall also have the nonexclusive power to define by rule any term, whether or not used in this chapter, insofar as the definition is not inconsistent with the provisions of this chapter.

(2) No provision of this chapter imposing liability shall apply to an act done, or omitted to be done, in conformity with a rule of the commission ~~department~~ in existence at the time of the act or omission, even though such

rule may thereafter be amended or repealed or determined by judicial or other authority to be invalid for any reason.

Section 585. Section 517.051, Florida Statutes, is amended to read:

517.051 Exempt securities.—The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office ~~department~~ prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following securities:

(1) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof; provided that no person shall directly or indirectly offer or sell securities, other than general obligation bonds, under this subsection if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest:

(a) With respect to an obligation issued by the issuer or successor of the issuer; or

(b) With respect to an obligation guaranteed by the guarantor or successor of the guarantor,

except by an offering circular containing a full and fair disclosure as prescribed by rule of the commission ~~department~~.

(2) A security issued or guaranteed by any foreign government with which the United States is maintaining diplomatic relations at the time of the sale or offer of sale of the security, or by any state, province, or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in this state as a valid obligation by such foreign government or by such state, province, or political subdivision thereof issuing the security.

(3) A security issued or guaranteed by:

(a) A national bank, a federally chartered savings and loan association, or a federally chartered savings bank, or the initial subscription for equity securities in such national bank, federally chartered savings and loan association, or federally chartered savings bank;

(b) Any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916;

(c) An international bank of which the United States is a member; or

(d) A corporation created and acting as an instrumentality of the government of the United States.

(4) A security issued or guaranteed, as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided that such corporation is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession of the United States, of any municipality located therein, of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; and also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

(5) A security issued or guaranteed by any of the following which are subject to the examination, supervision, or control of this state or of the Federal Deposit Insurance Corporation or the National Credit Union Association:

(a) A bank,

(b) A trust company,

(c) A savings institution,

(d) A building or savings and loan association,

(e) An international development bank, or

(f) A credit union;

or the initial subscription for equity securities of any institution listed in paragraphs (a)-(f), provided such institution is subject to the examination, supervision, or control of this state.

(6) A security, other than common stock, providing for a fixed return, which security has been outstanding in the hands of the public for a period of not less than 5 years, and upon which security no default in payment of principal or failure to pay the fixed return has occurred for an immediately preceding period of 5 years.

(7) Securities of nonprofit agricultural cooperatives organized under the laws of this state when the securities are sold or offered for sale to persons principally engaged in agricultural production or selling agricultural products.

(8) A note, draft, bill of exchange, or banker's acceptance having a unit amount of $25,000 or more which arises out of a current transaction, or the

proceeds of which have been or are to be used for current transactions, and which has a maturity period at the time of issuance not exceeding 9 months exclusive of days of grace, or any renewal thereof which has a maturity period likewise limited. This subsection applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public; that is, paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks.

(9) A security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which corporation inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission ~~department~~, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall not preempt any provision of this chapter.

(10) Any insurance or endowment policy or annuity contract or optional annuity contract or self-insurance agreement issued by a corporation, insurance company, reciprocal insurer, or risk retention group subject to the supervision of the insurance regulator ~~commissioner~~ or bank regulator ~~commissioner~~, or any agency or officer performing like functions, of any state or territory of the United States or the District of Columbia.

Section 586. Section 517.061, Florida Statutes, is amended to read:

517.061 Exempt transactions.—The exemption for each transaction listed below is self-executing and does not require any filing with the office ~~department~~ prior to claiming such exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(2) By or for the account of a pledgeholder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the pur-

poses of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) The isolated sale or offer for sale of securities when made by or on behalf of a vendor not the issuer or underwriter of the securities, who, being the bona fide owner of such securities, disposes of her or his own property for her or his own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a vendor of securities not the issuer or underwriter of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (11)(a)1., 2., 3., and 4. and paragraph (11)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(1) of the Securities Act of 1933, as amended.

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which she or he has owned beneficially for at least 1 year.

(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.

(5) The issuance of securities to such equity security holders or other creditors of a corporation, trust, or partnership in the process of a reorganization of such corporation or entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) Any transaction involving the distribution of the securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction is a holder of any convertible security, any nontransferable warrant, or any transferable warrant which is exercisable within not more than 90 days of issuance, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(7) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, pension or profit-sharing trust, or qualified institutional buyer as defined by rule of the commission ~~department~~ in

accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. 230.144(A)(a)), whether any of such entities is acting in its individual or fiduciary capacity; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(8) The sale of securities from one corporation to another corporation provided that:

(a) The sale price of the securities is $50,000 or more; and

(b) The buyer and seller corporations each have assets of $500,000 or more.

(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets.

(10) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(11)(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Prior to the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any corporation specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. Any corporation or other organization of which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any purchaser who makes a bona fide investment of $100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor, as defined by rule of the commission ~~department~~ in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. 230.501).

(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 6 months prior to an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission ~~department~~ may~~, but is not required to,~~ adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.

(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.

(12) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to

such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(13) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered ~~with the Department of Banking and Finance~~ pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

(14) The offer or sale of shares of a corporation which represent ownership, or entitle the holders of the shares to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.

(15) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.

(16) The sale by or through a registered dealer of any securities option if at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission ~~department~~; or

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office ~~department~~; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

(e) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter.

(17)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended;

4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933 and is not subject to any registration or filing requirements under this act, which appear in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which securities have been listed or approved for listing upon notice of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or controlling persons of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) This exemption shall not be available for any securities which have been denied registration ~~by the department~~ pursuant to s. 517.111. Additionally, the office ~~department~~ may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as the office ~~department~~ finds proper.

(18) The offer or sale of any security effected by or through a person registered pursuant to s. 517.12(17).

(19) Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission ~~department~~ may~~, but is not required to,~~ adopt from time to time, but only after a finding by the office ~~department~~ that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission ~~department~~ may also provide in such rules that persons selling or offering for sale the exempted securities are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute in the other subsections of this section.

(20) Any nonissuer transaction by a registered associated person of a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided, at the time of the transaction:

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, any unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(d) A nationally recognized securities manual designated by rule of the commission or order of the office ~~department~~ or a document filed with the Securities and Exchange Commission that is publicly available through the commission's electronic data gathering and retrieval system contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

2. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

3. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such

transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

Section 587. Section 517.07, Florida Statutes, is amended to read:

517.07 Registration of securities.—

(1) It is unlawful and a violation of this chapter for any person to sell or offer to sell a security within this state unless the security is exempt under s. 517.051, is sold in a transaction exempt under s. 517.061, is a federal covered security, or is registered pursuant to this chapter.

(2) No securities that are required to be registered under this chapter shall be sold or offered for sale within this state unless such securities have been registered pursuant to this chapter and unless prior to each sale the purchaser is furnished with a prospectus meeting the requirements of rules adopted by the commission ~~department~~.

(3) The office ~~department~~ shall issue a permit when registration has been granted by the office ~~department~~. A permit to sell securities is effective for 1 year from the date it was granted. Registration of securities shall be deemed to include the registration of rights to subscribe to such securities if the application under s. 517.081 or s. 517.082 for registration of such securities includes a statement that such rights are to be issued.

(4) A record of the registration of securities shall be kept by ~~in~~ the office ~~of the department~~, in which register of securities shall also be recorded any orders entered by the office ~~department~~ with respect to such securities. Such register, and all information with respect to the securities registered therein, shall be open to public inspection.

(5) Notwithstanding any other provision of this section, offers of securities required to be registered by this section may be made in this state before the registration of such securities if the offers are made in conformity with rules adopted by the commission ~~department~~.

Section 588. Subsections (2), (3), (4), and (5) of section 517.075, Florida Statutes, are amended to read:

517.075 Cuba, prospectus disclosure of doing business with, required.—

(2) Any disclosure required by subsection (1) must include:

(a) The name of such person, affiliate, or government with which the issuer does business and the nature of that business;

(b) A statement that the information is accurate as of the date the securities were effective with the United States Securities and Exchange Commission or with the office ~~department~~, whichever date is later; and

(c) A statement that current information concerning the issuer's business dealings with the government of Cuba or with any person or affiliate located

in Cuba may be obtained from the office ~~Department of Banking and Finance~~, which statement must include the address and phone number of the office ~~department~~.

(3) If an issuer commences engaging in business with the government of Cuba or with any person or affiliate located in Cuba, after the date issuer's securities become effective with the Securities and Exchange Commission or with the office ~~department~~, whichever date is later, or if the information reported in the prospectus concerning that business changes in any material way, the issuer must provide the office ~~department~~ notice of that business or change, as appropriate, in a manner ~~form~~ acceptable to the office ~~department~~. The commission ~~department~~ shall prescribe by rule a form for persons to use to report the commencement of such business or any change in such business which occurs after the effective registration of such securities. This form must include, at a minimum, the information required by subsection (2). The information reported on the form must be kept current. Information is current if reported to the office ~~department~~ within 90 days after the commencement of business or within 90 days after the change occurs with respect to previously reported information.

(4) The office ~~department~~ shall provide, upon request, a copy of any form filed with the office ~~department~~ under subsection (3) to any person requesting the form.

(5) Each securities offering sold in violation of this section, and each failure of an issuer to timely file the form required by subsection (3), subjects the issuer to a fine of up to $5,000. Any fine collected under this section shall be deposited into the Anti-Fraud Trust Fund of the office ~~Department of Banking and Finance~~.

Section 589. Section 517.081, Florida Statutes, is amended to read:

517.081 Registration procedure.—

(1) All securities required by this chapter to be registered before being sold in this state and not entitled to registration by notification shall be registered in the manner provided by this section.

(2) The office ~~department~~ shall receive and act upon applications to have securities registered and the commission may prescribe forms on which it may require such applications to be submitted. Applications shall be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the office ~~department~~. The commission ~~department~~ may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office ~~department~~ with the information and data required by this section. An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

(3) The office ~~department~~ may require the applicant to submit to the office ~~department~~ the following information concerning the issuer and such other relevant information as the office ~~department~~ may in its judgment

deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of the directors, trustees, and officers, if the issuer be a corporation, association, or trust; of all the partners, if the issuer be a partnership; or of the issuer, if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.

(d) A statement of the capitalization of the issuer.

(e) A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as the office ~~department~~ may permit at the written request of the issuer on a showing of good cause therefor.

(f) A detailed statement of the plan upon which the issuer proposes to transact business.

(g)1. A specimen copy of the security and a copy of any circular, prospectus, advertisement, or other description of such securities.

2. The commission ~~department~~ shall adopt a form for a simplified offering circular to be used solely by corporations to register, under this section, securities of the corporation that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

a. An issuer seeking to register securities for resale by persons other than the issuer.

b. An issuer who is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, or who has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, shareholder who owns at least 10 percent of the shares of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, or partner of such selling agent.

c. An issuer who is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

d. An issuer of offerings in which the specific business or properties cannot be described.

e. Any issuer the office ~~department~~ determines is ineligible if the form would not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

f. Any corporation which has failed to provide the office ~~department~~ the reports required for a previous offering registered pursuant to this subparagraph.

As a condition precedent to qualifying for use of the simplified offering circular, a corporation shall agree to provide the office ~~department~~ with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office ~~department~~ within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.

(h) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(i) A statement of the issuer's cash sources and application during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(j) A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(k) A copy of the opinion or opinions of counsel concerning the legality of the issue or other matters which the office ~~department~~ may determine to be relevant to the issue.

(l) A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration in payment for which such securities have been or are to be issued.

(m) The amount of securities to be set aside and disposed of and a statement of all securities issued from time to time for promotional purposes.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office ~~department~~. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or

association and all other papers pertaining to its organization, if not already on file in the office ~~department~~.

(4) All of the statements, exhibits, and documents of every kind required ~~by the department~~ under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commission ~~department~~.

(5) The commission ~~department~~ may by rule fix the maximum discounts, commissions, expenses, remuneration, and other compensation to be paid in cash or otherwise, not to exceed 20 percent, directly or indirectly, for or in connection with the sale or offering for sale of such securities in this state.

(6) An issuer filing an application under this section shall, at the time of filing, pay the office ~~department~~ a nonreturnable fee of $1,000 per application.

(7) If upon examination of any application the office ~~department~~ shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the office ~~department~~.

Section 590. Section 517.082, Florida Statutes, is amended to read:

517.082 Notification registration.—

(1) Except as provided in subsection (3), securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933 shall be entitled to registration by notification in the manner provided in subsection (2), provided that prior to the offer or sale the registration statement has become effective.

(2) An application for registration by notification shall be filed with the office ~~department~~, shall contain the following information, and shall be accompanied by the following:

(a) An application to sell executed by the issuer, any person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold;

(b) Copies of such documents filed with the Securities and Exchange Commission as the Financial Services Commission ~~department~~ may by rule require;

(c) An irrevocable written consent to service as required by s. 517.101; and

(d) A nonreturnable fee of $1,000 per application.

A registration under this section becomes effective when the federal registration statement becomes effective or as of the date the application is filed with the office ~~department~~, whichever is later, provided that, in addition to the items listed in paragraphs (a)-(d), the office ~~department~~ has received written notification of effective registration under the Securities Act of 1933 or the Investment Company Act of 1940 within 10 business days from the date federal registration is granted. Failure to provide all the information required by this subsection to the office ~~department~~ within 60 days of the date the registration statement becomes effective with the Securities and Exchange Commission shall be a violation of this chapter.

(3) Except for units of limited partnership interests or such other securities as the commission ~~department~~ describes by rule as exempt from this subsection due to high investment quality, the provisions of this section may not be used to register securities if the offering price at the time of effectiveness with the Securities and Exchange Commission is $5 or less per share, unless such securities are listed or designated, or approved for listing or designation upon notice of issuance, on a stock exchange registered pursuant to the Securities Exchange Act of 1934 or on the National Association of Securities Dealers Automated Quotation (NASDAQ) System, or unless such securities are of the same issuer and of senior or substantially equal rank to securities so listed or designated.

(4) In lieu of filing with the office ~~department~~ the application, fees, and documents for registration required by subsection (2), the commission ~~department~~ may establish, by rule, procedures for depositing fees and filing documents by electronic means, provided such procedures provide the office ~~department~~ with the information and data required by this section.

Section 591. Section 517.101, Florida Statutes, is amended to read:

517.101 Consent to service.—

(1) Upon any initial application for registration under s. 517.081 or s. 517.082 or upon request of the office ~~department~~, the issuer shall file with such application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of any provision of this chapter, the service on the office ~~department~~ of a notice, process, or pleading therein, authorized by the laws of this state, shall be as valid and binding as if due service had been made on the issuer.

(2) Any such action shall be brought either in the county of the plaintiff's residence or in the county in which the office ~~department~~ has its official headquarters. The written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or

association, authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the office ~~department~~, it shall be by duplicate copies, one of which shall be filed in the office ~~department~~ and another immediately forwarded by the office ~~department~~ by registered mail to the principal office of the issuer against which said process or pleadings are directed.

Section 592. Section 517.111, Florida Statutes, is amended to read:

517.111 Revocation or denial of registration of securities.—

(1) The office ~~department~~ may revoke or suspend the registration of any security, or may deny any application to register securities, if upon examination into the affairs of the issuer of such security it shall appear that:

(a) The issuer is insolvent;

(b) The issuer or any officer, director, or control person of the issuer has violated any provision of this chapter or any rule made hereunder or any order of the office ~~department~~ of which such issuer has notice;

(c) The issuer or any officer, director, or control person of the issuer has been or is engaged or is about to engage in fraudulent transactions;

(d) The issuer or any officer, director, or control person of the issuer has been found guilty of a fraudulent act in connection with any sale of securities, has engaged, is engaged, or is about to engage, in making a fictitious sale or purchase of any security, or in any practice or sale of any security which is fraudulent or a violation of any law;

(e) The issuer or any officer, director, or control person of the issuer has had a final judgment entered against such issuer or person in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit;

(f) The issuer or any officer, director, or control person of the issuer has demonstrated any evidence of unworthiness;

(g) The issuer or any officer, director, or control person of the issuer is in any other way dishonest or has made any fraudulent representations or failed to disclose any material information in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities;

(h) The security registered or sought to be registered is the subject of an injunction entered by a court of competent jurisdiction or is the subject of an administrative stop-order or similar order prohibiting the offer or sale of the security;

(i) For any security for which registration has been applied pursuant to s. 517.081, the terms of the offer or sale of such securities would not be fair, just, or equitable; or

(j) The issuer or any person acting on behalf of the issuer has failed to timely complete any application for registration filed with the office ~~depart-~~

~~ment~~ pursuant to the provisions of s. 517.081 or s. 517.082 or any rule adopted under such sections.

In making such examination, the office ~~department~~ shall have access to and may compel the production of all the books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or its income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the office deems ~~department may deem~~ it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the office ~~department~~ may require.

(2) If any issuer shall refuse to permit an examination to be made by the office ~~department~~, it shall be proper ground for revocation of registration.

(3) If the office deems ~~department shall deem~~ it necessary, it may enter an order suspending the right to sell securities pending any investigation, provided that the order shall state the office's ~~department's~~ grounds for taking such action.

(4) Notice of the entry of such order shall be given by mail, personally, by telephone confirmed in writing, or by telegraph to the issuer. Before such order is made final, the issuer applying for registration shall, on application, be entitled to a hearing.

(5) The office ~~department~~ may deny any request to terminate any registration or to withdraw any application for registration if the office ~~department~~ believes that an act which would be grounds for denial, suspension, or revocation under this chapter has been committed.

Section 593. Section 517.12, Florida Statutes, is amended to read:

517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the office ~~department~~ pursuant to the provisions of this section. The office ~~department~~ shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office ~~department~~ pursuant to this chapter.

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).

(3) Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19), the registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(12), (14), and (15).

(4) No investment adviser or associated person of an investment adviser or federal covered adviser shall engage in business from offices in this state, or render investment advice to persons of this state, by mail or otherwise, unless the federal covered adviser has made a notice filing with the office ~~department~~ pursuant to s. 517.1201 or the investment adviser is registered pursuant to the provisions of this chapter and associated persons of the federal covered adviser or investment adviser have been registered with the office ~~department~~ pursuant to this section. The office ~~department~~ shall not register any person or an associated person of a federal covered adviser or an investment adviser unless the federal covered adviser or investment adviser with which the applicant seeks registration is in compliance with the notice filing requirements of s. 517.1201 or is lawfully registered with the office ~~department~~ pursuant to this chapter. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to and approval from the office ~~department~~.

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the office ~~department~~ pursuant to the provisions of this section.

(6) A dealer, associated person, investment adviser, or branch office, in order to obtain registration, must file with the office ~~department~~ a written application, on a form which the commission ~~department~~ may by rule prescribe, verified under oath. The commission ~~department~~ may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office ~~department~~ with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office ~~department~~ may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

(7) The application shall also contain such information as the commission or office ~~department~~ may require about the applicant; any partner, officer, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser

rendering investment advisory services. Each applicant shall file a complete set of fingerprints taken by an authorized law enforcement officer. Such fingerprints shall be submitted to the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing. The commission ~~department~~ may waive, by rule, the requirement that applicants must file a set of fingerprints or the requirement that such fingerprints must be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office ~~department~~ may require information about any such applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he or she may have been known, and his or her age, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office ~~department~~ may inquire as to his or her character, reputation, and financial responsibility.

(8) The commission or office ~~department~~ may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any associated person applicant to successfully pass oral or written examinations. Because any principal, manager, supervisor, or person exercising similar functions shall be responsible for the acts of the associated persons affiliated with a dealer or investment adviser, the examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory associated person. The commission ~~department~~ may waive the examination process when it determines that such examinations are not in the public interest. The office ~~department~~ shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 that relates to the position to be filled by the applicant.

(9)(a) All dealers, except securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, shall comply with the net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. The commission ~~department~~ may by rule require a dealer to file with the office ~~department~~ any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act.

(b) The commission ~~department~~ may by rule require the maintenance of a minimum net capital for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public. The provisions of this section shall not apply to any investment adviser that maintains its principal place of business in a state other than this state, provided such investment adviser is registered in the state where it maintains its principal place of business and is in compliance with such state's net capital requirements.

(10) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $40, in the case of an associated person. The assessment fee of an associated person shall be reduced to $30, but only after the office ~~department~~ determines, by final order, that sufficient funds have been allocated to the Securities Guaranty Fund pursuant to s. 517.1203 to satisfy all valid claims filed in accordance with s. 517.1203(2) and after all amounts payable under any service contract entered into by the office ~~department~~ pursuant to s. 517.1204, and all notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness secured by such notes, bonds, certificates of indebtedness, or other obligations, have been paid or provision has been made for the payment of such amounts, notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness. An associated person not having current fingerprint cards filed with the National Association of Securities Dealers or a national securities exchange registered with the Securities and Exchange Commission shall be assessed an additional fee to cover the cost for said fingerprint cards to be processed by the office ~~department~~. Such fee shall be determined by rule of the commission ~~department~~. Each dealer and each investment adviser shall pay an assessment fee of $100 for each office in this state, except its designated principal office. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(11) If the office ~~department~~ finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, and associated person will expire on December 31, and the registration of each branch office will expire on March 31, of the year in which it became effective unless the registrant has renewed its registration on or before that date. Registration may be renewed by furnishing such information as the commission ~~department~~ may require, together with payment of the fee required in subsection (10) for dealers, investment advisers, associated persons, or branch offices and the payment of any amount lawfully due and owing to the office ~~department~~ pursuant to any order of the office ~~department~~ or pursuant to any agreement with the office ~~department~~. Any dealer, investment adviser, or associated person registrant who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing

with the office ~~department~~, on or before January 31 of the year following the year of expiration, such information as may be required by the commission ~~department~~, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office ~~department~~ during the month of January shall be deemed effective retroactive to January 1 of that year.

(12)(a) The office ~~department~~ may issue a license to a dealer, investment adviser, associated person, or branch office to evidence registration under this chapter. The office ~~department~~ may require the return to the office ~~department~~ of any license it may issue prior to issuing a new license.

(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office ~~department~~, as prescribed by rules adopted by the commission ~~department~~, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to, and register with, the office ~~department~~ a manager for each office the dealer or investment adviser has in this state.

(13) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the commission ~~department~~ may specify. In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a registered dealer or investment adviser, such person or group shall submit an initial application for registration as a dealer or investment adviser prior to such purchase or acquisition. The commission ~~department~~ shall adopt rules providing for waiver of the application required by this subsection where control of a registered dealer or investment adviser is to be acquired by another dealer or investment adviser registered under this chapter or where the application is otherwise unnecessary in the public interest.

(14) Every dealer, investment adviser, or branch office registered or required to be registered with the office ~~department~~ shall keep records of all currency transactions in excess of $10,000 and shall file reports, as prescribed under the financial recordkeeping regulations in 31 C.F.R. part 103, with the office ~~department~~ when transactions occur in or from this state. All reports required by this subsection to be filed with the office ~~department~~ shall be confidential and exempt from s. 119.07(1) except that any law enforcement agency or the Department of Revenue shall have access to, and shall be authorized to inspect and copy, such reports.

(15) In lieu of filing with the office ~~department~~ the applications specified in subsection (6), the fees required by subsection (10), and the termination notices required by subsection (12), the commission ~~department~~ may by rule establish procedures for the deposit of such fees and documents with the

Central Registration Depository of the National Association of Securities Dealers, Inc., as developed under contract with the North American Securities Administrators Association, Inc.; provided, however, that such procedures shall provide the office ~~department~~ with the information and data as required by this section.

(16) Except for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, every applicant for initial or renewal registration as a securities dealer and every person registered as a securities dealer shall be registered as a broker or dealer with the Securities and Exchange Commission and shall be subject to insurance coverage by the Securities Investor Protection Corporation.

(17)(a) A dealer that is located in Canada and has no office or other physical presence in this state may, provided the dealer is registered in accordance with this section, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

1. A person from Canada who temporarily resides in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States; or

2. A person from Canada who is a resident of this state, and whose transactions are in a self-directed tax advantage retirement plan in Canada of which the person is the holder or contributor.

(b) An associated person who represents a Canadian dealer registered under this section may, provided the agent is registered in accordance with this section, effect transactions in securities in this state as permitted for a dealer, under subsection (a).

(c) A Canadian dealer may register under this section provided that such dealer:

1. Files an application in the form required by the jurisdiction in which the dealer has a head office.

2. Files a consent to service of process.

3. Is registered as a dealer in good standing in the jurisdiction from which it is effecting transactions into this state and files evidence of such registration with the office ~~department~~.

4. Is a member of a self-regulatory organization or stock exchange in Canada.

(d) An associated person who represents a Canadian dealer registered under this section in effecting transactions in securities in this state may register under this section provided that such person:

1. Files an application in the form required by the jurisdiction in which the dealer has its head office.

2. Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence of such registration with the office ~~department~~.

(e) If the office ~~department~~ finds that the applicant is of good repute and character and has complied with the provisions of this chapter, the office ~~department~~ shall register the applicant.

(f) A Canadian dealer registered under this section shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing.

2. Provide the office ~~department~~ upon request with its books and records relating to its business in this state as a dealer.

3. Provide the office ~~department~~ notice of each civil, criminal, or administrative action initiated against the dealer.

4. Disclose to its clients in this state that the dealer and its agents are not subject to the full regulatory requirements under this chapter.

5. Correct any inaccurate information within 30 days, if the information contained in the application form becomes inaccurate for any reason before or after the dealer becomes registered.

(g) An associated person of a Canadian dealer registered under this section shall:

1. Maintain provincial or territorial registration in good standing.

2. Provide the office ~~department~~ with notice of each civil, criminal, or administrative action initiated against such person.

3. Through the dealer, correct any inaccurate information within 30 days, if the information contained in the application form becomes inaccurate for any reason before or after the associated person becomes registered.

(h) Renewal applications for Canadian dealers and associated persons under this section must be filed before December 31 each year. Every applicant for registration or renewal registration under this section shall pay the fee for dealers and associated persons under this chapter.

(18) Every dealer or associated person registered or required to be registered with the office ~~department~~ shall satisfy any continuing education requirements established by rule pursuant to law.

(19) The registration requirements of this section which apply to investment advisers and associated persons do not apply to a commodity trading adviser who:

(a) Is registered as such with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

(b) Advises or exercises trading discretion, with respect to foreign currency options listed and traded exclusively on the Philadelphia Stock Exchange, on behalf of an "appropriate person" as defined by the Commodity Exchange Act.

The exemption provided in this subsection does not apply to a commodity trading adviser who engages in other activities that require registration under this chapter.

(20) The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626 ~~individuals licensed under s. 626.041 or its successor statute, or s. 626.051 or its successor statute~~, for the sale of a security as defined in s. 517.021(20)(g) ~~s. 517.021(19)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 594. Section 517.1201, Florida Statutes, is amended to read:

517.1201 Notice filing requirements for federal covered advisers.—

(1) It is unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the office ~~department~~. A notice filing under this section shall consist of a copy of those documents that have been filed or are required to be filed by the federal covered adviser with the Securities and Exchange Commission that the Financial Services Commission ~~department~~ by rule requires to be filed, together with a consent to service of process and a filing fee of $200. The commission ~~department~~ may establish by rule procedures for the deposit of fees and the filing of documents to be made through electronic means, if the procedures provide to the office ~~department~~ the information and data required by this section.

(2) A notice filing shall be effective upon receipt. A notice filing shall expire on December 31 of the year in which the filing became effective unless the federal covered adviser has renewed the filing on or before that date. A federal covered adviser may renew a notice filing by furnishing to the office ~~department~~ such information that has been filed or is required to be filed with the Securities and Exchange Commission, as the Financial Services Commission or office ~~department~~ may require, together with a renewal fee of $200 and the payment of any amount due and owing the office ~~department~~ pursuant to any agreement with the office ~~department~~. Any federal covered adviser who has not renewed a notice filing by the time a current notice filing expires may request reinstatement of such notice filing by filing with the office ~~department~~, on or before January 31 of the year following the year the notice filing expires, such information that has been filed or is required to be filed with the Securities and Exchange Commission as may be required by the Financial Services Commission or office ~~department~~, together with the payment of $200 and a late fee equal to $200. Any reinstatement of a

notice filing granted by the office ~~department~~ during the month of January shall be deemed effective retroactive to January 1 of that year.

(3) The commission ~~department~~ may require, by rule, a federal covered adviser who has made a notice filing pursuant to this section to file with the office ~~department~~ copies of any amendments filed or required to be filed with the Securities and Exchange Commission.

(4) The office ~~department~~ may issue a permit to evidence the effectiveness of a notice filing for a federal covered adviser.

(5) A notice filing may be terminated by filing notice of such termination with the office ~~department~~. Unless another date is specified by the federal covered adviser, such notice shall be effective upon its receipt by the office ~~department~~.

(6) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a notice filing is withdrawn.

Section 595. Section 517.1203, Florida Statutes, is amended to read:

517.1203 Allocation and disbursement of assessment fees.—

(1) Notwithstanding s. 517.131(1), an additional amount equal to 25 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) from persons applying for or renewing registrations as associated persons shall be allocated to the Securities Guaranty Fund and disbursed as provided in this section. This allocation shall continue until the office ~~department~~ determines, by final order, that sufficient funds have been allocated to the Securities Guaranty Fund pursuant to this section to satisfy all valid claims filed in accordance with subsection (2) and until all amounts payable under any service contract entered into by the office ~~department~~ pursuant to s. 517.1204, and all notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness secured by such notes, bonds, certificates of indebtedness, or other obligations, have been paid or provision has been made for the payment of such amounts, notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness. This assessment fee shall be part of the regular license fee and shall be transferred to or deposited into the Securities Guaranty Fund. The moneys allocated to the Securities Guaranty Fund under this section shall not be included in the calculation of the allocation of the assessment fees referred to in s. 517.131(1)(b). Moneys allocated under this section in excess of the valid claims filed pursuant to subsection (2) shall be allocated to the Anti-Fraud Trust Fund.

(2)(a) Notwithstanding the provisions of ss. 517.131 and 517.141, moneys allocated to the Securities Guaranty Fund under this section shall be used to pay amounts payable under any service contract entered into by the office ~~department~~ pursuant to s. 517.1204, subject to annual appropriation by the Legislature, and to pay investors who have filed claims with the Department

of Banking and Finance after October 1, 1996, and on or before December 31, 1998, who have:

1. Received a final judgment against an associated person of GIC Government Securities, Inc., based upon allegations which would amount to a violation of s. 517.07 or s. 517.301; or

2. Demonstrated to the former Department of Banking and Finance or office that the claimant has suffered monetary damages as a result of the acts or actions of GIC Government Securities, Inc., or any associated person thereof, based upon allegations which would amount to a violation of s. 517.07 or s. 517.301.

(b)1. Claims shall be paid in the order that they were ~~have been~~ filed with the former Department of Banking and Finance, unless the department ~~has~~ noticed its intent to deny the claim in whole or in part. If a notice of intent to deny a claim in whole or in part was ~~is~~ issued, the claim shall not be paid until a final order has been entered which is not subject to an order staying its effect.

2. If at any time the money in the Securities Guaranty Fund allocated under this section is insufficient to satisfy any valid claim or portion of a valid claim approved by the department or office under this section, the office ~~department~~ shall prorate the payment based upon the ratio that the person's claim bears to the total approved claims filed on the same day. The office ~~department~~ shall satisfy the unpaid claims as soon as a sufficient amount of money has been deposited in or transferred to the fund as provided in this section.

3. A claimant shall not be substantially affected by the payment of another person's claim.

(c) Claims shall be limited to the amount of the investment, reduced by any amounts received from a bankruptcy proceeding or from any other source. If an investor is deceased, the award shall be made to the surviving spouse. If the investor and surviving spouse are both deceased, the award shall be made pursuant to the laws of descent and distribution. Neither the office ~~department~~ nor the Investment Fraud Restoration Financing Corporation shall make payment to assignees, secured parties, lien creditors, or other such entities.

(3) In rendering a determination, the office ~~department~~ may rely on records from the bankruptcy proceeding regarding GIC Government Securities, Inc., unless there is good cause to believe that the record is not genuine.

(4) Amounts deposited into the Securities Guaranty Fund pursuant to this section shall be applied to or allocated for payment of amounts payable by the office ~~department~~ pursuant to paragraph (2)(a), under a service contract entered into by the office ~~department~~ pursuant to s. 517.1204, subject to annual appropriation by the Legislature, before making or providing for any other disbursements from the fund.

Section 596. Subsection (2), paragraph (e) of subsection (3), and subsections (4), (5), and (6) of section 517.1204, Florida Statutes, are amended to read:

517.1204 Investment Fraud Restoration Financing Corporation.—

(2) The corporation shall be governed by a board of directors consisting of the director of the office or his or her designee ~~assistant comptroller~~, the Secretary of Elderly Affairs or the secretary's designee, and the executive director of the Department of Veterans' Affairs or the executive director's designee. The executive director of the State Board of Administration shall be the chief executive officer of the corporation and shall direct and supervise the administrative affairs of the corporation and shall control, direct, and supervise the operation of the corporation. The corporation shall also have such other officers as may be determined by the board of directors.

(3) The corporation shall have all the powers of a corporate body under the laws of this state to the extent not inconsistent with or restricted by the provisions of this section, including, but not limited to, the power to:

(e) Elect or appoint and employ such officers, agents, and employees as the corporation deems advisable to operate and manage the affairs of the corporation, which officers, agents, and employees may be officers or employees of the office ~~department~~ and the state agencies represented on the board of directors of the corporation.

(4) The corporation is authorized to enter into one or more service contracts with the office ~~department~~ pursuant to which the corporation shall provide services to the office ~~department~~ in connection with financing the functions and activities provided for in s. 517.1203. The office ~~department~~ may enter into one or more such service contracts with the corporation and provide for payments under such contracts pursuant to s. 517.1203(2)(a), subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the costs and expenses of administration of the corporation after payments as set forth in subsection (5). Each service contract shall have a term not to exceed 15 years and shall terminate no later than July 1, 2021. The aggregate amount payable from the Securities Guaranty Fund under all such service contracts shall not exceed the amount provided by s. 517.1203(1). In compliance with provisions of s. 287.0641 and other applicable provisions of law, the obligations of the office ~~department~~ under such service contracts shall not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state nor shall such obligations be construed in any manner as an obligation of the State Board of Administration or entities for which it invests funds, other than the office ~~department~~ as provided in this section, but shall be payable solely from amounts available in the Securities Guaranty Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, such service contracts shall expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(5) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from

and secured by amounts payable to the corporation by the office ~~department~~ under a service contract entered into pursuant to subsection (4) for the purpose of the simultaneous payment of all claims approved pursuant to s. 517.1203. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness shall not exceed 15 years. The corporation may select a financing team and issue obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. Any such indebtedness of the corporation shall not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state, but shall be payable from and secured by payments made by the office ~~department~~ under the service contract pursuant to subsection (4).

(6) The corporation shall pay all claims approved pursuant to s. 517.1203 as determined by and at the direction of the office ~~department~~.

Section 597. Section 517.121, Florida Statutes, is amended to read:

517.121 Books and records requirements; examinations.—

(1) A dealer, investment adviser, branch office, or associated person shall maintain such books and records as the commission ~~department~~ may prescribe by rule.

(2) The office ~~department~~ shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, branch office, or associated person, or require such records and reports to be submitted to it as required ~~it may require~~ by rule of the commission, to determine compliance with this act.

Section 598. Paragraph (a) of subsection (1), paragraphs (b) and (e) of subsection (3), and subsection (4) of section 517.131, Florida Statutes, are amended to read:

517.131 Securities Guaranty Fund.—

(1)(a) The Chief Financial Officer ~~Treasurer~~ shall establish a Securities Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) for associated persons shall be allocated to the fund. An additional amount not exceeding 3.5 percent of all revenues received as assessment fees for associated persons pursuant to s. 517.12(10) and (11) shall be allocated to the Securities Guaranty Fund but only after the office ~~department~~ determines, by final order, that sufficient funds have been allocated to the fund pursuant to s. 517.1203 to satisfy all valid claims filed in accordance with s. 517.1203(2) and after all amounts payable under any service contract entered into by the office ~~department~~ pursuant to s. 517.1204, and all notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness secured by such notes, bonds, certificates of indebtedness, or other obligations, have been paid or provision has been made for the payment of such amounts, notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness. This assessment fee

shall be part of the regular license fee and shall be transferred to or deposited in the Securities Guaranty Fund.

(3) Any person is eligible to seek recovery from the Securities Guaranty Fund if:

(b) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by her or his search the person has discovered no property or assets; or she or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment. To verify compliance with such condition, the office ~~department~~ may require such person to have a writ of execution be issued upon such judgment and may further require a showing that no personal or real property of the judgment debtor liable to be levied upon in complete satisfaction of the judgment can be found.

(e) The office ~~department~~ waives compliance with the requirements of paragraph (a) or paragraph (b). The office ~~department~~ may waive such compliance if the dealer, investment adviser, or associated person which is the subject of the claim filed with the office ~~department~~ is the subject of any proceeding in which a receiver has been appointed by a court of competent jurisdiction. If the office ~~department~~ waives such compliance, the office ~~department~~ may, upon petition by the debtor or the court-appointed trustee, examiner, or receiver, distribute funds from the Securities Guaranty Fund up to the amount allowed under s. 517.141. Any waiver granted pursuant to this section shall be considered a judgment for purposes of complying with the requirements of this section and of s. 517.141.

(4) Any person who files an action that may result in the disbursement of funds from the Securities Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice by certified mail to the office ~~department~~ as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Securities Guaranty Fund if all of the conditions specified in subsection (3) are satisfied.

Section 599. Section 517.141, Florida Statutes, is amended to read:

517.141 Payment from the fund.—

(1) Any person who meets all of the conditions prescribed in s. 517.131 may apply to the office ~~department~~ for payment to be made to such person from the Securities Guaranty Fund in the amount equal to the unsatisfied portion of such person's judgment or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages, excluding costs and attorney's fees.

(2) Regardless of the number of claimants involved, payments for claims shall be limited in the aggregate to $100,000 against any one dealer, investment adviser, or associated person. If the total claims exceed the aggregate

limit of $100,000, the office ~~department~~ shall prorate the payment based upon the ratio that the person's claim bears to the total claims filed.

(3) No payment shall be made on any claim against any one dealer, investment adviser, or associated person before the expiration of 2 years from the date any claimant is found by the office ~~department~~ to be eligible for recovery pursuant to this section. If during this 2-year period more than one claim is filed against the same dealer, investment adviser, or associated person, or if the office ~~department~~ receives notice pursuant to s. 517.131(4) that an action against the same dealer, investment adviser, or associated person is pending, all such claims and notices of pending claims received during this period against the same dealer, investment adviser, or associated person may be handled by the office ~~department~~ as provided in this section. Two years after the first claimant against that same dealer, investment adviser, or associated person applies for payment pursuant to this section:

(a) The office ~~department~~ shall determine those persons eligible for payment or for potential payment in the event of a pending action. All such persons may be entitled to receive their pro rata shares of the fund as provided in this section.

(b) Those persons who meet all the conditions prescribed in s. 517.131 and who have applied for payment pursuant to this section will be entitled to receive their pro rata shares of the total disbursement.

(c) Those persons who have filed notice with the office ~~department~~ of a pending claim pursuant to s. 517.131(4) but who are not yet eligible for payment from the fund will be entitled to receive their pro rata shares of the total disbursement once they have complied with subsection (1). However, in the event that the amounts they are eligible to receive pursuant to subsection (1) are less than their pro rata shares as determined under this section, any excess shall be distributed pro rata to those persons entitled to disbursement under this subsection whose pro rata shares of the total disbursement were less than the amounts of their claims.

(4) Individual claims filed by persons owning the same joint account, or claims stemming from any other type of account maintained by a particular licensee on which more than one name appears, shall be treated as the claims of one eligible claimant with respect to payment from the fund. If a claimant who has obtained a judgment which qualifies for disbursement under s. 517.131 has maintained more than one account with the dealer, investment adviser, or associated person who is the subject of the claims, for purposes of disbursement of the fund, all such accounts, whether joint or individual, shall be considered as one account and shall entitle such claimant to only one distribution from the fund not to exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1). To the extent that a claimant obtains more than one judgment against a dealer, investment adviser, or one or more associated persons arising out of the same transactions, occurrences, or conduct or out of the dealer's, investment adviser's, or associated person's handling of the claimant's account, such judgments shall be consolidated for purposes of this

section and shall entitle the claimant to only one disbursement from the fund not to exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1).

(5) If the final judgment which gave rise to the claim is overturned in any appeal or in any collateral proceeding, the claimant shall reimburse the fund all amounts paid to the claimant on the claim. Such reimbursement shall be paid to the office ~~department~~ within 60 days after the final resolution of the appellate or collateral proceedings, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.

(6) If a claimant receives payments in excess of that which is permitted under this chapter, the claimant shall reimburse the fund such excess within 60 days after the claimant receives such excess payment or after the payment is determined to be in excess of that permitted by law, whichever is later.

(7) The office ~~department~~ may institute legal proceedings to enforce compliance with this section and with s. 517.131 to recover moneys owed to the fund, and shall be entitled to recover interest, costs, and attorney's fees in any action brought pursuant to this section in which the office ~~department~~ prevails.

(8) If at any time the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office ~~department~~, the office ~~department~~ shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office ~~department~~, which order is not subject to an appeal or other pending proceeding.

(9) Upon receipt by the claimant of the payment from the Securities Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the office ~~department~~. If the provisions of s. 517.131(3)(e) apply, the claimant must assign to the office ~~department~~ any right, title, and interest in the debt to the extent of any payment by the office ~~department~~ from the Securities Guaranty Fund.

(10) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer ~~Treasurer~~ upon authorization ~~a voucher~~ signed by the director of the office ~~Comptroller, as head of the department~~, or such agent as she or he may designate.

Section 600. Section 517.151, Florida Statutes, is amended to read:

517.151 Investments of the fund.—The funds of the Securities Guaranty Fund shall be invested by the Chief Financial Officer ~~Treasurer~~ under the same limitations as other state funds, and the interest earned thereon shall be deposited to the credit of the fund and available for the same purpose as other moneys deposited in the Securities Guaranty Fund.

Section 601. Subsection (1), (3), and (5), and paragraph (b) of subsection (6) of section 517.161, Florida Statutes, are amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, associated person, or branch office.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office ~~department~~ if the office ~~department~~ determines that such applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with rendering investment advice or in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by the dealer, broker, or investment adviser, as and when paid for, and due to be delivered;

(g) Is rendering investment advice or selling or offering for sale securities through any associated person not registered in compliance with the provisions of this chapter;

(h) Has demonstrated unworthiness to transact the business of dealer, investment adviser, or associated person;

(i) Has exercised management or policy control over or owned 10 percent or more of the securities of any dealer or investment adviser that has been declared bankrupt, or had a trustee appointed under the Securities Investor Protection Act; or is, in the case of a dealer or investment adviser, insolvent;

(j) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, associated person, or branch office; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(k) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

(l) Is of bad business repute; or

(m) Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers, or other related or similar industries. For purposes of this subsection, the office ~~department~~ may not deny registration to any applicant who has been continuously registered with the office ~~department~~ for 5 years from the entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office ~~department~~ pursuant to the commission's ~~department's~~ rules ~~and regulations~~.

(3) In the event the office ~~department~~ determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of dealers and associated persons; and denial, suspension, or revocation of the registration of a dealer or investment adviser shall also deny, suspend, or revoke the registration of all her or his associated persons.

(5) The office ~~department~~ may deny any request to terminate or withdraw any application or registration if the office ~~department~~ believes that an act which would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

(6) Registration under s. 517.12 may be denied or any registration granted may be suspended or restricted if an applicant or registrant is charged, in a pending enforcement action or pending criminal prosecution, with any conduct that would authorize denial or revocation under subsection (1).

(b) Any order of suspension or restriction under this subsection shall:

1. Take effect only after a hearing, unless no hearing is requested by the registrant or unless the suspension or restriction is made in accordance with s. 120.60(6).

2. Contain a finding that evidence of a prima facie case supports the charge made in the enforcement action or criminal prosecution.

3. Operate for no longer than 10 days beyond receipt of notice by the office ~~department~~ of termination with respect to the registrant of the enforcement action or criminal prosecution.

Section 602. Section 517.181, Florida Statutes, is amended to read:

517.181 Escrow agreement.—

(1) If the statement containing information as to securities to be registered, as provided for in s. 517.081, shall disclose that any such securities or any securities senior thereto shall have been or shall be intended to be issued for any patent right, copyright, trademark, process, formula, or goodwill; for organization or promotion fees or expenses; or for goodwill or going-concern value or other intangible assets, then the amount and nature thereof shall be fully set forth, and the office ~~department~~ may require that such securities so issued in payment of such patent right, copyright, trademark, process, formula, or goodwill; for organization or promotion fees or expenses; or for other intangible assets shall be delivered in escrow to the office ~~department~~ or other depository satisfactory to the office ~~department~~ under an escrow agreement. The escrow agreement shall be in a form suitable to the office ~~department~~ and shall provide for the escrow or impoundment of such securities for a reasonable length of time determined by the office ~~department~~ to be in the best interest of other shareholders. The securities subject to escrow shall also include any dividend, cash, or stock that may be paid during the life of the escrow and any stock issued through, or by reason of, any stock split, exchange of shares, recapitalization, merger, consolidation, reorganization, or similar combination or subdivision in substitution for or in lieu of any stock subject to this provision; and in case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(2) Any securities held in escrow under this section on November 1, 1978, may be released to the owners thereof upon request, if satisfactory financial data is submitted to the office ~~department~~ showing that the issuer is currently operating on sound business principles and has net income in accordance with criteria-implementing rules of the commission ~~department~~ relating to escrow of securities. At any time, the office ~~department~~ may review any existing escrow agreement made under this section and determine that the same may be amended in order to permit a subsequent release of the securities upon terms and conditions which are just and equitable as defined by said rules.

(3) When it shall appear from information available to the office ~~department~~ that the issuer of securities held in escrow has been dissolved or disbanded or is defunct or no longer actively engaged in business and such securities are of no value, the office ~~department~~, after giving at least 60 days' notice in at least one newspaper of general circulation and after giving interested parties opportunity for hearing, may enter its order authorizing the destruction of said securities. Any affected escrow agent may rely on such order and shall not be required to determine the validity or sufficiency thereof.

Section 603. Section 517.191, Florida Statutes, is amended to read:

517.191 Injunction to restrain violations.—

(1) When it appears ~~shall appear~~ to the office ~~department~~, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office ~~department~~ may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office ~~department~~ may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court proceedings, the office ~~department~~ may apply for, and on due showing be entitled to have issued, the court's subpoena requiring forthwith the appearance of any defendant and her or his employees, associated persons, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the equity courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the office ~~department~~, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon her or him by the court. In any such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

(3) In addition to any other remedies provided by this chapter, the office ~~department~~ may apply to the court hearing this matter for an order of restitution whereby the defendants in such action shall be ordered to make restitution of those sums shown by the office ~~department~~ to have been obtained by them in violation of any of the provisions of this chapter. Such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

Section 604. Section 517.201, Florida Statutes, is amended to read:

517.201 Investigations; examinations; subpoenas; hearings; witnesses.—

(1) The office ~~department~~:

(a) May make investigations and examinations within or outside of this state as it deems necessary:

1. To determine whether a person has violated or is about to violate any provision of this chapter or a rule or order hereunder; or

2. To aid in the enforcement of this chapter.

(b) May require or permit a person to file a statement in writing, under oath or otherwise as the office ~~department~~ determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) When it is proposed to conduct an investigation or examination, the office ~~department~~ may gather evidence in the matter. The office ~~department~~ may administer oaths, examine witnesses, and issue subpoenas.

(3) Subpoenas for witnesses whose evidence is deemed material to any investigation or examination may be issued by the office ~~department~~ under the seal of the office ~~department~~, or by any county court judge or clerk of the circuit court or county court, commanding such witnesses to be or appear before the office ~~department~~ at a time and place to be therein named and to bring such books, records, and documents as may be specified or to submit such books, records, and documents to inspection; and such subpoenas may be served by an authorized representative of the office ~~department~~.

(4)(a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office ~~department~~ pursuant to this section, the office ~~department~~ may petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, records, and documents as are specified in such subpoena duces tecum. The court may grant injunctive relief restraining the issuance, sale or offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement, or distribution in or from offices in this state of securities or investments by a person or agent, employee, broker, partner, officer, director, or stockholder thereof, and may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena or subpoena duces tecum and the office ~~department~~ has completed its investigation or examination. The office ~~department~~ is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the office ~~department~~ to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

(b) When it shall appear to the office ~~department~~ that the compliance with a subpoena or subpoena duces tecum issued or caused to be issued by

the office ~~department~~ pursuant to this section is essential and otherwise unavailable to an investigation or examination, the office ~~department~~, in addition to the other remedies provided for herein, may, by verified petition setting forth the facts, apply to the circuit court of the county in which the subpoenaed person resides or has its principal place of business for a writ of ne exeat. The court shall thereupon direct the issuance of the writ against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the writ a suitable amount of bond on payment of which the person named in the writ shall be freed, having a due regard to the nature of the case.

(5) Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination or investigation is held at the place of business or residence of the witness.

Section 605. Subsections (1) and (3) of section 517.2015, Florida Statutes, are amended to read:

517.2015 Confidentiality of information relating to investigations and examinations.—

(1)(a) Except as otherwise provided by this section, information relative to an investigation or examination by the office ~~department~~ pursuant to this chapter, including any consumer complaint, is confidential and exempt from s. 119.07(1) until the investigation or examination is completed or ceases to be active. The information compiled by the office ~~department~~ in such an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the office's ~~department's~~ investigation or examination is completed or ceases to be active if the office ~~department~~ submits the information to any law enforcement or administrative agency or regulatory organization for further investigation. Such information shall remain confidential and exempt from s. 119.07(1) until that agency's or organization's investigation is completed or ceases to be active. For purposes of this section, an investigation or examination shall be considered "active" so long as the office ~~department~~ or any law enforcement or administrative agency or regulatory organization is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit. This section shall not be construed to prohibit disclosure of information which is required by law to be filed with the office ~~department~~ and which, but for the investigation or examination, would be subject to s. 119.07(1).

(b) Except as necessary for the office ~~department~~ to enforce the provisions of this chapter, a consumer complaint and other information relative to an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the investigation or examination is completed or ceases to be active to the extent disclosure would:

1. Jeopardize the integrity of another active investigation or examination.

2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder.

3. Disclose the identity of a confidential source.

4. Disclose investigative techniques or procedures.

5. Reveal a trade secret as defined in s. 688.002.

(c) In the event that office ~~department~~ personnel are or have been involved in an investigation or examination of such nature as to endanger their lives or physical safety or that of their families, then the home addresses, telephone numbers, places of employment, and photographs of such personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the names and locations of schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).

(d) Nothing in this section shall be construed to prohibit the office ~~department~~ from providing information to any law enforcement or administrative agency or regulatory organization. Any law enforcement or administrative agency or regulatory organization receiving confidential information in connection with its official duties shall maintain the confidentiality of the information so long as it would otherwise be confidential.

(e) All information obtained by the office ~~department~~ from any person which is only made available to the office ~~department~~ on a confidential or similarly restricted basis shall be confidential and exempt from s. 119.07(1). This exemption shall not be construed to prohibit disclosure of information which is required by law to be filed with the office ~~department~~ or which is otherwise subject to s. 119.07(1).

(3) A privilege against civil liability is granted to a person who furnishes information or evidence to the office ~~department~~, unless such person acts in bad faith or with malice in providing such information or evidence.

Section 606. Section 517.221, Florida Statutes, is amended to read:

517.221 Cease and desist orders.—

(1) The office ~~department~~ may issue and serve upon a person a cease and desist order whenever the office ~~department~~ has reason to believe that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated by the commission or office ~~department~~, or any written agreement entered into with the office ~~department~~.

(2) Whenever the office ~~department~~ finds that conduct described in subsection (1) presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named therein and remains effective for 90 days. If the

office ~~department~~ begins nonemergency cease and desist proceedings under subsection (1), the emergency cease and desist order remains effective until conclusion of the proceedings under ss. 120.569 and 120.57.

(3) The office ~~department~~ may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order promulgated by the commission or office ~~department~~, or any written agreement entered into with the office ~~department~~ in an amount not to exceed $5,000 for each such violation. All fines collected hereunder shall be deposited as received in the Anti-Fraud Trust Fund.

Section 607. Subsection (1) of section 517.241, Florida Statutes, is amended to read:

517.241 Remedies.—

(1) Any person aggrieved by a final order of the office ~~department~~ may have the order reviewed as provided by chapter 120, the Administrative Procedure Act.

Section 608. Paragraph (c) of subsection (1) and paragraph (b) of subsection (2) of section 517.301, Florida Statutes, are amended to read:

517.301 Fraudulent transactions; falsification or concealment of facts.—

(1) It is unlawful and a violation of the provisions of this chapter for a person:

(c) In any matter within the jurisdiction of the office ~~department~~, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(2) For purposes of ss. 517.311 and 517.312 and this section, the term "investment" means any commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term "investment" does not include a commitment of money or property for:

(b) The purchase of tangible personal property through a person not engaged in telephone solicitation, where said property is offered and sold in accordance with the following conditions:

1. There are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase;

2. The tangible property is delivered to the purchaser within 30 days after sale, except that such 30-day period may be extended by the office ~~department~~ if market conditions so warrant; and

3. The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that the amount of such refund in no

event shall exceed the bid price in effect at the time the property is returned to the seller. If the applicable sellers' market is closed at the time the property is returned to the seller for a refund, the amount of such refund shall be based on the bid price for such property at the next opening of such market.

Section 609. Subsection (3) of section 517.302, Florida Statutes, is amended to read:

517.302 Criminal penalties; alternative fine; Anti-Fraud Trust Fund; time limitation for criminal prosecution.—

(3) In lieu of a fine otherwise authorized by law, a person who has been convicted of or who has pleaded guilty or no contest to having engaged in conduct in violation of the provisions of this chapter may be sentenced to pay a fine that does not exceed the greater of three times the gross value gained or three times the gross loss caused by such conduct, plus court costs and the costs of investigation and prosecution reasonably incurred.

(a) There is created within the office ~~department~~ a trust fund to be known as the Anti-Fraud Trust Fund. Any amounts assessed as costs of investigation and prosecution under this subsection shall be deposited in the trust fund. Funds deposited in such trust fund shall be used, when authorized by appropriation, for investigation and prosecution of administrative, civil, and criminal actions arising under the provisions of this chapter. Funds may also be used to improve the public's awareness and understanding of prudent investing.

(b) The office ~~department~~ shall report to the Executive Office of the Governor annually by November 15, the amounts deposited into the Anti-Fraud Trust Fund during the previous fiscal year. The Executive Office of the Governor shall distribute these reports to the President of the Senate and the Speaker of the House of Representatives.

Section 610. Subsections (1) and (2) of section 517.313, Florida Statutes, are amended to read:

517.313 Destroying certain records; reproduction.—

(1) The commission and office may ~~department is authorized to~~ photograph, microphotograph, or reproduce on film or prints documents, records, data, and information of a permanent character.

(2) The commission and office may ~~department is authorized to~~ destroy any of said documents after audit ~~of the office~~ has been completed for the period embracing the dates of said instruments, after complying with the provisions of chapter 119.

Section 611. Section 517.315, Florida Statutes, is amended to read:

517.315 Fees.—All fees and charges of any nature collected by the office ~~department~~ pursuant to this chapter, except the fees and charges collected pursuant to s. 517.131, shall be paid into the State Treasury and credited

to the General Revenue Fund; and an appropriation shall be made annually of necessary funds for the administration of the provisions of this chapter.

Section 612. Section 517.32, Florida Statutes, is amended to read:

517.32 Exemption from excise tax, certain obligations to pay.—There shall be exempt from all excise taxes imposed by chapter 201 all promissory notes, nonnegotiable notes, and other written obligations to pay money bearing dates subsequent to July 1, 1957, when the maker thereof is a security dealer registered by the office ~~department~~ under this chapter and when such promissory note, nonnegotiable note or notes, or other written obligation to pay money shall be for the duration of 30 days or less and secured by pledge or deposit, as collateral security for the payment thereof, security or securities as defined in s. 517.021, provided all excise taxes imposed by chapter 201 shall have been paid upon such collateral security.

Section 613. Paragraph (b) of subsection (1) of section 518.115, Florida Statutes, is amended to read:

518.115 Power of fiduciary or custodian to deposit securities in a central depository.—

(1)

(b) A bank or a trust company so depositing securities with a clearing corporation shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of state-chartered institutions, the Financial Services Commission ~~Department of Banking and Finance~~ and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue.

Section 614. Paragraph (b) of subsection (1) of section 518.116, Florida Statutes, is amended to read:

518.116 Power of certain fiduciaries and custodians to deposit United States Government and agency securities with a Federal Reserve bank.—

(1)

(b) A bank or trust company so depositing securities with a Federal Reserve Bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposits as, in the case of state-chartered institutions, the Financial Services Commission ~~Department of Banking and Finance~~ and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. The records of such bank or trust company shall at all times show the ownership of the securities held in such account.

Section 615. Section 518.15, Florida Statutes, is amended to read:

518.15 Bonds or motor vehicle tax anticipation certificates legal investments and security.—Notwithstanding any restrictions on investments contained in any law of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers,

trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and all persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in bonds or motor vehicle anticipation certificates issued under authority of s. 18, Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 revised constitution, and the additional provisions of s. 9(d), and such bonds or certificates shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this act to authorize any person, firm or corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or anticipation certificates, up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds.

Section 616. Section 518.151, Florida Statutes, is amended to read:

518.151 Higher education bonds or certificates legal investments and security.—Notwithstanding any restrictions on investments contained in any law of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and all persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in higher education bonds or certificates issued under authority of s. 19, Art. XII of the State Constitution of 1885 or of s. 9(a), Art. XII of the constitution as revised in 1968, as amended, and such bonds or certificates shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this act to authorize any person, firm or corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or certificates, up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds.

Section 617. Section 518.152, Florida Statutes, is amended to read:

518.152 Puerto Rican bonds or obligations, legal investments and securities.—Notwithstanding any restrictions on investments contained in any law of this state, all public officers and public bodies of the state, counties, municipal corporations, and other political subdivisions; all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; all persons holding in trust any pension, health and welfare, and vacation funds; all administrators,

executors, guardians, trustees, and other fiduciaries of any public, quasi-public, or private fund or estate; and all other persons authorized to invest in bonds or other obligations may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in bonds or other obligations issued by the Commonwealth of Puerto Rico, its agencies, authorities, instrumentalities, municipalities, or political subdivisions, provided such agency, authority, instrumentality, municipality, or political subdivision has not, within 5 years prior to the making of such investment, defaulted for more than 90 days in the payment of any part of the principal or interest of its bonded indebtedness. Such bonds or obligations shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this section to authorize any person, firm, corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or obligations up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds. However, nothing contained in this section shall be construed as relieving any person from any duty of exercising reasonable care in selecting securities.

Section 618. Section 519.101, Florida Statutes, is amended to read:

519.101 Florida equity exchange feasibility study; structure, operation, and regulation.—

(1) There may be created one or more Florida equity exchanges, with one or more offices each, upon a determination by the Office of Financial Regulation of the Financial Services Commission ~~Comptroller~~ that each such exchange has a reasonable promise of successful operation, will promote economic development, will produce net economic benefits in the state, and will not expose the public to undue risk of financial loss. This determination shall be based on the results of a feasibility study concerning the possible structure, operation, and regulation of each such exchange, to be carried out under the supervision of the office ~~Comptroller~~. ~~The Secretary of Commerce shall provide the Comptroller any needed advice on economic development aspects of the feasibility study.~~ Said feasibility study shall evaluate to what extent securities laws may limit the transferability of investments in which any exchange would deal; to what extent companies financed through securities in which the exchange would deal would prefer a stable group of investors; to what extent the particular investment objectives of potential participants in any exchange might be inconsistent with an exchange operation; and the possibility that the frequency of investment opportunities of the type in which an exchange would deal would be too low to economically operate any exchange. The determination of the office ~~Comptroller~~ shall constitute a final order as defined in s. 120.52 and shall be subject to the provisions of chapter 120. Nothing in this section, however, shall be construed to require the expenditure of state funds for the purpose of conducting any such feasibility study. For the purposes of this section, the term "exchange" shall apply to any such Florida equity exchange proposed or created under this section.

(2) The purpose of the exchange shall be to provide a marketplace for the negotiation, arrangement, exchange, sale, purchase, brokerage, syndication, and underwriting, and all activities incidental thereto, of investment opportunities, in an institutionalized and, to the maximum extent possible, self-regulated fashion.

(3) Within 30 days following such determination, a committee shall be appointed to write the constitution and bylaws of the exchange. The office ~~Comptroller~~ may provide technical assistance to the committee on the development of the constitution and bylaws of the exchange. The committee shall consist of 15 members, 11 members to be appointed by the Governor, 2 members to be appointed by the Speaker of the House of Representatives, and 2 members to be appointed by the President of the Senate. The chair shall be elected by a majority of the committee. The committee shall transmit such proposed constitution, bylaws, and other recommendations for the approval of the office ~~Comptroller~~ no later than 90 days following the first meeting of the committee. In reviewing the constitution and the bylaws of the exchange, as well as any other recommendations made to the office ~~Comptroller~~ by the committee, the office ~~Comptroller~~ shall consider whether such constitution, bylaws, and recommendations are reasonably consistent with the public interest and the efficient functioning of the exchange. The office ~~Comptroller~~ shall approve the constitution and bylaws of the exchange if he or she finds that they specifically describe the types of business that the exchange will conduct, that such business activities are not inconsistent with state or federal law, that the form of business organization of the exchange complies with statutory requirements, and that the interest of owners or members of the exchange would be adequately protected. The submission of the proposed constitution and bylaws to the office ~~Comptroller~~ shall be deemed an application for a license and shall be subject to the provisions of s. 120.80(9).

(4) The exchange shall have full authority to function 60 days after its constitution and bylaws are approved by the office ~~Comptroller~~. The initial Board of Governors of the exchange shall consist of the members of the committee who shall serve until the first election pursuant to the constitution and bylaws. If the constitution and bylaws are disapproved by the office ~~Comptroller~~, the committee, in consultation with the office ~~Comptroller~~, shall have 60 days from the date of such disapproval within which to submit an acceptable constitution and bylaws.

(5) The constitution and bylaws of the exchange shall include provision that:

(a) There shall be no less than 9 nor more than 15 governors of the exchange, at least one-third of whom shall not be members of the exchange.

(b) The principal offices of each exchange and the principal offices of its members shall be located within this state for the purpose of conducting the type of business described in subsection (2). Any exchange may have such other offices around the state as it deems necessary from time to time, subject to a determination by the office ~~Comptroller~~ that such additional offices will be necessary for the efficient operation of the exchange and will be in the public interest.

(c) All members and applicants for membership on the exchange shall submit all financial information reasonably required by the office ~~Comptroller~~.

(d) The exchange shall establish or participate in a security fund which shall be capitalized or underwritten in such form and amount as will reasonably protect persons transacting business through the exchange from any harm or loss occasioned by the insolvency of any member of the exchange. The formation of such security fund and the adequacy of the financial security provided thereby shall be subject to the approval of the Office of Financial Regulation ~~Department of Banking and Finance~~ based upon the types and amounts of transactions effected through the facilities of the exchange.

(e) Rules shall be adopted prescribing eligibility for membership and the voting power, duties, and rights to participate in the conduct and management of the affairs of the exchange by the members thereof, such rights and duties to include, without limitation, the manner and form of conducting business, financial stability requirements, dues, membership fees, resolution of dispute mechanisms, and all other matters necessary or appropriate to conduct any business permitted herein; however, such rules shall not impose any limit on the number of members of any such exchange. Any amendments to the constitution and bylaws shall be subject to the approval of the office ~~Comptroller~~.

(f) Elections to the Board of Governors of the exchange shall be held once every 2 years, with those persons receiving the greatest number of votes cast being elected thereto.

(6) If the exchange contemplated by this section is established, the office ~~Comptroller~~ shall furnish the chairs of the finance and taxation committees of the Legislature with copies of its constitution and bylaws. Upon receipt of the constitution and bylaws, the Legislature shall consider what tax policy and tax exemptions are needed to facilitate successful operation of the exchange.

(7) If the exchange contemplated by this section is finally established, the Financial Services Commission ~~Comptroller~~ shall forthwith adopt rules providing for the reimbursement by the exchange or any member thereof of the actual costs incurred by the office ~~Comptroller~~ in connection with the regulation and supervision of the exchange. As used in this section, "actual costs" means all direct and indirect costs and expenses incurred by the office ~~Comptroller~~ in connection with the exchange including, without limitation, general administrative costs, travel expenses, salaries, and other benefits given to persons involved in the regulation and supervision of the exchange. The office ~~Comptroller~~ shall have the power to make any allocations that are deemed reasonable and necessary and may require the exchange or any members to pay interim assessments related to estimated final assessments.

(8) The Florida securities laws and rules shall apply to the exchange and to its members.

(9) The Financial Services Commission ~~Comptroller~~ may establish limitations on investments in members of the exchange by any person or company, consistent with the public interest and the efficient functioning of the exchange.

Section 619. Subsection (3) of section 520.02, Florida Statutes, is amended, present subsections (4) through (17) of that section are renumbered as (5) through (18), respectively, and a new subsection (4) is added to that section to read:

520.02 Definitions.—In this act, unless the context or subject matter otherwise requires:

(3) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(4) "Office" means the Office of Financial Regulation of the commission.

Section 620. Subsections (2), (3), (4), and (5) of section 520.03, Florida Statutes, are amended to read:

520.03 Licenses.—

(2) An application for a license under this part must be submitted to the office ~~department~~ in such form as the commission ~~department~~ may prescribe by rule. If the office ~~department~~ determines that an application should be granted, it shall issue the license for a period not to exceed 2 years. A nonrefundable application fee of $175 shall accompany an initial application for the principal place of business and each application for a branch location of a retail installment seller who is required to be licensed under this chapter.

(3) The renewal fee for a motor vehicle retail installment seller license shall be $175. The commission ~~department~~ shall establish by rule biennial licensure periods and procedures for renewal of licenses. A license that is not renewed by the end of the biennium established by the commission ~~department~~ shall revert from active to inactive status. An inactive license may be reactivated within 6 months after becoming inactive upon filing a completed reactivation form, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee. A license that is not reactivated within 6 months after becoming inactive automatically expires.

(4) Each license shall specify the location for which it is issued and must be conspicuously displayed at that location. Prior to relocating a principal place of business or any branch location, the licensee must provide to the office ~~department~~ notice of the relocation in a form prescribed by commission ~~department~~ rule. A licensee may not transact business as a motor vehicle retail installment seller except under the name by which it is licensed. Licenses issued under this part are not transferable or assignable.

(5) The office ~~department~~ may deny an initial application for a license under this part if the applicant or any person with power to direct the management or policies of the applicant is the subject of a pending criminal

prosecution or governmental enforcement action, in any jurisdiction, until conclusion of such criminal prosecution or enforcement action.

Section 621. Subsections (4) and (9) of section 520.07, Florida Statutes, are amended to read:

520.07 Requirements and prohibitions as to retail installment contracts.—

(4) The amount, if any, included for insurance which may be purchased by the holder of the retail installment contract may not exceed the applicable premiums chargeable in accordance with the rates filed with the Office of Insurance Regulation of the Commission ~~Department of Insurance~~. If dual interest insurance on the motor vehicle is purchased by the holder, it shall, within 30 days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages, and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance. Nothing in this act shall impair or abrogate the right of a buyer, as defined herein, to procure insurance from an agent and company of his or her own selection as provided by the insurance laws of this state; and nothing contained in this act shall modify, amend, alter, or repeal any of the insurance laws of the state, including any such laws enacted by the 1957 Legislature.

(9) The office ~~department~~ may order a seller to refund any amounts assessed and charged on a retail installment contract which exceed the maximum charges provided by this act or by rules of the commission ~~department~~.

Section 622. Subsection (3) of section 520.31, Florida Statutes, is amended, present subsections (4) through (17) of that section are renumbered as (5) through (18), respectively, and a new subsection (4) is added to that section to read:

520.31 Definitions.—Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(3) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(4) "Office" means the Office of Financial Regulation of the commission.

Section 623. Subsections (2), (3), (4), and (5) of section 520.32, Florida Statutes, are amended to read:

520.32 Licenses.—

(2) An application for a license under this part must be submitted to the office ~~department~~ in such form as the commission ~~department~~ may prescribe by rule. If the office ~~department~~ determines that an application should be

granted, it shall issue the license for a period not to exceed 2 years. A nonrefundable application fee of $175 shall accompany an initial application for the principal place of business and each application for a branch location of a retail installment seller.

(3) The renewal fee for a retail seller license shall be $175. Biennial licensure periods and procedures for renewal of licenses may also be established by the commission ~~department~~ by rule. A license that is not renewed at the end of the biennium established by the commission ~~department~~ shall revert from active to inactive status. An inactive license may be reactivated within 6 months after becoming inactive upon filing a completed reactivation form, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee. A license that is not reactivated within 6 months after becoming inactive automatically expires.

(4) Each license must specify the location for which it is issued and must be conspicuously displayed at that location. If a licensee's principal place of business or branch location changes, the licensee shall notify the office ~~department~~ and the office ~~department~~ shall endorse the change of location without charge. A licensee may not transact business as a retail installment seller except under the name by which it is licensed. A license issued under this part is not transferable or assignable.

(5) The office ~~department~~ may deny an initial application for a license under this part if the applicant or any person with power to direct the management or policies of the applicant is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction, until conclusion of such criminal prosecution or enforcement action.

Section 624. Subsection (8) of section 520.34, Florida Statutes, is amended to read:

520.34 Retail installment contracts.—

(8) The seller under any retail installment contract shall, within 30 days after execution of the contract, deliver or mail or cause to be delivered or mailed to the buyer at his or her aforesaid address any policy or policies of insurance the seller has agreed to purchase in connection therewith, or in lieu thereof a certificate or certificates of such insurance. The amount, if any, included for insurance shall not exceed the applicable premiums chargeable in accordance with the rates filed with the Office of Insurance Regulation of the commission ~~Department of Insurance~~; if any such insurance is canceled, unearned insurance premium refunds and any unearned finance charges thereon received by the holder shall, at his or her option, be credited to the final maturing installments of the contract or paid to the buyer, except to the extent applied toward the payment for similar insurance protecting the interests of the seller and the holder or either of them. The finance charge on the original transaction shall be separately computed:

(a) With the premium for the canceled or adjusted insurance included in the "amount financed"; and

(b) With the premium for the canceled insurance or the amount of the premium adjustment excluded from the "amount financed."

The difference in the finance charge resulting from these computations shall be the portion of the finance charge attributable to the canceled or adjusted insurance, and the unearned portion thereof shall be determined by the use of the rule of 78ths. "Cancellation of insurance" occurs at such time as the seller or holder receives from the insurance carrier the proper refund of unearned insurance premiums. Nothing in this act shall impair or abrogate the right of a buyer to procure insurance from an agent and company of his or her own selection, as provided by the insurance laws of this state; and nothing contained in this act shall modify, alter, or repeal any of the insurance laws of this state.

Section 625. Subsections (2), (3), (4), and (5) of section 520.52, Florida Statutes, are amended to read:

520.52 Licensees.—

(2) An application for a license under this part must be submitted to the office ~~department~~ in such form as the commission ~~department~~ may prescribe by rule. If the office ~~department~~ determines that an application should be granted, it shall issue the license for a period not to exceed 2 years. A nonrefundable application fee of $175 shall accompany an initial application for the principal place of business and each branch location of a sales finance company.

(3) The renewal fee for a sales finance company license shall be $175. Biennial licensure periods and procedures for renewal of licenses may also be established by the commission ~~department~~ by rule. A license that is not renewed at the end of the biennium established by the commission ~~department~~ shall revert from active to inactive status. An inactive license may be reactivated within 6 months after becoming inactive upon filing a completed reactivation form, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee. A license that is not reactivated within 6 months after becoming inactive automatically expires.

(4) Each license must specify the location for which it is issued and must be conspicuously displayed at that location. If a licensee's principal place of business or branch location changes, the licensee shall notify the office ~~department~~ and the office ~~department~~ shall endorse the change of location without charge. A licensee may not transact business as a sales finance company except under the name by which it is licensed. A license issued under this part is not transferable or assignable.

(5) The office ~~department~~ may deny an initial application for a license under this part if the applicant or any person with power to direct the management or policies of the applicant is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction, until conclusion of such criminal prosecution or enforcement action.

Section 626. Subsection (6) of section 520.61, Florida Statutes, is amended, present subsections (7) through (21) of that section are renum-

bered as (8) through (22), respectively, and a new subsection (7) is added to that section to read:

520.61 Definitions.—As used in this act:

(6) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(7) "Office" means the Office of Financial Regulation of the commission.

Section 627. Section 520.63, Florida Statutes, is amended to read:

520.63 Licensees.—

(1) A person may not engage in or transact any business as a home improvement finance seller or operate a branch without first obtaining a license from the office ~~department~~, except that a banking institution, trust company, savings and loan association, credit union authorized to do business in this state, or licensee under ss. 494.006-494.0077 is not required to obtain a license to engage in home improvement financing.

(2) An application for a license under this part must be submitted to the office ~~department~~ in such form as the commission ~~department~~ may prescribe by rule. If the office ~~department~~ determines that an application should be granted, it shall issue the license for a period not to exceed 2 years. A nonrefundable application fee of $175 shall accompany an initial application for the principal place of business and each application for a branch location of a home improvement finance seller.

(3) The renewal fee for a home improvement finance license shall be $175. Biennial licensure periods and procedures for renewal of licenses may also be established by the commission ~~department~~ by rule. A license that is not renewed at the end of the biennium established by the commission ~~department~~ shall automatically revert from active to inactive status. An inactive license may be reactivated within 6 months after becoming inactive upon filing a completed reactivation form, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee. A license that is not reactivated within 6 months after becoming inactive automatically expires.

(4) Each license must specify the location for which it is issued and must be conspicuously displayed at that location. If a home improvement finance seller's principal place of business or any branch location changes, the licensee shall notify the office ~~department~~ and the office ~~department~~ shall endorse the change of location without charge. A licensee may not transact business as a home improvement finance seller except under the name by which it is licensed. A license issued under this part is not transferable or assignable.

(5) The office ~~department~~ may deny an initial application for a license under this part if the applicant or any person with power to direct the management or policies of the applicant is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction, until conclusion of such criminal prosecution or enforcement action.

(6) Each seller shall designate and maintain an agent in the state for service of process.

Section 628. Subsections (1) and (5) of section 520.73, Florida Statutes, are amended to read:

520.73 Home improvement contract; form and content; separate disclosures.—

(1) Every home improvement contract shall be evidenced by a written agreement and shall be signed by the parties. The home improvement contract shall be in the form approved by the office ~~department~~ and shall contain:

(a) The name, address, and license number of the home improvement finance seller;

(b) The names of the home improvement finance seller's employees who solicited or negotiated the home improvement contract;

(c) The approximate dates when the work will begin and will be completed; and

(d) A description of the work to be done and the materials to be used.

(5) The home improvement contract shall contain the following notice, in substantially this form, and such other notices required by the public interest and specified by the commission ~~department~~ by rule, in 10-point boldfaced type directly above the space provided for the signature of the owner:

Notice To Owner

a. Do not sign this home improvement contract in blank.

b. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.

c. This home improvement contract may contain a mortgage or otherwise create a lien on your property that could be foreclosed on if you do not pay. Be sure you understand all provisions of the contract before you sign.

Section 629. Subsection (3) of section 520.76, Florida Statutes, is amended to read:

520.76 Insurance provisions, procurement, rates.—

(3) The amount, if any, included for such insurance shall not exceed the applicable premiums chargeable in accordance with rates filed with the Office of Insurance Regulation of the commission ~~Department of Insurance~~. If any such group credit life or other insurance is canceled, the refund for unearned insurance premiums received or receivable by the holder of the home improvement contract or the excess of the amount included in the contract for insurance over the premiums paid or payable by the holder of the contract together with, in either case, the unearned portion of the finance charge or other interest applicable thereto shall be credited to the

final maturing installments of the home improvement contract. However, no such credit need be made if the amount would be less than $1.

Section 630. Subsection (2) of section 520.81, Florida Statutes, is amended to read:

520.81 Completion certificate.—

(2) The form of the certificate shall be prescribed by the commission ~~department~~.

Section 631. Subsection (2) of section 520.83, Florida Statutes, is amended to read:

520.83 Cancellation of contract on payment in full.—

(2) For all other home improvement contracts, the holder, upon payment in full by the owner of the time sales price and other amounts lawfully due under the home improvement contract, shall furnish the owner with such instruments as the commission ~~department~~ may by rule ~~regulation~~ provide.

Section 632. Subsections (10) and (12) of section 520.90, Florida Statutes, are amended to read:

520.90 Prohibited acts.—The following acts are prohibited:

(10) Willful failure to notify the office ~~department~~ of any change of control in ownership, management, business name, or location.

(12) Willful failure to comply with any order, demand, or requirement lawfully made by the office ~~department~~.

Section 633. Section 520.994, Florida Statutes, is amended to read:

520.994 Powers of office ~~department~~.—

(1) The office ~~department~~ may issue and serve subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter pertaining to this chapter. The office ~~department~~ may administer oaths and affirmations to any person whose testimony is required. If any person refuses to testify, produce books, records, and documents, or otherwise refuses to obey a subpoena issued under this section, the office ~~department~~ may present its petition to a court of competent jurisdiction in or for the county in which such person resides or has its principal place of business, whereupon the court shall issue its rule nisi requiring such person to obey forthwith the subpoena issued by the office ~~department~~ or show cause for failing to obey such subpoena. Unless the person shows sufficient cause for failing to obey the subpoena, the court shall forthwith direct such person to obey the subpoena, subject to such punishment as the court may direct, including, but not limited to, the restraint, by injunction or by appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents as the court deems appropriate, until such person has

fully complied with such subpoena and the office ~~department~~ has completed its investigation or examination. The office ~~department~~ is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the office ~~department~~ to obtain an order granting, in whole or in part, its petition shall be taxed against the subpoenaed person, and failure to comply with such order is a contempt of court. Witnesses are entitled to the same fees and mileage as they are entitled to by law for attending as witnesses in the circuit court, unless such examination or investigation is held at the place of business or residence of the witness.

(2) In addition to any other powers conferred upon it to enforce or administer this chapter, the office ~~department~~ may bring an action in any court of competent jurisdiction to enforce or administer any provision of this chapter, any rule or order adopted pursuant to this chapter, or any written agreement entered into with the office ~~department~~. In such action, the office ~~department~~ may seek temporary or permanent injunction, appointment of a receiver or administrator, or an order of restitution. If in any such action the office ~~department~~ alleges that five or more persons have been defrauded by acts constituting violations of this chapter, it shall state the circumstances constituting such fraud with particularity and may seek any appropriate remedy at law or in equity, provided the remedy does not impair any rights granted by law to any holder in due course as defined in s. 673.302.

(3) In addition to any other powers conferred upon it to enforce or administer this chapter, the office ~~department~~ may issue and serve upon a person a cease and desist order whenever the office ~~department~~ finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order adopted pursuant to this chapter, or any written agreement entered into with the office ~~department~~. Any such order shall contain a notice of the rights provided by ss. 120.569 and 120.57.

(4) In addition to any other powers conferred upon it to enforce or administer this chapter, the office ~~department~~ may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order adopted pursuant to this chapter, or any written agreement entered into with the office ~~department~~, in an amount not to exceed $1,000 for each violation.

(5) The office ~~department~~ shall administer and enforce this chapter. The commission ~~department~~ has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. The commission ~~department~~ may adopt rules to allow electronic submission of any form, document, or fee required by this chapter.

Section 634. Subsections (1), (2), and (4) of section 520.995, Florida Statutes, are amended to read:

520.995 Grounds for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for the disciplinary actions specified in subsection (2):

(a) Failure to comply with any provision of this chapter, any rule or order adopted pursuant to this chapter, or any written agreement entered into with the office ~~department~~;

(b) Fraud, misrepresentation, deceit, or gross negligence in any home improvement finance transaction or retail installment transaction, regardless of reliance by or damage to the buyer or owner;

(c) Fraudulent misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a retail buyer or owner pursuant to this chapter, regardless of reliance by or damage to the buyer or owner;

(d) Willful imposition of illegal or excessive charges in any retail installment transaction or home improvement finance transaction;

(e) False, deceptive, or misleading advertising by a seller or home improvement finance seller;

(f) Failure to maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this chapter, by any rule or order adopted pursuant to this chapter, or by any agreement entered into with the office ~~department~~;

(g) Refusal to permit inspection of books and records in an investigation or examination by the office ~~department~~ or refusal to comply with a subpoena issued by the office ~~department~~;

(h) Criminal conduct in the course of a person's business as a seller, as a home improvement finance seller, or as a sales finance company; or

(i) Failure to timely pay any fee, charge, or fine imposed or assessed pursuant to this chapter or any rule adopted under this chapter.

(2) Upon a finding by the office ~~department~~ that any person has committed any of the acts set forth in subsection (1), the office ~~department~~ may enter an order taking one or more of the following actions:

(a) Denying an application for a license pursuant to this chapter;

(b) Revoking or suspending a license previously granted pursuant to this chapter;

(c) Placing a licensee or an applicant for a license on probation for a period of time and subject to such conditions as the office ~~department~~ may specify;

(d) Placing permanent restrictions or conditions upon issuance or maintenance of a license pursuant to this chapter;

(e) Issuing a reprimand; or

(f) Imposing an administrative fine not to exceed $1,000 for each such act.

(4) It is sufficient cause for the office ~~department~~ to take any of the actions specified in subsection (2) as to any partnership, corporation, or association, if the office ~~department~~ finds grounds for such action as to any member of the partnership, as to any officer or director of the corporation or association, or as to any person with power to direct the management or policies of the partnership, corporation, or association.

Section 635. Section 520.996, Florida Statutes, is amended to read:

520.996 Investigations and complaints.—

(1)(a) The office ~~department~~ or its agent may, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with this chapter. For such purposes, it may examine the books, accounts, records, and other documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during any 12-month period unless the office ~~department~~ has good and sufficient reason to believe the licensee is not complying with the provisions of this chapter. Such examination fee shall be calculated on an hourly basis and shall be rounded to the nearest hour.

(b) The office ~~department~~ shall conduct all examinations at a convenient location in this state unless the office ~~department~~ determines that it is more effective or cost-efficient to perform an examination at the licensee's out-of-state location. For an examination performed at the licensee's out-of-state location, the licensee shall pay the travel expense and per diem subsistence at the rate provided by law for up to thirty 8-hour days per year for each examiner who participates in such an examination. However, if the examination involves or reveals possible fraudulent conduct of the licensee, the licensee shall pay the travel expenses and per diem subsistence provided by law, without limitation, for each participating examiner.

(2) The examination expenses incurred by the office ~~department~~ in each examination shall be paid by the licensee examined. The expenses of the office ~~department~~ incurred in each examination of a home improvement finance seller or of an employee representing such home improvement finance seller shall be paid by the home improvement finance seller. Expenses incurred for each examination of a sales finance company shall be paid by it. The examination expenses shall be paid by such licensee examined or such other person obligated to pay such examination expenses within 30 days after demand therefor by the office ~~department~~.

(3) Any retail buyer or owner having reason to believe that the provisions of this chapter have been violated may file with the office or the Department of Financial Services a written complaint setting forth the details of such alleged violations and the office ~~department~~ upon receipt of such complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and of the seller involved, relating to such specific written complaint.

Section 636. Section 520.9965, Florida Statutes, is amended to read:

520.9965 Confidentiality of information relating to investigations and examinations.—

(1)(a) Except as otherwise provided by this section, information relative to an investigation or examination by the office ~~department~~ pursuant to this chapter, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) until the investigation or examination is completed or ceases to be active. The information compiled by the office ~~department~~ in such an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the office's ~~department's~~ investigation or examination is completed or ceases to be active if the office ~~department~~ submits the information to any law enforcement or administrative agency for further investigation. Such information shall remain confidential and exempt from s. 119.07(1) until that agency's investigation is completed or ceases to be active. For purposes of this section, an investigation or examination shall be considered "active" so long as the office ~~department~~ or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit. This section shall not be construed to prohibit disclosure of information which is required by law to be filed with the office ~~department~~ and which, but for the investigation or examination, would be subject to s. 119.07(1).

(b) Except as necessary for the office ~~department~~ to enforce the provisions of this chapter, a consumer complaint and other information relative to an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the investigation or examination is completed or ceases to be active to the extent disclosure would:

1. Jeopardize the integrity of another active investigation or examination.

2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder.

3. Disclose the identity of a confidential source.

4. Disclose investigative techniques or procedures.

5. Reveal a trade secret as defined in s. 688.002.

(c) In the event that office ~~department~~ personnel or personnel of the former Department of Banking and Finance are or have been involved in an investigation or examination of such nature as to endanger their lives or physical safety or that of their families, then the home addresses, telephone numbers, places of employment, and photographs of such personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the

names and locations of schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).

(d) Nothing in this section shall be construed to prohibit the office ~~department~~ from providing information to any law enforcement or administrative agency. Any law enforcement or administrative agency receiving confidential information in connection with its official duties shall maintain the confidentiality of the information so long as it would otherwise be confidential.

(e) All information obtained by the office ~~department~~ from any person which is only made available to the office ~~department~~ on a confidential or similarly restricted basis shall be confidential and exempt from s. 119.07(1). This exemption shall not be construed to prohibit disclosure of information which is required by law to be filed with the office ~~department~~ or which is otherwise subject to s. 119.07(1).

(2) If information subject to subsection (1) is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may, in his or her discretion, prevent the disclosure of information which would be confidential pursuant to paragraph (1)(b).

(3) A privilege against civil liability is granted to a person who furnishes information or evidence to the office ~~department~~, unless such person acts in bad faith or with malice in providing such information or evidence.

Section 637. Section 520.997, Florida Statutes, is amended to read:

520.997 Books, accounts, and records.—

(1) Every licensee shall maintain, at the principal place of business, such books, accounts, and records of the business conducted under the license issued for such place of business as will enable the office ~~department~~ to determine whether the business of the licensee contemplated by this chapter is being operated in accordance with the provisions of this chapter. The licensee shall make all such books, accounts, and records of business conducted under the license available at a convenient location in this state upon request of the office ~~department~~.

(2) A licensee, operating two or more licensed places of business in this state, may maintain the general control records of all such offices at any one of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the office ~~department~~ designating therein the office at which such control records are maintained.

(3) All books, accounts, and records of licensees, including any cards used in a card system, shall be preserved and available for examination by the office ~~department~~ for at least 2 years after making the final entry therein.

(4) The commission may ~~department is hereby authorized and empowered to~~ prescribe the minimum information to be shown in the books, accounts, and records of licensees so that such records will enable the office ~~department~~ to determine compliance with the provisions of this chapter.

(5) A licensee that is the subject of a voluntary or involuntary bankruptcy filing must provide notice of such filing to the office ~~department~~ within 7 days after the filing date.

Section 638. Section 520.998, Florida Statutes, is amended to read:

520.998 Regulatory Trust Fund.—All fees, charges, and fines collected by the office ~~department~~ pursuant to this chapter shall be deposited in the State Treasury to the credit of the Regulatory Trust Fund under the office ~~department~~.

Section 639. Subsection (7) of section 526.141, Florida Statutes, is amended to read:

526.141 Self-service gasoline stations; attendants; regulations.—

(7) The Chief Financial Officer ~~Insurance Commissioner~~, under her or his powers, duties, and functions as State Fire Marshal, shall adopt ~~promulgate~~ rules ~~and regulations~~ for the administration and enforcement of this section, except for subsection (5) which shall be administered and enforced by the Department of Agriculture and Consumer Services.

Section 640. Subsection (2) of section 537.003, Florida Statutes, is amended, present subsections (3) through (15) of that section are renumbered as (4) through (16), respectively, and a new subsection (3) is added to that section to read:

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

(2) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(3) "Office" means the Office of Financial Regulation of the commission.

Section 641. Subsections (1) through (5), (9), and (10) of section 537.004, Florida Statutes, are amended to read:

537.004 License required; license fees.—

(1) A person may not act as a title loan lender or own or operate a title loan office unless such person has an active title loan lender license issued by the office ~~department~~ under this act. A title loan lender may not own or operate more than one title loan office unless the lender obtains a separate title loan lender license for each title loan office.

(2) A person applying for licensure as a title loan lender shall file with the office ~~department~~ an application, the bond required by s. 537.005(3), a nonrefundable application fee of $1,200, a nonrefundable investigation fee of $200, and a complete set of fingerprints taken by an authorized law enforcement officer. The office ~~department~~ shall submit such fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(3) If the office ~~department~~ determines that an application should be approved, the office ~~department~~ shall issue a license for a period not to exceed 2 years.

(4) A license shall be renewed biennially by filing a renewal form and a nonrefundable renewal fee of $1,200. A license that is not renewed by the end of the biennial period shall automatically revert to inactive status. An inactive license may be reactivated within 6 months after becoming inactive by filing a reactivation form, payment of the nonrefundable $1,200 renewal fee, and payment of a nonrefundable reactivation fee of $600. A license that is not reactivated within 6 months after becoming inactive may not be reactivated and shall automatically expire. The commission ~~department~~ shall establish by rule the procedures for renewal and reactivation of a license and shall adopt a renewal form and a reactivation form.

(5) Each license must be conspicuously displayed at the title loan office. When a licensee wishes to move a title loan office to another location, the licensee shall provide prior written notice to the office ~~department~~.

(9) The commission ~~department~~ may adopt rules to allow for electronic filing of applications, fees, and forms required by this act.

(10) All moneys collected by the office ~~department~~ under this act shall be deposited into the Regulatory Trust Fund of the office ~~Department of Banking and Finance~~.

Section 642. Section 537.005, Florida Statutes, is amended to read:

537.005 Application for license.—

(1) A verified application for licensure under this act, in the form prescribed by commission ~~department~~ rule, shall:

(a) Contain the name and the residence and business address of the applicant. If the applicant is other than a natural person, the application shall contain the name and the residence and business address of each ultimate equitable owner of 10 percent or more of such entity and each director, general partner, and executive officer of such entity.

(b) State whether any individual identified in paragraph (a) has, within the last 10 years, pleaded nolo contendere to, or has been convicted or found guilty of, a felony, regardless of whether adjudication was withheld.

(c) Identify the county and municipality with the street and number or location where the business is to be conducted.

(d) Contain additional information as the commission ~~department~~ determines by rule to be necessary to ensure compliance with this act.

(2) Notwithstanding subsection (1), the application need not state the full name and address of each officer, director, and shareholder if the applicant is owned directly or beneficially by a person who as an issuer has a class of securities registered pursuant to s. 12 of the Securities Exchange Act of 1934 or, pursuant to s. 13 or s. 15(d) of such act, is an issuer of securities

which is required to file reports with the Securities and Exchange Commission, if the person files with the office ~~department~~ any information, documents, and reports required by such act to be filed with the Securities and Exchange Commission.

(3) An applicant for licensure shall file with the office ~~department~~ a bond, in the amount of $100,000 for each license, with a surety company qualified to do business in this state. However, in no event shall the aggregate amount of the bond required for a single title loan lender exceed $1 million. In lieu of the bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a financial institution, as defined in s. 655.005, in the amount of the bond. The original bond, certificate of deposit, or letter of credit shall be filed with the office ~~department~~, and the office ~~department~~ shall be the beneficiary to that document. The bond, certificate of deposit, or letter of credit shall be in favor of the office ~~department~~ for the use and benefit of any consumer who is injured pursuant to a title loan transaction by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this act by the title loan lender. Such liability may be enforced either by proceeding in an administrative action or by filing a judicial suit at law in a court of competent jurisdiction. However, in such court suit, the bond, certificate of deposit, or letter of credit posted with the office ~~department~~ shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond, certificate of deposit, or letter of credit shall be amenable to and enforceable only by and through administrative proceedings before the office ~~department~~. It is the intent of the Legislature that such bond, certificate of deposit, or letter of credit shall be applicable and liable only for the payment of claims duly adjudicated by order of the office ~~department~~. The bond, certificate of deposit, or letter of credit shall be payable on a pro rata basis as determined by the office ~~department~~, but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or letter of credit.

(4) The office ~~department~~ shall approve an application and issue a license if the office ~~department~~ determines that the applicant satisfies the requirements of this act.

Section 643. Paragraphs (a), (f), (h), and (o) of subsection (1) and subsections (2) and (4) of section 537.006, Florida Statutes, are amended to read:

537.006 Denial, suspension, or revocation of license.—

(1) The following acts are violations of this act and constitute grounds for the disciplinary actions specified in subsection (2):

(a) Failure to comply with any provision of this act, any rule or order adopted pursuant to this act, or any written agreement entered into with the office ~~department~~.

(f) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by this act, by any rule or order adopted pursuant to this act, or by any agreement entered into with the office ~~department~~.

(h) Refusal to provide information upon request of the office ~~department~~, to permit inspection of books and records in an investigation or examination by the office ~~department~~, or to comply with a subpoena issued by the office ~~department~~.

(o) Having demonstrated unworthiness, as defined by commission ~~department~~ rule, to transact the business of a title loan lender.

(2) Upon a finding by the office ~~department~~ that any person has committed any of the acts set forth in subsection (1), the office ~~department~~ may enter an order taking one or more of the following actions:

(a) Denying an application for licensure under this act.

(b) Revoking or suspending a license previously granted pursuant to this act.

(c) Placing a licensee or an applicant for a license on probation for a period of time and subject to such conditions as the office ~~department~~ specifies.

(d) Issuing a reprimand.

(e) Imposing an administrative fine not to exceed $5,000 for each separate act or violation.

(4) It is sufficient cause for the office ~~department~~ to take any of the actions specified in subsection (2), as to any entity other than a natural person, if the office ~~department~~ finds grounds for such action as to any member of such entity, as to any executive officer or director of the entity, or as to any person with power to direct the management or policies of the entity.

Section 644. Paragraph (b) of subsection (2) of section 537.008, Florida Statutes, is amended to read:

537.008 Title loan agreement.—

(2) The following information shall also be printed on all title loan agreements:

(b) The name and address of the Department of Financial Services as well as a telephone number to which consumers may address complaints.

Section 645. Section 537.009, Florida Statutes, is amended to read:

537.009 Recordkeeping; reporting; safekeeping of property.—

(1) Every title loan lender shall maintain, at the lender's title loan office, such books, accounts, and records of the business conducted under the license issued for such place of business as will enable the office ~~department~~ to determine the licensee's compliance with this act.

(2) The office ~~department~~ may authorize the maintenance of books, accounts, and records at a location other than the lender's title loan office. The

office ~~department~~ may require books, accounts, and records to be produced and available at a reasonable and convenient location in this state within a reasonable period of time after such a request.

(3) The title loan lender shall maintain the original copy of each completed title loan agreement on the title loan office premises, and shall not obliterate, discard, or destroy any such original copy, for a period of at least 2 years after making the final entry on any loan recorded in such office or after an ~~a department~~ examination by the Office of Financial Regulation, whichever is later.

(4) Loan property which is delivered to a title loan lender shall be securely stored and maintained at the title loan office unless the loan property has been forwarded to the appropriate state agency for the purpose of having a lien recorded or deleted.

(5) The commission ~~department~~ may prescribe by rule the books, accounts, and records, and the minimum information to be shown in the books, accounts, and records, of licensees so that such records will enable the office ~~department~~ to determine compliance with the provisions of this act.

Section 646. Subsection (2) and paragraph (c) of subsection (4) of section 537.011, Florida Statutes, are amended to read:

537.011 Title loan charges.—

(2) The annual percentage rate that may be charged for a title loan may equal, but not exceed, the annual percentage rate that must be computed and disclosed as required by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. The maximum annual percentage rate of interest that may be charged is 12 times the maximum monthly rate, and the maximum monthly rate must be computed on the basis of one-twelfth of the annual rate for each full month. The commission ~~Department of Banking and Finance~~ shall establish by rule the rate for each day in a fraction of a month when the period for which the charge is computed is more or less than 1 month.

(4) Any interest contracted for or received, directly or indirectly, by a title loan lender, or an agent of the title loan lender, in excess of the amounts authorized under this chapter is prohibited and may not be collected by the title loan lender or an agent of the title loan lender.

(c) The office ~~department~~ may order a title loan lender, or an agent of the title loan lender, to comply with the provisions of paragraphs (a) and (b).

Section 647. Paragraphs (b), (f), and (n) of subsection (1) of section 537.013, Florida Statutes, are amended to read:

537.013 Prohibited acts.—

(1) A title loan lender, or any agent or employee of a title loan lender, shall not:

(b) Refuse to allow the office ~~department~~ to inspect completed title loan agreements, extensions of such agreements, or loan property during the ordinary operating hours of the title loan lender's business or other times acceptable to both parties.

(f) Fail to exercise reasonable care, as defined by commission ~~department~~ rule, in the safekeeping of loan property or of titled personal property repossessed pursuant to this act.

(n) Act as a title loan lender under this act within a place of business in which the licensee solicits or engages in business outside the scope of this act if the office ~~department~~ determines that the licensee's operation of and conduct pertaining to such other business results in an evasion of this act. Upon making such a determination, the office ~~department~~ shall order the licensee to cease and desist from such evasion; provided, no licensee shall engage in the pawnbroker business.

Section 648. Section 537.016, Florida Statutes, is amended to read:

537.016 Subpoenas; enforcement actions; rules.—

(1) The office ~~department~~ may issue and serve subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before the office ~~department~~ in any matter pertaining to this act. The office ~~department~~ may administer oaths and affirmations to any person whose testimony is required. If any person refuses to testify; produce books, records, and documents; or otherwise refuses to obey a subpoena issued under this section, the office ~~department~~ may enforce the subpoena in the same manner as subpoenas issued under the Administrative Procedure Act are enforced. Witnesses are entitled to the same fees and mileage as they are entitled to by law for attending as witnesses in the circuit court, unless such examination or investigation is held at the place of business or residence of the witness.

(2) In addition to any other powers conferred upon the office ~~department~~ to enforce or administer this act, the office ~~department~~ may:

(a) Bring an action in any court of competent jurisdiction to enforce or administer this act, any rule or order adopted under this act, or any written agreement entered into with the office ~~department~~. In such action, the office ~~department~~ may seek any relief at law or equity, including a temporary or permanent injunction, appointment of a receiver or administrator, or an order of restitution.

(b) Issue and serve upon a person an order requiring such person to cease and desist and take corrective action whenever the office ~~department~~ finds that such person is violating, has violated, or is about to violate any provision of this act, any rule or order adopted under this act, or any written agreement entered into with the office ~~department~~.

(c) Whenever the office ~~department~~ finds that conduct described in paragraph (b) presents an immediate danger to the public health, safety, or welfare requiring an immediate final order, the office ~~department~~ may issue

an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named in the order and shall remain effective for 90 days. If the office ~~department~~ begins nonemergency proceedings under paragraph (b), the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

(3) The commission ~~department~~ may adopt rules to administer this act.

Section 649. Section 537.017, Florida Statutes, is amended to read:

537.017 Investigations and complaints.—

(1) The office ~~department~~ may make any investigation and examination of any licensee or other person the office ~~department~~ deems necessary to determine compliance with this act. For such purposes, the office ~~department~~ may examine the books, accounts, records, and other documents or matters of any licensee or other person. The office ~~department~~ may compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Examinations shall not be made more often than once during any 12-month period unless the office ~~department~~ has reason to believe the licensee is not complying with the provisions of this act.

(2) The office ~~department~~ shall conduct all examinations at a convenient location in this state unless the office ~~department~~ determines that it is more effective or cost-efficient to perform an examination at the licensee's out-of-state location. For an examination performed at the licensee's out-of-state location, the licensee shall pay the travel expense and per diem subsistence at the rate provided by law for up to thirty 8-hour days per year for each office ~~department~~ examiner who participates in such an examination. However, if the examination involves or reveals possible fraudulent conduct by the licensee, the licensee shall pay the travel expenses and per diem subsistence provided by law, without limitation, for each participating examiner.

(3) Any person having reason to believe that any provision of this act has been violated may file with the Department of Financial Services or the office a written complaint setting forth the details of such alleged violation, and the office ~~department~~ may investigate such complaint.

Section 650. Subsection (1) of section 548.066, Florida Statutes, is amended to read:

548.066 Ticket refunds.—

(1) Upon the postponement, substitution of either participant, or cancellation of the main event or the entire program of matches, the promoter shall refund the full purchase price of a ticket to each person presenting a ticket for a refund within 30 days after the scheduled date of the event. Within 10 days after the expiration of the 30-day period, the promoter shall pay all unclaimed ticket receipts to the commission. The commission shall hold the funds for 1 year and make refunds during such time to any person presenting a ticket for a refund. Thereafter, the commission shall pay all remaining

moneys from the ticket sale to the Chief Financial Officer ~~State Treasurer~~ for deposit into the General Revenue Fund.

Section 651. Section 548.077, Florida Statutes, is amended to read:

548.077 Florida State Boxing Commission; collection and disposition of moneys.—All fees, fines, forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the Chief Financial Officer ~~State Treasurer~~ who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust Fund to be used for the administration and operation of the commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds $250,000, any excess of that amount shall be deposited in the General Revenue Fund.

Section 652. Subsection (10) of section 550.0251, Florida Statutes, is amended to read:

550.0251 The powers and duties of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.—The division shall administer this chapter and regulate the pari-mutuel industry under this chapter and the rules adopted pursuant thereto, and:

(10) The division may impose an administrative fine for a violation under this chapter of not more than $1,000 for each count or separate offense, except as otherwise provided in this chapter, and may suspend or revoke a permit, a pari-mutuel license, or an occupational license for a violation under this chapter. All fines imposed and collected under this subsection must be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the General Revenue Fund.

Section 653. Paragraph (b) of subsection (9) of section 550.054, Florida Statutes, is amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(9)

(b) The division may revoke or suspend any permit or license issued under this chapter upon the willful violation by the permitholder or licensee of any provision of this chapter or of any rule adopted under this chapter. In lieu of suspending or revoking a permit or license, the division may impose a civil penalty against the permitholder or licensee for a violation of this chapter or any rule adopted by the division. The penalty so imposed may not exceed $1,000 for each count or separate offense. All penalties imposed and collected must be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the General Revenue Fund.

Section 654. Paragraph (a) of subsection (1) and subsection (5) of section 550.0951, Florida Statutes, are amended to read:

550.0951 Payment of daily license fee and taxes.—

(1)(a) DAILY LICENSE FEE.—Each person engaged in the business of conducting race meetings or jai alai games under this chapter, hereinafter referred to as the "permitholder," "licensee," or "permittee," shall pay to the division, for the use of the division, a daily license fee on each live or simulcast pari-mutuel event of $100 for each horserace and $80 for each dograce and $40 for each jai alai game conducted at a racetrack or fronton licensed under this chapter. In addition to the tax exemption specified in s. 550.09514(1) of $360,000 or $500,000 per greyhound permitholder per state fiscal year, each greyhound permitholder shall receive in the current state fiscal year a tax credit equal to the number of live greyhound races conducted in the previous state fiscal year times the daily license fee specified for each dograce in this subsection applicable for the previous state fiscal year. This tax credit and the exemption in s. 550.09514(1) shall be applicable to any tax imposed by this chapter or the daily license fees imposed by this chapter except during any charity or scholarship performances conducted pursuant to s. 550.0351. Each permitholder shall pay daily license fees not to exceed $500 per day on any simulcast races or games on which such permitholder accepts wagers regardless of the number of out-of-state events taken or the number of out-of-state locations from which such events are taken. This license fee shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the Pari-mutuel Wagering Trust Fund.

(5) PAYMENT AND DISPOSITION OF FEES AND TAXES.—Payment for the admission tax, tax on handle, and the breaks tax imposed by this section shall be paid to the division. The division shall deposit these sums with the Chief Financial Officer ~~Treasurer~~, to the credit of the Pari-mutuel Wagering Trust Fund, hereby established. The permitholder shall remit to the division payment for the daily license fee, the admission tax, the tax on handle, and the breaks tax. Such payments shall be remitted by 3 p.m. Wednesday of each week for taxes imposed and collected for the preceding week ending on Sunday. Permitholders shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month. Such payments shall be accompanied by a report under oath showing the total of all admissions, the pari-mutuel wagering activities for the preceding calendar month, and such other information as may be prescribed by the division.

Section 655. Paragraph (a) of subsection (3) of section 550.125, Florida Statutes, is amended to read:

550.125 Uniform reporting system; bond requirement.—

(3)(a) Each permitholder to which a license is granted under this chapter, at its own cost and expense, must, before the license is delivered, give a bond in the penal sum of $50,000 payable to the Governor of the state and her or his successors in office, with a surety or sureties to be approved by the division and the Chief Financial Officer ~~Treasurer~~, conditioned to faithfully make the payments to the Chief Financial Officer ~~Treasurer~~ in her or his capacity as treasurer of the division; to keep its books and records and make reports as provided; and to conduct its racing in conformity with this chapter. When the greatest amount of tax owed during any month in the prior state fiscal year, in which a full schedule of live racing was conducted, is less

than $50,000, the division may assess a bond in a sum less than $50,000. The division may review the bond for adequacy and require adjustments each fiscal year. The division has the authority to adopt rules to implement this paragraph and establish guidelines for such bonds.

Section 656. Section 550.135, Florida Statutes, is amended to read:

550.135 Division of moneys derived under this law.—All moneys that are deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the Pari-mutuel Wagering Trust Fund shall be distributed as follows:

(1) The daily license fee revenues collected pursuant to s. 550.0951(1) shall be used to fund the operating cost of the division and to provide a proportionate share of the operation of the office of the secretary and the Division of Administration of the Department of Business and Professional Regulation; however, other collections in the Pari-mutuel Wagering Trust Fund may also be used to fund the operation of the division in accordance with authorized appropriations.

(2) All unappropriated funds in excess of $3.5 million in the Pari-mutuel Wagering Trust Fund shall be deposited with ~~to~~ the Chief Financial Officer ~~Treasurer~~ to the credit of the General Revenue Fund.

Section 657. Subsection (3) of section 550.1645, Florida Statutes, is amended to read:

550.1645 Escheat to state of abandoned interest in or contribution to pari-mutuel pools.—

(3) All money or other property that has escheated to and become the property of the state as provided herein, and which is held by such licensee authorized to conduct pari-mutuel pools in this state, shall be paid by such licensee to the Chief Financial Officer ~~Treasurer~~ annually within 60 days after the close of the race meeting of the licensee. Such moneys so paid by the licensee to the Chief Financial Officer ~~Treasurer~~ shall be deposited in the State School Fund to be used for the support and maintenance of public free schools as required by s. 6, Art. IX of the State Constitution.

Section 658. Subsection (14) of section 552.081, Florida Statutes, is amended to read:

552.081 Definitions.—As used in this chapter:

(14) "Division" means the Division of State Fire Marshal of the Department of Financial Services ~~Insurance~~.

Section 659. Subsection (2) of section 552.161, Florida Statutes, is amended to read:

552.161 Administrative fines.—

(2) All such fines, monetary penalties, and costs received by the division in connection with this chapter shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 660. Subsection (3) of section 552.21, Florida Statutes, is amended to read:

552.21 Confiscation and disposal of explosives.—

(3) Costs incurred in the confiscation and disposal of such explosives shall be paid from the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 661. Section 552.26, Florida Statutes, is amended to read:

552.26 Administration of chapter; personnel; fees to be deposited in Insurance ~~Commissioner's~~ Regulatory Trust Fund.—

(1) The division is authorized to employ such persons as it may deem qualified and necessary, and incur such other expenses as may be required, in connection with the administration of this chapter.

(2) All fees collected for licenses and permits and competency examination filing fees required by this chapter shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund and are ~~hereby~~ appropriated for the use of the division in the administration of this chapter.

Section 662. Subsection (4) of section 553.72, Florida Statutes, is amended to read:

553.72 Intent.—

(4) It is the intent of the Legislature that the Florida Fire Prevention Code and the Life Safety Code of this state be adopted, modified, updated, interpreted, and maintained by the Department of Financial Services ~~Insurance~~ in accordance with ss. 120.536(1) and 120.54 and included by reference as sections in the Florida Building Code.

Section 663. Paragraph (c) of subsection (1) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(1)

(c) The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services ~~Insurance~~ by rule adopted pursuant to ss. 120.536(1) and 120.54. The Florida Building Commission may not adopt a fire prevention or lifesafety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services ~~Insurance~~.

Section 664. Paragraph (k) of subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and shall be located within the Department of Community Affairs for administrative purposes. Members shall be appointed by the Governor subject to confirmation by the Senate. The commission shall be composed of 23 members, consisting of the following:

(k) One member who represents the Department of Financial Services ~~Insurance~~.

Section 665. Effective October 1, 2003, paragraph (k) of subsection (1) of section 553.74, Florida Statutes, as amended by chapter 2002-293, Laws of Florida, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and shall be located within the Department of Community Affairs for administrative purposes. Members shall be appointed by the Governor subject to confirmation by the Senate. The commission shall be composed of 23 members, consisting of the following:

(k) One member who represents the Department of Financial Services ~~Insurance~~.

Any person serving on the commission under paragraph (c) or paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.

Section 666. Subsection (16) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(16) Notwithstanding any other provision of law, state agencies responsible for the construction, erection, alteration, modification, repair, or demolition of public buildings, or the regulation of public and private buildings, structures, and facilities, shall be subject to enforcement of the Florida Building Code by local jurisdictions. This subsection applies in addition to the jurisdiction and authority of the Department of Financial Services ~~Insurance~~ to inspect state-owned buildings. This subsection does not apply to the jurisdiction and authority of the Department of Agriculture and Consumer Services to inspect amusement rides or the Department of Financial Services ~~Insurance~~ to inspect state-owned buildings and boilers.

Section 667. Subsection (6) of section 553.88, Florida Statutes, is amended to read:

553.88 Adoption of electrical and alarm standards.—For the purpose of establishing minimum electrical and alarm standards in this state, the current edition of the following standards are adopted:

(6) The minimum standards for grounding of portable electric equipment, chapter 8C-27 as recommended by the ~~Industrial Standards Section,~~

Division of Workers' Compensation, Department of Financial Services ~~Labor and Employment Security~~.

The Florida Building Commission shall update and maintain such electrical standards consistent with the procedures established in s. 553.73 and may recommend the National Electrical Installation Standards.

Section 668. Subsection (6) of section 554.1021, Florida Statutes, is amended to read:

554.1021 Definitions.—As used in ss. 554.1011-554.115:

(6) "Department" means the Department of Financial Services ~~Insurance~~.

Section 669. Subsection (1) of section 554.105, Florida Statutes, is amended to read:

554.105 Chief inspector.—

(1) The Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall appoint a chief inspector, who shall have not less than 5 years' experience in the construction, installation, inspection, operation, maintenance, or repair of high pressure, high temperature water boilers and who shall hold a commission from the National Board of Boiler and Pressure Vessel Inspectors or a certificate of competency from the department.

Section 670. Subsection (3) of section 554.111, Florida Statutes, is amended to read:

554.111 Fees.—

(3) The chief inspector shall deposit all fees received pursuant to ss. 554.1011-554.115 into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 671. Paragraph (b) of subsection (2) and subsection (3) of section 559.10, Florida Statutes, are amended to read:

559.10 Definition; "budget planning".—

(2) The term "budget planning" does not include the following:

(b) Other activities defined by rule of the Financial Services Commission ~~Department of Banking and Finance~~ as not within the prohibition of this part, provided such rule is adopted after a finding that consumers are adequately protected in the activity and that its prohibition is not required in the public interest.

(3) The Financial Services Commission ~~Department of Banking and Finance~~ may adopt rules as necessary to implement and enforce this part.

Section 672. Subsection (5) of section 559.543, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

559.543 Definitions.—As used in this part:

(5) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(6) "Office" means the Office of Financial Regulation of the commission.

Section 673. Subsections (2), (3), and (4) of section 559.544, Florida Statutes, are amended to read:

559.544 Registration required; exemptions.—

(2) Each commercial collection agency doing business in this state shall register with the office ~~department~~ and annually renew such registration, providing the registration fee, information, and surety bond required by this part.

(3) No registration shall be valid for any commercial collection agency transacting business at any place other than that designated in the registration unless the office ~~department~~ is first notified in advance of any change of location. A registration under this part is not transferable or assignable. Any commercial collection agency desiring to change its registered name, location, or agent for service of process at any time other than renewal of registration shall notify the office ~~department~~ of such change prior to the change.

(4) The office ~~department~~ shall not accept any registration for any commercial collection agency as validly made and filed with the office ~~department~~ under this section unless the registration information furnished to the office ~~department~~ by the registrant is complete pursuant to s. 559.545 and facially demonstrates that such registrant is qualified to engage in business as a commercial collection agency, including specifically that neither the registrant nor any principal of the registrant has engaged in any unlawful collection practices, dishonest dealings, acts of moral turpitude, or other criminal acts that reflect an inability to engage in the commercial collection agency business. The office ~~department~~ shall inform any person whose registration is rejected by the office ~~department~~ of the fact of and basis for such rejection. A prospective registrant shall be entitled to be registered when her or his or its registration information is complete on its face, the applicable registration fee has been paid, and the required evidence of current bond is furnished to the office ~~department~~.

Section 674. Section 559.545, Florida Statutes, is amended to read:

559.545 Registration of commercial collection agencies; procedure.—Any person who wishes to register as a commercial collection agency in compliance with this part shall do so on forms adopted by the commission and furnished by the office ~~department~~. Any renewal of registration shall be made between October 1 and December 31 of each year. In registering or renewing a registration as required by this part, each commercial collection agency shall furnish to the office ~~department~~ a registration fee, information, and surety bond, as follows:

(1) The registrant shall pay to the office ~~department~~ a registration fee of $500. All amounts collected shall be deposited to the credit of the Regulatory Trust Fund of the office ~~department~~.

(2) The registrant shall provide the following information:

(a) The business name or trade name of the commercial collection agency, the current mailing address of the agency, and the current business location of each place from which the agency operates either a main or branch office, with a designation of which location constitutes its principal place of business.

(b) The full names, current addresses, current telephone numbers, and social security numbers, or federal identification numbers of any corporate owner, of the registrant's owners or corporate officers and directors, and of the Florida resident agent of the registering agency.

(c) A statement as to whether the registrant is a domestic or foreign corporation, together with the state and date of incorporation, charter number of the corporation, and, if a foreign corporation, the date the corporation first registered to do business in this state.

(d) A statement listing each county in this state in which the registrant is currently doing business or plans to do business within the next calendar year, indicating each county in which the registrant holds an occupational license.

(e) A statement listing each county in this state in which the registrant is operating under a fictitious name or trade name other than that of the registrant, indicating the date and place of registration of any such fictitious name or trade name.

(f) A statement listing the names of any other corporations, entities, or trade names through which any owner or director of the registrant was known or did business as a commercial or consumer collection agency within the 5 calendar years immediately preceding the year in which the agency is registering.

(g) A statement clearly identifying and explaining any occasion on which any professional license or occupational license held by the registrant, any principal of the registrant, or any business entity in which any principal of the registrant was the owner of 10 percent or more of such business was the subject of any suspension, revocation, or other disciplinary action.

(h) A statement clearly identifying and explaining any occasion of a finding of guilt of any crime involving moral turpitude or dishonest conduct on the part of any principal of the registrant.

(3) The registrant shall furnish to the office ~~department~~ evidence, as provided in s. 559.546, of the registrant having a current surety bond in the amount of $50,000, valid for the year of registration, paid for and issued for the use and benefit of any credit grantor who suffers or sustains any loss or damage by reason of any violation of the provisions of this part by the

registrant, or by any agent or employee of the registrant acting within the scope of her or his employment, and issued to ensure conformance with the provisions of this part.

Section 675. Section 559.546, Florida Statutes, is amended to read:

559.546 Bond; evidence of current and valid bond.—Pursuant to s. 559.545, the registrant shall provide to the office ~~department~~ evidence that the registrant has been issued a current and valid surety bond as required by this part.

(1) In addition to each registration filed pursuant to s. 559.545 and any renewal of such registration, each registrant shall furnish to the office ~~department~~ the following:

(a) A copy of the surety bond, which bond shall be one issued by a surety known by the registrant to be acceptable to the office ~~department~~.

(b) A statement from the surety that the annual premium for the bond has been paid in full by the registrant.

(c) A statement from the surety that the bond issued by the surety meets the requirements of this part.

(2) The liability of the surety under any bond issued pursuant to the requirements of this part shall not exceed in the aggregate the amount of the bond, regardless of the number or amount of any claims filed or which might be asserted against the surety on such bond. If multiple claims are filed against the surety on any such bond in excess of the amount of the bond, the surety may pay the full amount of the bond to the office ~~department~~ and shall not be further liable under the bond. The office ~~department~~ shall hold such funds for distribution to claimants and administratively determine and pay to each claimant the pro rata share of each valid claim made against the funds within 6 months after the date of the filing of the first claim against the surety.

Section 676. Paragraph (a) of subsection (1) and paragraph (a) of subsection (2) of section 559.548, Florida Statutes, are amended to read:

559.548 Penalties.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Operating or soliciting business as a commercial collection agency in this state without first registering with the office ~~department~~, unless specifically exempted by this part.

(2) Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Relocating a business as a commercial collection agency, or operating under any name other than that designated in the registration, unless writ-

ten notification is given to the office ~~department~~ and to the surety or sureties on the original bond.

Section 677. Subsection (4) of section 559.55, Florida Statutes, is amended to read:

559.55 Definitions.—The following terms shall, unless the context otherwise indicates, have the following meanings for the purpose of this part:

(4) "Office" means the Office of Financial Regulation of the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

Section 678. Subsections (2) and (3) of section 559.553, Florida Statutes, are amended to read:

559.553 Registration of consumer collection agencies required; exemptions.—

(2) Each consumer collection agency doing business in this state shall register with the office ~~department~~ and renew such registration annually as set forth in s. 559.555.

(3) A prospective registrant shall be entitled to be registered when registration information is complete on its face and the applicable registration fee has been paid; however, the office ~~department~~ may reject a registration submitted by a prospective registrant if the registrant or any principal of the registrant previously has held any professional license or state registration which was the subject of any suspension or revocation which has not been explained by the prospective registrant to the satisfaction of the office ~~department~~ either in the registration information submitted initially or upon the subsequent written request of the office ~~department~~. In the event that an attempted registration is rejected by the office ~~department~~ the prospective registrant shall be informed of the basis for rejection.

Section 679. Section 559.555, Florida Statutes, is amended to read:

559.555 Registration of consumer collection agencies; procedure.—Any person required to register as a consumer collection agency shall furnish to the office ~~department~~ the registration fee and information as follows:

(1) The registrant shall pay to the office ~~department~~ a registration fee in the amount of $200. All amounts collected shall be deposited by the office ~~department~~ to the credit of the Regulatory Trust Fund of the office ~~department~~.

(2) Each registrant shall provide to the office ~~department~~ the business name or trade name, the current mailing address, the current business location which constitutes its principal place of business, and the full name of each individual who is a principal of the registrant. "Principal of a registrant" means the registrant's owners if a partnership or sole proprietorship, corporate officers, corporate directors other than directors of a not-for-profit corporation organized pursuant to chapter 617 and Florida resident agent

if a corporate registrant. The registration information shall include a statement clearly identifying and explaining any occasion on which any professional license or state registration held by the registrant, by any principal of the registrant, or by any business entity in which any principal of the registrant was the owner of 10 percent or more of such business, was the subject of any suspension or revocation.

(3) Renewal of registration shall be made between October 1 and December 31 of each year. There shall be no proration of the fee for any registration.

Section 680. Section 559.563, Florida Statutes, is amended to read:

559.563 Void registration.—Any registration made under this part based upon false identification or false information, or identification not current with respect to name, address, and business location, or other fact which is material to such registration, shall be void. Any registration made and subsequently void under this section shall not be construed as creating any defense in any action by the office ~~department~~ to impose any sanction for any violation of this part.

Section 681. Section 559.725, Florida Statutes, is amended to read:

559.725 Consumer complaints; administrative duties.—

(1) The Division of Consumer Services of the Department of Financial Services shall serve as the registry for receiving and maintaining records of inquiries, correspondence, and complaints from consumers concerning any and all persons who collect debts, including consumer collection agencies.

(2) The division shall classify complaints by type and identify the number of written complaints against persons collecting or attempting to collect debts in this state, including credit grantors collecting their own debts, debt collectors generally, and, specifically, consumer collection agencies as distinguished from other persons who collect debts such as commercial debt collection agencies regulated under part V of this chapter. The division shall identify the nature and number of various kinds of written complaints, including specifically those alleging violations of s. 559.72.

(3) The division shall inform and furnish relevant information to the appropriate regulatory body of the state, or The Florida Bar in the case of attorneys, when any consumer debt collector exempt from registration under this part has been named in five or more written consumer complaints alleging violations of s. 559.72 within a 12-month period.

(4) The division shall furnish a form to each complainant whose complaint concerns an alleged violation of s. 559.72 by a consumer collection agency. Such form may be filed with the office ~~Department of Banking and Finance~~. The form shall identify the accused consumer collection agency and provide for the complainant's summary of the nature of the alleged violation and facts which allegedly support the complaint. The form shall include a provision for the complainant to state under oath before a notary public that the allegations therein made are true.

(5) Upon receipt of such sworn complaint, the office ~~department~~ shall promptly furnish a copy of the sworn complaint to the accused consumer collection agency.

(6) The office ~~department~~ shall investigate sworn complaints by direct written communication with the complainant and the affected consumer collection agency. In addition, the office ~~department~~ shall attempt to resolve each sworn complaint and shall record the resolution of such complaints.

(7) Periodically, the office ~~department~~ shall identify consumer collection agencies that have unresolved sworn consumer complaints from five or more different consumers within a 12-month period under the provisions of this part.

(8) The office ~~department~~ shall issue a written warning notice to the accused consumer collection agency if the office ~~department~~ is unable to resolve all such sworn complaints and fewer than five unresolved complaints remain. Such notice shall include a statement that the warning may constitute evidence in any future investigation of similar complaints against that agency and in any future administrative determination of the imposition of other administrative remedies available to the office ~~department~~ under this part.

(9) The office ~~department~~ may issue a written reprimand when five or more such unresolved sworn complaints against a consumer collection agency collectively fall short of constituting apparent repeated violations that warrant more serious administrative sanctions. Such reprimand shall include a statement that the reprimand may constitute evidence in any future investigation of similar complaints against that agency and in any future administrative determination of the imposition of other administrative remedies available to the office ~~department~~.

(10) The office ~~department~~ shall issue a notice of intent either to revoke or suspend the registration or to impose an administrative fine when the office ~~department~~ preliminarily determines that repeated violations of s. 559.72 by an accused registrant have occurred which would warrant more serious administrative sanctions being imposed under this part. The office ~~department~~ shall advise each registrant of the right to require an administrative hearing under chapter 120, prior to the agency's final action on the matter as authorized by s. 559.730.

(11) The office ~~department~~ shall advise the appropriate state attorney, or the Attorney General in the case of an out-of-state consumer debt collector, of any determination by the office ~~department~~ of a violation of the requirements of this part by any consumer collection agency which is not registered as required by this part. The office ~~department~~ shall furnish the state attorney or Attorney General with the office's ~~department's~~ information concerning the alleged violations of such requirements.

Section 682. Section 559.730, Florida Statutes, is amended to read:

559.730 Administrative remedies.—

(1) The office ~~department~~ may revoke or suspend the registration of any registrant under this part who has engaged in repeated violations which establish a clear pattern of abuse of prohibited collection practices under s. 559.72. Final office ~~department~~ action to revoke or suspend the registration of any registrant shall be subject to review in accordance with chapter 120 in the same manner as revocation of a license. The repeated violations of the law by one employee shall not be grounds for revocation or suspension of the registration of the employing consumer collection agency, unless the employee is also the owner of a majority interest in the collection agency.

(2) The registration of a registrant shall not be revoked or suspended if the registrant shows by a preponderance of the evidence that the violations were not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(3) The office ~~department~~ shall consider the number of complaints against the registrant in relation to the accused registrant's volume of business when determining whether suspension or revocation is the more appropriate sanction when circumstances warrant that one or the other should be imposed upon a registrant.

(4) The office ~~department~~ shall impose suspension rather than revocation when circumstances warrant that one or the other should be imposed upon a registrant and the accused registrant demonstrates that the registrant has taken affirmative steps which can be expected to effectively eliminate the repeated violations and that the registrant's registration has never previously been suspended.

(5) The office ~~department~~ may impose an administrative fine up to $1,000 against the offending registrant as a sanction for repeated violations of the provisions of s. 559.72 when violations do not rise to the level of misconduct governed by subsection (1). Final office ~~department~~ action to impose an administrative fine shall be subject to review in accordance with ss. 120.569 and 120.57.

(6) Any administrative fine imposed under this part shall be payable to the office ~~department~~. The office ~~department~~ shall maintain an appropriate record and shall deposit such fine into the Regulatory Trust Fund of the office ~~department~~.

(7) An administrative action by the office ~~department~~ to impose revocation, suspension, or fine shall be brought within 2 years after the date of the last violation upon which the action is founded.

(8) Nothing in this part shall be construed to preclude any person from pursuing remedies available under the Federal Fair Debt Collection Practices Act for any violation of such act, including specifically against any person who is exempt from the registration provisions of this part.

Section 683. Section 559.785, Florida Statutes, is amended to read:

559.785 Criminal penalty.—It shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person not exempt

from registering as provided in this part to engage in collecting consumer debts in this state without first registering with the office ~~department~~, or to register or attempt to register by means of fraud, misrepresentation, or concealment.

Section 684. Subsection (2) of section 559.928, Florida Statutes, is amended to read:

559.928 Registration.—

(2) Registration fees shall be $300 per year per registrant. All amounts collected shall be deposited by the Chief Financial Officer ~~Treasurer~~ to the credit of the General Inspection Trust Fund of the Department of Agriculture and Consumer Services pursuant to s. 570.20, for the sole purpose of administration of this part.

Section 685. Subsection (2) of section 559.9232, Florida Statutes, is amended to read:

559.9232 Definitions; exclusion of rental-purchase agreements from certain regulations.—

(2) A rental-purchase agreement that complies with this act shall not be construed to be, nor be governed by, any of the following:

(a) A lease or agreement which constitutes a credit sale as defined in 12 C.F.R. s. 226.2(a)(16) and s. 1602(g) of the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.;

(b) A lease which constitutes a "consumer lease" as defined in 12 C.F.R. s. 213.2(a)(6);

(c) Any lease for agricultural, business, or commercial purposes;

(d) Any lease made to an organization;

(e) A lease or agreement which constitutes a "retail installment contract" or "retail installment transaction" as those terms are defined in s. 520.31(13) and (14) ~~s. 520.31(12) and (13)~~; or

(f) A security interest as defined in s. 671.201(37).

Section 686. Subsection (1) and paragraph (h) of subsection (2) of section 560.102, Florida Statutes, are amended to read:

560.102 Purpose; application.—The purposes of the code are to:

(1) Provide general regulatory powers to be exercised by the Financial Services Commission and the Office of Financial Regulation ~~Department of Banking and Finance~~ in relation to the regulation of the money transmitter industry. The code applies to all money transmitters transacting business in this state and to the enforcement of all laws relating to the money transmitter industry.

(2) Provide for and promote, subject to the provisions of the code:

(h) Only such rulemaking power to the commission and administrative discretion to the office ~~department~~ as is necessary, in order that the supervision and regulation of money transmitters may be flexible and readily responsive to changes in economic conditions, in technology, and in money transmitter practices.

Section 687. Subsections (1), (7), (17), and (20) of section 560.103, Florida Statutes, are amended, present subsections (8) through (20) of that section are renumbered as (9) through (21), respectively, and a new subsection (8) is added to that section to read:

560.103 Definitions.—As used in the code, unless the context otherwise requires:

(1) "Appropriate regulator" means any state or federal agency, including the commission or office ~~department~~, which has been granted state or federal statutory authority with regard to the money transmission function.

(7) "Commission" means the Financial Services Commission ~~"Department" means the Florida Department of Banking and Finance~~.

(8) "Office" means the Office of Financial Regulation of the commission.

(18)~~(17)~~ "Registrant" means a person registered by the office ~~department~~ pursuant to the code.

(21)~~(20)~~ "Unsafe or unsound practice" means any practice or conduct found by the office ~~department~~ to be contrary to generally accepted standards applicable to the specific money transmitter, or a violation of any prior order of an appropriate regulatory agency, which practice, conduct, or violation creates the likelihood of material loss, insolvency, or dissipation of assets of the money transmitter or otherwise materially prejudices the interests of its customers. In making this determination, the office ~~department~~ must consider the size and condition of the money transmitter, the magnitude of the loss, the gravity of the violation, and the prior conduct of the person or business involved.

Section 688. Section 560.105, Florida Statutes, is amended to read:

560.105 Supervisory powers ~~of the department~~; rulemaking.—

(1) Consistent with the purposes of the code, the office ~~department~~ shall have:

(a)~~(1)~~ Supervision over all money transmitters and their authorized vendors.

(b)~~(2)~~ Access to books and records of persons over whom the office ~~department~~ exercises supervision as is necessary for the performance of the duties and functions of the office ~~department~~ prescribed by the code.

(c)~~(3)~~ Power to issue orders and declaratory statements, disseminate information, and otherwise exercise its discretion to effectuate the purposes, policies, and provisions of the code.

(2) Consistent with the purposes of the code, the commission may ~~and to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of the code.

Section 689. Subsection (2) of section 560.106, Florida Statutes, is amended to read:

560.106 Construction; standards.—

(2) The purposes and policies stated in s. 560.102 constitute the standards to be observed by both the commission and the office ~~department~~ in the exercise of their ~~its~~ discretionary powers under the code, in the adoption of rules, in the issuance of orders and declaratory statements, in the examination and supervision of money transmitters and their authorized vendors, and in all matters of construction and application of the code required for any determination or action by the commission or the office ~~department~~.

Section 690. Section 560.107, Florida Statutes, is amended to read:

560.107 Liability.—No person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the commission or the office ~~department~~ shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no person other than the person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

Section 691. Section 560.1073, Florida Statutes, is amended to read:

560.1073 False or misleading statements or supporting documents; penalty.—Any person who, personally or otherwise, files with the office ~~department~~, or signs as the duly authorized representative for filing with the office ~~department~~, any financial statement or any document in support thereof which is required by law or rule with intent to deceive and with knowledge that the statement or document is materially false or materially misleading commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 692. Section 560.108, Florida Statutes, is amended to read:

560.108 Administrative enforcement guidelines.—

(1) In imposing any administrative remedy or penalty provided for in the code, the office ~~department~~ shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(2) All administrative proceedings pursuant to the code shall be conducted in accordance with chapter 120. Any service required or authorized to be made by the office ~~department~~ under the code must be made by certified mail, return receipt requested, delivered to the addressee only by personal delivery or in accordance with chapter 48. The service provided for in this subsection is effective on the date of delivery.

Section 693. Section 560.109, Florida Statutes, is amended to read:

560.109 Investigations, subpoenas, hearings, and witnesses.—

(1) The office ~~department~~ may make investigations, within or outside this state, which it deems necessary in order to determine whether a person has violated any provision of the code or the rules adopted by the commission ~~department~~ pursuant to the code.

(2)(a) In the course of or in connection with an investigation by the office ~~department~~ pursuant to the provisions of subsection (1) or an investigation or examination in connection with any application to the office ~~department~~ for the organization or establishment of a money transmitter business, or in connection with an examination or investigation of a money transmitter or its authorized vendor, the office ~~department~~, or any of its officers holding no lesser title and position than financial examiner or analyst, financial investigator, or attorney at law, may:

1. Administer oaths and affirmations.

2. Take or cause to be taken testimony and depositions.

(b) The office ~~department~~, or any of its officers holding no lesser title than attorney or area financial manager, may issue, revoke, quash, or modify subpoenas and subpoenas duces tecum under the seal of the office ~~department~~ or cause any such subpoena or subpoena duces tecum to be issued by any county court judge or clerk of the circuit court or county court to require persons to appear before the office ~~department~~ at a reasonable time and place to be therein named and to bring such books, records, and documents for inspection as may be therein designated. Such subpoenas may be served by a representative of the office ~~department~~ or may be served as otherwise provided for by law for the service of subpoenas.

(c) In connection with any such investigation or examination, the office ~~department~~ may permit a person to file a statement in writing, under oath or otherwise as the office ~~department~~ determines, as to facts and circumstances specified by the office ~~department~~.

(3)(a) In the event of noncompliance with a subpoena issued or caused to be issued by the office ~~department~~ pursuant to this section, the office ~~department~~ may petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, records, and documents as are specified in such subpoena duces tecum. The office ~~department~~ is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar.

(b) A copy of the petition shall be served upon the person subpoenaed by any person authorized by this section to serve subpoenas, who shall make and file with the court an affidavit showing the time, place, and date of service.

(c) At any hearing on any such petition, the person subpoenaed, or any person whose interests will be substantially affected by the investigation, examination, or subpoena, may appear and object to the subpoena and to the granting of the petition. The court may make any order that justice requires in order to protect a party or other person and her or his personal and property rights, including, but not limited to, protection from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Failure to comply with an order granting, in whole or in part, a petition for enforcement of a subpoena is a contempt of the court.

(4) Witnesses are entitled to the same fees and mileage to which they would be entitled by law for attending as witnesses in the circuit court, except that no fees or mileage is allowed for testimony of a person taken at the person's principal office or residence.

(5) Reasonable and necessary costs incurred by the office ~~department~~ and payable to persons involved with investigations may be assessed against any person on the basis of actual costs incurred. Assessable expenses include, but are not limited to: expenses for interpreters; expenses for communications; expenses for legal representation; expenses for economic, legal, or other research, analyses, and testimony; and fees and expenses for witnesses. The failure to reimburse the office ~~department~~ is a ground for denial of the registration application or for revocation of any approval thereof. No such costs shall be assessed against a person unless the office ~~department~~ has determined that the person has operated or is operating in violation of the code.

Section 694. Subsection (1) of section 560.111, Florida Statutes, is amended to read:

560.111 Prohibited acts and practices.—

(1) It is unlawful for any money transmitter or money transmitter-affiliated party to:

(a) Receive or possess itself of any property otherwise than in payment of a just demand, and, with intent to deceive or defraud, to omit to make or cause to be made a full and true entry thereof in its books and accounts, or to concur in omitting to make any material entry thereof;

(b) Embezzle, abstract, or misapply any money, property, or thing of value of the money transmitter or authorized vendor with intent to deceive or defraud such money transmitter or authorized vendor;

(c) Make any false entry in any book, report, or statement of such money transmitter or authorized vendor with intent to deceive or defraud such money transmitter, authorized vendor, or another person, or with intent to

deceive the office ~~department~~, any other state or federal regulatory agency, or any authorized representative appointed to examine or investigate the affairs of such money transmitter or authorized vendor;

(d) Engage in an act that violates 18 U.S.C. s. 1956, 31 U.S.C. s. 5324, or any other law, rule, or regulation of another state or of the United States relating to the business of money transmission or usury which may cause the denial or revocation of a money transmitter license or registration in such jurisdiction;

(e) Deliver or disclose to the office ~~department~~ or any of its employees any examination report, report of condition, report of income and dividends, audit, account, statement, or document known by it to be fraudulent or false as to any material matter; or

(f) Place among the assets of such money transmitter or authorized vendor any note, obligation, or security that the money transmitter or authorized vendor does not own or that to the person's knowledge is fraudulent or otherwise worthless, or for any such person to represent to the office ~~department~~ that any note, obligation, or security carried as an asset of such money transmitter or authorized vendor is the property of the money transmitter or authorized vendor and is genuine if it is known to such person that such representation is false or that such note, obligation, or security is fraudulent or otherwise worthless.

Section 695. Subsections (1), (3), and (6) of section 560.112, Florida Statutes, are amended to read:

560.112 Procedures for disciplinary actions.—

(1) The office ~~department~~ may issue and serve upon any person a complaint stating charges whenever the office ~~department~~ has reason to believe that such person has engaged in or is engaging in conduct described in s. 560.114.

(3) If no hearing is requested within the time allowed by ss. 120.569 and 120.57, or if a hearing is held and the office ~~department~~ finds that any of the charges are true, the office ~~department~~ may enter an order directing the money transmitter, the money transmitter-affiliated party, or the person named therein to cease and desist from engaging in the conduct complained of and to take reasonable corrective action. The office ~~department~~ may also issue an order suspending or barring any money transmitter-affiliated party from continuing to be employed by or associated with any money transmitter or authorized vendor during the period such order is in effect.

(6) Whenever the office ~~department~~ finds that conduct described in s. 560.114 is likely to cause substantial dissipation of assets or earnings of the money transmitter or, insolvency or substantial prejudice to the customers of the money transmitter or authorized vendor, it may issue an emergency removal order or an emergency cease and desist order requiring any person to disassociate itself from participating in the affairs of the money transmitter or authorized vendor or to immediately cease and desist from engaging in the conduct complained of and to take corrective action. The emergency

order is effective immediately upon service of the order upon the person and remains effective for 90 days. Such person may object to the issuance of the emergency order pursuant to the provisions of chapter 120. Such objection must be in writing and must include a request for a formal hearing, which is to be promptly instituted and acted upon. If the office ~~department~~ begins nonemergency proceedings under subsection (1), the emergency order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

Section 696. Section 560.113, Florida Statutes, is amended to read:

560.113 Injunctions.—Whenever a violation of the code is threatened or impending and such violation will cause substantial injury to any person, the circuit court has jurisdiction to hear any complaint filed by the office ~~department~~ and, upon proper showing, to issue an injunction restraining such violation or granting other such appropriate relief.

Section 697. Subsections (1) and (2) of section 560.114, Florida Statutes, are amended to read:

560.114 Disciplinary actions.—

(1) The following actions by a money transmitter or money transmitter-affiliated party are violations of the code and constitute grounds for the issuance of a cease and desist order, the issuance of a removal order, the denial of a registration application or the suspension or revocation of any registration previously issued pursuant to the code, or the taking of any other action within the authority of the office ~~department~~ pursuant to the code:

(a) Failure to comply with any provision of the code, any rule or order adopted pursuant thereto, or any written agreement entered into with the office ~~department~~.

(b) Fraud, misrepresentation, deceit, or gross negligence in any transaction involving money transmission, regardless of reliance thereon by, or damage to, a money transmitter customer.

(c) Fraudulent misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a money transmitter customer pursuant to the code, regardless of reliance thereon by, or damage to, such customer.

(d) False, deceptive, or misleading advertising.

(e) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by the code, by any rule or order adopted pursuant to the code, or by any agreement entered into with the office ~~department~~.

(f) Refusal to permit the examination or inspection of books and records in an investigation or examination by the office ~~department~~, pursuant to the provisions of the code, or to comply with a subpoena issued by the office ~~department~~.

(g) Failure to pay a judgment recovered in any court in this state by a claimant in an action arising out of a money transmission transaction within 30 days after the judgment becomes final.

(h) Engaging in an act or practice proscribed by s. 560.111.

(i) Insolvency or operating in an unsafe and unsound manner.

(j) Failure by a money transmitter to remove a money transmitter-affiliated party after the office ~~department~~ has issued and served upon the money transmitter a final order setting forth a finding that the money transmitter-affiliated party has violated any provision of the code.

(k) Making any material misstatement or misrepresentation or committing any fraud in an initial or renewal application for registration.

(l) Committing any act resulting in an application for registration, or a registration or its equivalent, to practice any profession or occupation being denied, suspended, revoked, or otherwise acted against by a registering authority in any jurisdiction or a finding by an appropriate regulatory body of engaging in unlicensed activity as a money transmitter within any jurisdiction.

(m) Committing any act resulting in a registration or its equivalent, or an application for registration, to practice any profession or occupation being denied, suspended, or otherwise acted against by a registering authority in any jurisdiction for a violation of 18 U.S.C. s. 1956, 31 U.S.C. s. 5324, or any other law, rule, or regulation of another state or of the United States relating to the business of money transmission or usury which may cause the denial or revocation of a money transmitter license or registration in such jurisdiction.

(n) Having been convicted of or found guilty of, or having pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or of the United States which involves fraud, moral turpitude, or dishonest dealing, without regard to whether a judgment of conviction has been entered by the court.

(o) Having been convicted of or found guilty of, or having pleaded guilty or nolo contendere to, a crime under 18 U.S.C. s. 1956 or 31 U.S.C. s. 5324, without regard to whether a judgment of conviction has been entered by the court.

(p) Having been convicted of or found guilty of, or having pleaded guilty or nolo contendere to, misappropriation, conversion, or unlawful withholding of moneys that belong to others and were received in the conduct of the business of the money transmitter.

(q) Failure to inform the office ~~department~~ in writing within 15 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or of the United States, or of any crime involving fraud, moral turpitude, or dishonest dealing, without regard to whether a judgment of conviction has been entered by the court.

(r) Aiding, assisting, procuring, advising, or abetting any person in violating a provision of this code or any order or rule of the office or commission ~~department~~.

(s) Failure to timely pay any fee, charge, or fine under the code.

(t) Failure to pay any judgment entered by any court within 30 days after the judgment becomes final.

(u) Engaging or holding oneself out to be engaged in the business of a money transmitter without the proper registration.

(v) Any action that would be grounds for denial of a registration or for revocation, suspension, or restriction of a registration previously granted under part III of this chapter.

(w) Failure to pay any fee, charge, or fine under the code.

(x) Engaging or advertising engagement in the business of a money transmitter without a registration, unless the person is exempted from the registration requirements of the code.

(2) The office ~~department~~ may issue a cease and desist order or removal order, suspend or revoke any previously issued registration, or take any other action within the authority of the office ~~department~~ against a money transmitter based on any fact or condition that exists and that, if it had existed or been known to exist at the time the money transmitter applied for registration, would have been grounds for denial of registration.

Section 698. Section 560.115, Florida Statutes, is amended to read:

560.115 Surrender of registration.—Any money transmitter registered pursuant to the code may voluntarily surrender its registration at any time by giving written notice to the office ~~department~~.

Section 699. Section 560.116, Florida Statutes, is amended to read:

560.116 Civil immunity.—Any person having reason to believe that a provision of the code is being violated, or has been violated, or is about to be violated, may file a complaint with the office ~~department~~ setting forth the details of the alleged violation. An immunity from civil liability is hereby granted to any person who furnishes such information, unless the information provided is false and the person providing the information does so with reckless disregard for the truth.

Section 700. Section 560.117, Florida Statutes, is amended to read:

560.117 Administrative fines; enforcement.—

(1) The office ~~department~~ may, by complaint, initiate a proceeding pursuant to chapter 120 to impose an administrative fine against any person found to have violated any provision of the code or a cease and desist order of the office ~~department~~ or any written agreement with the office ~~department~~. However, the office ~~department~~ shall give notice, in writing, if it

suspects that the licensee has violated any of the following provisions of the code and shall give the licensee 15 days after actual notice is served on the person within which to correct the violation before bringing disciplinary action under the code:

(a) Failure to timely pay any fee, charge, or fine under the code;

(b) Failure to pay any judgment entered by any court within 30 days after the judgment becomes final;

(c) Failure to notify the office ~~department~~ of a change of control of a money transmitter as required by s. 560.127; or

(d) Failure to notify the office ~~department~~ of any change of address or fictitious name as required by s. 560.205.

Except as provided in this section, such fine may not exceed $100 a day for each violation. The office ~~department~~ may excuse any such fine with a showing of good cause by the person being fined.

(2) If the office ~~department~~ finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue a license or registration issued under this chapter, the office ~~department~~ may, in addition to or in lieu of suspension, revocation, or refusal to renew or continue a license or registration, impose a fine in an amount up to $10,000 for each violation of this chapter.

(3) Notwithstanding any other provision of this section, the office ~~department~~ may impose a fine not to exceed $1,000 per day for each day that a person violates the code by engaging in the business of a money transmitter without being registered.

(4) Any administrative fine levied by the office ~~department~~ may be enforced by the office ~~department~~ by appropriate proceedings in the circuit court of the county in which such person resides or maintains a principal office. In any administrative or judicial proceeding arising under this section, a party may elect to correct the violation asserted by the office ~~department~~ and, upon the party's doing so, any fine ceases to accrue; however, an election to correct the violation does not render moot any administrative or judicial proceeding.

Section 701. Section 560.118, Florida Statutes, is amended to read:

560.118 Examinations, reports, and internal audits; penalty.—

(1)(a) The office ~~department~~ may conduct an examination of a money transmitter or authorized vendor by providing not less than 15 days' advance notice to the money transmitter or authorized vendor. However, if the office ~~department~~ suspects that the money transmitter or authorized vendor has violated any provisions of this code or any criminal laws of this state or of the United States or is engaging in an unsafe and unsound practice, the office ~~department~~ may, at any time without advance notice, conduct an examination of all affairs, activities, transactions, accounts, business rec-

ords, and assets of any money transmitter or any money transmitter-affiliated party for the protection of the public. For the purpose of examinations, the office ~~department~~ may administer oaths and examine a money transmitter or any of its affiliated parties concerning their operations and business activities and affairs. The office ~~department~~ may accept an audit or examination from any appropriate regulatory agency or from an independent third party with respect to the operations of a money transmitter or an authorized vendor. The office ~~department~~ may also make a joint or concurrent examination with any state or federal regulatory agency. The office ~~department~~ may furnish a copy of all examinations made of such money transmitter or authorized vendor to the money transmitter and any appropriate regulatory agency provided that such agency agrees to abide by the confidentiality provisions as set forth in chapter 119.

(b) Persons subject to this chapter who are examined shall make available to the office ~~department~~ or its examiners the accounts, records, documents, files, information, assets, and matters which are in their immediate possession or control and which relate to the subject of the examination. Those accounts, records, documents, files, information, assets, and matters not in their immediate possession shall be made available to the office ~~department~~ or the office's ~~department's~~ examiners within 10 days after actual notice is served on such persons.

(c) The audit of a money transmitter required under this section may be performed by an independent third party that has been approved by the office ~~department~~ or by a certified public accountant authorized to do business in the United States. The examination of a money transmitter or authorized vendor required under this section may be performed by an independent third party that has been approved by the office ~~department~~ or by a certified public accountant authorized to do business in the United States. The cost of such an independent examination or audit shall be directly borne by the money transmitter or authorized vendor.

(2)(a) Annual financial reports that are required to be filed under the code or any rules adopted thereunder must be audited by an independent third party that has been approved by the office ~~department~~ or by a certified public accountant authorized to do business in the United States. The money transmitter or authorized vendor shall directly bear the cost of the audit. This paragraph does not apply to any seller of payment instruments who can prove to the satisfaction of the office ~~department~~ that it has a combined total of fewer than 50 employees and authorized vendors or that its annual payment instruments issued from its activities as a payment instrument seller are less than $200,000.

(b) The commission ~~department~~ may, by rule, require each money transmitter or authorized vendor to submit quarterly reports to the office ~~department~~. The commission ~~department~~ may require that each report contain a declaration by an officer, or any other responsible person authorized to make such declaration, that the report is true and correct to the best of her or his knowledge and belief. Such report must include such information as the commission ~~department~~ by rule requires for that type of money transmitter.

(c) The office ~~department~~ may levy an administrative fine of up to $100 per day for each day the report is past due, unless it is excused for good cause. In excusing any such administrative fine, the office ~~department~~ may consider the prior payment history of the money transmitter or authorized vendor.

(3) Any person who willfully violates this section or fails to comply with any lawful written demand or order of the office ~~department~~ made under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 702. Section 560.119, Florida Statutes, is amended to read:

560.119 Deposit of fees and assessments.—The application fees, registration renewal fees, late payment penalties, civil penalties, administrative fines, and other fees or penalties provided for in the code shall, in all cases, be paid directly to the office ~~department~~, which shall deposit such proceeds into the Regulatory Trust Fund. Each year, the Legislature shall appropriate from the trust fund to the office ~~department~~ sufficient moneys to pay the office's ~~department's~~ costs for administration of the code. The Regulatory Trust Fund is subject to the service charge imposed pursuant to chapter 215.

Section 703. Paragraph (a) of subsection (1) and subsections (2) and (3) of section 560.121, Florida Statutes, are amended to read:

560.121 Records; limited restrictions upon public access.—

(1)(a) Orders of courts or of administrative law judges for the production of confidential records or information shall provide for inspection in camera by the court or the administrative law judge and, after the court or administrative law judge has made a determination that the documents requested are relevant or would likely lead to the discovery of admissible evidence, said documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality thereof. Any order directing the release of information shall be immediately reviewable, and a petition by the office ~~department~~ for review of such order shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of such petition by the reviewing court. If any other party files such a petition for review, it will operate as a stay of such proceedings only upon order of the reviewing court.

(2) Examination reports, investigatory records, applications, and related information compiled by the office ~~department~~, or photographic copies thereof, shall be retained by the office ~~department~~ for a period of at least 10 years.

(3) A copy of any document on file with the office ~~department~~ which is certified by the office ~~department~~ as being a true copy may be introduced in evidence as if it were the original. The commission ~~department~~ shall establish a schedule of fees for preparing true copies of documents.

Section 704. Subsections (2), (4), (5), (6), and (7) of section 560.123, Florida Statutes, are amended to read:

560.123 Florida control of money laundering in the Money Transmitters' Code; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties; corpus delicti.—

(2) It is the purpose of this section to require the submission to the office ~~department~~ of reports and the maintenance of certain records of transactions involving currency or monetary instruments which reports and records deter the use of money transmitters to conceal proceeds from criminal activity and are useful in criminal, tax, or regulatory investigations or proceedings.

(a) Every money transmitter shall keep a record of each financial transaction occurring in this state known to it to involve currency or other monetary instrument, as the commission ~~department~~ prescribes by rule, of a value in excess of $10,000, to involve the proceeds of specified unlawful activity, or to be designed to evade the reporting requirements of this section or chapter 896 and shall maintain appropriate procedures to ensure compliance with this section and chapter 896.

(b) Multiple financial transactions shall be treated as a single transaction if the money transmitter has knowledge that they are made by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any day.

(c) Any money transmitter may keep a record of any financial transaction occurring in this state, regardless of the value, if it suspects that the transaction involves the proceeds of specified unlawful activity.

(d) A money transmitter, or officer, employee, or agent thereof, that files a report in good faith pursuant to this section is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

(4) In enforcing this section, the commission and office ~~department~~ shall acknowledge and take into consideration the requirements of Title 31, United States Code, both to reduce the burden of fulfilling duplicate requirements and to acknowledge the economic advantage of having similar reporting and recordkeeping requirements between state and federal regulatory authorities.

(5)(a) Each money transmitter must file a report with the office ~~department~~ of the record required by this section. Each record filed pursuant to this section must be filed at such time and contain such information as the commission ~~department~~ requires by rule.

(b) The timely filing of the report required by 31 U.S.C. s. 5313, with the appropriate federal agency is deemed compliance with the reporting requirements of this subsection unless the reports are not regularly and comprehensively transmitted by the federal agency to the office ~~department~~.

(6) The office ~~department~~ must retain a copy of all reports received under subsection (5) for a minimum of 5 calendar years after receipt of the report. However, if a report or information contained in a report is known by the

office ~~department~~ to be the subject of an existing criminal proceeding, the report must be retained for a minimum of 10 calendar years from the date of receipt.

(7) In addition to any other powers conferred upon the office ~~department~~ to enforce and administer the code, the office ~~department~~ may:

(a) Bring an action in any court of competent jurisdiction to enforce or administer this section. In such action, the office ~~department~~ may seek award of any civil penalty authorized by law and any other appropriate relief at law or equity.

(b) Issue and serve upon a person an order requiring such person to cease and desist and take corrective action whenever the office ~~department~~ finds that such person is violating, has violated, or is about to violate any provision of this section or chapter 896; any rule or order adopted under this section or chapter 896; or any written agreement related to this section or chapter 896 which is entered into with the office ~~department~~.

(c) Issue and serve upon a person an order suspending or revoking such person's money transmitter registration whenever the office ~~department~~ finds that such person is violating, has violated, or is about to violate any provision of this section or chapter 896; any rule or order adopted under this section or chapter 896; or any written agreement related to this section or chapter 896 which is entered into with the office ~~department~~.

(d) Issue and serve upon any person an order of removal whenever the office ~~department~~ finds that such person is violating, has violated, or is about to violate any provision of this section or chapter 896; any rule or order adopted under this section or chapter 896; or any written agreement related to this section or chapter 896 which is entered into with the office ~~department~~.

(e) Impose and collect an administrative fine against any person found to have violated any provision of this section or chapter 896; any rule or order adopted under this section or chapter 896; or any written agreement related to this section or chapter 896 which is entered into with the office ~~department~~, in an amount not exceeding $10,000 a day for each willful violation or $500 a day for each negligent violation.

Section 705. Subsections (3) and (4) of section 560.125, Florida Statutes, are amended to read:

560.125 Money transmitter business by unauthorized persons; penalties.—

(3) Any person whose substantial interests are affected by a proceeding brought by the office ~~department~~ pursuant to the code may, pursuant to s. 560.113, petition any court to enjoin the person or activity that is the subject of the proceeding from violating any of the provisions of this section. For the purpose of this subsection, any money transmitter registered pursuant to the code, any person residing in this state, and any person whose principal place of business is in this state are presumed to be substantially affected.

In addition, the interests of a trade organization or association are deemed substantially affected if the interests of any of its members are so affected.

(4) The office ~~department~~ may issue and serve upon any person who violates any of the provisions of this section a complaint seeking a cease and desist order in accordance with the procedures and in the manner prescribed by s. 560.112. The office ~~department~~ may also impose an administrative fine pursuant to s. 560.117(3) against any person who violates any of the provisions of this section.

Section 706. Section 560.126, Florida Statutes, is amended to read:

560.126 Significant events; notice required.—Unless exempted by the office ~~department~~, every money transmitter must provide the office ~~department~~ with a written notice within 15 days after the occurrence or knowledge of, whichever period of time is greater, any of the following events:

(1) The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the money transmitter.

(2) The commencement of any registration suspension or revocation proceeding, either administrative or judicial, or the denial of any original registration request or a registration renewal, by any state, the District of Columbia, any United States territory, or any foreign country, in which the money transmitter operates or plans to operate or has registered to operate.

(3) A felony indictment relating to the money transmission business involving the money transmitter or a money transmitter-affiliated party of the money transmitter.

(4) The felony conviction, guilty plea, or plea of nolo contendere, if the court adjudicates the nolo contendere pleader guilty, or the adjudication of guilt of a money transmitter or money transmitter-affiliated party.

(5) The interruption of any corporate surety bond required by the code.

(6) Any suspected criminal act, as defined by the commission ~~department~~ by rule, perpetrated in this state against a money transmitter or authorized vendor.

However, no liability shall be incurred by any person as a result of making a good faith effort to fulfill this disclosure requirement.

Section 707. Section 560.127, Florida Statutes, is amended to read:

560.127 Control of a money transmitter.—

(1) A person has control over a money transmitter if:

(a) The person directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the money transmitter; or

(b) The office ~~department~~ determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the activities of the money transmitter.

(2) In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a money transmitter, and thereby to change the control of that money transmitter, each person or group of persons shall provide written notice to the office ~~department~~.

(a) A money transmitter whose stock is traded on an organized stock exchange shall provide the office ~~department~~ with written notice within 15 days after knowledge of such change in control.

(b) A money transmitter whose stock is not publicly traded shall provide the office ~~department~~ with not less than 30 days' prior written notice of such proposed change in control.

(3) After a review of the written notification, the office ~~department~~ may require the money transmitter to provide additional information relating to other and former addresses, and the reputation, character, responsibility, and business affiliations, of the proposed new owner or each of the proposed new owners of the money transmitter.

(a) The office ~~department~~ may deny the person or group of persons proposing to purchase, or who have acquired control of, a money transmitter if, after investigation, the office ~~department~~ determines that the person or persons are not qualified by reputation, character, experience, or financial responsibility to control or operate the money transmitter in a legal and proper manner and that the interests of the other stockholders, if any, or the interests of the public generally may be jeopardized by the proposed change in ownership, controlling interest, or management.

(b) The office ~~department~~ may disapprove any person who has been convicted of, or pled guilty or nolo contendere to, a violation of s. 560.123, s. 655.50, chapter 896, or any similar state, federal, or foreign law.

Section 708. Section 560.128, Florida Statutes, is amended to read:

560.128 Consumer disclosure.—

(1) Every money transmitter and authorized vendor shall provide each consumer of a money transmitter transaction a toll-free telephone number for the purpose of consumer contacts; however, in lieu of such toll-free telephone number, the money transmitter or authorized vendor may provide the address and telephone number of the office and the Division of Consumer Services of the Department of Financial Services ~~department~~.

(2) The commission ~~department~~ may by rule require every money transmitter to display its registration at each location, including the location of each person designated by the registrant as an authorized vendor, where the money transmitter engages in the activities authorized by the registration.

Section 709. Section 560.129, Florida Statutes, is amended to read:

560.129 Confidentiality.—

~~(1) For purposes of this section, the definitions contained in s. 560.103, as created by chapter 94-238, Laws of Florida, and chapter 94-354, Laws of Florida, apply.~~

(1)~~(2)~~(a) Except as otherwise provided in this section, all information concerning an investigation or examination by the office ~~department~~ pursuant to this chapter, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active. For purposes of this section, an investigation or examination is considered "active" so long as the office ~~department~~ or any other administrative, regulatory, or law enforcement agency of any jurisdiction is proceeding with reasonable dispatch and has a reasonable good faith belief that action may be initiated by the office ~~department~~ or other administrative, regulatory, or law enforcement agency.

(b) Notwithstanding paragraph (a), all information obtained by the office ~~department~~ in the course of its investigation or examination which is a trade secret, as defined in s. 688.002, or which is personal financial information shall remain confidential. If any administrative, civil, or criminal proceeding against the money transmitter or a money transmitter-affiliated party is initiated and the office ~~department~~ seeks to use matter that a registrant believes to be a trade secret or personal financial information, such records shall be subject to an in camera review by the administrative law judge, if the matter is before the Division of Administrative Hearings, or a judge of any court of this state, any other state, or the United States, as appropriate, for the purpose of determining if the matter is a trade secret or is personal financial information. If it is determined that the matter is a trade secret, the matter shall remain confidential. If it is determined that the matter is personal financial information, the matter shall remain confidential unless the administrative law judge or judge determines that, in the interests of justice, the matter should become public.

(c) If any administrative, civil, or criminal proceeding against the money transmitter or a money transmitter-affiliated party results in an acquittal or the dismissal of all of the allegations against the money transmitter or a money transmitter-affiliated party, upon the request of any party, the administrative law judge or the judge may order all or a portion of the record of the proceeding to be sealed, and it shall thereafter be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Except as necessary for the office ~~department~~ or any other administrative, regulatory, or law enforcement agency of any jurisdiction to enforce the provisions of this chapter or the law of any other state or the United States, a consumer complaint and other information concerning an investigation or examination shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution after the investigation or examination ceases to be active to the extent that disclosure would:

1. Jeopardize the integrity of another active investigation;

2. Reveal personal financial information;

3. Reveal the identity of a confidential source; or

4. Reveal investigative techniques or procedures.

(2)~~(3)~~ This section does not prevent or restrict:

(a) Furnishing records or information to any appropriate regulatory agency if such agency adheres to the confidentiality provisions of the code;

(b) Furnishing records or information to an independent third party or a certified public accountant who has been approved by the office ~~department~~ to conduct an examination under s. 560.118(1)(b), if the independent third party or certified public accountant adheres to the confidentiality provisions of the code; or

(c) Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement or prosecutorial agencies.

(3)~~(4)~~ All quarterly reports submitted by a money transmitter to the office ~~department~~ under s. 560.118(2)(b) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4)~~(5)~~ Examination reports, investigatory records, applications, and related information compiled by the office ~~department~~, or photographic copies thereof, shall be retained by the office ~~department~~ for a period of at least 10 years.

(5)~~(6)~~ Any person who willfully discloses information made confidential by this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 710. Subsection (4) of section 560.202, Florida Statutes, is amended to read:

560.202 Definitions.—In addition to the definitions provided in s. 560.103, for purposes of this part, unless otherwise clearly indicated by the context:

(4) "Registrant" means a person registered by the office ~~department~~ pursuant to this part.

Section 711. Section 560.205, Florida Statutes, is amended to read:

560.205 Qualifications of applicant for registration; contents.—

(1) To qualify for registration under this part, an applicant must demonstrate to the office ~~department~~ such character and general fitness as to command the confidence of the public and warrant the belief that the registered business will be operated lawfully and fairly. The office ~~department~~

may investigate each applicant to ascertain whether the qualifications and requirements prescribed by this part have been met. The office's ~~department's~~ investigation may include a criminal background investigation of all controlling shareholders, principals, officers, directors, members, and responsible persons of a funds transmitter and a payment instrument seller and all persons designated by a funds transmitter or payment instrument seller as an authorized vendor. Each controlling shareholder, principal, officer, director, member, and responsible person of a funds transmitter or payment instrument seller, unless the applicant is a publicly traded corporation, a subsidiary thereof, or a subsidiary of a bank or bank holding company, shall file a complete set of fingerprints taken by an authorized law enforcement officer. Such fingerprints must be submitted to the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing. The commission ~~department~~ may waive by rule the requirement that applicants file a set of fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.

(2) Each application for registration must be submitted under oath to the office ~~department~~ on such forms as the commission ~~department~~ prescribes by rule and must be accompanied by a nonrefundable application fee. Such fee may not exceed $500 for each payment instrument seller or funds transmitter and $50 for each authorized vendor or location operating within this state. The application forms shall set forth such information as the commission ~~department~~ reasonably requires, including, but not limited to:

(a) The name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.

(b) The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.

(c) A description of the activities conducted by the applicant, the applicant's history of operations, and the business activities in which the applicant seeks to engage in this state.

(d) A list identifying the applicant's proposed authorized vendors in this state, including the location or locations in this state at which the applicant and its authorized vendors propose to conduct registered activities.

(e) A sample authorized vendor contract, if applicable.

(f) A sample form of payment instrument, if applicable.

(g) The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments will be drawn or through which such payment instruments will be payable.

(h) Documents revealing that the net worth and bonding requirements specified in s. 560.209 have been or will be fulfilled.

(3) Each application for registration by an applicant that is a corporation shall also set forth such information as the commission ~~department~~ reasonably requires, including, but not limited to:

(a) The date of the applicant's incorporation and state of incorporation.

(b) A certificate of good standing from the state or country in which the applicant was incorporated.

(c) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange.

(d) The name, business and residence addresses, and employment history for the past 5 years for each executive officer, each director, each controlling shareholder, and the responsible person who will be in charge of all the applicant's business activities in this state.

(e) The history of material litigation and criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, each director, each controlling shareholder, and the responsible person who will be in charge of the applicant's registered activities.

(f) Copies of the applicant's audited financial statements for the current year and, if available, for the immediately preceding 2-year period. In cases where the applicant is a wholly owned subsidiary of another corporation, the parent's consolidated audited financial statements may be submitted to satisfy this requirement. An applicant who is not required to file audited financial statements may satisfy this requirement by filing unaudited financial statements verified under penalty of perjury, as provided by the commission ~~department~~ by rule.

(g) An applicant who is not required to file audited financial statements may file copies of the applicant's unconsolidated, unaudited financial statements for the current year and, if available, for the immediately preceding 2-year period.

(h) If the applicant is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

(4) Each application for registration submitted to the office ~~department~~ by an applicant that is not a corporation shall also set forth such information as the commission ~~department~~ reasonably requires, including, but not limited to:

(a) Evidence that the applicant is registered to do business in this state.

(b) The name, business and residence addresses, personal financial statement and employment history for the past 5 years for each individual having a controlling ownership interest in the applicant, and each responsible person who will be in charge of the applicant's registered activities.

(c) The history of material litigation and criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each individual having a controlling ownership interest in the applicant and each responsible person who will be in charge of the applicant's registered activities.

(d) Copies of the applicant's audited financial statements for the current year, and, if available, for the preceding 2 years. An applicant who is not required to file audited financial statements may satisfy this requirement by filing unaudited financial statements verified under penalty of perjury, as provided by the commission ~~department~~ by rule.

(5) Each applicant shall designate and maintain an agent in this state for service of process.

Section 712. Section 560.206, Florida Statutes, is amended to read:

560.206 Investigation of applicants.—Upon the filing of a properly completed application, accompanied by the nonrefundable application fee and other required documents, the office ~~department~~ shall investigate to ascertain whether the qualifications and requirements prescribed by this part have been met. If the office ~~department~~ finds that the applicant meets such qualifications and requirements, the office ~~department~~ shall issue the applicant a registration to engage in the business of selling payment instruments and transmitting funds in this state. Any registration issued under this part shall remain effective through April 30 of the second year following the date of issuance of the registration, not to exceed 24 months, unless during such period the registration is surrendered, suspended, or revoked.

Section 713. Subsections (1) and (2) of section 560.207, Florida Statutes, are amended to read:

560.207 Renewal of registration; registration fee.—

(1) Registration may be renewed for a 24-month period or the remainder of any such period without proration following the date of its expiration, upon the filing with the office ~~department~~ of an application and other statements and documents as may reasonably be required of registrants by the commission ~~department~~. However, the registrant must remain qualified for such registration under the provisions of this part.

(2) All registration renewal applications shall be accompanied by a renewal fee not to exceed $1,000. All renewal applications must be filed on or after January 1 of the year in which the existing registration expires, but before the expiration date of April 30. If the renewal application is filed prior to the expiration date of an existing registration, no late fee shall be paid in connection with such renewal application. If the renewal application is filed within 60 calendar days after the expiration date of an existing registration, then, in addition to the $1,000 renewal fee, the renewal application shall be accompanied by a nonrefundable late fee of $500. If the registrant has not filed a renewal application within 60 calendar days after the expiration date of an existing registration, a new application shall be filed with the office ~~department~~ pursuant to s. 560.205.

Section 714. Subsections (2) and (3) of section 560.208, Florida Statutes, are amended to read:

560.208 Conduct of business.—

(2) Within 60 days after the date a registrant either opens a location within this state or authorizes an authorized vendor to operate on the registrant's behalf within this state, the registrant shall notify the office ~~department~~ on a form prescribed by the commission ~~department~~ by rule. The notification shall be accompanied by a nonrefundable $50 fee for each authorized vendor or location. Each notification shall also be accompanied by a financial statement demonstrating compliance with s. 560.209(1), unless compliance has been demonstrated by a financial statement filed with the registrant's quarterly report in compliance with s. 560.118(2). The financial statement must be dated within 90 days of the date of designation of the authorized vendor or location. This subsection shall not apply to any authorized vendor or location that has been designated by the registrant before October 1, 2001.

(3) Within 60 days after the date a registrant closes a location within this state or withdraws authorization for an authorized vendor to operate on the registrant's behalf within this state, the registrant shall notify the office ~~department~~ on a form prescribed by the commission ~~department~~ by rule.

Section 715. Subsections (2), (3), (4), (5), and (6) of section 560.209, Florida Statutes, are amended to read:

560.209 Net worth; corporate surety bond; collateral deposit in lieu of bond.—

(2) Before the office ~~department~~ may issue a registration, the applicant must provide to the office ~~department~~ a corporate surety bond, issued by a bonding company or insurance company authorized to do business in this state.

(a) The corporate surety bond shall be in such amount as may be determined by commission ~~department~~ rule, but shall not exceed $250,000. However, the commission and office ~~department~~ may consider extraordinary circumstances, such as the registrant's financial condition, the number of locations, and the existing or anticipated volume of outstanding payment instruments or funds transmitted, and require an additional amount above $250,000, up to $500,000.

(b) The corporate surety bond shall be in a form satisfactory to the office ~~department~~ and shall run to the state for the benefit of any claimants in this state against the applicant or its authorized vendors to secure the faithful performance of the obligations of the applicant and its authorized vendors with respect to the receipt, handling, transmission, and payment of funds. The aggregate liability of the corporate surety bond in no event shall exceed the principal sum of the bond. Such claimants against the applicant or its authorized vendors may themselves bring suit directly on the corporate surety bond, or the Department of Legal Affairs may bring suit thereon on behalf of such claimants, in either one action or in successive actions.

(c) A corporate surety bond filed with the office ~~department~~ for purposes of compliance with this section may not be canceled by either the registrant or the corporate surety except upon written notice to the office ~~department~~ by registered or certified mail with return receipt requested. A cancellation

shall not take effect less than 30 days after receipt by the office ~~department~~ of such written notice.

(d) The corporate surety must, within 10 days after it pays any claim to any claimant, give written notice to the office ~~department~~ by registered or certified mail of such payment with details sufficient to identify the claimant and the claim or judgment so paid.

(e) Whenever the principal sum of such bond is reduced by one or more recoveries or payments, the registrant must furnish a new or additional bond so that the total or aggregate principal sum of such bond equals the sum required by the commission ~~department~~. Alternatively, a registrant may furnish an endorsement executed by the corporate surety reinstating the bond to the required principal sum thereof.

(3) In lieu of such corporate surety bond, or of any portion of the principal thereof required by this section, the applicant may deposit collateral cash, securities, or alternative security devices approved by the commission ~~department~~, with any federally insured financial institution.

(a) Acceptable collateral deposit items in lieu of a bond include cash and interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state.

(b) The collateral deposit must be in an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof.

(c) Collateral deposits made under this subsection shall be pledged to the office ~~department~~ and held by the insured financial institution to secure the same obligations as would the corporate surety bond, but the depositor is entitled to receive all interest and dividends thereon and may, with the approval of the office ~~department~~, substitute other securities or deposits for those deposited. The principal amount of the deposit shall be released only on written authorization of the office ~~department~~ or on the order of a court of competent jurisdiction.

(4) A registrant must at all times have and maintain the bond or collateral deposit in the amount prescribed by the commission ~~department~~. If the office ~~department~~ at any time reasonably determines that the bond or elements of the collateral deposit are insecure, deficient in amount, or exhausted in whole or in part, the office ~~department~~ may, by written order, require the filing of a new or supplemental bond or the deposit of new or additional collateral deposit items.

(5) The bond and collateral deposit shall remain in place for 5 years after the registrant ceases registered operations in this state. The office ~~department~~ may permit the bond or collateral deposit to be reduced or eliminated prior to that time to the extent that the amount of the registrant's outstanding payment instruments or funds transmitted in this state are reduced. The office ~~department~~ may also permit a registrant to substitute a letter of credit or such other form of acceptable security for the bond or collateral deposit

at the time the registrant ceases money transmission operations in this state.

(6) The office ~~department~~ may waive or reduce a registrant's net worth or bond or collateral deposit requirement. Such waiver or modification must be requested by the applicant or registrant, and may be granted upon a showing by the applicant or registrant to the satisfaction of the office ~~department~~ that:

(a) The existing net worth, bond, or collateral deposit requirement is sufficiently in excess of the registrant's highest potential level of outstanding payment instruments or money transmissions in this state;

(b) The direct and indirect cost of meeting the net worth, bond, or collateral deposit requirement will restrict the ability of the money transmitter to effectively serve the needs of its customers and the public; or

(c) The direct and indirect cost of meeting the net worth, bond, or collateral requirement will not only have a negative impact on the money transmitter but will severely hinder the ability of the money transmitter to participate in and promote the economic progress and welfare of this state or the United States.

Section 716. Paragraph (i) of subsection (2) and subsections (3) and (4) of section 560.210, Florida Statutes, are amended to read:

560.210 Permissible investments.—

(2) Acceptable permissible investments include:

(i) Any other investment approved by the commission ~~department~~.

(3) Notwithstanding any other provision of this part, the office ~~department~~, with respect to any particular registrant or all registrants, may limit the extent to which any class of permissible investments may be considered a permissible investment, except for cash and certificates of deposit.

(4) The office ~~department~~ may waive the permissible investments requirement if the dollar value of a registrant's outstanding payment instruments and funds transmitted do not exceed the bond or collateral deposit posted by the registrant under s. 560.209.

Section 717. Subsection (2) of section 560.211, Florida Statutes, is amended to read:

560.211 Records.—

(2) The records required to be maintained by the code may be maintained by the registrant at any location, provided that the registrant notifies the office ~~department~~ in writing of the location of the records in its application or otherwise. The registrant shall make such records available to the office ~~department~~ for examination and investigation in this state, as permitted by the code, within 7 days after receipt of a written request.

Section 718. Subsection (2) of section 560.302, Florida Statutes, is amended to read:

560.302 Definitions.—In addition to the definitions provided in s. 560.103, unless otherwise clearly indicated by the context, for purposes of this part:

(2) "Registrant" means a person authorized by the office ~~department~~ pursuant to this part.

Section 719. Section 560.305, Florida Statutes, is amended to read:

560.305 Application.—Each application for registration shall be in writing and under oath to the office ~~department~~, in such form as the commission prescribes ~~department may prescribe~~. The application shall include the following:

(1) The legal name and residence and business addresses of the applicant if the applicant is a natural person, or, if the applicant is a partnership, association, or corporation, the name of every partner, officer, or director thereof.

(2) The location of the principal office of the applicant.

(3) The complete address of any other locations at which the applicant proposes to engage in such activities since the provisions of registration apply to each and every operating location of a registrant.

(4) Such other information as the commission or office ~~department may~~ reasonably requires ~~require~~ with respect to the applicant or any money transmitter-affiliated party of the applicant; however, the commission or office ~~department~~ may not require more information than is specified in part II.

Section 720. Section 560.306, Florida Statutes, is amended to read:

560.306 Standards.—

(1) In order to qualify for registration under this part, an applicant must demonstrate to the office ~~department~~ that he or she has such character and general fitness as will command the confidence of the public and warrant the belief that the registered business will be operated lawfully and fairly. The office ~~department~~ may investigate each applicant to ascertain whether the qualifications and requirements prescribed by this part have been met. The office's ~~department's~~ investigation may include a criminal background investigation of all controlling shareholders, principals, officers, directors, members, and responsible persons of a check casher and a foreign currency exchanger and all persons designated by a foreign currency exchanger or check casher as an authorized vendor. Each controlling shareholder, principal, officer, director, member, and responsible person of a check casher or foreign currency exchanger, unless the applicant is a publicly traded corporation, a subsidiary thereof, or a subsidiary of a bank or bank holding company, shall file a complete set of fingerprints taken by an authorized law

enforcement officer. Such fingerprints must be submitted to the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing. The commission ~~department~~ may waive by rule the requirement that applicants file a set of fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.

(2) The office ~~department~~ may deny registration if it finds that the applicant, or any money transmitter-affiliated party of the applicant, has been convicted of a crime involving moral turpitude in any jurisdiction or of a crime which, if committed in this state, would constitute a crime involving moral turpitude under the laws of this state. For the purposes of this part, a person shall be deemed to have been convicted of a crime if such person has either pleaded guilty to or been found guilty of a charge before a court or federal magistrate, or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof. The office ~~department~~ may take into consideration the fact that such plea of guilty, or such decision, judgment, or verdict, has been set aside, reversed, or otherwise abrogated by lawful judicial process or that the person convicted of the crime received a pardon from the jurisdiction where the conviction was entered or received a certificate pursuant to any provision of law which removes the disability under this part because of such conviction.

(3) The office ~~department~~ may deny an application for registration if the applicant or money transmitter-affiliated party of the applicant is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction, until the conclusion of such criminal prosecution or enforcement action.

(4) Each registration application and renewal application must specify the location at which the applicant proposes to establish its principal place of business and any other location, including authorized vendors operating in this state. The registrant shall notify the office ~~department~~ of any changes to any such locations. Any registrant may satisfy this requirement by providing the office ~~department~~ with a list of such locations, including all authorized vendors operating in this state, not less than annually. A registrant may not transact business as a check casher or a foreign currency exchanger except pursuant to the name under which it is registered.

(5) Each applicant shall designate and maintain an agent in this state for service of process.

Section 721. Subsections (2) and (3) of section 560.307, Florida Statutes, are amended to read:

560.307 Fees.—

(2) Within 60 days after the date a registrant either opens a location within this state or authorizes an authorized vendor to operate on the registrant's behalf within this state, the registrant shall notify the office ~~department~~ on a form prescribed by the commission ~~department~~ by rule. The notification shall be accompanied by a nonrefundable $50 fee for each

authorized vendor or location. This subsection shall not apply to any authorized vendor or location that has been designated by the registrant before October 1, 2001.

(3) Within 60 days after the date a registrant closes a location within this state or withdraws authorization for an authorized vendor to operate on the registrant's behalf within this state, the registrant shall notify the office ~~department~~ on a form prescribed by the commission ~~department~~ by rule.

Section 722. Subsections (2) and (4) of section 560.308, Florida Statutes, are amended to read:

560.308 Registration terms; renewal; renewal fees.—

(2) The office ~~department~~ shall renew registration upon receipt of a completed renewal form and payment of a nonrefundable renewal fee not to exceed $500. The completed renewal form and payment of the renewal fee shall occur on or after June 1 of the year in which the existing registration expires.

(4) Registration that is not renewed on or before the expiration date of the registration period automatically expires. A renewal application and fee, and a late fee of $250, must be filed within 60 calendar days after the expiration of an existing registration in order for the registration to be reinstated. If the registrant has not filed a renewal application within 60 days after the expiration date of an existing registration, a new application must be filed with the office ~~department~~ pursuant to s. 560.307.

Section 723. Subsections (3) and (4) of section 560.309, Florida Statutes, are amended to read:

560.309 Rules.—

(3) The commission ~~department~~ may by rule require every check casher to display its registration and post a notice containing its charges for cashing payment instruments.

(4) Exclusive of the direct costs of verification which shall be established by commission ~~department~~ rule, no check casher shall:

(a) Charge fees, except as otherwise provided by this part, in excess of 5 percent of the face amount of the payment instrument, or 6 percent without the provision of identification, or $5, whichever is greater;

(b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or 4 percent without the provision of identification, or $5, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of such payment instrument; or

(c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.

(d) As used in this subsection, "identification" means, and is limited to, an unexpired and otherwise valid driver license, a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature, a United States Government Resident Alien Identification Card, a United States passport, or a United States Military identification card.

Section 724. Subsections (2) and (5) of section 560.310, Florida Statutes, are amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(2) The records required to be maintained by the code may be maintained by the registrant at any location, provided that the registrant notifies the office ~~department~~, in writing, of the location of the records in its application or otherwise. The registrant shall make such records available to the office ~~department~~ for examination and investigation in this state, as permitted by the code, within 7 days after receipt of a written request.

(5) Any person who willfully violates this section or fails to comply with any lawful written demand or order of the office ~~department~~ made pursuant to this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 725. Subsection (5) of section 560.402, Florida Statutes, is amended to read:

560.402 Definitions.—In addition to the definitions provided in ss. 560.103, 560.202, and 560.302 and unless otherwise clearly indicated by the context, for purposes of this part:

(5) "Deferred presentment provider" means a person who engages in a deferred presentment transaction and is registered under part II or part III of the code and has filed a declaration of intent with the office ~~department~~.

Section 726. Subsections (1) and (4) of section 560.403, Florida Statutes, are amended to read:

560.403 Requirements of registration; declaration of intent.—

(1) No person, unless otherwise exempt from this chapter, shall engage in a deferred presentment transaction unless the person is registered under the provisions of part II or part III and has on file with the office ~~department~~ a declaration of intent to engage in deferred presentment transactions. The declaration of intent shall be under oath and on such form as the commission ~~department~~ prescribes by rule. The declaration of intent shall be filed together with a nonrefundable filing fee of $1,000. Any person who is registered under part II or part III on the effective date of this act and intends to engage in deferred presentment transactions shall have 60 days after the effective date of this act to file a declaration of intent.

(4) The notice of intent of a registrant under this part who fails to timely renew his or her intent to engage in the business of deferred presentment

transactions or to act as a deferred presentment provider on or before the expiration date of the registration period automatically expires. A renewal declaration of intent and fee, and a late fee of $500, must be filed within 60 calendar days after the expiration of an existing registration in order for the declaration of intent to be reinstated. If the registrant has not filed a renewal declaration of intent within 60 days after the expiration date of an existing registration, a new declaration must be filed with the office ~~department~~.

Section 727. Subsection (3), paragraph (b) of subsection (19), paragraph (b) of subsection (22), and subsection (23) of section 560.404, Florida Statutes, are amended to read:

560.404 Requirements for deferred presentment transactions.—

(3) Each written agreement shall contain the following information, in addition to any information the commission ~~department~~ requires by rule:

(a) The name or trade name, address, and telephone number of the deferred presentment provider and the name and title of the person who signs the agreement on behalf of the deferred presentment provider.

(b) The date the deferred presentment transaction was made.

(c) The amount of the drawer's check.

(d) The length of deferral period.

(e) The last day of the deferment period.

(f) The address and telephone number of the office and the Division of Consumer Services of the Department of Financial Services ~~department~~.

(g) A clear description of the drawer's payment obligations under the deferred presentment transaction.

(h) The transaction number assigned by the office's ~~department's~~ database.

(19) A deferred presentment provider may not enter into a deferred presentment transaction with a person who has an outstanding deferred presentment transaction with that provider or with any other deferred presentment provider, or with a person whose previous deferred presentment transaction with that provider or with any other provider has been terminated for less than 24 hours. The deferred presentment provider must verify such information as follows:

(b) The deferred presentment provider shall access the office's ~~department's~~ database established pursuant to subsection (23) and shall verify whether any other deferred presentment provider has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. Prior to the time that the office ~~department~~ has implemented such a database, the de-

ferred presentment provider may rely upon the written verification of the drawer as provided in subsection (20).

(22)

(b) At the commencement of the grace period, the deferred presentment provider shall provide the drawer:

1. Verbal notice of the availability of the grace period consistent with the written notice in subsection (20).

2. A list of approved consumer credit counseling agencies prepared by the office ~~department~~. ~~The department shall prepare the list by October 1, 2001.~~ The office ~~department~~ list shall include nonprofit consumer credit counseling agencies affiliated with the National Foundation for Credit Counseling which provide credit counseling services to Florida residents in person, by telephone, or through the Internet. The office ~~department~~ list must include phone numbers for the agencies, the counties served by the agencies, and indicate the agencies that provide telephone counseling and those that provide Internet counseling. The office ~~department~~ shall update the list at least once each year.

3. The following notice in at least 14-point type in substantially the following form:

AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN SEVEN (7) DAYS, BY [DATE], THAT YOU HAVE MADE AN APPOINTMENT WITH SUCH A CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US WITHIN SIXTY (60) DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE AGENCY. IF YOU FAIL TO PROVIDE EITHER THE 7-DAY OR 60-DAY NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT.

(23) ~~On or before March 1, 2002,~~ The office ~~department~~ shall implement a common database with real-time access through an Internet connection for deferred presentment providers, as provided in this subsection. The database must be accessible to the office ~~department~~ and the deferred presentment providers to verify whether any deferred presentment transactions are outstanding for a particular person. Deferred presentment providers shall

submit such data before entering into each deferred presentment transaction in such format as the commission ~~department~~ shall require by rule, including the drawer's name, social security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by the commission ~~department~~. The commission ~~department~~ may impose a fee not to exceed $1 per transaction for data required to be submitted by a deferred presentment provider. A deferred presentment provider may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database. The commission ~~department~~ may adopt rules to administer and enforce the provisions of this section and to assure that the database is used by deferred presentment providers in accordance with this section.

Section 728. Section 560.4041, Florida Statutes, is amended to read:

560.4041 Database for deferred presentment providers; public-records exemption.—The identifying information contained in the database for deferred presentment providers, which is authorized under s. 560.404, is confidential and exempt from s. 119.07(1), and s. 24(a), Art. I of the State Constitution, except that the identifying information in the database may be accessed by deferred presentment providers to verify whether any deferred presentment transactions are outstanding for a particular person and by the office ~~Department of Banking and Finance~~ for the purpose of maintaining the database. This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 729. Subsections (1), (2), and (3) of section 560.407, Florida Statutes, are amended to read:

560.407 Records.—

(1) Each registrant under this part must maintain all books, accounts, records, and documents necessary to determine the registrant's compliance with the provisions of the code. Such books, accounts, records, and documents shall be retained for a period of at least 3 years unless a longer period is expressly required by the commission ~~department~~, the laws of this state, or any federal law.

(2) The records required to be maintained by the code or any rule adopted pursuant thereto may be maintained by the registrant at any location within this state, provided that the registrant notifies the office ~~department~~, in writing, of the location of the records in its application or otherwise.

(3) A registrant shall make records available to the office ~~department~~ for examination and investigation in this state, as permitted by the code, within 7 days after receipt of a written request.

Section 730. Subsection (2) of section 560.408, Florida Statutes, is amended to read:

560.408 Legislative intent; report.—

(2) The director of the office shall submit a report on January 1, 2004, ~~Comptroller shall submit a report~~ to the President of the Senate and the Speaker of the House of Representatives ~~on January 1, 2003, and January 1, 2004,~~ containing findings and conclusions concerning the effectiveness of this act in preventing fraud, abuse, and other unlawful activity associated with deferred presentment transactions. The report may contain legislative recommendations addressing the prevention of fraud, abuse, and other unlawful activity associated with deferred presentment transactions. Prior to filing each ~~the~~ report, the Comptroller and director of the office shall consult with the Attorney General for the purpose of including any recommendations or concerns expressed by the Attorney General.

Section 731. Section 561.051, Florida Statutes, is amended to read:

561.051 Reporting requirements of director.—The director of the division shall promptly report and remit to the Chief Financial Officer ~~Treasurer~~ all taxes and fees collected by him or her hereunder ~~and shall send copies of the reports to the Comptroller~~.

Section 732. Section 562.44, Florida Statutes, is amended to read:

562.44 Donation of forfeited beverages or raw materials to state institutions; sale of forfeited beverages.—Any alcoholic beverage or raw materials used for the manufacture of alcoholic beverages that may be seized and forfeited under any of the provisions of the Beverage Law may, with the approval and consent of the Department of Business and Professional Regulation, be donated to any state-operated or charitable institution that may have a legitimate use therefor in the operation of such institution, or the division may sell such beverage so seized and forfeited to any licensed wholesaler in the state, upon the condition that all federal and state taxes that may be due thereon shall be paid, that such sale shall be made only upon submission by said division of a request for bids to at least five wholesale dealers in the state, and that such sale shall be made to the highest and best bidder therefor. However, if no satisfactory bid from a wholesaler is received, the division may then reject all bids and sell such beverage so seized and forfeited to any retailer, licensed in this state to sell such beverage, upon the condition that all federal and state taxes that may be due thereon shall have been paid, that such sale shall be made only upon submission by said division of a request for bids to at least five retail dealers in the state and that such sale shall be to the highest and best bidder therefor. All moneys received from such sales shall be paid by the division to the Chief Financial Officer ~~State Treasurer~~ for the account of the beverage fund and shall be subject to disbursement in accordance with the law relating thereto.

Section 733. Section 567.08, Florida Statutes, is amended to read:

567.08 Refund of unused portion of state license tax.—When any county votes by an election to discontinue permitting the sale of intoxicating liquors, wines, or beer, prior to the date of expiration of any license issued by the state for the sale of intoxicating liquors, wines, or beer in such county,

the fee for the unexpired and unused portion of said license shall be refunded to the licensee by warrant drawn by the Chief Financial Officer, ~~State Comptroller on the State Treasurer~~ who shall pay such warrants from any moneys in the State Treasury not otherwise appropriated.

Section 734. Subsections (1) and (2) of section 569.205, Florida Statutes, are amended to read:

569.205 Department of Business and Professional Regulation Tobacco Settlement Trust Fund.—

(1) The Department of Business and Professional Regulation Tobacco Settlement Trust Fund is hereby created within that department. Funds to be credited to the trust fund shall consist of funds disbursed, by nonoperating transfer, from the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund in amounts equal to the annual appropriations made from this trust fund.

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

Section 735. Subsection (1) of section 569.215, Florida Statutes, is amended to read:

569.215 Confidential records relating to tobacco settlement agreement.—

(1) Proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the settlement agreement, as amended, in the case of State of Florida et al. v. American Tobacco Company et al., No. 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, or received by the Chief Financial Officer ~~Comptroller~~ or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a) of Art. I of the State Constitution. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in furtherance of such agency's statutory duties, notwithstanding the provisions of this section. Proprietary confidential business information received under this section shall not retain its confidential and exempt status if that information is made public, including publicizing such information in a Securities and Exchange Commission filing, an annual financial statement, or other document or means. This exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 736. Subsection (2) of section 570.13, Florida Statutes, is amended to read:

570.13 Salary of commissioner, officers, and employees; expenses.—

(2) The reasonable and necessary travel and other expenses of the commissioner, assistant commissioner, counsel, directors, and other officers and employees of the department, while actually engaged in the performance of their duties, outside of the City of Tallahassee, or if any such officer or employee be in charge of or regularly employed at a branch office of the department, the reasonable and necessary travel and other expenses outside the place such branch office is located, shall be paid from the State Treasury after audit by the Chief Financial Officer ~~Comptroller~~ of vouchers approved by the department in the amount provided in s. 112.061.

Section 737. Subsection (1) of section 570.195, Florida Statutes, is amended to read:

570.195 Tobacco farmers; assistance.—

(1) In order to assist Florida tobacco farmers in reducing encumbered debt on stranded investment in equipment, the nonrecurring sum of $2.5 million is appropriated from the Department of Financial Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund to the Department of Agriculture and Consumer Services for the purchase at fair market value of equipment associated with agricultural production of tobacco from persons or entities that were using such equipment for production of tobacco between April 1 and October 1, 2000, on land within this state and sign a letter of intent to cease tobacco production upon the development and implementation of an alternative crop that would provide the same net revenue and proportional costs as tobacco. The department may adopt rules that, at a minimum, define and describe the equipment to be purchased under this section, prescribe criteria for identifying persons and entities who are eligible to have such equipment purchased by the department, and prescribe procedures to be followed for equipment purchases. From the funds appropriated by this section, the department is authorized to expend such sums as are reasonable and necessary to administer the program.

Section 738. Section 570.20, Florida Statutes, is amended to read:

570.20 General Inspection Trust Fund.—All donations and all inspection fees and other funds authorized and received from whatever source in the enforcement of the inspection laws administered by the department shall be paid into the General Inspection Trust Fund of Florida, which is created in the office of the Chief Financial Officer ~~Treasurer~~. All expenses incurred in carrying out the provisions of the inspection laws shall be paid from this fund as other funds are paid from the State Treasury. A percentage of all revenue deposited in this fund, including transfers from any subsidiary accounts, shall be deposited in the General Revenue Fund pursuant to chapter 215, except that funds collected for marketing orders shall pay at the rate of 3 percent.

Section 739. Subsection (6) of section 574.03, Florida Statutes, is amended to read:

574.03 Warehouseman; licenses and fees.—

(6) As a prerequisite to the issuance of a license under the provisions of this section, each applicant shall furnish evidence to the Department of Agriculture and Consumer Services that the applicant has in force a standard fire and extended coverage insurance policy for the full market value of the maximum amount of tobacco contained in his or her sales warehouse at any one time during the marketing season for which the license is sought. The insurance policy shall be written by an insurance company of the warehouseman's choice authorized to transact business in this state, and such insurance coverage shall be approved in form by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, and a copy of the insurance policy shall be filed with the director of the Division of Marketing and Development of the Department of Agriculture and Consumer Services. The policy shall contain an endorsement requiring notification to the director of the Division of Marketing and Development of the Department of Agriculture and Consumer Services by the insurance company at least 10 days prior to cancellation of their intention to cancel the policy.

Section 740. Section 589.06, Florida Statutes, is amended to read:

589.06 Warrants for payment of accounts.—Upon the presentation to the Chief Financial Officer ~~Comptroller~~ of any accounts duly approved by the Division of Forestry, accompanied by such itemized vouchers or accounts as shall be required by her or him, the Chief Financial Officer ~~Comptroller~~ shall audit the same and draw a warrant ~~on the State Treasurer~~ for the amount for which the account is audited, payable out of funds to the credit of the division.

Section 741. Paragraph (a) of subsection (7) of section 597.010, Florida Statutes, is amended to read:

597.010 Shellfish regulation; leases.—

(7) SURCHARGE FOR IMPROVEMENT OR REHABILITATION.—A surcharge of $10 per acre, or any fraction of an acre, per annum shall be levied upon each lease, other than a perpetual lease granted pursuant to chapter 370 prior to 1985, and deposited into the General Inspection Trust Fund. The purpose of the surcharge is to provide a mechanism to have financial resources immediately available for improvement of lease areas and for cleanup and rehabilitation of abandoned or vacated lease sites. The department is authorized to adopt rules necessary to carry out the provisions of this subsection.

(a) Moneys in the fund that are not needed currently for cleanup and rehabilitation of abandoned or vacated lease sites shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the fund and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the fund.

The department shall recover to the use of the fund from the person or persons abandoning or vacating the lease, jointly and severally, all sums owed or expended from the fund.

Section 742. Subsections (9) and (10) of section 601.10, Florida Statutes, are amended to read:

601.10 Powers of the Department of Citrus.—The Department of Citrus shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but shall not be confined to, the following:

(9) When, in the opinion of the Department of Citrus, the tax revenues collected pursuant to this chapter, whether allocated for research, advertising or promotion, reserve funds, advertising incentive plans, or other purposes, are not immediately needed for the purpose for which such funds are provided, the Chief Financial Officer ~~Treasurer~~ is authorized and shall, upon the request and approval of the Department of Citrus, or its general manager if she or he has been given such authority, invest and reinvest the funds designated and for the period of time specified in such request. In the investment of such funds, the Chief Financial Officer ~~Treasurer~~ shall have the powers and be subject to the limitations provided for in s. 17.61 ~~s. 18.125~~.

(10) Subject to the concurrence of the Chief Financial Officer ~~Treasurer~~, whenever the department contracts with a foreign entity for performance of services or the purchase of materials, and such contract requires payment in equivalent foreign currency, the department may, for payment of such contract obligation, deposit sufficient state funds in a foreign bank, or purchase foreign currency at the current market rate, up to an amount not in excess of the contract obligation. All payments from these funds must have prior audit approval from the office of the Chief Financial Officer ~~Comptroller~~.

Section 743. Paragraph (c) of subsection (8) of section 601.15, Florida Statutes, is amended to read:

601.15 Advertising campaign; methods of conducting; excise tax; emergency reserve fund; citrus research.—

(8)

(c) All obligations, expenses, and costs incurred under the provisions of this section shall be paid out of the Citrus Advertising Fund upon warrant of the Chief Financial Officer ~~Comptroller~~ when vouchers thereof, approved by the Department of Citrus, are exhibited.

Section 744. Subsection (6) of section 601.28, Florida Statutes, is amended to read:

601.28 Inspection fees.—

(6) When any portion of the revenues deposited to the Citrus Inspection Trust Fund is not immediately needed for the purpose for which such funds are appropriated, the Chief Financial Officer ~~Treasurer~~ shall invest and reinvest such funds, and the earnings thereon shall be deposited to and made a part of the Citrus Inspection Trust Fund.

Section 745. Subsection (2) of section 607.0501, Florida Statutes, is amended to read:

607.0501 Registered office and registered agent.—

(2) This section does not apply to corporations which are required by law to designate the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as their attorney for the service of process, associations subject to the provisions of chapter 665, and banks and trust companies subject to the provisions of the financial institutions codes.

Section 746. Section 607.14401, Florida Statutes, is amended to read:

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

Section 747. Section 609.05, Florida Statutes, is amended to read:

609.05 Qualification with Office of Financial Regulation ~~Department of Banking and Finance~~.—Before any person may offer for sale, barter or sell any unit, share, contract, note, bond, mortgage, oil or mineral lease or other security of an association doing business under what is known as a "declaration of trust" in this state, such person shall procure from the Office of Financial Regulation of the Financial Services Commission ~~Department of Banking and Finance~~ a permit to offer for sale and sell such securities, which permit shall be applied for and granted under the same conditions as like permits are applied for and granted to corporations.

Section 748. Subsection (2) of section 617.0501, Florida Statutes, is amended to read:

617.0501 Registered office and registered agent.—

(2) This section does not apply to corporations which are required by law to designate the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as their attorney for the service of process.

Section 749. Section 617.1440, Florida Statutes, is amended to read:

617.1440 Deposit with Department of Financial Services ~~Banking and Finance~~.—Assets of a dissolved corporation that should be transferred to a creditor, claimant, member of the corporation, or other person who cannot be found or who is not competent to receive them shall be deposited, within 6 months after the date fixed for the payment of the final liquidating distribution, with the Department of Financial Services ~~Banking and Finance~~,

where such assets shall be held as abandoned property. When the creditor, claimant, member, or other person furnishes satisfactory proof of entitlement to the amount or assets deposited, the Department of Financial Services ~~Banking and Finance~~ shall pay him or her or his or her representative that amount or those assets.

Section 750. Section 624.01, Florida Statutes, is amended to read:

624.01 Short title.—Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."

Section 751. Section 624.05, Florida Statutes, is amended to read:

624.05 "Department," "commission," and "office" defined.—As used in the Insurance Code:

(1) "Department" means the Department of Financial Services. The term does not mean the Financial Services Commission or any office of the Financial Services Commission ~~Insurance of this state, unless the context otherwise requires~~.

(2) "Commission" means the Financial Services Commission.

(3) "Office" means the Office of Insurance Regulation of the Financial Services Commission.

Section 752. Subsection (2) of section 624.07, Florida Statutes, is amended to read:

624.07 "Domicile" defined.—Except as provided in s. 631.011, the "domicile" of an insurer means:

(2) As to other alien insurers authorized to transact insurance in one or more states, the state designated by the insurer in writing filed with the office ~~department~~ at the time of admission to this state or within 6 months after the effective date of this code, whichever date is the later, and may be any of the following states:

(a) That in which the insurer was first authorized to transact insurance if the insurer is still so authorized.

(b) That in which is located the insurer's principal place of business in the United States.

(c) That in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

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

Section 753. Subsection (1) of section 624.09, Florida Statutes, is amended to read:

624.09 "Authorized," "unauthorized" insurer defined.—

(1) An "authorized" insurer is one duly authorized by a subsisting certificate of authority issued by the office ~~department~~ to transact insurance in this state.

Section 754. Subsection (2) of section 624.11, Florida Statutes, is amended to read:

624.11 Compliance required.—

(2) Any risk retention group organized and existing under the provisions of the Product Liability Risk Retention Act of 1981 (Pub. L. No. 97-45), which has been licensed as an insurance company and authorized to engage in the business of insurance may transact insurance in this state and shall be subject to the provisions of ss. 624.15, 624.316, 624.418, 624.421, 624.4211, 624.422, 624.509, 626.112, 626.611, 626.621, 626.7315, 626.741, 626.932, 626.938, 626.9541, 627.351, and 627.915; part I of chapter 631; and all other applicable provisions of the laws of this state. Any such group formed in another jurisdiction shall furnish to the office ~~department~~, upon request, a copy of any financial report submitted by the group in the licensing jurisdiction.

Section 755. Section 624.124, Florida Statutes, is amended to read:

624.124 Motor vehicle services; exemption from code.—Any person may, in exchange for fees, dues, charges, or other consideration, provide any of the following services related to the ownership, operation, use, or maintenance of a motor vehicle without being deemed an insurer and without being subject to the provisions of this code:

(1) Towing service.

(2) Procuring from an insurer group coverage for bail and arrest bonds or for accidental death and dismemberment.

(3) Emergency service.

(4) Procuring prepaid legal services, or providing reimbursement for legal services, except that this shall not be deemed to be an exemption from chapter 642.

(5) Offering assistance in locating or recovering stolen or missing motor vehicles.

(6) Paying emergency living and transportation expenses of the owner of a motor vehicle when the motor vehicle is damaged.

For purposes of this section, "motor vehicle" has the same meaning specified by s. 634.011(6) ~~s. 634.011(7)~~.

Section 756. Subsection (3) of section 624.129, Florida Statutes, is amended to read:

624.129 Certain location and recovery services; exemption from code.—

(3) The written agreement or enrollment form used by the provider of such services for subscribers in this state shall contain a conspicuous legend to the effect that the services are not regulated by either the department or the office as insurance.

Section 757. Subsection (5) of section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

(5) This section shall not be construed to authorize a class action suit against an insurer or a civil action against the commission, the office, or the department or any of their, ~~its~~ employees, ~~or the Insurance Commissioner,~~ or to create a cause of action when a health insurer refuses to pay a claim for reimbursement on the ground that the charge for a service was unreasonably high or that the service provided was not medically necessary.

Section 758. Section 624.19, Florida Statutes, is amended to read:

624.19 Existing forms and filings.—Every form of insurance document and every rate or other filing lawfully in use immediately prior to October 1, 1959, may continue to be so used or be effective until the commission or office ~~department~~ otherwise prescribes pursuant to this code.

Section 759. Section 624.302, Florida Statutes, is amended to read:

624.302 Offices.—The department shall establish and maintain offices at the State Capitol in Tallahassee, and in such other places throughout the state as it designates ~~may from time to time designate~~. The Office of Insurance Regulation shall establish and maintain offices in Tallahassee and in such other places throughout the state as it designates.

Section 760. Section 624.303, Florida Statutes, is amended to read:

624.303 Seal; certified copies as evidence.—

(1) The department, commission, and office shall each have an official seal by which its respective proceedings are authenticated.

(2) All certificates executed by the department or office, other than licenses of agents, solicitors, or adjusters or similar licenses or permits, shall bear its respective seal.

(3) Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the department, commission, or office or any record of the department, commission, or office or copy of any document on file in its office when authenticated under hand of the respective agency head or his or her designee ~~commissioner~~ by the seal shall be accepted by all the courts of this state as prima facie evidence of its contents.

Section 761. Section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(1) The department and office shall enforce the provisions of this code and shall execute the duties imposed upon it by this code, within the respective jurisdiction of each, as provided by law.

(2) The department shall have the powers and authority expressly conferred upon it by, or reasonably implied from, the provisions of this code. The office shall have the powers and authority expressly conferred upon it by, or reasonably implied from, the provisions of this code.

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

(4) The department and office may each collect, propose, publish, and disseminate information relating to the subject matter of any duties imposed upon it by law.

(5) The department and office shall each have such additional powers and duties as may be provided by other laws of this state.

(6) The department and office may each employ actuaries who shall be at-will employees and who shall serve at the pleasure of the Chief Financial Officer, in the case of department employees, or at the pleasure of the director of the office, in the case of office employees ~~Insurance Commissioner~~. Actuaries employed pursuant to this paragraph shall be members of the Society of Actuaries or the Casualty Actuarial Society and shall be exempt from the Career Service System established under chapter 110. The salaries of the actuaries employed pursuant to this paragraph ~~by the department~~ shall be set in accordance with s. 216.251(2)(a)5. and shall be set at levels which are commensurate with salary levels paid to actuaries by the insurance industry.

(7) The office ~~department~~ shall, within existing resources, develop and implement an outreach program for the purpose of encouraging the entry of additional insurers into the Florida market.

Section 762. Subsection (1) of section 624.308, Florida Statutes, is amended to read:

624.308 Rules.—

(1) The department and the commission may each ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties upon the department or the commission, respectively ~~it~~.

Section 763. Section 624.310, Florida Statutes, is amended to read:

624.310 Enforcement; cease and desist orders; removal of certain persons; fines.—

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

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

1. A director, officer, employee, trustee, committee member, or controlling stockholder of a licensee or a subsidiary or service corporation of the licensee, other than a controlling stockholder which is a holding company, or an agent of a licensee or a subsidiary or service corporation of the licensee;

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

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

4. An independent contractor who:

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

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

(I) Constitutes a violation of the insurance code or a lawful rule or order of the department, commission, or office; and

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

For the purposes of this subparagraph, any representation of fact made by an independent contractor on behalf of a licensee, affirmatively communicated as a representation of the licensee to the independent contractor, shall not be considered a misrepresentation by the independent contractor ~~to the department~~.

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

(2) ENFORCEMENT GENERALLY.—

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

(b) The department and office each may institute such suits or other legal proceedings as may be required to enforce any provision of this code within the respective regulatory jurisdiction of each. If it appears that any person has violated any provision of this code for which criminal prosecution is provided, the department or office shall provide the appropriate state attorney or other prosecuting agency having jurisdiction with respect to such prosecution with the relevant information in its possession.

(3) CEASE AND DESIST ORDERS.—

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

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

2. A violation of any provision of the Florida Insurance Code;

3. A violation of any rule of the department or commission;

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

5. A breach of any written agreement with the department or office.

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

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

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

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

(f) Whenever the department or office finds that conduct described in paragraph (a) is likely to cause insolvency, substantial dissipation or misvaluation of assets or earnings of the licensee, substantial inability to pay claims on a timely basis, or substantial prejudice to prospective or existing insureds, policyholders, subscribers, or the public, it may issue an emergency cease and desist order requiring the licensee or any affiliated party

to immediately cease and desist from engaging in the conduct complained of and to take corrective and remedial action. The emergency order is effective immediately upon service of a copy of the order upon the licensee or affiliated party named therein and remains effective for 90 days. If the department or office begins nonemergency cease and desist proceedings under this subsection, the emergency order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57. Any emergency order entered under this subsection is exempt from s. 119.07(1) and is confidential until it is made permanent unless the department or office finds that the confidentiality will result in substantial risk of financial loss to the public. All emergency cease and desist orders that are not made permanent are available for public inspection 1 year from the date the emergency cease and desist order expires; however, portions of an emergency cease and desist order remain confidential and exempt from the provisions of s. 119.07(1) if disclosure would:

1. Jeopardize the integrity of another active investigation;

2. Impair the safety and financial soundness of the licensee or affiliated party;

3. Reveal personal financial information;

4. Reveal the identity of a confidential source;

5. Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

6. Reveal investigative techniques or procedures.

(4) REMOVAL OF AFFILIATED PARTIES ~~BY THE DEPARTMENT~~.—

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

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

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

3. A violation of any other law involving fraud or moral turpitude that constitutes a felony;

4. A willful violation of any rule of the department or commission;

5. A willful violation of any order of the department or office;

6. A material misrepresentation of fact, made knowingly and willfully or made with reckless disregard for the truth of the matter; or

7. An act of commission or omission or a practice which is a breach of trust or a breach of fiduciary duty.

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

(c) If no hearing is requested within the time allotted by ss. 120.569 and 120.57, or if a hearing is held and the department or office finds that any of the charges in the complaint are proven true and that:

1. The licensee has suffered or will likely suffer loss or other damage;

2. The interests of the policyholders, creditors, or public are, or could be, seriously prejudiced by reason of the violation or act or breach of fiduciary duty;

3. The affiliated party has received financial gain by reason of the violation, act, or breach of fiduciary duty; or

4. The violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the affiliated party or the conduct jeopardizes or could reasonably be anticipated to jeopardize the financial soundness of the licensee,

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

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

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

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

2. Whenever any affiliated party is charged with a felony in a state or federal court or with the equivalent of a felony in the courts of any foreign country with which the United States maintains diplomatic relations, and the charge alleges violation of any law involving fraud, theft, or moral turpitude, the department or office may enter an emergency order suspending the affiliated party or restricting or prohibiting participation by the

affiliated party in the affairs of the particular licensee or of any other licensee upon service of the order upon the licensee and the affiliated party charged. The order shall contain notice of opportunity for a hearing pursuant to ss. 120.569 and 120.57, where the affiliated party may request a postsuspension hearing to show that continued service to or participation in the affairs of the licensee does not pose a threat to the interests of the licensee's policyholders or creditors and does not threaten to impair public confidence in the licensee. In accordance with applicable ~~departmental~~ rules, the department or office shall notify the affiliated party whether the order suspending or prohibiting the person from participation in the affairs of a licensee will be rescinded or otherwise modified. The emergency order remains in effect, unless otherwise modified by the department or office, until the criminal charge is disposed of. The acquittal of the person charged, or the final, unappealed dismissal of all charges against the person, dissolves the emergency order, but does not prohibit the department or office from instituting proceedings under paragraph (a). If the person charged is convicted or pleads guilty or nolo contendere, whether or not an adjudication of guilt is entered by the court, the emergency order shall become final.

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

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

(5) ADMINISTRATIVE FINES; ENFORCEMENT.—

(a) The department or office may, in a proceeding initiated pursuant to chapter 120, impose an administrative fine against any person found in the proceeding to have violated any provision of this code, a cease and desist order of the department or office, or any written agreement with the department or office. No proceeding shall be initiated and no fine shall accrue until after the person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

(b) A fine imposed under this subsection may not exceed the amounts specified in s. 624.4211, per violation.

(c) The department or office may, in addition to the imposition of an administrative fine under this subsection, also suspend or revoke the license or certificate of authority of the licensee fined under this subsection.

(d) Any administrative fine levied by the department or office under this subsection may be enforced by the department or office by appropriate proceedings in the circuit court of the county in which the person resides or in which the principal office of a licensee is located, or, in the case of a foreign

insurer or person not residing in this state, in Leon County. In any administrative or judicial proceeding arising under this section, a party may elect to correct the violation asserted by the department or office, and, upon doing so, any fine shall cease to accrue; however, the election to correct the violation does not render any administrative or judicial proceeding moot. All fines collected under this section shall be paid to the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

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

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

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

(7) OTHER LAWS NOT SUPERSEDED.—The provisions of this section are in addition to other provisions of this code, and shall not be construed to curtail, impede, replace, or delete any other similar provision or power of the department or office under the insurance code as defined in s. 624.01 or any power of the department or office which may exist under the common law of this state. The procedures set forth in s. 626.9581 do not apply to regulatory action taken pursuant to the provisions of this section.

Section 764. Section 624.3102, Florida Statutes, is amended to read:

624.3102 Immunity from civil liability for providing department, commission, or office with information about condition of insurer.—A person, other than a person filing a required report or other required information, who provides the department, commission, or office with information about the financial condition of an insurer is immune from civil liability arising out of the provision of the information unless the person acted with knowledge that the information was false or with reckless disregard for the truth or falsity of the information.

Section 765. Section 624.311, Florida Statutes, is amended to read:

624.311 Records; reproductions; destruction.—

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

(2) The records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt from s. 119.07(1) until termination of all litigation and settlement of all claims arising out of the same incident.

(3) The department, commission, and office may each photograph, microphotograph, or reproduce on film, whereby each page will be reproduced in exact conformity with the original, all financial records, financial statements of domestic insurers, reports of business transacted in this state by foreign insurers and alien insurers, reports of examination of domestic insurers, and such other records and documents on file in its office as it may in its discretion select.

(4) To facilitate the efficient use of floor space and filing equipment in its offices, the department, commission, and office may each destroy the following records and documents pursuant to chapter 257:

(a) General closed correspondence files over 3 years old;

(b) Agent, adjuster, and similar license files, including license files of the Division of State Fire Marshal, over 2 years old; except that the department or office shall preserve by reproduction or otherwise a copy of the original records upon the basis of which each such licensee qualified for her or his initial license, except a competency examination, and of any disciplinary proceeding affecting the licensee;

(c) All agent, adjuster, and similar license files and records, including original license qualification records and records of disciplinary proceedings 5 years after a licensee has ceased to be qualified for a license;

(d) Insurer certificate of authority files over 2 years old, except that the office ~~department~~ shall preserve by reproduction or otherwise a copy of the initial certificate of authority of each insurer;

(e) All documents and records which have been photographed or otherwise reproduced as provided in subsection (3), if such reproductions have been filed and an audit of the department or office has been completed for the period embracing the dates of such documents and records; and

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

Section 766. Subsections (2) and (3) of section 624.312, Florida Statutes, are amended to read:

624.312 Reproductions and certified copies of records as evidence.—

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

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

Section 767. Section 624.313, Florida Statutes, is amended to read:

624.313 Publications.—

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

(a) A summary of all information reported to the office ~~department~~ under s. 627.915(1).

(b) The total amount of premiums written and earned by line of insurance.

(c) The total amount of losses paid and losses incurred by line of insurance.

(d) The ratio of premiums written to losses paid by line of insurance.

(e) The ratio of premiums earned to losses incurred by line of insurance.

(f) The market share of the 10 largest insurers or insurer groups by line of insurance and of each insurer or insurer group that has a market share of at least 1 percent of a line of insurance in this state.

(g) The profitability of each major line of insurance.

(h) An analysis of the impact of the insurance industry on the economy of the state.

(i) A complaint ratio by line of insurance for the insurers referred to in paragraph (f), based upon information provided to the office by the department. The office ~~department~~ shall determine the most appropriate ratio or ratios for quantifying complaints.

(j) An analysis of such lines or kinds of insurance for which the office ~~department~~ determines that an availability problem exists in this state.

(k) A summary of the findings of market examinations performed by the office ~~department~~ under s. 624.3161 during the preceding year.

(l) Such other information as the office ~~department~~ deems relevant.

(2)(a) The department may prepare and have printed and published in pamphlet or book form the following:

1.~~(a)~~ As needed, questions and answers for the use of persons applying for an examination for licensing as agents or solicitors for property, casualty, surety, health, and miscellaneous insurers.

2.~~(b)~~ As needed, questions and answers for the use of persons applying for an examination for licensing as agents for life and health insurers.

(b)~~(c)~~ The office may prepare and have printed and published in pamphlet or book form, as needed, questions and answers for the use of persons applying for an examination for licensing as adjusters.

(3) The department or office shall sell the publications mentioned in subsections (1) and (2) to purchasers at a price fixed by the department or office ~~it~~ at not less than the cost of printing and binding such publications, plus packaging and postage costs for mailing; except that the department or office may deliver copies of such publications free of cost to state agencies and officers; insurance supervisory authorities of other states and jurisdictions; institutions of higher learning located in Florida; the Library of Congress; insurance officers of Naval, Military, and Air Force bases located in Florida; and to persons serving as advisers to the department or office in preparation of the publications.

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

Section 768. Section 624.314, is amended to read:

624.314 Publications; Insurance ~~Commissioner's~~ Regulatory Trust Fund.—The department and office shall each deposit all moneys received from the sale of publications under s. 624.313 in the Insurance ~~Commissioner's~~ Regulatory Trust Fund for the purpose of paying costs for the preparation, printing, and delivery ~~to the department~~ of the publications mentioned in s. 624.313(2), packaging and mailing costs, and banking, accounting, and incidental expenses connected with the sale and delivery of such publications ~~by the department~~. All moneys so deposited and all funds hereafter transferred to the Insurance ~~Commissioner's~~ Regulatory Trust Fund are appropriated for the uses and purposes above mentioned.

Section 769. Section 624.315, Florida Statutes, is amended to read:

624.315 Department; annual report.—

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

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

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

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

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

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

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

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

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

(a) Calendar year profitability, including investment income from policyholders' unearned premium and loss reserves (Florida and countrywide).

(b) Aggregate Florida loss reserves.

(c) Premiums written (Florida and countrywide).

(d) Premiums earned (Florida and countrywide).

(e) Incurred losses (Florida and countrywide).

(f) Paid losses (Florida and countrywide).

(g) Allocated Florida loss adjustment expenses.

(h) Renewal ratio (countrywide).

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

(j) An analysis of policy size limits (Florida and countrywide).

(k) Insureds' selection of claims-made versus occurrence coverage (Florida and countrywide).

(l) A subreport on the involuntary market in Florida encompassing such joint underwriting plans and assigned risk plans operating in the state.

(m) A subreport providing information relevant to emerging markets and alternate marketing mechanisms, such as self-insured trusts, risk retention groups, purchasing groups, and the excess-surplus lines market.

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

(o) Fast track loss ratios as defined and assimilated by the Insurance Services Office (Florida and countrywide).

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

Section 770. Section 624.316, Florida Statutes, is amended to read:

624.316 Examination of insurers.—

(1)(a) The office ~~department~~ shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer and of the attorney in fact of a reciprocal insurer as to its transactions affecting the insurer as often as it deems advisable, except as provided in this section. The examination may include examination of the affairs, transactions, accounts, and records relating directly or indirectly to the insurer and of the assets of the insurer's managing general agents and controlling or controlled person, as defined in s. 625.012. The examination shall be pursuant to a written order of the office ~~department~~. Such order shall expire upon receipt by the office ~~department~~ of the written report of the examination.

(b) As a part of its examination procedure, the office ~~department~~ shall examine each insurer regarding all of the information required by s. 627.915.

(c) The office ~~department~~ shall examine each insurer according to accounting procedures designed to fulfill the requirements of generally accepted insurance accounting principles and practices and good internal control and in keeping with generally accepted accounting forms, accounts, records, methods, and practices relating to insurers. To facilitate uniformity in examinations, the commission ~~department~~ may adopt, by rule, the Market ~~and Financial~~ Conduct Examiners ~~Examination~~ Handbook and the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners, 2002 ~~1990~~, and may adopt subsequent amendments thereto, if the examination methodology remains substantially consistent.

(2)(a) Except as provided in paragraph (f), the office ~~department~~ may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each domestic insurer not less frequently than once every 3 years. The examination shall cover the preceding 3 fiscal years of the insurer and shall be commenced within 12 months after the end of the most recent fiscal year being covered by the examination. The examination may cover any period of the insurer's operations since the last previous examination. The examination may include examination of events subsequent to the end of the most recent fiscal year and the events of any prior period that affect the present financial condition of the insurer. In lieu of making its own examination, the office ~~department~~ may accept an independent certified public accountant's audit report prepared on a statutory basis consistent with the Florida Insurance Code on that specific company. The office ~~department~~ may not accept the report in lieu of the requirement imposed by paragraph (1)(b). When an examination is conducted by the office ~~department~~ for the sole purpose of examining the 3 preceding fiscal years of the insurer within 12 months after the opinion date of an independent certified public accountant's audit report prepared on a statutory basis on that specific company consistent with the Florida Insurance Code, the cost of the examination as charged to the insurer pursuant to s. 624.320 shall be reduced by the cost to the insurer of

the independent certified public accountant's audit reports. Requests for the reduction in cost of examination must be submitted to the office ~~department~~ in writing no later than 90 days after the conclusion of the examination and shall include sufficient documentation to support the charges incurred for the statutory audit performed by the independent certified public accountant.

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

(c) In lieu of making its own examination, the office ~~department~~ may accept a full report of the last recent examination of a foreign insurer, certified to by the insurance supervisory official of another state.

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

(e) The commission ~~department~~ shall adopt rules providing that, upon agreement between the office ~~department~~ and the insurer, an examination under this section may be conducted by independent certified public accountants, actuaries meeting criteria specified by rule, and reinsurance specialists meeting criteria specified by rule. The rules shall provide:

1. That the agreement of the insurer is not required if the office ~~department~~ reasonably suspects criminal misconduct on the part of the insurer.

2. That the office ~~department~~ shall provide the insurer with a list of three firms acceptable to the office ~~department~~, and that the insurer shall select the firm to conduct the examination from the list provided by the office ~~department~~.

3. That the insurer being examined must make payment for the examination directly to the firm performing the examination in accordance with the rates and terms agreed to by the office ~~department~~, the insurer, and the firm performing the examination.

4. That if the examination is conducted without the consent of the insurer, the insurer must pay all reasonable charges of the examining firm if the examination finds impairment, insolvency, or criminal misconduct on the part of the insurer.

(f)1.

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

b. The office ~~department~~ may not accept an independent certified public accountant's audit report in lieu of an examination required by this subparagraph.

c. An insurer may not be required to pay more than $25,000 to cover the costs of any one examination under this subparagraph.

2. An examination under this section must be conducted not less frequently than once every 5 years with respect to an insurer that has continuously held a certificate of authority, without a change in ownership subject to s. 624.4245 or s. 628.461, for more than 15 years. The examination must cover the preceding 5 fiscal years of the insurer or the period since the last examination of the insurer. This subparagraph does not limit the ability of the office ~~department~~ to conduct more frequent examinations.

Section 771. Section 624.3161, Florida Statutes, is amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the office ~~department~~ shall examine each licensed rating organization, each advisory organization, each group, association, carrier, as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance, and each authorized insurer transacting in this state any class of insurance to which the provisions of chapter 627 are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

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

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

(4) The reasonable cost of the examination shall be paid by the person examined, and such person shall be subject, as though an insurer, to the provisions of s. 624.320.

(5) Such examinations shall also be subject to the applicable provisions of chapter 440 and ss. 624.318, 624.319, 624.321, and 624.322.

Section 772. Section 624.317, Florida Statutes, is amended to read:

624.317 Investigation of agents, adjusters, administrators, service companies, and others.—If it has reason to believe that any person has violated or is violating any provision of this code, or upon the written complaint signed by any interested person indicating that any such violation may exist:~~,~~

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

~~(1)~~ general agent, surplus line agent, managing general agent, ~~adjuster, administrator, service company, or other person.~~

~~(2)~~ insurance agent, customer representative, service representative, or other person subject to its jurisdiction ~~or solicitor~~, subject to the requirements of s. 626.601.

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

(a) Adjuster, administrator, service company, or other person subject to its jurisdiction.

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

(c)~~(4)~~ Person engaged in or proposing to be engaged in the promotion or formation of:

1.~~(a)~~ A domestic insurer;

2.~~(b)~~ An insurance holding corporation; or

3.~~(c)~~ A corporation to finance a domestic insurer or in the production of the domestic insurer's business.

Section 773. Section 624.318, Florida Statutes, is amended to read:

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

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

(2) Every person being examined or investigated, and its officers, attorneys, employees, agents, and representatives, shall make freely available to the department or office or its examiners or investigators the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination or investigation. An agent who provides other products or services or maintains customer information not related to insurance must maintain records relating to insurance products and transactions separately if necessary to give the department or office access to such records. If records relating to the insurance transactions are maintained by an agent on premises owned or operated by a third party, the agent and the third party must provide access to the records by the department or office.

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

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

(5) Neither the department, the office, nor any examiner shall remove any record, account, document, file, or other property of the person being examined from the offices of such person except with the written consent of such person given in advance of such removal or pursuant to an order of court duly obtained.

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

Section 774. Section 624.319, Florida Statutes, is amended to read:

624.319 Examination and investigation reports.—

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

(2) The examination report when so filed shall be admissible in evidence in any action or proceeding brought by the department or office against the person examined, or against its officers, employees, or agents. In all other proceedings, the admissibility of the examination report is governed by the evidence code. The department or office or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written

report of the examination has been either made, furnished, or filed in the department or office.

(3)(a) Examination reports, until filed, are confidential and exempt from the provisions of s. 119.07(1). Investigation reports are confidential and exempt from the provisions of s. 119.07(1) until the investigation is completed or ceases to be active. For purposes of this subsection, an investigation is active while it is being conducted by the department or office with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department or office is proceeding with reasonable dispatch and has a good faith belief that action could be initiated by the department or office or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of the investigation report relating to the investigation remain confidential and exempt from the provisions of s. 119.07(1) if disclosure would:

1. Jeopardize the integrity of another active investigation;

2. Impair the safety and financial soundness of the licensee or affiliated party;

3. Reveal personal financial information;

4. Reveal the identity of a confidential source;

5. Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

6. Reveal investigative techniques or procedures.

(b) Workpapers and other information held by the department or office, and workpapers and other information received from another governmental entity or the National Association of Insurance Commissioners, for the department's or office's use in the performance of its examination or investigation duties pursuant to this section and ss. 624.316, 624.3161, 624.317, and 624.318 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to workpapers and other information held by the department or office before, on, or after the effective date of this exemption. Such confidential and exempt information may be disclosed to another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and may be disclosed to the National Association of Insurance Commissioners. The receiving governmental entity or the association must maintain the confidential and exempt status of the information. The information made confidential and exempt by this paragraph may be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status of such information is maintained. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Lists of insurers or regulated companies are confidential and exempt from the provisions of s. 119.07(1) if:

1. The financial solvency, condition, or soundness of such insurers or regulated companies is being monitored by the office ~~department~~;

2. The list is prepared to internally coordinate regulation by the office ~~department~~ of the financial solvency, condition, or soundness of the insurers or regulated companies; and

3. The office determines ~~Insurance Commissioner and Treasurer determine~~ that public inspection of such list could impair the financial solvency, condition, or soundness of such insurers or regulated companies.

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

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

Section 775. Subsections (1), (2), (3), and (5) of section 624.320, Florida Statutes, are amended to read:

624.320 Examination expenses.—

(1) Each insurer so examined shall pay to the office ~~department~~ the expenses of the examination at the rates adopted by the office ~~department~~. Such expenses shall include actual travel expenses, reasonable living expense allowance, compensation of the examiner or other person making the examination, and necessary attendant administrative costs of the office ~~department~~ directly related to the examination. Such travel expense and living expense allowance shall be limited to those expenses necessarily incurred on account of the examination and shall be paid by the examined insurer together with compensation upon presentation by the office ~~department~~ to such insurer of a detailed account of such charges and expenses after a detailed statement has been filed by the examiner and approved by the office ~~department~~.

(2) All moneys collected from insurers for examinations shall be deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund, and the office may ~~department is authorized to~~ make deposits from time to time into such fund from moneys appropriated for the operation of the office ~~department~~.

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

(5) The office may ~~department is authorized to~~ pay to regular insurance examiners, not residents of Leon County, Florida, per diem for periods not exceeding 30 days for each such examiner while at the Office of Insurance Regulation ~~the department~~ in Tallahassee, Florida, for the purpose of auditing insurers' annual statements. Such expenses shall be paid out of moneys budgeted for such purpose, as for regular employees at rates provided in s. 112.061.

Section 776. Subsections (1) and (2) of section 624.321, Florida Statutes, are amended to read:

624.321 Witnesses and evidence.—

(1) As to any examination, investigation, or hearing being conducted under this code, a person designated by the department or office, respectively ~~the Insurance Commissioner and Treasurer or her or his designee~~:

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

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

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

Section 777. Section 624.322, Florida Statutes, is amended to read:

624.322 Testimony compelled; immunity from prosecution.—

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

upon any criminal action, investigation, or proceeding concerning such perjury. No license or permit conferred or to be conferred to such person shall be refused, suspended, or revoked based upon the use of such testimony.

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

Section 778. Section 624.324, Florida Statutes, is amended to read:

624.324 Hearings.—The department, commission, and office may each hold hearings for any purpose within the scope of this code deemed to be necessary.

Section 779. Section 624.33, Florida Statutes, is amended to read:

624.33 Jurisdiction regarding health or life coverage.—

(1) Notwithstanding any other provision of law, and except as provided in this section, any person or other entity which in this state provides life insurance coverage; annuities; or coverage for medical, surgical, chiropractic, physical therapy, speech-language pathology, audiology, professional mental health, dental, hospital, or optometric expenses, or any other health insurance coverage, whether such coverage is by direct payment, reimbursement, or otherwise, shall, upon request, file with the office ~~Department of Insurance~~ a copy of Internal Revenue Service form 5500 and attached schedules as filed with the Internal Revenue Service and the United States Department of Labor, and an annual summary, as required by the Employee Retirement Income Security Act of 1974, 29 U.S.C. ss. 1001 et seq., as amended.

(2) Any person or entity providing any of the coverages or benefits referred to in subsection (1) which does not meet the filing requirements referred to in subsection (1), or which otherwise fails to demonstrate to the office ~~department~~ that, while providing such services, it is exempt from state law, shall submit to an examination by the office ~~department~~ to determine the organization and solvency of the person or entity and to determine whether or not such entity is in compliance with the applicable provisions of chapters 624-651.

(3) A governmental trust which is established or maintained entirely by the state, counties, municipalities, or special taxing districts or any agency or instrumentality thereof or any combination thereof exclusively for the benefit of their employees is exempt from the terms of this section.

(4) Any licensed agent, administrator, service company, or other person which, in connection with coverage offered by an entity subject to examina-

tion by the office ~~department~~ in accordance with subsection (2), is engaged in this state in the solicitation, negotiation, or effectuation of any such coverage or the inspection of risks or the setting of rates, the investigation or adjustment of losses, the collection of premiums, or any other function connected with any such coverage is subject to the jurisdiction of the department or office and to such examination as the department or office deems necessary of the accounts, records, documents, and transactions pertaining to or affecting such coverage to the same extent as the person or entity affording such coverage.

(5) This section does not apply to an insurer, health maintenance organization, professional service plan corporation, or person providing continuing care, which person or entity possesses a valid certificate of authority issued by the office ~~department~~, except to the extent that such person or entity provides the coverages described in subsection (1) to its employees other than under a policy or contract which is otherwise subject to regulation under the Florida Insurance Code.

Section 780. Subsections (2) and (3) of section 624.34, Florida Statutes, are amended to read:

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

(2) The Department of Law Enforcement may accept fingerprints of individuals who apply for a license as an agent, customer representative, adjuster, service representative, or managing general agent or the fingerprints of the majority owner, sole proprietor, partners, officers, and directors of a corporation or other legal entity that applies for licensure with the department or office under the provisions of the Florida Insurance Code.

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

Section 781. Subsections (1) and (2) of section 624.401, Florida Statutes, are amended to read:

624.401 Certificate of authority required.—

(1) No person shall act as an insurer, and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance, in this state except as authorized by a subsisting certificate of authority issued to the insurer by the office ~~department~~, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall from offices or by personnel or facilities located in this state solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting certificate of authority issued to it by the office ~~department~~ authorizing it to transact the same kind or kinds of insurance in this state.

Section 782. Subsection (8) of section 624.4031, Florida Statutes, is amended to read:

624.4031 Church benefit plans and church benefit board.—

(8) The Florida Insurance Code does not apply to a church benefits board that has operated more than 5 years in its state of domicile and has more than $2 million in reserves. This exemption extends to the programs, plans, benefits, activities, or affiliates of the church benefits board. A church benefits board may qualify for this exemption if an authorized representative of the church benefits board submits to the office ~~department~~ an affidavit stating that the church benefits board meets or exceeds the requirements of this section. If the office ~~department~~ believes the information provided on the affidavit is inaccurate, the office ~~department~~ has the burden of proving that the church benefits board fails to meet the requirements of this section.

Section 783. Subsections (2), (3), (4), (5), and (7) of section 624.404, Florida Statutes, are amended to read:

624.404 General eligibility of insurers for certificate of authority.—To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, of the same general type as may be formed as a domestic insurer under this code; except that:

(2) No foreign or alien insurer or exchange shall be authorized to transact insurance in this state unless it is otherwise qualified therefor under this code and has operated satisfactorily for at least 3 years in its state or country of domicile; however, the office ~~department~~ may waive the 3-year requirement if the foreign or alien insurer or exchange:

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

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

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

(d) Provides a product or service not readily available to the consumers of this state.

(3)(a) The office ~~department~~ shall not grant or continue authority to transact insurance in this state as to any insurer the management, officers, or directors of which are found by it to be incompetent or untrustworthy; or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or so lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or which it has good reason to believe are affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detri-

ment of policyholders or stockholders or investors or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

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

(c) The office ~~department~~ may deny, suspend, or revoke the authority to transact insurance in this state of any insurer if any person, including any subscriber, stockholder, or incorporator, who exercises or has the ability to exercise effective control of the insurer, or who influences or has the ability to influence the transaction of the business of the insurer, has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more under the law of the United States or any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction in such case. However, in the case of an insurer operating under a subsisting certificate of authority, the insurer shall remove any such person immediately upon discovery of the conditions set forth in this paragraph when applicable to such person or upon the order of the office ~~department~~, and the failure to so act by said insurer shall be grounds for revocation or suspension of the insurer's certificate of authority.

(d) The office ~~department~~ may deny, suspend, or revoke the authority of an insurer to transact insurance in this state if any person, including any subscriber, stockholder, or incorporator, who exercises or has the ability to exercise effective control of the insurer, or who influences or has the ability to influence the transaction of the business of the insurer, which person the office ~~department~~ has good reason to believe is now or was in the past affiliated directly or indirectly, through ownership interest of 10 percent or more, control, or reinsurance transactions, with any business, corporation, or other entity that has been found guilty of or has pleaded guilty or nolo contendere to any felony or crime punishable by imprisonment for 1 year or more under the laws of the United States, any state, or any other country, regardless of adjudication. However, in the case of an insurer operating under a subsisting certificate of authority, the insurer shall immediately remove such person or immediately notify the office ~~department~~ of such person upon discovery of the conditions set forth in this paragraph, either when applicable to such person or upon order of the office ~~department~~; the failure to remove such person, provide such notice, or comply with such order constitutes grounds for suspension or revocation of the insurer's certificate of authority.

(4)(a) No authorized insurer shall act as a fronting company for any unauthorized insurer which is not an approved reinsurer.

(b) A "fronting company" is an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized

insurer which does not meet the requirements of s. 624.610(3)(a), (b), or (c), or more than 75 percent to two or more unauthorized insurers which do not meet the requirements of s. 624.610(3)(a), (b), or (c), of the entire risk of loss on all of the insurance written by it in this state, or on one or more lines of insurance, on all of the business produced through one or more agents or agencies, or on all of the business from a designated geographical territory, without obtaining the prior approval of the office ~~department~~.

(c) The office ~~department~~ may, in its discretion, approve a transfer of risk in excess of the limits in paragraph (b) upon presentation of evidence, satisfactory to the office ~~department~~, that the transfer would be in the best interests of the financial condition of the insurer and in the best interests of the policyholders.

(5) No insurer shall be authorized to transact insurance in this state which, during the 3 years immediately preceding its application for a certificate of authority, has violated any of the insurance laws of this state and after being informed of such violation has failed to correct the same; except that, if all other requirements are met, the office ~~department~~ may nevertheless issue a certificate of authority to such an insurer upon the filing by the insurer of a sworn statement of all such insurance so written in violation of law, and upon payment to the office ~~department~~ of a sum of money as additional filing fee equivalent to all premium taxes and other state taxes and fees as would have been payable by the insurer if such insurance had been lawfully written by an authorized insurer under the laws of this state. This fee, when collected, shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

(7) For the purpose of satisfying the requirements of ss. 624.407 and 624.408, the investment portfolio of an insurer applying for an initial certificate of authority to do business in this state shall value its bonds and stocks in accordance with the provisions of the latest edition of the publication "Purposes and Procedures Manual of the NAIC Securities Valuation Office" ~~"Valuations of Securities"~~ by the National Association of Insurance Commissioners, July 1, 2002 ~~1990~~, and subsequent amendments thereto, if the valuation methodology remains substantially unchanged.

Section 784. Subsection (1) of section 624.4072, Florida Statutes, is amended to read:

624.4072 Minority-owned property and casualty insurers; limited exemption for taxation and assessments.—

(1) A minority business that is at least 51 percent owned by minority persons, as defined in s. 288.703(3), initially issued a certificate of authority in this state as an authorized insurer after May 1, 1998, and before January 1, 2002, to write property and casualty insurance shall be exempt, for a period not to exceed 10 years from the date of receiving its certificate of authority, from the following taxes and assessments:

(a) Taxes imposed under ss. 175.101, 185.08, and 624.509;

(b) Assessments by the Citizens Property Insurance Corporation ~~Florida Residential Property and Casualty Joint Underwriting Association or by the Florida Windstorm Underwriting Association, as provided under s. 627.351~~, except for emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d. ~~s. 627.351(2)(b)2.d.(III) and (6)(b)3.d~~. Any such insurer shall be a member insurer of the Citizens Property Insurance Corporation ~~Florida Windstorm Underwriting Association and the Florida Residential Property and Casualty Joint Underwriting Association~~. The premiums of such insurer shall be included in determining, for the Citizens Property Insurance Corporation ~~Florida Windstorm Underwriting Association, the aggregate statewide direct written premium for property insurance and in determining, for the Florida Residential Property and Casualty Joint Underwriting Association~~, the aggregate statewide direct written premium for the subject lines of business for all member insurers.

Section 785. Section 624.4085, Florida Statutes, is amended to read:

624.4085 Risk-based capital requirements for insurers.—

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

(a) "Adjusted risk-based capital report" means a risk-based capital report that has been adjusted by the office ~~department~~ in accordance with this section.

(b) "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in the risk-based capital instructions.

(c) "Company action level risk-based capital" means the product of 2.0 and an insurer's authorized control level risk-based capital.

(d) "Corrective order" means an order issued by the office ~~department~~ specifying corrective actions that the office ~~department~~ has determined are required.

~~(e) "Department" means the Department of Insurance.~~

(e)~~(f)~~ "Domestic insurer" means any insurer domiciled in this state.

(f)~~(g)~~ "Foreign insurer" means any insurer that is authorized or eligible to do business in this state but that is not domiciled in this state.

(g)~~(h)~~ "Life and health insurer" means any insurer authorized or eligible under the Florida Insurance Code to underwrite life or health insurance. The term includes a property and casualty insurer that writes accident and health insurance only.

(h)~~(i)~~ "Mandatory control level risk-based capital" means the product of 0.70 and the authorized control level risk-based capital.

(i)~~(j)~~ "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the risk-based capital instructions.

(j)~~(k)~~ "Property and casualty insurer" means any insurer licensed under the Florida Insurance Code, but does not include a single-line mortgage guaranty insurer, financial guaranty insurer, or title insurer or a life and health insurer.

(k)~~(l)~~ "Regulatory action level risk-based capital" means the product of 1.5 and an insurer's authorized control level risk-based capital.

(l)~~(m)~~ "Revised risk-based capital plan" means the revision of the risk-based capital plan which is prepared by an insurer after the office ~~department~~ rejects the original plan.

(m)~~(n)~~ "Risk-based capital instructions" means the instructions for preparing a risk-based capital report as adopted by the National Association of Insurance Commissioners.

(n)~~(o)~~ "Risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital.

(o)~~(p)~~ "Risk-based capital plan" means a comprehensive financial plan specified in paragraph (4)(b).

(p)~~(q)~~ "Risk-based capital report" means the report required in subsection (2).

(q)~~(r)~~ "Total adjusted capital" means the sum of:

1. An insurer's statutory capital and surplus; and

2. Any other item required by the risk-based capital instructions.

(2)(a) Each domestic insurer that is subject to this section shall, on or before March 1 of each year, prepare and file with the National Association of Insurance Commissioners a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing the information required in the risk-based capital instructions. In addition, each domestic insurer shall file a printed copy of its risk-based capital report:

1. With the office ~~department~~ on or before March 1 of each year.

2. With the insurance department in any other state in which the insurer is authorized to do business, if that department has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:

a. Fifteen days after the receipt of notice to file its risk-based capital report with that state; or

b. March 1.

(b) The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for

possible corrective action with respect to the insurer, and may not be used as a means to rank insurers generally. Therefore, except as otherwise required under this section, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; however, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels (or any of them) or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the office ~~commissioner~~ with substantial proof the falsity or inappropriateness of the statement, the insurer may publish in a written publication an announcement the sole purpose of which is to rebut the materially false statement.

(c) The office ~~department~~ shall use the risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans solely for monitoring the solvency of insurers and assessing the need for corrective action with respect to insurers. The office ~~department~~ may not use that information for ratemaking, as evidence in any rate proceeding, or for calculating or deriving any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or an affiliate of such insurer is authorized to write.

(d) A life and health insurer's risk-based capital is determined in accordance with the formula set forth in the risk-based capital instructions. The formula takes into account and may adjust for the covariance between:

1. The risk with respect to the insurer's assets;

2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

3. The interest rate risk with respect to the insurer's business; and

4. Any other business or other relevant risk set out in the risk-based capital instructions,

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(e) A property and casualty insurer's risk-based capital is determined in accordance with the formula set forth in the risk-based capital instructions. The formula takes into account and may adjust for the covariance between:

1. The asset risk;

2. The credit risk;

3. The underwriting risk; and

4. Any other business or other relevant risk set out in the risk-based capital instructions,

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(f) The Legislature finds that an excess of capital over the amount produced by the risk-based capital requirements and the formulas, schedules, and instructions specified in this section is a desirable goal with respect to the business of insurance. Accordingly, insurers should seek to maintain capital above the risk-based capital levels required by this section. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this section.

(g) If a domestic insurer files a risk-based capital report that the office ~~department~~ finds is inaccurate, the office ~~department~~ shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice must state the reason for the adjustment. A risk-based capital report that is so adjusted is referred to as the adjusted risk-based capital report. The adjusted risk-based capital report must also be filed by the insurer with the National Association of Insurance Commissioners.

(3)(a) A company action level event includes:

1. The filing of a risk-based capital report by an insurer which indicates that:

a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or

b. If a life and health insurer, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital, but is less than the product of its authorized control level risk-based capital and 2.5, and has a negative trend;

2. The notification by the office ~~department~~ to the insurer of an adjusted risk-based capital report that indicates an event in subparagraph 1., unless the insurer challenges the adjusted risk-based capital report under subsection (7); or

3. If, under subsection (7), an insurer challenges an adjusted risk-based capital report that indicates an event in subparagraph 1., the notification by the office ~~department~~ to the insurer that the office ~~department~~ has, after a hearing, rejected the insurer's challenge.

(b) If a company action level event occurs, the insurer shall prepare and submit to the office ~~department~~ a risk-based capital plan, which must:

1. Identify the conditions that contribute to the company action level event;

2. Contain proposals of corrective actions that the insurer intends to take and that are reasonably expected to result in the elimination of the company action level event;

3. Provide projections of the insurer's financial results in the current year and at least the 4 succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and, if separate projections are provided, must separately identify each significant income, expense, and benefit component;

4. Identify the key assumptions affecting the insurer's projections and the sensitivity of the projections to the assumptions; and

5. Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and any use of reinsurance.

(c) The risk-based capital plan must be submitted:

1. Within 45 days after the company action level event; or

2. If the insurer challenges an adjusted risk-based capital report under subsection (7), within 45 days after notification to the insurer that the office ~~department~~ has, after a hearing, rejected the insurer's challenge.

(d) Within 60 days after the submission by an insurer of a risk-based capital plan to the office ~~department~~, the office ~~department~~ shall notify the insurer whether the risk-based capital plan must be implemented or is, in the judgment of the office ~~department~~, unsatisfactory. If the office ~~department~~ determines that the risk-based capital plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may set forth proposed revisions. Upon notification from the office ~~department~~, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the office ~~department~~, and shall submit the revised risk-based capital plan to the office ~~department~~:

1. Within 45 days after the notification from the office ~~department~~; or

2. If the insurer challenges the notification from the office ~~department~~ under subsection (7), within 45 days after a notification to the insurer that the office ~~department~~ has, after a hearing, rejected the insurer's challenge.

(e) If the office ~~department~~ notifies an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the office ~~department~~ may, at its discretion and subject to the insurer's right to a hearing under subsection (7), specify in the notification that the notification is a regulatory action level event.

(f) Each domestic insurer that files a risk-based capital plan or a revised risk-based capital plan with the office ~~department~~ shall file a copy of the risk-based capital plan or the revised risk-based capital plan with the insurance department in any other state in which the insurer is authorized to do business if:

1. That state has a risk-based capital law that is substantially similar to paragraph (8)(a); and

2. The insurance department of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or the revised risk-based capital plan in that state no later than the later of:

a. Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

b. The date on which the risk-based capital plan or the revised risk-based capital plan is filed under paragraph (c) or paragraph (d).

(4)(a) A regulatory action level event includes:

1. The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but is less than its regulatory action level risk-based capital;

2. The notification by the office ~~department~~ to the insurer of an adjusted risk-based capital report that indicates the event described in subparagraph 1., unless the insurer challenges the adjusted risk-based capital report under subsection (7);

3. If, under subsection (7), the insurer challenges an adjusted risk-based capital report that indicates the event described in subparagraph 1., the notification by the office ~~department~~ to the insurer that the office ~~department~~ has, after a hearing, rejected the insurer's challenge;

4. The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer provides an explanation for such failure which is satisfactory to the office ~~department~~ and cures the failure within 10 days after the filing date;

5. The failure of the insurer to submit a risk-based capital plan to the office ~~department~~ within the time period set forth in paragraph (3)(c);

6. Notification by the office ~~department~~ to the insurer that:

a. The risk-based capital plan or the revised risk-based capital plan submitted by the insurer is, in the judgment of the office ~~department~~, unsatisfactory; and

b. This notification constitutes a regulatory action level event with respect to the insurer, unless the insurer challenges the determination under subsection (7);

7. If, under subsection (7), the insurer challenges a determination by the office ~~department~~ under subparagraph 6., the notification by the office ~~department~~ to the insurer that the office ~~department~~ has, after a hearing, rejected the challenge;

8. Notification by the office ~~department~~ to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if this failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the office ~~department~~ has so stated in the notification, unless the insurer challenges the determination under subsection (7); or

9. If, under subsection (7), the insurer challenges a determination by the office ~~department~~ under subparagraph 8., the notification by the office ~~department~~ to the insurer that the office ~~department~~ has, after a hearing, rejected the challenge.

(b) If a regulatory action level event occurs, the office ~~department~~ shall:

1. Require the insurer to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan;

2. Perform an examination pursuant to s. 624.316 or an analysis, as the office ~~department~~ considers necessary, of the assets, liabilities, and operations of the insurer, including a review of the risk-based capital plan or the revised risk-based capital plan; and

3. After the examination or analysis, issue a corrective order specifying such corrective actions as the office ~~department~~ determines are required.

(c) In determining corrective actions, the office ~~department~~ shall consider any factor relevant to the insurer based upon the office's ~~department's~~ examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken as provided in the risk-based capital instructions. The risk-based capital plan or the revised risk-based capital plan must be submitted:

1. Within 45 days after the occurrence of the regulatory action level event;

2. If the insurer challenges an adjusted risk-based capital report under subsection (7), within 45 days after the notification to the insurer that the office ~~department~~ has, after a hearing, rejected the insurer's challenge; or

3. If the insurer challenges a revised risk-based capital plan under subsection (7), within 45 days after the notification to the insurer that the office ~~department~~ has, after a hearing, rejected the insurer's challenge.

(d) The office ~~department~~ may retain actuaries, investment experts, and other consultants to review an insurer's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities, and operations of an insurer, and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants must be borne by the affected insurer or by any other party as directed by the office ~~department~~.

(5)(a) An authorized control level event includes:

1. The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but is less than its authorized control level risk-based capital;

2. The notification by the office ~~department~~ to the insurer of an adjusted risk-based capital report that indicates the event in subparagraph 1., unless the insurer challenges the adjusted risk-based capital report under subsection (7);

3. If, under subsection (7), the insurer challenges an adjusted risk-based capital report that indicates the event in subparagraph 1., notification by the office ~~department~~ to the insurer that the office ~~department~~ has, after a hearing, rejected the insurer's challenge;

4. The failure of the insurer to respond, in a manner satisfactory to the office ~~department~~, to a corrective order, unless the insurer challenges the corrective order under subsection (7); or

5. If the insurer challenges a corrective order under subsection (7) and the office ~~department~~ has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the office ~~department~~, to the corrective order after rejection or modification by the office ~~department~~.

(b) If an authorized control level event occurs, the office ~~department~~ shall:

1. Take any action required under subsection (4) regarding the insurer with respect to which a regulatory action level event has occurred; or

2. If the office ~~department~~ considers it to be in the best interests of the policyholders and creditors of the insurer and of the public, take any action as necessary to cause the insurer to be placed under regulatory control under chapter 631. An authorized control level event is sufficient ground for the department to be appointed as receiver as provided in chapter 631.

(6)(a) A mandatory control level event includes:

1. The filing of a risk-based capital report that indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital;

2. Notification by the office ~~department~~ to the insurer of an adjusted risk-based capital report that indicates the event in subparagraph 1., unless the insurer challenges the adjusted risk-based capital report under subsection (7); or

3. If, under subsection (7), the insurer challenges an adjusted risk-based capital report that indicates the event in subparagraph 1., notification by the office ~~department~~ to the insurer that the office ~~department~~ has, after a hearing, rejected the insurer's challenge.

(b) If a mandatory control level event occurs:

1. With respect to a life and health insurer, the office ~~department~~ shall, after due consideration of s. 624.408, take any action necessary to place the insurer under regulatory control, including any remedy available under chapter 631. A mandatory control level event is sufficient ground for the department to be appointed as receiver as provided in chapter 631. The office ~~department~~ may forego taking action for up to 90 days after the mandatory control level event if the office ~~department~~ finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

2. With respect to a property and casualty insurer, the office ~~department~~ shall, after due consideration of s. 624.408, take any action necessary to place the insurer under regulatory control, including any remedy available under chapter 631, or, in the case of an insurer that is not writing new business, may allow the insurer to continue to operate under the supervision of the office ~~department~~. In either case, the mandatory control level event is sufficient ground for the department to be appointed as receiver as provided in chapter 631. The office ~~department~~ may forego taking action for up to 90 days after the mandatory control level event if the office ~~department~~ finds there is a reasonable expectation that the mandatory control level event will be eliminated within the 90-day period.

(7)(a) An insurer has a right to a hearing before the office ~~department~~ upon:

1. Notification to an insurer by the office ~~department~~ of an adjusted risk-based capital report;

2. Notification to an insurer by the office ~~department~~ that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, and that the notification constitutes a regulatory action level event with respect to such insurer;

3. Notification to any insurer by the office ~~department~~ that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accord-

ance with its risk-based capital plan or its revised risk-based capital plan; or

4. Notification to an insurer by the office ~~department~~ of a corrective order with respect to the insurer.

(b) At such hearing the insurer may challenge any determination or action by the office ~~department~~. The insurer shall notify the office ~~department~~ of its request for a hearing within 5 days after receipt of the notification by the office ~~department~~ under this subsection. Upon receipt of the request for a hearing, the office ~~department~~ shall set a date for the hearing, which date must be no fewer than 10 nor more than 30 days after the date the office ~~department~~ receives the insurer's request. The hearing must be conducted as provided in s. 624.324, with the right to appellate review under s. 120.68.

(8)(a) Any foreign insurer shall, upon the written request of the office ~~department~~, submit to the office ~~department~~ a risk-based capital report, as of the end of the calendar year just ended, no later than the later of:

1. The date a risk-based capital report is required to be filed by a domestic insurer under this section; or

2. Fifteen days after the request is received by the foreign insurer.

(b) Any foreign insurer shall, upon the written request of the office ~~department~~, promptly submit to the office ~~department~~ a copy of any risk-based capital plan that is filed with the insurance department of another state.

(c) The office ~~department~~ may require a foreign insurer to file a risk-based capital plan if:

1. A company action level event, regulatory action level event, or authorized control level event occurs with respect to any foreign insurer as determined under the risk-based capital law of the state of domicile of the insurer, or, if there is no risk-based capital law in that state, under this section.

2. The insurance department of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the risk-based capital law of that state, or, if there is no risk-based capital law in that state, under subsection (3).

The failure of the foreign insurer to file a risk-based capital plan with the office ~~department~~ when required under this paragraph is a ground for the office ~~department~~ to take any action under s. 624.418 which it determines is necessary.

(d) If a mandatory control level event occurs with respect to any foreign insurer and a domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation and liquidation law of the state of domicile of the foreign insurer, the office ~~department~~ may apply to the Circuit Court of Leon County and such event constitutes grounds for the department to be appointed as receiver as provided in chapter 631 with

respect to the liquidation of property of foreign insurers found in this state. The occurrence of a mandatory control level event is a ground for such application.

(9) There shall be no liability on the part of, and no cause of action shall arise against, the commission, ~~commissioner, the~~ department, or office, or their ~~its~~ employees or agents, for any action taken by them in the performance of their powers and duties under this section.

(10) The office ~~department~~ shall transmit any notice that may result in regulatory action by registered mail, certified mail, or any other method of transmission. Notice is effective when the insurer receives it.

~~(11) For the purposes of the risk-based capital reports required to be filed by life and health insurers with respect to their 1997 annual statement data and the risk-based capital reports required to be filed by property and casualty insurers with respect to their 1997 annual statement data, the following requirements apply in lieu of the provisions of subsections (3), (4), (5), and (6):~~

~~(a) If a company action level event occurs with respect to a domestic insurer, the department may not take any regulatory action.~~

~~(b) If a regulatory action level event occurs under subparagraph (4)(a)1., 2., or 3., the department shall take the actions required under subsection (3).~~

~~(c) If a regulatory action level event occurs under subparagraph (4)(a)4., 5., 6., 7., 8., or 9., or an authorized control level event occurs, the department shall take the actions required under subsection (4).~~

~~(d) If a mandatory control level event occurs with respect to an insurer, the department shall take the actions required under subsection (5).~~

(11)~~(12)~~ This section is supplemental to the other laws of this state and does not preclude or limit any power or duty of the department or office under those laws or under the rules adopted under those laws.

(12)~~(13)~~ This section does not apply to a domestic property and casualty insurer that meets all of the following conditions:

(a) Writes direct business only in this state;

(b) Writes direct annual premiums of $2 million or less; and

(c) Assumes no reinsurance in excess of 5 percent of direct premiums written.

(13)~~(14)~~ The commission ~~department~~ may adopt rules to administer this section, including, but not limited to, those regarding risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, corrective orders and procedures to be followed in the event of a triggering of a company action level event, a regulatory action level event, an authorized control level event, or a mandatory control level event.

Section 786. Subsections (1) and (2) of section 624.40851, Florida Statutes, are amended to read:

624.40851 Confidentiality of risk-based capital information.—

(1) The initial risk-based capital report and any adjusted risk-based capital report; any risk-based capital plan and any revised risk-based capital plan; and working papers and reports of examination or analysis of an insurer performed pursuant to a plan or corrective order, or regulatory action level event, with respect to any domestic insurer or foreign insurer, held by the office ~~Department of Insurance~~, and transcripts of hearings made as required by this section, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Hearings conducted pursuant to s. 624.4085 relating to the office's ~~department's~~ actions regarding any insurer's risk-based capital plan, revised risk-based capital plan, risk-based capital report, or adjusted risk-based capital report, are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, except as otherwise provided in this section. Such hearings shall be recorded by a court reporter. The office ~~Department of Insurance~~ shall open such hearings or provide a copy of the transcript of such hearings or information otherwise made confidential and exempt pursuant to this section to a department, agency, or instrumentality of this or another state or of the United States if the office ~~department~~ determines the disclosure is necessary or proper for the enforcement of the laws of the United States or of this or another state.

Section 787. Section 624.4094, Florida Statutes, is amended to read:

624.4094 Bail bond premiums.—

(1) The Legislature finds that a significant portion of bail bond premiums is retained by the licensed bail bond agents or licensed managing general agents. For purposes of reporting in financial statements required to be filed with the office ~~department~~ pursuant to s. 624.424, direct written premiums for bail bonds by a domestic insurer in this state shall be reported net of any amounts retained by licensed bail bond agents or licensed managing general agents. However, in no case shall the direct written premiums for bail bonds be less than 6.5 percent of the total consideration received by the agent for all bail bonds written by the agent. This subsection also applies to any determination of compliance with s. 624.4095.

(2) Premiums assumed by a domestic insurer shall be reported consistent with subsections (1) and (4) for purposes of filing financial statements with the office ~~department~~.

(3) Each domestic bail bond insurer shall keep complete and accurate records of the total consideration paid for all bail bonds written by such insurer.

(4) Each domestic bail bond insurer shall disclose the following information in the notes to the financial statement in the insurer's annual statement filed with the office ~~department~~.

(a) The gross bail bond premiums written in each state by agents for the company.

(b) The amount of premium taxes incurred by the company in each state.

(c) Total consideration withheld by agents and not reported as an expense by the insurer in financial statements filed with the office ~~department~~.

(d) The amount of bail bond premium included on the surety line of the annual statement filed with the office ~~department~~.

(5) This section does not affect the reporting or payment of insurance premium taxes under ss. 624.509, 624.5091, and 624.5092, and the insurance premium tax and related excise taxes shall continue to be calculated using gross bail bond premiums.

Section 788. Subsection (1) of section 624.4095, Florida Statutes, is amended to read:

624.4095 Premiums written; restrictions.—

(1) Whenever an insurer's ratio of actual or projected annual written premiums as adjusted in accordance with subsection (4) to current or projected surplus as to policyholders as adjusted in accordance with subsection (6) ~~(5)~~ exceeds 10 to 1 for gross written premiums or exceeds 4 to 1 for net written premiums, the office ~~department~~ shall suspend the insurer's certificate of authority or establish by order maximum gross or net annual premiums to be written by the insurer consistent with maintaining the ratios specified herein unless the insurer demonstrates to the office's ~~department's~~ satisfaction that exceeding the ratios of this section does not endanger the financial condition of the insurer or endanger the interests of the insurer's policyholders.

Section 789. Section 624.410, Florida Statutes, is amended to read:

624.410 Permissible insuring combinations without additional capital funds.—A property insurer may include such amount and kind of insurance against legal liability for injury, damage, or loss to the person or property of others, and for medical, hospital, and surgical expense related to such injury, as the office ~~department~~ deems to be reasonably incidental to insurance of real property against fire and other perils under policies covering residential properties involving not more than four families, with or without incidental office, professional, private school or studio occupancy by an insured, whether or not the premium or rate charged for certain perils so covered is specified in the policy. Any provision of s. 624.609 to the contrary notwithstanding, no insurer authorized as to property insurance only shall, pursuant to this subsection, retain risk as to any one subject of insurance as to hazards other than property insurance hazards, in an amount exceeding 5 percent of its surplus as to policyholders.

Section 790. Section 624.411, Florida Statutes, is amended to read:

624.411 Deposit requirement; domestic insurers and foreign insurers.—

(1) As to domestic insurers, the office ~~department~~ shall not issue or permit to exist a certificate of authority unless such insurer has deposited and maintains deposited in trust for the protection of the insurer's policyholders or its policyholders and creditors with the department securities eligible for such deposit under s. 625.52, having at all times a value of not less than as follows:

(a) To transact casualty insurance, $250,000.

(b) To transact all other kinds of insurance, $100,000 per kind of insurance.

(c) A domestic insurer authorized to transact more than one kind of insurance shall not be required to deposit more than $300,000 under this subsection.

(2) As to foreign insurers, the office ~~department~~, upon issuing or permitting to exist a certificate of authority, may require for good cause a deposit and maintenance of the deposit in trust for the protection of the insured's policyholders or its policyholders and creditors with the department securities eligible for such deposit under s. 625.52, having at all times a value of not less than as follows:

(a) To transact casualty insurance, $150,000.

(b) To transact all other kinds of insurance, $100,000 per kind of insurance.

(c) A foreign insurer authorized to transact more than one kind of insurance in this state shall not be required to deposit more than $200,000 under this subsection.

(d) A foreign insurer with surplus as to policyholders of more than $10 million according to its latest annual statement shall not be required to make a deposit under this subsection.

(3) Whenever the office ~~department~~ determines that the financial condition of an insurer has deteriorated or that the policyholders' best interests are not being preserved by the activities of an insurer, the office ~~department~~ may require such insurer to deposit and maintain deposited in trust with the department for the protection of the insurer's policyholders or its policyholders and creditors, for such time as the office ~~department~~ deems necessary, securities eligible for such deposit under s. 625.52, having a market value of not less than the amount which the office ~~department~~ determines is necessary, which amount shall be not less than $100,000, or more than 25 percent of the insurer's obligations in this state, as determined from the latest annual financial statement of the insured. The deposit required under this subsection shall not exceed $2 million and is in addition to any other deposits required of an insurer pursuant to subsections (1) and (2) or any other provisions of the Florida Insurance Code.

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

Section 791. Subsection (1) of section 624.412, Florida Statutes, is amended to read:

624.412 Deposit of alien insurers.—

(1) An alien insurer shall not have authority to transact insurance in this state unless it has and maintains within the United States as trust deposits with public officials having supervision over insurers, or with trustees, public depositories, or trust institutions approved by the office ~~department~~, assets available for discharge of its United States insurance obligations, which assets shall be in amount not less than the outstanding reserves and other liabilities of the insurer arising out of its insurance transactions in the United States together with the amount of surplus as to policyholders required by s. 624.408 of a domestic stock insurer transacting like kinds of insurance.

Section 792. Subsection (1) of section 624.413, Florida Statutes, is amended to read:

624.413 Application for certificate of authority.—

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

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

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

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

(d) A copy of its financial statement as of December 31 next preceding, containing information generally included in insurer financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the insurer, or certified by the public official having supervision of insurance in the insurer's state of domicile or of entry into the United States. To facilitate uniformity in financial statements, the commission ~~department~~ may by rule adopt

the form for financial statements approved by the National Association of Insurance Commissioners in 2002 ~~1990~~, and may adopt subsequent amendments thereto if the form remains substantially consistent.

(e) Supplemental quarterly financial statements for each calendar quarter since the beginning of the year of its application for the certificate of authority, sworn to by at least two of its executive officers. To facilitate uniformity in financial statements, the commission ~~department~~ may by rule adopt the form for quarterly financial statements approved by the National Association of Insurance Commissioners in 2002 ~~1990~~, and may adopt subsequent amendments thereto if the form remains substantially consistent.

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

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

(h) If a foreign or alien insurer, a certificate of the public official having custody of any deposit maintained by the insurer in another state in lieu of a deposit or part thereof required in this state under s. 624.411 or s. 624.412, showing the amount of such deposit and the assets or securities of which comprised.

(i) If a life insurer, a certificate of valuation.

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

Section 793. Section 624.4135, Florida Statutes, is amended to read:

624.4135 Redomestication.—The commission ~~department~~ shall adopt rules establishing procedures and forms for a foreign insurer to apply for a certificate of authority as a domestic insurer.

Section 794. Section 624.414, Florida Statutes, is amended to read:

624.414 Issuance or refusal of authority.—The fee for filing application for a certificate of authority shall not be subject to refund. The office ~~department~~ shall issue to the applicant insurer a proper certificate of authority if it finds that the insurer has met the requirements of this code, exclusive of the requirements relative to the filing and approval of an insurer's policy forms, riders, endorsements, applications, and rates. If it does not so find, the office ~~department~~ shall issue its order refusing the certificate. The certificate, if issued, shall specify the kind or kinds and line or lines of insurance

the insurer is authorized to transact in this state. The issuance of a certificate of authority does not signify that an insurer has met the requirements of this code relative to the filing and approval of an insurer's policy forms, riders, endorsements, applications, and rates which may be required prior to an insurer actually writing any premiums.

Section 795. Section 624.415, Florida Statutes, is amended to read:

624.415 Ownership of certificate of authority; return.—Although issued to the insurer, the certificate of authority is at all times the property of this state. Upon any expiration, suspension, or termination thereof, the insurer shall promptly deliver the certificate of authority to the office ~~department~~.

Section 796. Subsections (2), (3), and (4) of section 624.416, Florida Statutes, are amended to read:

624.416 Continuance, expiration, reinstatement, and amendment of certificate of authority.—

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

(3) The office ~~department~~ may, in its discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration, and upon payment by the insurer of the fee for reinstatement, in the amount provided in s. 624.501(1)(b). Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) The office ~~department~~ may amend a certificate of authority at any time to accord with changes in the insurer's charter or insuring powers.

Section 797. Section 624.418, Florida Statutes, is amended to read:

624.418 Suspension, revocation of certificate of authority for violations and special grounds.—

(1) The office ~~department~~ shall suspend or revoke an insurer's certificate of authority if it finds that the insurer:

(a) Is in unsound financial condition.

(b) Is using such methods and practices in the conduct of its business as to render its further transaction of insurance in this state hazardous or injurious to its policyholders or to the public.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) No longer meets the requirements for the authority originally granted.

(2) The office ~~department~~ may, in its discretion, suspend or revoke the certificate of authority of an insurer if it finds that the insurer:

(a) Has violated any lawful order or rule of the office or commission ~~department~~ or any provision of this code.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the office ~~department~~.

(c) Has for any line, class, or combination thereof, with such frequency as to indicate its general business practice in this state, without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insureds or claimants to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims.

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

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

(f) Has a ratio of net premiums written to surplus as to policyholders that exceeds 4 to 1, and the office ~~department~~ has reason to believe that the financial condition of the insurer endangers the interests of the policyholders. The ratio of net premiums written to surplus as to policyholders shall be on an annualized actual or projected basis. The ratio shall be based on the insurer's current calendar year activities and experience to date or the insurer's previous calendar year activities and experience, or both, and shall be calculated to represent a 12-month period. However, the provisions of this paragraph do not apply to any insurance or insurer exempted from s. 624.4095.

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

(3) The insolvency or impairment of an insurer constitutes an immediate serious danger to the public health, safety, or welfare; and the office ~~department~~ may, at its discretion, without prior notice and the opportunity for hearing immediately suspend the certificate of authority of an insurer upon a determination that:

(a) The insurer is impaired or insolvent; or

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

Section 798. Section 624.420, Florida Statutes, is amended to read:

624.420 Order, notice of suspension or revocation of certificate of authority; effect; publication.—

(1) Suspension or revocation of an insurer's certificate of authority shall be by the order of the office ~~department~~. The office ~~department~~ shall promptly also give notice of such suspension or revocation to the insurer's agents in this state of record ~~in the office of the department~~. The insurer shall not solicit or write any new coverages in this state during the period of any such suspension and may renew coverages only upon a finding by the office ~~department~~ that the insurer is capable of servicing the renewal coverage. The insurer shall not solicit or write any new or renewal coverages after any such revocation.

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

Section 799. Subsections (2), (3), (4), and (5) of section 624.421, Florida Statutes, are amended to read:

624.421 Duration of suspension; insurer's obligations during suspension period; reinstatement.—

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

(3) If the suspension of the certificate of authority is for a fixed period of time and the certificate of authority has not been otherwise terminated, upon expiration of the suspension period the insurer's certificate of authority shall be reinstated unless the office ~~department~~ finds that the insurer is not in compliance with the requirements of this code. The office ~~department~~ shall promptly notify the insurer of such reinstatement, and the insurer shall not consider its certificate of authority reinstated until so notified by the office ~~department~~. If not reinstated, the certificate of authority shall be deemed to have expired as of the end of the suspension period or upon failure of the insurer to continue the certificate during the suspension period in accordance with subsection (2), whichever event first occurs.

(4) If the suspension of the certificate of authority was until the occurrence of a specific event or events and the certificate of authority has not been otherwise terminated, upon the presentation of evidence satisfactory to the office ~~department~~ that the specific event or events have occurred, the insurer's certificate of authority shall be reinstated unless the office ~~department~~ finds that the insurer is otherwise not in compliance with the requirements of this code. The office ~~department~~ shall promptly notify the insurer of such reinstatement, and the insurer shall not consider its certificate of authority reinstated until so notified by the office ~~department~~. If satisfactory evidence as to the occurrence of the specific event or events has not been

presented to the office ~~department~~ within 2 years of the date of such suspension, the certificate of authority shall be deemed to have expired as of 2 years from the date of suspension or upon failure of the insurer to continue the certificate during the suspension period in accordance with subsection (2), whichever first occurs.

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

Section 800. Subsections (1), (3), and (4) of section 624.4211, Florida Statutes, are amended to read:

624.4211 Administrative fine in lieu of suspension or revocation.—

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

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

(4) The failure of an insurer to make restitution when due as required under this section constitutes a willful violation of this code. However, if an insurer in good faith is uncertain as to whether any restitution is due or as to the amount of such restitution, it shall promptly notify the office ~~department~~ of the circumstances; and the failure to make restitution pending a determination thereof shall not constitute a violation of this code.

Section 801. Section 624.422, Florida Statutes, is amended to read:

624.422 Service of process; appointment of Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as process agent.—

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

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

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

Section 802. Section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

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

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

(3) Process served upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the insurer.

Section 803. Section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(1)(a) Each authorized insurer shall file with the office ~~department~~ full and true statements of its financial condition, transactions, and affairs. An annual statement covering the preceding calendar year shall be filed on or before March 1, and quarterly statements covering the periods ending on March 31, June 30, and September 30 shall be filed within 45 days after each such date. The office ~~department~~ may, for good cause, grant an extension of time for filing of an annual or quarterly statement. The statements shall contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the insurer or, if a reciprocal insurer, by the oath of the attorney in fact or its like officer if a corporation. To facilitate uniformity in financial statements and to facilitate office ~~department~~ analysis, the commission ~~department~~ may by rule adopt the form for financial statements approved by the National Association of Insurance Commissioners in 2002 ~~1990~~, and may adopt subsequent amendments thereto if the methodology remains substantially consistent,

and may by rule require each insurer to submit to the office ~~department~~ or such organization as the office ~~department~~ may designate all or part of the information contained in the financial statement in a computer-readable form compatible with the electronic data processing system specified by the office ~~department~~.

(b) Each insurer's annual statement must contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or by a qualified loss reserve specialist, under criteria established by rule of the commission ~~department~~. In adopting the rule, the commission ~~department~~ must consider any criteria established by the National Association of Insurance Commissioners. The office ~~department~~ may require semiannual updates of the annual statement of opinion as to a particular insurer if the office ~~department~~ has reasonable cause to believe that such reserves are understated to the extent of materially misstating the financial position of the insurer. Workpapers in support of the statement of opinion must be provided to the office ~~department~~ upon request. This paragraph does not apply to life insurance or title insurance.

(c) The commission ~~department~~ may by rule require reports or filings required under the insurance code to be submitted by electronic means in a computer-readable form ~~on a computer-diskette~~ compatible with the electronic data processing equipment specified by the commission ~~department~~.

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

(3) Each insurer having a deposit as required under s. 624.411 shall file with the office ~~department~~ annually with its annual statement a certificate to the effect that the assets so deposited have a market value equal to or in excess of the amount of deposit so required.

(4) At the time of filing, the insurer shall pay the fee for filing its annual statement in the amount specified in s. 624.501.

(5) The office ~~department~~ may refuse to continue, or may suspend or revoke, the certificate of authority of an insurer failing to file its annual or quarterly statements and accompanying certificates when due.

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

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

(8)(a) All authorized insurers must have conducted an annual audit by an independent certified public accountant and must file an audited financial report with the office ~~department~~ on or before June 1 for the preceding year ending December 31. The office ~~department~~ may require an insurer to file an audited financial report earlier than June 1 upon 90 days' advance notice to the insurer. The office ~~department~~ may immediately suspend an insurer's certificate of authority by order if an insurer's failure to file required reports, financial statements, or information required by this subsection or rule adopted pursuant thereto creates a significant uncertainty as to the insurer's continuing eligibility for a certificate of authority.

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

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

(d) An insurer may not use the same accountant or partner of an accounting firm responsible for preparing the report required by this subsection for more than 7 consecutive years. Following this period, the insurer may not use such accountant or partner for a period of 2 years, but may use another accountant or partner of the same firm. An insurer may request the office ~~department~~ to waive this prohibition based upon an unusual hardship to the insurer and a determination that the accountant is exercising independent

judgment that is not unduly influenced by the insurer considering such factors as the number of partners, expertise of the partners or the number of insurance clients of the accounting firm; the premium volume of the insurer; and the number of jurisdictions in which the insurer transacts business.

(e) The commission ~~department~~ shall adopt rules to implement this subsection, which rules must be in substantial conformity with the 1998 ~~1990~~ Model Rule Requiring Annual Audited Financial Reports adopted by the National Association of Insurance Commissioners, except where inconsistent with the requirements of this subsection. Any exception to, waiver of, or interpretation of accounting requirements of the commission ~~department~~ must be in writing and signed by an authorized representative of the office ~~department~~. No insurer may raise as a defense in any action, any exception to, waiver of, or interpretation of accounting requirements, unless previously issued in writing by an authorized representative of the office ~~department~~.

(9)(a) Each authorized insurer shall, pursuant to s. 409.910(20), provide records and information to the Agency for Health Care Administration to identify potential insurance coverage for claims filed with that agency and its fiscal agents for payment of medical services under the Medicaid program.

(b) Each authorized insurer shall, pursuant to s. 409.2561(5)(c), notify the Medicaid agency of a cancellation or discontinuance of a policy within 30 days if the insurer received notification from the Medicaid agency to do so.

(c) Any information provided by an insurer under this subsection does not violate any right of confidentiality or contract that the insurer may have with covered persons. The insurer is immune from any liability that it may otherwise incur through its release of such information to the Agency for Health Care Administration.

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission ~~department~~ with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 804. Section 624.4241, Florida Statutes, is amended to read:

624.4241 NAIC filing requirements.—

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

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

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

Section 805. Subsections (2) and (3) of section 624.4243, Florida Statutes, are amended to read:

624.4243 Reporting of premium growth.—

(2) Until an insurer has held a certificate of authority in this state for 24 months, the insurer shall, instead of making the calculations required under subsection (1), report to the office ~~department~~ no later than the last day of each month the insurer's direct and assumed written premiums from the United States and its territories for the previous month.

(3) If the amount of the premium growth calculated by an insurer under this section exceeds 33 percent, the insurer shall, within 30 days after the end of the 12-month period ending on the last day of the previous month, file with the office ~~department~~ a statement of the premium growth calculations under this section. The commission ~~department~~ shall adopt rules specifying the form for the report. In response to a report under this section, the office ~~department~~ may require the insurer to submit an explanation of the insurer's pattern of premium growth.

Section 806. Section 624.4245, Florida Statutes, is amended to read:

624.4245 Change in controlling interest of foreign or alien insurer; report required.—In the event of a change in the controlling capital stock or a change of 50 percent or more of the assets of a foreign or alien insurer, such insurer shall report such change in writing to the office ~~department~~ within 30 days of the effective date thereof. The report shall contain the name and address of the new owner or owners of the controlling stock or assets, the nature and value of the new assets, and such other relevant information as the commission or office ~~department~~ may reasonably require. For the purposes of this section, the term "controlling capital stock" means a sufficient number of shares of the issued and outstanding capital stock of such insurer or person so as to give the owner thereof power to exercise a controlling influence over the management or policies of such insurer or person.

Section 807. Subsections (1), (2), (3), (7), and (8) of section 624.430, Florida Statutes, are amended to read:

624.430 Withdrawal of insurer or discontinuance of writing certain kinds or lines of insurance.—

(1) Any insurer desiring to surrender its certificate of authority, withdraw from this state, or discontinue the writing of any one or multiple kinds or lines of insurance in this state shall give 90 days' notice in writing to the office ~~department~~ setting forth its reasons for such action. Any insurer who does not write any premiums in a kind or line of insurance within a calendar year shall have that kind or line of insurance removed from its certificate of authority; however, such line of insurance shall be restored to the insurer's certificate upon the insurer demonstrating that it has available the expertise necessary and meets the other requirements of this code to write that line of insurance.

(2) If the office ~~department~~ determines, based upon its review of the notice and other required information, that the plan of an insurer withdrawing from this state makes adequate provision for the satisfaction of the insurer's obligations and is not hazardous to policyholders or the public, the office ~~department~~ shall approve the surrender of the insurer's certificate of authority. The office ~~department~~ shall, within 45 days from receipt of a complete notice and all required or requested additional information, approve, disapprove, or approve with conditions the plan submitted by the insurer. Failure to timely take action with respect to the notice shall be deemed an approval of the surrender of the certificate of authority.

(3) Upon office ~~department~~ approval of the surrender of the certificate of authority of a domestic property and casualty insurer that is a corporation, the insurer may initiate the dissolution of the corporation in accordance with the applicable provisions of chapter 607.

(7) This section does not apply to insurers who have discontinued writing in accordance with an order issued by the office ~~department~~.

(8) The commission ~~department~~ may adopt rules to administer this section.

Section 808. Subsections (5) and (6) of section 624.4361, Florida Statutes, are amended to read:

624.4361 Definitions.—As used in ss. 624.436-624.446:

(5) "Statutory accounting principles" means generally accepted accounting principles, except as modified by part I of chapter 625 and by rules adopted by the commission ~~department~~ which recognize the difference between an arrangement and an insurer.

(6) "Surplus notes" means funds borrowed by a multiple-employer welfare arrangement which result in a written instrument which includes all of the following:

(a) The effective date, amount, interest, and parties involved are clearly set forth.

(b) The principal sum and any interest accrued thereon are subject to and subordinate to all other liabilities of the multiple-employer welfare arrangement.

(c) The instrument states that the parties agree that the multiple-employer welfare arrangement shall satisfy the office ~~department~~ that all claims of participants and general creditors of the organization have been paid or otherwise discharged prior to any payment of interest or repayment of principal.

(d) The instrument is executed by both parties and a certified copy of the instrument is filed with the office ~~department~~.

(e) The parties agree not to modify, terminate, or cancel the surplus note without the prior approval of the office ~~department~~.

Section 809. Subsections (2) and (4) of section 624.437, Florida Statutes, are amended to read:

624.437 "Multiple-employer welfare arrangement" defined; certificate of authority required; penalty.—

(2) No person shall operate, maintain, or, after October 1, 1983, establish a multiple-employer welfare arrangement unless such arrangement has a valid certificate of authority issued by the office ~~department~~.

(4)(a) Any person failing to hold a subsisting certificate of authority from the office ~~department~~ while operating or maintaining a multiple-employer welfare arrangement shall be subject to a fine of not less than $5,000 or more than $100,000 for each violation.

(b) Any person who operates or maintains a multiple-employer welfare arrangement without a subsisting certificate of authority from the office ~~department~~ shall be subject to the cease and desist penalty powers of the office ~~department~~ as set forth in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

(c)1. Any person who operates or maintains a multiple-employer welfare arrangement without a subsisting certificate of authority as required under this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

2. Except as provided in subparagraph 1., any person who violates the provisions of ss. 624.437-624.446 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) In addition to the penalties and other enforcement provisions of the Florida Insurance Code, the office ~~department~~ is vested with the power to seek both temporary and permanent injunctive relief when:

1. A multiple-employer welfare arrangement is being operated by any person or entity without a subsisting certificate of authority.

2. Any person, entity, or multiple-employer welfare arrangement has engaged in any activity prohibited by the Florida Insurance Code or by any rule adopted pursuant thereto.

3. Any multiple-employer welfare arrangement, person, or entity is renewing, issuing, or delivering a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided to employees or employee family members without a subsisting certificate of authority.

The office's ~~department's~~ authority to seek injunctive relief shall not be conditioned on having conducted any proceeding pursuant to chapter 120. The authority vested in the office ~~department~~ by virtue of the operation of this section shall not act to reduce any other enforcement remedy or power to seek injunctive relief that may otherwise be available to the office ~~department~~.

Section 810. Subsections (5) and (6) of section 624.438, Florida Statutes, are amended to read:

624.438 General eligibility.—

(5) The office ~~department~~ shall not grant or continue a certificate of authority for any arrangement if the office ~~department~~ determines any trustee, manager, or administrator to be incompetent, untrustworthy, or so lacking in insurance expertise as to make the operations of the arrangement hazardous to potential and existing insureds; that any trustee, manager, or administrator has been found guilty of, or has pled guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered; that any trustee, manager, or administrator has had any type of insurance license revoked in this or any other state; or that the business operations of the arrangement are or have been marked, to the detriment of the employers participating in the arrangement, of persons receiving benefits from the arrangement, or of creditors or the public, by the improper manipulation of assets, accounts, or specific excess insurance or by bad faith.

(6) To qualify for and retain approval to transact business, an arrangement shall make all contracts with administrators or service companies available for inspection by the office ~~department~~ initially, and annually thereafter upon reasonable notice.

Section 811. Section 624.439, Florida Statutes, is amended to read:

624.439 Filing of application.—The sponsoring association shall file with the office ~~department~~ an application for a certificate of authority upon a form to be adopted by the commission and furnished by the office ~~department~~, signed under oath by officers of the trust, which shall include or have attached the following:

(1) A copy of the articles of incorporation, constitution, and bylaws of the association, if any.

(2) A list of the names, addresses, and official capacities within the arrangement of the individuals who are to be responsible for the management of and the conduct of the affairs of the arrangement, including all trustees, officers, and directors. Such individuals shall fully disclose to the office ~~department~~ the extent and nature of any contracts or arrangements between themselves and the arrangement, including any possible conflicts of interest.

(3) A copy of the articles of incorporation, bylaws, or trust agreement which governs the operation of the arrangement.

(4) A copy of the policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided to covered employees, which shall be in accordance with s. 627.651(4), and which shall include a table of the rates charged, or proposed to be charged, for each form of such contract. A qualified actuary shall certify that:

(a) The rates are not inadequate.

(b) The rates are appropriate for the class of risks for which they have been computed.

(c) An adequate description of the rating methodology has been filed with the office ~~department~~ and such methodology follows consistent and equitable actuarial principles.

(5) A copy of the fidelity bond in an amount equal to not less than 10 percent of the funds handled annually and issued in the name of the arrangement covering its trustees, directors, officers, employees, administrator, or other individuals managing or handling the funds or assets of the arrangement. In no case may such bond be less than $50,000 or more than $500,000, except that the office ~~department~~, after due notice to all interested parties and opportunity for hearing, and after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10-percent limitation of the preceding sentence.

(6)(a) A copy of the arrangement's excess insurance agreement, which shall provide that the net retention level for any one risk shall not exceed

$50,000, and which shall otherwise be in accordance with sound actuarial principles.

(b) The office ~~department~~ may waive or modify the maximum net retention requirement if:

1. The excess insurance is not available for a reasonable cost; or

2. The arrangement:

a. Has 150 percent of the statutory reserve requirement as specified in s. 624.441;

b. Has a fund balance in excess of that required by statute; and

c. Has a ratio of current assets to current liabilities of at least 2.0 to 1.0.

(7)(a) A feasibility study, done by an independent qualified actuary and an independent certified public accountant, determined by the office ~~department~~ to satisfactorily address market potential, market penetration, market competition, operating expenses, gross revenues, net income, total assets and liabilities, cash flow, and such other items as the office or commission ~~department may~~ reasonably requires ~~require~~. The study shall be for the greater of 3 years or until the arrangement has been projected to be profitable for 12 consecutive months. The study must show that the arrangement would not, at any month-end of the projection period, have less than the minimum statutory deposit as required by s. 624.441 or have a fund balance less than the amount required by s. 624.4392.

(b) The feasibility study shall reflect and support that initial gross premiums for the first year of operation will be at least $100,000.

(8) Evidence satisfactory to the office ~~department~~ showing that the arrangement will be operated in accordance with sound actuarial principles. The office ~~department~~ shall not approve the arrangement unless the office ~~department~~ determines that the plan is designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles.

(9) Confirmation of insolvency protection as required by s. 624.441.

(10) A copy of each contract between the arrangement and any administrator or service company which may be made available for review rather than filed or attached.

(11) Such additional information as the office or commission ~~department may~~ reasonably requires ~~require~~.

Section 812. Subsections (1) and (3) of section 624.4392, Florida Statutes, are amended to read:

624.4392 Fund balance.—

(1) Each multiple-employer welfare arrangement licensed on or after October 1, 1991, shall have a fund balance equal to $200,000 before a certifi-

cate of authority may be issued by the office ~~department~~. After it has received a certificate of authority, the arrangement must maintain a fund balance equal to $100,000 or 10 percent of total liabilities, whichever is greater.

(3) The office ~~department~~ shall order the arrangement to assess participating employers at any time the fund balance does not meet the requirements of this section.

Section 813. Section 624.44, Florida Statutes, is amended to read:

624.44 Examination by the office ~~department~~.—

(1)(a) The office ~~department~~ shall examine the affairs, transactions, accounts, business records, and assets of any multiple-employer welfare arrangement as often as it deems necessary for the protection of the people of the state, but not less frequently than once every 3 years. For the purpose of examinations, the office ~~department~~ may administer oaths and examine the trustees, directors, officers, and agents of an arrangement concerning its business and affairs.

(b) The expenses of examination of each arrangement by the office are ~~department shall be~~ subject to the same terms and conditions as apply to insurers under part II.

(c) The office ~~department~~ may contract, at reasonable fees for work performed, with qualified, impartial, outside sources to perform audits or examinations or portions thereof to determine continued compliance with the requirements of ss. 624.436-624.446. Any contracted assistance shall be under direct supervision of the office ~~department~~. The results of any contracted assistance shall be subject to review, approval, disapproval, or modification by the office ~~department~~.

(2) If the office ~~department~~ preliminarily finds that an arrangement is insolvent, the office ~~department~~ shall notify the arrangement of such insolvency. Upon being so notified, the arrangement shall within 15 days file with the office ~~department~~ all information that proves that the arrangement is not insolvent.

(3) If the arrangement fails within the 15-day period provided in subsection (2) to supply information showing to the satisfaction of the office ~~department~~ that the arrangement is not insolvent, the office ~~department~~ may:

(a)1. Suspend any new enrollment;

2. Suspend or revoke the arrangement's certificate of authority; or

3. Place the arrangement in administrative supervision under s. 624.80; or

(b) For the purposes of dissolution, liquidation, or rehabilitation, place the arrangement under the supervision of the department pursuant to chapter 631.

Section 814. Subsections (2) and (3) of section 624.441, Florida Statutes, are amended to read:

624.441 Insolvency protection.—

(2) All income from deposits shall belong to the depositing arrangement and shall be paid to it as it becomes available. An arrangement that has made a securities deposit may withdraw that deposit, or any part thereof, after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value, upon approval by the office and department. No judgment creditor or other claimant of a multiple-employer welfare association shall have the right to levy upon any of the assets or securities held in this state as a deposit under this section.

(3) Deposits of securities or cash pursuant to this section shall be administered by the office and department in accordance with part III of chapter 625.

Section 815. Section 624.4411, Florida Statutes, is amended to read:

624.4411 Administrative, provider, and management contracts.—

(1) The office ~~department~~ may require a multiple-employer welfare arrangement to submit any contract for administrative services, contract with a provider other than an individual physician, contract for management services, or contract with an affiliated person to the office ~~department~~, if the office ~~department~~ has reason to believe that the arrangement has entered into a contract which requires it to pay a fee which is unreasonably high in relation to the services provided. Multiple-employer welfare arrangements are prohibited from paying a fee to a sponsoring association unless such fee is directly related to services provided by the association for the arrangement.

(2) After review of a contract, the office ~~department~~ may order the arrangement to cancel the contract in accordance with the terms of the contract and applicable law if the office ~~department~~ determines that the fees to be paid by the arrangement under the contract are so unreasonably high in relation to the services provided that the contract is detrimental to the policyholders or certificateholders of the arrangement.

(3) All contracts for administrative services, management services, and provider services other than individual physician contracts, and all contracts with affiliated entities, entered into or renewed by an arrangement on or after October 1, 1991, shall contain a provision that the contract shall be canceled upon issuance of an order by the office ~~department~~ pursuant to this section.

Section 816. Section 624.4412, Florida Statutes, is amended to read:

624.4412 Policy forms.—

(1) No policy or contract form, application form, certificate, rider, endorsement, summary plan description, or other evidence of coverage shall

be issued by an arrangement unless the form and all changes thereto have been filed with the office ~~department at its offices in Tallahassee~~ by or on behalf of the arrangement which proposes to use such form and have been approved by the office ~~department~~. Filing of all forms shall be in accordance with the provisions of s. 627.410(2).

(2) The office ~~department~~ shall disapprove any form filed under this section, or withdraw any previous approval thereof, only if the form:

(a) Is in any respect in violation of, or does not comply with, this code;

(b) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract;

(c) Has any title, heading, or other indication of its provisions which is misleading;

(d) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible; or

(e) Contains provisions which are unfair or inequitable, or contrary to the public policy of this state or which encourage misrepresentation.

Section 817. Section 624.442, Florida Statutes, is amended to read:

624.442 Annual reports; actuarial certification; quarterly reports; penalties.—

(1) Every arrangement shall, annually within 3 months after the end of the fiscal year or within such extension of time therefor as the office ~~department~~ for good cause may grant, file a report with the office ~~department~~, on forms prescribed by the commission ~~department~~, verified by the oath of a member of the board of trustees and by an administrative executive appointed by the board, showing its condition on the last day of the preceding fiscal year. The report shall contain an audited financial statement of the arrangement prepared in accordance with statutory accounting principles, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant. The report shall also include an analysis of the adequacy of reserves and contributions or premiums charged, based on a review of past and projected claims and expenses.

(2) In addition to information called for and furnished in connection with the annual report, if reasonable grounds exist, the office ~~department~~ may request information which summarizes paid and incurred expenses, and contributions or premiums received, and may request evidence satisfactory to the office ~~department~~ that the arrangement is actuarially sound. Such information and evidence shall be furnished to the office ~~department~~ by the arrangement as soon as reasonably possible after requested by the office ~~department~~, but not later than 30 days after such request, unless the office ~~department~~, for good cause, grants an extension.

(3) Annually, in conjunction with the annual report required by subsection (1), each arrangement shall submit an actuarial certification prepared by an independent actuary certifying that:

(a) The arrangement is actuarially sound. The certification shall consider the rates, benefits, and expenses of, and any other funds available for the payment of the obligations of, the arrangement.

(b) The rates being charged and to be charged for contracts are actuarially adequate through the end of the period for which rates have been guaranteed.

(c) Incurred but not reported claims and claims reported but not fully paid have been adequately provided for.

(d) Such other information relating to the performance of the arrangement as the commission or office ~~department~~ requires.

(4) Each arrangement shall file quarterly, within 45 days after the end of each of its four quarterly reporting periods, an unaudited financial statement of the arrangement on forms prescribed by the commission ~~department~~, verified according to the best of their information, knowledge, and belief by the oath of a member of the board of trustees and by an administrative executive appointed by the board showing its condition on the last day of the preceding quarter.

(5) Any arrangement that fails to file an annual financial report, actuarial report, or quarterly financial report in the form and within the time required by this section shall forfeit to the office ~~department~~ an amount set by order of the office ~~department~~ which does not exceed $1,000 for each of the first 10 days of noncompliance and does not exceed $2,000 for each subsequent day of noncompliance. Upon notice by the office ~~department~~ that the arrangement is not in compliance with this section, the arrangement's authority to enroll new enrollees or to do business in this state ceases until the office ~~department~~ determines the arrangement to be in compliance. The office ~~department~~ may not collect more than $100,000 under this paragraph with respect to any particular report.

(6) All moneys collected by the office ~~department~~ under this section shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

(7) Each authorized arrangement must retain an independent certified public accountant, referred to in this subsection as "CPA," who agrees by written contract with the arrangement to comply with ss. 624.436-624.445. The contract must state that:

(a) The CPA will provide to the arrangement audited financial statements consistent with ss. 624.436-624.445.

(b) Any determination by the CPA that the arrangement does not meet the minimum surplus requirements set forth in ss. 624.436-624.445 will be stated by the CPA, in writing, in the audited financial statement.

(c) The completed workpapers and any written communications between the CPA and the arrangement will be made available for review on a visual inspection-only basis by the office ~~department~~ at the location ~~offices~~ of the arrangement, the office ~~department~~, or any other reasonable place agreeable to both the office ~~department~~ and the arrangement.

(d) The CPA will retain for review the workpapers and written communications with the arrangement for not less than 6 years.

Section 818. Section 624.443, Florida Statutes, is amended to read:

624.443 Place of business; maintenance of records.—Each arrangement shall have and maintain its principal place of business in this state and shall therein make available to the office ~~department~~ complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for, or suitable to, the kind or kinds of business transacted.

Section 819. Section 624.4431, Florida Statutes, is amended to read:

624.4431 Administration; rules.—The administration of ss. 624.436-624.446 is vested in the commission and office ~~department~~. The commission may ~~department has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of ss. 624.436-624.446.

Section 820. Section 624.444, Florida Statutes, is amended to read:

624.444 Suspension, revocation of approval.—

(1) The office ~~department~~ shall deny, suspend, or revoke an arrangement's certificate of authority if it finds that the arrangement:

(a) Is insolvent;

(b) Is using such methods and practices in the conduct of its business as to render its further transaction of business in this state hazardous or injurious to its participating employers, covered employees and dependents, or to the public;

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final;

(d) Is in violation of any provision of this chapter, including any requirements for the granting of a certificate of authority;

(e) Is no longer actuarially sound or the arrangement does not have the minimum surplus required by this chapter; or

(f) The existing contract rates are inadequate.

(2) The office ~~department~~ may, in its discretion, deny, suspend, or revoke the certificate of authority of any arrangement if it finds that the arrangement:

(a) Has violated any lawful order or rule of the office or commission ~~department~~ or any applicable provision of the Florida Insurance Code; or

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the office ~~department~~.

(3) Whenever the financial condition of the arrangement is such that, if not modified or corrected, its continued operation would result in impairment or insolvency, the department may order the arrangement to file with the office ~~department~~ and implement a corrective action plan designed to do one or more of the following:

(a) Reduce the total amount of present potential liability for benefits by reinsurance or other means.

(b) Reduce the volume of new business being accepted.

(c) Reduce the expenses of the arrangement by specified methods.

(d) Suspend or limit the writing of new business for a specified period of time.

(e) Require an increase in the arrangement's net worth.

If the arrangement fails to submit a plan within 30 days after the office's ~~department's~~ order, or if the plan submitted is insufficient to correct the arrangement's financial condition, the office ~~department~~ may order the arrangement to implement one or more of the corrective actions specified in this subsection.

(4) In any order to suspend the authority of an arrangement to enroll new subscribers, the office ~~department~~ shall specify the period during which the suspension is to be in effect and the conditions, if any, which must be met by the arrangement prior to reinstatement of its authority to enroll new subscribers. The order of suspension is subject to rescission or modification by further order of the office ~~department~~ prior to the expiration of the suspension period. An arrangement's authority to enroll new subscribers shall not be reinstated unless it requests reinstatement, and shall not be reinstated if the office ~~department~~ finds that the circumstances that gave rise to the suspension still exist.

Section 821. Subsection (2) of section 624.445, Florida Statutes, is amended to read:

624.445 Order, notice, duration, effect of suspension or revocation; administrative fine.—

(2) If the office ~~department~~ finds that one or more grounds exist for the discretionary revocation or suspension of an arrangement's certificate of authority under ss. 624.436-624.446, the office ~~department~~ may, in lieu of or in addition to such revocation or suspension, impose a fine upon such arrangement, in accordance with s. 624.4211.

Section 822. Section 624.4435, Florida Statutes, is transferred, renumbered as section 624.448, Florida Statutes, and amended to read:

624.448 ~~624.4435~~ Assets of insurers; reporting requirements.—

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

(a) "Material acquisition of assets" or "material disposition of assets" means one or more transactions occurring during any 30-day period which are nonrecurring and not in the ordinary course of business and involve more than 5 percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

(b) "Material nonrenewal, cancellation, or revision of a ceded reinsurance agreement" is one that affects:

1. With respect to property and casualty business, including accident and health business written by a property and casualty insurer:

a. More than 50 percent of the insurer's total ceded written premium; or

b. More than 50 percent of the insurer's total ceded indemnity and loss adjustment reserves.

2. With respect to life, annuity, and accident and health business, more than 50 percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.

3. With respect to property and casualty business or life, annuity, and accident and health business, a material revision includes:

a. The replacement of an authorized reinsurer representing more than 10 percent of a total cession by one or more unauthorized reinsurers; or

b. The reduction or waiver, with respect to one or more unauthorized insurers, of previously established collateral requirements representing more than 10 percent of a total cession.

(2) Each domestic insurer shall file a report with the office ~~Department of Insurance~~ disclosing a material acquisition of assets, a material disposition of assets, or a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement, unless the material acquisition or disposition of assets or the material nonrenewal, cancellation, or revision of a ceded reinsurance agreement has been submitted to the office ~~department~~ for review, approval, or informational purposes under another section of the Florida Insurance Code or a rule adopted thereunder. A copy of the report and each exhibit or other attachment must be filed by the insurer with the National Association of Insurance Commissioners. The report required in this section is due within 15 days after the end of the calendar month in which the transaction occurs.

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

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

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

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

1. The date of the transaction;

2. The manner of acquisition or disposition;

3. The description of the assets involved;

4. The nature and amount of the consideration given or received;

5. The purpose of, or reason for, the transaction;

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

7. The gain or loss recognized or realized as a result of the transaction; and

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

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

(6) The nonrenewal, cancellation, or revision of a ceded reinsurance agreement need not be reported if the renewal or the revision is not material or if:

(a) With respect to property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less

than 10 percent of its total written premium for direct and assumed business; or

(b) With respect to life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than 10 percent of the statutory reserve requirement before the cession.

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

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

2. The description of the transaction and the identification of the initiator of the transaction;

3. The purpose of, or reason for, the transaction; and

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

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

Section 823. Subsection (1) of section 624.45, Florida Statutes, is amended to read:

624.45 Participation of financial institutions in reinsurance and in insurance exchanges.—Subject to applicable laws relating to financial institutions and to any other applicable provision of the Florida Insurance Code, any financial institution or aggregation of such institutions may:

(1) Own or control, directly or indirectly, any insurer which is authorized or approved by the <u>office</u> ~~department~~, which insurer transacts only reinsurance in this state and which actively engages in reinsuring risks located in this state.

Nothing in this section shall be deemed to prohibit a financial institution from engaging in any presently authorized insurance activity.

Section 824. Subsections (1), (2), (3), (4), (5), and (6) of section 624.4621, Florida Statutes, are amended to read:

624.4621 Group self-insurance funds.—

(1) The commission ~~department~~ shall adopt rules that allow two or more employers to enter into agreements to pool their liabilities under chapter 440 for the purpose of qualifying as a group self-insurer's fund, which shall be classified as a self-insurer, and each employer member of such approved group shall be known as a group self-insurer's fund member and shall be classified as a self-insurer as defined in chapter 440. The agreement entered into under this section may provide that the pool will be liable for 80 percent, and the employer member will be liable for 20 percent, of the medical benefits due any employee for an injury compensable under this chapter up to the amount of $5,000. One hundred percent of the medical benefits above $5,000 due to an employee for one injury shall be paid by the pool. The agreement may also provide that each employer member will be responsible for up to the first $500 of medical benefits due each of its employees for each injury. The claim shall be paid by the pool, regardless of its size, which shall be reimbursed by the employer for any amounts required to be paid by the employer under the agreement.

(2) The commission ~~department~~ shall adopt rules:

(a) Requiring monetary reserves to be maintained by such self-insurers to insure their financial solvency; and

(b) Governing their organization and operation to assure compliance with such requirements.

(3) The commission ~~department~~ shall adopt rules implementing the reserve requirements in accordance with accepted actuarial techniques.

(4) Any self-insurer established under this section, except for self-insurers that are state or local governmental entities, is required to carry reinsurance in accordance with rules adopted by the commission ~~department~~.

(5) A dividend or premium refund of any self-insurer established under this section, otherwise earned, may not be made contingent upon continued membership in the fund, renewal of any policy, or the payment of renewal premiums for membership in the fund or on any policy issued by such self-insurer. Before making any dividend or premium refund, the group self-insurer shall submit to the office ~~department~~ the following information:

(a) An audited certified financial statement.

(b) An annual report of financial condition.

(c) A loss reserve review by a qualified actuary.

The required information listed in paragraphs (a)-(c) shall be submitted annually, no later than 7 months after the end of the group self-insurer's fund year. A request for such dividend or premium refund may not be made before the required information is filed. The request for such dividend or premium refund must include a resolution of the board of trustees of the

group self-insurer requesting approval of a specific amount to be distributed. A dividend, premium refund, or premium discount or credit must not discriminate on the basis of continued coverage or continued membership in the group self-insurer. The office ~~department~~ shall review the request and shall issue a decision within 60 days after the filing. Failure to issue a decision within 60 days constitutes an approval of the request. Any dividend or premium refund approved by the office ~~department~~ for distribution which cannot be paid to the applicable member or policyholder or former member or policyholder of the group self-insurer because the former member or policyholder cannot be reasonably located shall become the property of the group self-insurer.

(6) The office ~~department~~ may impose civil penalties not to exceed $100 per occurrence for violations of the provisions of this chapter or rules adopted pursuant hereto.

Section 825. Section 624.4622, Florida Statutes, is amended to read:

624.4622 Local government self-insurance funds.—

(1) Any two or more local governmental entities may enter into interlocal agreements for the purpose of securing the payment of benefits under chapter 440, provided the local government self-insurance fund that is created must:

(a) Have annual normal premiums in excess of $5 million;

(b) Maintain a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary;

(c) Submit annually an audited fiscal year-end financial statement by an independent certified public accountant within 6 months after the end of the fiscal year to the office ~~department~~; and

(d) Have a governing body which is comprised entirely of local elected officials.

(2) A local government self-insurance fund that meets the requirements of this section is not subject to s. 624.4621 and is not required to file any report with the office ~~department~~ under s. 440.38(2)(b) which is uniquely required of group self-insurer funds qualified under s. 624.4621. If any of the requirements of this section are not met, the local government self-insurance fund is subject to the requirements of s. 624.4621.

Section 826. Section 624.464, Florida Statutes, is amended to read:

624.464 Certificate of authority required; penalties.—

(1) No person shall establish a commercial self-insurance fund unless such fund is issued a certificate of authority by the office ~~department~~ pursuant to s. 624.466.

(2)(a) Any person failing to hold a subsisting certificate of authority from the office ~~department~~ while operating or maintaining a commercial self-insurance fund shall be subject to a fine of not less than $5,000 or more than $10,000 for each violation.

(b) Any person who operates or maintains a commercial self-insurance fund without a subsisting certificate of authority from the office ~~department~~ shall be subject to the cease and desist penalty powers of the office ~~department~~ as set forth in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

(c) In addition to the penalties and other enforcement provisions of the Florida Insurance Code, the office ~~department~~ is vested with the power to seek both temporary and permanent injunctive relief when:

1. A commercial self-insurance fund is being operated by any person or entity without a subsisting certificate of authority.

2. Any person, entity, or commercial self-insurance fund has engaged in any activity prohibited by the Florida Insurance Code made applicable by ss. 624.460-624.488 or by any rule adopted pursuant thereto.

3. Any commercial self-insurance fund, person, or entity is renewing, issuing, or delivering a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided to members without a subsisting certificate of authority.

The office's ~~department's~~ authority to seek injunctive relief shall not be conditioned on having conducted any proceeding pursuant to chapter 120. The authority vested in the office ~~department~~ by virtue of the operation of this section shall not act to reduce any other enforcement remedy or power to seek injunctive relief that may otherwise be available to the office ~~department~~.

Section 827. Section 624.466, Florida Statutes, is amended to read:

624.466 Application requirements for certificate of authority.—All applications for a certificate of authority for a commercial self-insurance fund shall be on a form adopted by the commission and furnished by the office ~~department~~ and shall include or have attached the following:

(1) The name of the fund and the location of the fund's principal office, which shall be maintained within this state.

(2) The kinds of insurance initially proposed to be transacted and a copy of each policy, endorsement, and application form it initially proposes to issue or use.

(3) A copy of the constitution, bylaws, or trust agreement which governs the operation of the fund. The constitution, bylaws, or trust agreement shall contain a provision prohibiting any distribution of surplus funds or profit except to members of the fund, as approved by the office ~~department~~ pursuant to s. 624.473.

(4) The names and addresses of the trustees of the fund. The office ~~department~~ shall not grant or continue approval as to any fund if the office ~~department~~ determines any trustee to be incompetent or untrustworthy; that any trustee has been found guilty of, or has pled guilty or no contest to, a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered; or that any trustee has had any type of insurance license revoked in this or any other state.

(5) A copy of a properly executed indemnity agreement binding each fund member to individual, several, and proportionate liability as set forth in ss. 624.472 and 624.474.

(6) A plan of risk management which has established measures and procedures to minimize both the frequency and severity of losses.

(7) Proof of competent and trustworthy persons to administer or service the fund in the areas of claims adjusting, underwriting, risk management, and loss control.

(8) Membership applications and the name and address of each member applying for coverage and a current financial statement on each member applying for coverage showing the aggregate net worth of all members to be not less than $500,000, a combined ratio of current assets to current liabilities of more than 1 to 1, and a combined working capital of an amount establishing financial strength and liquidity of the businesses to promptly provide for payment of the normal property or casualty claims proposed to be self-insured.

(9)(a) An initial deposit of cash or securities of the type eligible for deposit by insurers under s. 625.52 in the amount of $100,000.

1. All income from deposits shall belong to the fund and shall be transmitted to the fund as it becomes available.

2. No judgment creditor or other claimant of the fund shall have the right to levy upon any of the assets or securities held as a deposit under this section.

(b) In lieu of the deposit of cash or securities, a fund may file with the office ~~department~~ a surety bond in like amount. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the office's ~~department's~~ approval.

1. No bond shall be approved unless it covers liabilities arising from all policies and contracts issued and entered into during the time the bond is in effect and unless the office ~~department~~ is satisfied that the bond provides the same degree of security as would be provided by a deposit of securities.

2. No bond shall be canceled or subject to cancellation unless at least 60 days' advance notice thereof in writing is filed with the office ~~department~~.

(c) Deposits of securities or cash pursuant to this section shall be administered by the office and department in accordance with part III of chapter 625.

(10)(a) Copies of acceptable excess insurance policies written by an insurer or insurers authorized or approved to transact insurance in this state, which excess insurance provides specific and aggregate limits and retention levels satisfactory to the office ~~department~~ in accordance with sound actuarial principles. The office ~~department~~ may waive this requirement if the fund demonstrates to the satisfaction of the office ~~department~~ that its operation is and will be actuarially sound without obtaining excess insurance.

(b) At least 10 days prior to the proposed effective date of the issuance of any policy, the trustees shall submit proof that the members have paid into a common claims fund in a designated depository cash premiums in an amount of not less than $50,000 or 10 percent of the estimated annual premium of the members at the inception, whichever is greater.

(11) A copy of a fidelity bond or insurance policy from an authorized insurer providing coverage in an amount equal to not less than 10 percent of the funds handled annually and issued in the name of the fund covering its trustees, employees, administrator, or other individuals managing or handling the funds or assets of the fund. In no case may such bond or policy be less than $1,000 or more than $500,000, except that the office ~~department~~ may for good cause prescribe an amount in excess of $500,000, subject to the 10-percent limitation of the preceding sentence.

(12)(a) A plan of operation designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles.

(b) A statement prepared by an actuary who is a member of the American Academy of Actuaries or the Casualty Actuarial Society establishing that the fund has prepared a plan of operation which is based on sound actuarial principles. The office ~~department~~ shall not approve the fund unless the office ~~department~~ determines that the plan established by the fund is designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles.

(13) Such additional information as the commission or office ~~department may~~ reasonably requires ~~require~~.

Section 828. Subsections (1), (4), (6), (8), (9), (10), and (12) of section 624.468, Florida Statutes, are amended to read:

624.468 Continuing requirements for certificate of authority.—After issuance of its initial certificate of authority a commercial self-insurance fund shall thereafter meet the following requirements as a condition of maintaining its certificate of authority:

(1) Maintenance of competent and trustworthy persons to service the program, as further specified in s. 624.466(7). Written notice shall be provided to the office ~~department~~ before changing the fund's method of fulfilling its servicing requirements.

(4) Maintenance of excess insurance in accordance with sound actuarial principles, unless waived by the office ~~department~~, as further specified in s. 624.466(10).

(6) Maintenance of appropriate funded loss reserves determined in accordance with sound actuarial principles satisfactory to the office ~~department~~.

(8) Each fund shall have and maintain its principal place of business in this state and shall therein make available to the office ~~department~~ upon reasonable notice complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for, or suitable to, the kind or kinds of business transacted.

(9) A fund shall file such reports with the office ~~department~~ as are required by s. 624.470.

(10) A fund shall report to the office ~~department~~ within 15 days of a determination that the actual premiums written or liability assumed or any other factor which substantially contributes to the financial condition of the plan deviates by more than 25 percent from the projections used in the most recent annual report, as required by s. 624.470 or, if the first annual report has not yet been filed, projections used in the initial plan of operation.

(12) A fund shall maintain records which will confirm that membership in the fund is in accordance with the constitution or bylaws of the association as required by s. 624.462(3). The office ~~department~~ may request from the fund, not more than annually, a certification which confirms that all members of the fund are members of the association and are in compliance with the constitution or bylaws of the association and may require that the fund submit a plan, acceptable to the office ~~department~~, to eliminate membership that does not comply with s. 624.462(3).

Section 829. Paragraph (b) of subsection (1) and subsection (2) of section 624.470, Florida Statutes, are amended to read:

624.470 Annual reports.—

(1)

(b) For financial statements filed on or after January 1, 1998, future investment income may only be reported as an admitted asset by an Assessable Mutual or Self-Insurance Fund which reported future investment income in financial statements filed with the Department of Insurance prior to January 1, 1998.

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

(a) A financial statement of the fund, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant.

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

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

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

3. A description and explanation of actuarial assumptions.

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

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

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

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

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

(c) Any changes in the constitution, bylaws, or trust agreement of the fund.

Section 830. Section 624.473, Florida Statutes, is amended to read:

624.473 Dividends.—A commercial self-insurance fund shall obtain the approval of the office ~~department~~ prior to paying any dividend or refund to its members. No such dividend or refund may be approved until 12 months after the last day of the fiscal year for which the dividend or refund is payable, or such later time as the office ~~department~~ may require in accordance with sound actuarial principles.

Section 831. Section 624.4741, Florida Statutes, is amended to read:

624.4741 Venue in assessment actions.—In any action brought by a self-insurance fund to collect assessments levied under this chapter, venue lies where the fund maintains its principal place of business or, if the department, the office, or the Florida Group Self-Insurers Guaranty Association is a party to such action, in the Circuit Court of Leon County.

Section 832. Subsections (2), (3), and (4) of section 624.476, Florida Statutes, are amended to read:

624.476 Impaired self-insurance funds.—

(2) If any fund levies an assessment pursuant to subsection (1), the office ~~department~~ shall require the fund to consent to administrative supervision under part VI of this chapter. The office ~~department~~ may waive the requirement to consent to administrative supervision for good cause.

(3) If the trustees fail to make an assessment as required by subsection (1), the office ~~department~~ shall order the trustees to do so. If the deficiency is not sufficiently made up within 60 days after the date of the order, the fund shall be deemed insolvent and grounds shall exist to proceed against the fund as provided for in part I of chapter 631.

(4) Notwithstanding the requirement of the fund to make an assessment pursuant to subsection (1) or subsection (3), the office ~~department~~ may at any time request that the department ~~to~~ be appointed receiver for purposes of rehabilitation or liquidation if it is able to demonstrate that any grounds for rehabilitation or liquidation exist pursuant to s. 631.051 or s. 631.061.

Section 833. Section 624.477, Florida Statutes, is amended to read:

624.477 Liquidation, rehabilitation, reorganization, and conservation.—Any rehabilitation, liquidation, conservation, or dissolution of a self-insurance fund shall be conducted under the supervision of the office and department, which shall each have all power with respect thereto granted to the fund under part I of chapter 631 governing the rehabilitation, liquidation, conservation, or dissolution of insurers and including all grounds for the appointment of a receiver contained in ss. 631.051 and 631.061.

Section 834. Section 624.480, Florida Statutes, is amended to read:

624.480 Filing, approval, and disapproval of forms.—

(1) A basic insurance policy or application form for which written application is required and is to be a part of the policy or contract or printed rider or endorsement form may not be issued by a self-insurance fund unless the form has been filed with and approved by the office ~~department~~.

(2) Every such filing shall be made not less than 30 days in advance of any such use or delivery. At the expiration of such 30 days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the office ~~department~~. The office ~~department~~ may extend by not more than an additional 15 days the period within which it may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial 30-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form must be deemed approved.

(3) The office ~~department~~ shall disapprove any form or withdraw any previous approval thereof only, if the form:

(a) Is in any respect in violation of, or does not comply with, this code.

(b) Contains or incorporates by reference, when such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or any exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(c) Has any title, heading, or other indication of its provisions which is misleading.

(d) Is printed or otherwise reproduced in such manner as to render any material provision of such form substantially illegible.

Section 835. Subsections (1), (5), (6), (7), and (8) of section 624.482, Florida Statutes, are amended to read:

624.482 Making and use of rates.—

(1) With respect to all classes of insurance which a self-insurance fund underwrites, the rates must not be excessive, inadequate, or unfairly discriminatory. In determining what rates, including credits and surcharges, are excessive, inadequate, or unfairly discriminatory, the office ~~department~~ shall apply the same standards applicable to other insurers regulated by the office ~~department~~.

(5) If the office ~~department~~ determines that the continued use of a rate for a coverage endangers the solvency of the fund, it may issue an order requiring the rate to be increased or requiring the fund to limit or cease writing the coverage.

(6) A fund shall have the burden of proving that a rate filed is adequate if, during the first 5 years of issuing policies, the fund files a rate that is below the rate for loss and loss adjustment expenses for the same type and classification of insurance that has been filed by the Insurance Services Office and approved by the office ~~department~~.

(7) Nothing herein shall be construed to prohibit the office ~~department~~ from examining a fund pursuant to s. 624.3161.

(8) A self-insurance fund shall file its rates, including credits and surcharge schedules, with the office ~~department~~ for approval pursuant to the standards of this section and the procedures of s. 624.480(2).

Section 836. Section 624.484, Florida Statutes, is amended to read:

624.484 Registration of agent.—A self-insurance fund shall register with and designate the Chief Financial Officer ~~Insurance Commissioner~~ as its agent solely for the purpose of receiving service of legal documents or process.

Section 837. Section 624.486, Florida Statutes, is amended to read:

624.486 Examination.—Self-insurance funds licensed under ss. 624.460-624.488 are subject to periodic examination by the office ~~department~~ in the

same manner and subject to the same terms and conditions applicable to insurers under part II of this chapter.

Section 838. Section 624.487, Florida Statutes, is amended to read:

624.487 Enforcement of specified insurance provisions; adoption of rules.—The office ~~department~~ may enforce, with respect to group self-insurance funds established or operated under s. 624.4621, the provisions of s. 624.316, s. 624.424, s. 625.091, or s. 625.305 as they relate to workers' compensation insurers, and the commission may adopt rules to implement the enforcement authority granted by this section.

Section 839. Section 624.501, Florida Statutes, is amended to read:

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

(1) Certificate of authority of insurer.

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

(b) Reinstatement fee $50.00

(2) Charter documents of insurer.

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

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

(c) Filing bylaws, when required, or amendments thereof, filing fee $5.00

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

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

(a) Annual statement $250.00

(b) Quarterly statement $250.00

(5) All insurance representatives, application for license, each filing, filing fee $50.00

(6) Insurance representatives, property, marine, casualty, and surety insurance.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer:

Appointment fee $42.00

State tax 12.00

County tax 6.00
Total $60.00

(b) Solicitor's or customer representative's original appointment and biennial renewal or continuation thereof:

Appointment fee $42.00

State tax 12.00

County tax 6.00
Total $60.00

(c) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer $60.00

(d) Service representatives; managing general agents.

Original appointment and biennial renewal or continuation thereof, each insurer or managing general agent, whichever is applicable $60.00

(7) Life insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer:

Appointment fee $42.00

State tax 12.00

County tax 6.00
Total $60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer $60.00

(8) Health insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer:

Appointment fee $42.00

State tax 12.00

County tax 6.00
Total $60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer $60.00

(9) All limited appointments as agent, as provided for in s. 626.321. Agent's original appointment and biennial renewal or continuation thereof, each insurer:

Appointment fee $42.00

State tax 12.00

County tax 6.00
Total $60.00

(10) Fraternal benefit society agents. Original appointment and biennial renewal or continuation thereof, each insurer:

Appointment fee $42.00

State tax 12.00

County tax 6.00
Total $60.00

(11) Surplus lines agent. Agent's appointment and biennial renewal or continuation thereof, appointment fee $150.00

(12) Adjusters:

(a) Adjuster's original appointment and biennial renewal or continuation thereof, appointment fee $60.00

(b) Nonresident adjuster's original appointment and biennial renewal or continuation thereof, appointment fee $60.00

(c) Emergency adjuster's license, appointment fee $10.00

(d) Fee to cover actual cost of credit report, when such report must be secured by <u>office</u> ~~department~~.

(13) Examination—Fee to cover actual cost of examination.

(14) Temporary license and appointment as agent or adjuster, where expressly provided for, rate of fee for each month of the period for which the license and appointment is issued $5.00

(15) Issuance, reissuance, reinstatement, modification resulting in a modified license being issued, duplicate copy of any insurance representative license, or an appointment being reinstated $5.00

(16) Additional appointment continuation fees as prescribed in chapter 626 . . . . . $5.00

(17) Filing application for permit to form insurer as referred to in chapter 628, filing fee $25.00

(18) Annual license fee of rating organization, each domestic or foreign organization $25.00

(19) Miscellaneous services:

(a) For copies of documents or records on file with the department, commission, or office per page . . . . . $ .50

(b) For each certificate of the department, commission, or office under its seal, authenticating any document or other instrument (other than a license or certificate of authority) $5.00

(c) For preparing lists of agents, solicitors, adjusters, and other insurance representatives, and for other miscellaneous services, such reasonable charge as may be fixed by the office or department.

(d) For processing requests for approval of continuing education courses, processing fee $100.00

(e) Insurer's registration fee for agent exchanging business more than 24 times in calendar year under s. 626.752, s. 626.793, or s. 626.837, registration fee per agent per year $30.00

(20) Insurance agency or adjusting firm, 3-year license $60.00

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

Appointment fee $44.00

State tax 24.00

County tax 12.00
Total $80.00

(22) Certain military installations, as authorized under s. 626.322: original appointment and biennial renewal or continuation thereof, each insurer $20.00

(23) Filing application for original certificate of authority for third-party administrator or original certificate of approval for a service company, including all documents required to be filed therewith, filing fee . . $100.00

(24) Fingerprinting processing fee—Fee to cover fingerprint processing.

(25) Sales representatives, miscellaneous lines. Original appointment and biennial renewal or continuation thereof, appointment fee . . . $60.00

(26) Reinsurance intermediary:

(a) Application filing and license fee $50.00

(b) Original appointment and biennial renewal or continuation thereof, appointment fee $60.00

(27) Title insurance agents:

(a) Agent's original appointment or biennial renewal or continuation thereof, each insurer:

Appointment fee $42.00

State tax 12.00

County tax 6.00
Total $60.00

(b) Agency original appointment or biennial renewal or continuation thereof, each insurer:

Appointment fee $42.00

State tax 12.00

County tax 6.00
Total $60.00

(c) Filing for title insurance agent's license:

Application for filing, each filing, filing fee $10.00

(d) Additional appointment continuation fee as prescribed by s. 626.843 . . . . . $5.00

(e) Title insurer and title insurance agency administrative surcharge:

1. On or before January 30 of each calendar year, each title insurer shall pay to the office ~~department~~ for each licensed title insurance agency appointed by the title insurer and for each retail office of the insurer on January 1 of that calendar year an administrative surcharge of $200.00.

2. On or before January 30 of each calendar year, each licensed title insurance agency shall remit to the department an administrative surcharge of $200.00.

The administrative surcharge may be used solely to defray the costs to the department and office in their ~~its~~ examination or audit of title insurance agencies and retail offices of title insurers and to gather title insurance data for statistical purposes to be furnished to and used by the office in its regulation of title insurance.

Section 840. Subsection (1) of section 624.5015, Florida Statutes, is amended to read:

624.5015 Advance collection of fees and taxes; title insurers not to pay without reimbursement.—

(1) The department or the office ~~of Insurance~~ shall collect in advance from the applicant or licensee fees and taxes as provided in s. 624.501.

Section 841. Section 624.502, Florida Statutes, is amended to read:

624.502 Service of process fee.—In all instances as provided in any section of the insurance code and s. 48.151(3) in which service of process is authorized to be made upon the Chief Financial Officer or the director of the office ~~Insurance Commissioner and Treasurer~~, the plaintiff shall pay to the department or office a fee of $15 for such service of process, which fee shall be deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 842. Subsections (1) and (3) of section 624.506, Florida Statutes, are amended to read:

624.506 County tax; deposit and remittance.—

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

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

Section 843. Paragraph (b) of subsection (5) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.—

(5) There shall be allowed a credit against the net tax imposed by this section equal to 15 percent of the amount paid by the insurer in salaries to employees located or based within this state and who are covered by the provisions of chapter 443. For purposes of this subsection:

(b) The term "employees" does not include independent contractors or any person whose duties require that the person hold a valid license under the Florida Insurance Code, except persons defined in s. 626.015(1), (15) ~~(16)~~, and (17) ~~(18)~~.

Section 844. Subsection (5) of section 624.5091, Florida Statutes, is amended to read:

624.5091 Retaliatory provision, insurers.—

(5) The excess amount of all fees, licenses, and taxes collected by the Department of Revenue under this section over the amount of similar fees,

licenses, and taxes provided for in this part, together with all fines, penalties, or other monetary obligations collected under this section and ss. 626.711 and 626.743 exclusive of such fees, licenses, and taxes, shall be deposited by the Department of Revenue to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund; provided that such excess amount shall not exceed $125,000 for 1992, and for any subsequent year shall not exceed $125,000 adjusted annually by the lesser of 20 percent or the growth in the total of such excess amount. The remainder of such excess amount shall be deposited into the General Revenue Fund.

Section 845. Subsection (1) of section 624.5092, Florida Statutes, is amended to read:

624.5092 Administration of taxes; payments.—

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

Section 846. Section 624.516, Florida Statutes, is amended to read:

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

(1) The regulatory assessment imposed under s. 624.515(1) and the surcharge imposed under s. 624.515(2) shall be deposited by the Department of Revenue, when received and audited, into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

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

(3) If, at the end of any fiscal year, a balance of funds remains in the Insurance ~~Commissioner's~~ Regulatory Trust Fund, such balance shall not revert to the general fund of the state, but shall be retained in the Insurance ~~Commissioner's~~ Regulatory Trust Fund to be used for the purposes for which the moneys are appropriated as set forth in subsection (2).

Section 847. Section 624.517, Florida Statutes, is amended to read:

624.517 State Fire Marshal regulatory assessment; reduction of assessment.—

(1) The office ~~Department of Insurance~~ shall ascertain on or before December 1 of each year whether the amounts estimated to be received from the regulatory assessment imposed under s. 624.515 for that calendar year, payable on or before the following March 1, as herein prescribed, shall result in an accumulation of funds in excess of the just requirements for which the assessment is imposed as set forth in s. 624.516; and if it determines that the imposition of the full amount of the assessment would result in such excess, it may reduce the percentage amount of the assessment for that calendar year to such percentage as may be necessary to meet the just requirements for which the assessment is imposed.

(2) When a determination is made so reducing the amount of the assessment, the department shall make and issue its order setting forth such determination and fixing the amount of assessment for that calendar year, payable on or before March 1 of the following year, and shall mail a copy of such order to each insurer who, according to the records of the office ~~department~~, is subject to the assessment.

Section 848. Section 624.519, Florida Statutes, is amended to read:

624.519 Nonpayment of premium tax or fire marshal assessment; penalty.—If any insurer fails to pay to the Department of Revenue on or before March 1 in each and every year any premium taxes required of it under s. 624.509 or s. 624.510, or any state fire marshal regulatory assessment required of it under s. 624.515 or s. 624.517, the office ~~Department of Insurance~~ may revoke its certificate of authority.

Section 849. Subsection (1) of section 624.521, Florida Statutes, is amended to read:

624.521 Deposit of certain tax receipts; refund of improper payments.—

(1) The Department of Financial Services ~~Insurance~~ shall promptly deposit in the State Treasury to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund all "state tax" portions of agents' and solicitors' licenses collected under s. 624.501 necessary to fund the Division of Insurance Fraud. The balance of the tax shall be credited to the General Fund. All moneys received by the Department of Financial Services or the office ~~Insurance~~ not in accordance with the provisions of this code or not in the exact amount as specified by the applicable provisions of this code shall be returned to the remitter. The records of the department or office shall show the date and reason for such return.

Section 850. Section 624.523, Florida Statutes, is amended to read:

624.523 Insurance ~~Commissioner's~~ Regulatory Trust Fund.—

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

(a) All fines, monetary penalties, and costs imposed upon persons by the department or the office as authorized by law for violation of the laws of this state.

(b) Any sums received for copies of the stenographic record of hearings, as authorized by law.

(c) All sums received under s. 624.404(5).

(d) All sums received under s. 624.5091, as provided in subsection (5) thereof.

(e) All payments received on account of items provided for under respective provisions of s. 624.501, as follows:

1. Subsection (1) (certificate of authority of insurer).

2. Subsection (2) (charter documents of insurer).

3. Subsection (3) (annual license tax of insurer).

4. Subsection (4) (annual statement of insurer).

5. Subsection (5) (application fee for insurance representatives).

6. The "appointment fee" portion of any appointment provided for under paragraphs (6)(a) and (b) (insurance representatives, property, marine, casualty and surety insurance, and agents).

7. Paragraph (6)(c) (nonresident agents).

8. Paragraph (6)(d) (service representatives).

9. The "appointment fee" portion of any appointment provided for under paragraph (7)(a) (life insurance agents, original appointment, and renewal or continuation of appointment).

10. Paragraph (7)(b) (nonresident agent license).

11. The "appointment fee" portion of any appointment provided for under paragraph (8)(a) (health insurance agents, agent's appointment, and renewal or continuation fee).

12. Paragraph (8)(b) (nonresident agent appointment).

13. The "appointment fee" portion of any appointment provided for under subsections (9) and (10) (limited licenses and fraternal benefit society agents).

14. Subsection (11) (vending machines).

15. Subsection (12) (surplus lines agent).

16. Subsection (13) (adjusters' appointment).

17. Subsection (14) (examination fee).

18. Subsection (15) (temporary license and appointment as agent or adjuster).

19. Subsection (16) (reissuance, reinstatement, etc.).

20. Subsection (17) (additional license continuation fees).

21. Subsection (18) (filing application for permit to form insurer).

22. Subsection (19) (license fee of rating organization).

23. Subsection (20) (miscellaneous services).

24. Subsection (21) (insurance agencies).

(f) All payments received on account of actuarial and other services in the valuation or computation of the reserves of life insurers pursuant to s. 625.121(2).

(g) All sums received under ss. 626.711 and 626.743.

(h) Sums received under s. 626.932, as provided in subsection (5) thereof.

(i) Sums received under s. 626.938, as provided in subsection (7) thereof.

(j) All sums received under s. 627.828.

(k) All sums received from motor vehicle service agreement companies under s. 634.221.

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

(m) All sums received under s. 651.015.

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

(o) All state tax portions of agents' licenses collected under s. 624.501.

(2) The moneys so received and deposited in this regulatory trust fund are hereby appropriated for use by the department and the office to defray the expenses of the department and the office in the discharge of their ~~its~~ administrative and regulatory powers and duties as prescribed by law.

Section 851. Paragraph (q) of section 624.6012, Florida Statutes, is amended to read:

624.6012 "Lines of insurance" defined.—Kinds of insurance shall be classified into "lines of insurance." The commission ~~department~~ shall adopt by rule the lines of insurance to be utilized. Such lines of insurance shall be consistent with the reporting requirements of the National Association of Insurance Commissioners.

Section 852. Paragraph (q) of subsection (1) of section 624.605, Florida Statutes, is amended to read:

624.605 "Casualty insurance" defined.—

(1) "Casualty insurance" includes:

(q) Miscellaneous.—When first approved by the office ~~department~~ as not being contrary to law or public policy nor covered by any other kind of insurance as defined in the code, insurance against liability for any other kind of loss or damage to person or property, properly a subject of insurance and not within any other kind of insurance as defined in this code.

Section 853. Subsection (3) of section 624.607, Florida Statutes, is amended to read:

624.607 "Marine insurance," "wet marine and transportation insurance," and "inland marine insurance" defined.—

(3) For the purposes of this code, "inland marine insurance" is as established by general custom of the insurance business and promulgated by rule of the commission ~~department~~.

Section 854. Subsection (6) of section 624.609, Florida Statutes, is amended to read:

624.609 Limit of risk.—

(6) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law and shall be determined from the last sworn statement of the insurer on file with the office ~~department~~, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

Section 855. Subsections (1), (3), (4), (5), (7), (11), (12), and (14) of section 624.610, Florida Statutes, are amended to read:

624.610 Reinsurance.—

(1) The purpose of this section is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public. It is the intent of the Legislature to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the Legislature requires that upon the insolvency of a non-United States insurer or reinsurer which provides security to fund its United States obligations in accordance with this section, such security shall be maintained in the United States and claims shall be filed with and valued by the state insurance regulator ~~Commissioner~~ with regulatory oversight, and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. ss. 1011-1012.

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

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

a. Files with the office ~~department~~ evidence of its submission to this state's jurisdiction;

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

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

d. Files annually with the office ~~department~~ a copy of its annual statement filed with the insurance department of its state of domicile any quarterly statements if required by its state of domicile or such quarterly statements if specifically requested by the office ~~department~~, and a copy of its most recent audited financial statement; and

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

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

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

a. Its financial stability;

b. The lawfulness and quality of its investments;

c. The competency, character, and integrity of its management;

d. The competency, character, and integrity of persons who own or have a controlling interest in the assuming insurer; and

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

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

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

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

2.a. Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

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

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

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

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

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

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million. The funds in the trust and trusteed surplus consist of assets of a quality substantially similar to that required in part II of chapter 625.

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

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

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

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

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

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

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

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

1.a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming

insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

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

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

(f) If the assuming insurer does not meet the requirements of paragraph (a) or paragraph (b), the credit permitted by paragraph (c) is not allowed unless the assuming insurer agrees in the trust agreements, in substance, to the following conditions:

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

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

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

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

(4) An asset allowed or a deduction from liability taken for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2) and (3) is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The deduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if

the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (5)(b). This security may be in the form of:

(a) Cash in United States dollars;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets pursuant to part II of chapter 625;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (5)(a), effective no later than December 31 of the year for which the filing is made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(d) Any other form of security acceptable to the office ~~department~~.

(5)(a) For purposes of paragraph (4)(c) regarding letters of credit, a "qualified United States financial institution" means an institution that:

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

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

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

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

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

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

(7) After notice and an opportunity for a hearing, the office ~~department~~ may disallow any credit that it finds would be contrary to the proper interests of the policyholders or stockholders of a ceding domestic insurer.

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

1. The contract period;

2. The nature of the reinsured's business;

3. An indication as to whether the treaty is proportional, nonproportional, coinsurance, modified coinsurance, or indemnity, as applicable;

4. The ceding company's loss retention per risk;

5. The reinsured limits;

6. Any special contract restrictions;

7. A schedule of reinsurers assuming the risks of loss;

8. An indication as to whether payments to the assuming insurer are based on written premiums or earned premiums;

9. Identification of any intermediary or broker used in obtaining the reinsurance and the commission paid to such intermediary or broker if known; and

10. Ceding commissions and allowances.

(b) The summary statement must be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the office ~~Insurance Commissioner~~ may require the filing of any supporting information relating to the ceding of such risks as it ~~she or he~~ deems necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the office ~~department~~ that the relevant reinsurance treaty or treaties comply with the accounting requirements contained in any rule adopted by the commission ~~department~~ under subsection (14). If such certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate must state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty.

(c) This subsection applies to cessions of directly written risk or loss. This subsection does not apply to contracts of facultative reinsurance or to any ceding insurer with surplus as to policyholders that exceeds $100 million as of the immediately preceding December 31. Additionally, any ceding insurer otherwise subject to this section with less than $500,000 in direct premiums

written in this state during the preceding calendar year or with less than 1,000 policyholders at the end of the preceding calendar year is exempt from the requirements of this subsection. However, any ceding insurer otherwise subject to this section with more than $250,000 in direct premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection.

(d) An authorized insurer not otherwise exempt from the provisions of this subsection shall provide the information required by this subsection with underlying and supporting documentation upon written request of the office ~~department~~.

(e) The office ~~department~~ may, upon a showing of good cause, waive the requirements of this subsection.

(12) If the office ~~department~~ finds that a reinsurance agreement creates a substantial risk of insolvency to either insurer entering into the reinsurance agreement, the office ~~department~~ may by order require a cancellation of the reinsurance agreement.

(14) The commission ~~department~~ may adopt rules implementing the provisions of this section. Rules are authorized to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public. These rules shall be in substantial compliance with:

(a) The National Association of Insurance Commissioners model regulations relating to credit for reinsurance;

(b) ~~Version 2001 of~~ The National Association of Insurance Commissioners Accounting Practices and Procedures Manual as of March 2002 and subsequent amendments thereto if the methodology remains substantially consistent; and

(c) The National Association of Insurance Commissioners model regulation for Credit for Reinsurance and Life and Health Reinsurance Agreements.

The commission ~~department~~ may further adopt rules to provide for transition from existing requirements for the approval of reinsurers to the accreditation of reinsurers pursuant to this section.

Section 856. Subsections (2) and (3) of section 624.80, Florida Statutes, are amended to read:

624.80 Definitions.—As used in this part:

(2) "Unsound condition" means that the office ~~department~~ has determined that one or more of the following conditions exist with respect to an insurer:

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

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

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

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

(3) "Exceeded its powers" means the following conditions:

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

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

(c) The insurer has failed to promptly comply with the applicable financial reporting statutes and office ~~departmental~~ requests relating thereto;

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

(e) The insurer has unlawfully or in violation of an office ~~a department~~ order:

1. Totally reinsured its entire outstanding business; or

2. Merged or consolidated substantially its entire property or business with another insurer.

Section 857. Section 624.81, Florida Statutes, is amended to read:

624.81 Notice to comply with written requirements of office ~~department~~; noncompliance.—

(1) If the office ~~department~~ determines that the conditions set forth in subsection (2) exist, the office ~~department~~ shall issue an order placing the insurer in administrative supervision, setting forth the reasons giving rise to the determination, and specifying that the office ~~department~~ is applying and effectuating the provisions of this part. An order issued by the office ~~department~~ pursuant to this subsection entitles the insurer to request a proceeding under ss. 120.569 and 120.57, and such a request shall stay the action pending such proceeding.

(2) An insurer shall be subject to administrative supervision by the office ~~department~~ if upon examination or at any other time the office ~~department~~ determines that:

(a) The insurer is in unsound condition;

(b) The insurer's methods or practices render the continuance of its business hazardous to the public or to its insureds; or

(c) The insurer has exceeded its powers granted under its certificate of authority and applicable law.

(3) Within 15 days of receipt of notice of the office's ~~department's~~ determination to proceed under this part, an insurer shall submit to the office ~~department~~ a plan to correct the conditions set forth in the notice. For good cause shown, the office ~~department~~ may extend the 15-day time period for submission of the plan. If the office ~~department~~ and the insurer agree on a corrective plan, a written agreement shall be entered into to carry out the plan.

(4) If an insurer fails to timely submit a plan, the office ~~department~~ may specify the requirements of a plan to address the conditions giving rise to imposition of administrative supervision under this part. In addition, failure of the insurer to timely submit a plan is a violation of the provisions of this code punishable in accordance with s. 624.418.

(5) The plan shall address, but shall not be limited to, each of the activities of the insurer's business which are set forth in s. 624.83.

(6) If the office ~~department~~ and the insurer are unable to agree on the provisions of the plan, the office ~~department~~ may require the insurer to take such corrective action as may be reasonably necessary to remove the causes and conditions giving rise to the need for administrative supervision.

(7) The insurer shall have 60 days, or a longer period of time as designated by the office ~~department~~ but not to exceed 120 days, after the date of the written agreement or the receipt of the office's ~~department's~~ plan within which to comply with the requirements of the office ~~department~~. At the conclusion of the initial period of supervision, the office ~~department~~ may extend the supervision in increments of 60 days or longer, not to exceed 120 days, if conditions justifying supervision exist. Each extension of supervision shall provide the insurer with a point of entry pursuant to chapter 120.

(8) The initiation or pendency of administrative proceedings arising from actions taken under this section shall not preclude the office ~~department~~ from initiating judicial proceedings to place an insurer in conservation, rehabilitation, or liquidation or initiating other delinquency proceedings however designated under the laws of this state.

(9) If it is determined that the conditions giving rise to administrative supervision have been remedied so that the continuance of its business is no longer hazardous to the public or to its insureds, the office ~~department~~ shall release the insurer from supervision.

(10) The commission ~~department~~ may adopt rules to define standards of hazardous financial condition and corrective action substantially similar to that indicated in the National Association of Insurance Commissioners' 1997 "Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition," which are necessary to implement the provisions of this part.

Section 858. Subsections (1), (2), (3), and (4) of section 624.82, Florida Statutes, are amended to read:

624.82 Confidentiality of certain proceedings and records.—

(1) Orders, notices, correspondence, reports, records, and other information in the possession of the office ~~department~~ relating to the supervision of any insurer are confidential and exempt from the provisions of s. 119.07(1), except as otherwise provided in this section. Proceedings and hearings relating to the office's ~~department's~~ supervision of any insurer are exempt from the provisions of s. 286.011, except as otherwise provided in this section.

(2) The personnel of the department and the office shall have access to proceedings, hearings, notices, correspondence, reports, records, or other information as permitted by the office ~~department~~.

(3) The office ~~department~~ may open the proceedings or hearings or disclose the contents of the notices, correspondence, reports, records, or other information to a department, agency, or instrumentality of this or another state or the United States if it determines that the disclosure is necessary or proper for the enforcement of the laws of the United States or of this or another state of the United States.

(4) The office ~~department~~ may open the proceedings or hearings or make public the notices, correspondence, reports, records, or other information if the office ~~department~~ finds that it is in the best interest of the public, the insurer in supervision, or its insureds.

Section 859. Section 624.83, Florida Statutes, is amended to read:

624.83 Prohibited acts during period of supervision.—The office ~~department~~ may provide that the insurer may not conduct the following activities during the period of supervision, without prior approval by the office ~~department~~:

(1) Dispose of, convey, or encumber any of its assets or its business in force;

(2) Withdraw any of its bank accounts;

(3) Lend any of its funds;

(4) Invest any of its funds;

(5) Transfer any of its property;

(6) Incur any debt, obligation, or liability;

(7) Merge or consolidate with another company;

(8) Enter into any new reinsurance contract or treaty;

(9) Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract of insurance, except for nonpayment of premiums due;

(10) Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy or certificate; or

(11) Make any material change in management.

Section 860. Section 624.84, Florida Statutes, is amended to read:

624.84 Review.—During the period of supervision, the insurer may contest an action taken or proposed to be taken by the supervisor, specifying the manner wherein the action complained of would not result in improving the condition of the insurer. Such request shall not stay the action specified pending reconsideration of the action by the office ~~department~~. Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under ss. 120.569 and 120.57.

Section 861. Section 624.85, Florida Statutes, is amended to read:

624.85 Administrative election of proceedings.—If the office ~~department~~ determines to act under authority of this part, the sequence of its acts and proceedings shall be as set forth herein. However, it is a purpose and substance of this part to allow the office ~~department~~ administrative discretion in the event of insurer delinquencies and, in furtherance of that purpose, the office ~~department~~ is hereby authorized, in respect to insurer delinquencies or suspected delinquencies, to proceed and administer either under the provisions of this part or under any other applicable law, or under the provisions of this part in conjunction with other applicable law, and it is so provided. Nothing contained in this part or in any other provision of law shall preclude the office ~~department~~ from initiating judicial proceedings to place an insurer in conservation, rehabilitation, or liquidation proceedings or other delinquency proceedings however designated under the laws of this state, regardless of whether the office ~~department~~ has previously initiated administrative supervision proceedings under this part against the insurer. The entry of an order of seizure, rehabilitation, or liquidation pursuant to chapter 631 shall terminate all proceedings pending pursuant to this part.

Section 862. Section 624.86, Florida Statutes, is amended to read:

624.86 Other laws; conflicts; meetings between the office ~~department~~ and the supervisor.—During the period of administrative supervision, the office ~~department~~ may meet with a supervisor appointed under this part and with the attorney or other representative of the supervisor and such meetings are exempt from the provisions of s. 286.011.

Section 863. Section 624.87, Florida Statutes, is amended to read:

624.87 Administrative supervision; expenses.—

(1) During the period of supervision the office ~~department~~ by contract or otherwise may appoint a deputy supervisor to supervise the insurer.

(2) Each insurer which is subject to administrative supervision by the office ~~department~~ shall pay to the office ~~department~~ the expenses of its administrative supervision at the rates adopted by the office ~~department~~. Expenses shall include actual travel expenses, a reasonable living expense allowance, compensation of the deputy supervisor or other person employed or appointed by the office ~~department~~ for purposes of the supervision, and

necessary attendant administrative costs of the office ~~department~~ directly related to the supervision. The travel expense and living expense allowance shall be limited to those expenses necessarily incurred on account of the administrative supervision and shall be paid by the insurer together with compensation upon presentation by the office ~~department~~ to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the deputy supervisor or other person employed or appointed by the office ~~department~~ and approved by the office ~~department~~.

(3) All moneys collected from insurers for the expenses of administrative supervision shall be deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund, and the office ~~department~~ is authorized to make deposits from time to time into this fund from moneys appropriated for the operation of the office ~~department~~.

(4) Notwithstanding the provisions of s. 112.061, the office ~~department~~ is authorized to pay to the deputy supervisor or person employed or appointed by the office ~~department~~ for purposes of the supervision out of such trust fund the actual travel expenses, reasonable living expense allowance, and compensation in accordance with the statement filed with the office ~~department~~ by the deputy supervisor or other person, as provided in subsection (2), upon approval by the office ~~department~~.

(5) The office ~~department~~ may in whole or in part defer payment of expenses due from the insurer pursuant to this section upon a showing that payment would adversely impact on the financial condition of the insurer and jeopardize its rehabilitation. The payment shall be made by the insurer when the condition is removed and the payment would no longer jeopardize the insurer's financial condition.

Section 864. Section 625.01115, Florida Statutes, is amended to read:

625.01115 Definitions.—As used in this chapter, the term "statutory accounting principles" means accounting principles as defined in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual as of March 2002 and subsequent amendments thereto if the methodology remains substantially consistent ~~effective January 1, 2001~~.

Section 865. Paragraph (d) of subsection (2), paragraphs (a) and (c) of subsection (5), and subsections (10), (13), and (16) of section 625.012, Florida Statutes, are amended to read:

625.012 "Assets" defined.—In any determination of the financial condition of an insurer, there shall be allowed as "assets" only such assets as are owned by the insurer and which consist of:

(2) Investments, securities, properties, and loans acquired or held in accordance with this code, and in connection therewith the following items:

(d) Interest due or accrued on deposits in solvent banks, savings and loan associations, and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the office ~~department~~ a collectible asset.

(5)(a) Premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States Government or by any of its instrumentalities. All premiums, excluding commissions payable thereon, due from a controlling or controlled person shall not be allowed as an asset to the extent that:

1. The premiums collected by the controlling or controlled person and not remitted to the insurer are not held in a trust account with a bank or other depository approved by the office ~~department~~. Such funds shall be held as trust funds and may not be commingled with any other funds of the controlling or controlled person. Disbursements from the trust account may be made only to the insurer, the insured, or, for the purpose of returning premiums, an entity who is entitled to returned premiums on behalf of the insured. A written copy of the trust agreement must be filed with and approved by the office ~~department~~ prior to its becoming effective. However, the investment income derived from the trust may be allocated as the parties deem proper. A controlling or controlled person shall deposit premiums collected into the trust account within 15 working days after collection;

2. The controlling or controlled person has not provided to the insurer and the insurer has not maintained in its possession an unexpired, clean irrevocable letter of credit, payable to the insurer, issued for a term of not less than 1 year and in conformity with the requirements set forth in this subparagraph, the amount of which equals or exceeds the liability of the controlling or controlled person to the insurer, at all times during the period which the letter of credit is in effect, for premiums collected by the controlling or controlled person. The requirements are that such letter of credit be issued under arrangements satisfactory to the office ~~department~~ and that the letter be issued by a banking institution which is a member of the Federal Reserve System and which has a financial standing satisfactory to the office ~~department~~;

3. The controlling or controlled person has not provided to the insurer and the insurer maintained in its possession evidence that the controlling or controlled person has purchased and has currently in effect a financial guaranty bond, payable to the insurer, issued for a term of not less than 1 year and which is in conformity with the requirements set forth in this subparagraph, the amount of which equals or exceeds the liability of the controlling or controlled person to the insurer, at all times during which the financial guaranty bond is in effect, for the premiums collected by the controlling or controlled person. The requirements are that such a financial guaranty bond shall be issued under an arrangement satisfactory to the office ~~department~~ and that the financial guaranty bond be issued by an insurer authorized to transact such business in Florida and which has a financial standing satisfactory to the office ~~department~~ and which is neither controlled nor controlling in relation to either the insurer or the person for whom the bond is purchased; or

4. A financial evaluation indicates that the controlling or controlled person is unlikely to have the ability to pay such premiums as they become due. The financial evaluation shall be based on a review of the books and records of the controlling or controlled person.

(c) The office ~~department~~ shall disapprove any trust agreement filed pursuant to paragraph (a) which does not assure the safety of the premiums collected.

(10) Deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds, or from any suspended banking institution, to the extent deemed by the office ~~department~~ available for the payment of losses and claims and at values to be determined by it.

(13) Loans or advances by an insurer to its parent or principal owner if approved by the office ~~department~~.

(16) Other assets, not inconsistent with the provisions of this section, deemed by the office ~~department~~ to be available for the payment of losses and claims, at values to be determined by it.

Section 866. Paragraph (d) of subsection (2) of section 625.041, Florida Statutes, is amended to read:

625.041 Liabilities, in general.—In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

(2) With reference to life and health insurance and annuity contracts:

(d) Any additional reserves that may be required by the office ~~department~~ consistent with practice formulated or approved by the National Association of Insurance Commissioners or its successor organization, on account of such insurance, including contract and premium deficiency reserves.

Section 867. Subsection (2) of section 625.051, Florida Statutes, is amended to read:

625.051 Unearned premium reserve.—

(2) The office ~~department~~ may require that such reserves be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance in solvent insurers as computed on each respective risk from the date of issue of the policy. If the office ~~department~~ does not so require, the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve, shall be computed according to the following table:

Term for which policy was written	Reserve for unearned premium
1 year or less	1/2
2 years	1st year—3/4 2nd year—1/4
3 years	1st year—5/6 2nd year—1/2 3rd year—1/6

4 years . . . . . 1st year—7/8
2nd year—5/8
3rd year—3/8
4th year—1/8

5 years . . . . . 1st year—9/10
2nd year—7/10
3rd year—1/2
4th year—3/10
5th year—1/10

Over 5 years . . . . . pro rata

Section 868. Section 625.061, Florida Statutes, is amended to read:

625.061 Unearned premium reserve for marine and transportation insurance.—As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned; and the office ~~department~~ may require the insurer to carry a reserve equal to 100 percent of premiums on trip risks written during the month ended as of the date of statement.

Section 869. Section 625.071, Florida Statutes, is amended to read:

625.071 Special reserve for bail and judicial bonds.—In lieu of the unearned premium reserve required on surety bonds under s. 625.051, the office ~~department~~ may require any surety insurer or limited surety insurer to set up and maintain a reserve on all bail bonds or other single-premium bonds without definite expiration date, furnished in judicial proceedings, equal to the lesser of 35 percent of the bail premiums in force or $7 per $1,000 of bail liability. Such reserve shall be reported as a liability in financial statements required to be filed with the office ~~department~~. Each insurer shall file a supplementary schedule showing bail premiums in force and bail liability and the associated special reserve for bail and judicial bonds with financial statements required by s. 624.424. Bail premiums in force do not include amounts retained by licensed bail bond agents or licensed managing general agents, but may not be less than 6.5 percent of the total consideration received for all bail bonds in force.

Section 870. Section 625.081, Florida Statutes, is amended to read:

625.081 Reserve for health insurance.—For all health insurance policies, the insurer shall maintain an active life reserve which places a sound value on the insurer's liabilities under such policies; is not less than the reserve according to appropriate standards set forth in rules issued by the commission ~~department~~; and, in no event, is less in the aggregate than the pro rata gross unearned premiums for such policies.

Section 871. Paragraph (d) of subsection (4) of section 625.091, Florida Statutes, is amended to read:

625.091 Losses and loss adjustment expense reserves; liability insurance and workers' compensation insurance.—The reserve liabilities recorded in the insurer's annual statement and financial statements for unpaid losses

and loss adjustment expenses shall be the estimated value of its claims when ultimately settled and shall be computed as follows:

(4)

(d)1. Beginning in calendar year 1998, each insurer shall separately identify anticipated recoveries from the Special Disability Trust Fund on the annual statement required to be filed pursuant to s. 624.424.

2. For all financial statements filed with the office ~~department beginning in calendar year 1998~~, each insurer shall disclose in the notes to the financial statements of any financial statement required to be filed pursuant to s. 624.424 any credit in loss reserves taken for anticipated recoveries from the Special Disability Trust Fund. That disclosure shall include:

a. The amount of credit taken by the insurer in the determination of its loss reserves for the prior calendar year and the current reporting period on a year-to-date basis.

b. The amount of payments received by the insurer from the Special Disability Trust Fund during the prior calendar year and the year-to-date recoveries for the current year.

c. The amount the insurer was assessed by the Special Disability Trust Fund during the prior calendar year and during the current calendar year.

Section 872. Section 625.101, Florida Statutes, is amended to read:

625.101 Increase of inadequate loss reserves.—If loss experience shows that an insurer's loss reserves, however computed or estimated, are inadequate, the office ~~department~~ shall require the insurer to maintain loss reserves in such additional amount as is needed to make them adequate. This section does not apply as to life insurance.

Section 873. Subsections (2), (3), and (4), paragraphs (c), (d), (g), (h), (i), and (j) of subsection (5), paragraph (e) of subsection (6), subsection (10), paragraph (b) of subsection (12), and subsection (14) of section 625.121, Florida Statutes, are amended to read:

625.121 Standard Valuation Law; life insurance.—

(2) ANNUAL VALUATION.—The office ~~department~~ shall annually value, or cause to be valued, the reserve liabilities, hereinafter called "reserves," for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net-level premium method or others, used in the calculation of such reserves. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States. In calculating such reserves, the office ~~department~~ may use group methods and approximate averages for fractions of a year or otherwise. It may accept in its discretion the insurer's calculation of such reserves. In lieu of the valuation of the reserves herein required of any foreign

or alien insurer, it may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the office ~~department~~ when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction. When any such valuation is made by the office ~~department~~, it may use the actuary of the office ~~department~~ or employ an actuary for the purpose; and the reasonable compensation of the actuary, at a rate approved by the office ~~department~~, and reimbursement of travel expenses pursuant to s. 624.320 upon demand by the office ~~department~~, supported by an itemized statement of such compensation and expenses, shall be paid by the insurer. When a domestic insurer furnishes the office ~~department~~ with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for the purpose by the office ~~department~~, the valuation shall be verified by the actuary of the office ~~department~~ without cost to the insurer.

(3) ACTUARIAL OPINION OF RESERVES.—

(a)1. Each life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission ~~department~~ by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commission ~~department~~ by rule shall define the specifics of this opinion and add any other items determined to be necessary to its scope.

2. The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1992.

3. The opinion shall apply to all business in force, including individual and group health insurance plans, in the form and substance acceptable to the office ~~department~~ as specified by rule of the commission.

4. The commission ~~department~~ may adopt rules providing the standards of the actuarial opinion consistent with standards adopted by the Actuarial Standards Board on December 31, 2002 ~~October 1, 1991~~, and subsequent revisions thereto, provided that the standards remain substantially consistent.

5. In the case of an opinion required to be submitted by a foreign or alien company, the office ~~department~~ may accept the opinion filed by that company with the insurance supervisory official of another state if the office ~~department~~ determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

6. For the purposes of this subsection, "qualified actuary" means a member in good standing of the American Academy of Actuaries who also meets the requirements specified by rule of the commission ~~department~~.

7. Disciplinary action by the office ~~department~~ against the company or the qualified actuary shall be in accordance with the insurance code and related rules adopted by the commission ~~department~~.

8. A memorandum in the form and substance specified by rule shall be prepared to support each actuarial opinion.

9. If the insurance company fails to provide a supporting memorandum at the request of the office ~~department~~ within a period specified by rule of the commission, or if the office ~~department~~ determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by rule of the commission, the office ~~department~~ may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the office ~~department~~.

10. Except as otherwise provided in this paragraph, any memorandum or other material in support of the opinion is confidential and exempt from the provisions of s. 119.07(1); however, the memorandum or other material may be released by the office ~~department~~ with the written consent of the company, or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the office ~~department~~ for preserving the confidentiality of the memorandum or other material. If any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, no portion of the memorandum is confidential.

(b) In addition to the opinion required by subparagraph (a)1., the office ~~department~~ may, pursuant to commission ~~by~~ rule, require an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission ~~department~~ by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under, and expenses associated with, the policies and contracts.

(c) The commission ~~department~~ may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this subsection.

(4) MINIMUM STANDARD FOR VALUATION OF POLICIES AND CONTRACTS ISSUED BEFORE OPERATIVE DATE OF STANDARD NONFORFEITURE LAW.—The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of s. 627.476 (Standard Nonforfeiture Law) shall be any basis satisfactory to the office ~~department~~. Any basis satisfactory to the former Department of Insurance on the effective date of this code shall be deemed to meet such minimum standards.

(5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD NONFORFEITURE LAW.—Except as otherwise provided in paragraph (h) and subsections (6), (11), and (14), the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of s. 627.476 (Standard Nonforfeiture Law for Life Insurance) shall be the commissioners' reserve valuation method defined in subsections (7), (11), and (14); 5 percent interest for group annuity and pure endowment contracts and 3.5 percent interest for all other such policies and contracts, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, 4 percent interest for such policies issued prior to October 1, 1979, and 4.5 percent interest for such policies issued on or after October 1, 1979; and the following tables:

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the office ~~department~~.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951; any modification of such table approved by the office ~~department~~; or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(g) For group life insurance, life insurance issued on the substandard basis, and other special benefits, such tables as may be approved by the office ~~department~~ as being sufficient with relation to the benefits provided by such policies.

(h) Except as provided in subsection (6), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the commissioners' reserve valuation method defined in subsection (7) and the following tables and interest rates:

1. For individual annuity and pure endowment contracts issued prior to October 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office ~~department~~, and 6 percent interest for single-premium immediate annuity contracts and 4 percent interest for all other individual annuity and pure endowment contracts.

2. For individual single-premium immediate annuity contracts issued on or after October 1, 1979, and prior to October 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office ~~department~~, and 7.5 percent interest. For such contracts issued on or after October 1, 1986, the 1983 Individual Annual Mortality Table, or any

modification of such table approved by the office ~~department~~, and the applicable calendar year statutory valuation interest rate as described in subsection (6).

3. For individual annuity and pure endowment contracts issued on or after October 1, 1979, and prior to October 1, 1986, other than single-premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office ~~department~~, and 5.5 percent interest for single-premium deferred annuity and pure endowment contracts and 4.5 percent interest for all other such individual annuity and pure endowment contracts. For such contracts issued on or after October 1, 1986, the 1983 Individual Annual Mortality Table, or any modification of such table approved by the office ~~department~~, and the applicable calendar year statutory valuation interest rate as described in subsection (6).

4. For all annuities and pure endowments purchased prior to October 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the office ~~department~~, and 6 percent interest.

5. For all annuities and pure endowments purchased on or after October 1, 1979, and prior to October 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the office ~~department~~, and 7.5 percent interest. For such contracts purchased on or after October 1, 1986, the 1983 Group Annuity Mortality Table, or any modification of such table approved by the office ~~department~~, and the applicable calendar year statutory valuation interest rate as described in subsection (6).

After July 1, 1973, any insurer may have filed ~~file~~ with the former Department of Insurance a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such insurer. However, an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this paragraph for such insurer shall be January 1, 1979.

(i) In lieu of the mortality tables specified in this subsection, and subject to rules previously adopted by the former Department of Insurance, the insurance company may, at its option:

1. Substitute the applicable 1958 CSO or CET Smoker and Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET mortality table standard, for policies issued on or after the operative date of s. 627.476(9) and before January 1, 1989.

2. Substitute the applicable 1980 CSO or CET Smoker and Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET mortality table standard;

3. Use the Annuity 2000 Mortality Table for determining the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after January 1, 1998, and before July 1, 1998 ~~the operative date of this section until the department, on a date certain that is on or after January 1, 1998, adopts by rule that table for determining the minimum standard for valuation purposes~~.

4. Use the 1994 GAR Table for determining the minimum standard of valuation for annuities and pure endowments purchased on or after January 1, 1998, and before July 1, 1998, ~~the operative date of this section~~ under group annuity and pure endowment contracts ~~until the department, on a date certain that is on or after January 1, 1998, adopts by rule that table for determining the minimum standard for valuation purposes~~.

(j) The commission ~~department~~ may adopt by rule the model regulation for valuation of life insurance policies as approved by the National Association of Insurance Commissioners in March 1999, including tables of select mortality factors, and may make the regulation effective for policies issued on or after January 1, 2000.

(6) MINIMUM STANDARD OF VALUATION.—

(e) The interest rate index shall be the Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., as long as this index is calculated by using substantially the same methodology as used by it on January 1, 1981. If Moody's corporate bond yield average ceases to be calculated in this manner, the interest rate index shall be the index approved by rule promulgated by the commission ~~department~~. The methodology used in determining the index approved by rule shall be substantially the same as the methodology employed on January 1, 1981, for determining Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Services, Inc.

(10) LOWER VALUATIONS.—An insurer which at any time had adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the office ~~department~~, adopt any lower standard of valuation, but not lower than the minimum herein provided; however, for the purposes of this subsection, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection (3) shall not be deemed to be the adoption of a higher standard of valuation.

(12) ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN CASES.—In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsection (7), the reserves which are held under any such plan shall:

(b) Be computed by a method which is consistent with the principles of this section, as determined by rules promulgated by the commission ~~department~~.

(14) MINIMUM STANDARDS FOR HEALTH PLANS.—The commission ~~department~~ shall adopt a rule containing the minimum standards applicable to the valuation of health plans in accordance with sound actuarial principles.

Section 874. Subsection (2) of section 625.131, Florida Statutes, is amended to read:

625.131 Credit life and disability policies, special reserve bases.—

(2) As to single-premium credit life insurance policies, the insurer shall establish and maintain reserves which are not less than the value, at the valuation date, of the risk for the unexpired portion of the period for which the premium has been paid as computed on the basis of the commissioners' 1980 Standard Ordinary Mortality Table and 3.5 percent interest. At the discretion of the office ~~department~~, the insurer may make a reasonable assumption as to the ages at which net premiums are to be determined. In lieu of the foregoing basis, reserves based upon unearned gross premiums may be used at the option of the insurer.

Section 875. Section 625.141, Florida Statutes, is amended to read:

625.141 Valuation of bonds.—

(1) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commission ~~department~~.

(c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of such securities.

(2) The office ~~department~~ shall have full discretion in determining the method of calculating values according to the rules set forth in this section, but no such method or valuation shall be inconsistent with the method formulated or approved by the National Association of Insurance Commissioners or its successor organization and set forth in the latest edition of its publication "Valuation of Securities"; provided that such valuation methodology is substantially similar to the methodology used by the National Association of Insurance Commissioners in its July 1, 2002, ~~2001~~ edition of such publication. Amortization of bond premium or discount must be calculated

using the scientific (constant yield) interest method taking into consideration specified interest and principal provisions over the life of the bond. Bonds containing call provisions shall be amortized to the call or maturity value or date that produces the lowest asset value.

Section 876. Subsections (1), (2), and (4) of section 625.151, Florida Statutes, are amended to read:

625.151 Valuation of other securities.—

(1) Securities, other than those referred to in s. 625.141, held by an insurer shall be valued, in the discretion of the office ~~department~~, at their market value, or at their appraised value, or at prices determined by it as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the office ~~department~~ and in accordance with such method of valuation as it may approve.

(4) No valuations under this section shall be inconsistent with any applicable valuation or method contained in the latest edition of the publication "Valuation of Securities" published by the National Association of Insurance Commissioners or its successor organization; provided that such valuation methodology is substantially similar to the methodology used by the National Association of Insurance Commissioners in its July 1, 2002, ~~1988~~ edition of such publication.

Section 877. Subsections (1), (2), (3), and (5) of section 625.161, Florida Statutes, are amended to read:

625.161 Valuation of property.—

(1) Real property owned by an insurer which is reported in financial statements filed with the office ~~department~~ shall be valued at the lower of depreciated cost or fair market value.

(2) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the office ~~department~~ to be reliable, shall not be valued at an amount greater than the unpaid principal and accrued interest of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(3) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If the valuation of real property is based on an appraisal more than 5 years old, the office ~~department~~ may, at its discretion, call for and require a new appraisal in order to determine fair market value.

(5) In carrying out its responsibilities under this section, in the event that the office ~~department~~ and the insurer do not agree on the value of real

or personal property of such insurer, the office ~~department~~ may retain the services of a qualified real or personal property appraiser. In the event it is subsequently determined that the insurer has overvalued assets, the office ~~department~~ shall be reimbursed for the costs of the services of any such appraiser incurred with respect to its responsibilities under this section regarding an insurer by said insurer and any reimbursement shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 878. Section 625.172, Florida Statutes, is amended to read:

625.172 Replacing certain assets; reporting certain liabilities.—

(1) The office ~~department~~, upon determining that an insurer's asset has not been evaluated according to applicable law or that it does not qualify as an asset, shall require the insurer to properly reevaluate the asset or replace the asset with an asset suitable to the office ~~department~~.

(2) The office ~~department~~, upon determining that an insurer has failed to report certain liabilities that should have been reported, shall require that the insurer report such liabilities to the office ~~department~~ within 90 days.

(3) If it is determined that the proper valuation of an asset or the establishment of certain liabilities would place the insurer in financial impairment or insolvency, the office ~~department~~ may, at its discretion, immediately suspend the certificate of authority of an insurer or take other action it deems appropriate to protect the interests of policyholders or the general public.

Section 879. Section 625.181, Florida Statutes, is amended to read:

625.181 Assets received as capital or surplus contributions.—Assets received by an insurer as a capital or surplus contribution shall, for purposes of this code, be deemed to be purchased by the insurer at a cost equal to, in the discretion of the office ~~department~~, their market value, their appraised value, or prices determined by the office ~~department~~ as representing their fair market value. Assets so acquired shall be valued in accordance with the appropriate sections of this code as if the insurer had purchased such assets directly.

Section 880. Subsection (2) of section 625.303, Florida Statutes, is amended to read:

625.303 General qualifications.—

(2) No security or investment shall be eligible for purchase at a price above its market value unless it is approved by the office ~~department~~ and is made in accordance with valuation procedures of the National Association of Insurance Commissioners which have been adopted by the commission ~~department~~.

Section 881. Subsections (3) and (9) of section 625.305, Florida Statutes, are amended, subsection (7) of that section is repealed, and present subsection (9) of that section is amended to read:

625.305 Diversification.—

(3) The cost of investments made by insurers in a mortgage loan authorized by s. 625.327 shall not exceed the lesser of 5 percent of the insurer's admitted assets or 10 percent of the insurer's capital and surplus. An insurer shall not invest in additional mortgage loans without the consent of the office ~~department~~ if the admitted value of all mortgage loans held by the insurer exceeds:

(a) With respect to life and health insurers, 40 percent of the admitted assets of the insurer.

(b) With respect to property and casualty insurers, 10 percent of the admitted assets of the insurer.

~~An insurer that, as of October 1, 1991, has mortgage investments that exceed the aggregate limitation specified in this subsection shall submit to the department no later than January 31, 1992, a plan to bring the amount of mortgage investments into compliance with such limitations by January 1, 2001.~~

(8)~~(9)~~ The office ~~department~~ may limit the extent of an insurer's deposits with any financial institution which does not meet its regulatory capital requirement if the office ~~department~~ determines that the financial solvency of the insurer is threatened by a deposit in excess of such limit.

Section 882. Section 625.317, Florida Statutes, is amended to read:

625.317 Corporate bonds and debentures.—An insurer may invest in bonds, notes, or other interest-bearing or interest-accruing obligations of any solvent corporation organized under the laws of the United States or Canada or under the laws of any state, the District of Columbia, any territory or possession of the United States, or any Province of Canada or in bonds or notes issued by the Citizens Property Insurance Corporation as authorized by s. 627.351(6) ~~Florida Windstorm Underwriting Association or a private nonprofit corporation, a private nonprofit unincorporated association, or a nonprofit mutual company organized by that association, all as authorized in s. 627.351(2)(c), or any subsidiary or affiliate thereof authorized by the Department of Insurance to issue such bonds or notes~~.

Section 883. Section 625.322, Florida Statutes, is amended to read:

625.322 Collateral loans.—An insurer may invest in loans with a maturity not in excess of 12 years from the date thereof which are secured by the pledge of assets permitted by part I of this chapter. Loans made pursuant to this section shall not be admitted as an asset when it is considered probable that any portion of the amounts due under the contractual terms of the loan will not be collected. Collateral loans reported in financial statements filed with the office ~~department~~ shall not exceed the value of the collateral held by the company.

Section 884. Section 625.324, Florida Statutes, is amended to read:

625.324 Corporate stocks.—An insurer may invest in stocks, common or preferred, of any corporation created or existing under the laws of the United States or of any state or Canada or any province thereof. An insurer may invest in stocks, common or preferred, of any corporation created or existing under the laws of any foreign country other than Canada if such stocks are listed and traded on a national securities exchange in the United States or, in the alternative, if such investment in stocks of any corporation created or existing under the laws of any foreign country are first approved by the office ~~department~~. Nothing in this section shall apply to qualifying investments made by an insurer in a foreign country under authority of s. 625.326.

Section 885. Subsection (4) of section 625.325, Florida Statutes, is amended to read:

625.325 Investments in subsidiaries and related corporations.—

(4) DEBT OBLIGATIONS.—Debt obligations, other than mortgage loans, made under the authority of this section must meet amortization requirements in accordance with the latest edition of the publication "Valuation of Securities" by the National Association of Insurance Commissioners or its successor organization; provided that such amortization methodology is substantially similar to the methodology used by the National Association of Insurance Commissioners in its July 1, 2002, ~~1988~~ edition of such publication.

Section 886. Section 625.326, Florida Statutes, is amended to read:

625.326 Foreign investments.—An insurer authorized to transact insurance in a foreign country may have funds invested in such securities as may be required for such authority and for the transaction of such business. Canadian securities eligible for investment under other provisions of this part are not subject to this section. Subject to the approval of the office ~~department~~:

(1) An insurer may invest in eurodollar certificates of deposit issued by foreign branches of United States commercial banks.

(2) In addition to Canadian securities eligible for investment and to investments in countries in which an insurer transacts insurance, an insurer may invest in bonds, notes, or stocks of any foreign country or corporation if such security meets the general requirements of s. 625.303 and does not exceed, in total, 5 percent of admitted assets.

Section 887. Subsection (1) of section 625.330, Florida Statutes, is amended to read:

625.330 Special investments by title insurer.—

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

and equipment, in loans secured by mortgages on abstract plants and equipment, and, with the consent of the office ~~department~~, in stocks of abstract companies. If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be prorated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance; but the capital so assigned to title insurance shall in no event be less than $100,000.

Section 888. Subsection (1) of section 625.331, Florida Statutes, is amended to read:

625.331 Special consent investments.—

(1) After satisfying the requirements of this part, any funds of an insurer in excess of its reserves and policyholders' surplus required to be maintained may be invested:

(a) Without limitation in any investments otherwise authorized by this part; or

(b) In such other investments not specifically authorized by this part as long as such investments do not exceed the lesser of 5 percent of the insurer's total admitted assets or 25 percent of the amount by which the insurer's policyholders' surplus exceeds the minimum required to be maintained.

The limitations in paragraph (b) may be exceeded if consented to in writing by the office ~~department~~.

Section 889. Paragraphs (a) and (b) of subsection (1) of section 625.332, Florida Statutes, are amended to read:

625.332 Prohibited investments and investment underwriting.—

(1) In addition to investments excluded pursuant to other provisions of this code, an insurer shall not directly or indirectly invest in or lend its funds upon the security of:

(a) Issued shares of its own capital stock, except for the purpose of mutualization under s. 628.431, or in connection with a plan approved by the office ~~department~~ for purchase of such shares by the insurer's officers, employees, or agents. No such stock shall, however, constitute an asset of the insurer in any determination of its financial condition.

(b) Except with the consent of the office ~~department~~, securities issued by any corporation or enterprise the controlling interest of which is, or will after such acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under s. 625.325 shall not be subject to this provision.

Section 890. Paragraph (e) of subsection (1) and subsection (3) of section 625.333, Florida Statutes, are amended to read:

625.333 Real estate, in general.—An insurer shall not directly or indirectly acquire or hold real estate except as authorized in this section.

(1) An insurer may acquire and hold:

(e) Additional real property and equipment incident to real property, if necessary or convenient for the enhancement of the marketability or sale value of real property previously acquired or held by it under paragraphs (b)-(d), but subject to the prior written approval of the office ~~department~~.

(3) The amount in real property acquired and held by an insurer shall not exceed 15 percent of the insurer's admitted assets, but the office ~~department~~ may grant permission to the insurer to invest in real property in such increased amount as it may deem proper.

Section 891. Section 625.338, Florida Statutes, is amended to read:

625.338 Time limit for disposal of ineligible property and securities; effect of failure to dispose.—

(1) Any property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition shall be disposed of within 3 years from the date of acquisition, unless within such period the security has attained to the standard of eligibility except that any security or property acquired under any agreement of bulk reinsurance, merger, or consolidation may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the office ~~department~~ under chapter 628. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the office ~~department~~ may extend the disposal period for an additional reasonable time.

(2) Any property or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the office ~~department~~ shall not be allowed as an asset of the insurer.

Section 892. Paragraph (d) of subsection (3) and subsection (4) of section 625.52, Florida Statutes, are amended to read:

625.52 Securities eligible for deposit.—

(3) To be eligible for deposit under paragraph (1)(h), any certificate of deposit must have the following characteristics:

(d) The issuing bank, savings bank, or savings association must agree to the terms and conditions of the department ~~State Treasurer~~ regarding the rights to the certificate of deposit and must have executed a written certificate of deposit agreement with the department ~~State Treasurer~~. The terms and conditions of such agreement shall include, but need not be limited to:

1. Exclusive authorized signature authority for the Chief Financial Officer ~~State Treasurer~~.

2. Agreement to pay, without protest, the proceeds of its certificate of deposit to the department within 30 business days after presentation.

3. Prohibition against levies, setoffs, survivorship, or other conditions that might hinder the department's ability to recover the full face value of a certificate of deposit.

4. Instructions regarding interest payments, renewals, taxpayer identification, and early withdrawal penalties.

5. Agreement to be subject to the jurisdiction of the courts of this state, or those of the United States which are located in this state, for the purposes of any litigation arising out of this section.

6. Such other conditions as the department requires.

(4) The office or department may refuse to accept certain securities or refuse to accept the reported market value of certain securities offered pursuant to this section in order to ensure that sufficient cash and securities are on hand to meet the purposes of the deposit. In making a refusal under this subsection, the guidelines for use of the office or department may include, but need not be limited to, whether the market value of the securities cannot be readily ascertained and the lack of liquidity of the securities. Securities refused under this subsection are not acceptable as deposits.

Section 893. Subsection (2) of section 625.53, Florida Statutes, is amended to read:

625.53 Depository.—

(2) The department shall hold all such deposits in safekeeping in the vaults located in the offices of the department ~~Treasurer~~.

Section 894. Subsections (5) of section 625.55, Florida Statutes, is amended to read:

625.55 Custodial arrangements.—

(5) The department or office may at any time, in its discretion, terminate any such custodial arrangement and require the deposit represented thereby to be made with it directly as otherwise provided for under this code.

Section 895. Subsection (1) of section 625.56, Florida Statutes, is amended to read:

625.56 Registration, conveyance of assets or securities.—

(1) The insurer shall duly register in the name of the Chief Financial Officer ~~department~~ all securities being deposited with the department under this code which are not negotiable by delivery.

Section 896. Section 625.57, Florida Statutes, is amended to read:

625.57 Appraisal.—The office or department may, in its discretion, prior to acceptance for deposit of any particular asset or security, or at any time

thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

Section 897. Section 625.58, Florida Statutes, is amended to read:

625.58 Excess and deficit deposits.—

(1) If securities or assets deposited by an insurer under this part are subject to material fluctuations in market value, the office or department may, in its discretion, require the insurer to deposit and maintain on deposit additional securities or assets in an amount as may be reasonably necessary to assure that the deposit will at all times have a market value of not less than the amount specified under or pursuant to the law by which the deposit is required.

(2) The insurer is responsible at all times for having deposited with, or pledged to, if custodial arrangements are used, the department eligible securities which have a market value of not less than the amount specified pursuant to the law by which the deposit is required. If for any reason the market value of assets and securities of an insurer held on deposit in this state under this code falls below the amount required, the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure such deficiency. If the insurer has failed to cure the deficiency within 30 days after receipt of notice thereof by registered or certified mail from the office ~~department~~, the office ~~department~~ shall revoke the insurer's certificate of authority or may take such other administrative action as provided by law.

(3) An insurer may at its option deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than 3 times the amount of the required or permitted deposit for the purpose of satisfying the office ~~department~~ that the insurer's obligations in this state will be met. During the solvency of the insurer, the amount of any excess or a portion thereof shall be released to the insurer if the office ~~department~~ is satisfied that the insurer's obligations in this state will be met. During the insolvency of the insurer, the amount of any excess deposit shall be released only as provided in s. 625.62.

Section 898. Paragraph (c) of subsection (2) of section 625.62, Florida Statutes, is amended to read:

625.62 Duration and release of deposit.—

(2) Any such deposit, whether in the form of a certificate of deposit or otherwise, shall be released and returned:

(c) To the insurer, during solvency, upon its written request, when such insurer has met all requirements and the office ~~department~~ is satisfied, or, for deposits made under s. 625.51(2) or (3), the department is satisfied, that the deposit is no longer necessary.

Section 899. Section 625.63, Florida Statutes, is amended to read:

625.63 Proofs for release of deposit.—

(1) Before authorizing the release of any deposit or excess portion thereof to the insurer, as provided in s. 625.62, the office or department shall require the insurer to file with the office or department a written statement in such form and with such verification as the office or department deems advisable setting forth the facts upon which it bases its entitlement to such release.

(2) If release of the deposit is claimed by the insurer upon the ground that its liabilities in this state, as to which the deposit was originally made and is held, have been assumed by another insurer authorized to transact insurance in this state, the insurer shall file with the office ~~department~~ a duly attested copy of the contract or agreement of such reinsurance.

(3) Upon being satisfied by such statement and such other information and evidence as the office or department may reasonably require, and by such examination, if any, of the affairs of the insurer as it deems advisable to make, that the insurer is entitled to the release of its deposits or excess portions thereof as provided in s. 625.62, the office or department shall release, or authorize the custodian bank or trust company in the case of deposits made under s. 625.55 to release, the deposit or excess portion thereof to the insurer or its authorized representative. The office and department shall have no liability as to any such release so made or authorized by it in good faith.

(4) The department may release a deposit upon sending notification by certified mail to the public official having supervision over insurers in another state, province, or country that has filed a notification of reliance on a deposit made pursuant to s. 625.51(2) unless the release is denied in writing to the department by another state, province, or country within 90 days. The department has no liability as to any such release so made or authorized by it in good faith.

(5) Upon the failure of the office or department to release any deposit whether in the form of a certificate of deposit or otherwise or any excess portion thereof, requested as provided in s. 625.62 upon compliance by the insurer with the requirements of this section or within 90 days after receipt of the insurer's written request, whichever is later, the office or department shall, upon petition by the insurer, post or cause to be posted a notice of pendency of the insurer's request, at the place customarily used for the posting of public notices, at the courthouse of each county, and shall make a copy of such notice available to the established news agencies having offices at Tallahassee, Florida. The commission or department may by rule prescribe the general form of such notice, shall specify the insurer's name, or may list such names when more than one request is pending at the same time. Such notice shall state therein that such insurer or insurers have petitioned for the release and return of deposits pursuant to and in compliance with s. 625.62 and this section; that the office or department has no information upon which to base a finding that the insurer or insurers named in the notice are not lawfully entitled to obtain the release and return of such deposits; and that, unless such information is presented to it within 90 days from the date specified in the notice, such deposits must be returned to the

insurer or insurers. In the event that no such information is presented to the office or department within such 90-day period, it shall thereupon release and return the deposit or deposits as requested by the insurer or insurers whose request was not challenged. In the event that such information is presented to the office or department within that period, it shall refuse to release or return the deposit of the insurer or insurers concerned and shall hold a hearing with respect thereto upon the request of such insurer or insurers.

Section 900. Section 625.75, Florida Statutes, is amended to read:

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

Section 901. Section 625.765, Florida Statutes, is amended to read:

625.765 Exemptions from ss. 625.75 and 625.76.—The commission ~~department~~ may adopt by rule exemptions from ss. 625.75 and 625.76 for transactions that are not subject to s. 628.461 and that are the result of proceedings in probate, incompetency, or bankruptcy; sales of securities by odd-lot securities dealers; small transactions by gift which do not exceed $3,000 over any 6-month period; transactions that are effected in connection with the distribution of a substantial block of securities; acquisitions of shares of stock and stock options under a stock bonus plan, stock option plan, or similar plan; securities acquired by redeeming other securities by an insurer; consolidations or mergers of insurers that hold over 85 percent of the companies being merged or consolidated; acquisitions or dispositions of an equity security involved in the deposit of the security under, or the withdrawal of the security from, a voting trust or deposit agreement; and conversions of an insurer's equity securities into another equity security of the same insurer. The commission ~~department~~ may limit by rule the scope of exemptions and provide conditions for exemptions as necessary to maintain the purpose and intent of ss. 625.75 and 625.76 and prevent the circumvention of ss. 625.75 and 625.76.

Section 902. Section 625.78, Florida Statutes, is amended to read:

625.78 Certain sale and purchase exempted; investment account.—The provisions of s. 625.76 do not apply to any purchase and sale, or sale and purchase, and the provisions of s. 625.77 do not apply to any sale, of an

equity security of a domestic stock insurer not then or theretofore held by a person required to report under s. 625.75 in an investment account, which transaction is by a dealer in the ordinary course of business and incident to the establishment or maintenance by him or her of a primary or secondary market, other than on an exchange as defined in the Securities Exchange Act of 1934, for such security. The commission ~~department~~ may, by such rules as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

Section 903. Section 625.79, Florida Statutes, is amended to read:

625.79 Certain foreign or domestic arbitrage transactions exempted.—The provisions of ss. 625.75-625.77 do not apply to foreign or domestic arbitrage transactions unless made in contravention of rules that ~~which~~ the commission has adopted ~~department may adopt~~.

Section 904. Section 625.80, Florida Statutes, is amended to read:

625.80 "Equity security" defined.—The term "equity security" when used in this part means:

(1) Any stock or similar security;

(2) Any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security;

(3) Any such warrant or right; or

(4) Any other security which the commission ~~department~~ deems to be of similar nature and considers necessary or appropriate, by such rules as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

Section 905. Section 625.82, Florida Statutes, is amended to read:

625.82 Rules.—The commission may adopt ~~department shall have the power to make~~ such rules as are ~~may be~~ necessary for the execution of the functions vested in it by ss. 625.75-625.81 and may for such purpose classify domestic stock insurers, securities, and other persons or matters within its jurisdiction. No provision of ss. 625.75-625.77 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commission ~~department~~, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

Section 906. Section 625.83, Florida Statutes, is amended to read:

625.83 Failure to file reporting forms.—Any insurer who knowingly fails to file information, documents, or reports required to be filed under s. 625.75 or any rule thereunder shall forfeit to the state the sum of $100 for each day

such failure to file continues. Such forfeiture shall be payable to the office ~~Treasurer~~ to be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund and shall be recoverable in a civil suit in the name of the state. A time for filing may be extended for a reasonable period by the office ~~department~~.

Section 907. Subsection (6) of section 626.015, Florida Statutes, is repealed and present subsection (11) of that section is amended to read:

626.015 Definitions.—As used in this part:

(10)~~(11)~~ "License" means a document issued by the department or office authorizing a person to be appointed to transact insurance or adjust claims for the kind, line, or class of insurance identified in the document.

Section 908. Section 626.016, Florida Statutes, is created to read:

626.016 Powers and duties of department, commission, and office.—

(1) The powers and duties of the Chief Financial Officer and the department specified in part I of this chapter apply only with respect to insurance agents, managing general agents, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, and agencies.

(2) The powers and duties of the commission and office specified in part I of this chapter apply only with respect to insurance adjusters, service companies, administrators, and viatical settlement providers and contracts.

(3) The department has jurisdiction to enforce provisions of parts VIII and IX of this chapter with respect to persons who engage in actions for which a license issued by the department is legally required. The office has jurisdiction to enforce provisions of parts VIII and IX of this chapter with respect to persons who engage in actions for which a license or certificate of authority issued by the office is legally required. For persons who violate a provision of this chapter for whom a license or certificate of authority issued by either the department or office is not required, either the department or office may take administrative action against such person as authorized by this chapter, pursuant to agreement between the office and department.

(4) Nothing in this section is intended to limit the authority of the department and the Division of Insurance Fraud, as specified in s. 626.989.

Section 909. Subsection (16) of section 626.025, Florida Statutes, is amended to read:

626.025 Consumer protections.—To transact insurance, agents shall comply with consumer protection laws, including the following, as applicable:

(16) Any other licensing requirement, restriction, or prohibition designated a consumer protection by the Chief Financial Officer ~~Insurance Commissioner~~, but not inconsistent with the requirements of Subtitle C of the Gramm-Leach-Bliley Act, 15 U.S.C.A. ss. 6751 et seq.

Section 910. Paragraph (a) of subsection (1) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(1)(a) No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, or customer representative~~, or adjuster~~ unless he or she is currently licensed by the department and appointed by one or more insurers. No person may be, act as, or advertise or hold himself or herself out to be an insurance adjuster unless he or she is currently licensed by the office and appointed by one or more insurers.

However, an employee leasing company licensed pursuant to chapter 468 which is seeking to enter into a contract with an employer that identifies products and services offered to employees may deliver proposals for the purchase of employee leasing services to prospective clients of the employee leasing company setting forth the terms and conditions of doing business; classify employees as permitted by s. 468.529; collect information from prospective clients and other sources as necessary to perform due diligence on the prospective client and to prepare a proposal for services; provide and receive enrollment forms, plans, and other documents; and discuss or explain in general terms the conditions, limitations, options, or exclusions of insurance benefit plans available to the client or employees of the employee leasing company were the client to contract with the employee leasing company. Any advertising materials or other documents describing specific insurance coverages must identify and be from a licensed insurer or its licensed agent or a licensed and appointed agent employed by the employee leasing company. The employee leasing company may not advise or inform the prospective business client or individual employees of specific coverage provisions, exclusions, or limitations of particular plans. As to clients for which the employee leasing company is providing services pursuant to s. 468.525(4), the employee leasing company may engage in activities permitted by ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions specified in those sections. If a prospective client requests more specific information concerning the insurance provided by the employee leasing company, the employee leasing company must refer the prospective business client to the insurer or its licensed agent or to a licensed and appointed agent employed by the employee leasing company.

Section 911. Section 626.161, Florida Statutes, is amended to read:

626.161 Licensing forms.—The department shall prescribe and furnish all printed forms required in connection with the application for issuance of and termination of all licenses and appointments, except that, with respect to adjusters, the commission shall prescribe and the office shall furnish such forms.

Section 912. Subsections (1), (2), and (5) of section 626.171, Florida Statutes, are amended to read:

626.171 Application for license.—

(1) The department or office shall not issue a license as agent, customer representative, adjuster, insurance agency, service representative, managing general agent, or reinsurance intermediary to any person except upon written application therefor filed with it, qualification therefor, and payment in advance of all applicable fees. Any such application shall be made under the oath of the applicant and be signed by the applicant. Beginning November 1, 2002, the department shall accept the uniform application for nonresident agent licensing. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence, and place of business.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a license to solicit insurance by the department or by the supervising officials of any state.

(d) Whether any insurer or any managing general agent claims the applicant is indebted under any agency contract or otherwise and, if so, the name of the claimant, the nature of the claim, and the applicant's defense thereto, if any.

(e) Proof that the applicant meets the requirements for the type of license for which he or she is applying.

(f) Such other or additional information as the department or office may deem proper to enable it to determine the character, experience, ability, and other qualifications of the applicant to hold himself or herself out to the public as an insurance representative.

(5) An application for a license as an agent, customer representative, adjuster, insurance agency, service representative, managing general agent, or reinsurance intermediary must be accompanied by a set of the individual applicant's fingerprints, or, if the applicant is not an individual, by a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, on a form adopted by rule of the department or commission and accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be certified by a law enforcement officer.

Section 913. Section 626.181, Florida Statutes, is amended to read:

626.181 Number of applications for licensure required.—After a license as agent, customer representative, or adjuster has been issued to an individual, the same individual shall not be required to take another examination for a similar license, regardless, in the case of an agent, of the number of insurers to be represented by him or her as agent, unless:

(1) Specifically ordered by the department or office to complete a new application for license; or

(2) During any period of 48 months since the filing of the original license application, such individual was not appointed as an agent, customer representative, or adjuster, unless the failure to be so appointed was due to military service, in which event the period within which a new application is not required may, in the discretion of the department or office, be extended to 12 months following the date of discharge from military service if the military service does not exceed 3 years, but in no event to extend under this clause for a period of more than 6 years from the date of filing of the original application for license.

Section 914. Section 626.191, Florida Statutes, is amended to read:

626.191 Repeated applications.—The failure of an applicant to secure a license upon an application shall not preclude him or her from applying again as many times as desired, but the department or office shall not give consideration to or accept any further application by the same individual for a similar license dated or filed within 30 days subsequent to the date the department or office denied the last application, except as provided in s. 626.281.

Section 915. Section 626.201, Florida Statutes, is amended to read:

626.201 Investigation.—The department or office may propound any reasonable interrogatories in addition to those contained in the application, to any applicant for license or appointment, or on any renewal, reinstatement, or continuation thereof, relating to his or her qualifications, residence, prospective place of business, and any other matter which, in the opinion of the department or office, is deemed necessary or advisable for the protection of the public and to ascertain the applicant's qualifications. The department or office may, upon completion of the application, make such further investigation as it may deem advisable of the applicant's character, experience, background, and fitness for the license or appointment. Such an inquiry or investigation shall be in addition to any examination required to be taken by the applicant as hereinafter in this chapter provided.

Section 916. Section 626.202, Florida Statutes, is amended to read:

626.202 Fingerprinting requirements.—If there is a change in ownership or control of any entity licensed under this chapter, or if a new partner, officer, or director is employed or appointed, a set of fingerprints of the new owner, partner, officer, or director must be filed with the department or office within 30 days after the change. The acquisition of 10 percent or more of the voting securities of a licensed entity is considered a change of ownership or control. The fingerprints must be certified by a law enforcement officer and be accompanied by the fingerprint processing fee in s. 624.501.

Section 917. Section 626.211, Florida Statutes, is amended to read:

626.211 Approval, disapproval of application.—

(1) If upon the basis of a completed application for license and such further inquiry or investigation as the department or office may make concerning an applicant the department or office is satisfied that, subject to any examination required to be taken and passed by the applicant for a license, the applicant is qualified for the license applied for and that all pertinent fees have been paid, it shall approve the application. The department or office shall not deny, delay, or withhold approval of an application due to the fact that it has not received a criminal history report based on the applicant's fingerprints.

(2) Upon approval of an applicant for license as agent, customer representative, or adjuster who is subject to written examination, the department or office shall notify the applicant when and where he or she may take the required examination.

(3) Upon approval of an applicant for license who is not subject to examination, the department or office shall promptly issue the license.

(4) If upon the basis of the completed application and such further inquiry or investigation the department or office deems the applicant to be lacking in any one or more of the required qualifications for the license applied for, the department or office shall disapprove the application and notify the applicant, stating the grounds of disapproval.

Section 918. Section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(1) The department or office shall not issue any license as agent, customer representative, or adjuster to any individual who has not qualified for, taken, and passed to the satisfaction of the department or office a written examination of the scope prescribed in s. 626.241.

(2) However, no such examination shall be necessary in any of the following cases:

(a) An applicant for renewal of appointment as an agent, customer representative, or adjuster, unless the department or office determines that an examination is necessary to establish the competence or trustworthiness of such applicant.

(b) An applicant for limited license as agent for personal accident insurance, baggage and motor vehicle excess liability insurance, credit life or disability insurance, credit insurance, credit property insurance, in-transit and storage personal property insurance, or communications equipment property insurance or communication equipment inland marine insurance.

(c) In the discretion of the department or office, an applicant for reinstatement of license or appointment as an agent, customer representative, or adjuster whose license has been suspended within 2 years prior to the date of application or written request for reinstatement.

(d) An applicant who, within 2 years prior to application for license and appointment as an agent, customer representative, or adjuster, was a full-

time salaried employee of the department or office and had continuously been such an employee with responsible insurance duties for not less than 2 years and who had been a licensee within 2 years prior to employment by the department or office with the same class of license as that being applied for.

(e) An individual who qualified as a managing general agent, service representative, customer representative, or all-lines adjuster by passing a general lines agent's examination and subsequently was licensed and appointed and has been actively engaged in all lines of property and casualty insurance may, upon filing an application for appointment, be licensed and appointed as a general lines agent for the same kinds of business without taking another examination if he or she holds any such currently effective license referred to in this paragraph or held the license within 24 months prior to the date of filing the application with the department.

(f) A person who has been licensed and appointed ~~by the department~~ as a public adjuster or independent adjuster, or licensed and appointed either as an agent or company adjuster as to all property, casualty, and surety insurances, may be licensed and appointed as a company adjuster as to any of such insurances, or as an independent adjuster or public adjuster, without additional written examination if an application for appointment is filed with the office ~~department~~ within 24 months following the date of cancellation or expiration of the prior appointment.

(g) A person who has been licensed ~~by the department~~ as an adjuster for motor vehicle, property and casualty, workers' compensation, and health insurance may be licensed as such an adjuster without additional written examination if his or her application for appointment is filed with the office ~~department~~ within 24 months after cancellation or expiration of the prior license.

(h) An applicant for temporary license, except as provided in this code.

(i) An applicant for a life or health license who has received the designation of chartered life underwriter (CLU) from the American College of Life Underwriters and who has been engaged in the insurance business within the past 4 years, except that such an individual may be examined on pertinent provisions of this code.

(j) An applicant for license as a general lines agent, customer representative, or adjuster who has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for Property and Liability Underwriters and who has been engaged in the insurance business within the past 4 years, except that such an individual may be examined on pertinent provisions of this code.

(k) An applicant for license as a customer representative who has the designation of Accredited Advisor in Insurance (AAI) from the Insurance Institute of America, the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors, the designation of Accredited Customer Service Representative (ACSR) from the Independent Insurance Agents of America, the designation of Certified Professional

Service Representative (CPSR) from the National Association of Professional Insurance Agents, the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives. Also, an applicant for license as a customer representative who has the designation of Certified Customer Service Representative (CCSR) from the Florida Association of Insurance Agents, or the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in this state, or the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute, whose curriculum has been approved by the department and whose curriculum includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the customer representative license. The department shall adopt rules establishing standards for the approval of curriculum.

(l) An applicant for license as an adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, or the designation of Professional Claims Adjuster (PCA) from the Professional Career Institute, whose curriculum has been approved by the office ~~department~~ and whose curriculum includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard office ~~department~~ testing for the all-lines adjuster license. The commission ~~department~~ shall adopt rules establishing standards for the approval of curriculum.

(m) An applicant qualifying for a license transfer under s. 626.292, if the applicant:

1. Has successfully completed the prelicensing examination requirements in the applicant's previous state which are substantially equivalent to the examination requirements in this state, as determined by the department ~~Insurance Commissioner of this state~~;

2. Has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for Property and Liability Underwriters and has been engaged in the insurance business within the past 4 years if applying to transfer a general lines agent license; or

3. Has received the designation of chartered life underwriter (CLU) from the American College of Life Underwriters and has been engaged in the insurance business within the past 4 years, if applying to transfer a life or health agent license.

(n) An applicant for a nonresident agent license, if the applicant:

1. Has successfully completed prelicensing examination requirements in the applicant's home state which are substantially equivalent to the examination requirements in this state, as determined by the department ~~Insurance Commissioner of this state~~, as a requirement for obtaining a resident license in his or her home state;

2. Held a general lines agent license, life agent license, or health agent license prior to the time a written examination was required;

3. Has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for Property and Liability Underwriters and has been engaged in the insurance business within the past 4 years, if an applicant for a nonresident license as a general lines agent; or

4. Has received the designation of chartered life underwriter (CLU) from the American College of Life Underwriters and has been in the insurance business within the past 4 years, if an applicant for a nonresident license as a life agent or health agent.

(3) An individual who is already licensed as a customer representative shall not be licensed as a general lines agent without application and examination for such license.

Section 919. Section 626.231, Florida Statutes, is amended to read:

626.231 Eligibility for examination.—No person shall be permitted to take an examination for license until his or her application for the license has been approved and the required fees have been received by the department or office or a person designated by the department or office to administer the examination.

Section 920. Subsection (1) of section 626.241, Florida Statutes, is amended to read:

626.241 Scope of examination.—

(1) Each examination for a license as agent, customer representative, or adjuster shall be of such scope as is deemed by the department or office to be reasonably necessary to test the applicant's ability and competence and knowledge of the kinds of insurance and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and of the pertinent provisions of the laws of this state.

Section 921. Section 626.251, Florida Statutes, is amended to read:

626.251 Time and place of examination; notice.—

(1) The department or office or a person designated by the department or office shall mail written notice of the time and place of the examination to each applicant for license required to take an examination who will be eligible to take the examination as of the examination date. The notice shall be so mailed, postage prepaid, and addressed to the applicant at his or her address shown on the application for license or at such other address as requested by the applicant in writing filed with the department or office prior to the mailing of the notice. Notice shall be deemed given when so mailed.

(2) The examination shall be held in an adequate and designated examination center in this state.

(3) The department or office shall make an examination available to the applicant, to be taken as soon as reasonably possible after the applicant is

eligible therefor. Any examination required under this part shall be available in this state at a designated examination center.

Section 922. Section 626.261, Florida Statutes, is amended to read:

626.261 Conduct of examination.—

(1) The applicant for license shall appear in person and personally take the examination for license at the time and place specified by the department or office or by a person designated by the department or office.

(2) The examination shall be conducted by an employee of the department or office or a person designated by the department or office for that purpose.

(3) The questions propounded shall be as prepared by the department or office, or by a person designated by the department or office for that purpose, consistent with the applicable provisions of this code.

(4) All examinations shall be given and graded in a fair and impartial manner and without unfair discrimination in favor of or against any particular applicant.

Section 923. Section 626.266, Florida Statutes, is amended to read:

626.266 Printing of examinations or related materials to preserve examination security.—A contract let for the development, administration, or grading of examinations or related materials by the department or office ~~of Insurance~~ pursuant to the various agent, customer representative, solicitor, or adjuster licensing and examination provisions of this code may include the printing or furnishing of these examinations or related materials in order to preserve security. Any such contract shall be let as a contract for a contractual service pursuant to s. 287.057.

Section 924. Subsection (1) of section 626.271, Florida Statutes, is amended to read:

626.271 Examination fee; determination, refund.—

(1) Prior to being permitted to take an examination, each applicant who is subject to examination shall pay to the department or office or a person designated by the department or office an examination fee. A separate and additional examination fee shall be payable for each separate class of license applied for, notwithstanding that all such examinations are taken on the same date and at the same place.

Section 925. Section 626.281, Florida Statutes, is amended to read:

626.281 Reexamination.—

(1) Any applicant for license who has either:

(a) Taken an examination and failed to make a passing grade, or

(b) Failed to appear for the examination or to take or complete the examination at the time and place specified in the notice of the department or office,

may take additional examinations, after filing with the department or office an application for reexamination together with applicable fees. The failure of an applicant to pass an examination or the failure to appear for the examination or to take or complete the examination does not preclude the applicant from taking subsequent examinations.

(2) The department or office may require any individual whose license as an agent, customer representative, or adjuster has expired or has been suspended to pass an examination prior to reinstating or relicensing the individual as to any class of license. The examination fee shall be paid as to each examination.

Section 926. Subsections (5) and (6) of section 626.2815, Florida Statutes, are amended to read:

626.2815 Continuing education required; application; exceptions; requirements; penalties.—

(5) The department ~~of Insurance~~ shall refuse to renew the appointment of any agent who has not had his or her continuing education requirements certified unless the agent has been granted an extension by the department. The department may not issue a new appointment of the same or similar type, with any insurer, to an agent who was denied a renewal appointment for failure to complete continuing education as required until the agent completes his or her continuing education requirement.

(6)(a) There is created an 11-member continuing education advisory board to be appointed by the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~. Appointments shall be for terms of 4 years. The purpose of the board is to advise the department in determining standards by which courses may be evaluated and categorized as basic, intermediate, or advanced. ~~The board shall establish such criteria and the department shall implement such criteria by January 1, 1997.~~ The board shall submit recommendations to the department of changes needed in such criteria not less frequently than every 2 years ~~thereafter~~. The department shall require all approved course providers to submit courses for approval to the department using the criteria. All materials, brochures, and advertisements related to the approved courses must specify the level assigned to the course.

(b) The board members shall be appointed as follows:

1. Seven members representing agents of which at least one must be a representative from each of the following organizations: the Florida Association of Insurance Agents; the Florida Association of Life Underwriters; the Professional Insurance Agents of Florida, Inc.; the Florida Association of Health Underwriters; the Specialty Agents' Association; the Latin American Agents' Association; and the National Association of Insurance Women. Such board members must possess at least a bachelor's degree or higher

from an accredited college or university with major coursework in insurance, risk management, or education or possess the designation of CLU, CPCU, CHFC, CFP, AAI, or CIC. In addition, each member must possess 5 years of classroom instruction experience or 5 years of experience in the development or design of educational programs or 10 years of experience as a licensed resident agent. Each organization may submit to the department a list of recommendations for appointment. If one organization does not submit a list of recommendations, the Chief Financial Officer ~~Insurance Commissioner~~ may select more than one recommended person from a list submitted by other eligible organizations.

2. Two members representing insurance companies at least one of whom must represent a Florida Domestic Company and one of whom must represent the Florida Insurance Council. Such board members must be employed within the training department of the insurance company. At least one such member must be a member of the Society of Insurance Trainers and Educators.

3. One member representing the general public who is not directly employed in the insurance industry. Such board member must possess a minimum of a bachelor's degree or higher from an accredited college or university with major coursework in insurance, risk management, training, or education.

4. One member, appointed by the Chief Financial Officer ~~Insurance Commissioner~~, who represents the department.

(c) The members of the board shall serve at the pleasure of the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~. Each board member shall be entitled to reimbursement for expenses pursuant to s. 112.061. The board shall designate one member as chair. The board shall meet at the call of the chair or the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~.

Section 927. Section 626.2817, Florida Statutes, is amended to read:

626.2817 Regulation of course providers, instructors, school officials, and monitor groups involved in prelicensure education for insurance agents and other licensees.—

(1) Any course provider, instructor, school official, or monitor group must be approved by and registered with the department or office before offering prelicensure education courses for insurance agents and other licensees.

(2) The department or commission shall adopt rules establishing standards for the approval, registration, discipline, or removal from registration of course providers, instructors, school officials, and monitor groups. The standards must be designed to ensure that such persons have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this chapter and chapter 648 and to assure that insurance agents and licensees are competent to engage in the activities authorized under the license.

(3) The department or commission shall adopt rules to establish a process for determining compliance with the prelicensure requirements of this chapter and chapter 648 and shall establish a prelicensure cycle for insurance agents and other licensees. The department or commission shall adopt rules prescribing the forms necessary to administer the prelicensure requirements.

Section 928. Section 626.291, Florida Statutes, is amended to read:

626.291 Denial, issuance of license.—

(1) Within 30 days after the applicant has completed any examination required under s. 626.221, the department or office or its designee shall provide a score report; and, if it finds that the applicant has received a passing grade, the department or office shall within such period notify the applicant and issue and transmit the license to which such examination related. If it finds that the applicant did not make a passing grade on the examination for a particular license, the department or office or its designee shall within this period provide notice to the applicant to that effect and of its denial of the license.

(2) As to an applicant for a license for which no examination is required, the department or office shall promptly issue the license applied for as soon as it has approved the application.

(3) The department or office shall not deny, delay, or withhold issuance of a license due to the fact that it has not received a criminal history report based on the applicant's fingerprints.

Section 929. Paragraph (d) of subsection (2) of section 626.292, Florida Statutes, is amended to read:

626.292 Transfer of license from another state.—

(2) To qualify for a license transfer, an individual applicant must meet the following requirements:

(d) The individual shall satisfy prelicensing education requirements in this state, unless the completion of prelicensing education requirements was a prerequisite for licensure in the other state and the prelicensing education requirements in the other state are substantially equivalent to the prelicensing requirements of this state as determined by the department ~~Insurance Commissioner of this state~~.

Section 930. Section 626.301, Florida Statutes, is amended to read:

626.301 Form and contents of licenses, in general.—Each license issued by the department or office shall be in such form as the department or commission may designate and contain the licensee's name, lines of authority the licensee is authorized to transact, the licensee's personal identification number, the date of issuance, and any other information the department or commission deems necessary to fully identify the licensee and the authority being granted. The department or commission may by rule require photographs of applicants as a part of the licensing process.

Section 931. Section 626.322, Florida Statutes, is amended to read:

626.322 License, appointment; certain military installations.—A natural person, not a resident of this state, may be licensed and appointed to represent an authorized life insurer domiciled in this state or an authorized foreign life insurer which maintains a regional home office in this state, provided such person represents such insurer exclusively at a United States military installation located in a foreign country. The department may, upon request of the applicant and the insurer on application forms furnished by the department and upon payment of fees as prescribed in s. 624.501, issue a license and appointment to such person. The insurer shall certify to the department that the applicant has the necessary training to hold himself or herself out as a life insurance representative, and the insurer shall further certify that it is willing to be bound by the acts of such applicant within the scope of his or her employment. Appointments shall be continued as prescribed in s. 626.381 and upon payment of a fee as prescribed in s. 624.501, unless sooner terminated. Such fees received shall be credited to the Insurance ~~Commissioner's~~ Regulatory Trust Fund as provided for in s. 624.523.

Section 932. Section 626.361, Florida Statutes, is amended to read:

626.361 Effective date of appointments.—All appointments shall be submitted to the department or office on a monthly basis no later than 45 days after the date of appointment. All appointments shall be effective as of the date requested on the appointment form.

Section 933. Section 626.371, Florida Statutes, is amended to read:

626.371 Payment of fees, taxes for appointment period without appointment.—If, upon application and qualification for an appointment and such investigation as the department or office may make, it appears to the department or office that an individual who was formerly appointed has been actively engaged or is currently actively engaged as such an appointee, but without being appointed as required, the department or office may, if it finds that such failure to be appointed was an inadvertent error on the part of the insurer or employer so represented, nevertheless issue the appointment as applied for but subject to the condition that, before the appointment is issued, all fees and taxes which would have been due had the applicant been so appointed during such current and prior periods, together with a continuation fee for such current and prior terms of appointment, shall be paid to the department or office.

Section 934. Subsections (2), (3), and (4), of section 626.381, Florida Statutes, are amended to read:

626.381 Renewal, continuation, reinstatement, or termination of appointment.—

(2) Each appointing entity shall file with the department or office the lists, statements, and information as to appointees whose appointments are being renewed or terminated, accompanied by payment of the applicable renewal fees and taxes as prescribed in s. 624.501, by a date set forth by the

department or office following the month during which the appointments will expire.

(3) Renewal of an appointment which is received on a date set forth by the department or office in the succeeding month may be renewed by the department or office without penalty and shall be effective as of the day the appointment would have expired.

(4) Renewal of an appointment which is received by the department or office after the date set by the department or office may be accepted and effectuated by the department or office in its discretion if an additional appointment, continuation, and reinstatement fee accompanies the renewal pursuant to s. 624.501.

Section 935. Subsection (2) of section 626.431, Florida Statutes, is amended to read:

626.431 Effect of expiration of license and appointment.—

(2) When a licensee's last appointment for a particular class of insurance has been terminated or not renewed, the department or office must notify the licensee that his or her eligibility for appointment as such an appointee will expire unless he or she is appointed prior to expiration of the 48-month period referred to in subsection (3).

Section 936. Section 626.451, Florida Statutes, is amended to read:

626.451 Appointment of agent or other representative.—

(1) Each appointing entity appointing an agent, adjuster, service representative, customer representative, or managing general agent in this state shall file the appointment with the department or office and, at the same time, pay the applicable appointment fee and taxes. Every appointment shall be subject to the prior issuance of the appropriate agent's, adjuster's, service representative's, customer representative's, or managing general agent's license.

(2) As a part of each appointment there shall be a certified statement or affidavit of an appropriate officer or official of the appointing entity stating what investigation the appointing entity has made concerning the proposed appointee and his or her background and the appointing entity's opinion to the best of its knowledge and belief as to the moral character, fitness, and reputation of the proposed appointee and any other information the department or office may reasonably require relative to the proposed appointee.

(3) In the appointment of an agent, adjuster, service representative, customer representative, or managing general agent the appointing entity shall also certify therein that it is willing to be bound by the acts of the agent, adjuster, service representative, customer representative, or managing general agent, within the scope of his or her employment.

(4) Each appointing entity shall advise the department or office in writing within 15 days after it or its general agent, officer, or other official

becomes aware that an appointee has pleaded guilty or nolo contendere to or has been found guilty of a felony after being appointed.

(5) Any law enforcement agency or state attorney's office that is aware that an agent, adjuster, service representative, customer representative, or managing general agent has pleaded guilty or nolo contendere to or has been found guilty of a felony shall notify the department or office of such fact.

(6) Upon the filing of an information or indictment against an agent, adjuster, service representative, customer representative, or managing general agent, the state attorney shall immediately furnish the department or office a certified copy of the information or indictment.

Section 937. Section 626.461, Florida Statutes, is amended to read:

626.461 Continuation of appointment of agent or other representative.—Subject to renewal or continuation by the appointing entity, the appointment of the agent, adjuster, solicitor, service representative, customer representative, or managing general agent shall continue in effect until the person's license is revoked or otherwise terminated, unless written notice of earlier termination of the appointment is filed with the department or office by either the appointing entity or the appointee.

Section 938. Subsections (2), (3), (4), and (5) of section 626.471, Florida Statutes, are amended to read:

626.471 Termination of appointment.—

(2) As soon as possible and at all events within 30 days after terminating the appointment of an appointee, other than as to an appointment terminated by the appointing entity's failure to continue or renew it, the appointing entity shall file written notice thereof with the department or office, together with a statement that it has given the appointee notice thereof as provided in subsection (1) and shall file with the department or office the reasons and facts involved in such termination as required under s. 626.511.

(3) Upon termination of the appointment of an appointee, whether by failure to renew or continue the appointment, the appointing entity shall:

(a) File with the department or office the information required under s. 626.511.

(b) Subject to the exceptions provided under subsection (1), continue the outstanding contracts transacted by an agent until the expiration date or anniversary date when the policy is a continuous policy with no expiration date. This paragraph shall not be construed to prohibit the cancellation of such contracts when not otherwise prohibited by law.

(4) An appointee may terminate the appointment at any time by giving written notice thereof to the appointing entity and filing a copy of the notice with the department or office. Such termination shall be subject to the appointee's contract rights, if any.

(5) Upon receiving notice of termination, the department or office shall terminate the appointment.

Section 939. Section 626.511, Florida Statutes, is amended to read:

626.511 Reasons for termination; confidential information.—

(1) Any insurer terminating the appointment of an agent; any general lines agent terminating the appointment of a customer representative or a crop hail or multiple-peril crop insurance agent; and any employer terminating the appointment of an adjuster, service representative, or managing general agent, whether such termination is by direct action of the appointing insurer, agent, or employer or by failure to renew or continue the appointment as provided, shall file with the department or office a statement of the reasons, if any, for and the facts relative to such termination. In the case of termination of the appointment of an agent, such information may be filed by the insurer or by the general agent of the insurer.

(2) In the case of terminations by failure to renew or continue the appointment, the information required under subsection (1) shall be filed with the department or office as soon as possible, and at all events within 30 days, after the date notice of intention not to so renew or continue was filed with the department or office as required in this chapter. In all other cases, the information required under subsection (1) shall be filed with the department or office at the time, or at all events within 10 days after, notice of the termination was filed with the department or office.

(3) Any information, document, record, or statement furnished to the department or office under subsection (1) is confidential and exempt from the provisions of s. 119.07(1).

Section 940. Subsections (2), (3), and (5) of section 626.521, Florida Statutes, are amended to read:

626.521 Character, credit reports.—

(2) If requested by the department or office, the insurer, manager, general agent, general lines agent, or employer, as the case may be, shall furnish to the department or office on a form adopted by the department or commission and furnished by the department or office, such information as it may reasonably require relative to such individual and investigation.

(3) As to an applicant for an adjuster's or reinsurance intermediary's license who is to be self-employed, the department or office may secure, at the cost of the applicant, a full detailed credit and character report made by an established and reputable independent reporting service relative to the applicant.

(5) Information contained in credit or character reports furnished to or secured by the department or office under this section is confidential and exempt from the provisions of s. 119.07(1).

Section 941. Subsections (1) and (2) of section 626.541, Florida Statutes, are amended to read:

626.541 Firm, corporate, and business names; officers; associates; notice of changes.—

(1) Any licensed agent or adjuster doing business under a firm or corporate name or under any business name other than his or her own individual name shall, within 30 days after the initial transaction of insurance under such business name, file with the department or office, on forms adopted by the department or commission and furnished by the department or office ~~it~~, a written statement of the firm, corporate, or business name being so used, the address of any office or offices or places of business making use of such name, and the name and social security number of each officer and director of the corporation and of each individual associated in such firm or corporation as to the insurance transactions thereof or in the use of such business name.

(2) In the event of any change of such name, or of any of the officers and directors, or of any of such addresses, or in the personnel so associated, written notice of such change must be filed with the department or office within 30 days by or on behalf of those licensees terminating any such firm, corporate, or business name or continuing to operate thereunder.

Section 942. Section 626.551, Florida Statutes, is amended to read:

626.551 Notice of change of address, name.—Every licensee shall notify the department or office in writing within 60 days after a change of name, residence address, principal business street address, or mailing address. Any licensed agent who has moved his or her residence from this state shall have his or her license and all appointments immediately terminated by the department or office. Failure to notify the department or office within the required time period shall result in a fine not to exceed $250 for the first offense and, for subsequent offenses, a fine of not less than $500 or suspension or revocation of the license pursuant to s. 626.611 or s. 626.621.

Section 943. Subsections (1) and (2) of section 626.561, Florida Statutes, are amended to read:

626.561 Reporting and accounting for funds.—

(1) All premiums, return premiums, or other funds belonging to insurers or others received by an agent, customer representative, or adjuster in transactions under his or her license are trust funds received by the licensee in a fiduciary capacity. An agent shall keep the funds belonging to each insurer for which he or she is not appointed, other than a surplus lines insurer, in a separate account so as to allow the department or office to properly audit such funds. The licensee in the applicable regular course of business shall account for and pay the same to the insurer, insured, or other person entitled thereto.

(2) The licensee shall keep and make available to the department or office books, accounts, and records as will enable the department or office to determine whether such licensee is complying with the provisions of this code. Every licensee shall preserve books, accounts, and records pertaining to a premium payment for at least 3 years after payment; provided, however,

the preservation of records by computer or photographic reproductions or records in photographic form shall constitute compliance with this requirement. All other records shall be maintained in accordance with s. 626.748. The 3-year requirement shall not apply to insurance binders when no policy is ultimately issued and no premium is collected.

Section 944. Section 626.591, Florida Statutes, is amended to read:

626.591 Penalty for violation of s. 626.581.—

(1) If any ~~insurer or~~ agent is found by the department to be in violation of s. 626.581, the department may, in its discretion, suspend or revoke ~~the insurer's certificate of authority and~~ the agent's license. If any insurer is found by the office to be in violation of s. 626.581, the office may, in its discretion, suspend or revoke the insurer's certificate of authority.

(2) Any such suspension or revocation shall be for a period of not less than 6 months, and the insurer or agent shall not subsequently be authorized or licensed to transact insurance unless the office or department is satisfied that the insurer or agent will not again violate any of the provisions of s. 626.581.

Section 945. Subsection (1) of section 626.592, Florida Statutes, is amended to read:

626.592 Primary agents.—

(1) Each person operating an insurance agency and each location of a multiple location agency shall designate a primary agent for each insurance agency location and shall file the name of the person so designated, and the address of the insurance agency location where he or she is primary agent, with the department ~~of Insurance~~, on a form approved by the department. The designation of the primary agent may be changed at the option of the agency, and any change shall be effective upon notification to the department. Notice of change must be sent to the department within 30 days after such change.

Section 946. Section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by any interested person and filed with the department or office, inquire into any alleged improper conduct of any licensed agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, continuing education course provider, instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of any such licensee if it has reasonable cause to believe that the licensee has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the licensee being investigated unless it determines that contacting such person could jeopardize the successful completion of the investigation or cause injury to the public.

(2) In the investigation by the department or office of the alleged misconduct, the licensee shall, whenever so required by the department or office, cause his or her books and records to be open for inspection for the purpose of such inquiries.

(3) The complaints against any licensee may be informally alleged and need not be in any such language as is necessary to charge a crime on an indictment or information.

(4) The expense for any hearings or investigations under this law, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

(5) If the department or office, after investigation, has reason to believe that a licensee may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the licensee to file with the department or office a complete set of his or her fingerprints, which shall be accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be certified by an authorized law enforcement officer.

(6) The complaint and any information obtained pursuant to the investigation by the department or office are confidential and are exempt from the provisions of s. 119.07, unless the department or office files a formal administrative complaint, emergency order, or consent order against the licensee. Nothing in this subsection shall be construed to prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency.

Section 947. Section 626.611, Florida Statutes, is amended to read:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department or office shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license or appointment as specified in this code.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department or office any examination required under this code.

(4) If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this code.

(5) Willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

(6) If, as an adjuster, or agent licensed and appointed to adjust claims under this code, he or she has materially misrepresented to an insured or other interested party the terms and coverage of an insurance contract with intent and for the purpose of effecting settlement of claim for loss or damage or benefit under such contract on less favorable terms than those provided in and contemplated by the contract.

(7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(8) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(9) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(10) Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license or appointment.

(11) Unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide his or her commission with another.

(12) Having obtained or attempted to obtain, or having used or using, a license or appointment as agent or customer representative for the purpose of soliciting or handling "controlled business" as defined in s. 626.730 with respect to general lines agents, s. 626.784 with respect to life agents, and s. 626.830 with respect to health agents.

(13) Willful failure to comply with, or willful violation of, any proper order or rule of the department, commission, or office or willful violation of any provision of this code.

(14) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(15) Fraudulent or dishonest practice in submitting or aiding or abetting any person in the submission of an application for workers' compensation coverage under chapter 440 containing false or misleading information as to employee payroll or classification for the purpose of avoiding or reducing the amount of premium due for such coverage.

(16) Sale of an unregistered security that was required to be registered, pursuant to chapter 517.

Section 948. Section 626.621, Florida Statutes, is amended to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department or office may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(1) Any cause for which issuance of the license or appointment could have been refused had it then existed and been known to the department or office.

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment.

(3) Violation of any lawful order or rule of the department, commission, or office.

(4) Failure or refusal, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.

(5) Violation of the provision against twisting, as defined in s. 626.9541(1)(l).

(6) In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter, or having otherwise shown himself or herself to be a source of injury or loss to the public or detrimental to the public interest.

(7) Willful overinsurance of any property or health insurance risk.

(8) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(9) If a life agent, violation of the code of ethics.

(10) Cheating on an examination required for licensure or violating test center or examination procedures published orally, in writing, or electronically at the test site by authorized representatives of the examination pro-

gram administrator. Communication of test center and examination procedures must be clearly established and documented.

(11) Failure to inform the department or office in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof, or under the law of any other country without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(12) Knowingly aiding, assisting, procuring, advising, or abetting any person in the violation of or to violate a provision of the insurance code or any order or rule of the department, commission, or office.

Section 949. Section 626.631, Florida Statutes, is amended to read:

626.631 Procedure for refusal, suspension, or revocation of license.—

(1) If any licensee is convicted by a court of a violation of this code or a felony, the licenses and appointments of such person shall be immediately revoked by the department or office. The licensee may subsequently request a hearing pursuant to ss. 120.569 and 120.57, and the department or office shall expedite any such requested hearing. The sole issue at such hearing shall be whether the revocation should be rescinded because such person was not in fact convicted of a violation of this code or a felony.

(2) The papers, documents, reports, or evidence of the department or office relative to a hearing for revocation or suspension of a license or appointment pursuant to the provisions of this chapter and chapter 120 are confidential and exempt from the provisions of s. 119.07(1) until after the same have been published at the hearing. However, such papers, documents, reports, or items of evidence are subject to discovery in a hearing for revocation or suspension of a license or appointment.

Section 950. Subsections (1) and (2) of section 626.641, Florida Statutes, are amended to read:

626.641 Duration of suspension or revocation.—

(1) The department or office shall, in its order suspending a license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect; but such period shall not exceed 2 years. The license, appointment, or eligibility shall remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department or office, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility which has been suspended shall not be reinstated except upon request for such reinstatement; but the department or office shall not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, or eligibility was suspended still exist or are likely to recur.

(2) No person or appointee under any license or appointment revoked by the department or office, nor any person whose eligibility to hold same has been revoked by the department or office, shall have the right to apply for another license or appointment under this code within 2 years from the effective date of such revocation or, if judicial review of such revocation is sought, within 2 years from the date of final court order or decree affirming the revocation. The department or office shall not, however, grant a new license or appointment or reinstate eligibility to hold such license or appointment if it finds that the circumstance or circumstances for which the eligibility was revoked or for which the previous license or appointment was revoked still exist or are likely to recur; if an individual's license as agent or customer representative or eligibility to hold same has been revoked upon the ground specified in s. 626.611(12), the department or office shall refuse to grant or issue any new license or appointment so applied for.

Section 951. Subsection (2) of section 626.661, Florida Statutes, is amended to read:

626.661 Surrender of license.—

(2) This section shall not be deemed to require the surrender to the department or office of any license unless such surrender has been requested by the department or office.

Section 952. Section 626.681, Florida Statutes, is amended to read:

626.681 Administrative fine in lieu of or in addition to suspension, revocation, or refusal of license, appointment, or disapproval.—

(1) Except as to insurance agencies, if the department or office finds that one or more grounds exist for the suspension, revocation, or refusal to issue, renew, or continue any license or appointment issued under this chapter, or disapproval of a continuing education course provider, instructor, school official, or monitor groups, the department or office may, in its discretion, in lieu of or in addition to such suspension or revocation, or in lieu of such refusal, or disapproval, and except on a second offense or when such suspension, revocation, or refusal is mandatory, impose upon the licensee, appointee, course provider, instructor, school official, or monitor group an administrative penalty in an amount up to $500 or, if the department or office has found willful misconduct or willful violation on the part of the licensee, appointee, course provider, instructor, school official, or monitor group up to $3,500. The administrative penalty may, in the discretion of the department or office, be augmented by an amount equal to any commissions received by or accruing to the credit of the licensee or appointee in connection with any transaction as to which the grounds for suspension, revocation, or refusal related.

(2) With respect to insurance agencies, if the department finds that one or more grounds exist for the suspension, revocation, or refusal to issue, renew, or continue any license issued under this chapter, the department may, in its discretion, in lieu of or in addition to such suspension or revocation, or in lieu of such refusal, impose upon the licensee an administrative

penalty in an amount not to exceed $10,000 per violation. The administrative penalty may, in the discretion of the department, be augmented by an amount equal to any commissions received by or accruing to the credit of the licensee in connection with any transaction as to which the grounds for suspension, revocation, or refusal related.

(3) The department or office may allow the licensee, appointee, or continuing education course provider, instructor, school official, or monitor group a reasonable period, not to exceed 30 days, within which to pay to the department or office the amount of the penalty so imposed. If the licensee, appointee, course provider, instructor, school official, or monitor group fails to pay the penalty in its entirety to the department or office within the period so allowed, the license, appointments, approval, or status of that person shall stand suspended or revoked or issuance, renewal, or continuation shall be refused, as the case may be, upon expiration of such period.

Section 953. Section 626.691, Florida Statutes, is amended to read:

626.691 Probation.—

(1) If the department or office finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any license or appointment issued under this part, the department or office may, in its discretion, except when an administrative fine is not permissible under s. 626.681 or when such suspension, revocation, or refusal is mandatory, in lieu of or in addition to such suspension or revocation, or in lieu of such refusal, or in connection with any administrative monetary penalty imposed under s. 626.681, place the offending licensee or appointee on probation for a period, not to exceed 2 years, as specified by the department or office in its order.

(2) As a condition to such probation or in connection therewith, the department or office may specify in its order reasonable terms and conditions to be fulfilled by the probationer during the probation period. If during the probation period the department or office has good cause to believe that the probationer has violated a term or condition, it shall suspend, revoke, or refuse to issue, renew, or continue the license or appointment of the probationer, as upon the original grounds referred to in subsection (1).

Section 954. Section 626.692, Florida Statutes, is amended to read:

626.692 Restitution.—If any ground exists for the suspension, revocation, or refusal of a license or appointment, the department or office may, in addition to any other penalty authorized under this chapter, order the licensee to pay restitution to any person who has been deprived of money by the licensee's misappropriation, conversion, or unlawful withholding of moneys belonging to insurers, insureds, beneficiaries, or others. In no instance shall the amount of restitution required to be paid under this section exceed the amount of money misappropriated, converted, or unlawfully withheld. Nothing in this section limits or restricts a person's right to seek other remedies as provided for by law.

Section 955. Section 626.7315, Florida Statutes, is amended to read:

626.7315 Prohibition against the unlicensed transaction of general lines insurance.—With respect to any line of authority as defined in s. 626.015(6) ~~s. 626.015(7)~~, no individual shall, unless licensed as a general lines agent:

(1) Solicit insurance or procure applications therefor;

(2) In this state, receive or issue a receipt for any money on account of or for any insurer, or receive or issue a receipt for money from other persons to be transmitted to any insurer for a policy, contract, or certificate of insurance or any renewal thereof, even though the policy, certificate, or contract is not signed by him or her as agent or representative of the insurer;

(3) Directly or indirectly represent himself or herself to be an agent of any insurer or as an agent, to collect or forward any insurance premium, or to solicit, negotiate, effect, procure, receive, deliver, or forward, directly or indirectly, any insurance contract or renewal thereof or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state;

(4) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to insurance or insurance contracts, for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his or her employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer;

(5) In any way, directly or indirectly, make or cause to be made, or attempt to make or cause to be made, any contract of insurance for or on account of any insurer;

(6) Solicit, negotiate, or in any way, directly or indirectly, effect insurance contracts, if a member of a partnership or association, or a stockholder, officer, or agent of a corporation which holds an agency appointment from any insurer; or

(7) Receive or transmit applications for suretyship, or receive for delivery bonds founded on applications forwarded from this state, or otherwise procure suretyship to be effected by a surety insurer upon the bonds of persons in this state or upon bonds given to persons in this state.

Section 956. Subsection (3) of section 626.732, Florida Statutes, is amended to read:

626.732 Requirement as to knowledge, experience, or instruction.—

(3) An individual who was or became qualified to sit for an agent's, customer representative's, or adjuster's examination at or during the time he or she was employed by the department or office and who, while so employed, was employed in responsible insurance duties as a full-time bona fide employee shall be permitted to take an examination if application for

such examination is made within 90 days after the date of termination of his or her employment with the department or office.

Section 957. Section 626.742, Florida Statutes, is amended to read:

626.742 Nonresident agents; service of process.—

(1) Each licensed nonresident agent shall appoint the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as his or her attorney to receive service of legal process issued against the agent in this state, upon causes of action arising within this state out of transactions under the agent's license and appointment. Service upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as attorney shall constitute effective legal service upon the agent.

(2) The appointment of the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ for service of process shall be irrevocable for as long as there could be any cause of action against the agent arising out of his or her insurance transactions in this state.

(3) Duplicate copies of such legal process against such agent shall be served upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ by a person competent to serve a summons.

(4) Upon receiving such service, the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent at his or her last address of record with the department.

(5) The Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall keep a record of the day and hour of service upon him or her of all such legal process.

Section 958. Subsections (4) and (7) of section 626.7451, Florida Statutes, are amended to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies the division of responsibilities, and contains the following minimum provisions:

(4) Separate records of business written by the managing general agent shall be maintained unless the managing general agent is a controlled or controlling person. The insurer shall have access and the right to copy all accounts and records related to its business in a form usable by the insurer, and the department and office shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the department and office. The records shall be retained according to s. 626.561.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the company in a timely manner and all claims must be adjusted by properly licensed persons.

(b) Notice shall be sent by the managing general agent to the insurer as soon as it becomes known that the claim:

1. Exceeds the limit set by the insurer;

2. Involves a coverage dispute;

3. Exceeds the managing general agent's claims settlement authority;

4. Is open for more than 6 months; or

5. Is closed by payment of an amount set by the office ~~department~~ or an amount set by the insurer, whichever is less.

(c) All claims files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer the claims and related application files shall become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

For the purposes of this section and ss. 626.7453 and 626.7454, the term "controlling person" or "controlling" has the meaning set forth in s. 625.012(5)(b)1., and the term "controlled person" or "controlled" has the meaning set forth in s. 625.012(5)(b)2.

Section 959. Subsections (1), (5), and (6) of section 626.7454, Florida Statutes, are amended to read:

626.7454 Managing general agents; duties of insurers.—

(1) The insurer shall have on file for each managing general agent with which it has done business an independent financial examination in a form acceptable to the office ~~department~~.

(5) Within 30 days after entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the department and office. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the department or office may request.

(6) An insurer shall review its books and records on a quarterly basis to determine if any producer has become a managing general agent as defined

in s. 626.015. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the department and office of such determination and the insurer and producer must fully comply with the provisions of this section and ss. 626.7451, 626.7452, and 626.7453 within 30 days after such determination.

Subsections (1), (3), and (4) do not apply to a managing general agent that is a controlled or controlling person.

Section 960. Subsections (6), (7), and (8) of section 626.7491, Florida Statutes, are amended to read:

626.7491 Business transacted with producer controlled property and casualty insurer.—

(6) AUDIT COMMITTEE.—Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the office ~~department~~ to review the adequacy of the insurer's loss reserves.

(7) REPORTING REQUIREMENTS.—

(a) In addition to any other required loss reserve certification, the controlled insurer shall, on April 1 of each year, file with the office ~~department~~ the opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the office ~~department~~, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of the year end, including incurred but not reported losses, on business placed by the producer.

(b) The controlled insurer shall annually report to the office ~~department~~ the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

(8) PENALTIES.—

(a) If the department believes that the controlling producer or any other person has not materially complied with this section, or any rule adopted or order issued hereunder, the department may order the controlling producer to cease placing business with the controlled insurer.

(b) If, due to such material noncompliance, the controlled insurer or any policyholder thereof has suffered any loss or damage, the department or office may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(c) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to chapter 631 and the receiver appointed under

such order believes that the controlling producer or any other person has not materially complied with this section or any rule adopted or order issued hereunder and the insurer has suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(d) Nothing contained in this section shall affect the right of the department or office to impose any other penalties provided for in the Florida Insurance Code.

(e) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

Section 961. Paragraph (e) of subsection (3) and subsections (11) and (12) of section 626.7492, Florida Statutes, are amended to read:

626.7492 Reinsurance intermediaries.—

(3) LICENSURE.—

(e) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, must designate the Chief Financial Officer ~~Insurance Commissioner~~ as agent for service of process in the manner, and with the same legal effect, provided for by this section for designation of service of process upon unauthorized insurers. Such applicant shall also furnish the department with the name and address of a resident of this state upon whom notices or orders of the department or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the department in writing of each change in its designated agent for service of process, and the change shall not become effective until acknowledged by the department.

(11) PENALTIES AND LIABILITIES.—

(a) A reinsurance intermediary found by the department, or an insurer~~,~~ or reinsurer found by the office, ~~department~~ to be in violation of any provision of this section must:

1. For each separate violation pay a penalty in an amount not to exceed $5,000;

2. Be subject to revocation or suspension of its license; and

3. If a violation was committed by the reinsurance intermediary, the reinsurance intermediary must make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(b) Nothing contained in this section shall affect the right of the office or department to impose any other penalties provided in the Florida Insurance Code.

(c) Nothing contained in this section is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to these persons.

~~(12) No insurer or reinsurer may continue to use the services of a reinsurance intermediary on or after April 8, 1992, unless such use is in compliance with this section.~~

Section 962. Subsection (5) of section 626.752, Florida Statutes, is amended to read:

626.752 Exchange of business.—

(5) Within 15 days after the last day of each month, any insurer accepting business under this section shall report to the department the name, address, telephone number, and social security number of each agent from which the insurer received more than 24 personal lines risks during the calendar year, except for risks being removed from the Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~ and placed with that insurer by a brokering agent. Once the insurer has reported pursuant to this subsection an agent's name to the department, additional reports on the same agent shall not be required. However, the fee set forth in s. 624.501 shall be paid for the agent by the insurer for each year until the insurer notifies the department that the insurer is no longer accepting business from the agent pursuant to this section. The insurer may require that the agent reimburse the insurer for the fee.

Section 963. Subsection (2) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(2) Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(11) ~~s. 626.015(12)~~, no individual shall, unless licensed as a life agent:

(a) Solicit insurance or annuities or procure applications; or

(b) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts other than:

1. As a consulting actuary advising an insurer; or

2. As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

Section 964. Section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.—No applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall be qualified or licensed unless within the 4 years immediately preceding the date the application for a license is filed with the department he or she has:

(1) Successfully completed 40 hours of classroom courses in insurance satisfactory to the department at a school or college, or extension division thereof, or other authorized course of study, approved by the department. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of life insurance by employers to their employees and the regulation thereof;

(2) Successfully completed a correspondence course in insurance satisfactory to the department and regularly offered by accredited institutions of higher learning in this state, approved by the department. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of life insurance by employers to their employees and the regulation thereof;

(3) Held an active license in life, or life and health, insurance in another state. This provision may not be utilized unless the other state grants reciprocal treatment to licensees formerly licensed in Florida; or

(4) Been employed by the department or office for at least 1 year, full time in life or life and health insurance regulatory matters and who was not terminated for cause, and application for examination is made within 90 days after the date of termination of his or her employment with the department or office.

Section 965. Section 626.8305, Florida Statutes, is amended to read:

626.8305 Prohibition against the unlicensed transaction of health insurance.—Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(7) ~~s. 626.015(8)~~, no individual shall, unless licensed as a health agent:

(1) Solicit insurance or procure applications; or

(2) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance contracts other than:

(a) As a consulting actuary advising insurers; or

(b) As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of

each, relative to their interests and those of their members or employees under insurance benefit plans.

Section 966. Section 626.8311, Florida Statutes, is amended to read:

626.8311 Requirement as to knowledge, experience, or instruction.—No applicant for a license as a health agent, except for a chartered life underwriter (CLU), shall be qualified or licensed unless within the 4 years immediately preceding the date the application for license is filed with the department he or she has:

(1) Successfully completed 40 hours of classroom courses in insurance satisfactory to the department at a school or college, or extension division thereof, or other authorized course of study, approved by the department. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of health insurance by employers to their employees and the regulation thereof;

(2) Successfully completed a correspondence course in insurance satisfactory to the department and regularly offered by accredited institutions of higher learning in this state, approved by the department. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of health insurance by employers to their employees and the regulation thereof;

(3) Held an active license in health, or life and health, insurance in another state. This provision may not be utilized unless the other state grants reciprocal treatment to licensees formerly licensed in Florida; or

(4) Been employed by the department or office for at least 1 year, full time in health insurance regulatory matters and who was not terminated for cause, and application for examination is made within 90 days after the date of termination of his or her employment with the department or office.

Section 967. Subsection (1) of section 626.8427, Florida Statutes, is amended to read:

626.8427 Number of applications for licensure required; exemption; effect of expiration of license.—

(1) After a license as a title insurance agent has been issued to a title insurance agent, the agent is not required to file another license application for a similar license, irrespective of the number of insurers to be represented by the agent, unless:

(a) The agent is specifically ordered by the department to complete a new application; or

(b) During any period of 48 months since the filing of the original license application, the agent was not appointed, unless in the case of individuals the failure to be so appointed was due to military service, in which event the period within which a new application is not required may, in the discretion of the department ~~of Insurance~~, be extended for 12 months following the date of discharge from military service if the military service does not exceed 3 years, but in no event shall the period be extended under this clause for a period of more than 6 years from the date of filing the original application.

Section 968. Subsections (1) and (3) of section 626.8463, Florida Statutes, are amended to read:

626.8463 Witnesses and evidence.—

(1) As to the subject of any examination, investigation, or hearing being conducted by him or her under s. 624.5015, ss. 626.8417-626.847, or s. 627.791, an examiner appointed by the department or office ~~of Insurance~~ may administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which the examiner deems relevant to the inquiry.

(3) If a person refuses to comply with any such subpoena or to testify as to any matter concerning which the person may be lawfully interrogated, the circuit court in and for Leon County, or the county in which such examination, investigation, or hearing is being conducted, or the county in which such person resides, upon application by the department or office, may issue an order requiring such person to comply with the subpoena and to testify. A person who fails to obey such an order of the court may be punished by the court for contempt.

Section 969. Section 626.8467, Florida Statutes, is amended to read:

626.8467 Testimony compelled; immunity from prosecution.—

(1) If a person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted under s. 624.5015, ss. 626.8417-626.847, or s. 627.791 by the department or office or its examiner on the ground that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture and notwithstanding is directed to give such testimony or produce such evidence, the person must, if so directed by the Department of Financial Services ~~Insurance~~ and the Department of Legal Affairs or by the office and the Department of Legal Affairs, nonetheless comply with such direction, but he or she shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against the person upon any criminal action, investigation, or proceeding. However, a person so testifying shall not be exempt from prosecution or punishment for any perjury committed by him or her in

such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury; and such person shall not be exempt from the refusal, suspension, or revocation of any license or appointment, permission, or authority conferred or to be conferred pursuant to s. 624.5015, ss. 626.8417-626.847, or s. 627.791.

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

Section 970. Section 626.847, Florida Statutes, is amended to read:

626.847 Penalty for refusal to testify.—A person who refuses or fails, without lawful cause, to testify relative to the affairs of any title insurer or other person when subpoenaed under s. 626.8463 and requested by the department or office ~~of Insurance~~ to so testify is guilty of a misdemeanor of the second degree and, upon conviction, is punishable as provided in s. 775.082 or s. 775.083.

Section 971. Subsection (3) of section 626.8473, Florida Statutes, is amended to read:

626.8473 Escrow; trust fund.—

(3) All funds received by a title insurance agent to be held in trust shall be immediately placed in a financial institution that is located within this state and is a member of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. These funds shall be invested in an escrow account in accordance with the investment requirements and standards established for deposits and investments of state funds in s. 17.57 ~~s. 18.10~~, where the funds shall be kept until disbursement thereof is properly authorized.

Section 972. Section 626.8582, Florida Statutes, is amended to read:

626.8582 "Nonresident public adjuster" defined.—A "nonresident public adjuster" is a person who:

(1) Is not a resident of this state;

(2) Is a currently licensed public adjuster in his or her state of residence for the type or kinds of insurance for which the licensee intends to adjust claims in this state or, if a resident of a state that does not license public adjusters, has passed the office's ~~department's~~ adjuster examination as prescribed in s. 626.8732(1)(b); and

(3) Is a self-employed public adjuster or associated with or employed by a public adjusting firm or other public adjuster.

Section 973. Section 626.8584, Florida Statutes, is amended to read:

626.8584 "Nonresident independent adjuster" defined.—A "nonresident independent adjuster" is a person who:

(1) Is not a resident of this state;

(2) Is a currently licensed independent adjuster in his or her state of residence for the type or kinds of insurance for which the licensee intends to adjust claims in this state or, if a resident of a state that does not license independent adjusters, has passed the office's ~~department's~~ adjuster examination as prescribed in s. 626.8734(1)(b); and

(3) Is a self-employed independent adjuster or associated with or employed by an independent adjusting firm or other independent adjuster.

Section 974. Section 626.859, Florida Statutes, is amended to read:

626.859 "Catastrophe" or "emergency" adjuster defined.—A "catastrophe" or "emergency" adjuster is a person who is not a licensed adjuster under this part, but who has been designated and certified to the office ~~department~~ by insurers as qualified to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer, and whom the office ~~department~~ may license, in the event of a catastrophe or emergency, for the purposes and under the conditions which the office ~~department~~ shall fix and for the period of the emergency as the office ~~department~~ shall determine, to adjust claims, losses, or damages under the policies of insurance issued by the insurers.

Section 975. Subsection (2) of section 626.861, Florida Statutes, is amended to read:

626.861 Insurer's officers, insurer's employees, reciprocal insurer's representatives; adjustments by.—

(2) If any such officer, employee, attorney, or agent in connection with the adjustment of any such claim, loss, or damage engages in any of the misconduct described in or contemplated by s. 626.611(6), the office ~~department~~ may suspend or revoke the insurer's certificate of authority.

Section 976. Subsection (2) of section 626.863, Florida Statutes, is amended to read:

626.863 Licensed independent adjusters required; insurers' responsibility.—

(2) Before referring any claim or loss, the insurer shall ascertain from the office ~~department~~ whether the proposed independent adjuster is currently licensed and appointed as such. Having once ascertained that a particular person is so licensed and appointed, the insurer may assume that he or she

will continue to be so licensed and appointed until the insurer has knowledge, or receives information from the office ~~department~~, to the contrary.

Section 977. Section 626.865, Florida Statutes, is amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The office ~~department~~ shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(a) Is a natural person at least 18 years of age.

(b) Is a bona fide resident of this state.

(c) Is trustworthy and has such business reputation as would reasonably assure that the applicant will conduct his or her business as insurance adjuster fairly and in good faith and without detriment to the public.

(d) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts, and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom the applicant may have business as a public adjuster.

(e) Has passed any required written examination.

(2) At the time of application for license as a public adjuster, the applicant shall file with the office ~~department~~ a bond executed and issued by a surety insurer authorized to transact such business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a public adjuster under the license applied for. The bond shall be in favor of the office ~~department~~ and shall specifically authorize recovery by the office ~~department~~ of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as public adjuster. The aggregate liability of the surety for all such damages shall in no event exceed the amount of the bond. Such bond shall not be terminated unless at least 30 days' written notice is given to the licensee and filed with the office ~~department~~.

Section 978. Section 626.866, Florida Statutes, is amended to read:

626.866 Independent adjuster's qualifications.—The office ~~department~~ shall issue a license to an applicant for an independent adjuster's license upon determining that the applicable license fee specified in s. 624.501 has been paid and that the applicant possesses the following qualifications:

(1) Is a natural person at least 18 years of age.

(2) Is a bona fide resident of this state.

(3) Is trustworthy and has such business reputation as would reasonably assure that the applicant will conduct his or her business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training, or instruction concerning the adjusting of damage or loss under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and the effects of the provisions of such types of contracts, and possesses adequate knowledge of the insurance laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have relations as an insurance adjuster and to adjust all claims in accordance with the policy or contract and the insurance laws of this state.

(5) Has passed any required written examination.

Section 979. Section 626.867, Florida Statutes, is amended to read:

626.867 Company employee adjuster's qualifications.—The office ~~department~~ shall issue a license to an applicant for a company employee adjuster's license upon determining that the applicable license fee specified in s. 624.501 has been paid and that the applicant possesses the following qualifications:

(1) Is a natural person at least 18 years of age.

(2) Is a bona fide resident of this state.

(3) Is trustworthy and has such business reputation as would reasonably assure that the applicant will conduct his or her business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training, or instruction concerning the adjusting of damage or loss of risks described in his or her application, is sufficiently informed as to the terms and the effects of the provisions of insurance contracts covering such risks, and possesses adequate knowledge of the insurance laws of this state relating to such insurance contracts as to enable and qualify him or her to engage in such business as insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have relations as an insurance adjuster and to adjust all claims in accordance with the policy or contract and the insurance laws of this state.

(5) Has passed any required written examination.

Section 980. Subsection (5) of section 626.869, Florida Statutes, is amended to read:

626.869 License, adjusters.—

(5) Any person holding a license for 24 consecutive months or longer and who engages in adjusting workers' compensation insurance must, beginning in their birth month and every 2 years thereafter, have completed 24 hours of courses, 2 hours of which relate to ethics, in subjects designed to inform

the licensee regarding the current workers' compensation laws of this state, so as to enable him or her to engage in business as a workers' compensation insurance adjuster fairly and without injury to the public and to adjust all claims in accordance with the policy or contract and the workers' compensation laws of this state. In order to qualify as an eligible course under this subsection, the course must:

(a) Have a course outline approved by the office ~~department~~.

(b) Be taught at a school training facility or other location approved by the office ~~department~~.

(c) Be taught by instructors with at least 5 years of experience in the area of workers' compensation, general lines of insurance, or other persons approved by the office ~~department~~. However, a member of The Florida Bar is exempt from the 5 years' experience requirement.

(d) Furnish the attendee a certificate of completion. The course provider shall send a roster to the office ~~department~~ in a format prescribed by the commission ~~department~~.

Section 981. Section 626.8695, Florida Statutes, is amended to read:

626.8695 Primary adjuster.—

(1) Each person operating an adjusting firm and each location of a multiple location adjusting firm must designate a primary adjuster for each such firm or location and must file with the office ~~department~~ the name of such primary adjuster and the address of the firm or location where he or she is the primary adjuster, on a form approved by the commission ~~department~~. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the office ~~department~~. Notice of change must be sent to the office ~~department~~ within 30 days after such change.

(2)(a) For purposes of this section, a "primary adjuster" is the licensed adjuster who is responsible for the hiring and supervision of all individuals within an adjusting firm location who deal with the public and who acts in the capacity of a public adjuster as defined in s. 626.854, or an independent adjuster as defined in s. 626.855. An adjuster may be designated as a primary adjuster for only one adjusting firm location.

(b) For purposes of this section, an "adjusting firm" is a location where an independent or public adjuster is engaged in the business of insurance.

(3) The office ~~department~~ may suspend or revoke the license of the primary adjuster if the adjusting firm employs any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed to perform clerical or administrative functions for which licensure is not required.

(4) The primary adjuster in an unincorporated adjusting firm, or the primary adjuster in an incorporated adjusting firm in which no officer,

director, or stockholder is an adjuster, is responsible and accountable for the acts of salaried employees under his or her direct supervision and control while acting on behalf of the adjusting firm. Nothing in this section renders any person criminally liable or subject to any disciplinary proceedings for any act unless the person personally committed or knew or should have known of the act and of the facts constituting a violation of this code.

(5) The office ~~department~~ may suspend or revoke the license of any adjuster who is employed by a person whose license is currently suspended or revoked.

(6) An adjusting firm location may not conduct the business of insurance unless a primary adjuster is designated. Failure of the person operating the adjusting firm to designate a primary adjuster for the firm, or for each location, as applicable, on a form prescribed by the commission ~~department~~ within 30 days after inception of the firm or change of primary adjuster designation, constitutes grounds for requiring the adjusting firm to obtain an adjusting firm license pursuant to s. 626.8696.

(7) Any adjusting firm may request, on a form prescribed by the commission ~~department~~, verification from the office ~~department~~ of any person's current licensure status. If a request is mailed to the office ~~department~~ within 5 working days after the date an adjuster is hired, and the office ~~department~~ subsequently notifies the adjusting firm that an employee's license is currently suspended, revoked, or has been denied, the license of the primary adjuster shall not be revoked or suspended if the unlicensed person is immediately dismissed from employment as an adjuster with the firm.

Section 982. Subsections (1) and (5) of section 626.8696, Florida Statutes, are amended to read:

626.8696 Application for adjusting firm license.—

(1) The application for an adjusting firm license must include:

(a) The name of each majority owner, partner, officer, and director of the adjusting firm.

(b) The resident address of each person required to be listed in the application under paragraph (a).

(c) The name of the adjusting firm and its principal business address.

(d) The location of each adjusting firm office and the name under which each office conducts or will conduct business.

(e) Any additional information which the commission ~~department~~ may require.

(5) An adjusting firm required to be licensed pursuant to s. 626.8695 must remain so licensed for a period of 3 years from the date of licensure, unless the license is suspended or revoked. The office ~~department~~ may suspend or revoke the adjusting firm's authority to do business for activities

occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.

Section 983. Section 626.8697, Florida Statutes, is amended to read:

626.8697 Grounds for refusal, suspension, or revocation of adjusting firm license.—

(1) The office ~~department~~ shall deny, suspend, revoke, or refuse to continue the license of any adjusting firm if it finds, as to any adjusting firm or as to any majority owner, partner, manager, director, officer, or other person who manages or controls the firm, that any of the following grounds exist:

(a) Lack by the firm of one or more of the qualifications for the license as specified in this code.

(b) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license.

(2) The office ~~department~~ may, in its discretion, deny, suspend, revoke, or refuse to continue the license of any adjusting firm if it finds that any of the following applicable grounds exist with respect to the firm or any owner, partner, manager, director, officer, or other person who is otherwise involved in the operation of the firm:

(a) Any cause for which issuance of the license could have been refused had it then existed and been known to the office ~~department~~.

(b) Violation of any provision of this code or of any other law applicable to the business of insurance.

(c) Violation of any order or rule of the office or commission ~~department~~.

(d) An owner, partner, manager, director, officer, or other person who manages or controls the firm having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the laws of the United States or of any state or under the laws of any other country, without regard to whether adjudication was made or withheld by the court.

(e) Failure to inform the office ~~department~~ in writing within 30 days after a pleading by an owner, partner, manager, director, officer, or other person managing or controlling the firm of guilty or nolo contendere to, or being convicted or found guilty of, any felony or a crime punishable by imprisonment of 1 year or more under the laws of the United States or of any state, or under the laws of any other country, without regard to whether adjudication was made or withheld by the court.

(f) Knowingly aiding, assisting, procuring, advising, or abetting any person in the violation of or to violate a provision of the insurance code or any order or rule of the office or commission ~~department~~.

(g) Knowingly employing any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the office ~~department~~.

(h) Committing any of the following acts with such a frequency as to have made the operation of the adjusting firm hazardous to the insurance-buying public or other persons:

1. Misappropriation, conversion, or unlawful or unreasonable withholding of moneys belonging to insurers or insureds or beneficiaries or claimants or to others and received in the conduct of business under the license.

2. Misrepresentation or deception with regard to the business of insurance, dissemination of information, or advertising.

3. Demonstrated lack of fitness or trustworthiness to engage in the business of insurance adjusting arising out of activities related to insurance adjusting or the adjusting firm.

(i) Failure to appoint a primary adjuster.

(3) In lieu of discretionary refusal, suspension, or revocation of an adjusting firm's license, the office ~~department~~ may impose an administrative penalty of up to $1,000 for each violation or ground provided under this section, not to exceed an aggregate amount of $10,000 for all violations or grounds.

(4) If any adjusting firm, having been licensed, thereafter has such license revoked or suspended, the firm shall terminate all adjusting activities while the license is revoked or suspended.

Section 984. Section 626.8698, Florida Statutes, is amended to read:

626.8698 Disciplinary guidelines for public adjusters.—The office ~~department~~ may deny, suspend, or revoke the license of a public adjuster, and administer a fine not to exceed $5,000 per act, for any of the following:

(1) Violating any provision of this chapter or a rule or order of the office or commission ~~department~~;

(2) Receiving payment or anything of value as a result of an unfair or deceptive practice;

(3) Receiving or accepting any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise; entering into a split-fee arrangement with another person who is not a public adjuster; or being otherwise paid or accepting payment for services that have not been performed;

(4) Violating s. 316.066 or s. 817.234;

(5) Soliciting or otherwise taking advantage of a person who is vulnerable, emotional, or otherwise upset as the result of a trauma, accident, or other similar occurrence; or

(6) Violating any ethical rule of the commission ~~department~~.

Section 985. Section 626.870, Florida Statutes, is amended to read:

626.870 Application for license.—

(1) Application for a license under this part shall be made as provided in s. 626.171 and related sections of this code.

(2) The commission ~~department~~ shall so prepare the form of the application as to elicit and require from the applicant the information necessary to enable the office ~~department~~ to determine whether the applicant possesses the qualifications prerequisite to issuance of the license to the applicant.

(3) The commission ~~department~~ may, in its discretion, require that the application be supplemented by the certificate or affidavit of such person or persons as it deems necessary for its determination of the applicant's residence, business reputation, and reputation for trustworthiness. The commission ~~department~~ shall prescribe and the office may furnish the forms for such certificates and affidavits.

Section 986. Section 626.871, Florida Statutes, is amended to read:

626.871 Reappointment after military service.—The office ~~department~~ may, without requiring a further written examination, issue an appointment as an adjuster to a formerly licensed and appointed adjuster of this state who held a current adjuster's appointment at the time of entering service in the Armed Forces of the United States, subject to the following conditions:

(1) The period of military service must not have been in excess of 3 years;

(2) The application for the appointment must be filed with the office ~~department~~ and the applicable fee paid, within 12 months following the date of honorable discharge of the applicant from the military service; and

(3) The new appointment will be of the same type and class as that currently effective at the time the applicant entered military service; but, if such type and class of appointment is not being currently issued under this code, the new appointment shall be of that type and class or classes most closely resembling those of the former appointment.

Section 987. Subsections (1) and (5) of section 626.872, Florida Statutes, are amended to read:

626.872 Temporary license.—

(1) The office ~~department~~ may, in its discretion, issue a temporary license as an independent adjuster or as a company employee adjuster, subject to the following conditions:

(a) The applicant must be an employee of an adjuster currently licensed by the office ~~department~~, an employee of an authorized insurer, or an employee of an established adjusting firm or corporation which is supervised by a currently licensed independent adjuster.

(b) The application must be accompanied by a certificate of employment and a report as to the applicant's integrity and moral character on a form prescribed by the commission ~~department~~ and executed by the employer.

(c) The applicant must be a natural person of at least 18 years of age, must be a bona fide resident of this state, must be trustworthy, and must have such business reputation as would reasonably assure that the applicant will conduct his or her business as an adjuster fairly and in good faith and without detriment to the public.

(d) The applicant's employer is responsible for the adjustment acts of any licensee under this section.

(e) The applicable license fee specified must be paid before issuance of the temporary license.

(f) The temporary license shall be effective for a period of 1 year, but subject to earlier termination at the request of the employer, or if the licensee fails to take an examination as an independent adjuster or company employee adjuster within 6 months after issuance of the temporary license, or if suspended or revoked by the office ~~department~~.

(5) The office ~~department~~ shall not issue a temporary license as an independent adjuster or as a company employee adjuster to any individual who has ever held such a license in this state.

Section 988. Subsection (1) of section 626.873, Florida Statutes, is amended to read:

626.873 Nonresident company employee adjusters.—

(1) The office ~~department~~ shall, upon application therefor, issue a license to an applicant for a nonresident adjuster's license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(a) Is a currently licensed insurance adjuster in his or her home state, if such state requires a license.

(b) Is an employee of an insurer, or a wholly owned subsidiary of an insurer, admitted to do business in this state.

(c) Has filed a certificate or letter of authorization from the insurance department of his or her home state, if such state requires an adjuster to be licensed, stating that he or she holds a current license or authorization to adjust insurance losses. Such certificate or authorization must be signed by the insurance commissioner, or his or her deputy, of the adjuster's home state and must reflect whether or not the adjuster has ever had his or her license or authorization in the adjuster's home state suspended or revoked and, if such is the case, the reason for such action.

Section 989. Section 626.8732, Florida Statutes, is amended to read:

626.8732 Nonresident public adjuster's qualifications, bond.—

(1) The office ~~department~~ shall, upon application therefor, issue a license to an applicant for a nonresident public adjuster's license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(a) Is a natural person at least 18 years of age.

(b) Has passed to the satisfaction of the office ~~department~~ a written Florida public adjuster's examination of the scope prescribed in s. 626.241(6); however, the requirement for such an examination does not apply to any of the following:

1. An applicant who is licensed as a resident public adjuster in his or her state of residence, when that state requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of that state has been entered into by the office ~~department~~; or

2. An applicant who is licensed as a nonresident public adjuster in a state other than his or her state of residence when the state of licensure requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of the state of licensure has been entered into by the office ~~department~~.

(c) Is self-employed as a public adjuster or associated with or employed by a public adjusting firm or other public adjuster. Applicants licensed as nonresident public adjusters under this section must be appointed as such in accordance with the provisions of ss. 626.112 and 626.451. Appointment fees in the amount specified in s. 624.501 must be paid to the office ~~department~~ in advance. The appointment of a nonresident public adjuster shall continue in force until suspended, revoked, or otherwise terminated, but subject to biennial renewal or continuation by the licensee in accordance with procedures prescribed in s. 626.381 for licensees in general.

(d) Is trustworthy and has such business reputation as would reasonably assure that he or she will conduct his or her business as a nonresident public adjuster fairly and in good faith and without detriment to the public.

(e) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts; is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts; and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have business as a public adjuster.

(2) The applicant shall furnish the following with his or her application:

(a) A complete set of his or her fingerprints. The applicant's fingerprints must be certified by an authorized law enforcement officer. The office ~~department~~ may not authorize an applicant to take the required examination

or issue a nonresident public adjuster's license to the applicant until the office ~~department~~ has received a report from the Florida Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

(b) If currently licensed as a resident public adjuster in the applicant's state of residence, a certificate or letter of authorization from the licensing authority of the applicant's state of residence, stating that the applicant holds a current or comparable license to act as a public adjuster. The certificate or letter of authorization must be signed by the insurance commissioner or his or her deputy or the appropriate licensing official and must disclose whether the adjuster has ever had any license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action.

(c) If the applicant's state of residence does not require licensure as a public adjuster and the applicant has been licensed as a resident insurance adjuster, agent, broker, or other insurance representative in his or her state of residence or any other state within the past 3 years, a certificate or letter of authorization from the licensing authority stating that the applicant holds or has held a license to act as such an insurance adjuster, agent, or other insurance representative. The certificate or letter of authorization must be signed by the insurance commissioner or his or her deputy or the appropriate licensing official and must disclose whether or not the adjuster, agent, or other insurance representative has ever had any license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action.

(3) At the time of application for license as a nonresident public adjuster, the applicant shall file with the office ~~department~~ a bond executed and issued by a surety insurer authorized to transact surety business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a nonresident public adjuster under the license applied for. The bond must be in favor of the office ~~department~~ and must specifically authorize recovery by the office ~~department~~ of the damages sustained if the licensee commits fraud or unfair practices in connection with his or her business as nonresident public adjuster. The aggregate liability of the surety for all the damages may not exceed the amount of the bond. The bond may not be terminated unless at least 30 days' written notice is given to the licensee and filed with the office ~~department~~.

(4) The usual and customary records pertaining to transactions under the license of a nonresident public adjuster must be retained for at least 3 years after completion of the adjustment and must be made available in this state to the office ~~department~~ upon request. The failure of a nonresident public adjuster to properly maintain records and make them available to the office ~~department~~ upon request constitutes grounds for the immediate suspension of the license issued under this section.

(5) After licensure as a nonresident public adjuster, as a condition of doing business in this state, the licensee must annually on or before January 1, on a form prescribed by the commission ~~department~~, submit an affidavit certifying that the licensee is familiar with and understands the insurance code and rules adopted thereunder and the provisions of the contracts negotiated or to be negotiated. Compliance with this filing requirement is a condition precedent to the issuance, continuation, reinstatement, or renewal of a nonresident public adjuster's appointment.

Section 990. Subsections (1), (3), and (4) of section 626.8734, Florida Statutes, are amended to read:

626.8734 Nonresident independent adjuster's qualifications.—

(1) The office ~~department~~ shall, upon application therefor, issue a license to an applicant for a nonresident independent adjuster's license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(a) Is a natural person at least 18 years of age.

(b) Has passed to the satisfaction of the office ~~department~~ a written Florida independent adjuster's examination of the scope prescribed in s. 626.241(6); however, the requirement for the examination does not apply to any of the following:

1. An applicant who is licensed as a resident independent adjuster in his or her state of residence when that state requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of that state has been entered into by the office ~~department~~; or

2. An applicant who is licensed as a nonresident independent adjuster in a state other than his or her state of residence when the state of licensure requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of the state of licensure has been entered into by the office ~~department~~.

(c) Is self-employed or associated with or employed by an independent adjusting firm or other independent adjuster. Applicants licensed as nonresident independent adjusters under this section must be appointed as such in accordance with the provisions of ss. 626.112 and 626.451. Appointment fees in the amount specified in s. 624.501 must be paid to the office ~~department~~ in advance. The appointment of a nonresident independent adjuster shall continue in force until suspended, revoked, or otherwise terminated, but subject to biennial renewal or continuation by the licensee in accordance with procedures prescribed in s. 626.381 for licensees in general.

(d) Is trustworthy and has such business reputation as would reasonably assure that he or she will conduct his or her business as a nonresident independent adjuster fairly and in good faith and without detriment to the public.

(e) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts; is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts; and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have business as an independent adjuster.

(3) The usual and customary records pertaining to transactions under the license of a nonresident independent adjuster must be retained for at least 3 years after completion of the adjustment and must be made available in this state to the office ~~department~~ upon request. The failure of a nonresident independent adjuster to properly maintain records and make them available to the office ~~department~~ upon request constitutes grounds for the immediate suspension of the license issued under this section.

(4) After licensure as a nonresident independent adjuster, as a condition of doing business in this state, the licensee must annually on or before January 1, on a form prescribed by the commission ~~department~~, submit an affidavit certifying that the licensee is familiar with and understands the insurance laws and administrative rules of this state and the provisions of the contracts negotiated or to be negotiated. Compliance with this filing requirement is a condition precedent to the issuance, continuation, reinstatement, or renewal of a nonresident independent adjuster's appointment.

Section 991. Section 626.8736, Florida Statutes, is amended to read:

626.8736 Nonresident independent or public adjusters; service of process.—

(1) Each licensed nonresident independent or public adjuster shall appoint the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ and his or her successors in office as his or her attorney to receive service of legal process issued against the nonresident independent or public adjuster in this state, upon causes of action arising within this state out of transactions under his license and appointment. Service upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as attorney shall constitute effective legal service upon the nonresident independent or public adjuster.

(2) The appointment of the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ for service of process shall be irrevocable for as long as there could be any cause of action against the nonresident independent or public adjuster arising out of his or her insurance transactions in this state.

(3) Duplicate copies of legal process against the nonresident independent or public adjuster shall be served upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ by a person competent to serve a summons.

(4) Upon receiving the service, the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith send one of the copies of the

process, by registered mail with return receipt requested, to the defendant nonresident independent or public adjuster at his or her last address of record with the office ~~department~~.

(5) The Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall keep a record of the day and hour of service upon him or her of all legal process received under this section.

Section 992. Section 626.8738, Florida Statutes, is amended to read:

626.8738 Penalty for violation.—In addition to any other remedy imposed pursuant to this code, any person who acts as a resident or nonresident public adjuster or holds himself or herself out to be a public adjuster to adjust claims in this state, without being licensed by the office ~~department~~ as a public adjuster and appointed as a public adjuster, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each act in violation of this section constitutes a separate offense.

Section 993. Section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the office ~~department~~ may issue a license, for the purposes and under the conditions which it shall fix and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters by independent resident adjusters or by an authorized insurer or by a licensed general lines agent to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurers. The fee for the license shall be as provided in s. 624.501(12)(c).

(2) If any person not a licensed adjuster who has been permitted to adjust such losses, claims, or damages under the conditions and circumstances set forth in subsection (1), engages in any of the misconduct described in or contemplated by ss. 626.611 and 626.621, the office ~~department~~, without notice and hearing, shall be authorized to issue its order denying such person the privileges granted under this section; and thereafter it shall be unlawful for any such person to adjust any such losses, claims, or damages in this state.

Section 994. Section 626.878, Florida Statutes, is amended to read:

626.878 Rules; code of ethics.—An adjuster shall subscribe to the code of ethics specified in the rules of the commission ~~department~~.

Section 995. Paragraphs (d) and (m) of subsection (1) of section 626.88, Florida Statutes, are amended to read:

626.88 Definitions of "administrator" and "insurer".—

(1) For the purposes of this part, an "administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or premi-

ums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s. 624.33(1) or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers, other than any of the following persons:

(d) A health care services plan, health maintenance organization, professional service plan corporation, or person in the business of providing continuing care, possessing a valid certificate of authority issued by the office ~~department~~, and the sales representatives thereof, if the activities of such entity are limited to the activities permitted under the certificate of authority.

(m) A person approved by the department ~~of Insurance~~ who administers only self-insured workers' compensation plans.

A person who provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers shall comply with the provisions of ss. 627.6131, 641.3155, and 641.51(4).

Section 996. Section 626.8805, Florida Statutes, is amended to read:

626.8805 Certificate of authority to act as administrator.—

(1) It is unlawful for any person to act as or hold himself or herself out to be an administrator in this state without a valid certificate of authority issued by the office ~~department~~ pursuant to ss. 626.88-626.894. To qualify for and hold authority to act as an administrator in this state, an administrator must otherwise be in compliance with this code and with its organizational agreement. The failure of any person to hold such a certificate while acting as an administrator shall subject such person to a fine of not less than $5,000 or more than $10,000 for each violation.

(2) The administrator shall file with the office ~~department~~ an application for a certificate of authority upon a form to be adopted by the commission and furnished by the office ~~department~~, which application shall include or have attached the following information and documents:

(a) All basic organizational documents of the administrator, such as the articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents, and all amendments to those documents.

(b) The bylaws, rules, and regulations or similar documents regulating the conduct or the internal affairs of the administrator.

(c) The names, addresses, official positions, and professional qualifications of the individuals who are responsible for the conduct of the affairs of the administrator, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the

principal officers in the case of a corporation, the partners or members in the case of a partnership or association, and any other person who exercises control or influence over the affairs of the administrator.

(d) Annual statements or reports for the 3 most recent years, or such other information as the office ~~department~~ may require in order to review the current financial condition of the applicant.

(e) If the applicant is not currently acting as an administrator, a statement of the amounts and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other principals.

(3) The applicant shall make available for inspection by the office ~~department~~ copies of all contracts with insurers or other persons utilizing the services of the administrator.

(4) The office ~~department~~ shall not issue a certificate of authority if it determines that the administrator or any principal thereof is not competent, trustworthy, financially responsible, or of good personal and business reputation or has had an insurance license denied for cause by any state.

(5) A certificate of authority issued under this section shall remain valid, unless suspended or revoked by the office ~~department~~, so long as the certificateholder continues in business in this state.

(6) A certificate of authority issued under this section shall indicate that the administrator is authorized to administer commercial self-insurance funds or life and health programs or both, except that a certificate of authority issued prior to October 1, 1988, does not authorize the administration of commercial self-insurance funds.

Section 997. Section 626.8809, Florida Statutes, is amended to read:

626.8809 Fidelity bond.—An administrator shall have and keep in full force and effect a fidelity bond equal to at least 10 percent of the amount of the funds handled or managed annually by the administrator. However, the office ~~department~~ may not require a bond greater than $500,000 unless the office ~~department~~, after due notice to all interested parties and opportunity for hearing and after consideration of the record, requires an amount in excess of $500,000 but not more than 10 percent of the amount of the funds handled or managed annually by the administrator.

Section 998. Section 626.8814, Florida Statutes, is amended to read:

626.8814 Disclosure of ownership or affiliation.—Each administrator shall identify to the office ~~department~~ any ownership interest or affiliation of any kind with any insurance company responsible for providing benefits directly or through reinsurance to any plan for which the administrator provides administrative services.

Section 999. Subsection (2) of section 626.884, Florida Statutes, is amended to read:

626.884 Maintenance of records by administrator; access; confidentiality.—

(2) The office ~~department~~ shall have access to books and records maintained by the administrator for the purpose of examination, audit, and inspection. Information contained in such books and records is confidential and exempt from the provisions of s. 119.07(1) if the disclosure of such information would reveal a trade secret as defined in s. 688.002. However, the office ~~department~~ may use such information in any proceeding instituted against the administrator.

Section 1000. Subsections (1) and (3) of section 626.89, Florida Statutes, are amended to read:

626.89 Annual financial statement and filing fee; notice of change of ownership.—

(1) Each authorized administrator shall file with the office ~~department~~ a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed annually on or before March 1 or within such extension of time therefor as the office ~~department~~ for good cause may have granted and shall be for the preceding calendar year. The statement shall be in such form and contain such matters as the commission ~~department~~ prescribes and shall be verified by at least two officers of such administrator.

(3) In addition, the administrator shall immediately notify the office ~~department~~ of any material change in its ownership.

Section 1001. Section 626.891, Florida Statutes, is amended to read:

626.891 Grounds for suspension or revocation of certificate of authority.—

(1) The certificate of authority of an administrator shall be suspended or revoked if the office ~~department~~ determines that the administrator:

(a) Is in an unsound financial condition;

(b) Has used or is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or

(c) Has failed to pay any judgment rendered against it in this state within 60 days after the judgment has become final.

(2) The office ~~department~~ may, in its discretion, suspend or revoke the certificate of authority of an administrator if it finds that the administrator:

(a) Has violated any lawful rule or order of the commission or office ~~department~~ or any provision of this chapter;

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to such examination, when required by the office ~~department~~;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, compelled insured persons to accept less than the amount due them or to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

(d) Is or was affiliated with and under the same general management or interlocking directorate or ownership as another administrator which transacts business in this state without having a certificate of authority;

(e) At any time fails to meet any qualification for which issuance of the certificate could have been refused had such failure then existed and been known to the office ~~department~~;

(f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony relating to the business of insurance or insurance administration in this state or in any other state without regard to whether adjudication was withheld; or

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

(3) The office ~~department~~ may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the certificate of any administrator if it finds that one or more of the following circumstances exist:

(a) The administrator is insolvent or impaired.

(b) The fidelity bond required by s. 626.8809 is not maintained.

(c) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the administrator has been commenced in any state.

(d) The financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(4) The violation of this part by any insurer shall be a ground for suspension or revocation of the certificate of authority of that insurer in this state.

Section 1002. Section 626.892, Florida Statutes, is amended to read:

626.892 Order of suspension or revocation of certificate of authority; notice.—

(1) The suspension or revocation of a certificate of authority of an administrator shall be effected by order of the office ~~department~~ mailed to the administrator by registered or certified mail.

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

Section 1003. Subsections (1), (3), and (4) of section 626.894, Florida Statutes, are amended to read:

626.894 Administrative fine in lieu of suspension or revocation.—

(1) If the office ~~department~~ finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the office ~~department~~ may, in lieu of such suspension or revocation, impose a fine upon the administrator.

(3) With respect to any knowing and willful violation of a lawful order or rule of the office or commission ~~department~~ or a provision of this part, the office ~~department~~ may impose a fine upon the administrator in an amount not to exceed $5,000 for each such violation. In no event may such fine exceed an aggregate amount of $25,000 for all knowing and willful violations arising out of the same action. In addition to such fine, the administrator shall make restitution when due in accordance with the provisions of subsection (2).

(4) The failure of an administrator to make restitution when due as required under this section constitutes a willful violation of this part. However, if an administrator in good faith is uncertain as to whether any restitution is due or as to the amount of restitution due, it shall promptly notify the office ~~department~~ of the circumstances; and the failure to make restitution pending a determination of whether restitution is due or the amount of restitution due will not constitute a violation of this part.

Section 1004. Section 626.895, Florida Statutes, is amended to read:

626.895 Definition of "service company" or "service agent".—For the purpose of this part, a "service company" is any business entity which has met all the requirements of ss. 626.895-626.899, which does not control funds, and which has obtained office ~~department~~ approval to contract with self-insurers or multiple-employer welfare arrangements for the purpose of providing all or any part of the services necessary to establish and maintain a multiple-employer welfare arrangement as defined in s. 624.437(1). The term "service agent" is synonymous with the term "service company" as used in this part.

Section 1005. Subsection (3) of section 626.896, Florida Statutes, is amended to read:

626.896 Servicing requirements for self-insurers and multiple-employer welfare arrangements.—

(3) It is the responsibility of the self-insurer or multiple-employer welfare arrangement to notify the office ~~department~~ within 90 days of changing its method of fulfilling its servicing requirements from those which were previously filed with the office ~~department~~.

Section 1006. Subsection (2) of section 626.897, Florida Statutes, is amended to read:

626.897 Application for authorization to act as service company; bond.—

(2) Any business desiring to act as a service company for individual self-insurers or multiple-employer welfare arrangements shall be approved by the office ~~department~~. Any business acting as a service company prior to October 1, 1983, will be approved as a service company upon complying with the filing requirements of this section and s. 626.898. The failure of any person to obtain such approval while acting as a service company shall subject such person to a fine of not less than $5,000 or more than $10,000 for each violation.

Section 1007. Subsections (3) and (10) of section 626.898, Florida Statutes, are amended to read:

626.898 Requirements for retaining authorization as service company; recertification.—

(3)(a) Each service company shall maintain at one or more locations within this state copies of all contracts with each self-insurer or multiple-employer welfare arrangement that it services and records relating thereto which are sufficient in type and quantity to verify the accuracy and completeness of all reports and documents submitted to the office ~~department~~ pursuant to this part. In the event that the service company has its records distributed in multiple locations, it shall inform the office ~~department~~ as to the location of each type of record, as well as the location of specific records for the self-insurers or multiple-employer welfare arrangements it services.

(b) These records shall be open to inspection by representatives of the office ~~department~~ during regular business hours. All records shall be retained according to the schedule adopted by the commission ~~department~~ for similar documents. The location of these records shall be made known to the office ~~department~~ as necessary.

(10) Each service company shall identify to the office ~~department~~ any ownership interest or affiliation of any kind with any insurance company responsible directly or through reinsurance for providing benefits to any plan for which it provides services.

Section 1008. Section 626.899, Florida Statutes, is amended to read:

626.899 Withdrawal of authorization as service company.—The failure to comply with any provision of ss. 626.895-626.899 or with any rule or any order of the commission or office ~~department~~ within the time prescribed shall be considered good cause for withdrawal of the certificate of approval. The office ~~department~~ shall by registered or certified mail give to the service company prior written notice of such withdrawal. The service company shall have 30 days from the date of mailing to request a hearing. The failure to request a hearing within the time prescribed shall result in the withdrawal becoming effective 45 days from the date of mailing of the original notice. In no event shall the withdrawal of the certificate of approval be effective prior to the date upon which a hearing, if requested, is scheduled. Copies of such notice of withdrawal of a certificate of approval shall be furnished by the office ~~department~~ to each self-funded program serviced.

Section 1009. Subsection (4) of section 626.901, Florida Statutes, is amended to read:

626.901 Representing or aiding unauthorized insurer prohibited.—

(4) This section does not apply to:

(a) Matters authorized to be done by the office ~~department~~ under the Unauthorized Insurers Process Law, ss. 626.904-626.912.

(b) Surplus lines insurance when written pursuant to the Surplus Lines Law, ss. 626.913-626.937.

(c) Transactions as to which a certificate of authority is not required of an insurer, as stated in s. 624.402.

(d) Independently procured coverage written pursuant to s. 626.938.

Section 1010. Section 626.906, Florida Statutes, is amended to read:

626.906 Acts constituting Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as process agent.—Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign insurer, alien insurer, or person representing or aiding such an insurer is equivalent to and shall constitute an appointment by such insurer or person representing or aiding such insurer of the Chief Financial Officer ~~Insurance Commissioner and Treasurer, and his or her successor or successors in office,~~ to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, arising out of any such contract of insurance; and any such act shall be signification of the insurer's or person's agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer or person representing or aiding such insurer:

(1) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein;

(2) The solicitation of applications for such contracts;

(3) The collection of premiums, membership fees, assessments, or other considerations for such contracts; or

(4) Any other transaction of insurance.

Section 1011. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

626.907 Service of process; judgment by default.—

(1) Service of process upon an insurer or person representing or aiding such insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ or some person in apparent charge of his or her office two copies

thereof. The Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith mail by registered mail one of the copies of such process to the defendant at the defendant's last known principal place of business and shall keep a record of all process so served upon him or her. The service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Section 1012. Section 626.909, Florida Statutes, is amended to read:

626.909 Jurisdiction of office and department; service of process on Secretary of State.—

(1) The Legislature hereby declares that it is a subject of concern that the purpose of the Unauthorized Insurers Process Law as expressed in s. 626.905 may be denied by the possibility that the right of service of process provided for in that law may be restricted only to those actions, suits, or proceedings brought by insureds or beneficiaries. It therefore declares that it is the intent of s. 626.905 that it is the obligation and duty of the state to protect its residents and also proceed under this law through the office or department in the courts of this state. It further declares that it is also the intent of the Legislature to subject unauthorized insurers and persons representing or aiding such insurers to the jurisdiction of the office or department in proceedings, examinations, or hearings before it as provided for in this code.

(2) In addition to the procedure for service of process on unauthorized insurers or persons representing or aiding such insurers contained in ss. 626.906 and 626.907, the office or department shall have the right to bring any action, suit, or proceeding in the name of the state or conduct any proceeding, examination, or hearing provided for in this code against any unauthorized insurer or person representing or aiding such insurer for violation of any lawful order of the office or department or any provision of this code, specifically including but not limited to the regulation of trade practices provided for in part IX of this chapter, if the insurer or person representing or aiding such insurer transacts insurance in this state as defined in ss. 624.10 and 626.906 and the insurer does not transact such business under a subsisting certificate of authority as required by s. 624.401. In the event the transaction of business is done by mail, the venue of the act is at the point where the matter transmitted by mail is delivered and takes effect.

(3) In addition to the right of action, suit, or proceeding authorized by subsection (2), the office or department shall have the right to bring a civil action in the name of the state, as parens patriae on behalf of any insured, beneficiary of any insured, claimant or dependent, or any other person or

class of persons injured as a result of the transaction of any insurance business as defined in s. 626.906 by any unauthorized insurer, as defined in s. 624.09 who is also an ineligible insurer as set forth in ss. 626.917 and 626.918, or any person who represents or aids any unauthorized insurer, in violation of s. 626.901, to recover actual damages on behalf of individuals who were residents at the time the transaction occurred and the cost of such suit, including a reasonable attorney's fee. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

(4) Transaction of business in this state, as so defined, by any unauthorized insurer or person representing or aiding such insurer shall be deemed consent by the insurer or person representing or aiding such insurer to the jurisdiction of the office or department in proceedings, examinations, and hearings before it as provided for in this code and shall constitute an irrevocable appointment by the insurer or person representing or aiding such insurer of the Secretary of State and his or her successor or successors in office as its true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding in any court by the office or department or by the state and upon whom may be served all notices and orders of the office or department arising out of any such transaction of business; and such transaction of business shall constitute the agreement of the insurer or person representing or aiding such insurer that any such process against it or any such notice or order which is so served shall be of the same legal force and validity as if served personally within this state on the insurer or person representing or aiding such insurer. Service of process shall be in accordance with and in the same manner as now provided for service of process upon nonresidents under the provision of s. 48.161, and service of process shall also be valid if made as provided in s. 626.907(2).

(5) No plaintiff shall be entitled to a judgment by default or a decree pro confesso under this section until the expiration of 30 days after date of the filing of the affidavit of compliance.

(6) Nothing in this section shall limit or abridge the right to serve any process, notice, orders, or demand upon the insurer or person representing or aiding such insurer in any other manner now or hereafter permitted by law.

(7) Nothing in this section shall apply as to surplus lines insurance when written pursuant to the Surplus Lines Law, ss. 626.913-626.937, or as to transactions as to which a certificate of authority is not required of the insurer, as stated in s. 624.402.

Section 1013. Section 626.910, Florida Statutes, is amended to read:

626.910 Penalty for violation by unauthorized insurers and persons representing or aiding such insurers.—Any unauthorized insurer or person representing or aiding such insurer transacting insurance in this state and subject to service of process as referred to in s. 626.909 shall forfeit and pay to the state a civil penalty of not more than $1,000 for each nonwillful

violation, or not more than $10,000 for each willful violation, of any lawful order of the office or department or any provision of this code.

Section 1014. Section 626.912, Florida Statutes, is amended to read:

626.912 Exemptions from ss. 626.904-626.911.—The provisions of ss. 626.904-626.911 do not apply to any action, suit, or proceeding against any unauthorized foreign insurer, alien insurer, or person representing or aiding such an insurer arising out of any contract of insurance:

(1) Covering reinsurance, wet marine and transportation, commercial aircraft, or railway insurance risks;

(2) Against legal liability arising out of the ownership, operation, or maintenance of any property having a permanent situs outside this state;

(3) Against loss of or damage to any property having a permanent situs outside this state; or

(4) Issued under and in accordance with the Surplus Lines Law, when such insurer or person representing or aiding such insurer enters a general appearance or when such contract of insurance contains a provision designating the Chief Financial Officer ~~Insurance Commissioner and Treasurer and his or her successor or successors in office~~ or designating a Florida resident agent to be the true and lawful attorney of such unauthorized insurer or person representing or aiding such insurer upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or person representing or aiding such insurer or beneficiary arising out of any such contract of insurance; and service of process effected on such Chief Financial Officer ~~Insurance Commissioner and Treasurer, his or her successor or successors in office,~~ or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer or person representing or aiding such insurer in such action.

Section 1015. Subsection (2) of section 626.914, Florida Statutes, is amended to read:

626.914 Definitions.—As used in this Surplus Lines Law, the term:

(2) "Eligible surplus lines insurer" means an unauthorized insurer which has been made eligible by the office ~~department~~ to issue insurance coverage under this Surplus Lines Law.

Section 1016. Subsections (1) and (2) of section 626.916, Florida Statutes, are amended to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(a) The full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class

of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers. Surplus lines agents must verify that a diligent effort has been made by requiring a properly documented statement of diligent effort from the retail or producing agent. However, to be in compliance with the diligent effort requirement, the surplus lines agent's reliance must be reasonable under the particular circumstances surrounding the export of that particular risk. Reasonableness shall be assessed by taking into account factors which include, but are not limited to, a regularly conducted program of verification of the information provided by the retail or producing agent. Declinations must be documented on a risk-by-risk basis. If it is not possible to obtain the full amount of insurance required by layering the risk, it is permissible to export the full amount.

(b) The premium rate at which the coverage is exported shall not be lower than that rate applicable, if any, in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.

(c) The policy or contract form under which the insurance is exported shall not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks; except that a coverage may be exported under a unique form of policy designed for use with respect to a particular subject of insurance if a copy of such form is filed with the office ~~department~~ by the surplus lines agent desiring to use the same and is subject to the disapproval of the office ~~department~~ within 10 days of filing such form exclusive of Saturdays, Sundays, and legal holidays if it finds that the use of such special form is not reasonably necessary for the principal purposes of the coverage or that its use would be contrary to the purposes of this Surplus Lines Law with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(d) Except as to extended coverage in connection with fire insurance policies and except as to windstorm insurance, the policy or contract under which the insurance is exported shall not provide for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts in actual and current use by one or more authorized insurers.

(2) The commission ~~department~~ may by rule ~~rules and regulations~~ declare eligible for export generally, and notwithstanding the provisions of paragraphs (a), (b), (c), and (d) of subsection (1), any class or classes of insurance coverage or risk for which it finds, after a hearing, that there is no reasonable or adequate market among authorized insurers. Any such rules ~~and regulations~~ shall continue in effect during the existence of the conditions upon which predicated, but subject to termination by the commission ~~department~~.

Section 1017. Subsection (1) of section 626.917, Florida Statutes, is amended to read:

626.917 Eligibility for export; wet marine and transportation, aviation risks.—

(1) Insurance coverage of wet marine and transportation risks, as defined in this code in s. 624.607(2), or aviation risks, including airport and products liability incidental thereto and hangarkeeper's liability, may be exported under the following conditions:

(a) The insurance must be placed only by or through a licensed Florida surplus lines agent; and

(b) The insurer must be one made eligible by the office ~~department~~ specifically for such coverages, based upon information furnished by the insurer and indicating that the insurer is well able to meet its financial obligations.

Section 1018. Section 626.918, Florida Statutes, is amended to read:

626.918 Eligible surplus lines insurers.—

(1) No surplus lines agent shall place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer, except as permitted under subsections (5) and (6).

(2) No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the office ~~department~~ in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by the Florida Surplus Lines Service Office;

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed and must have been such an insurer for not less than the 3 years next preceding or must be the wholly owned subsidiary of such authorized insurer or must be the wholly owned subsidiary of an already eligible surplus lines insurer as to the kind or kinds of insurance proposed for a period of not less than the 3 years next preceding. However, the office ~~department~~ may waive the 3-year requirement if the insurer provides a product or service not readily available to the consumers of this state or has operated successfully for a period of at least 1 year next preceding and has capital and surplus of not less than $25 million;

(c) Before granting eligibility, the requesting surplus lines agent or the insurer shall furnish the office ~~department~~ with a duly authenticated copy of its current annual financial statement in the English language and with all monetary values therein expressed in United States dollars, at an exchange rate (in the case of statements originally made in the currencies of other countries) then-current and shown in the statement, and with such additional information relative to the insurer as the office ~~department~~ may request;

(d)1. The insurer must have and maintain surplus as to policyholders of not less than $15 million; in addition, an alien insurer must also have and

maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the office ~~department~~ to be reasonably adequate, in an amount not less than $5.4 million. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625 provided, however, that in the case of an alien insurance company, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625;

2. For those surplus lines insurers that were eligible on January 1, 1994, and that maintained their eligibility thereafter, the required surplus as to policyholders shall be:

a. On December 31, 1994, and until December 30, 1995, $2.5 million.

b. On December 31, 1995, and until December 30, 1996, $3.5 million.

c. On December 31, 1996, and until December 30, 1997, $4.5 million.

d. On December 31, 1997, and until December 30, 1998, $5.5 million.

e. On December 31, 1998, and until December 30, 1999, $6.5 million.

f. On December 31, 1999, and until December 30, 2000, $8 million.

g. On December 31, 2000, and until December 30, 2001, $9.5 million.

h. On December 31, 2001, and until December 30, 2002, $11 million.

i. On December 31, 2002, and until December 30, 2003, $13 million.

j. On December 31, 2003, and thereafter, $15 million.

3. The capital and surplus requirements as set forth in subparagraph 2. do not apply in the case of an insurance exchange created by the laws of individual states, where the exchange maintains capital and surplus pursuant to the requirements of that state, or maintains capital and surplus in an amount not less than $50 million in the aggregate. For an insurance exchange which maintains funds in the amount of at least $12 million for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus in an amount not less than $3 million. If the insurance exchange does not maintain funds in the amount of at least $12 million for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements set forth in subparagraph 2.;

4. A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer as set forth in its holding company registration statement, as set forth in s. 628.801 and rules adopted thereunder, may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, subject to the

requirement that the surplus lines insurer shall at all times be in compliance with the requirements of chapter 625.

The election shall be submitted to the office ~~department~~ and shall be effective upon the office's ~~department's~~ being satisfied that the requirements of subparagraph 4. have been met. The initial date of election shall be the date of office ~~department~~ approval. The election approval application shall be on a form adopted by commission ~~department~~ rule. The office ~~department~~ may approve an election form submitted pursuant to subparagraph 4. only if it was on file with the former Department of Insurance before February 28, 1998;

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims;

(f) The insurer must be eligible, as for authority to transact insurance in this state, under s. 624.404(3); and

(g) This subsection does not apply as to unauthorized insurers made eligible under s. 626.917 as to wet marine and aviation risks.

(3) The office ~~department~~ shall from time to time publish a list of all currently eligible surplus lines insurers and shall mail a copy thereof to each licensed surplus lines agent at his or her office of record with the office ~~department~~.

(4) This section shall not be deemed to cast upon the office ~~department~~ any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the office ~~department~~, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices and that the office ~~department~~ has no credible evidence to the contrary.

(5) When it appears that any particular insurance risk which is eligible for export, but on which insurance coverage, in whole or in part, is not procurable from the eligible surplus lines insurers, after a search of eligible surplus lines insurers, then the surplus lines agent may file a supplemental signed statement setting forth such facts and advising the office ~~department~~ that such part of the risk as shall be unprocurable, as aforesaid, is being placed with named unauthorized insurers, in the amounts and percentages set forth in the statement. Such named unauthorized insurer shall, however, before accepting any risk in this state, deposit with the department cash or securities acceptable to the office and department of the market value of $50,000 for each individual risk, contract, or certificate, which deposit shall be held by the department for the benefit of Florida policyholders only; and the surplus lines agent shall procure from such unauthorized insurer and file with the office ~~department~~ a certified copy of its statement of condition as of the close of the last calendar year. If such statement reveals, including both capital and surplus, net assets of at least that amount required for licensure of a domestic insurer, then the surplus lines agent may proceed to consummate such contract of insurance. Whenever any insurance risk, or any part thereof, is placed with an unauthorized

insurer, as provided herein, the policy, binder, or cover note shall contain a statement signed by the insured and the agent with the following notation: "The insured is aware that certain insurers participating in this risk have not been approved to transact business in Florida nor have they been declared eligible as surplus lines insurers by the Office of Insurance Regulation ~~Department of Insurance~~ of Florida. The placing of such insurance by a duly licensed surplus lines agent in Florida shall not be construed as approval of such insurer by the Office of Insurance Regulation ~~Department of Insurance~~ of Florida. Consequently, the insured is aware that the insured has severely limited the assistance available under the insurance laws of Florida. The insured is further aware that he or she may be charged a reasonable per policy fee, as provided in s. 626.916(4), Florida Statutes, for each policy certified for export." All other provisions of this code shall apply to such placement the same as if such risks were placed with an eligible surplus lines insurer.

(6) When any particular insurance risk subject to subsection (5) is eligible for placement with an unauthorized insurer and not more than 12.5 percent of the risk is so subject, the office ~~Department of Insurance~~ may, at its discretion, permit the agent to obtain from the insured a signed statement as indicated in subsection (5). All other provisions of this code apply to such placement the same as if such risks were placed with an eligible surplus lines insurer.

Section 1019. Section 626.919, Florida Statutes, is amended to read:

626.919 Withdrawal of eligibility; surplus lines insurer.—

(1) If at any time the office ~~department~~ has reason to believe that any unauthorized insurer then on the list of eligible surplus lines insurers is insolvent or in unsound financial condition, or does not make reasonable prompt payment of just losses and claims in this state, or that it is no longer eligible under the conditions therefor provided in s. 626.918, it shall withdraw the eligibility of the insurer to insure surplus lines risks in this state.

(2) If the office ~~department~~ finds that an insurer currently eligible as a surplus lines insurer has willfully violated the laws of this state or a rule of the commission ~~department~~, it may, in its discretion, withdraw the eligibility of the insurer to insure surplus lines risks in this state.

(3) The office ~~department~~ shall promptly mail notice of all such withdrawals of eligibility to each surplus lines agent at his or her address of record with the department.

Section 1020. Subsections (3), (5), (6), (7), and (8) of section 626.921, Florida Statutes, is amended to read:

626.921 Florida Surplus Lines Service Office.—

(3) The association shall perform its functions under a plan of operation adopted under subsection (5). It shall exercise its powers through a board of governors established under subsection (4). The association shall be regulated by the office ~~department~~ and is subject to the applicable provisions of

this code and the rules of the commission and, with respect to surplus lines agents, rules of the department. The service office shall conduct the following activities provided in the plan of operation adopted under subsection (5):

(a) Receive, record, and review all surplus lines insurance policies or documents.

(b) Maintain records of the surplus lines policies reported to the service office and prepare monthly reports for the office ~~department~~ in such form as the commission ~~department~~ may prescribe.

(c) Prepare and deliver to each surplus lines agent quarterly reports of each surplus lines agent's business in such form as the commission ~~department~~ may prescribe, and collect and remit to the department the surplus lines tax as provided for in s. 626.932.

(d) Perform a reconciliation of the policies written in the nonadmitted market, as provided by nonadmitted insurers, with the policies reported to the service office by the surplus lines agents, and prepare and deliver to the office ~~department~~ a report on the results of the reconciliation in such form as the commission ~~department~~ may prescribe.

(e) Submit to the office ~~department~~ for review and approval an annual budget for the operation of the service office.

(f) Collect from each surplus lines agent a service fee of up to 0.3 percent, as determined by the office ~~department~~, of the total gross premium of each surplus lines policy or document reported under this section, for the cost of operation of the service office. The service fee shall be paid by the insured.

(g) Employ and retain such personnel as are necessary to carry out the duties of the service office.

(h) Borrow money, as necessary, to effect the purposes of the service office.

(i) Enter into contracts, as necessary, to effect the purposes of the service office.

(j) Perform such other acts as will facilitate and encourage compliance with the surplus lines law of this state and rules adopted thereunder.

(k) Provide such other services as are incidental or related to the purposes of the service office.

(5)(a) The association shall submit to the office ~~department~~ a plan of operation, and any amendments thereto, to provide operating procedures for the administration of the service office. The plan of operation and any amendments thereto shall become effective upon approval by order of the office ~~department~~.

(b) If the association fails to submit a suitable plan of operation within 180 days following the effective date of this act, or if at any time thereafter the association fails to submit suitable amendments to the plan of operation,

the office ~~department~~ shall, after notice and hearing, adopt by order a plan of operation, or amendments to a plan of operation, and the commission shall adopt such rules as are necessary or advisable to effectuate the provisions of this section. Such rules shall continue in force until modified by the commission ~~department~~ or superseded by a plan of operation submitted by the association and approved by order of the office ~~department~~.

(c) All surplus lines agents licensed in this state must comply with the plan of operation.

(6) The office ~~department~~ shall, at such times deemed necessary, make or cause to be made an examination of the association. The costs of any such examination shall be paid by the association. During the course of such examination, the governors, officers, agents, employees, and members of the association may be examined under oath regarding the operation of the service office and shall make available all books, records, accounts, documents, and agreements pertaining thereto.

(7) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member or its agents or employees, agents or employees of the association, the commission, the office, members of the board of governors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(8)(a) Information furnished to the department under s. 626.923 or contained in the records subject to examination by the department under s. 626.930 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of the information would reveal information specific to a particular policy or policyholder. The exemption does not apply to any proceeding instituted by the department or office against an agent or insurer.

(b) Information furnished to the Florida Surplus Lines Service Office under the Surplus Lines Law is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of the information would reveal information specific to a particular policy or policyholder. This exemption does not prevent the disclosure of any information by the Florida Surplus Lines Service Office to the department, but the exemption applies to records obtained by the department from the Florida Surplus Lines Service Office. The exemption does not apply to any proceeding instituted by the department or office against an agent or insurer. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 1021. Subsection (5) of section 626.931, Florida Statutes, is amended to read:

626.931 Agent affidavit and insurer reporting requirements.—

(5) The department may ~~Insurance Commissioner shall have the authority to~~ waive the filing requirements described in subsections (3) and (4).

Section 1022. Subsections (2) and (5) of section 626.932, Florida Statutes, are amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall make payable to the department ~~of Insurance~~ the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office, and remit the tax to the Florida Surplus Lines Service Office at the same time as provided for the filing of the quarterly affidavit, under s. 626.931. The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b), within 10 days of receipt.

(b) The agent shall pay interest on the amount of any delinquent tax due, at the rate of 9 percent per year, compounded annually, beginning the day the amount becomes delinquent.

(5) The department shall deposit 55 percent of all taxes collected under this section to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund. Forty-five percent of all taxes collected under this section shall be deposited into the General Revenue Fund.

Section 1023. Section 626.936, Florida Statutes, is amended to read:

626.936 Failure to file reports or pay tax or service fee; administrative penalty.—

(1) Any licensed surplus lines agent who neglects to file a report or an affidavit in the form and within the time required or provided for in the Surplus Lines Law may be fined up to $50 per day for each day the neglect continues, beginning the day after the report or affidavit was due until the date the report or affidavit is received. All sums collected under this section shall be deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

(2) Any licensed surplus lines agent who neglects to pay the taxes or service fees as required under the Surplus Lines Law and within the time required may be fined up to $500 per day for each day the failure to pay continues, beginning the day after the tax or service fees were due. The agent shall pay interest on the amount of any delinquent tax due, at the rate of 9 percent per year, compounded annually, beginning the day the amount becomes delinquent. The department shall deposit all sums collected under this section into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1024. Section 626.9361, Florida Statutes, is amended to read:

626.9361 Failure to file report; administrative penalty.—Any eligible surplus lines insurer who fails to file a report in the form and within the time required or provided for in the Surplus Lines Law may be fined up to $500

per day for each day such failure continues, beginning the day after the report was due, until the date the report is received. Failure to file a report may also result in withdrawal of eligibility as a surplus lines insurer in this state. All sums collected by the department under this section shall be deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1025. Subsections (2), (3), and (4) of section 626.937, Florida Statutes, are amended to read:

626.937 Actions against insurer; service of process.—

(2) The unauthorized insurer accepting the risk or issuing the policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section, and to have appointed the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as its agent for service of process issuing upon any cause of action arising in this state under any such policy, contract, or insurance.

(3) Each unauthorized insurer requesting eligibility pursuant to s. 626.918 shall file with the department its appointment of the Chief Financial Officer ~~Insurance Commissioner and Treasurer and his or her successors in office~~, on a form as furnished by the department, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

(4) At the time of such appointment of the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as its process agent, the insurer shall file with the department designation of the name and address of the person to whom process against it served upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ is to be forwarded. The insurer may change the designation at any time by a new filing.

Section 1026. Subsections (3) and (7) of section 626.938, Florida Statutes, are amended to read:

626.938 Report and tax of independently procured coverages.—

(3) For the general support of the government of this state, there is levied upon the obligation, chose in action, or right represented by the premium charged for such insurance a tax at the rate of 5 percent of the gross amount of such premium and a 0.3 percent service fee pursuant to s. 626.9325. The insured shall withhold the amount of the tax and service fee from the amount of premium charged by and otherwise payable to the insurer for such insurance. Within 30 days after the insurance is procured, continued, or renewed, and simultaneously with the filing of the report provided for in subsection (1) with the Florida Surplus Lines Service Office, the insured shall make payable to the department ~~of Insurance~~ the amount of the tax and make payable to the Florida Surplus Lines Service Office the amount

of the service fee. The insured shall remit the tax and the service fee to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall forward to the department the taxes, and any interest collected pursuant to subsection (5), within 10 days after receipt.

(7) The department shall deposit 55 percent of all taxes and interest collected under this section to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund. Forty-five percent of all taxes and interest collected under this section shall be deposited into the General Revenue Fund.

Section 1027. Section 626.9511, Florida Statutes, is amended to read:

626.9511 Definitions.—When used in this part:

(1) "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, or business trust or any entity involved in the business of insurance.

~~(2) "Department" means the Department of Insurance of this state.~~

(2)~~(3)~~ "Insurance policy" or "insurance contract" means a written contract of, or a written agreement for or effecting, insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements, and papers which are a part thereof.

Section 1028. Paragraphs (h), (o), (w), and (aa) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(h) Unlawful rebates.—

1. Except as otherwise expressly provided by law, or in an applicable filing with the office ~~department~~, knowingly:

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

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

c. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

2. Nothing in paragraph (g) or subparagraph 1. of this paragraph shall be construed as including within the definition of discrimination or unlawful rebates:

a. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

b. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

c. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

d. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

e. Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

3.a. No title insurer, or any member, employee, attorney, agent, agency, or solicitor thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the agent's, agency's, or title insurer's share of the premium or any charge for related title services below the cost for providing such services, or provide any special favor or advantage, or any monetary consideration or inducement whatever. Nothing herein contained shall preclude an abatement in an attorney's fee charged for legal services.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of said charge, or any monetary consideration or inducement, other than as set forth in sub-subparagraph b.

(o) Illegal dealings in premiums; excess or reduced charges for insurance.—

1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as permitted by this code.

2. Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office ~~department~~, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this code to be so filed and approved, premiums and charges in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VIII of this chapter, of the amount of applicable state and federal taxes, or fees as authorized by s. 626.916(4), in addition to the premium required by the insurer or the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer. This subparagraph shall not be construed to prohibit collection of a premium for a universal life or a variable or indeterminate value insurance policy made in accordance with the terms of the contract.

3.a. Imposing or requesting an additional premium for a policy of motor vehicle liability, personal injury protection, medical payment, or collision insurance or any combination thereof or refusing to renew the policy solely because the insured was involved in a motor vehicle accident unless the insurer's file contains information from which the insurer in good faith determines that the insured was substantially at fault in the accident.

b. An insurer which imposes and collects such a surcharge or which refuses to renew such policy shall, in conjunction with the notice of premium due or notice of nonrenewal, notify the named insured that he or she is entitled to reimbursement of such amount or renewal of the policy under the conditions listed below and will subsequently reimburse him or her or renew the policy, if the named insured demonstrates that the operator involved in the accident was:

(I) Lawfully parked;

(II) Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;

(III) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident;

(IV) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident;

(V) Not convicted of a moving traffic violation in connection with the accident, but the operator of the other automobile involved in such accident was convicted of a moving traffic violation;

(VI) Finally adjudicated not to be liable by a court of competent jurisdiction;

(VII) In receipt of a traffic citation which was dismissed or nolle prossed; or

(VIII) Not at fault as evidenced by a written statement from the insured establishing facts demonstrating lack of fault which are not rebutted by information in the insurer's file from which the insurer in good faith determines that the insured was substantially at fault.

c. In addition to the other provisions of this subparagraph, an insurer may not fail to renew a policy if the insured has had only one accident in which he or she was at fault within the current 3-year period. However, an insurer may nonrenew a policy for reasons other than accidents in accordance with s. 627.728. This subparagraph does not prohibit nonrenewal of a policy under which the insured has had three or more accidents, regardless of fault, during the most recent 3-year period.

4. Imposing or requesting an additional premium for, or refusing to renew, a policy for motor vehicle insurance solely because the insured committed a noncriminal traffic infraction as described in s. 318.14 unless the infraction is:

a. A second infraction committed within an 18-month period, or a third or subsequent infraction committed within a 36-month period.

b. A violation of s. 316.183, when such violation is a result of exceeding the lawful speed limit by more than 15 miles per hour.

5. Upon the request of the insured, the insurer and licensed agent shall supply to the insured the complete proof of fault or other criteria which justifies the additional charge or cancellation.

6. No insurer shall impose or request an additional premium for motor vehicle insurance, cancel or refuse to issue a policy, or refuse to renew a policy because the insured or the applicant is a handicapped or physically disabled person, so long as such handicap or physical disability does not substantially impair such person's mechanically assisted driving ability.

7. No insurer may cancel or otherwise terminate any insurance contract or coverage, or require execution of a consent to rate endorsement, during the stated policy term for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured with the same exposure at a higher premium rate or continuing an existing contract or coverage with the same exposure at an increased premium.

8. No insurer may issue a nonrenewal notice on any insurance contract or coverage, or require execution of a consent to rate endorsement, for the

purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured at a higher premium rate or continuing an existing contract or coverage at an increased premium without meeting any applicable notice requirements.

9. No insurer shall, with respect to premiums charged for motor vehicle insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement.

10. Imposing or requesting an additional premium for motor vehicle comprehensive or uninsured motorist coverage solely because the insured was involved in a motor vehicle accident or was convicted of a moving traffic violation.

11. No insurer shall cancel or issue a nonrenewal notice on any insurance policy or contract without complying with any applicable cancellation or nonrenewal provision required under the Florida Insurance Code.

12. No insurer shall impose or request an additional premium, cancel a policy, or issue a nonrenewal notice on any insurance policy or contract because of any traffic infraction when adjudication has been withheld and no points have been assessed pursuant to s. 318.14(9) and (10). However, this subparagraph does not apply to traffic infractions involving accidents in which the insurer has incurred a loss due to the fault of the insured.

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

1. Whether or not delinquency proceedings as to the insurer have been or are to be initiated, but while such insolvency or impairment exists, no director or officer of an insurer, except with the written permission of the office ~~Department of Insurance~~, shall authorize or permit the insurer to solicit or accept new or renewal insurance risks in this state after such director or officer knew, or reasonably should have known, that the insurer was insolvent or impaired. "Impaired" includes impairment of capital or surplus, as defined in s. 631.011(12) and (13).

2. Any such director or officer, upon conviction of a violation of this paragraph, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(aa) Churning.—

1. Churning is the practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are utilized to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation:

a. Without an objectively reasonable basis for believing that the replacement or extraction will result in an actual and demonstrable benefit to the policyholder;

b. In a fashion that is fraudulent, deceptive, or otherwise misleading or that involves a deceptive omission;

c. ~~Effective October 1, 1995,~~ When the applicant is not informed that the policy values including cash values, dividends, and other assets of the existing policy or contract will be reduced, forfeited, or utilized in the purchase of the replacing or additional policy or contract, if this is the case; or

d. ~~Effective October 1, 1995,~~ Without informing the applicant that the replacing or additional policy or contract will not be a paid-up policy or that additional premiums will be due, if this is the case.

Churning by an insurer or an agent is an unfair method of competition and an unfair or deceptive act or practice.

2. ~~Effective October 1, 1995,~~ Each insurer shall comply with sub-subparagraphs 1.c. and 1.d. by disclosing to the applicant at the time of the offer on a form designed and adopted by rule by the commission ~~department~~ if, how, and the extent to which the policy or contract values (including cash value, dividends, and other assets) of a previously issued policy or contract will be used to purchase a replacing or additional policy or contract with the same insurer. The form shall include disclosure of the premium, the death benefit of the proposed replacing or additional policy, and the date when the policy values of the existing policy or contract will be insufficient to pay the premiums of the replacing or additional policy or contract.

3. ~~Effective October 1, 1995,~~ Each insurer shall adopt written procedures to reasonably avoid churning of policies or contracts that it has issued, and failure to adopt written procedures sufficient to reasonably avoid churning shall be an unfair method of competition and an unfair or deceptive act or practice.

Section 1029. Section 626.9545, Florida Statutes, is amended to read:

626.9545 Improper charge identification incentive program.—No section or provision of the Florida Insurance Code shall be construed as prohibiting an insurer from establishing a financial incentive program for remunerating a policyholder or an insured person with a selected percentage or stated portion of any health care charge identified by the policyholder or the insured person as an error or overcharge if the health care charge is recovered by the insurer. The financial incentive program shall be written and shall be available for inspection by the office ~~department~~.

Section 1030. Subsection (5) of section 626.9551, Florida Statutes, is amended to read:

626.9551 Favored agent or insurer; coercion of debtors.—

(5) The department or office may investigate the affairs of any person to whom this section applies to determine whether such person has violated this section. If a violation of this section is found to have been committed knowingly, the person in violation shall be subject to the same procedures and penalties as provided in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

Section 1031. Section 626.9561, Florida Statutes, is amended to read:

626.9561 Power of department and office.—The department and office shall each have power within its respective regulatory jurisdiction to examine and investigate the affairs of every person involved in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by s. 626.9521, and shall each have the powers and duties specified in ss. 626.9571-626.9601 in connection therewith.

Section 1032. Section 626.9571, Florida Statutes, is amended to read:

626.9571 Defined practices; hearings, witnesses, appearances, production of books and service of process.—

(1) Whenever the department or office has reason to believe that any person has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 626.9541 or s. 626.9551 or is engaging in the business of insurance without being properly licensed as required by this code and that a proceeding by it in respect thereto would be to the interest of the public, it shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The department or office, a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569; however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed $1,000 per violation.

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

Section 1033. Section 626.9581, Florida Statutes, is amended to read:

626.9581 Cease and desist and penalty orders.—After the hearing provided in s. 626.9571, the department or office shall enter a final order in accordance with s. 120.569. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of insurance, the department or office shall also issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of insurance. Further, if the act or practice is a violation of s. 626.9541 or s. 626.9551, the department or office may, at its discretion, order any one or more of the following:

(1) Suspension or revocation of the person's certificate of authority, license, or eligibility for any certificate of authority or license, if he or she

knew, or reasonably should have known, he or she was in violation of this act.

(2) Such other relief as may be provided in the insurance code.

Section 1034. Section 626.9591, Florida Statutes, is amended to read:

626.9591 Appeals from the department or office.—Any person subject to an order of the department or office under s. 626.9581 or s. 626.9601 may obtain a review of such order by filing an appeal therefrom in accordance with the provisions and procedures for appeal from the orders of the department or office in general under s. 120.68.

Section 1035. Section 626.9601, Florida Statutes, is amended to read:

626.9601 Penalty for violation of cease and desist orders.—Any person who violates a cease and desist order of the department or office under s. 626.9581 while such order is in effect, after notice and hearing as provided in s. 626.9571, shall be subject, at the discretion of the department or office, to any one or more of the following:

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

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

(3) Such other relief as may be provided in the insurance code.

Section 1036. Section 626.9611, Florida Statutes, is amended to read:

626.9611 Rules.—The department or commission may, in accordance with chapter 120, adopt ~~promulgate~~ reasonable rules as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by s. 626.9541 or s. 626.9551, but the rules shall not enlarge upon or extend the provisions of ss. 626.9541 and 626.9551.

Section 1037. Section 626.9621, Florida Statutes, is amended to read:

626.9621 Provisions of part additional to existing law.—The powers vested in the department, commission, and office by this part shall be additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law.

Section 1038. Section 626.9631, Florida Statutes, is amended to read:

626.9631 Civil liability.—The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department, commission, or office shall abrogate such rights to damages or other relief in any court.

Section 1039. Subsection (1) of section 626.9641, Florida Statutes, is amended to read:

626.9641 Policyholders, bill of rights.—

(1) The principles expressed in the following statements shall serve as standards to be followed by the department, commission, and office in exercising their ~~its~~ powers and duties, in exercising administrative discretion, in dispensing administrative interpretations of the law, and in adopting ~~promulgating~~ rules:

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

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

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

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

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

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

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

(h) Policyholders shall have the right to a balanced and positive regulation by the department, commission, and office.

Section 1040. Section 626.9651, Florida Statutes, is amended to read:

626.9651 Privacy.—The department and commission shall each adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information. These rules must be based on, consistent with, and not more restrictive than the Privacy of Consumer Financial and Health Information Regulation, adopted September 26, 2000, by the National Association of Insurance Commissioners; however, the rules must permit the use and disclosure of nonpublic personal health information for scientific, medical, or public policy research, in accordance with federal law. In addition, these rules must be consistent with, and not more restrictive than, the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102. If the office ~~department~~ determines that a health insurer or health maintenance organization is in compliance with, or is actively undertaking compliance with, the consumer privacy protection rules adopted by the United States Department of Health and Human Services, in conformance with the Health Insurance Portability and Affordability Act, that health insurer or health maintenance organization is in compliance with this section.

Section 1041. Paragraph (e) of subsection (4) and subsections (5) and (9) of section 626.989, Florida Statutes, are amended to read:

626.989 Investigation by department or Division of Insurance Fraud; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(4)

(e) The Chief Financial Officer ~~Insurance Commissioner~~ and any employee or agent of the department, commission, office, or division, when acting without malice and in the absence of fraud or bad faith, is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature exists against such person by virtue of the execution of official activities or duties of the department, commission, or office under this section or by virtue of the publication of any report or bulletin related to the official activities or duties of the department, ~~or~~ division, commission, or office under this section.

(5) The office's and the department's papers, documents, reports, or evidence relative to the subject of an investigation under this section are confidential and exempt from the provisions of s. 119.07(1) until such investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered "active" while the investigation is being conducted by the office or department with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the office or department is proceeding with reasonable dispatch and has a good faith belief that action could be initiated by the office or department or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of records relating to the investigation shall remain exempt from the provisions of s. 119.07(1) if disclosure would:

(a) Jeopardize the integrity of another active investigation;

(b) Impair the safety and soundness of an insurer;

(c) Reveal personal financial information;

(d) Reveal the identity of a confidential source;

(e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

(f) Reveal investigative techniques or procedures. Further, such papers, documents, reports, or evidence relative to the subject of an investigation under this section shall not be subject to discovery until the investigation is completed or ceases to be active. Office, department, or division investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the division.

(9) In recognition of the complementary roles of investigating instances of workers' compensation fraud and enforcing compliance with the workers'

compensation coverage requirements under chapter 440, the department ~~of Insurance~~ is directed to prepare and submit a joint performance report to the President of the Senate and the Speaker of the House of Representatives by November 1, 2003, and then by November 1 every 3 years thereafter, describing the results obtained in achieving compliance with the workers' compensation coverage requirements and reducing the incidence of workers' compensation fraud.

Section 1042. Subsection (1) of section 626.9892, Florida Statutes, is amended to read:

626.9892 Anti-Fraud Reward Program; reporting of insurance fraud.—

(1) The Anti-Fraud Reward Program is hereby established within the department, to be funded from the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1043. Paragraph (k) of subsection (5) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(5) GENERAL RULES RELATING TO SOLICITATION.—

(k) If an appropriately licensed agent proposes to replace a life insurance policy or an in-force annuity with a registered securities product, preapplication notice requirements ~~to the department~~ shall not apply.

Section 1044. Section 626.9911, Florida Statutes, is amended to read:

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

~~(1) "Department" means the Department of Insurance.~~

(1)~~(2)~~ "Independent third-party trustee or escrow agent" means an attorney, certified public accountant, financial institution, or other person providing escrow services under the authority of a regulatory body. The term does not include any person associated, affiliated, or under common control with a viatical settlement provider or viatical settlement broker.

(2)~~(3)~~ "Person" has the meaning specified in s. 1.01.

(3)~~(4)~~ "Viatical settlement broker" means a person who, on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator resident in this state and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, licensed Certified Public Accountant, or investment adviser lawfully registered ~~with the department of Banking and Finance~~ under chapter 517, who is retained to represent the viator and whose compensation is paid directly by or at the direction and on behalf of the viator.

(4)~~(5)~~ "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider, or its related provider trust, and a viator. The viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation of a life insurance policy at a later date, regardless of the date that compensation is paid to the viator. The agreement must establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the viatical settlement provider. A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy.

(5)~~(6)~~ "Viatical settlement provider" means a person who, in this state, from this state, or with a resident of this state, effectuates a viatical settlement contract. The term does not include:

(a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.~~;~~

(b) A life and health insurer that has lawfully issued a life insurance policy that provides accelerated benefits to terminally ill policyholders or certificateholders.~~; or~~

(c) Any natural person who enters into no more than one viatical settlement contract with a viator in 1 calendar year, unless such natural person has previously been licensed under this act or is currently licensed under this act.

(d) A trust that meets the definition of a "related provider trust."

(e) A viator in this state.

(f) A viatical settlement purchaser.

(g) A financing entity.

(6)~~(7)~~ "Viator" means the owner of a life insurance policy or a certificateholder under a group policy who enters or seeks to enter into a viatical settlement contract. This term does not include a viatical settlement purchaser or a viatical settlement provider or any person acquiring a policy or interest in a policy from a viatical settlement provider, nor does it include an independent third-party trustee or escrow agent.

(7)~~(8)~~ "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with a licensed viatical settlement provider or financing

entity under which the licensed viatical settlement provider or financing entity is responsible for insuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to viatical settlement transactions available to the office ~~department~~ as if those records and files were maintained directly by the licensed viatical settlement provider. This term does not include an independent third-party trustee or escrow agent or a trust that does not enter into agreements with a viator. A related provider trust shall be subject to all provisions of this act that apply to the viatical settlement provider who established the related provider trust, except s. 626.9912, which shall not be applicable. A viatical settlement provider may establish no more than one related provider trust, and the sole trustee of such related provider trust shall be the viatical settlement provider licensed under s. 626.9912. The name of the licensed viatical settlement provider shall be included within the name of the related provider trust.

(8)~~(9)~~ "Viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, which is entered into for the purpose of deriving an economic benefit. The term also includes purchases made by viatical settlement purchasers from any person other than the provider who effectuated the viatical settlement contract.

(9)~~(10)~~ "Viatical settlement purchaser" means a person who gives a sum of money as consideration for a life insurance policy or an equitable or legal interest in the death benefits of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit, including purchases made from any person other than the provider who effectuated the viatical settlement contract or an entity affiliated with the provider. The term does not include a licensee under this part, an accredited investor as defined in Rule 501, Regulation D of the Securities Act Rules, or a qualified institutional buyer as defined by Rule 144(a) of the Federal Securities Act, a special purpose entity, a financing entity, or a contingency insurer. The above references to Rule 501, Regulation D and Rule 144(a) of the Federal Securities Act are used strictly for defining purposes and shall not be interpreted in any other manner. Any person who claims to be an accredited investor shall sign an affidavit stating that he or she is an accredited investor, the basis of that claim, and that he or she understands that as an accredited investor he or she will not be entitled to certain protections of the Viatical Settlement Act. This affidavit must be kept with other documents required to be maintained by this act.

(10)~~(11)~~ "Viatical settlement sales agent" means a person other than a licensed viatical settlement provider who arranges the purchase through a viatical settlement purchase agreement of a life insurance policy or an interest in a life insurance policy.

(11)~~(12)~~ "Viaticated policy" means a life insurance policy, or a certificate under a group policy, which is the subject of a viatical settlement contract.

(12)~~(13)~~ "Related form" means any form, created by or on behalf of a licensee, which a viator or viatical settlement purchaser is required to sign

or initial. The forms include, but are not limited to, a power of attorney, a release of medical information form, a suitability questionnaire, a disclosure document, or any addendum, schedule, or amendment to a viatical settlement contract or viatical settlement purchase agreement considered necessary by a provider to effectuate a viatical settlement transaction.

(13)~~(14)~~ "Special purpose entity" means an entity established by a licensed viatical settlement provider or by a financing entity, which may be a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets to a viatical settlement provider or financing entity. A special purpose entity shall not enter into a viatical settlement contract or a viatical settlement purchase agreement.

(14)~~(15)~~ "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, or purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose principal activity related to the transaction is providing funds or credit enhancement to effect the viatical settlement or the purchase of one or more viatical policies and who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. The term does not include a nonaccredited investor, a viatical settlement purchaser, or other natural person. A financing entity may not enter into a viatical settlement contract.

Section 1045. Section 626.9912, Florida Statutes, is amended to read:

626.9912 Viatical settlement provider license required; application for license.—

(1) A person may not perform the functions of a viatical settlement provider as defined in this act or enter into or solicit a viatical settlement contract without first having obtained a license from the office ~~department~~.

(2) Application for a viatical settlement provider license must be made to the office ~~department~~ by the applicant on a form prescribed by the commission ~~department~~, under oath and signed by the applicant. The application must be accompanied by a fee of $500. If the applicant is a corporation, the application must be under oath and signed by the president and the secretary of the corporation.

(3) In the application, the applicant must provide all of the following:

(a) The applicant's full name, age, residence address, and business address, and all occupations engaged in by the applicant during the 5 years preceding the date of the application.

(b) A copy of the applicant's basic organizational documents, if any, including the articles of incorporation, articles of association, partnership agreement, trust agreement, or other similar documents, together with all amendments to such documents.

(c) Copies of all bylaws, rules, regulations, or similar documents regulating the conduct of the applicant's internal affairs.

(d) A list showing the name, business and residence addresses, and official position of each individual who is responsible for conduct of the applicant's affairs, including, but not limited to, any member of the applicant's board of directors, board of trustees, executive committee, or other governing board or committee and any other person or entity owning or having the right to acquire 10 percent or more of the voting securities of the applicant.

(e) With respect to each individual identified under paragraph (d):

1. A sworn biographical statement on forms adopted by the commission and supplied by the office ~~department~~.

2. A set of fingerprints on forms prescribed by the commission ~~department~~, certified by a law enforcement officer, and accompanied by the fingerprinting fee specified in s. 624.501.

3. Authority for release of information relating to the investigation of the individual's background.

(f) All applications, viatical settlement contract forms, viatical settlement purchase agreement forms, escrow forms, and other related forms proposed to be used by the applicant.

(g) Such other information as the commission or office ~~department~~ deems necessary to determine that the applicant and the individuals identified under paragraph (d) are competent and trustworthy and can lawfully and successfully act as a viatical settlement provider.

(4) The office ~~department~~ may not issue a license to an entity other than a natural person if it is not satisfied that all officers, directors, employees, stockholders, partners, and any other persons who exercise or have the ability to exercise effective control of the entity or who have the ability to influence the transaction of business by the entity meet the standards of this act and have not violated any provision of this act or rules of the commission ~~department~~ related to the business of viatical settlement contracts or viatical settlement purchase agreements.

(5) Upon the filing of a sworn application and the payment of the license fee, the office ~~department~~ shall investigate each applicant and may issue the applicant a license if the office ~~department~~ finds that the applicant:

(a) Has provided a detailed plan of operation.

(b) Is competent and trustworthy and intends to act in good faith in the business authorized by the license applied for.

(c) Has a good business reputation and has had experience, training, or education that qualifies the applicant to conduct the business authorized by the license applied for.

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

(e) Has designated the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as its agent for service of process.

(f) Has made the deposit required by s. 626.9913(3).

Section 1046. Subsections (2) and (3) of section 626.9913, Florida Statutes, are amended to read:

626.9913 Viatical settlement provider license continuance; annual report; fees; deposit.—

(2) Annually, on or before March 1, the viatical settlement provider licensee shall file a statement containing information the commission ~~department~~ requires and shall pay to the office ~~department~~ a license fee in the amount of $500. A viatical settlement provider shall include in all statements filed with the office ~~department~~ all information requested by the office ~~department~~ regarding a related provider trust established by the viatical settlement provider. The office ~~department~~ may require more frequent reporting. Failure to timely file the annual statement or to timely pay the license fee is grounds for immediate suspension of the license.

(3) A viatical settlement provider licensee must deposit and maintain deposited in trust with the department securities eligible for deposit under s. 625.52, having at all times a value of not less than $100,000. As an alternative to meeting the $100,000 deposit requirement, the provider may deposit and maintain deposited in trust with the department such securities in the amount of $25,000 and post with the office ~~department~~ a surety bond acceptable to the office ~~department~~ in the amount of $75,000.

Section 1047. Section 626.9914, Florida Statutes, is amended to read:

626.9914 Suspension, revocation, or nonrenewal of viatical settlement provider license; grounds; administrative fine.—

(1) The office ~~department~~ shall suspend, revoke, or refuse to renew the license of any viatical settlement provider if the office ~~department~~ finds that the licensee:

(a) Has made a misrepresentation in the application for the license;

(b) Has engaged in fraudulent or dishonest practices, or otherwise has been shown to be untrustworthy or incompetent to act as a viatical settlement provider;

(c) Demonstrates a pattern of unreasonable payments to viators;

(d) Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(e) Has issued viatical settlement contracts that have not been approved pursuant to this act;

(f) Has failed to honor contractual obligations related to the business of viatical settlement contracts;

(g) Deals in bad faith with viators;

(h) Has violated any provision of the insurance code or of this act;

(i) Employs any person who materially influences the licensee's conduct and who fails to meet the requirements of this act; or

(j) No longer meets the requirements for initial licensure.

(2) The office ~~department~~ may, in lieu of or in addition to any suspension or revocation, assess an administrative fine not to exceed $2,500 for each nonwillful violation or $10,000 for each willful violation by a viatical settlement provider licensee. The office ~~department~~ may also place a viatical settlement provider licensee on probation for a period not to exceed 2 years.

(3) If an employee of a viatical settlement provider violates any provision of this act, the office ~~department~~ may take disciplinary action against such employee as if the employee were licensed under this act, including suspending or otherwise prohibiting the employee from performing the functions of a viatical settlement provider or viatical settlement broker as defined in this act.

(4) If a viatical settlement provider establishes a related provider trust as permitted by this act, the viatical settlement provider shall be liable and responsible for the performance of all obligations of the related provider trust under all viatical settlement contracts entered into by the related provider trust, and for the compliance of the related provider trust with all provisions of this act. Any violation of this act by the related provider trust shall be deemed a violation of this act by the viatical settlement provider as well as the related provider trust. If the related provider trust violates any provisions of this act, the office ~~department~~ may exercise all remedies set forth in this act for such violations against the viatical settlement provider, as well as the related provider trust.

Section 1048. Subsections (1), (2), and (4) of section 626.9915, Florida Statutes, are amended to read:

626.9915 Effect of suspension or revocation of viatical settlement provider license; duration of suspension; reinstatement.—

(1) When its license is suspended or revoked, the provider must proceed, immediately following the effective date of the suspension or revocation, to conclude the affairs it is transacting under its license. The provider may not solicit, negotiate, advertise, or effectuate new contracts. The office ~~department~~ retains jurisdiction over the provider until all contracts have been fulfilled or canceled or have expired. A provider whose license is suspended or revoked may continue to maintain and service viaticated policies subject to the approval of the office ~~department~~.

(2) The suspension of the license of a viatical settlement provider licensee may be for such period, not to exceed 2 years, as determined by the office ~~department~~. The office ~~department~~ may shorten, rescind, or modify the suspension.

(4) If, upon expiration of the suspension order, the license has not otherwise been terminated, the office ~~department~~ must reinstate the license only upon written request by the suspended licensee unless the office ~~department~~ finds that the grounds giving rise to the suspension have not been removed or that the licensee is otherwise not in compliance with the requirements of this act. The office ~~department~~ shall give the licensee notice of its findings no later than 90 days after receipt of the request or upon expiration of the suspension order, whichever occurs later. If a license is not reinstated pursuant to the procedures set forth in this subsection, it expires at the end of the suspension or on the date it otherwise would have expired, whichever is sooner.

Section 1049. Subsections (7), (8), and (9) of section 626.9916, Florida Statutes, are 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:

(a) Is competent and trustworthy and intends to act in good faith in the business authorized by the license applied for.

(b) Has a good business reputation and has had experience, training, or education that qualifies the applicant to conduct the business authorized by the license applied for.

(c) Except with respect to applicants for nonresident licenses, is a bona fide resident of this state and actually resides in this state at least 180 days a year. If an applicant holds a similar license or an insurance agent's or broker's license in another state at the time of applying for a license under this section, the applicant may be found to meet the residency requirement of this paragraph only after he or she furnishes a letter of clearance satisfactory to the department or other proof that the applicant's resident licenses have been canceled or changed to nonresident status and that the applicant is in good standing with the licensing authority.

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

(e) Has designated the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as its agent for service of process.

(8) An applicant for a nonresident viatical settlement broker license must, in addition to designating the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as agent for service of process as required by this

section, also furnish the department with the name and address of a resident of this state upon whom notices or orders of the department or process affecting the applicant or licensee may be served. After issuance of the license, the licensee must also notify the department of change of the person to receive such notices, orders, or process; such change is not effective until acknowledged by the department.

(9) ~~Beginning July 1, 1997,~~ The department may, by rule, specify experience, educational, or other training standards required for licensure under this section.

Section 1050. Section 626.9919, Florida Statutes, is amended to read:

626.9919 Notice of change of licensee address or name.—Each viatical settlement provider licensee, viatical settlement broker licensee, and viatical settlement sales agent licensee must provide the office or department, as applicable, at least 30 days' advance notice of any change in the licensee's name, residence address, principal business address, or mailing address.

Section 1051. Section 626.9921, Florida Statutes, is amended to read:

626.9921 Filing of forms; required procedures; approval.—

(1) A viatical settlement contract form, viatical settlement purchase agreement form, escrow form, or related form may be used in this state only after the form has been filed with the office ~~department~~ and only after the form has been approved by the office ~~department~~.

(2) The viatical settlement contract form, viatical settlement purchase agreement form, escrow form, or related form must be filed with the office ~~department~~ at least 60 days before its use. The form is considered approved on the 60th day after its date of filing unless it has been previously disapproved by the office ~~department~~. The office ~~department~~ must disapprove a viatical settlement contract form, viatical settlement purchase agreement form, escrow form, or related form that is unreasonable, contrary to the public interest, discriminatory, or misleading or unfair to the viator or the purchaser.

(3) If a viatical settlement provider elects to use a related provider trust in accordance with this act, the viatical settlement provider shall file notice of its intention to use a related provider trust with the office ~~department~~, including a copy of the trust agreement of the related provider trust. The organizational documents of the trust must be submitted to and approved by the office ~~department~~ before the transacting of business by the trust.

(4) The commission ~~department~~ may adopt, by rule, standardized forms to be used by licensees, at the licensee's option in place of separately approved forms.

Section 1052. Section 626.9922, Florida Statutes, is amended to read:

626.9922 Examination.—

(1) The office or department may examine the business and affairs of any of its respective licensees or applicants ~~licensee or applicant~~ for a license. The office or department may order any such licensee or applicant to produce any records, books, files, advertising and solicitation materials, or other information and may take statements under oath to determine whether the licensee or applicant is in violation of the law or is acting contrary to the public interest. The expenses incurred in conducting any examination or investigation must be paid by the licensee or applicant. Examinations and investigations must be conducted as provided in chapter 624, and licensees are subject to all applicable provisions of the insurance code.

(2) All accounts, books and records, documents, files, contracts, and other information relating to all transactions of viatical settlement contracts or viatical settlement purchase agreements must be maintained by the licensee for a period of at least 3 years after the death of the insured and must be available to the office or department for inspection during reasonable business hours.

(3) All such records or accurate copies of such records must be maintained at the licensee's home office. As used in this section, the term "home office" means the principal place of business and any other single storage facility, the street address of which shall be disclosed to the office or department within 20 days after its initial use, or within 20 days of the effective date of this subsection.

(4) The originals of records required to be maintained under this section must be made available to the office or department for examination at the office's or department's request.

Section 1053. Subsection (2) of section 626.99235, Florida Statutes, is amended to read:

626.99235 Disclosures to viatical settlement purchasers; misrepresentations.—

(2) The viatical settlement provider and the viatical settlement sales agent, themselves or through another person, shall provide in writing the following disclosures to any viatical settlement purchaser or purchaser prospect:

(a) That the return represented as being available under the viatical settlement purchase agreement is directly tied to the projected life span of one or more insureds.

(b) If a return is represented, the disclosure shall indicate the projected life span of the insured or insureds whose life or lives are tied to the return.

(c) If required by the terms of the viatical settlement purchase agreement, that the viatical settlement purchaser shall be responsible for the payment of insurance premiums on the life of the insured, late or surrender fees, or other costs related to the life insurance policy on the life of the insured or insureds which may reduce the return.

(d) The amount of any trust fees, commissions, deductions, or other expenses, if any, to be charged to the viatical settlement purchaser.

(e) The name and address of the person responsible for tracking the insured.

(f) That group policies may contain limitations or caps in the conversion rights, that additional premiums may have to be paid if the policy is converted, and that the party responsible for the payment of such additional premiums shall be identified.

(g) That the life expectancy and rate of return are only estimates and cannot be guaranteed.

(h) That the purchase of a viatical settlement contract should not be considered a liquid purchase, since it is impossible to predict the exact timing of its maturity and the funds may not be available until the death of the insured.

(i) The name and address of the person with the responsibility for paying the premium until the death of the insured.

The written disclosure required under this subsection shall be conspicuously displayed in any viatical settlement purchase agreement, and in any solicitation material furnished to the viatical settlement purchaser by such viatical settlement provider, related provider trust, or person, and shall be in contrasting color and in not less than 10-point type or no smaller than the largest type on the page if larger than 10-point type. The commission may ~~department is authorized to~~ adopt by rule the disclosure form to be used. The disclosures need not be furnished in an invitation to inquire, the objective of which is to create a desire to inquire further about entering into a viatical settlement purchase agreement. The invitation to inquire may not quote rates of return, may not include material attendant to the execution of any specific viatical settlement purchase agreement, and may not relate to any specific viator.

Section 1054. Section 626.99245, Florida Statutes, is amended to read:

626.99245 Conflict of regulation of viaticals.—

(1) A viatical settlement provider who from this state enters into a viatical settlement purchase agreement with a purchaser who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement purchase agreements, shall be governed in the effectuation of that viatical settlement purchase agreement by the statutes and regulations of the purchaser's state of residence. If the state in which the purchaser is a resident has not enacted statutes or regulations governing viatical settlement purchase agreements, the provider shall give the purchaser notice that neither Florida nor his or her state regulates the transaction upon which he or she is entering. For transactions in these states, however, the viatical settlement provider is to maintain all records required as if the transactions were executed in Florida. However, the forms used in those states need not be approved by the office ~~department~~.

(2) A viatical settlement provider who from this state enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts shall be governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence. If the state in which the viator is a resident has not enacted statutes or regulations governing viatical settlement agreements, the provider shall give the viator notice that neither Florida nor his or her state regulates the transaction upon which he or she is entering. For transactions in those states, however, the viatical settlement provider is to maintain all records required as if the transactions were executed in Florida. The forms used in those states need not be approved by the office ~~department~~.

(3) This section does not affect the requirement of ss. 626.9911(5) ~~626.9911(6)~~ and 626.9912(1) that a viatical settlement provider doing business from this state must obtain a viatical settlement license from the office ~~department~~. As used in this subsection, the term "doing business from this state" includes effectuating viatical settlement contracts and effectuating viatical settlement purchase agreements from offices in this state, regardless of the state of residence of the viator or the viatical settlement purchaser.

Section 1055. Section 626.9925, Florida Statutes, is amended to read:

626.9925 Rules.—The commission ~~department~~ may adopt rules to administer this act, including rules establishing standards for evaluating advertising by licensees; rules providing for the collection of data, for disclosures to viators or purchasers, and for the reporting of life expectancies; and rules defining terms used in this act and prescribing recordkeeping requirements relating to executed viatical settlement contracts and viatical settlement purchase agreements.

Section 1056. Section 626.9926, Florida Statutes, is amended to read:

626.9926 Rate regulation not authorized.—Nothing in this act shall be construed to authorize the office or department to directly or indirectly regulate the amount paid as consideration for entry into a viatical settlement contract or viatical settlement purchase agreement.

Section 1057. Subsection (2) of section 626.9927, Florida Statutes, is amended to read:

626.9927 Unfair trade practices; cease and desist; injunctions; civil remedy.—

(2) In addition to the penalties and other enforcement provisions of this act, if any person violates this act or any rule implementing this act, the office or department, as appropriate, may seek an injunction in the circuit court of the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the office or department determines necessary to restrain the person from committing the violation.

Section 1058. Section 626.99272, Florida Statutes, is amended to read:

626.99272 Cease and desist orders and fines.—

(1) The office or department as appropriate may issue a cease and desist order upon a person that violates any provision of this part, any rule or order adopted by the commission, office, or department, or any written agreement entered into with the office or department.

(2) When the office or department finds that such an action presents an immediate danger to the public which requires an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the office or department begins nonemergency cease and desist proceedings under subsection (1), the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to s. 120.68, until the conclusion of proceedings under ss. 120.569 and 120.57.

(3) The office or department may impose and collect an administrative fine not to exceed $10,000 for each nonwillful violation and $25,000 for each willful violation of any provision of this part.

Section 1059. Section 626.99285, Florida Statutes, is amended to read:

626.99285 Applicability of insurance code.—In addition to other applicable provisions cited in the insurance code, the office or department, as appropriate, has the authority granted under ss. 624.310, 626.901, and 626.989 to regulate viatical settlement providers, viatical settlement brokers, viatical settlement sales agents, viatical settlement contracts, viatical settlement purchase agreements, and viatical settlement transactions.

Section 1060. Section 626.99295, Florida Statutes, is amended to read:

626.99295 Grace period.—An unlicensed viatical settlement provider or viatical settlement broker that was legally transacting business in this state on June 30, 2000, may continue to transact such business, in the absence of any orders by the office, department, or the former Department of Insurance to the contrary, until the office or department, as applicable, approves or disapproves the viatical settlement provider's application for licensure if the viatical settlement provider or viatical settlement broker filed ~~files~~ with the former department an application for licensure no later than August 1, 2000, and if the viatical settlement provider or viatical settlement broker complies with all other provisions of this act. Any form for which former department approval was ~~is~~ required under this part must have been ~~be~~ filed by August 1, 2000, and may continue to be used until disapproved by the office or department.

Section 1061. Subsection (2) of section 627.031, Florida Statutes, is amended to read:

627.031 Purposes of this part; interpretation.—

(2) It is the purpose of this part to protect policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory insurance rates, and to authorize the office ~~department~~ to regulate such rates. If at any time the office ~~department~~ has reason to believe any such rate is excessive, inadequate, or unfairly discriminatory under the law, it is directed to take the necessary action to cause such rate to comply with the laws of this state.

Section 1062. Section 627.0612, Florida Statutes, is amended to read:

627.0612 Administrative proceedings in rating determinations.—In any proceeding to determine whether rates, rating plans, or other matters governed by this part comply with the law, the appellate court shall set aside a final order of the office ~~department~~ if the office ~~department~~ has violated s. 120.57(1)(k) by substituting its findings of fact for findings of an administrative law judge which were supported by competent substantial evidence.

Section 1063. Section 627.0613, Florida Statutes, is amended to read:

627.0613 Consumer advocate.—The Chief Financial Officer ~~Insurance Commissioner~~ must appoint a consumer advocate who must represent the general public of the state before the department and the office. The consumer advocate must report directly to the Chief Financial Officer ~~Insurance Commissioner~~, but is not otherwise under the authority of the department or of any employee of the department. The consumer advocate has such powers as are necessary to carry out the duties of the office of consumer advocate, including, but not limited to, the powers to:

(1) Recommend to the department or office, by petition, the commencement of any proceeding or action; appear in any proceeding or action before the department or office; or appear in any proceeding before the Division of Administrative Hearings relating to subject matter under the jurisdiction of the department or office.

(2) Have access to and use of all files, records, and data of the department or office.

(3) Examine rate and form filings submitted to the office ~~department~~, hire consultants as necessary to aid in the review process, and recommend to the department or office any position deemed by the consumer advocate to be in the public interest.

(4) Prepare an annual budget for presentation to the Legislature by the department, which budget must be adequate to carry out the duties of the office of consumer advocate.

Section 1064. Subsections (2), (3), and (6) of section 627.062, Florida Statutes, are amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on such classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, shall be filed with the office ~~department~~ under one of the following procedures:

1. If the filing is made at least 90 days before the proposed effective date and the filing is not implemented during the office's ~~department's~~ review of the filing and any proceeding and judicial review, then such filing shall be considered a "file and use" filing. In such case, the office ~~department~~ shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office ~~department~~ of its preliminary findings shall not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office ~~department~~ does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with the provisions of subparagraph 1., such filing shall be made as soon as practicable, but no later than 30 days after the effective date, and shall be considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office ~~department~~ to return to policyholders portions of rates found to be excessive, as provided in paragraph (h).

(b) Upon receiving a rate filing, the office ~~department~~ shall review the rate filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office ~~department~~ shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission ~~department~~ may adopt ~~promulgate~~ rules utilizing reasonable techniques of actuarial science and economics to specify the manner in which insurers shall calculate investment income attributable to such classes of insurance written in this state and the manner in which such investment income shall be used in the calculation of insurance rates. Such manner shall contemplate allowances for an underwriting profit factor and full consideration of investment income which produce a reasonable rate of return; however, investment income from invested surplus shall

not be considered. ~~The profit and contingency factor as specified in the filing shall be utilized in computing excess profits in conjunction with s. 627.0625.~~

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. A reasonable margin for underwriting profit and contingencies.

12. The cost of medical services, if applicable.

13. Other relevant factors which impact upon the frequency or severity of claims or upon expenses.

(c) In the case of fire insurance rates, consideration shall be given to the availability of water supplies and the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

(d) If conflagration or catastrophe hazards are given consideration by an insurer in its rates or rating plan, including surcharges and discounts, the insurer shall establish a reserve for that portion of the premium allocated to such hazard and shall maintain the premium in a catastrophe reserve. Any removal of such premiums from the reserve for purposes other than paying claims associated with a catastrophe or purchasing reinsurance for catastrophes shall be subject to approval of the <u>office</u> ~~department~~. Any ceding commission received by an insurer purchasing reinsurance for catastrophes shall be placed in the catastrophe reserve.

(e) After consideration of the rate factors provided in paragraphs (b), (c), and (d), a rate may be found by the <u>office</u> ~~department~~ to be excessive, inadequate, or unfairly discriminatory based upon the following standards:

1. Rates shall be deemed excessive if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered.

2. Rates shall be deemed excessive if, among other things, the rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replenishment is attributable to investment losses.

3. Rates shall be deemed inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

4. A rating plan, including discounts, credits, or surcharges, shall be deemed unfairly discriminatory if it fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program adopted pursuant to s. 627.0625.

5. A rate shall be deemed inadequate as to the premium charged to a risk or group of risks if discounts or credits are allowed which exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks.

6. A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

(f) In reviewing a rate filing, the office ~~department~~ may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria enumerated in this section.

(g) The office ~~department~~ may at any time review a rate, rating schedule, rating manual, or rate change; the pertinent records of the insurer; and market conditions. If the office ~~department~~ finds on a preliminary basis that a rate may be excessive, inadequate, or unfairly discriminatory, the office ~~department~~ shall initiate proceedings to disapprove the rate and shall so notify the insurer. However, the office ~~department~~ may not disapprove as excessive any rate for which it has given final approval or which has been deemed approved for a period of 1 year after the effective date of the filing unless the office ~~department~~ finds that a material misrepresentation or material error was made by the insurer or was contained in the filing. Upon being so notified, the insurer or rating organization shall, within 60 days, file with the office ~~department~~ all information which, in the belief of the insurer or organization, proves the reasonableness, adequacy, and fairness of the rate or rate change. The office ~~department~~ shall issue a notice of intent to approve or a notice of intent to disapprove pursuant to the procedures of paragraph (a) within 90 days after receipt of the insurer's initial response. In such instances and in any administrative proceeding relating to the legality of the rate, the insurer or rating organization shall carry the burden of proof by a preponderance of the evidence to show that the rate is not excessive, inadequate, or unfairly discriminatory. After the office ~~department~~ notifies an insurer that a rate may be excessive, inadequate, or unfairly discriminatory, unless the office ~~department~~ withdraws the notification, the insurer shall not alter the rate except to conform with the office's ~~department's~~ notice until the earlier of 120 days after the date the notification was provided or 180 days after the date of the implementation of the rate. The office ~~department~~ may, subject to chapter 120, disapprove without the 60-day notification any rate increase filed by an insurer within the prohibited time period or during the time that the legality of the increased rate is being contested.

(h) In the event the office ~~department~~ finds that a rate or rate change is excessive, inadequate, or unfairly discriminatory, the office ~~department~~

shall issue an order of disapproval specifying that a new rate or rate schedule which responds to the findings of the office ~~department~~ be filed by the insurer. The office ~~department~~ shall further order, for any "use and file" filing made in accordance with subparagraph (a)2., that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified be returned to such policyholder in the form of a credit or refund. If the office ~~department~~ finds that an insurer's rate or rate change is inadequate, the new rate or rate schedule filed with the office ~~department~~ in response to such a finding shall be applicable only to new or renewal business of the insurer written on or after the effective date of the responsive filing.

(i) Except as otherwise specifically provided in this chapter, the office ~~department~~ shall not prohibit any insurer, including any residual market plan or joint underwriting association, from paying acquisition costs based on the full amount of premium, as defined in s. 627.403, applicable to any policy, or prohibit any such insurer from including the full amount of acquisition costs in a rate filing.

The provisions of this subsection shall not apply to workers' compensation and employer's liability insurance and to motor vehicle insurance.

(3)(a) For individual risks that are not rated in accordance with the insurer's rates, rating schedules, rating manuals, and underwriting rules filed with the office ~~department~~ and which have been submitted to the insurer for individual rating, the insurer must maintain documentation on each risk subject to individual risk rating. The documentation must identify the named insured and specify the characteristics and classification of the risk supporting the reason for the risk being individually risk rated, including any modifications to existing approved forms to be used on the risk. The insurer must maintain these records for a period of at least 5 years after the effective date of the policy.

(b) Individual risk rates and modifications to existing approved forms are not subject to this part or part II, except for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404, 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132, 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426, 627.4265, 627.427, and 627.428, but are subject to all other applicable provisions of this code and rules adopted thereunder.

(c) This subsection does not apply to private passenger motor vehicle insurance.

(6)(a) After any action with respect to a rate filing that constitutes agency action for purposes of the Administrative Procedure Act, an insurer may, in lieu of demanding a hearing under s. 120.57, require arbitration of the rate filing. Arbitration shall be conducted by a board of arbitrators consisting of an arbitrator selected by the office ~~department~~, an arbitrator selected by the insurer, and an arbitrator selected jointly by the other two arbitrators. Each arbitrator must be certified by the American Arbitration Association. A decision is valid only upon the affirmative vote of at least two of the arbitrators. No arbitrator may be an employee of any insurance regulator or regulatory body or of any insurer, regardless of whether or not the

employing insurer does business in this state. The office ~~department~~ and the insurer must treat the decision of the arbitrators as the final approval of a rate filing. Costs of arbitration shall be paid by the insurer.

(b) Arbitration under this subsection shall be conducted pursuant to the procedures specified in ss. 682.06-682.10. Either party may apply to the circuit court to vacate or modify the decision pursuant to s. 682.13 or s. 682.14. The commission ~~department~~ shall adopt rules for arbitration under this subsection, which rules may not be inconsistent with the arbitration rules of the American Arbitration Association as of January 1, 1996.

(c) Upon initiation of the arbitration process, the insurer waives all rights to challenge the action of the office ~~department~~ under the Administrative Procedure Act or any other provision of law; however, such rights are restored to the insurer if the arbitrators fail to render a decision within 90 days after initiation of the arbitration process.

Section 1065. Subsection (3) of section 627.0625, Florida Statutes, is amended to read:

627.0625 Commercial property and casualty risk management plans.—

(3) Each insurer or insurer group offering commercial casualty insurance or commercial property insurance covering risks located in this state shall develop and make available to insureds guidelines for risk management plans. The risk management program shall include the following:

(a) Safety measures, including, as applicable, the following areas:

1. Pollution and environmental hazards;

2. Disease hazards;

3. Accidental occurrences;

4. Fire hazards and fire prevention and detection;

5. Liability for acts from the course of business;

6. Slip and fall hazards;

7. Product injury; and

8. Hazards unique to a particular class or category of insureds.

(b) Training to insureds in safety management techniques.

(c) Safety management counseling services.

There shall be no civil cause of action against any insurer or its agents or employees for acts or omissions in any way connected with the requirements of this subsection. This shall not limit the authority for the office ~~department~~ to enforce the provisions of this subsection.

Section 1066. Paragraphs (a), (b), and (c) of subsection (2) and paragraph (c) of subsection (3) of section 627.0628, Florida Statutes, are amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology.—

(2) COMMISSION CREATED.—

(a) There is created the Florida Commission on Hurricane Loss Projection Methodology, which is assigned to the State Board of Administration. For the purposes of this section, the term "commission" means the Florida Commission on Hurricane Loss Projection Methodology. The commission shall be administratively housed within the State Board of Administration, but it shall independently exercise the powers and duties specified in this section.

(b) The commission shall consist of the following 11 members:

1. The insurance consumer advocate.

2. The senior employee of the State Board of Administration responsible for operations ~~Chief Operating Officer~~ of the Florida Hurricane Catastrophe Fund.

3. The Executive Director of the Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~.

4. The Director of the Division of Emergency Management of the Department of Community Affairs.

5. The actuary member of the Florida Hurricane Catastrophe Fund Advisory Council.

6. Six members appointed by the Chief Financial Officer ~~Insurance Commissioner~~, as follows:

a. An employee of the office ~~Department of Insurance~~ who is an actuary responsible for property insurance rate filings.

b. An actuary who is employed full time by a property and casualty insurer which was responsible for at least 1 percent of the aggregate statewide direct written premium for homeowner's insurance in the calendar year preceding the member's appointment to the commission.

c. An expert in insurance finance who is a full time member of the faculty of the State University System and who has a background in actuarial science.

d. An expert in statistics who is a full time member of the faculty of the State University System and who has a background in insurance.

e. An expert in computer system design who is a full time member of the faculty of the State University System.

f. An expert in meteorology who is a full time member of the faculty of the State University System and who specializes in hurricanes.

(c) Members designated under subparagraphs (b)1.-5. shall serve on the commission as long as they maintain the respective offices designated in subparagraphs (b)1.-5. Members appointed by the Chief Financial Officer ~~Insurance Commissioner~~ under subparagraph (b)6. shall serve on the commission until the end of the term of office of the Chief Financial Officer ~~Insurance Commissioner~~ who appointed them, unless earlier removed by the Chief Financial Officer ~~Insurance Commissioner~~ for cause. Vacancies on the commission shall be filled in the same manner as the original appointment.

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(c) With respect to a rate filing under s. 627.062, an insurer may employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable to determine hurricane loss factors for use in a rate filing under s. 627.062, which findings and factors are admissible and relevant in consideration of a rate filing by the office ~~department~~ or in any arbitration or administrative or judicial review.

Section 1067. Paragraph (b) of subsection (2) and subsections (5), (6), and (9) of section 627.0629, Florida Statutes, are amended to read:

627.0629 Residential property insurance; rate filings.—

(2)

(b) A rate filing for residential property insurance made more than 150 days after approval by the office ~~department~~ of a building code rating factor plan submitted by a statewide rating organization shall include positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage. The rate filing shall include variations from standard rate factors on an individual basis based on inspection of a particular structure by a licensed home inspector. If an inspection is requested by the insured, the insurer may require the insured to pay the reasonable cost of the inspection. This paragraph applies to structures constructed or renovated after the implementation of this paragraph.

(5) In order to provide an appropriate transition period, an insurer may, in its sole discretion, implement an approved rate filing for residential property insurance over a period of years. An insurer electing to phase in its rate filing must provide an informational notice to the office ~~department~~ setting out its schedule for implementation of the phased-in rate filing.

(6) An insurer may not write a residential property insurance policy without providing windstorm coverage or hurricane coverage as defined in s. 627.4025. This subsection does not apply with respect to risks located in an area eligible for coverage under the high-risk account of the Citizens Property Insurance Corporation pursuant to s. 627.351(6) ~~Florida Windstorm Underwriting Association under s. 627.351(2)~~.

(9) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL SOUNDNESS.—

(a) It is the intent of the Legislature to provide a program whereby homeowners may obtain an evaluation of the wind resistance of their homes with respect to preventing damage from hurricanes, together with a recommendation of reasonable steps that may be taken to upgrade their homes to better withstand hurricane force winds.

(b) To the extent that funds are provided for this purpose in the General Appropriations Act, the Legislature hereby authorizes the establishment of a program to be administered by the Citizens Property Insurance Corporation for homeowners insured in the high-risk account ~~Florida Windstorm Underwriting Association~~.

(c) The program shall provide grants to homeowners, for the purpose of providing homeowner applicants with funds to conduct an evaluation of the integrity of their homes with respect to withstanding hurricane force winds, recommendations to retrofit the homes to better withstand damage from such winds, and the estimated cost to make the recommended retrofits.

(d) The Department of Community Affairs shall establish by rule standards to govern the quality of the evaluation, the quality of the recommendations for retrofitting, the eligibility of the persons conducting the evaluation, and the selection of applicants under the program. In establishing the rule, the Department of Community Affairs shall consult with the advisory committee to minimize the possibility of fraud or abuse in the evaluation and retrofitting process, and to ensure that funds spent by homeowners acting on the recommendations achieve positive results.

(e) The Citizens Property Insurance Corporation ~~Florida Windstorm Underwriting Association~~ shall identify areas of this state with the greatest wind risk to residential properties and recommend annually to the Department of Community Affairs priority target areas for such evaluations and inclusion with the associated residential construction mitigation program.

Section 1068. Subsection (1), paragraph (b) of subsection (2), paragraph (a) of subsection (3), and subsections (6), (7), and (9) of section 627.0645, Florida Statutes, are amended to read:

627.0645 Annual filings.—

(1) Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance to which this part applies, except:

(a) Workers' compensation and employer's liability insurance; or

(b) Commercial property and casualty insurance as defined in s. 627.0625(1) other than commercial multiple line and commercial motor vehicle,

shall make an annual base rate filing for each such line with the office ~~department~~ no later than 12 months after its previous base rate filing, demonstrating that its rates are not inadequate.

(2)

(b) The office ~~department~~, after receiving a request to be exempted from the provisions of this section, may, for good cause due to insignificant numbers of policies in force or insignificant premium volume, exempt a company, by line of coverage, from filing rates or rate certification as required by this section.

(3) The filing requirements of this section shall be satisfied by one of the following methods:

(a) A rate filing prepared by an actuary which contains documentation demonstrating that the proposed rates are not excessive, inadequate, or unfairly discriminatory pursuant to the applicable rating laws and pursuant to rules of the commission ~~department~~.

(6) If at the time a filing is required under this section an insurer is in the process of completing a rate review, the insurer may apply to the office ~~department~~ for an extension of up to an additional 30 days in which to make the filing. The request for extension must be received by the office ~~department~~ no later than the date the filing is due.

(7) Nothing in this section limits the office's ~~department's~~ authority to review rates at any time or to find that a rate or rate change is excessive, inadequate, or unfairly discriminatory pursuant to s. 627.062.

(9) If an insurer fails to meet the filing requirements of this section and does not submit the filing within 60 days after the date the filing is due, the office ~~department~~ may, in addition to any other penalty authorized by law, order the insurer to discontinue the issuance of policies for the line of insurance for which the required filing was not made until such time as the office ~~department~~ determines that the required filing is properly submitted.

Section 1069. Subsection (1) of section 627.06501, Florida Statutes, is amended to read:

627.06501 Insurance discounts for certain persons completing driver improvement course.—

(1) Any rate, rating schedule, or rating manual for the liability, personal injury protection, and collision coverages of a motor vehicle insurance policy filed with the office ~~department~~ may provide for an appropriate reduction in premium charges as to such coverages when the principal operator on the covered vehicle has successfully completed a driver improvement course approved and certified by the Department of Highway Safety and Motor Vehicles which is effective in reducing crash or violation rates, or both, as determined pursuant to s. 318.1451(5). Any discount, not to exceed 10 percent, used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 1070. Subsections (1) and (2), paragraph (b) of subsection (5), subsections (9), (10), and (11), and paragraph (b) of subsection (13) of section 627.0651, Florida Statutes, are amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(1) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on motor vehicle insurance written in this state. A copy of rates, rating schedules, and rating manuals, and changes therein, shall be filed with the office ~~department~~ under one of the following procedures:

(a) If the filing is made at least 60 days before the proposed effective date and the filing is not implemented during the office's ~~department's~~ review of the filing and any proceeding and judicial review, such filing shall be considered a "file and use" filing. In such case, the office ~~department~~ shall initiate proceedings to disapprove the rate and so notify the insurer or shall finalize its review within 60 days after receipt of the filing. Notification to the insurer by the office ~~department~~ of its preliminary findings shall toll the 60-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office ~~department~~ does not issue notice to the insurer of its preliminary findings within 60 days after the filing.

(b) If the filing is not made in accordance with the provisions of paragraph (a), such filing shall be made as soon as practicable, but no later than 30 days after the effective date, and shall be considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office ~~department~~ to return to policyholders portions of rates found to be excessive, as provided in subsection (11).

(2) Upon receiving notice of a rate filing or rate change, the office ~~department~~ shall review the rate or rate change to determine if the rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office ~~department~~ shall in accordance with generally accepted and reasonable actuarial techniques consider the following factors:

(a) Past and prospective loss experience within and outside this state.

(b) The past and prospective expenses.

(c) The degree of competition among insurers for the risk insured.

(d) Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. Such investment income shall not include income from invested surplus. The commission ~~department~~ may adopt ~~promulgate~~ rules utilizing reasonable techniques of actuarial science and economics to specify the manner in which insurers shall calculate investment income attributable to motor vehicle insurance policies written in this state and the manner in which such investment income is used in the calculation of insurance rates. Such manner shall contemplate the use of a positive underwriting profit allowance in the rates that will be compatible with a reasonable rate of return plus provisions for contingencies. The total of the profit and contingency factor as specified in the filing shall be utilized in computing excess profits in conjunction with s. 627.066. In adopting ~~promulgating~~ such rules,

the commission ~~department~~ shall in all instances adhere to and implement the provisions of this paragraph.

(e) The reasonableness of the judgment reflected in the filing.

(f) Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

(g) The cost of repairs to motor vehicles.

(h) The cost of medical services, if applicable.

(i) The adequacy of loss reserves.

(j) The cost of reinsurance.

(k) Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

(l) Other relevant factors which impact upon the frequency or severity of claims or upon expenses.

(5)

(b) The office has ~~Insurance Commissioner shall have~~ the responsibility to ensure that rates for private passenger vehicle insurance are adequate. To that end, the commission ~~department~~ shall adopt ~~promulgate~~ rules ~~and regulations~~ establishing standards defining inadequate rates on private passenger vehicle insurance as defined in s. 627.041(8). In the event that the office ~~department~~ finds that a rate or rate change is inadequate, the office ~~department~~ shall order that a new rate or rate schedule be thereafter filed by the insurer and shall further provide information as to the manner in which noncompliance of the standards may be corrected. When a violation of this provision occurs, the office ~~department~~ shall impose an administrative fine pursuant to s. 624.4211.

(9) In reviewing the rate or rate change filed, the office ~~department~~ may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria enumerated herein.

(10) The office ~~department~~ may, at any time, review a rate or rate change, the pertinent records of the insurer, and market conditions; and, if the office ~~department~~ finds on a preliminary basis that the rate or rate change may be excessive, inadequate, or unfairly discriminatory, the office ~~department~~ shall so notify the insurer. However, the office ~~department~~ may not disapprove as excessive any rate for which it has given final approval or which has been deemed approved for a period of 1 year after the effective date of the filing unless the office ~~department~~ finds that a material misrepresentation or material error was made by the insurer or was contained in the filing. Upon being so notified, the insurer or rating organization shall, within 60 days, file with the office ~~department~~ all information which, in the belief of the insurer or organization, proves the reasonableness, adequacy,

and fairness of the rate or rate change. In such instances and in any administrative proceeding relating to the legality of the rate, the insurer or rating organization shall carry the burden of proof by a preponderance of the evidence to show that the rate is not excessive, inadequate, or unfairly discriminatory. After the office ~~department~~ notifies an insurer that a rate may be excessive, inadequate, or unfairly discriminatory, unless the office ~~department~~ withdraws the notification, the insurer shall not increase the rate until the earlier of 120 days after the date the notification was provided or 180 days after the date of the implementation of the rate. The office ~~department~~ may, subject to chapter 120, disapprove without the 60-day notification any rate increase filed by an insurer within the prohibited time period or during the time that the legality of the increased rate is being contested.

(11) In the event the office ~~department~~ finds that a rate or rate change is excessive, inadequate, or unfairly discriminatory, the office ~~department~~ shall issue an order of disapproval specifying that a new rate or rate schedule which responds to the findings of the office ~~department~~ be filed by the insurer. The office ~~department~~ shall further order for any "use and file" filing made in accordance with paragraph (1)(b), that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified be returned to such policyholder in the form of a credit or refund. If the office ~~department~~ finds that an insurer's rate or rate change is inadequate, the new rate or rate schedule filed with the office ~~department~~ in response to such a finding shall be applicable only to new or renewal business of the insurer written on or after the effective date of the responsive filing.

(13)

(b) The submission of rates, rating schedules, and rating manuals to the office ~~department~~ by a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this subsection for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating schedules, and rating manuals of such organization. All such information shall be available for public inspection, upon receipt by the office ~~department~~, during usual business hours.

Section 1071. Subsection (1) of section 627.0652, Florida Statutes, is amended to read:

627.0652 Insurance discounts for certain persons completing safety course.—

(1) Any rates, rating schedules, or rating manuals for the liability, personal injury protection, and collision coverages of a motor vehicle insurance policy filed with the office ~~department~~ shall provide for an appropriate reduction in premium charges as to such coverages when the principal operator on the covered vehicle is an insured 55 years of age or older who has successfully completed a motor vehicle accident prevention course approved by the Department of Highway Safety and Motor Vehicles. Any

discount used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 1072. Section 627.0653, Florida Statutes, is amended to read:

627.0653 Insurance discounts for specified motor vehicle equipment.—

(1) Any rates, rating schedules, or rating manuals for the liability, personal injury protection, and collision coverages of a motor vehicle insurance policy filed with the office ~~department~~ shall provide a premium discount if the insured vehicle is equipped with factory-installed, four-wheel antilock brakes.

(2) Each insurer writing motor vehicle comprehensive coverage in this state shall include in its rating manual discount provisions for comprehensive coverage which specifically relate to an antitheft device or vehicle recovery system utilized in the insured vehicle which are factory installed or approved by the office ~~department~~. The commission ~~department~~ shall adopt, by rule, procedures under which manufacturers, distributors, or sellers may apply to the office ~~department~~ for approval of non-factory-installed devices under this subsection. The rules must include, at a minimum, the test results that must accompany the application and the standards for approval.

(3) Any rates, rating schedules, or rating manuals for personal injury protection coverage and medical payments coverage, if offered, of a motor vehicle insurance policy filed with the office ~~department~~ shall provide a premium discount if the insured vehicle is equipped with one or more air bags which are factory installed.

(4) The removal of a discount or credit does not constitute the imposition of, or request for, additional premium or a surcharge if the basis for the discount or credit no longer exists or is substantially eliminated.

(5) Each insurer writing motor vehicle comprehensive coverage in this state may provide a premium discount for this coverage if the insured vehicle has the complete manufacturer's vehicle identification number permanently etched on the windshield and all windows of the vehicle. The etching must be by a tool or process that does not destroy the integrity of the glass or visibility for the operator of the motor vehicle. The identification numbers and letters must be at least ¼ inch in height. A sticker may identify the presence of this identification system. The commission ~~department~~ may, by rule, set forth appropriate guidelines to implement this subsection.

Section 1073. Section 627.06535, Florida Statutes, is amended to read:

627.06535 Electric vehicles; restrictions on imposing surcharges.—An insurer may not impose a surcharge on the premium for motor vehicle insurance written on an electric vehicle, as defined in s. 320.01, if the surcharge is based on a factor such as new technology, passenger payload, weight-to-horsepower ratio, or types of materials, including composite materials or aluminum, used to manufacture the vehicle, unless the office ~~Department of Insurance~~ determines from actuarial data submitted to it that the surcharge is justified.

Section 1074. Subsections (2), (7), (10), (11), and (13) of section 627.066, Florida Statutes, are amended to read:

627.066 Excessive profits for motor vehicle insurance prohibited.—

(2) Each Florida private passenger automobile insurer group shall file with the office ~~department~~, prior to July 1 of each year on forms prescribed by the commission ~~department~~, the following data for Florida private passenger automobile business. The data filed for the group shall be a consolidation of the data of the individual insurers of the group. The data shall include both voluntary and joint underwriting association business, as follows:

(a) Calendar-year total limits earned premium.

(b) Accident-year incurred losses and loss adjustment expenses.

(c) The administrative and selling expenses incurred in this state or allocated to this state for the calendar year.

(d) Policyholder dividends incurred during the applicable calendar year.

(7) If the insurer group has realized an excessive profit, the office ~~department~~ shall order a return of the excessive amounts after affording the insurer group an opportunity for hearing and otherwise complying with the requirements of chapter 120. Such excessive amounts shall be refunded in all instances unless the insurer group affirmatively demonstrates to the office ~~department~~ that the refund of the excessive amounts will render a member of the insurer group financially impaired or will render it insolvent under the provisions of the Florida Insurance Code.

(10)(a) Cash refunds to policyholders may be rounded to the nearest dollar.

(b) Data in required reports to the office ~~department~~ may be rounded to the nearest dollar.

(c) Rounding, if elected by the insurer group, shall be applied consistently.

(11)(a) Refunds shall be completed in one of the following ways:

1. If the insurer group elects to make a cash refund, the refund shall be completed within 60 days of entry of a final order indicating that excessive profits have been realized.

2. If the insurer group elects to make refunds in the form of a credit to renewal policies, such credits shall be applied to policy renewal premium notices which are forwarded to insureds more than 60 calendar days after entry of a final order indicating that excessive profits have been realized. If an insurer group has made this election but an insured thereafter cancels his or her policy or otherwise allows the policy to terminate, the insurer group shall make a cash refund not later than 60 days after termination of such coverage.

(b) Upon completion of the renewal credits or refund payments, the insurer group shall immediately certify to the office ~~department~~ that the refunds have been made.

~~(13) Since it appears to the Legislature that private passenger automobile insurer groups have realized excessive profits during all or part of the years 1977, 1978, and 1979 and that such profits were realized in part due to statutory changes for which rates were not adequately adjusted, it is the desire and intent of the Legislature that the provisions of this section, as amended by chapter 80-236, Laws of Florida, shall apply retroactively to excessive profits realized during the years 1977, 1978, and 1979. In the event that such retroactive application is judicially determined to be unconstitutional, it is the intent of the Legislature that the act be given prospective application as stated hereinafter. Prior to July 1, 1982, the data required by this section shall be submitted to the department for the years 1979, 1980, and 1981. Excessive profits shall be calculated in accordance with the provisions of this section. However, only the excessive profits realized by the insurer group in 1981 shall be refunded to policyholders, and such refunds shall be made in accordance with this section. Prior to July 1, 1983, the data required by this section shall be submitted to the department for the years 1980, 1981, and 1982. Excessive profits shall be calculated in accordance with this section; however, refunds shall only be made for excessive profits realized in the years 1981 and 1982. Thereafter, excessive profits shall be calculated and refunded on the basis of 3 years as set forth in this section.~~

Section 1075. Subsection (4) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(4)(a) In the case of workers' compensation and employer's liability insurance, the office ~~department~~ shall consider utilizing the following methodology in rate determinations: Premiums, expenses, and expected claim costs would be discounted to a common point of time, such as the initial point of a policy year, in the determination of rates; the cash-flow pattern of premiums, expenses, and claim costs would be determined initially by using data from 8 to 10 of the largest insurers writing workers' compensation insurance in the state; such insurers may be selected for their statistical ability to report the data on an accident-year basis and in accordance with subparagraphs (b)1., 2., and 3., for at least 2½ years; such a cash-flow pattern would be modified when necessary in accordance with the data and whenever a radical change in the payout pattern is expected in the policy year under consideration.

(b) If the methodology set forth in paragraph (a) is utilized, to facilitate the determination of such a cash-flow pattern methodology:

1. Each insurer shall include in its statistical reporting to the rating bureau and the office ~~department~~ the accident year by calendar quarter data for paid-claim costs;

2. Each insurer shall submit financial reports to the rating bureau and the office ~~department~~ which shall include total incurred claim amounts and paid-claim amounts by policy year and by injury types as of December 31 of each calendar year; and

3. Each insurer shall submit to the rating bureau and the office ~~department~~ paid-premium data on an individual risk basis in which risks are to be subdivided by premium size as follows:

Number of Risks in Premium Range	Standard Premium Size
...(to be filled in by carrier)...	$300—999
...(to be filled in by carrier)...	1,000—4,999
...(to be filled in by carrier)...	5,000—49,999
...(to be filled in by carrier)...	50,000—99,999
...(to be filled in by carrier)...	100,000 or more
Total:	

Section 1076. Section 627.091, Florida Statutes, is amended to read:

627.091 Rate filings; workers' compensation and employer's liability insurances.—

(1) As to workers' compensation and employer's liability insurances, every insurer shall file with the office ~~department~~ every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use. Every insurer is authorized to include deductible provisions in its manual of classifications, rules, and rates. Such deductibles shall in all cases be in a form and manner which is consistent with the underlying purpose of chapter 440.

(2) Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing and the office ~~department~~ does not have sufficient information to determine whether the filing meets the applicable requirements of this part, it shall within 15 days after the date of filing require the insurer to furnish the information upon which it supports the filing. The information furnished in support of a filing may include:

(a) The experience or judgment of the insurer or rating organization making the filing;

(b) Its interpretation of any statistical data it relies upon;

(c) The experience of other insurers or rating organizations; or

(d) Any other factors which the insurer or rating organization deems relevant.

(3) A filing and any supporting information shall be open to public inspection as provided in s. 119.07(1).

(4) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the office ~~department~~ to accept such filings in its behalf; but nothing contained in this chapter shall be construed as requiring any insurer to become a member or a subscriber to any rating organization.

(5) Pursuant to the provisions of s. 624.3161, the office ~~department~~ may examine the underlying statistical data used in such filings.

(6) Whenever the committee of a recognized rating organization with responsibility for workers' compensation and employer's liability insurance rates in this state meets to discuss the necessity for, or a request for, Florida rate increases or decreases, the determination of Florida rates, the rates to be requested, and any other matters pertaining specifically and directly to such Florida rates, such meetings shall be held in this state and shall be subject to s. 286.011. The committee of such a rating organization shall provide at least 3 weeks' prior notice of such meetings to the office ~~department~~ and shall provide at least 14 days' prior notice of such meetings to the public by publication in the Florida Administrative Weekly.

Section 1077. Section 627.0915, Florida Statutes, is amended to read:

627.0915 Rate filings; workers' compensation, drug-free workplace, and safe employers.—The office ~~Department of Insurance~~ shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that either implement a drug-free workplace program pursuant to rules adopted by the commission ~~Department of Insurance~~ or implement a safety program pursuant to provisions of the rating plan or implement both a drug-free workplace program and a safety program. The plans must be actuarially sound and must state the savings anticipated to result from such drug-testing and safety programs.

Section 1078. Section 627.0916, Florida Statutes, is amended to read:

627.0916 Agricultural horse farms.—Notwithstanding any other provision of this chapter to the contrary, any rates, rating schedules, or rating manuals for workers' compensation and employer's liability insurance filed with the office ~~Department of Insurance~~ shall provide for the rates of an agricultural horse farm engaged in breeding or training to be separated into the following three rate classifications and the premium paid shall be applied proportionately according to payroll: breeding activity involving stallions; breeding activity not involving stallions, including but not limited to boarding and foaling; and training.

Section 1079. Section 627.092, Florida Statutes, is amended to read:

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

Section 1080. Section 627.096, Florida Statutes, is amended to read:

627.096 Workers' Compensation Rating Bureau.—

(1) There is created within the office ~~department~~ a Workers' Compensation Rating Bureau, which shall make an investigation and study of all insurers authorized to issue workers' compensation and employer's liability coverage in this state. Such bureau shall study the data, statistics, schedules, or other information as it may deem necessary to assist and advise the office ~~department~~ in its review of filings made by or on behalf of workers' compensation and employer's liability insurers. The commission may adopt ~~department shall have the authority to promulgate~~ rules requiring all workers' compensation and employer's liability insurers to submit to the rating bureau any data, statistics, schedules, and other information deemed necessary to the rating bureau's study and advisement.

(2) The acquisition by the Department of Management Services of data processing software, hardware, and services necessary to carry out the provisions of this act for the department or office ~~Treasurer's Management Information Center of the Department of Insurance~~ shall be exempt from the provisions of part I of chapter 287.

Section 1081. Section 627.101, Florida Statutes, is amended to read:

627.101 When filing becomes effective; workers' compensation and employer's liability insurances.—

(1) The office ~~department~~ shall review filings as to workers' compensation and employer's liability insurances as soon as reasonably possible after they have been made in order to determine whether they meet the applicable requirements of this part. If the office ~~department~~ determines that part of a rate filing does not meet the applicable requirements of this part, it may reject so much of the filing as does not meet these requirements, and approve the remainder of the filing.

(2) The office ~~department~~ shall specifically approve the filing before it becomes effective, unless the office ~~department~~ has concluded it to be in the public interest to hold a public hearing to determine whether the filing meets the requirements of this chapter and has given notice of such hearing to the insurer or rating organization that made the filing, and in which case the effectiveness of the filing shall be subject to the further order of the office ~~department~~ made as provided in s. 627.111. If the office ~~department~~ specifically disapproves the filing, the provisions of subsection (4) shall apply.

(3) An insurer or rating organization may, at the time it makes a filing with the office ~~department~~, request a public hearing thereon. In such event, the office ~~department~~ shall give notice of the hearing.

(4) If the office ~~department~~ disapproves a filing, it shall promptly give notice of such disapproval to the insurer or rating organization that made the filing, stating the respects in which it finds that the filing does not meet the requirements of this chapter. If the office ~~department~~ approves a filing, it shall give prompt notice thereof to the insurer or rating organization that

made the filing, and in which case the filing shall become effective upon such approval or upon such subsequent date as may be satisfactory to the office ~~department~~ and the insurer or rating organization that made the filing.

Section 1082. Section 627.111, Florida Statutes, is amended to read:

627.111 Effective date of filing.—

(1) If, pursuant to s. 627.101(2), the office ~~department~~ determines to hold a public hearing as to a filing, or it holds such a public hearing pursuant to request therefor under s. 627.101(3), it shall give written notice thereof to the rating organization or insurer that made the filing and shall hold such hearing within 30 days, and not less than 10 days prior to the date of the hearing, it shall give written notice of the hearing to the insurer or rating organization that made the filing. The office ~~department~~ may also, in its discretion, give advance public notice of such hearing by publication of notice in one or more daily newspapers of general circulation in this state.

(2) If the order of the office ~~department~~ disapproves the filing, the filing shall not become effective during the effectiveness of such order. If the order of the office ~~department~~ approves the filing, the filing shall become effective upon the date of the order or upon such subsequent date as may be satisfactory to the insurer or rating organization that made the filing.

Section 1083. Section 627.141, Florida Statutes, is amended to read:

627.141 Subsequent disapproval of filing; workers' compensation and employer's liability insurances.—If at any time after a filing has been approved by it or has otherwise become effective the office ~~department~~ finds that the filing no longer meets the requirements of this chapter, it shall issue an order specifying in what respects it finds that such filing fails to meet such requirements and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. The order shall not affect any insurance contract or policy made or issued prior to the expiration of the period set forth in the order.

Section 1084. Subsection (1) of section 627.151, Florida Statutes, is amended to read:

627.151 Basis of approval or disapproval of workers' compensation or employer's liability insurance filing; scope of disapproval power.—

(1) In determining at any time whether to approve or disapprove a filing as to workers' compensation or employer's liability insurance, or to permit the filing otherwise to become effective, the office ~~department~~ shall give consideration only to the applicable standards and factors referred to in ss. 627.062 and 627.072.

Section 1085. Subsection (1) of section 627.171, Florida Statutes, is amended to read:

627.171 Excess rates.—

(1) With written consent of the insured signed prior to the policy inception date and filed with the insurer, the insurer may use a rate in excess of the otherwise applicable filed rate on any specific risk. The signed consent form must include the filed rate as well as the excess rate for the risk insured and a copy of the form must be maintained by the insurer for 3 years and be available for review by the office ~~department~~.

Section 1086. Paragraph (f) of subsection (2) of section 627.192, Florida Statutes, is amended to read:

627.192 Workers' compensation insurance; employee leasing arrangements.—

(2) For purposes of the Florida Insurance Code:

(f) "Premium subject to dispute" means that the insured has provided a written notice of dispute to the insurer or service carrier, has initiated any applicable proceeding for resolving such disputes as prescribed by law or rating organization procedures approved by the office ~~department~~, or has initiated litigation regarding the premium dispute. The insured must have detailed the specific areas of dispute and provided an estimate of the premium the insured believes to be correct. The insured must have paid any undisputed portion of the bill.

Section 1087. Section 627.211, Florida Statutes, is amended to read:

627.211 Deviations; workers' compensation and employer's liability insurances.—

(1) Every member or subscriber to a rating organization shall, as to workers' compensation or employer's liability insurance, adhere to the filings made on its behalf by such organization; except that any such insurer may make written application to the office ~~department~~ for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, for a class of insurance which is found by the office ~~department~~ to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of workers' compensation or employer's liability insurance:

(a) Comprised of a group of manual classifications which is treated as a separate unit for ratemaking purposes; or

(b) For which separate expense provisions are included in the filings of the rating organization.

Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to the rating organization.

(2) Every member or subscriber to a rating organization may, as to workers' compensation and employer's liability insurance, file a plan or plans to use deviations that vary according to factors present in each insured's individual risk. The insurer that files for the deviations provided in this subsection shall file the qualifications for the plans, schedules of rating factors, and

the maximum deviation factors which shall be subject to the approval of the office ~~department~~ pursuant to s. 627.091. The actual deviation which shall be used for each insured that qualifies under this subsection may not exceed the maximum filed deviation under that plan and shall be based on the merits of each insured's individual risk as determined by using schedules of rating factors which shall be applied uniformly. Insurers shall maintain statistical data in accordance with the schedule of rating factors. Such data shall be available to support the continued use of such varying deviations.

(3) In considering an application for the deviation, the office ~~department~~ shall give consideration to the applicable principles for ratemaking as set forth in ss. 627.062 and 627.072, the financial condition of the insurer, and the impact of the deviation on the current market conditions including the composition of the market, the stability of rates, and the level of competition in the market. In evaluating the financial condition of the insurer, the office ~~department~~ may consider: (1) the insurer's audited financial statements and whether the statements provide unqualified opinions or contain significant qualifications or "subject to" provisions; (2) any independent or other actuarial certification of loss reserves; (3) whether workers' compensation and employer's liability reserves are above the midpoint or best estimate of the actuary's reserve range estimate; (4) the adequacy of the proposed rate; (5) historical experience demonstrating the profitability of the insurer; (6) the existence of excess or other reinsurance that contains a sufficiently low attachment point and maximums that provide adequate protection to the insurer; and (7) other factors considered relevant to the financial condition of the insurer by the office ~~department~~. The office ~~department~~ shall approve the deviation if it finds it to be justified, it would not endanger the financial condition of the insurer, it would not adversely affect the current market conditions including the composition of the market, the stability of rates, and the level of competition in the market, and that the deviation would not constitute predatory pricing. It shall disapprove the deviation if it finds that the resulting premiums would be excessive, inadequate, or unfairly discriminatory, would endanger the financial condition of the insurer, or would adversely affect current market conditions including the composition of the marketplace, the stability of rates, and the level of competition in the market, or would result in predatory pricing. The insurer may not use a deviation unless the deviation is specifically approved by the office ~~department~~.

(4) Each deviation permitted to be filed shall be effective for a period of 1 year unless terminated, extended, or modified with the approval of the office ~~department~~. If at any time after a deviation has been approved the office ~~department~~ finds that the deviation no longer meets the requirements of this code, it shall notify the insurer in what respects it finds that the deviation fails to meet such requirements and specify when, within a reasonable period thereafter, the deviation shall be deemed no longer effective. The notice shall not affect any insurance contract or policy made or issued prior to the expiration of the period set forth in the notice.

(5) For purposes of this section, the office ~~department~~, when considering the experience of any insurer, shall consider the experience of any predecessor insurer when the business and the liabilities of the predecessor insurer

were assumed by the insurer pursuant to an order of the office ~~department~~ which approves the assumption of the business and the liabilities.

Section 1088. Section 627.212, Florida Statutes, is amended to read:

627.212 Workplace safety program surcharge.—The office ~~department~~ shall approve a rating plan for workers' compensation coverage insurance that provides for carriers voluntarily to impose a surcharge of no more than 10 percent on the premium of a policyholder or fund member if that policyholder or fund member has been identified by the department ~~of Labor and Employment Security~~ as having been required to implement a safety program and having failed to establish or maintain, either in whole or in part, a safety program. The department ~~division~~ shall adopt rules prescribing the criteria for the employee safety programs.

Section 1089. Paragraph (a) of subsection (1), subsection (9), paragraph (b) of subsection (11), and paragraph (b) of subsection (12) of section 627.215, Florida Statutes, are amended to read:

627.215 Excessive profits for workers' compensation, employer's liability, commercial property, and commercial casualty insurance prohibited.—

(1)(a) Each insurer group writing workers' compensation and employer's liability insurance as defined in s. 624.605(1)(c), commercial property insurance as defined in s. 627.0625, commercial umbrella liability insurance as defined in s. 627.0625, or commercial casualty insurance as defined in s. 627.0625 shall file with the office ~~department~~ prior to July 1 of each year, on a form prescribed by the commission ~~department~~, the following data for the component types of such insurance as provided in the form:

1. Calendar-year earned premium.

2. Accident-year incurred losses and loss adjustment expenses.

3. The administrative and selling expenses incurred in this state or allocated to this state for the calendar year.

4. Policyholder dividends applicable to the calendar year.

Nothing herein is intended to prohibit an insurer from filing on a calendar-year basis.

(9) If the insurer group has realized an excessive profit, the office ~~department~~ shall order a return of the excessive amounts after affording the insurer group an opportunity for hearing and otherwise complying with the requirements of chapter 120. Such excessive amounts shall be refunded in all instances unless the insurer group affirmatively demonstrates to the office ~~department~~ that the refund of the excessive amounts will render a member of the insurer group financially impaired or will render it insolvent under the provisions of the Florida Insurance Code.

(11)

(b) Data in required reports to the office ~~department~~ may be rounded to the nearest dollar.

(12)

(b) Upon completion of the renewal credits or refund payments, the insurer group shall immediately certify to the office ~~department~~ that the refunds have been made.

Section 1090. Section 627.221, Florida Statutes, is amended to read:

627.221 Rating organizations; licensing; fee.—

(1) A person, whether located within or outside this state, may make application to the office ~~department~~ for a license as a rating organization. As to property or inland marine insurance, the application shall be for such kinds of insurance or subdivisions thereof or classes of risk or a part or combination thereof as are specified in the application. As to casualty and surety insurances, the application shall be for such kinds of insurance or subdivisions thereof as are specified in the application. The applicant shall file with its application:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules, and regulations governing the conduct of its business;

(b) A list of its members and subscribers;

(c) The name and address of a resident of this state upon whom notices or orders of the office ~~department~~ or process affecting such rating organization may be served; and

(d) A statement of its qualifications as a rating organization.

If the office ~~department~~ finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules, and regulations governing the conduct of its business conform to the requirements of law, it shall issue a license specifying (in the case of a casualty or surety rating organization) the kinds of insurance or subdivisions thereof, or (in the case of a property insurance rating organization) the kinds of insurance or subdivisions thereof or classes of risk or a part or combination thereof, for which the applicant is authorized to act as a rating organization.

(2) Licenses issued pursuant to this section shall expire on the September 30 next following date of issuance and shall be subject to annual renewal.

(3) The fee for the license shall be in the amount specified therefor in s. 624.501. This fee, when collected, shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1091. Section 627.231, Florida Statutes, is amended to read:

627.231 Subscribers to rating organizations.—

(1) Subject to rules and regulations which have been approved by the office ~~department~~ as reasonable, each rating organization shall permit any insurer, not a member, to subscribe to its rating services. As to property and marine rating organizations, an insurer shall be so permitted to subscribe to rating services for any kind of insurance, subdivision thereof, or class of risk or a part or combination thereof for which the rating organization is authorized so to act. As to casualty and surety rating organizations, an insurer shall be so permitted to subscribe to rating services for any kind of insurance or subdivision thereof for which the rating organization is authorized so to act. The rating organization shall give notice to subscribers of proposed changes in such rules and regulations.

(2) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the office ~~department~~. If the office ~~department~~ finds that such rule or regulation is unreasonable in its application to subscribers, it shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the office ~~department~~ as if the application had been rejected. If the office ~~department~~ finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, it shall order the rating organization to admit the insurer as a subscriber. If it finds that the action of the rating organization was justified, it shall make an order affirming its action.

(3) Each rating organization shall furnish its rating services without discrimination to its members and subscribers.

Section 1092. Section 627.241, Florida Statutes, is amended to read:

627.241 Notice of changes.—Every rating organization shall notify the office ~~department~~ promptly of every change in:

(1) Its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the office ~~department~~ or process affecting such rating organization may be served.

Section 1093. Section 627.281, Florida Statutes, is amended to read:

627.281 Appeal from rating organization; workers' compensation and employer's liability insurance filings.—

(1) Any member or subscriber to a rating organization may appeal to the office ~~department~~ from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the workers' compensation or employer's liability insurance filings of such rating organization, and the office ~~department~~ shall issue an order approving the decision of such rating organization or directing it to give further consideration to such proposal. If such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, the office ~~department~~ may, in the event it finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with its findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in s. 627.072(2), from the system of expense provisions included in a filing made by the rating organization, the office ~~department~~ shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the office ~~department~~ shall apply the applicable standards set forth in ss. 627.062 and 627.072.

Section 1094. Subsection (2) of section 627.291, Florida Statutes, is amended to read:

627.291 Information to be furnished insureds; appeal by insureds; workers' compensation and employer's liability insurances.—

(2) As to workers' compensation and employer's liability insurances, every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his or her authorized representative, on his or her written request to review the manner in which such rating system has been applied in connection with the insurance afforded him or her. If the rating organization or insurer fails to grant or rejects such request within 30 days after it is made, the applicant may proceed in the same manner as if his or her application had been rejected. Any party affected by the action of such rating organization or insurer on such request may, within 30 days after written notice of such action, appeal to the office ~~department~~, which may affirm or reverse such action.

Section 1095. Section 627.301, Florida Statutes, is amended to read:

627.301 Advisory organizations.—

(1) No advisory organization shall conduct its operations in this state unless and until it has filed with the office ~~department~~:

(a) A copy of its constitution, articles of incorporation, articles of agreement or of association, and bylaws or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;

(b) A list of its members and subscribers; and

(c) The name and address of a resident of this state upon whom notices or orders of the office ~~department~~ or process may be served.

(2) Every such advisory organization shall notify the office ~~department~~ promptly of every change in:

(a) Its constitution;

(b) Its articles of incorporation, agreement, or association;

(c) Its bylaws, rules and regulations governing the conduct of its business;

(d) The list of members and subscribers; and

(e) The name and address of the resident of this state designated by it upon whom notices or orders of the office ~~department~~ or process affecting such organization may be served.

(3) No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

Section 1096. Subsections (2) and (3) and paragraphs (a), (b), (c), (e), (f), and (g) of subsection (4) of section 627.311, Florida Statutes, are amended to read:

627.311 Joint underwriters and joint reinsurers.—

(2) If the office ~~department~~ finds that any activity or practice of any such group, association, or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, it may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

(3) The office ~~department~~ may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the office ~~department~~ which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the office ~~department~~ shall be subject to the provisions of chapter 120. If adopted, the plan and the association created under the plan:

(a) Must be subject to all provisions of s. 627.351(1), except apportionment of applicants.

(b) May provide for one or more designated insurers, able and willing to provide policy and claims service, to act on behalf of all other insurers to provide insurance for applicants who are in good faith entitled to, but unable to, procure insurance through the voluntary insurance market at standard rates.

(c) Must provide that designated insurers will issue policies of insurance and provide policyholder and claims service on behalf of all insurers for the joint underwriting association.

(d) Must provide for the equitable apportionment among insurers of losses and expenses incurred.

(e) Must provide that the joint underwriting association will operate subject to the supervision and approval of a board of governors consisting of 11 individuals, including 1 who will be elected as chair. Five members of the board must be appointed by the Chief Financial Officer ~~Insurance Commissioner~~. Two of the Chief Financial Officer's ~~commissioner's~~ appointees must be chosen from the insurance industry. Any board member appointed by the Chief Financial Officer ~~Insurance Commissioner~~ may be removed and replaced by her or him at any time without cause. Six members of the board must be appointed by the participating insurers, two of whom must be from the insurance agents' associations. All board members, including the chair, must be appointed to serve for 2-year terms beginning annually on a date designated by the plan.

(f) Must provide that an agent appointed to a servicing carrier must be a licensed general lines agent of an insurer which is authorized to write automobile liability and physical damage insurance in the state and which is actively writing such coverage in the county in which the agent is located, or the immediately adjoining counties, or an agent who places a volume of other property and casualty insurance in an amount equal to the premium volume placed with the Florida Joint Underwriting Association. The office ~~department~~ may, however, determine that an agent may be appointed to a servicing carrier if, after public hearing, the office ~~department~~ finds that consumers in the agent's operating area would not have adequate and reasonable access to the purchase of automobile insurance if the agent were not appointed to a servicing carrier.

(g) Must make available noncancelable coverage as provided in s. 627.7275(2).

(h) Must provide for the furnishing of a list of insureds and their mailing addresses upon the request of a member of the association or an insurance agent licensed to place business with an association member. The list must indicate whether the insured is currently receiving a good driver discount from the association. The plan may charge a reasonable fee to cover the cost incurred in providing the list.

(i) Must not provide a renewal credit or discount or any other inducement designed to retain a risk.

(j) Must not provide any other good driver credit or discount that is not actuarially sound. In addition to other criteria that the plan may specify, to be eligible for a good driver credit, an insured must not have any criminal traffic violations within the most recent 36-month period preceding the date the discount is received.

(k) Shall have no liability, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, agents or employees of the association, members of the board of governors of the association, the Chief Financial Officer, or the office ~~department~~ or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for or arising out of breach of any contract or agreement pertaining to insurance, or any willful tort.

(l)1. Shall be subject to the public records requirements of chapter 119 and the public meeting requirements of s. 286.011. However, the following records of the Florida Automobile Joint Underwriting Association are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided by this paragraph.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed or, if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the association under contract when the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of an association employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. All records relative to an employee's participation in an employee assistance program designed to assist any employee who has a behavioral

or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law must be redacted.

When an authorized insurer is considering underwriting a risk insured by the association, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. When a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. The association may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the automobile owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

2. Portions of meetings of the Florida Automobile Joint Underwriting Association during which confidential underwriting files or confidential open claims files are discussed are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. All portions of association meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions of this paragraph and s. 119.07(2)(a), the court reporter's notes of any closed meeting shall be retained by the association for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting during which claims are discussed shall become public as to individual claims after settlement of the claim.

This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2003, unless reviewed and saved from repeal through reenactment by the Legislature.

(4)(a) ~~Effective upon this act becoming a law,~~ The office ~~department~~ shall, after consultation with insurers, approve a joint underwriting plan of insurers which shall operate as a nonprofit entity. For the purposes of this subsection, the term "insurer" includes group self-insurance funds authorized by s. 624.4621, commercial self-insurance funds authorized by s. 624.462, assessable mutual insurers authorized under s. 628.6011, and insurers licensed to write workers' compensation and employer's liability in-

surance in this state. The purpose of the plan is to provide workers' compensation and employer's liability insurance to applicants who are required by law to maintain workers' compensation and employer's liability insurance and who are in good faith entitled to but who are unable to purchase such insurance through the voluntary market. ~~The joint underwriting plan shall issue policies beginning January 1, 1994.~~ The plan must have actuarially sound rates that assure that the plan is self-supporting.

(b) The operation of the plan is subject to the supervision of a 13-member board of governors. The board of governors shall be comprised of:

1. Five of the 20 domestic insurers, as defined in s. 624.06(1), having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 domestic insurers;

2. Five of the 20 foreign insurers as defined in s. 624.06(2) having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 foreign insurers;

3. One person, who shall serve as the chair, appointed by the Chief Financial Officer ~~Insurance Commissioner~~;

4. One person appointed by the largest property and casualty insurance agents' association in this state; and

5. The consumer advocate appointed under s. 627.0613 or the consumer advocate's designee.

Each board member shall serve a 4-year term and may serve consecutive terms. No board member shall be an insurer which provides service to the plan or which has an affiliate which provides services to the plan or which is serviced by a service company or third-party administrator which provides services to the plan or which has an affiliate which provides services to the plan. The minutes, audits, and procedures of the board of governors are subject to chapter 119.

(c) 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 office ~~department~~. The plan of operation and all changes thereto are subject to the approval of the office ~~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.

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 office ~~department~~ on a date specified by the office ~~department~~ and containing such information as the office ~~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 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.

(e) The plan shall establish and use its rates and rating plans, and the plan may establish and use changes in rating plans at any time, but no more frequently than two times per any rating class for any calendar year. By December 1, 1993, and December 1 of each year thereafter, the board shall establish and use actuarially sound rates for use by the plan to assure that the plan is self-funding while those rates are in effect. Such rates and rating plans must be filed with the office ~~department~~ within 30 calendar days after their effective dates, and shall be considered a "use and file" filing. Any disapproval by the office ~~department~~ must have an effective date that is at least 60 days from the date of disapproval of the rates and rating plan and must have prospective effect only. The plan may not be subject to any order by the office ~~department~~ to return to policyholders any portion of the rates disapproved by the office ~~department~~. The office ~~department~~ may not disapprove any rates or rating plans unless it demonstrates that such rates and rating plans are excessive, inadequate, or unfairly discriminatory.

(f) No later than June 1 of each year, the plan shall obtain an independent actuarial certification of the results of the operations of the plan for prior years, and shall furnish a copy of the certification to the office ~~department~~. If, after the effective date of the plan, the projected ultimate incurred losses and expenses and dividends for prior years exceed collected premiums, accrued net investment income, and prior assessments for prior years, the certification is subject to review and approval by the office ~~department~~ before it becomes final.

(g) Whenever a deficit exists, the plan shall, within 90 days, provide the office ~~department~~ with a program to eliminate the deficit within a reasonable time. The deficit may be funded through increased premiums charged to insureds of the plan for subsequent years, through the use of policyholder surplus attributable to any year, and through assessments on insureds in the plan if the plan uses assessable policies.

Section 1097. Section 627.3111, Florida Statutes, is transferred, renumbered as section 624.23, Florida Statutes, and amended to read:

624.23 ~~627.3111~~ Public records exemption.—All bank account numbers and debit, charge, and credit card numbers, and all other personal financial and health information of a consumer held by the department or office ~~of~~

~~Insurance~~ or their ~~its~~ service providers or agents, relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For the purpose of this section, the term "consumer" includes but is not limited to a prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer, a subscriber under a group policy, or a policyholder. This information shall be redacted from records that contain nonexempt information prior to disclosure. This exemption applies to information made confidential and exempt by this section held by the department or office ~~of Insurance~~ or their ~~its~~ service providers or agents before, on, or after the effective date of this exemption. Such confidential and exempt information may be disclosed to another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and may be disclosed to the National Association of Insurance Commissioners. The receiving governmental entity and the association must maintain the confidential and exempt status of such information. The information made confidential and exempt by this section may be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status of such information is maintained. This exemption does not include the name and address of an inquirer or complainant to the department or office or the name of an insurer or other regulated entity which is the subject of the inquiry or complaint. 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, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 1098. Subsection (6) of section 627.314, Florida Statutes, is amended to read:

627.314 Concerted action by two or more insurers.—

(6) Notwithstanding any other provisions of this part, insurers shall not participate directly or indirectly in the deliberations or decisions of rating organizations on private passenger automobile insurance. However, such rating organizations shall, upon request of individual insurers, be required to furnish at reasonable cost the rate indications resulting from the loss and expense statistics gathered by them. Individual insurers may modify the indications to reflect their individual experience in determining their own rates. Such rates shall be filed with the office ~~department~~ for public inspection whenever requested and shall be available for public announcement only by the press, office ~~department~~, or insurer.

Section 1099. Section 627.318, Florida Statutes, is amended to read:

627.318 Records.—Every insurer, rating organization, and advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the

rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the office ~~department~~ to determine whether such organization, insurer, group, or association, and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it, complies with the provisions of this part applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any such insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the department at any time upon reasonable notice.

Section 1100. Section 627.331, Florida Statutes, is amended to read:

627.331 Recording and reporting of loss, expense, and claims experience; rating information.—

(1) The commission ~~department~~ may promulgate rules and statistical plans which shall thereafter be used by each insurer in the recording and reporting of its loss, expense, and claims experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the office ~~department~~ in determining whether the insurer's activities comply with the applicable standards of this code.

(2) In promulgating such rules and plans, the commission ~~department~~ shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it, except for motor vehicle insurance as otherwise provided by law.

(3) The office ~~department~~ may designate one or more rating organizations or other agencies to assist it in gathering such experience and making compilations thereof; and such compilations shall be made available, subject to reasonable rules adopted ~~promulgated~~ by the commission ~~department~~, to insurers and rating organizations.

Section 1101. Subsection (1), paragraphs (a) and (c) of subsection (3), paragraphs (a), (c), and (d) of subsection (4), and subsections (5) and (6) of section 627.351, Florida Statutes, are amended, and paragraph (f) is added to subsection (2) of that section to read:

627.351 Insurance risk apportionment plans.—

(1) MOTOR VEHICLE INSURANCE RISK APPORTIONMENT.—Agreements may be made among casualty and surety insurers with respect to the equitable apportionment among them of insurance which may be

afforded applicants who are in good faith entitled to, but are unable to, procure such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications shall be subject to the approval of the office ~~department~~. The office ~~department~~ shall, after consultation with the insurers licensed to write automobile liability insurance in this state, adopt a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to, but are unable to, procure such insurance through ordinary methods, and, when such plan has been adopted, all such insurers shall subscribe thereto and shall participate therein. Such plan or plans shall include rules for classification of risks and rates therefor. The plan or plans shall make available noncancelable coverage as provided in s. 627.7275(2). Any insured placed with the plan shall be notified of the fact that insurance coverage is being afforded through the plan and not through the private market, and such notification shall be given in writing within 10 days of such placement. To assure that plan rates are made adequate to pay claims and expenses, insurers shall develop a means of obtaining loss and expense experience at least annually, and the plan shall file such experience, when available, with the office ~~department~~ in sufficient detail to make a determination of rate adequacy. Prior to the filing of such experience with the office ~~department~~, the plan shall poll each member insurer as to the need for an actuary who is a member of the Casualty Actuarial Society and who is not affiliated with the plan's statistical agent to certify the plan's rate adequacy. If a majority of those insurers responding indicate a need for such certification, the plan shall include the certification as part of its experience filing. Such experience shall be filed with the office ~~department~~ not more than 9 months following the end of the annual statistical period under review, together with a rate filing based on said experience. The office ~~department~~ shall initiate proceedings to disapprove the rate and so notify the plan or shall finalize its review within 60 days of receipt of the filing. Notification to the plan by the office ~~department~~ of its preliminary findings, which include a point of entry to the plan pursuant to chapter 120, shall toll the 60-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office ~~department~~ does not issue notice to the plan of its preliminary findings within 60 days of the filing. In addition to provisions for claims and expenses, the ratemaking formula shall include a factor for projected claims trending and 5 percent for contingencies. In no instance shall the formula include a renewal discount for plan insureds. However, the plan shall reunderwrite each insured on an annual basis, based upon all applicable rating factors approved by the office ~~department~~. Trend factors shall not be found to be inappropriate if not in excess of trend factors normally used in the development of residual market rates by the appropriate licensed rating organization. Each application for coverage in the plan shall include, in boldfaced 12-point type immediately preceding the applicant's signature, the following statement:

"THIS INSURANCE IS BEING AFFORDED THROUGH THE FLORIDA JOINT UNDERWRITING ASSOCIATION AND NOT THROUGH THE PRIVATE MARKET. PLEASE BE ADVISED THAT COVERAGE WITH A PRIVATE INSURER MAY BE AVAILABLE FROM ANOTHER

AGENT AT A LOWER COST. AGENT AND COMPANY LISTINGS ARE AVAILABLE IN THE LOCAL YELLOW PAGES."

The plan shall annually report to the office ~~department~~ the number and percentage of plan insureds who are not surcharged due to their driving record.

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(f) As used in this subsection, the term "department" means the former Department of Insurance.

(3) POLITICAL SUBDIVISION; CASUALTY INSURANCE RISK APPORTIONMENT.—

(a) The office ~~department~~ shall, after consultation with the casualty insurers licensed in this state, adopt a plan or plans for the equitable apportionment among them of casualty insurance coverage which may be afforded political subdivisions which are in good faith entitled to, but are unable to, procure such coverage through the voluntary market at standard rates or through a statutorily approved plan authorized by the office ~~department~~. The office ~~department~~ may adopt a joint underwriting plan which shall provide for one or more designated insurers able and willing to provide policyholder and claims service, including the issuance of insurance policies, to act on behalf of all other insurers required to participate in the joint underwriting plan. Any joint underwriting plan adopted shall provide for the equitable apportionment of any profits realized, or of losses and expenses incurred, among participating insurers. The plan shall include, but shall not be limited to:

1. Rules for the classification of risks and rates which reflect the past loss experience and prospective loss experience in different geographic areas.

2. A rating plan which reasonably reflects the prior claims experience of the insureds.

3. Excess coverage by insurers if the office ~~Insurance Commissioner~~, in its ~~his or her~~ discretion, requires such coverage by insurers participating in the joint underwriting plan.

(c) Any deficit sustained under the plan shall first be recovered through a premium contingency assessment. Concurrently, the rates for insureds shall be adjusted for the next year so as to be actuarially sound in conformance with rules adopted by ~~of~~ the commission ~~department~~.

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

(a) The office ~~department~~ shall, after consultation with insurers as set forth in paragraph (b), adopt a joint underwriting plan as set forth in paragraph (d).

(c) The Joint Underwriting Association shall operate subject to the supervision and approval of a board of governors consisting of representatives of five of the insurers participating in the Joint Underwriting Association,

an attorney to be named by The Florida Bar, a physician to be named by the Florida Medical Association, a dentist to be named by the Florida Dental Association, and a hospital representative to be named by the Florida Hospital Association. The Chief Financial Officer shall select the representatives of the five insurers. One insurer representative shall be selected from recommendations of the American Insurance Association. One insurer representative shall be selected from recommendations of the Alliance of American Insurers. One insurer representative shall be selected from recommendations of the National Association of Independent Insurers. Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations. The board of governors shall choose, during the first meeting of the board after June 30 of each year, one of its members to serve as chair of the board and another member to serve as vice chair of the board. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, self-insurer, or its agents or employees, the Joint Underwriting Association or its agents or employees, members of the board of governors, or the office ~~department~~ or its representatives for any action taken by them in the performance of their powers and duties under this subsection.

(d) The plan shall provide coverage for claims arising out of the rendering of, or failure to render, medical care or services and, in the case of health care facilities, coverage for bodily injury or property damage to the person or property of any patient arising out of the insured's activities, in appropriate policy forms for all health care providers as defined in paragraph (h). The plan shall include, but shall not be limited to:

1. Classifications of risks and rates which reflect past and prospective loss and expense experience in different areas of practice and in different geographical areas. To assure that plan rates are adequate to pay claims and expenses, the Joint Underwriting Association shall develop a means of obtaining loss and expense experience; and the plan shall file such experience, when available, with the office ~~department~~ in sufficient detail to make a determination of rate adequacy. Within 60 days after a rate filing, the office ~~department~~ shall approve such rates or rate revisions as are fully supported by the filing. In addition to provisions for claims and expenses, the ratemaking formula may include a factor for projected claims trending and a margin for contingencies. The use of trend factors shall not be found to be inappropriate.

2. A rating plan which reasonably recognizes the prior claims experience of insureds.

3. Provisions as to rates for:

a. Insureds who are retired or semiretired.

b. The estates of deceased insureds.

c. Part-time professionals.

4. Protection in an amount not to exceed $250,000 per claim, $750,000 annual aggregate for health care providers other than hospitals and in an

amount not to exceed $1.5 million per claim, $5 million annual aggregate for hospitals. Such coverage for health care providers other than hospitals shall be available as primary coverage and as excess coverage for the layer of coverage between the primary coverage and the total limits of $250,000 per claim, $750,000 annual aggregate. The plan shall also provide tail coverage in these amounts to insureds whose claims-made coverage with another insurer or trust has or will be terminated. Such tail coverage shall provide coverage for incidents that occurred during the claims-made policy period for which a claim is made after the policy period.

5. A risk management program for insureds of the association. This program shall include, but not be limited to: investigation and analysis of frequency, severity, and causes of adverse or untoward medical injuries; development of measures to control these injuries; systematic reporting of medical incidents; investigation and analysis of patient complaints; and auditing of association members to assure implementation of this program. The plan may refuse to insure any insured who refuses or fails to comply with the risk management program implemented by the association. Prior to cancellation or refusal to renew an insured, the association shall provide the insured 60 days' notice of intent to cancel or nonrenew and shall further notify the insured of any action which must be taken to be in compliance with the risk management program.

(5) PROPERTY AND CASUALTY INSURANCE RISK APPORTIONMENT.—The commission ~~department~~ shall adopt by rule a joint underwriting plan to equitably apportion among insurers authorized in this state to write property insurance as defined in s. 624.604 or casualty insurance as defined in s. 624.605, the underwriting of one or more classes of property insurance or casualty insurance, except for the types of insurance that are included within property insurance or casualty insurance for which an equitable apportionment plan, assigned risk plan, or joint underwriting plan is authorized under s. 627.311 or subsection (1), subsection (2), subsection (3), subsection (4), or subsection (5) and except for risks eligible for flood insurance written through the federal flood insurance program to persons with risks eligible under subparagraph (a)1. and who are in good faith entitled to, but are unable to, obtain such property or casualty insurance coverage, including excess coverage, through the voluntary market. For purposes of this subsection, an adequate level of coverage means that coverage which is required by state law or by responsible or prudent business practices. The Joint Underwriting Association shall not be required to provide coverage for any type of risk for which there are no insurers providing similar coverage in this state. The office ~~department~~ may designate one or more participating insurers who agree to provide policyholder and claims service, including the issuance of policies, on behalf of the participating insurers.

(a) The plan shall provide:

1. A means of establishing eligibility of a risk for obtaining insurance through the plan, which provides that:

a. A risk shall be eligible for such property insurance or casualty insurance as is required by Florida law if the insurance is unavailable in the

voluntary market, including the market assistance program and the surplus lines market.

b. A commercial risk not eligible under sub-subparagraph a. shall be eligible for property or casualty insurance if:

(I) The insurance is unavailable in the voluntary market, including the market assistance plan and the surplus lines market;

(II) Failure to secure the insurance would substantially impair the ability of the entity to conduct its affairs; and

(III) The risk is not determined by the Risk Underwriting Committee to be uninsurable.

c. In the event the Federal Government terminates the Federal Crime Insurance Program established under 44 C.F.R. ss. 80-83, Florida commercial and residential risks previously insured under the federal program shall be eligible under the plan.

d.(I) In the event a risk is eligible under this paragraph and in the event the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less, for a given class of risk contained in the classification system defined in the plan of operation of the Joint Underwriting Association, and unless the market assistance plan provides a quotation for at least 80 percent of such applicants, such classification shall immediately be eligible for coverage in the Joint Underwriting Association.

(II) Any market assistance plan application which is rejected because an individual risk is so hazardous as to be practically uninsurable, considering whether the likelihood of a loss for such a risk is substantially higher than for other risks of the same class due to individual risk characteristics, prior loss experience, unwillingness to cooperate with a prior insurer, physical characteristics and physical location shall not be included in the minimum percentage calculation provided above. In the event that there is any legal or administrative challenge to a determination by the <u>office</u> ~~department~~ that the conditions of this subparagraph have been met for eligibility for coverage in the Joint Underwriting Association for a given classification, any eligible risk may obtain coverage during the pendency of any such challenge.

e. In order to qualify as a quotation for the purpose of meeting the minimum percentage calculation in this subparagraph, the quoted premium must meet the following criteria:

(I) In the case of an admitted carrier, the quoted premium must not exceed the premium available for a given classification currently in use by the Joint Underwriting Association or the premium developed by using the rates and rating plans on file with the <u>office</u> ~~department~~ by the quoting insurer, whichever is greater.

(II) In the case of an authorized surplus lines insurer, the quoted premium must not exceed the premium available for a given classification

currently in use by the Joint Underwriting Association by more than 25 percent, after consideration of any individual risk surcharge or credit.

f. Any agent who falsely certifies the unavailability of coverage as provided by sub-subparagraphs a. and b., is subject to the penalties provided in s. 626.611.

2. A means for the equitable apportionment of profits or losses and expenses among participating insurers.

3. Rules for the classification of risks and rates which reflect the past and prospective loss experience.

4. A rating plan which reasonably reflects the prior claims experience of the insureds. Such rating plan shall include at least two levels of rates for risks that have favorable loss experience and risks that have unfavorable loss experience, as established by the plan.

5. Reasonable limits to available amounts of insurance. Such limits may not be less than the amounts of insurance required of eligible risks by Florida law.

6. Risk management requirements for insurance where such requirements are reasonable and are expected to reduce losses.

7. Deductibles as may be necessary to meet the needs of insureds.

8. Policy forms which are consistent with the forms in use by the majority of the insurers providing coverage in the voluntary market for the coverage requested by the applicant.

9. A means to remove risks from the plan once such risks no longer meet the eligibility requirements of this paragraph. For this purpose, the plan shall include the following requirements: At each 6-month interval after the activation of any class of insureds, the board of governors or its designated committee shall review the number of applications to the market assistance plan for that class. If, based on these latest numbers, at least 90 percent of such applications have been provided a quotation, the Joint Underwriting Association shall cease underwriting new applications for such class within 30 days, and notification of this decision shall be sent to the office ~~Insurance Commissioner~~, the major agents' associations, and the board of directors of the market assistance plan. A quotation for the purpose of this subparagraph shall meet the same criteria for a quotation as provided in sub-subparagraph 1.e ~~sub-subparagraph d~~. All policies which were previously written for that class shall continue in force until their normal expiration date, at which time, subject to the required timely notification of nonrenewal by the Joint Underwriting Association, the insured may then elect to reapply to the Joint Underwriting Association according to the requirements of eligibility. If, upon reapplication, those previously insured Joint Underwriting Association risks meet the eligibility requirements, the Joint Underwriting Association shall provide the coverage requested.

10. A means for providing credits to insurers against any deficit assessment levied pursuant to paragraph (c), for risks voluntarily written through the market assistance plan by such insurers.

11. That the Joint Underwriting Association shall operate subject to the supervision and approval of a board of governors consisting of 13 individuals appointed by the Chief Financial Officer ~~Insurance Commissioner~~, and shall have an executive or underwriting committee. At least four of the members shall be representatives of insurance trade associations as follows: one member from the American Insurance Association, one member from the Alliance of American Insurers, one member from the National Association of Independent Insurers, and one member from an unaffiliated insurer writing coverage on a national basis. Two representatives shall be from two of the statewide agents' associations. Each board member shall be appointed to serve for 2-year terms beginning on a date designated by the plan and shall serve at the pleasure of the Chief Financial Officer ~~commissioner~~. Members may be reappointed for subsequent terms.

(b) Rates used by the Joint Underwriting Association shall be actuarially sound. To the extent applicable, the rate standards set forth in s. 627.062 shall be considered by the office ~~department~~ in establishing rates to be used by the joint underwriting plan. The initial rate level shall be determined using the rates, rules, rating plans, and classifications contained in the most current Insurance Services Office (ISO) filing with the office ~~department~~ or the filing of other licensed rating organizations with an additional increment of 25 percent of premium. For any type of coverage or classification which lends itself to manual rating for which the Insurance Services Office or another licensed rating organization does not file or publish a rate, the Joint Underwriting Association shall file and use an initial rate based on the average current market rate. The initial rate level for the rate plan shall also be subject to an experience and schedule rating plan which may produce a maximum of 25 percent debits or credits. For any risk which does not lend itself to manual rating and for which no rate has been promulgated under the rate plan, the board shall develop and file with the office ~~commissioner~~, subject to its ~~his or her~~ approval, appropriate criteria and factors for rating the individual risk. Such criteria and factors shall include, but not be limited to, loss rating plans, composite rating plans, and unique and unusual risk rating plans. The initial rates required under this paragraph shall be adjusted in conformity with future filings by the Insurance Services Office with the office ~~department~~ and shall remain in effect until such time as the Joint Underwriting Association has sufficient data as to independently justify an actuarially sound change in such rates.

(c)1. In the event an underwriting deficit exists for any policy year the plan is in effect, any surplus which has accrued from previous years and is not projected within reasonable actuarial certainty to be needed for payment for claims in the year the surplus arose shall be used to offset the deficit to the extent available.

2. As to any remaining deficit, the board of governors of the Joint Underwriting Association shall levy and collect an assessment in an amount sufficient to offset such deficit. Such assessment shall be levied against the insurers participating in the plan during the year giving rise to the assessment. Any assessments against insurers for the lines of property and casualty insurance issued to commercial risks shall be recovered from the participating insurers in the proportion that the net direct premium of each in-

surer for commercial risks written during the preceding calendar year bears to the aggregate net direct premium written for commercial risks by all members of the plan for the lines of insurance included in the plan. Any assessments against insurers for the lines of property and casualty insurance issued to personal risks eligible under sub-subparagraph (a)1.a. or sub-subparagraph (a)1.c. shall be recovered from the participating insurers in the proportion that the net direct premium of each insurer for personal risks written during the preceding calendar year bears to the aggregate net direct premium written for personal risks by all members of the plan for the lines of insurance included in the plan.

3. The board shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each participating insurer and policyholder, including, if prudent, filing suit to collect such assessment. If the board is unable to collect an assessment from any insurer, the uncollected assessments shall be levied as an additional assessment against the participating insurers and any participating insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying insurer.

4. Any funds or entitlements that the state may be eligible to receive by virtue of the Federal Government's termination of the Federal Crime Insurance Program referenced in sub-subparagraph (a)1.c. may be used under the plan to offset any subsequent underwriting deficits that may occur from risks previously insured with the Federal Crime Insurance Program.

5. Assessments shall be included as an appropriate factor in the making of rates as provided in s. 627.3512.

6.a. The Legislature finds that the potential for unlimited assessments under this paragraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the association was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for covering any deficits of the association; however, it is also the intent of the Legislature to provide a means by which assessment liabilities may be amortized over a period of years.

b. The total amount of deficit assessments under this paragraph with respect to any year may not exceed 10 percent of the statewide total gross written premium for all insurers for the coverages referred to in the introductory language of this subsection for the prior year, except that if the deficit with respect to any plan year exceeds such amount and bonds are issued under sub-subparagraph c. to defray the deficit, the total amount of assessments with respect to such deficit may not in any year exceed 10 percent of the deficit, or such lesser percentage as is sufficient to retire the bonds as determined by the board, and shall continue annually until the bonds are retired.

c. The governing body of any unit of local government, any residents or businesses of which are insured by the association, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the association, for the purpose of defraying

deficits of the association. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will provide relief to claimants and policyholders of the joint underwriting association and insurers responsible for apportionment of association losses. The unit of local government shall enter into such contracts with the association as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this paragraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the office ~~department~~ shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the office ~~department~~ determines that the purchase would endanger or impair the solvency of the insurer.

7. The plan shall provide for the deferment, in whole or in part, of the assessment of an insurer if the office ~~department~~ finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in subparagraph 2.

(d) Upon adoption of the plan, all insurers authorized in this state to underwrite property or casualty insurance shall participate in the plan.

(e) A Risk Underwriting Committee of the Joint Underwriting Association composed of three members experienced in evaluating insurance risks is created to review risks rejected by the voluntary market for which application is made for insurance through the joint underwriting plan. The committee shall consist of a representative of the market assistance plan created under s. 627.3515, a member selected by the insurers participating in the Joint Underwriting Association, and a member named by the Chief Financial Officer ~~Insurance Commissioner~~. The Risk Underwriting Committee shall appoint such advisory committees as are provided for in the plan and are necessary to conduct its functions. The salaries and expenses of the members of the Risk Underwriting Committee and its advisory committees shall be paid by the joint underwriting plan. The plan approved by the office ~~department~~ shall establish criteria and procedures for use by the Risk Underwriting Committee for determining whether an individual risk is so

hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

1. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

2. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the underwriting committee shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

(f) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, the Florida Property and Casualty Joint Underwriting Association or its agents or employees, members of the board of governors, the Chief Financial Officer, or the office ~~department~~ or its representatives for any action taken by them in the performance of their duties under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any other willful tort.

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a)1. The Legislature finds that actual and threatened catastrophic losses to property in this state from hurricanes have caused insurers to be unwilling or unable to provide property insurance coverage to the extent sought and needed. It is in the public interest and a public purpose to assist in assuring that property in the state is insured so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare; to the economy of the state; and to the revenues of the state and local governments needed to provide for the public welfare. It is necessary, therefore, to provide property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends by this subsection that property insurance be provided and that it continues, as long as necessary, through an entity organized to achieve efficiencies and economies, all toward the achievement of the foregoing public purposes. Because it is essential for the corporation to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known, as of July 1, 2002, as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the office ~~department~~. The plan is subject to

continuous review by the office ~~department~~. The office ~~department~~ may, by order, withdraw approval of all or part of a plan if the office ~~department~~ determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, and similar policies, and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An authorized insurer's assessment liability shall begin on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and shall terminate 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002 and for such policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential policies issued by the corporation or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation that provide coverage for basic property perils on risks that are not located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for such policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A high-risk account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation or transferred to the corporation that provide coverage for the peril of wind on risks that are located in areas eligible for coverage in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The high-risk account must also include quota share

primary insurance under subparagraph (c)2. The area eligible for coverage under the high-risk account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property. The office ~~department~~ may remove territory from the area eligible for wind-only and quota share coverage if, after a public hearing, the office ~~department~~ finds that authorized insurers in the voluntary market are willing and able to write sufficient amounts of personal and commercial residential coverage for all perils in the territory, including coverage for the peril of wind, such that risks covered by wind-only policies in the removed territory could be issued a policy by the corporation in either the personal lines or commercial lines account without a significant increase in the corporation's probable maximum loss in such account. Removal of territory from the area eligible for wind-only or quota share coverage does not alter the assignment of wind coverage written in such areas to the high-risk account.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. When the financing obligations are no longer outstanding, in accordance with the terms of the corresponding financing documents, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association shall have a claim against, and recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II) and shall have no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association shall have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and shall have no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. No part of the income of the corporation may inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. When the deficit incurred in a particular calendar year is not greater than 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (g) and assessable insureds.

b. When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (g) and on assessable insureds in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining deficit shall be recovered through emergency assessments under sub-subparagraph d.

c. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. shall be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. or sub-subparagraph b. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraphs a. and b. shall be paid as required by the corporation's plan of operation and paragraph (g). Assessments levied by the corporation on assessable insureds under sub-subparagraphs a. and b. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to the Florida Surplus Lines Service Office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

d. Upon a determination by the board of governors that a deficit in an account exceeds the amount that will be recovered through regular assessments under sub-subparagraph a. or sub-subparagraph b., the board shall levy, after verification by the office ~~department~~, emergency assessments, for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office ~~department~~. The office ~~department~~ shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and shall be paid to the Florida Surplus Lines Service Office at the time the surplus lines

agent pays the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessments so collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and shall be held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and for all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, market equalization surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (g), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a., sub-subparagraph b., or subparagraph (g)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or other indebtedness.

f. As used in this subsection, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverage on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1) other than insurance on mobile homes used as permanent dwellings.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and shall report that information to the corporation in a form and at a time the corporation specifies to ensure that the corpora-

tion can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and shall assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

(c) The plan of operation of the corporation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which forms must be approved by the office ~~department~~ prior to use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which coverage is more limited than the coverage under a standard policy.

c. Commercial lines residential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the high-risk account referred to in sub-subparagraph (b)2.a.

2.a. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer

and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the quota share primary insurance agreement, may not be altered by the inability of the other party to the agreement to pay its specified percentage of hurricane losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that neither the authorized insurer nor the corporation may be held responsible beyond its specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the quota share primary insurance agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the <u>office</u> ~~department~~. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under quota share primary insurance agreements, the corporation and the authorized insurer shall maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by Florida Hurricane Catastrophe Fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discrimina-

tory application among insurers as to the terms of quota share agreements, pricing of quota share agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer shall be voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation shall have the power to borrow funds, by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection. The corporation may, but is not required to, seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (g)2., in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office ~~department~~, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation is authorized to take all actions needed to facilitate tax-free status for any such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation shall have the authority to pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4.~~a.~~ Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of 7 individuals who are residents of this state, from different geographical areas of this state, appointed by the Chief Financial Officer ~~Treasurer~~. The Chief Financial Officer ~~Treasurer~~ shall designate one of the appointees as chair. All board members serve at the pleasure of the Chief Financial Officer ~~Treasurer~~. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. Any board vacancy shall be filled for the unexpired term by the Chief Financial Officer ~~Treasurer~~. The Chief Financial Officer ~~Treasurer~~ shall appoint a technical

advisory group to provide information and advice to the board of governors in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the Chief Financial Officer ~~Treasurer~~ and serve at the pleasure of the Chief Financial Officer ~~Treasurer~~. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the Office of the Chief Financial Officer ~~Treasurer~~.

~~b. To ensure the effective and efficient implementation of this subsection, the Treasurer shall appoint the board of governors by July 1, 2002. The board of governors shall work in conjunction with the Residential Property Insurance Market Coordinating Council to address appropriate organizational, operational, and financial matters relating to the corporation. In addition, after consultation with the Residential Property Insurance Market Coordinating Council, the bond trustees and rating agencies, the Treasurer may postpone for a period not to exceed 180 days after the effective date, the implementation of the corporation or the implementation of one or more of the provisions relating to transfer of Florida Windstorm Underwriting Association policies, obligations, rights, assets, and liabilities into the high-risk accounts and such other provisions that may be affected thereby if the Treasurer determines that postponement is necessary:~~

~~(I) Due to emergency conditions;~~

~~(II) To ensure the effective and efficient implementation of the corporation's operations; or~~

~~(III) To maintain existing financing arrangements without a material adverse effect on the creditors of the Residential Property and Casualty Joint Underwriting Association or the Florida Windstorm Underwriting Association.~~

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to the provisions of s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office ~~department~~, a basic policy including wind coverage, the risk is not eligible for any policy issued by the corporation ~~association~~. If the risk is not able to obtain any such offer, the risk is eligible for either a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation ~~association~~; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk shall be eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation ~~association~~ shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corpora-

tion ~~association~~ before a policy is issued to the risk by the corporation ~~association~~ or during the first 30 days of coverage by the corporation ~~association~~, and the producing agent who submitted the application to the plan or to the corporation ~~association~~ is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation ~~association~~; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's ~~association's~~ usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation ~~association~~ enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation ~~association~~ policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation ~~association~~ policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation ~~association~~; or

(B) Offer to allow the producing agent of record of the corporation ~~association~~ policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's ~~association's~~ usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for any policy issued by the corporation ~~association~~. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation ~~association~~.

(I) If the risk accepts an offer of coverage through the market assistance plan or an offer of coverage through a mechanism established by the corporation ~~association~~ before a policy is issued to the risk by the corporation ~~association~~ or during the first 30 days of coverage by the corporation ~~association~~, and the producing agent who submitted the application to the plan or

the corporation ~~association~~ is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation ~~association~~; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's ~~association's~~ usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation ~~association~~ enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation ~~association~~ policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation ~~association~~ policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation ~~association~~; or

(B) Offer to allow the producing agent of record of the corporation ~~association~~ policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's ~~association's~~ usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

~~c. This subparagraph does not require the association to provide wind coverage or hurricane coverage in any area in which such coverage is available through the Florida Windstorm Underwriting Association.~~

6. Must include rules for classifications of risks and rates therefor.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus shall be available to defray deficits in that account as to future years and shall be used for that purpose prior to assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied for all applicants in determining whether an individual risk is so hazardous

as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 shall not apply.

9. Must provide that the corporation shall make its best efforts to procure catastrophe reinsurance at reasonable rates, as determined by the board of governors.

10. Must provide that in the event of regular deficit assessments under sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b., in the personal lines account, the commercial lines residential account, or the high-risk account, the corporation shall levy upon corporation policyholders in its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge arising from a regular assessment in such account in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for subject lines of business for the prior calendar year. Market equalization surcharges under this subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

11. The policies issued by the corporation must provide that, if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation.

12. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer that does not provide coverage identical to the coverage provided by the corporation. The notice shall also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

13. May establish, subject to approval by the office ~~department~~, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the corporation. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective

date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

14. Must provide that, with respect to the high-risk account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office ~~department~~, within the first 90 days of each calendar year, to qualify as a limited apportionment company. In no event shall a limited apportionment company be required to participate in the portion of any assessment, within the high-risk account, pursuant to sub-subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the aggregate which exceeds $50 million after payment of available high-risk account funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan shall provide that, if the office ~~department~~ determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office ~~department~~ may direct that all or part of such assessment be deferred as provided in subparagraph (g)4. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d.

15. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.104 with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

(d)1. It is the intent of the Legislature that the rates for coverage provided by the corporation be actuarially sound and not competitive with approved rates charged in the admitted voluntary market, so that the corporation functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. Rates shall include an appropriate catastrophe loading factor that reflects the actual catastrophic exposure of the corporation.

2. For each county, the average rates of the corporation for each line of business for personal lines residential policies excluding rates for wind-only policies shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers with the greatest total direct written premium in the state for that line of business in the preceding year, except that with respect to mobile home coverages, the average rates of the corporation shall be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 5 insurers with the greatest total written premium for mobile home owner's policies in the state in the preceding year.

3. Rates for personal lines residential wind-only policies must be actuarially sound and not competitive with approved rates charged by authorized insurers. However, for personal lines residential wind-only policies issued or renewed between July 1, 2002, and June 30, 2003, the maximum premium increase must be no greater than 10 percent of the Florida Windstorm

Underwriting Association premium for that policy in effect on June 30, 2002, as adjusted for coverage changes and seasonal occupancy surcharges. The personal lines residential wind-only rates for the corporation effective July 1, 2003, must be based on a rate filing by the corporation which establishes rates which are actuarially sound and not competitive with approved rates charged by authorized insurers. Corporation rate manuals shall include a rate surcharge for seasonal occupancy. To ensure that personal lines residential wind-only rates effective on or after July 1, 2003, are not competitive with approved rates charged by authorized insurers, the office ~~department~~, by March 1 of each year, shall provide the corporation, for each county in which there are geographical areas in which personal lines residential wind-only policies may be issued, the average rates charged by the insurer that had the highest average rate in that county for wind coverage in that insurer's rating territories which most closely approximate the geographical area in that county in which personal lines residential wind-only policies may be written by the corporation. The average rates provided must be from an insurer among the 20 insurers with the greatest total direct written premium in the state for personal lines residential property insurance for the preceding year. With respect to mobile homes, the five insurers with the greatest total written premium for that line of business in the preceding year shall be used. The corporation shall certify to the office ~~department~~ that its average personal lines residential wind-only rates are no lower in each county than the average rates provided by the office ~~department~~. The commission may ~~department is authorized to~~ adopt rules to establish reporting requirements to obtain the necessary wind-only rate information from insurers to implement this provision.

4. Rates for commercial lines coverage shall not be subject to the requirements of subparagraph 2., but shall be subject to all other requirements of this paragraph and s. 627.062.

5. Nothing in this paragraph shall require or allow the corporation to adopt a rate that is inadequate under s. 627.062.

6. The corporation shall make a rate filing at least once a year, but no more often than quarterly.

7. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided for in s. 624.509 to augment the financial resources of the corporation.

(e) If coverage in an account is deactivated pursuant to paragraph (f), coverage through the corporation shall be reactivated by order of the office ~~department~~ only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from admitted carriers at their filed rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included

in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office ~~department~~ that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office ~~department~~ may activate coverage by order for the period of the emergency upon a finding by the office ~~department~~ that the emergency significantly affects the availability of residential property insurance.

(f)1. The corporation shall file with the office ~~department~~ quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the office ~~department~~ monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the office ~~department~~ requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office ~~department~~ to determine whether coverage shall be deactivated in an account on the basis that the conditions giving rise to its activation no longer exist.

(g)1. The corporation shall certify to the office ~~department~~ its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office ~~department~~ shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each assessable insurer, including, if prudent, filing suit to collect such assessment. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation,

may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the office ~~department~~ shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the office ~~department~~ determines that the purchase would endanger or impair the solvency of the insurer.

3.a. The corporation shall adopt one or more programs subject to approval by the office ~~department~~ for the reduction of both new and renewal writings in the corporation. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy

written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office ~~department~~, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office ~~department~~ finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

(h) Nothing in this subsection shall be construed to preclude the issuance of residential property insurance coverage pursuant to part VIII of chapter 626.

(i) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any assessable insurer or its agents or employees, the corporation or its agents or employees, members of the board of governors or their respective designees at a board meeting, corporation committee members, or the office ~~department~~ or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to:

1. Any of the foregoing persons or entities for any willful tort;

2. The corporation or its producing agents for breach of any contract or agreement pertaining to insurance coverage;

3. The corporation with respect to issuance or payment of debt; or

4. Any assessable insurer with respect to any action to enforce an assessable insurer's obligations to the corporation under this subsection.

(j) For the purposes of s. 199.183(1), the corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance coverage as required by this subsection, paying claims for Florida citizens

insured by the corporation, securing and repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government. Bonds and other debt obligations issued by or on behalf of the corporation are not to be considered "state bonds" within the meaning of s. 215.58(8) ~~s. 215.58(10)~~. The corporation is not subject to the procurement provisions of chapter 287, and policies and decisions of the corporation relating to incurring debt, levying of assessments and the sale, issuance, continuation, terms and claims under corporation policies, and all services relating thereto, are not subject to the provisions of chapter 120. The corporation is not required to obtain or to hold a certificate of authority issued by the office ~~department~~, nor is it required to participate as a member insurer of the Florida Insurance Guaranty Association. However, the corporation is required to pay, in the same manner as an authorized insurer, assessments pledged by the Florida Insurance Guaranty Association to secure bonds issued or other indebtedness incurred to pay covered claims arising from insurer insolvencies caused by, or proximately related to, hurricane losses. It is the intent of the Legislature that the tax exemptions provided in this paragraph will augment the financial resources of the corporation to better enable the corporation to fulfill its public purposes. Any bonds issued by the corporation, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof; however, this exemption does not apply to any tax imposed by chapter 220 ~~chapter 200~~ on interest, income, or profits on debt obligations owned by corporations other than the corporation.

(k) Upon a determination by the office ~~department~~ that the conditions giving rise to the establishment and activation of the corporation no longer exist, the corporation is dissolved. Upon dissolution, the assets of the corporation ~~association~~ shall be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation shall become property of the state and be deposited in the Florida Hurricane Catastrophe Fund. However, no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

(l)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association shall become policies of the corporation. All obligations, rights, assets and liabilities of the Residential Property and Casualty Joint Underwriting Association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and shall become policies of

the corporation. All obligations, rights, assets, and liabilities of the Florida Windstorm Underwriting Association, including bonds, note, and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsement or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions as may be proper to further evidence the transfers and shall provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the high-risk account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation shall in no way affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the Florida Hurricane Catastrophe Fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the high-risk account of the corporation. Notwithstanding any other provision of law, the coverage provided by the Florida Hurricane Catastrophe Fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the high-risk account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal

lines and commercial lines accounts shall be viewed together, for all Florida Hurricane Catastrophe Fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The coverage provided by the Florida Hurricane Catastrophe Fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting to the corporation.

(m) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. No such proceeding shall relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges under subparagraph (c)10., or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, market equalization or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state,

asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

(n)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all

litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law will be redacted.

When an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. When a file is transferred to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff of and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

2. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(2)(a), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(o) It is the intent of the Legislature that the amendments to this subsection enacted in 2002 should, over time, reduce the probable maximum windstorm losses in the residual markets and should reduce the potential assessments to be levied on property insurers and policyholders statewide. In furtherance of this intent:

1. The board shall, on or before February 1 of each year, provide a report to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year probable maximum loss attributable to wind-only coverages and the quota share program under this subsection combined, as compared to the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association. For purposes of this paragraph, the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association shall be the calculation dated February 2001 and based on November 30, 2000, exposures. In

order to ensure comparability of data, the board shall use the same methods for calculating its probable maximum loss as were used to calculate the benchmark probable maximum loss.

2. Beginning February 1, 2007, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 25 percent from the benchmark, the board shall reduce the boundaries of the high-risk area eligible for wind-only coverages under this subsection in a manner calculated to reduce such probable maximum loss to an amount at least 25 percent below the benchmark.

3. Beginning February 1, 2012, if the report under subparagraph 1. for any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 50 percent from the benchmark, the boundaries of the high-risk area eligible for wind-only coverages under this subsection shall be reduced by the elimination of any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway.

(p) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the applicable account of the corporation. So long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness,

financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

~~(q) Effective January 7, 2003, any reference in this subsection to the Treasurer shall be deemed to be a reference to the Chief Financial Officer and any reference to the Department of Insurance shall be deemed to be a reference to the Department of Insurance and Financial Services or other successor to the Department of Insurance specified by law.~~

(q)~~(r)~~ The corporation shall not require the securing of flood insurance as a condition of coverage if the insured or applicant executes a form approved by the office ~~department~~ affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured in addition to coverage by the corporation, the risk will not be covered for flood damage. A corporation policyholder electing not to secure flood insurance and executing a form as provided herein making a claim for water damage against the corporation shall have the burden of proving the damage was not caused by flooding. Notwithstanding other provisions of this subsection, the corporation may deny coverage to an applicant or insured who refuses to execute the form described herein.

Section 1102. Section 627.3511, Florida Statutes, is amended to read:

627.3511 Depopulation of Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~.—

(1) LEGISLATIVE INTENT.—The Legislature finds that the public policy of this state requires the maintenance of a residual market for residential property insurance. It is the intent of the Legislature to provide a variety of financial incentives to encourage the replacement of the highest possible number of Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~ policies with policies written by admitted insurers at approved rates.

(2) TAKE-OUT BONUS.—The Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~ shall pay the sum of up to $100 to an insurer for each risk that the insurer removes from the corporation ~~association~~, either by issuance of a policy upon expiration or cancellation of the corporation ~~association~~ policy or by assumption of the corporation's ~~association's~~ obligations with respect to an in-force policy. Such payment is subject to approval of the corporation ~~association~~ board. In order to qualify for the bonus under this subsection, the take-out plan must include a minimum of 25,000 policies. Within 30 days after approval by the board, the office ~~department~~ may reject the insurer's take-out plan and disqualify the insurer from the bonus, based on the following criteria:

(a) The capacity of the insurer to absorb the policies proposed to be taken out of the corporation ~~association~~ and the concentration of risks of those policies.

(b) Whether the geographic and risk characteristics of policies in the proposed take-out plan serve to reduce the exposure of the corporation ~~association~~ sufficiently to justify the bonus.

(c) Whether coverage for risks to be taken out otherwise exists in the admitted voluntary market.

(d) The degree to which the take-out bonus is promoting new capital being allocated by the insurer to Florida residential property coverage.

(3) EXEMPTION FROM DEFICIT ASSESSMENTS.—

(a) The calculation of an insurer's assessment liability under s. 627.351(6)(b)3.a. or b. shall, for an insurer that in any calendar year removes 50,000 or more risks from the Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~, either by issuance of a policy upon expiration or cancellation of the corporation ~~association~~ policy or by assumption of the corporation's ~~association's~~ obligations with respect to in-force policies, exclude such removed policies for the succeeding 3 years, as follows:

1. In the first year following removal of the risks, the risks are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the risks, the risks are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the risks, the risks are excluded from the calculation to the extent of 50 percent.

If the removal of risks is accomplished through assumption of obligations with respect to in-force policies, the corporation ~~association~~ shall pay to the assuming insurer all unearned premium with respect to such policies less any policy acquisition costs agreed to by the corporation ~~association~~ and assuming insurer. The term "policy acquisition costs" is defined as costs of issuance of the policy by the corporation ~~association~~ which includes agent commissions, servicing company fees, and premium tax. This paragraph does not apply to an insurer that, at any time within 5 years before removing the risks, had a market share in excess of 0.1 percent of the statewide aggregate gross direct written premium for any line of property insurance, or to an affiliate of such an insurer. This paragraph does not apply unless either at least 40 percent of the risks removed from the corporation ~~association~~ are located in Dade, Broward, and Palm Beach Counties, or at least 30 percent of the risks removed from the corporation ~~association~~ are located in such counties and an additional 50 percent of the risks removed from the corporation ~~association~~ are located in other coastal counties.

(b) An insurer that first wrote personal lines residential property coverage in this state on or after July 1, 1994, is exempt from regular deficit assessments imposed pursuant to s. 627.351(6)(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., of the Citizens Property Insurance Corporation ~~Residen-~~

~~tial Property and Casualty Joint Underwriting Association~~ until the earlier of the following:

1. The end of the calendar year in which it first wrote 0.5 percent or more of the statewide aggregate direct written premium for any line of residential property coverage; or

2. December 31, 1997, or December 31 of the third year in which it wrote such coverage in this state, whichever is later.

(c) Other than an insurer that is exempt under paragraph (b), an insurer that in any calendar year increases its total structure exposure subject to wind coverage by 25 percent or more over its exposure for the preceding calendar year is, with respect to that year, exempt from deficit assessments imposed pursuant to s. 627.351(6)(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., of the Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~ attributable to such increase in exposure.

(d) Any exemption or credit from regular assessments authorized by this section shall last no longer than 3 years following the cancellation or expiration of the policy by the corporation ~~association~~. With the approval of the office ~~department~~, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation ~~association~~, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

(4) AGENT BONUS.—When the corporation ~~Residential Property and Casualty Joint Underwriting Association~~ enters into a contractual agreement for a take-out plan that provides a bonus to the insurer, the producing agent of record of the corporation ~~association~~ policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(a) Pay to the producing agent of record of the association policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation ~~association~~; or

(b) Offer to allow the producing agent of record of the corporation ~~association~~ policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's ~~association's~~ usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with paragraph (a). The requirement of this subsection that the producing agent of record is entitled to retain the unearned commission on an association policy does not apply to a policy for which coverage has been provided in the association for 30 days or less or for which a cancellation notice has been issued pursuant to s. 627.351(6)(c)11. during the first 30 days of coverage.

(5) APPLICABILITY.—

(a) The take-out bonus provided by subsection (2) and the exemption from assessment provided by paragraph (3)(a) apply only if the corporation ~~association~~ policy is replaced by either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office ~~department~~, a basic policy including wind coverage; however, with respect to risks located in areas where coverage through the high-risk account of the corporation ~~Florida Windstorm Underwriting Association~~ is available, the replacement policy need not provide wind coverage. The insurer must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled by the insurer for a lawful reason other than reduction of hurricane exposure. If an insurer assumes the corporation's ~~association's~~ obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation ~~association~~ policy and must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled by the insurer for a lawful reason other than reduction of hurricane exposure. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 3-year coverage period required by this paragraph, the insurer must remove from the corporation ~~association~~ one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy. In addition to these requirements, the corporation ~~association~~ must place the bonus moneys in escrow for a period of 3 years; such moneys may be released from escrow only to pay claims. A take-out bonus provided by subsection (2) or subsection (6) shall not be considered premium income for purposes of taxes and assessments under the Florida Insurance Code and shall remain the property of the corporation ~~Residential Property and Casualty Joint Underwriting Association~~, subject to the prior security interest of the insurer under the escrow agreement until it is released from escrow, and after it is released from escrow it shall be considered an asset of the insurer and credited to the insurer's capital and surplus.

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

(6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.—

(a) The corporation ~~Residential Property and Casualty Joint Underwriting Association~~ shall pay a bonus to an insurer for each commercial residential policy that the insurer removes from the corporation ~~association~~ pursuant to an approved take-out plan, either by issuance of a new policy upon expiration of the corporation ~~association~~ policy or by assumption of the corporation's ~~association's~~ obligations with respect to an in-force policy. The corporation ~~association~~ board shall determine the amount of the bonus based on such factors as the coverage provided, relative hurricane risk, the length of time that the property has been covered by the corporation ~~association~~, and the criteria specified in paragraphs (b) and (c). The amount of the bonus with respect to a particular policy may not exceed 25 percent of the corporation's ~~association's~~ 1-year premium for the policy. Such payment is

subject to approval of the corporation ~~association~~ board. In order to qualify for the bonus under this subsection, the take-out plan must include policies reflecting at least $100 million in structure exposure.

(b) In order for a plan to qualify for approval:

1. At least 40 percent of the policies removed from the corporation ~~association~~ under the plan must be located in Dade, Broward, and Palm Beach Counties, or at least 30 percent of the policies removed from the corporation ~~association~~ under the plan must be located in such counties and an additional 50 percent of the policies removed from the corporation ~~association~~ must be located in other coastal counties.

2. The insurer must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled or nonrenewed by the insurer for a lawful reason other than reduction of hurricane exposure. If an insurer assumes the corporation's ~~association's~~ obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation ~~association~~ policy and must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled by the insurer for a lawful reason other than reduction of hurricane exposure. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 3-year coverage period required by this subparagraph, the insurer must remove from the corporation ~~association~~ one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy.

(c) A take-out plan is deemed approved unless the office ~~department~~, within 120 days after the board votes to recommend the plan, disapproves the plan based on:

1. The capacity of the insurer to absorb the policies proposed to be taken out of the corporation ~~association~~ and the concentration of risks of those policies.

2. Whether the geographic and risk characteristics of policies in the proposed take-out plan serve to reduce the exposure of the corporation ~~association~~ sufficiently to justify the bonus.

3. Whether coverage for risks to be taken out otherwise exists in the admitted voluntary market.

4. The degree to which the take-out bonus is promoting new capital being allocated by the insurer to residential property coverage in this state.

(d) The calculation of an insurer's regular assessment liability under s. 627.351(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., shall, with respect to commercial residential policies removed from the corporation ~~association~~ under an approved take-out plan, exclude such removed policies for the succeeding 3 years, as follows:

1. In the first year following removal of the policies, the policies are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the policies, the policies are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the policies, the policies are excluded from the calculation to the extent of 50 percent.

(e) An insurer that first wrote commercial residential property coverage in this state on or after June 1, 1996, is exempt from regular assessments under s. 627.351(6)(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., with respect to commercial residential policies until the earlier of:

1. The end of the calendar year in which such insurer first wrote 0.5 percent or more of the statewide aggregate direct written premium for commercial residential property coverage; or

2. December 31 of the third year in which such insurer wrote commercial residential property coverage in this state.

(f) An insurer that is not otherwise exempt from regular assessments under s. 627.351(6)(b)3.a. and b. with respect to commercial residential policies is, for any calendar year in which such insurer increased its total commercial residential hurricane exposure by 25 percent or more over its exposure for the preceding calendar year, exempt from regular assessments under s. 627.351(6)(b)3.a. and b., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.d., attributable to such increased exposure.

(7) A minority business, which is at least 51 percent owned by minority persons as described in s. 288.703(3), desiring to operate or become licensed as a property and casualty insurer may exempt up to $50 of the escrow requirements of the take-out bonus, as described in this section. Such minority business, which has applied for a certificate of authority to engage in business as a property and casualty insurer, may simultaneously file the business' proposed take-out plan, as described in this section, with the corporation ~~to the Residential Property and Casualty Joint Underwriting Association~~.

Section 1103. Subsections (3) and (4) of section 627.3512, Florida Statutes, are amended to read:

627.3512 Recoupment of residual market deficit assessments.—

(3) The insurer or insurer group shall file with the office ~~department~~ a statement setting forth the amount of the assessment factor and an explanation of how the factor will be applied, at least 15 days prior to the factor being applied to any policies. The statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the assessment factor. The office ~~department~~ shall complete its review within 15 days after receipt of the filing and shall limit its review to verification of the arithmetic calculations. The insurer or insurer group may use the assessment factor at any time after the expiration of the 15-day period unless the office ~~department~~ has notified the insurer or insurer group in writing that the arithmetic calculations are incorrect.

(4) The commission ~~department~~ may adopt rules to implement this section.

Section 1104. Section 627.3513, Florida Statutes, is amended to read:

627.3513 Standards for sale of bonds by Citizens Property Insurance Corporation ~~underwriting associations~~.—

(1)(a) The purpose of this section is to provide standards for the sale of bonds pursuant to s. 627.351(2) and (6).

(b) The term "corporation," as used in this section, means the Citizens Property Insurance Corporation. ~~"Association" or "associations," for purposes of this section, means the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association as established pursuant to s. 627.351(2) and (6), and any corporation or other entity established pursuant to those subsections.~~

(2) The plan of operation of the corporation ~~each association~~ shall provide for the selection of financial services providers and underwriters. Such provisions shall include the method for publicizing or otherwise providing reasonable notice to potential financial services providers, underwriters, and other interested parties, which may include expedited procedures and methods for emergency situations. The corporation ~~associations~~ shall not engage the services of any person or firm as a securities broker or bond underwriter that is not eligible to be engaged by the state under the provisions of s. 215.684. The corporation ~~associations~~ shall make all selections of financial service providers and managing underwriters at a noticed public meeting.

(3) The plan of operation of the corporation ~~each association~~ shall provide for any managing underwriter or financial adviser to provide to the corporation ~~association~~ a disclosure statement containing at least the following information:

(a) An itemized list setting forth the nature and estimated amounts of expenses to be incurred by the managing underwriter in connection with the issuance of such bonds. Notwithstanding the foregoing, any such list may include an item for miscellaneous expenses, provided such item includes only minor items of expense which cannot be easily categorized elsewhere in the statement.

(b) The names, addresses, and estimated amounts of compensation of any finders connected with the issuance of the bonds.

(c) The amount of underwriting spread expected to be realized and the amount of fees and expenses expected to be paid to the financial adviser.

(d) Any management fee charged by the managing underwriter.

(e) Any other fee, bonus, or compensation estimated to be paid by the managing underwriter in connection with the bond issue to any person not regularly employed or retained by it.

(f) The name and address of each financial adviser or managing underwriter, if any, connected with the bond issue.

(g) Any other disclosure which the corporation ~~association~~ may require.

(4)(a) No underwriter, commercial bank, investment banker, or financial consultant or adviser shall pay any finder any bonus, fee, or gratuity in connection with the sale of bonds issued by the corporation ~~association~~ unless full disclosure is made in writing to the corporation ~~association~~ prior to or concurrently with the submission of a purchase proposal for bonds by the underwriter, commercial bank, investment banker, or financial consultant or adviser, providing the name and address of any finder and the amount of bonus, fee, or gratuity paid to such finder. A violation of this subsection shall not affect the validity of the bond issue.

(b) As used in this subsection, the term "finder" means a person who is neither regularly employed by, nor a partner or officer of, an underwriter, bank, banker, or financial consultant or adviser and who enters into an understanding with either the issuer or the managing underwriter, or both, for any paid or promised compensation or valuable consideration, directly or indirectly, expressed or implied, to act solely as an intermediary between such issuer and managing underwriter for the purpose of influencing any transaction in the purpose of such bonds.

(5) This section is not intended to restrict or prohibit the employment of professional services relating to bonds issued under s. 627.351(6) ~~s. 627.351(2) or (6)~~ or the issuance of bonds by the corporation ~~associations~~.

(6) The failure of the corporation ~~association~~ to comply with one or more provisions of this section shall not affect the validity of the bond issue; however, the failure of the corporation ~~either association~~ to comply in good faith both with this section and with the plan as amended shall be a violation of its plan of operation and a violation of the insurance code.

Section 1105. Section 627.3515, Florida Statutes, is amended to read:

627.3515 Market assistance plan; property and casualty risks.—

(1) The office ~~department~~ shall adopt a market assistance plan to assist in the placement of risks of applicants who are unable to procure property insurance as defined in s. 624.604 or casualty insurance as defined in s. 624.605(1)(b), (e), (f), (g), or (h) from authorized insurers when such insurance is otherwise generally available from insurers authorized to transact and actually writing that kind and class of insurance in this state. Through such measures as are found appropriate by the board of governors, the market assistance plan shall take affirmative steps to assist in the removal from the Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~ any risk that can be placed in the voluntary market. All property and casualty insurers licensed in this state shall participate in the plan.

(2)(a) Each person serving as a member of the board of governors of the Citizens Property Insurance Corporation ~~Residential Property and Casualty~~

~~Joint Underwriting Association~~ shall also serve as a member of the board of governors of the market assistance plan.

(b) The plan shall be funded through payments from the Citizens Property Insurance Corporation ~~Residential Property and Casualty Joint Underwriting Association~~ and annual assessments of residential property insurers in the amount of $450.

(c) The plan is not required to assist in the placement of any workers' compensation, employer's liability, malpractice, or motor vehicle insurance coverage.

Section 1106. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keepout or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right shall not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keepout, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission ~~department~~ shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keepout offer, the policyholder shall not be disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies shall not be considered a take-out or keepout offer. Any rule, plan of operation, or plan of depopulation, through keepout, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 1107. Subsections (2), (4), and (6), paragraphs (c) and (h) of subsection (7), and subsection (8) of section 627.357, Florida Statutes, are amended to read:

627.357 Medical malpractice self-insurance.—

(2) A group or association of health care providers composed of any number of members, is authorized to self-insure against claims arising out of the rendering of, or failure to render, medical care or services, or against claims for injury or death to the insured's patients arising out of the insured's activities, upon obtaining approval from the office ~~department~~ and upon complying with the following conditions:

(a) Establishment of a Medical Malpractice Risk Management Trust Fund to provide coverage against professional medical malpractice liability.

(b) Employment of professional consultants for loss prevention and claims management coordination under a risk management program.

(4) The fund is subject to regulation and investigation by the office ~~department~~. The fund is subject to rules of the commission ~~department~~ and to part IX of chapter 626, relating to trade practices and frauds.

(6) The commission ~~department~~ shall adopt rules to implement this section, including rules that ensure that a trust fund maintains a sufficient reserve to cover contingent liabilities under subsection (7) in the event of its dissolution.

(7)

(c) The trust fund may from time to time assess members of the fund liable therefor under the terms of their policies and pursuant to this section. The office ~~department~~ may assess the members in the event of liquidation of the fund.

(h) If the trust fund fails to make an assessment as required by paragraph (g), the office ~~department~~ shall order the fund to do so. If the deficiency is not sufficiently made up within 60 days after the date of the order, the fund is deemed insolvent and grounds exist to proceed against the fund as provided for in part I of chapter 631.

(8) The expense factors associated with rates used by a fund shall be filed with the office ~~department~~ at least 30 days prior to use and may not be used until approved by the office ~~department~~. The office ~~department~~ shall disapprove the rates unless the filed expense factors associated therewith are justified and reasonable for the benefits and services provided.

Section 1108. Section 627.361, Florida Statutes, is amended to read:

627.361 False or misleading information.—No person shall willfully withhold information from or knowingly give false or misleading information to the office ~~department~~, any statistical agency designated by the office ~~department~~, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this part.

Section 1109. Section 627.371, Florida Statutes, is amended to read:

627.371 Hearings.—

(1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer, and any person aggrieved by any rating plan, rating system, or underwriting rule followed or adopted by a rating organization, may herself or himself or by her or his authorized representative make written request of the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded her or him. If the request is not granted within 30 days after it is made, the requester may

treat it as rejected. Any person aggrieved by the refusal of an insurer or rating organization to grant the review requested, or by the failure or refusal to grant all or part of the relief requested, may file a written complaint with the office ~~department~~, specifying the grounds relied upon. If the office ~~department~~ has already disposed of the issue as raised by a similar complaint or believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, it shall so notify the complainant. Otherwise, and if it also finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, it shall proceed as provided in subsection (2).

(2) If after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, upon the basis of other information, or upon sufficient complaint as provided in subsection (1), the office ~~department~~ has good cause to believe that such insurer, organization, group, or association, or any rate, rating plan, or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this part applicable to it, it shall, unless it has good cause to believe such noncompliance is willful, give notice in writing to such insurer, organization, group, or association stating therein in what manner and to what extent noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which the noncompliance may be corrected, including any premium adjustment.

(3) If the office ~~department~~ has good cause to believe that such noncompliance is willful or if, within the period prescribed by the office ~~department~~ in the notice required by subsection (2), the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the office ~~department~~ or establish to the satisfaction of the office ~~department~~ that such specified noncompliance does not exist, then the office ~~department~~ is required to proceed to further determine the matter. If no notice has been given as provided in subsection (2), the notice shall state in what manner and to what extent noncompliance is alleged to exist. The proceedings shall not consider any subject not specified in the notice required by subsections (2) and (3).

Section 1110. Section 627.381, Florida Statutes, is amended to read:

627.381 Penalty for violation.—

(1) The office ~~department~~ may, if it finds that any person or organization has violated any provision of this part, impose an administrative fine pursuant to s. 624.4211.

(2) The office ~~department~~ may suspend the license or authority of any rating organization or insurer which fails to comply with an order of the office ~~department~~ within the time limited by such order, or any extension thereof which the office ~~department~~ may grant. The office ~~department~~ shall not suspend the license or authority of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The office ~~department~~ may determine when a suspension of

license or authority shall become effective and it shall remain in effect for the period fixed by it, unless it modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded, or reversed.

Section 1111. Paragraph (i) of subsection (2) of section 627.4035, Florida Statutes, is amended to read:

627.4035 Cash payment of premiums; claims.—

(2) Subsection (1) is not applicable to:

(i) Such other methods of paying for life insurance as may be permitted by the commission ~~department~~ pursuant to rule or regulation.

Section 1112. Section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or group certificates issued under a master contract delivered in this state, or printed rider or endorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with the office ~~department at its offices in Tallahassee~~ by or in behalf of the insurer which proposes to use such form and has been approved by the office ~~department~~. This provision does not apply to surety bonds or to policies, riders, endorsements, or forms of unique character which are designed for and used with relation to insurance upon a particular subject (other than as to health insurance), or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificateholder. As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed with the office ~~department~~ for information purposes only.

(2) Every such filing must be made not less than 30 days in advance of any such use or delivery. At the expiration of such 30 days, the form so filed will be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the office ~~department~~. The approval of any such form by the office ~~department~~ constitutes a waiver of any unexpired portion of such waiting period. The office ~~department~~ may extend by not more than an additional 15 days the period within which it may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial 30-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) The office ~~department~~ may, for cause, withdraw a previous approval. No insurer shall issue or use any form disapproved by the office ~~department~~, or as to which the office ~~department~~ has withdrawn approval, after the effective date of the order of the office ~~department~~.

(4) The office ~~department~~ may, by order, exempt from the requirements of this section for so long as it deems proper any insurance document or form or type thereof as specified in such order, to which, in its opinion, this section may not practicably be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public.

(5) This section also applies to any such form used by domestic insurers for delivery in a jurisdiction outside this state if the insurance supervisory official of such jurisdiction informs the office ~~department~~ that such form is not subject to approval or disapproval by such official, and upon the order of the office ~~department~~ requiring the form to be submitted to it for the purpose. The applicable same standards apply to such forms as apply to forms for domestic use.

(6)(a) An insurer shall not deliver or issue for delivery or renew in this state any health insurance policy form until it has filed with the office ~~department~~ a copy of every applicable rating manual, rating schedule, change in rating manual, and change in rating schedule; if rating manuals and rating schedules are not applicable, the insurer must file with the order ~~department~~ applicable premium rates and any change in applicable premium rates. This paragraph does not apply to group health insurance policies, effectuated and delivered in this state, insuring groups of 51 or more persons, except for Medicare supplement insurance, long-term care insurance, and any coverage under which the increase in claim costs over the lifetime of the contract due to advancing age or duration is prefunded in the premium.

(b) The commission ~~department~~ may establish by rule, for each type of health insurance form, procedures to be used in ascertaining the reasonableness of benefits in relation to premium rates and may, by rule, exempt from any requirement of paragraph (a) any health insurance policy form or type thereof (as specified in such rule) to which form or type such requirements may not be practically applied or to which form or type the application of such requirements is not desirable or necessary for the protection of the public. With respect to any health insurance policy form or type thereof which is exempted by rule from any requirement of paragraph (a), premium rates filed pursuant to ss. 627.640 and 627.662 shall be for informational purposes.

(c) Every filing made pursuant to this subsection shall be made within the same time period provided in, and shall be deemed to be approved under the same conditions as those provided in, subsection (2).

(d) Every filing made pursuant to this subsection, except disability income policies and accidental death policies, shall be prohibited from applying the following rating practices:

1. Select and ultimate premium schedules.

2. Premium class definitions which classify insured based on year of issue or duration since issue.

3. Attained age premium structures on policy forms under which more than 50 percent of the policies are issued to persons age 65 or over.

(e) Except as provided in subparagraph 1., an insurer shall continue to make available for purchase any individual policy form issued on or after October 1, 1993. A policy form shall not be considered to be available for purchase unless the insurer has actively offered it for sale in the previous 12 months.

1. An insurer may discontinue the availability of a policy form if the insurer provides to the office ~~department~~ in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the office ~~department~~, the insurer shall no longer offer for sale the policy form or certificate form in this state.

2. An insurer that discontinues the availability of a policy form pursuant to subparagraph 1. shall not file for approval a new policy form providing similar benefits as the discontinued form for a period of 5 years after the insurer provides notice to the office ~~department~~ of the discontinuance. The period of discontinuance may be reduced if the office ~~department~~ determines that a shorter period is appropriate.

3. The experience of all policy forms providing similar benefits shall be combined for all rating purposes.

(7)(a) Each insurer subject to the requirements of subsection (6) shall make an annual filing with the office ~~department~~ no later than 12 months after its previous filing, demonstrating the reasonableness of benefits in relation to premium rates. The office ~~department~~, after receiving a request to be exempted from the provisions of this section, may, for good cause due to insignificant numbers of policies in force or insignificant premium volume, exempt a company, by line of coverage, from filing rates or rate certification as required by this section.

(b) The filing required by this subsection shall be satisfied by one of the following methods:

1. A rate filing prepared by an actuary which contains documentation demonstrating the reasonableness of benefits in relation to premiums charged in accordance with the applicable rating laws and rules promulgated by the commission ~~department~~.

2. If no rate change is proposed, a filing which consists of a certification by an actuary that benefits are reasonable in relation to premiums currently charged in accordance with applicable laws and rules promulgated by the commission ~~department~~.

(c) As used in this section, "actuary" means an individual who is a member of the Society of Actuaries or the American Academy of Actuaries. If an insurer does not employ or otherwise retain the services of an actuary, the insurer's certification shall be prepared by insurer personnel or consultants with a minimum of 5 years' experience in insurance ratemaking. The chief executive officer of the insurer shall review and sign the certification indicating his or her agreement with its conclusions.

(d) If at the time a filing is required under this section an insurer is in the process of completing a rate review, the insurer may apply to the office ~~department~~ for an extension of up to an additional 30 days in which to make the filing. The request for extension must be received by the office ~~department in its offices in Tallahassee~~ no later than the date the filing is due.

(e) If an insurer fails to meet the filing requirements of this subsection and does not submit the filing within 60 days following the date the filing is due, the office ~~department~~ may, in addition to any other penalty authorized by law, order the insurer to discontinue the issuance of policies for which the required filing was not made, until such time as the office ~~department~~ determines that the required filing is properly submitted.

(8)(a) For the purposes of subsections (6) and (7), benefits of an individual accident and health insurance policy form, including Medicare supplement policies as defined in s. 627.672, when authorized by rules adopted by the commission ~~department~~, and excluding long-term care insurance policies as defined in s. 627.9404, and other policy forms under which more than 50 percent of the policies are issued to individuals age 65 and over, are deemed to be reasonable in relation to premium rates if the rates are filed pursuant to a loss ratio guarantee and both the initial rates and the durational and lifetime loss ratios have been approved by the office ~~department~~, and such benefits shall continue to be deemed reasonable for renewal rates while the insurer complies with such guarantee, provided the currently expected lifetime loss ratio is not more than 5 percent less than the filed lifetime loss ratio as certified to by an actuary. The office ~~department~~ shall have the right to bring an administrative action should it deem that the lifetime loss ratio will not be met. For Medicare supplement filings, the office ~~department~~ may withdraw a previously approved filing which was made pursuant to a loss ratio guarantee if it determines that the filing is not in compliance with ss. 627.671-627.675 or the currently expected lifetime loss ratio is less than the filed lifetime loss ratio as certified by an actuary in the initial guaranteed loss ratio filing. If this section conflicts with ss. 627.671-627.675, ss. 627.671-627.675 shall control.

(b) The renewal premium rates shall be deemed to be approved upon filing with the office ~~department~~ if the filing is accompanied by the most current approved loss ratio guarantee. The loss ratio guarantee shall be in writing, shall be signed by an officer of the insurer, and shall contain at least:

1. A recitation of the anticipated lifetime and durational target loss ratios contained in the actuarial memorandum filed with the policy form when it was originally approved. The durational target loss ratios shall be calculated for 1-year experience periods. If statutory changes have rendered any portion of such actuarial memorandum obsolete, the loss ratio guarantee shall also include an amendment to the actuarial memorandum reflecting current law and containing new lifetime and durational loss ratio targets.

2. A guarantee that the applicable loss ratios for the experience period in which the new rates will take effect, and for each experience period thereafter until new rates are filed, will meet the loss ratios referred to in subparagraph 1.

3. A guarantee that the applicable loss ratio results for the experience period will be independently audited at the insurer's expense. The audit shall be performed in the second calendar quarter of the year following the end of the experience period, and the audited results shall be reported to the office ~~department~~ no later than the end of such quarter. The commission ~~department~~ shall establish by rule the minimum information reasonably necessary to be included in the report. The audit shall be done in accordance with accepted accounting and actuarial principles.

4. A guarantee that affected policyholders in this state shall be issued a proportional refund, based on the premium earned, of the amount necessary to bring the applicable experience period loss ratio up to the durational target loss ratio referred to in subparagraph 1. The refund shall be made to all policyholders in this state who are insured under the applicable policy form as of the last day of the experience period, except that no refund need be made to a policyholder in an amount less than $10. Refunds less than $10 shall be aggregated and paid pro rata to the policyholders receiving refunds. The refund shall include interest at the then-current variable loan interest rate for life insurance policies established by the National Association of Insurance Commissioners, from the end of the experience period until the date of payment. Payments shall be made during the third calendar quarter of the year following the experience period for which a refund is determined to be due. However, no refunds shall be made until 60 days after the filing of the audit report in order that the office ~~department~~ has adequate time to review the report.

5. A guarantee that if the applicable loss ratio exceeds the durational target loss ratio for that experience period by more than 20 percent, provided there are at least 2,000 policyholders on the form nationwide or, if not, then accumulated each calendar year until 2,000 policyholder years is reached, the insurer, if directed by the office ~~department~~, shall withdraw the policy form for the purposes of issuing new policies.

(c) As used in this subsection:

1. "Loss ratio" means the ratio of incurred claims to earned premium.

2. "Applicable loss ratio" means the loss ratio attributable solely to this state if there are 2,000 or more policyholders in the state. If there are 500 or more policyholders in this state but less than 2,000, it is the linear interpolation of the nationwide loss ratio and the loss ratio for this state. If there are less than 500 policyholders in this state, it is the nationwide loss ratio.

3. "Experience period" means the period, ordinarily a calendar year, for which a loss ratio guarantee is calculated.

Section 1113. Section 627.4101, Florida Statutes, is amended to read:

627.4101 Credit insurance enrollment forms.—~~Effective October 1, 2002,~~ All credit insurance enrollment forms must be approved by the office ~~Department of Insurance~~ pursuant to the provisions of s. 627.410 or s. 627.682.

Section 1114. Section 627.4105, Florida Statutes, is amended to read:

627.4105 Life and health insurance; reduced premiums upon rigorous physical examination.—Upon request, the office ~~department~~ may approve special life and health insurance policy forms providing for reduced premiums for each applicant passing a rigorous physical examination.

Section 1115. Section 627.411, Florida Statutes, is amended to read:

627.411 Grounds for disapproval.—

(1) The office ~~department~~ shall disapprove any form filed under s. 627.410, or withdraw any previous approval thereof, only if the form:

(a) Is in any respect in violation of, or does not comply with, this code.

(b) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(c) Has any title, heading, or other indication of its provisions which is misleading.

(d) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

(e) Is for health insurance, and provides benefits which are unreasonable in relation to the premium charged, contains provisions which are unfair or inequitable or contrary to the public policy of this state or which encourage misrepresentation, or which apply rating practices which result in premium escalations that are not viable for the policyholder market or result in unfair discrimination in sales practices.

(f) Excludes coverage for human immunodeficiency virus infection or acquired immune deficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of such contract, for human immunodeficiency virus infection or acquired immune deficiency syndrome which are different than those which apply to any other sickness or medical condition.

(2) In determining whether the benefits are reasonable in relation to the premium charged, the office ~~department~~, in accordance with reasonable actuarial techniques, shall consider:

(a) Past loss experience and prospective loss experience within and without this state.

(b) Allocation of expenses.

(c) Risk and contingency margins, along with justification of such margins.

(d) Acquisition costs.

Section 1116. Section 627.412, Florida Statutes, is amended to read:

627.412 Standard provisions, in general.—

(1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The office ~~department~~ may waive the required use of a particular provision in a particular insurance policy form if:

(a) It finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy; and

(b) The policy is otherwise approved by it.

(2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the office ~~department~~ may approve any substitute provision which is, in its opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the office ~~department~~.

Section 1117. Paragraph (g) of subsection (1) and subsections (4) and (5) of section 627.413, Florida Statutes, are amended to read:

627.413 Contents of policies, in general; identification.—

(1) Every policy shall specify:

(g) The form numbers and edition dates or numeric code indicating edition dates, when such code has been supplied to the office ~~department~~, of all endorsements attached to a policy. This requirement applies to life insurance policies and health insurance policies only at the time of original issue.

(4) All policies and annuity contracts issued by insurers, and the forms thereof filed with the office ~~department~~, shall have printed thereon an appropriate designating letter or figure, or combination of letters or figures or terms identifying the respective forms of policies or contracts. Whenever any change is made in any such form, the designating letters, figures, or terms thereon shall be correspondingly changed.

(5) Any policy that is a minimum premium policy issued by an insurer pursuant to the minimum premium provisions of rules adopted by rating organizations licensed by the office ~~Department of Insurance~~, shall have typed, printed, stamped, or legibly handwritten on the certificate the words "minimum premium policy" or equivalent language. The office ~~department~~ may impose an administrative fine pursuant to s. 624.4211 if the office ~~department~~ finds any violation of this subsection.

Section 1118. Subsections (1), (2), and (3) and paragraph (f) of subsection (5) of section 627.4145, Florida Statutes, are amended to read:

627.4145 Readable language in insurance policies.—

(1) Every policy shall be readable as required by this section. For the purposes of this section, the term "policy" means a policy form or endorsement. A policy is deemed readable if:

(a) The text achieves a minimum score of 45 on the Flesch reading ease test as computed in subsection (5) or an equivalent score on any other test comparable in result and approved by the office ~~department~~;

(b) It uses layout and spacing which separate the paragraphs from each other and from the border of the paper;

(c) It has section titles that are captioned in boldfaced type or that otherwise stand out significantly from the text;

(d) It avoids the use of unnecessarily long, complicated, or obscure words, sentences, paragraphs, or constructions;

(e) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders; and

(f) It contains a table of contents or an index of the principal sections of the policy, if the policy has more than 3,000 words or more than three pages.

(2) The office ~~department~~ may authorize a lower score than the Flesch reading ease test score required in subsection (1) whenever it finds that a lower score will provide a more accurate reflection of the readability of a policy form, is warranted by the nature of a particular policy form or type or class of policy forms, or is the result of language which is used to conform to the requirements of any law.

(3) A filing subject to this section shall be accompanied by a certification signed by an officer of the insurer stating that the policy meets the requirements of subsection (1). Such certification shall state that the policy meets the minimum reading ease test score on the test used or that the score is lower than the minimum required but should be approved in accordance with subsection (2). The office ~~department~~ may require the submission of further information to verify any certification.

(5) A Flesch reading ease test score shall be measured by the following method:

(f) The term "text" as used in this subsection includes all printed matter except:

1. The name and address of the insurer; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; specification pages; schedules; or tables;

2. Policy language required by any collectively bargained agreement;

3. Any medical terminology;

4. Words which are defined in the policy; and

5. Any policy language required by law, if the insurer identifies the language or terminology excepted by this paragraph and certifies to the office ~~department~~, in writing, that the language or terminology is entitled to be excepted under this paragraph.

Section 1119. Subsection (2) of section 627.417, Florida Statutes, is amended to read:

627.417 Underwriters' and combination policies.—

(2) Two or more authorized insurers may, with the approval of the office ~~department~~, issue a combination policy which shall contain provisions substantially as follows:

(a) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy; and

(b) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

Section 1120. Subsection (2) of section 627.418, Florida Statutes, is amended to read:

627.418 Validity of noncomplying contracts.—

(2) Any insurance contract delivered or issued for delivery in this state covering a subject or subjects of insurance resident, located, or to be performed in this state, which subjects, pursuant to the provisions of this code, the insurer may not lawfully insure under such a contract, shall be cancelable at any time by the insurer, any provision of the contract to the contrary notwithstanding; and the insurer shall promptly cancel the contract in accordance with the request of the office ~~department~~ therefor. No such illegality or cancellation shall be deemed to relieve the insurer of any liability incurred by it under the contract while in force, or to prohibit the insurer from retaining the pro rata earned premium thereon. This provision does not relieve the insurer from any penalty otherwise incurred by the insurer under this code on account of any such violation.

Section 1121. Subsection (7) of section 627.4234, Florida Statutes, is amended to read:

627.4234 Health insurance cost containment provisions required.—A health insurance policy or health care services plan which provides medical, hospital, or surgical expense coverage delivered or issued for delivery in this

state must contain one or more of the following procedures or provisions to contain health insurance costs or cost increases:

(7) Any lawful measure or combination of measures for which the insurer provides to the office ~~department~~ information demonstrating that the measure or combination of measures is reasonably expected to have an effect toward containing health insurance costs or cost increases.

Section 1122. Paragraph (a) of subsection (3) of section 627.4236, Florida Statutes, is amended to read:

627.4236 Coverage for bone marrow transplant procedures.—

(3)(a) The Agency for Health Care Administration shall adopt rules specifying the bone marrow transplant procedures that are accepted within the appropriate oncological specialty and are not experimental for purposes of this section. The rules must be based upon recommendations of an advisory panel appointed by the secretary of the agency, composed of:

1. One adult oncologist, selected from a list of three names recommended by the Florida Medical Association;

2. One pediatric oncologist, selected from a list of three names recommended by the Florida Pediatric Society;

3. One representative of the J. Hillis Miller Health Center at the University of Florida;

4. One representative of the H. Lee Moffitt Cancer Center and Research Institute, Inc.;

5. One consumer representative, selected from a list of three names recommended by the Chief Financial Officer ~~Insurance Commissioner~~;

6. One representative of the Health Insurance Association of America;

7. Two representatives of health insurers, one of whom represents the insurer with the largest Florida health insurance premium volume and one of whom represents the insurer with the second largest Florida health insurance premium volume; and

8. One representative of the insurer with the largest Florida small group health insurance premium volume.

Section 1123. Section 627.4238, Florida Statutes, is amended to read:

627.4238 Health insurer examinations.—The office ~~department~~ may examine each authorized health insurer which transacts health insurance in this state. The purpose of the examination is to ascertain compliance by the insurer with the applicable provisions of this chapter. In lieu of the examination, the office ~~department~~ may accept the report of a similar examination made by the insurance supervisory official of this state or another state. The reasonable cost of the examination shall be paid by the person examined, and such person is subject to the provisions of s. 624.320. Any examination

is also subject to the applicable provisions of ss. 624.318, 624.319, 624.321, and 624.322. An examination under this section may not exceed 10 working days in length, may not be conducted more often than annually, and may not be conducted during the same calendar year as a market conduct examination conducted by the office ~~department~~, except in a case in which the office ~~department~~ has prima facie evidence of a violation of this chapter or of chapter 626, which violation is of a nature so as to provide an immediate danger to the insurance-consuming public.

Section 1124. Subsection (2) of section 627.427, Florida Statutes, is amended to read:

627.427 Payment of judgment by insurer; penalty for failure.—

(2) If the judgment or decree is not satisfied as required under subsection (1), and proof of such failure to satisfy is made by filing with the office ~~department~~ a certified transcript of the docket of the judgment or decree together with a certificate by the clerk of the court wherein the judgment or decree was entered that the judgment or decree remains unsatisfied, in whole or in part, after the time aforesaid, the office ~~department~~ shall forthwith revoke the insurer's certificate of authority. The office ~~department~~ shall not issue to such insurer any new certificate of authority until the judgment or decree is wholly paid and satisfied and proof thereof filed with the office ~~department~~ under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the same is satisfied of record, and until the expenses and fees incurred in the case are also paid by the insurer.

Section 1125. Paragraph (b) of subsection (4) of section 627.429, Florida Statutes, is amended to read:

627.429 Medical tests for HIV infection and AIDS for insurance purposes.—

(4) USE OF MEDICAL TESTS FOR UNDERWRITING.—

(b) Prior to testing, the insurer shall disclose its intent to test the person for the HIV infection or for a specific sickness or medical condition derived therefrom and shall obtain the person's written informed consent to administer the test. The written informed consent required by this paragraph shall include a fair explanation of the test, including its purpose, potential uses, and limitations, and the meaning of its results and the right to confidential treatment of information. Use of a form approved by the office ~~department~~ raises a conclusive presumption of informed consent.

Section 1126. Subsection (1) of section 627.452, Florida Statutes, is amended to read:

627.452 Standard provisions required.—

(1) No policy of life insurance, except as stated in subsection (3), shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions as required by ss. 627.453-627.462 inclusive and ss. 627.475 and 627.476, or provisions which in the opinion of the office ~~department~~ are more favorable to the policyholder.

Section 1127. Subsection (1) of section 627.458, Florida Statutes, is amended to read:

627.458 Policy loan.—

(1) There shall be a provision that after the policy has a cash surrender value and while no premium is in default, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a rate of interest not exceeding 10 percent per year, for policies issued prior to October 1, 1981, payable in advance, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then-current policy year, except that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value, including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. However, as a condition for approval of a policy loan interest rate in excess of 6 percent per year, the office ~~department~~ shall require the insurer to furnish such assurances as the office ~~department~~ deems necessary that the interest rate on such loans will bear a reasonable relationship to other interest rates and that the holders of such policies will benefit through higher dividends or lower premiums, or both.

Section 1128. Section 627.462, Florida Statutes, is amended to read:

627.462 Table of installments.—If a policy provides for payment of its proceeds in installments, a table showing the amount and period of such installments shall be included in the policy; except that certain tables may be omitted from the policy if in the judgment of the office ~~department~~ it is not practical to include them.

Section 1129. Subsection (1) of section 627.464, Florida Statutes, is amended to read:

627.464 Annuity contracts, pure endowment contracts; standard provisions.—

(1) No fixed-dollar annuity, variable annuity, or pure endowment contract, other than a reversionary annuity, survivorship annuity, or group annuity, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions set forth in ss. 627.465-627.470, inclusive, or provisions which in the opinion of the office ~~department~~ are more favorable to the policyholder. Any of such provisions not applicable to single-premium annuities or single-premium pure endowment contracts shall not to that extent be incorporated therein.

Section 1130. Subsections (2) and (8), paragraphs (h) and (k) of subsection (9), and subsections (10) and (14) of section 627.476, Florida Statutes, are amended to read:

627.476 Standard Nonforfeiture Law for Life Insurance.—

(2) NONFORFEITURE PROVISIONS.—In the case of policies issued on or after the operative date of this section as defined in subsection (14), no policy of life insurance, except as set forth in subsection (13), shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the office ~~department~~ are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with subsection (12):

(a) That in the event of default in any premium payment, after premiums have been paid for at least 1 full year in the case of ordinary insurance or 3 full years in the case of industrial insurance, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits. With respect to all policy forms filed on or after October 1, 1990, the policy forms shall include, but not be limited to, a reduced paid-up nonforfeiture benefit. For the purposes of this subsection, the term "reduced paid-up nonforfeiture benefit" means a benefit whereby the policy may be continued at the option of the insured as reduced paid-up life insurance, the amount of which shall be as much as the surrender value of the policy will provide on the date of default, calculated using the surrender value of the policy as a net single premium on the due date of the first unpaid premium at the then-current age of the insured.

(b) That upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance or 5 full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default.

(d) That if the policy becomes paid up by completion of all premium payments, or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(e) In the case of a policy which causes on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provides an option

for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of any other policy, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(8) MORTALITY TABLES; INTEREST.—This subsection shall not apply to policies issued on or after the operative date of subsection (9), as defined therein. All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners' 1958 Standard Ordinary Mortality Table, except that, for any category of such policies issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 6 years younger than the actual age of the insured. Such calculations for all policies of industrial insurance shall be made on the basis of the following tables:

(a) For policies issued on and after the operative date of this section but before January 1, 1968, the 1941 Standard Industrial Mortality Table, unless the Commissioners' 1961 Standard Industrial Mortality Table is applicable according to subsection (14);

(b) For policies issued on and after January 1, 1968, the Commissioners' 1961 Standard Industrial Mortality Table.

All calculations shall be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; however, such rate of interest shall not exceed 3.5 percent per year, except that a rate of interest not exceeding 4 percent per year may be used for policies issued on or after July 1, 1973, and prior to October 1, 1979, and a rate of interest not exceeding 4.5 percent per year may be used for policies

issued on or after October 1, 1979, and a rate of interest not exceeding 5.5 percent per year may be used for policies issued on or after October 1, 1980. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners' 1958 Extended Term Insurance Table, for ordinary policies. In the case of industrial policies:

(c) For policies issued on and after the operative date of this section but before January 1, 1968, not more than 130 percent of the rates of mortality according to the 1941 Standard Industrial Mortality Table, unless the Commissioners' 1961 Industrial Extended Term Insurance Table is applicable according to subsection (14), in which case not more than those of the latter table;

(d) For policies issued on and after January 1, 1968, not more than those of the Commissioners' 1961 Industrial Extended Term Insurance Table.

For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the office ~~department~~.

(9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT VALUES FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS SUBSECTION.—

(h) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners' 1980 Standard Ordinary Mortality Table or, at the election of the insurer for any one or more specified plans of life insurance, the Commissioners' 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners' 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year. However:

1. At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

2. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

3. An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the

basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

4. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners' 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners' 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

5. In lieu of the mortality tables specified in this section, at the option of the insurance company and subject to rules adopted by the commission ~~department~~, the insurance company may substitute:

a. The 1958 CSO or CET Smoker and Nonsmoker Mortality Tables, whichever is applicable, for policies issued on or after the operative date of this subsection and before January 1, 1989;

b. The 1980 CSO or CET Smoker and Nonsmoker Mortality Tables, whichever is applicable, for policies issued on or after the operative date of this subsection;

c. A mortality table that is a blend of the sex-distinct 1980 CSO or CET mortality table standard, whichever is applicable, or a mortality table that is a blend of the sex-distinct 1980 CSO or CET smoker and nonsmoker mortality table standards, whichever is applicable, for policies that are subject to the United States Supreme Court decision in Arizona Governing Committee v. Norris to prevent unfair discrimination in employment situations.

6. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(k) After October 1, 1981, any insurer may file with the office ~~department~~ a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1989, which shall be the operative date of this subsection for that insurer. If an insurer makes no such election, the operative date of this subsection for the insurer shall be January 1, 1989.

(10) INDETERMINATE PREMIUMS OR MINIMUM VALUES.—In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsections (2)-(9):

(a) The office ~~department~~ must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections (2)-(9);

(b) The office ~~department~~ must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by rules promulgated by the commission ~~department~~.

(14) OPERATIVE DATE.—After the effective date of this code, any insurer may file with the office ~~department~~ a written notice or notices of its election to comply with the provisions of this section on and after a specified date or dates before January 1, 1966, as to either or both of its policies of ordinary and industrial insurance, in which case such specified date or dates shall be the operative date of this section with respect to such policies. The operative date of this section for policies of both ordinary and industrial insurance shall be the earlier of January 1, 1966, and any prior operative date or dates resulting from such previously filed written notices. With respect to policies of industrial insurance issued on and after the operative date of this section for such policies but before January 1, 1968, any insurer may file with the office ~~department~~ written notice of its election to have the Commissioners' 1961 Standard Industrial Mortality Table and the Commissioners' 1961 Industrial Extended Term Insurance Table applicable with respect to subsection (8) for policies issued on and after the date specified in such election.

Section 1131. Subsections (2) and (3) of section 627.479, Florida Statutes, are amended to read:

627.479 Prohibited policy plans.—

(2) No insurer shall issue policies containing annual endowments or other specialty-type policies such as founder's policies or coupon-bearing policies. The commission ~~department~~ shall, by rule, define such prohibited policies.

(3) The office ~~department~~ shall revoke the certificate of authority of any insurer which violates this section.

Section 1132. Section 627.480, Florida Statutes, is amended to read:

627.480 Cash payments of single-premium life policies.—Premiums for single-premium life insurance policies shall be paid in cash. This section is not applicable to the use of dividends to purchase paid-up additional insurance or to such other usual and customary methods of paying for life insurance as may be permitted by rule of the commission ~~department~~.

Section 1133. Paragraph (a) of subsection (2) and subsections (4), (6), and (11) of section 627.481, Florida Statutes, are amended to read:

627.481 Requirements for certain annuity agreements.—

(2)(a) Every such domestic corporation or such domestic or foreign trust shall have and maintain admitted assets at least equal to the sum of the reserves on its outstanding annuity agreements, and a surplus of 10 percent of such reserves, calculated using:

1.a. The present value of future guaranteed benefits for individual annuities that have either commenced paying benefits or have fixed a future date of the first benefit payment.

b. The commissioner's annuity reserve method, as set forth in s. 625.121(7)(c), for individual deferred annuities that have not fixed a date for the first benefit payment.

2. The mortality tables used to value individual annuities, as defined in s. 625.121(5).

a. For annuities issued prior to July 1, 1998:

(I) The mortality tables described in s. 625.121(5)(h), for individual annuities;

(II) At the option of the corporation or trust, the 1983 Individual Annuity Mortality Table; or

(III) At the option of the corporation or trust, the 2000 Individual Annuity Mortality Table for annuities issued between January 1, 1998, and June 30, 1998, inclusive.

b. For annuities issued on or after July 1, 1998:

(I) The mortality tables set forth in s. 625.121(5)(i)3.;

(II) Any other mortality tables required to be used by insurers in accordance with s. 625.121; or

(III) At the option of the corporation or trust, any other mortality tables authorized to be used by insurers in accordance with s. 625.121.

3. An interest rate not greater than the maximum interest rate permitted for the valuation of individual annuities issued during the same calendar year as the charitable gift annuity for individual annuities as set forth in s. 625.121(6)(b)-(f).

a. The maximum statutory valuation interest rates for single-premium immediate annuities for 1992 may be used for annuities issued in 1992 or any prior year. The maximum statutory valuation interest rates for single-premium immediate annuities issued in 1992 through 2001 are as follows:

Year of Issue	Single Premium Immediate Annuity Interest Rate
1992	7.75 percent
1993	7.00 percent
1994	6.50 percent
1995	7.25 percent
1996	6.75 percent
1997	6.75 percent
1998	6.25 percent
1999	6.25 percent
2000	7.00 percent
2001	6.75 percent

b. For 2002 and subsequent years, until an interest rate for a specified year can be determined in accordance with s. 625.121(6), the prior year's rate shall be used unless the office ~~department~~ requires use of a lower rate.

(4) Any corporation or trust that engages in the business of issuing these annuity agreements shall notify the office ~~department~~ in writing by the later of 90 days after the effective date of this act or the date on which it enters into the first of these annuity agreements. The notice must:

(a) Be signed by two or more officers or directors of the organization;

(b) Identify the organization; and

(c) Certify that the organization meets the requirements of this section.

(6) If the office ~~department~~ finds that any such corporation or trust has failed to comply with the requirements of this section, it may order such corporation or trust to cease making any new annuity agreements until such requirements have been satisfied. The office ~~department~~ may, in its discretion, require annual statements by such corporation or trust and may accept in lieu thereof a sworn statement by two or more of the principal officers thereof, in such form as will satisfy the office ~~department~~ that the requirements of this section are being complied with.

(11) The commission ~~department~~ shall adopt rules and forms for the filing of annual statements and agreements pertaining to donor annuity organizations.

Section 1134. Subsection (2) of section 627.482, Florida Statutes, is amended to read:

627.482 Interest payable on cash surrender of policy.—

(2) An insurer shall be exempt from the requirements of this section if, upon petition by the insurer to the office ~~department~~, it is determined by the office ~~department~~ that payment of such interest threatens the solvency of the insurer.

Section 1135. Subsection (2) of section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting.—

(2) Every life insurer transacting industrial life insurance shall report to the office ~~department~~ all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

Section 1136. Subsection (1) of section 627.503, Florida Statutes, is amended to read:

627.503 Required provisions.—

(1) No policy of industrial life insurance shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions

as required in s. 627.476 and ss. 627.504-627.521, or provisions which in the opinion of the office ~~department~~ are more favorable to the policyholder.

Section 1137. Subsection (2) of section 627.510, Florida Statutes, is amended to read:

627.510 Settlement on proof of death.—

(2) Insurers transacting industrial life insurance business in the state who require a claim form to be filed by a claimant for settlement of a policy shall allow the claimant to file the claim using the uniform life insurance claim form developed by the commission ~~department~~. The commission ~~department~~ shall establish by rule a uniform life insurance claim form to be used by claimants for settlement of any industrial life insurance policy issued by an insurer transacting life insurance business in this state.

Section 1138. Subsections (4) and (5) of section 627.5515, Florida Statutes, are amended to read:

627.5515 Out-of-state groups.—

(4) Prior to solicitation in this state, a copy of the master policy and a copy of the form of the certificate evidencing coverage that will be issued to residents of this state shall be filed with the office ~~department~~ for informational purposes.

(5) Prior to solicitation in this state, an officer of the insurer shall truthfully certify to the office ~~department~~ that the policy and certificates evidencing coverage have been reviewed and approved by the state in which the group policy is issued.

Section 1139. Subsection (2) of section 627.5565, Florida Statutes, is amended to read:

627.5565 Additional groups.—

(2) An insurer shall inform the office ~~department~~ of the effectuation of any coverage under this section within 30 days after effectuation of coverage. The insurer is responsible for establishing that the criteria of subsection (1) have been satisfied.

Section 1140. Section 627.558, Florida Statutes, is amended to read:

627.558 Provisions required in group contracts.—No policy of group life insurance shall be delivered in this state unless it contains in substance the provisions set forth in ss. 627.559-627.568 or provisions which in the opinion of the office ~~department~~ are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder; except that:

(1) Sections 627.564-627.568 inclusive do not apply to policies issued to a creditor to insure debtors of such creditor;

(2) The standard provisions required for individual life insurance policies do not apply to group life insurance policies; and

(3) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the office ~~department~~ is or are equitable to the insured persons and to the policyholder, but nothing in this section shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

Section 1141. Paragraph (g) of subsection (1) and subsection (2) of section 627.602, Florida Statutes, are amended to read:

627.602 Scope, format of policy.—

(1) Each health insurance policy delivered or issued for delivery to any person in this state must comply with all applicable provisions of this code and all of the following requirements:

(g) The policy may not contain any provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates, statement of classification of risks, or short-rate table filed with the office ~~department~~.

(2) The office ~~department~~ may require any health insurance policy or certificate containing a provision commonly known as a "deductible provision" to have printed or stamped on such policy or certificate: "This policy or certificate contains a deductible provision."; or appropriate words of similar import approved by the office ~~department~~. The statement shall appear on the first page of the policy or certificate in at least 18-point type and may be printed or stamped either as an overprint or by means of a rubber stamp impression.

Section 1142. Section 627.604, Florida Statutes, is amended to read:

627.604 Nonresident insured.—If any health insurance policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state has advised the office ~~department~~ that any such policy is not subject to approval or disapproval by such official, the commission ~~department~~ may by rule require that such policy meet the standards set forth in this part.

Section 1143. Section 627.605, Florida Statutes, is amended to read:

627.605 Required provisions; captions, omissions, substitutions.—

(1) Except as provided in subsection (2), each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in ss. 627.606-627.617, inclusive, in the words in which the same appear; except that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the office ~~department~~ which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded individually by the applicable caption shown or, at the option of the

insurer, by such appropriate individual or group captions or subcaptions as the office ~~department~~ may approve.

(2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the office ~~department~~, shall omit from such policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

Section 1144. Subsection (14) of section 627.6131, Florida Statutes, is amended to read:

627.6131 Payment of claims.—

(14) A permissible error ratio of 5 percent is established for insurer's claims payment violations of paragraphs (4)(a), (b), (c), and (e) and (5)(a), (b), (c), and (e). If the error ratio of a particular insurer does not exceed the permissible error ratio of 5 percent for an audit period, no fine shall be assessed for the noted claims violations for the audit period. The error ratio shall be determined by dividing the number of claims with violations found on a statistically valid sample of claims for the audit period by the total number of claims in the sample. If the error ratio exceeds the permissible error ratio of 5 percent, a fine may be assessed according to s. 624.4211 for those claims payment violations which exceed the error ratio. Notwithstanding the provisions of this section, the office ~~department~~ may fine a health insurer for claims payment violations of paragraphs (4)(e) and (5)(e) which create an uncontestable obligation to pay the claim. The office ~~department~~ shall not fine insurers for violations which the office ~~department~~ determines were due to circumstances beyond the insurer's control.

Section 1145. Section 627.618, Florida Statutes, is amended to read:

627.618 Optional policy provisions.—Except as provided in s. 627.605(2), no health insurance policy delivered or issued for delivery to any person in this state shall contain any provision respecting the matters set forth in ss. 627.619-627.629, inclusive, unless such provision is in the words in which the same appears in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the office ~~department~~ which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the office ~~department~~ may approve.

Section 1146. Subsection (2) of section 627.622, Florida Statutes, is amended to read:

627.622 Insurance with other insurers.—

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in s. 627.623, there shall be added to

the caption of the foregoing provision the phrase: "—Expense-incurred Benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the office ~~department~~, which definition shall be limited to coverage provided by organizations subject to regulation by the insurance law of any jurisdiction. In the absence of such definition, such term does not include group insurance, automobile medical payments insurance, or coverage provided by health care services plans or by union welfare plans or employer or employee benefit organizations. Any benefit provided for an insured pursuant to any compulsory benefit statute shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision, no third-party liability coverage shall be included as "other valid coverage."

Section 1147. Subsection (2) of section 627.623, Florida Statutes, Florida Statutes, Florida Statutes, is amended to read:

627.623 Insurance with other insurers; other benefits.—

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in s. 627.622, there shall be added to the caption of the foregoing provision the phrase: "—Other Benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the office ~~department~~, which definition shall be limited to coverage provided by organizations subject to regulation by the insurance law of any jurisdiction. In the absence of such definition, such term does not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. Any benefit provided for an insured pursuant to any compulsory benefit statute shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision, no third-party liability coverage shall be included as "other valid coverage."

Section 1148. Subsection (2) of section 627.624, Florida Statutes, is amended to read:

627.624 Relation of earnings to insurance.—

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss-of-time coverage," approved as to form by the office ~~department~~, which definition shall be limited to coverage provided by governmental agencies or by organizations subject to regulation by insurance law, or any combination of such coverages. In the absence of such definition, such term does not include any coverage provided for such insured pursuant to any compulsory benefit statute or benefits provided by union welfare plans or by employer or employee benefit organizations.

Section 1149. Subsection (2) of section 627.635, Florida Statutes, is amended to read:

627.635 Excess insurance.—

(2) Any excess insurance policy, or any policy containing any excess insurance provision, shall have imprinted or stamped conspicuously upon the face thereof the designation "excess insurance" or appropriate words of similar import approved by the office ~~department~~.

Section 1150. Section 627.640, Florida Statutes, is amended to read:

627.640 Filing of classifications and rates.—An insurer shall not deliver or issue for delivery in this state any health insurance policy until it has filed with the office ~~department~~ a copy of any applicable classification of risks and premium rates.

Section 1151. Paragraph (b) of subsection (3) of section 627.6425, Florida Statutes, is amended to read:

627.6425 Renewability of individual coverage.—

(3)

(b)1. Subject to subparagraph (a)3., in any case in which an insurer elects to discontinue offering all health insurance coverage in the individual market in this state, health insurance coverage may be discontinued by the insurer only if:

a. The insurer provides notice to the office ~~department~~ and to each individual of such discontinuation at least 180 days prior to the date of the nonrenewal of such coverage; and

b. All health insurance issued or delivered for issuance in the state in the individual market is discontinued and coverage under such health insurance coverage in such market is not renewed.

2. In the case of a discontinuation under subparagraph 1. in the individual market, the insurer may not provide for the issuance of any individual health insurance coverage in this state during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

Section 1152. Section 627.643, Florida Statutes, is amended to read:

627.643 Uniform minimum standards.—

(1) The commission ~~department~~ shall adopt rules which establish minimum standards for the general content of forms of individual and family health insurance policies. The rules must include terms of renewability, initial and subsequent conditions of eligibility, termination of insurance, probationary periods, exclusions, limitations, and reductions. The minimum standards are in addition to, and must comply with, the individual health insurance policy provisions provided in part II and in this part.

(2) The commission ~~department~~ shall adopt rules which establish minimum standards of benefits and identification for each of the following cate-

gories of coverage in individual and family accident and health insurance policy forms, other than conversion policy forms:

(a) Basic hospital expense insurance.

(b) Basic medical expense insurance.

(c) Basic surgical expense insurance.

(d) Hospital confinement indemnity insurance.

(e) Major medical expense insurance.

(f) Disability income protection insurance.

(g) Accident-only insurance.

(h) Limited benefit insurance.

(i) Supplemental insurance.

(j) Home health care coverage.

(k) Nonconventional coverage.

This subsection does not preclude the issuance of a policy which combines two or more of the categories of coverage enumerated in paragraphs (a)-(e). This subsection does not preclude the issuance of a policy that does not meet the prescribed minimum standards for categories of coverage in paragraphs (a)-(g) if the office ~~department~~ determines that the policy is either experimental in nature or is demonstrated to be a type of coverage that fulfills a reasonable need of the person or persons to be insured. Any policy not meeting the minimum standards that is approved by the office ~~department~~ must be identified as to category only as prescribed by the office ~~department~~.

(3) The office ~~department~~ may, within the time provided by law for the disapproval of an individual or family form of accident or health insurance, disapprove any form if it finds that the form does not comply with applicable law or it finds that the form is unjust, unfair, or inequitable to the policyholder, any insured, or any beneficiary. In acting upon any submission, the office ~~department~~ shall consider whether the benefits afforded under the submitted policy or benefit form fulfill a reasonable need of a policyholder.

Section 1153. Subsection (1) of section 627.647, Florida Statutes, is amended to read:

627.647 Standard health claim form.—

(1) The commission ~~department~~ shall prescribe a standard health claim form to be used by all hospitals and a standard health claim form to be used by all physicians, dentists, and pharmacists. Such forms shall be in a format that allows for the use of generally accepted coding systems by providers in order to facilitate the processing of claims. Such forms shall provide for the disclosure by the claimant of the name, policy number, and address of every

insurance policy which may cover the claimant with respect to the submitted claim except those policies specified in s. 627.4235(5). The required information on diagnosis, dental procedures, medical procedures, services, date of service, supplies, and fees may also be met by an attachment to the appropriate physician claim form. However, for the purpose of filing Medicaid claims, such attachments shall be prohibited. Such standard health claim forms shall be accepted by all insurers and all agencies, departments, and divisions of the state.

Section 1154. Paragraph (c) of subsection (14) of section 627.6472, Florida Statutes, is amended to read:

627.6472 Exclusive provider organizations.—

(14)

(c) The failure of the insurer to pay the assessment within the time specified in s. 641.58 constitutes grounds for suspension or revocation of the insurer's certificate of authority by the office ~~Department of Insurance~~.

Section 1155. Paragraphs (a) and (b) of subsection (5), subsection (6), paragraphs (b), (c), (e), and (g) of subsection (7), and subsection (9) of section 627.6475, Florida Statutes, are amended to read:

627.6475 Individual reinsurance pool.—

(5) ISSUER'S ELECTION TO BECOME A RISK-ASSUMING CARRIER.—

(a) Each health insurance issuer that offers individual health insurance must elect to become a risk-assuming carrier or a reinsuring carrier for purposes of this section. Each such issuer must make an initial election, binding through December 31, 1999. The issuer's initial election must be made no later than October 31, 1997. By October 31, 1997, all issuers must file a final election, which is binding for 2 years, from January 1, 1998, through December 31, 1999, after which an election shall be binding for a period of 5 years. The office ~~department~~ may permit an issuer to modify its election at any time for good cause shown, after a hearing.

(b) The office ~~department~~ shall establish an application process for issuers seeking to change their status under this subsection.

(6) ELECTION PROCESS TO BECOME A RISK-ASSUMING CARRIER.—

(a)1. A health insurance issuer that offers individual health insurance may become a risk-assuming carrier by filing with the office ~~department~~ a designation of election under this subsection in a format and manner prescribed by the commission ~~department~~. The office ~~department~~ shall approve the election of a health insurance issuer to become a risk-assuming carrier if the office ~~department~~ finds that the issuer is capable of assuming that status pursuant to the criteria set forth in paragraph (b).

2. The office ~~department~~ must approve or disapprove any designation as a risk-assuming carrier within 60 days after a filing.

(b) In determining whether to approve an application by an issuer to become a risk-assuming carrier, the office ~~department~~ shall consider:

1. The issuer's financial ability to support the assumption of the risk of individuals.

2. The issuer's history of rating and underwriting individuals.

3. The issuer's commitment to market fairly to all individuals in the state or its service area, as applicable.

4. The issuer's ability to assume and manage the risk of enrolling individuals without the protection of the reinsurance program provided in subsection (7).

(c) The office ~~department~~ shall provide public notice of an issuer's designation of election under this subsection to become a risk-assuming carrier and shall provide at least a 21-day period for public comment prior to making a decision on the election. The office ~~department~~ shall hold a hearing on the election at the request of the issuer.

(d) The office ~~department~~ may rescind the approval granted to a risk-assuming carrier under this subsection if the office ~~department~~ finds that the carrier no longer meets the criteria of paragraph (b).

(7) INDIVIDUAL HEALTH REINSURANCE PROGRAM.—

(b) A reinsuring carrier may reinsure with the program coverage of an eligible individual, subject to each of the following provisions:

1. A reinsuring carrier may reinsure an eligible individual within 60 days after commencement of the coverage of the eligible individual.

2. The program may not reimburse a participating carrier with respect to the claims of a reinsured eligible individual until the carrier has paid incurred claims of at least $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 10 percent of the next $50,000 and 5 percent of the next $100,000 of incurred claims during a calendar year, and the program shall reinsure the remainder.

3. The board shall annually adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the "Commerce Price Index for All Urban Consumers" of the Bureau of Labor Statistics of the United States Department of Labor, unless the board proposes and the office ~~department~~ approves a lower adjustment factor.

4. A reinsuring carrier may terminate reinsurance for all reinsured eligible individuals on any plan anniversary.

5. The premium rate charged for reinsurance by the program to a health maintenance organization that is approved by the Secretary of Health and Human Services as a federally qualified health maintenance organization pursuant to 42 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to requirements that limit the amount of risk that may be ceded to the program, which requirements are more restrictive than subparagraph 2., shall be reduced by an amount equal to that portion of the risk, if any, which exceeds the amount set forth in subparagraph 2., which may not be ceded to the program.

6. The board may consider adjustments to the premium rates charged for reinsurance by the program or carriers that use effective cost-containment measures, including high-cost case management, as defined by the board.

7. A reinsuring carrier shall apply its case-management and claims-handling techniques, including, but not limited to, utilization review, individual case management, preferred provider provisions, other managed-care provisions, or methods of operation consistently with both reinsured business and nonreinsured business.

(c)1. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring eligible individuals pursuant to this section. The methodology must include a system for classifying individuals which reflects the types of case characteristics commonly used by carriers in this state. The methodology must provide for the development of basic reinsurance premium rates, which shall be multiplied by the factors set for them in this paragraph to determine the premium rates for the program. The basic reinsurance premium rates shall be established by the board, subject to the approval of the office ~~department~~, and shall be set at levels that reasonably approximate gross premiums charged to eligible individuals for individual health insurance by health insurance issuers. The premium rates set by the board may vary by geographical area, as determined under this section, to reflect differences in cost. An eligible individual may be reinsured for a rate that is five times the rate established by the board.

2. The board shall periodically review the methodology established, including the system of classification and any rating factors, to ensure that it reasonably reflects the claims experience of the program. The board may propose changes to the rates that are subject to the approval of the office ~~department~~.

(e)1. Before March 1 of each calendar year, the board shall determine and report to the office ~~department~~ the program net loss in the individual account for the previous year, including administrative expenses for that year and the incurred losses for that year, taking into account investment income and other appropriate gains and losses.

2. Any net loss in the individual account for the year shall be recouped by assessing the carriers as follows:

a. The operating losses of the program shall be assessed in the following order subject to the specified limitations. The first tier of assessments shall

be made against reinsuring carriers in an amount that may not exceed 5 percent of each reinsuring carrier's premiums for individual health insurance. If such assessments have been collected and additional moneys are needed, the board shall make a second tier of assessments in an amount that may not exceed 0.5 percent of each carrier's health benefit plan premiums.

b. Except as provided in paragraph (f), risk-assuming carriers are exempt from all assessments authorized pursuant to this section. The amount paid by a reinsuring carrier for the first tier of assessments shall be credited against any additional assessments made.

c. The board shall equitably assess reinsuring carriers for operating losses of the individual account based on market share. The board shall annually assess each carrier a portion of the operating losses of the individual account. The first tier of assessments shall be determined by multiplying the operating losses by a fraction, the numerator of which equals the reinsuring carrier's earned premium pertaining to direct writings of individual health insurance in the state during the calendar year for which the assessment is levied, and the denominator of which equals the total of all such premiums earned by reinsuring carriers in the state during that calendar year. The second tier of assessments shall be based on the premiums that all carriers, except risk-assuming carriers, earned on all health benefit plans written in this state. The board may levy interim assessments against reinsuring carriers to ensure the financial ability of the plan to cover claims expenses and administrative expenses paid or estimated to be paid in the operation of the plan for the calendar year prior to the association's anticipated receipt of annual assessments for that calendar year. Any interim assessment is due and payable within 30 days after receipt by a carrier of the interim assessment notice. Interim assessment payments shall be credited against the carrier's annual assessment. Health benefit plan premiums and benefits paid by a carrier that are less than an amount determined by the board to justify the cost of collection may not be considered for purposes of determining assessments.

d. Subject to the approval of the office ~~department~~, the board shall adjust the assessment formula for reinsuring carriers that are approved as federally qualified health maintenance organizations by the Secretary of Health and Human Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the extent, if any, that restrictions are placed on them which are not imposed on other carriers.

3. Before March 1 of each year, the board shall determine and file with the office ~~department~~ an estimate of the assessments needed to fund the losses incurred by the program in the individual account for the previous calendar year.

4. If the board determines that the assessments needed to fund the losses incurred by the program in the individual account for the previous calendar year will exceed the amount specified in subparagraph 2., the board shall evaluate the operation of the program and report its findings and recommendations to the office ~~department~~ in the format established in s. 627.6699(11) for the comparable report for the small employer reinsurance program.

(g) Except as otherwise provided in this section, the board and the office ~~department~~ shall have all powers, duties, and responsibilities with respect to carriers that issue and reinsure individual health insurance, as specified for the board and the office ~~department~~ in s. 627.6699(11) with respect to small employer carriers, including, but not limited to, the provisions of s. 627.6699(11) relating to:

1. Use of assessments that exceed the amount of actual losses and expenses.

2. The annual determination of each carrier's proportion of the assessment.

3. Interest for late payment of assessments.

4. Authority for the office ~~department~~ to approve deferment of an assessment against a carrier.

5. Limited immunity from legal actions or carriers.

6. Development of standards for compensation to be paid to agents. Such standards shall be limited to those specifically enumerated in s. 627.6699(13)(d).

7. Monitoring compliance by carriers with this section.

(9) RULEMAKING AUTHORITY.—The commission ~~department~~ may adopt rules to administer this section, including rules governing compliance by carriers.

Section 1156. Subsections (11) and (12) of section 627.6482, Florida Statutes, are amended to read:

627.6482 Definitions.—As used in ss. 627.648-627.6498, the term:

(11) "Plan" means the comprehensive health insurance plan adopted by the association or by rule of the commission ~~Department of Insurance~~.

(12) "Premium" means the entire cost of an insurance plan, including the administrative fee, the risk assumption charge, and, in the instance of a minimum premium plan or stop-loss coverage, the incurred claims whether or not such claims are paid directly by the insurer. "Premium" shall not include a health maintenance organization's annual earned premium revenue for Medicare and Medicaid contracts for any assessment due for calendar years 1990 and 1991. For assessments due for calendar year 1992 and subsequent years, a health maintenance organization's annual earned premium revenue for Medicare and Medicaid contracts is subject to assessments unless the office ~~department~~ determines that the health maintenance organization has made a reasonable effort to amend its Medicare or Medicaid government contract for 1992 and subsequent years to provide reimbursement for any assessment on Medicare or Medicaid premiums paid by the health maintenance organization and the contract does not provide for such reimbursement.

Section 1157. Subsections (1) and (2) of section 627.6484, Florida Statutes, are amended to read:

627.6484 Termination of enrollment; availability of other coverage.—

(1) The association shall accept applications for insurance only until June 30, 1991, after which date no further applications may be accepted. Upon receipt of an application for insurance, the association shall issue coverage for an eligible applicant. When appropriate, the administrator shall forward a copy of the application to a market assistance plan created by the office ~~department~~, which shall conduct a diligent search of the private marketplace for a carrier willing to accept the application.

(2) The office ~~department~~ shall, after consultation with the health insurers licensed in this state, adopt a market assistance plan to assist in the placement of risks of Florida Comprehensive Health Association applicants. All health insurers and health maintenance organizations licensed in this state shall participate in the plan.

Section 1158. Paragraph (b) of subsection (4), paragraph (a) of subsection (5), and subsection (6) of section 627.6487, Florida Statutes, are amended to read:

627.6487 Guaranteed availability of individual health insurance coverage to eligible individuals.—

(4)

(b) The requirement of this subsection is met for health insurance coverage policy forms offered by an issuer in the individual market if the issuer offers the policy forms for individual health insurance coverage with the largest, and next to largest, premium volume of all such policy forms offered by the issuer in this state or applicable marketing or service area, as prescribed in rules adopted by the commission ~~department~~, in the individual market in the period involved. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(5)(a) In the case of a health insurance issuer that offers individual health insurance coverage through a network plan, the issuer may:

1. Limit the individuals who may be enrolled under such coverage to those who live, reside, or work within the service area for such network plan; and

2. Within the service area of such plan, deny such coverage to such individuals if the issuer has demonstrated to the office ~~department~~ that:

a. It will not have the capacity to deliver services adequately to additional individual enrollees because of its obligations to existing group contract holders and enrollees and individual enrollees; and

b. It is applying this paragraph uniformly to individuals without regard to any health-status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(6)(a) A health insurance issuer may deny individual health insurance coverage to an eligible individual if the issuer has demonstrated to the office ~~department~~ that:

1. It does not have the financial reserves necessary to underwrite additional coverage; and

2. It is applying this paragraph uniformly to all individuals in the individual market in this state consistent with the laws of this state and without regard to any health-status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(b) An issuer, upon denying individual health insurance coverage in any service area in accordance with paragraph (a), may not offer such coverage in the individual market within such service area for a period of 180 days after the date such coverage is denied or until the issuer has demonstrated to the office ~~department~~ that the issuer has sufficient financial reserves to underwrite additional coverage, whichever occurs later.

Section 1159. Paragraphs (a) and (e) of subsection (2), subsection (3), paragraphs (e), (j), and (k) of subsection (4), and subsection (6) of section 627.6488, Florida Statutes, are amended to read:

627.6488 Florida Comprehensive Health Association.—

(2)(a) The association shall operate subject to the supervision and approval of a three-member board of directors. The board of directors shall be appointed by the Chief Financial Officer ~~Insurance Commissioner~~ as follows:

1. The chair of the board shall be the Chief Financial Officer ~~Insurance Commissioner~~ or his or her designee.

2. One representative of policyholders who is not associated with the medical profession, a hospital, or an insurer.

3. One representative of insurers.

The administrator or his or her affiliate shall not be a member of the board. Any board member appointed by the Chief Financial Officer ~~commissioner~~ may be removed and replaced by him or her at any time without cause.

(e) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, or its agents or employees, agents or employees of the association, members of the board of directors of the association, or the Chief Financial Officer's ~~departmental~~ representatives for any act or omission taken by them in the performance of their powers and duties under this act, unless such act or omission by such person is in intentional disregard of the rights of the claimant.

(3) The association shall adopt a plan pursuant to this act and submit its articles, bylaws, and operating rules to the office ~~department~~ for approval. If the association fails to adopt such plan and suitable articles, bylaws, and

operating rules within 180 days after the appointment of the board, the commission ~~department~~ shall adopt rules to effectuate the provisions of this act; and such rules shall remain in effect until superseded by a plan and articles, bylaws, and operating rules submitted by the association and approved by the office ~~department~~.

(4) The association shall:

(e) Require that all policy forms issued by the association conform to standard forms developed by the association. The forms shall be approved by the office ~~department~~.

(j) Make a report to the Governor, the office ~~Insurance Commissioner~~, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and House of Representatives, not later than 45 days after the close of each calendar quarter, which includes, for the prior quarter, current data and estimates of net written and earned premiums, the expenses of administration, and the paid and incurred losses. The report shall identify any statutorily mandated program that has not been fully implemented by the board.

(k) To facilitate preparation of assessments and for other purposes, the board shall direct preparation of annual audited financial statements for each calendar year as soon as feasible following the conclusion of that calendar year, and shall, within 30 days after rendition of such statements, file with the office ~~department~~ the annual report containing such information as required by the office ~~department~~ to be filed on March 1 of each year.

(6) The office ~~department~~ shall examine and investigate the association in the manner provided in part II of chapter 624.

Section 1160. Paragraph (f) of subsection (3) of section 627.649, Florida Statutes, is amended to read:

627.649 Administrator.—

(3) The administrator shall:

(f) Following the close of each calendar year, determine net premiums, reinsurance premiums less administrative expense allowance, the expense of administration pertaining to the reinsurance operations of the association, and the incurred losses of the year and report this information to the association and the office ~~department~~.

Section 1161. Subsection (2) of section 627.6494, Florida Statutes, is amended to read:

627.6494 Assessments; deferment, limitation.—

(2) The association, upon approval of the office ~~department~~, may abate or defer, in whole or in part, the assessment of a participating insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the participating insurer to fulfill its contractual obligations. In the

event that an assessment against a participating insurer is abated or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other participating insurers in a manner consistent with the basis for assessments set forth in s. 627.6492; and the insurer receiving such abatement or deferment shall remain liable to the association for the deficiency for 4 years.

Section 1162. Paragraph (a) of subsection (4) of section 627.6498, Florida Statutes, is amended to read:

627.6498 Minimum benefits coverage; exclusions; premiums; deductibles.—

(4) PREMIUMS, DEDUCTIBLES, AND COINSURANCE.—

(a) The plan shall provide for annual deductibles for major medical expense coverage in the amount of $1,000 or any higher amounts proposed by the board and approved by the office ~~department~~, plus the benefits payable under any other type of insurance coverage or workers' compensation. The schedule of premiums and deductibles shall be established by the association. With regard to any preferred provider arrangement utilized by the association, the deductibles provided in this paragraph shall be the minimum deductibles applicable to the preferred providers and higher deductibles, as approved by the office ~~department~~, may be applied to providers who are not preferred providers.

1. Separate schedules of premium rates based on age may apply for individual risks.

2. Rates are subject to approval by the office ~~department~~.

3. Standard risk rates for coverages issued by the association shall be established by the office ~~department~~, pursuant to s. 627.6675(3).

4. The board shall establish separate premium schedules for low-risk individuals, medium-risk individuals, and high-risk individuals and shall revise premium schedules annually beginning January 1999. No rate shall exceed 200 percent of the standard risk rate for low-risk individuals, 225 percent of the standard risk rate for medium-risk individuals, or 250 percent of the standard risk rate for high-risk individuals. For the purpose of determining what constitutes a low-risk individual, medium-risk individual, or high-risk individual, the board shall consider the anticipated claims payment for individuals based upon an individual's health condition.

Section 1163. Section 627.6499, Florida Statutes, is amended to read:

627.6499 Reporting by insurers and third-party administrators.—The office ~~department~~ may require any insurer, third-party administrator, or service company to report any information reasonably required to assist the board in assessing insurers as required by this act.

Section 1164. Subsections (4) and (5) of section 627.6515, Florida Statutes, are amended to read:

627.6515 Out-of-state groups.—

(4) Prior to solicitation in this state, a copy of the master policy and a copy of the form of the certificate evidencing coverage that will be issued to residents of this state shall be filed with the office ~~department~~ for informational purposes.

(5) Prior to solicitation in this state, an officer of the insurer shall truthfully certify to the office ~~department~~ that the policy and certificates evidencing coverage have been reviewed and approved by the state in which the group policy is issued.

Section 1165. Paragraphs (a), (b), and (c) of subsection (5), paragraph (b) of subsection (7), paragraphs (a) and (e) of subsection (8), and paragraph (b) of subsection (9) of section 627.6561, Florida Statutes, are amended to read:

627.6561 Preexisting conditions.—

(5)(a) The term, "creditable coverage," means, with respect to an individual, coverage of the individual under any of the following:

1. A group health plan, as defined in s. 2791 of the Public Health Service Act.

2. Health insurance coverage consisting of medical care, provided directly, through insurance or reimbursement, or otherwise and including terms and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance contract offered by a health insurance issuer.

3. Part A or part B of Title XVIII of the Social Security Act.

4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under s. 1928.

5. Chapter 55 of Title 10, United States Code.

6. A medical care program of the Indian Health Service or of a tribal organization.

7. The Florida Comprehensive Health Association or another state health benefit risk pool.

8. A health plan offered under chapter 89 of Title 5, United States Code.

9. A public health plan as defined by rules adopted by the commission ~~department~~. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

10. A health benefit plan under s. 5(e) of the Peace Corps Act (22 U.S.C. s. 2504(e)).

(b) Creditable coverage does not include coverage that consists solely of one or more or any combination thereof of the following excepted benefits:

1. Coverage only for accident, or disability income insurance, or any combination thereof.

2. Coverage issued as a supplement to liability insurance.

3. Liability insurance, including general liability insurance and automobile liability insurance.

4. Workers' compensation or similar insurance.

5. Automobile medical payment insurance.

6. Credit-only insurance.

7. Coverage for on-site medical clinics, including prepaid health clinics under part II of chapter 641.

8. Other similar insurance coverage, specified in rules adopted by the commission ~~department~~, under which benefits for medical care are secondary or incidental to other insurance benefits. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(c) The following benefits are not subject to the creditable coverage requirements, if offered separately:

1. Limited scope dental or vision benefits.

2. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

3. Such other similar, limited benefits as are specified in rules adopted by the commission ~~department~~.

(7)

(b) An insurer may elect to count, as creditable coverage, coverage of benefits within each of several classes or categories of benefits specified in rules adopted by the commission ~~department~~ rather than as provided under paragraph (a). To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services. Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election, an insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.

(8)(a) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in this subsection or in such other manner as is specified in rules adopted by the commission ~~department~~. To the extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(e) The commission ~~department~~ shall adopt rules to prevent an insurer's failure to provide information under this subsection with respect to previous

coverage of an individual from adversely affecting any subsequent coverage of the individual under another group health plan or health insurance coverage. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(9)

(b) The commission ~~department~~ shall adopt rules that provide a process whereby individuals who need to establish creditable coverage for periods before July 1, 1996, and who would have such coverage credited but for paragraph (a), may be given credit for creditable coverage for such periods through the presentation of documents or other means. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

Section 1166. Paragraph (b) of subsection (3) of section 627.6571, Florida Statutes, is amended to read:

627.6571 Guaranteed renewability of coverage.—

(3)

(b)1. In any case in which an insurer elects to discontinue offering all health insurance coverage in the small-group market or the large-group market, or both, in this state, health insurance coverage may be discontinued by the insurer only if:

a. The insurer provides notice to the office ~~department~~ and to each policyholder, and participants and beneficiaries covered under such coverage, of such discontinuation at least 180 days prior to the date of the nonrenewal of such coverage; and

b. All health insurance issued or delivered for issuance in this state in such market is discontinued and coverage under such health insurance coverage in such market is not renewed.

2. In the case of a discontinuation under subparagraph 1. in a market, the insurer may not provide for the issuance of any health insurance coverage in the market in this state during the 5-year period beginning on the date of the discontinuation of the last insurance coverage not renewed.

Section 1167. Section 627.6675, Florida Statutes, is amended to read:

627.6675 Conversion on termination of eligibility.—Subject to all of the provisions of this section, a group policy delivered or issued for delivery in this state by an insurer or nonprofit health care services plan that provides, on an expense-incurred basis, hospital, surgical, or major medical expense insurance, or any combination of these coverages, shall provide that an employee or member whose insurance under the group policy has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and under any group policy providing

similar benefits that the terminated group policy replaced, for at least 3 months immediately prior to termination, shall be entitled to have issued to him or her by the insurer a policy or certificate of health insurance, referred to in this section as a "converted policy." A group insurer may meet the requirements of this section by contracting with another insurer, authorized in this state, to issue an individual converted policy, which policy has been approved by the office ~~department~~ under s. 627.410. An employee or member shall not be entitled to a converted policy if termination of his or her insurance under the group policy occurred because he or she failed to pay any required contribution, or because any discontinued group coverage was replaced by similar group coverage within 31 days after discontinuance.

(1) TIME LIMIT.—Written application for the converted policy shall be made and the first premium must be paid to the insurer, not later than 63 days after termination of the group policy. However, if termination was the result of failure to pay any required premium or contribution and such nonpayment of premium was due to acts of an employer or policyholder other than the employee or certificateholder, written application for the converted policy must be made and the first premium must be paid to the insurer not later than 63 days after notice of termination is mailed by the insurer or the employer, whichever is earlier, to the employee's or certificateholder's last address as shown by the record of the insurer or the employer, whichever is applicable. In such case of termination due to nonpayment of premium by the employer or policyholder, the premium for the converted policy may not exceed the rate for the prior group coverage for the period of coverage under the converted policy prior to the date notice of termination is mailed to the employee or certificateholder. For the period of coverage after such date, the premium for the converted policy is subject to the requirements of subsection (3).

(2) EVIDENCE OF INSURABILITY.—The converted policy shall be issued without evidence of insurability.

(3) CONVERSION PREMIUM; EFFECT ON PREMIUM RATES FOR GROUP COVERAGE.—

(a) The premium for the converted policy shall be determined in accordance with premium rates applicable to the age and class of risk of each person to be covered under the converted policy and to the type and amount of insurance provided. However, the premium for the converted policy may not exceed 200 percent of the standard risk rate as established by the office ~~department~~, pursuant to this subsection.

(b) Actual or expected experience under converted policies may be combined with such experience under group policies for the purposes of determining premium and loss experience and establishing premium rate levels for group coverage.

(c) The office ~~department~~ shall annually determine standard risk rates, using reasonable actuarial techniques and standards adopted by the commission ~~department~~ by rule. The standard risk rates must be determined as follows:

1. Standard risk rates for individual coverage must be determined separately for indemnity policies, preferred provider/exclusive provider policies, and health maintenance organization contracts.

2. The office ~~department~~ shall survey insurers and health maintenance organizations representing at least an 80 percent market share, based on premiums earned in the state for the most recent calendar year, for each of the categories specified in subparagraph 1.

3. Standard risk rate schedules must be determined, computed as the average rates charged by the carriers surveyed, giving appropriate weight to each carrier's statewide market share of earned premiums.

4. The rate schedule shall be determined from analysis of the one county with the largest market share in the state of all such carriers.

5. The rate for other counties must be determined by using the weighted average of each carrier's county factor relationship to the county determined in subparagraph 4.

6. The rate schedule must be determined for different age brackets and family size brackets.

(4) EFFECTIVE DATE OF COVERAGE.—The effective date of the converted policy shall be the day following the termination of insurance under the group policy.

(5) SCOPE OF COVERAGE.—The converted policy shall cover the employee or member and his or her dependents who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent.

(6) OPTIONAL COVERAGE.—The insurer shall not be required to issue a converted policy covering any person who is or could be covered by Medicare. The insurer shall not be required to issue a converted policy covering a person if paragraphs (a) and (b) apply to the person:

(a) If any of the following apply to the person:

1. The person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan, or by any other plan or program.

2. The person is eligible for similar benefits, whether or not actually provided coverage, under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis.

3. Similar benefits are provided for or are available to the person under any state or federal law.

(b) If the benefits provided under the sources referred to in subparagraph (a)1. or the benefits provided or available under the sources referred to in

subparagraphs (a)2. and 3., together with the benefits provided by the converted policy, would result in overinsurance according to the insurer's standards. The insurer's standards must bear some reasonable relationship to actual health care costs in the area in which the insured lives at the time of conversion and must be filed with the office ~~department~~ prior to their use in denying coverage.

(7) INFORMATION REQUESTED BY INSURER.—

(a) A converted policy may include a provision under which the insurer may request information, in advance of any premium due date, of any person covered thereunder as to whether:

1. The person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program.

2. The person is covered for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis.

3. Similar benefits are provided for or are available to the person under any state or federal law.

(b) The converted policy may provide that the insurer may refuse to renew the policy or the coverage of any person only for one or more of the following reasons:

1. Either the benefits provided under the sources referred to in subparagraphs (a)1. and 2. for the person or the benefits provided or available under the sources referred to in subparagraph (a)3. for the person, together with the benefits provided by the converted policy, would result in overinsurance according to the insurer's standards on file with the office ~~department~~.

2. The converted policyholder fails to provide the information requested pursuant to paragraph (a).

3. Fraud or intentional misrepresentation in applying for any benefits under the converted policy.

4. Other reasons approved by the office ~~department~~.

(8) BENEFITS OFFERED.—

(a) An insurer shall not be required to issue a converted policy that provides benefits in excess of those provided under the group policy from which conversion is made.

(b) An insurer shall offer the benefits specified in s. 627.668 and the benefits specified in s. 627.669 if those benefits were provided in the group plan.

(c) An insurer shall offer maternity benefits and dental benefits if those benefits were provided in the group plan.

(9) PREEXISTING CONDITION PROVISION.—The converted policy shall not exclude a preexisting condition not excluded by the group policy. However, the converted policy may provide that any hospital, surgical, or medical benefits payable under the converted policy may be reduced by the amount of any such benefits payable under the group policy after the termination of coverage ~~covered~~ under the group policy. The converted policy may also provide that during the first policy year the benefits payable under the converted policy, together with the benefits payable under the group policy, shall not exceed those that would have been payable had the individual's insurance under the group policy remained in force.

(10) REQUIRED OPTION FOR MAJOR MEDICAL COVERAGE.—Subject to the provisions and conditions of this part, the employee or member shall be entitled to obtain a converted policy providing major medical coverage under a plan meeting the following requirements:

(a) A maximum benefit equal to the lesser of the policy limit of the group policy from which the individual converted or $500,000 per covered person for all covered medical expenses incurred during the covered person's lifetime.

(b) Payment of benefits at the rate of 80 percent of covered medical expenses which are in excess of the deductible, until 20 percent of such expenses in a benefit period reaches $2,000, after which benefits will be paid at the rate of 90 percent during the remainder of the contract year unless the insured is in the insurer's case management program, in which case benefits shall be paid at the rate of 100 percent during the remainder of the contract year. For the purposes of this paragraph, "case management program" means the specific supervision and management of the medical care provided or prescribed for a specific individual, which may include the use of health care providers designated by the insurer. Payment of benefits for outpatient treatment of mental illness, if provided in the converted policy, may be at a lesser rate but not less than 50 percent.

(c) A deductible for each calendar year that must be $500, $1,000, or $2,000, at the option of the policyholder.

(d) The term "covered medical expenses," as used in this subsection, shall be consistent with those customarily offered by the insurer under group or individual health insurance policies but is not required to be identical to the covered medical expenses provided in the group policy from which the individual converted.

(11) ALTERNATIVE PLANS.—The insurer shall, in addition to the option required by subsection (10), offer the standard health benefit plan, as established pursuant to s. 627.6699(12). The insurer may, at its option, also offer alternative plans for group health conversion in addition to the plans required by this section.

(12) RETIREMENT COVERAGE.—If coverage would be continued under the group policy on an employee following the employee's retirement prior to the time he or she is or could be covered by Medicare, the employee may elect, instead of such continuation of group insurance, to have the same

conversion rights as would apply had his or her insurance terminated at retirement by reason or termination of employment or membership.

(13) REDUCTION OF COVERAGE DUE TO MEDICARE.—The converted policy may provide for reduction of coverage on any person upon his or her eligibility for coverage under Medicare or under any other state or federal law providing for benefits similar to those provided by the converted policy.

(14) CONVERSION PRIVILEGE ALLOWED.—The conversion privilege shall also be available to any of the following:

(a) The surviving spouse, if any, at the death of the employee or member, with respect to the spouse and the children whose coverages under the group policy terminate by reason of the death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or, if the group policy provides for continuation of dependents' coverages following the employee's or member's death, at the end of such continuation.

(b) The former spouse whose coverage would otherwise terminate because of annulment or dissolution of marriage, if the former spouse is dependent for financial support.

(c) The spouse of the employee or member upon termination of coverage of the spouse, while the employee or member remains insured under the group policy, by reason of ceasing to be a qualified family member under the group policy, with respect to the spouse and the children whose coverages under the group policy terminate at the same time.

(d) A child solely with respect to himself or herself upon termination of his or her coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided in this subsection with respect to such termination.

(15) BENEFIT LEVELS.—If the benefit levels required in subsection (10) exceed the benefit levels provided under the group policy, the conversion policy may offer benefits which are substantially similar to those provided under the group policy in lieu of those required in subsection (10).

(16) GROUP COVERAGE INSTEAD OF INDIVIDUAL COVERAGE.—The insurer may elect to provide group insurance coverage instead of issuing a converted individual policy.

(17) NOTIFICATION.—A notification of the conversion privilege shall be included in each certificate of coverage. The insurer shall mail an election and premium notice form, including an outline of coverage, on a form approved by the <u>office</u> ~~department~~, within 14 days after an individual who is eligible for a converted policy gives notice to the insurer that the individual is considering applying for the converted policy or otherwise requests such information. The outline of coverage must contain a description of the principal benefits and coverage provided by the policy and its principal exclusions and limitations, including, but not limited to, deductibles and coinsurance.

(18) OUTSIDE CONVERSIONS.—A converted policy that is delivered outside of this state must be on a form that could be delivered in the other jurisdiction as a converted policy had the group policy been issued in that jurisdiction.

(19) APPLICABILITY.—This section does not require conversion on termination of eligibility for a policy or contract that provides benefits for specified diseases, or for accidental injuries only, disability income, Medicare supplement, hospital indemnity, limited benefit, nonconventional, or excess policies.

(20) Nothing in this section or in the incorporation of it into insurance policies shall be construed to require insurers to provide benefits equal to those provided in the group policy from which the individual converted; provided, however, that comprehensive benefits are offered which shall be subject to approval by the office ~~Insurance Commissioner~~.

Section 1168. Paragraph (a) of subsection (2) of section 627.6685, Florida Statutes, is amended to read:

627.6685 Mental health coverage.—

(2) BENEFITS.—

(a)1. In the case of a group health plan, or health insurance coverage offered in connection with such a plan, which provides both medical and surgical benefits and mental health benefits:

a. If the plan or coverage does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan or coverage may not impose any aggregate lifetime limit on mental health benefits.

b. If the plan or coverage includes an aggregate lifetime limit on substantially all medical and surgical benefits, the plan or coverage must:

(I) Apply that applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

(II) Not include any aggregate lifetime limit on mental health benefits which is less than that applicable lifetime limit.

c. For any plan or coverage that is not described in sub-subparagraph a. or sub-subparagraph b. and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the commission ~~department~~ shall establish rules under which sub-subparagraph b. is applied to such plan or coverage with respect to mental health benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

2. In the case of a group health plan, or health insurance coverage offered in connection with such a plan, which provides both medical and surgical benefits and mental health benefits:

a. If the plan or coverage does not include an annual limit on substantially all medical and surgical benefits, the plan or coverage may not impose any annual limit on mental health benefits.

b. If the plan or coverage includes an annual limit on substantially all medical and surgical benefits, the plan or coverage must:

(I) Apply that applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

(II) Not include any annual limit on mental health benefits which is less than the applicable annual limit.

c. For any plan or coverage that is not described in sub-subparagraph a. or sub-subparagraph b. and that includes no or different annual limits on different categories of medical and surgical benefits, the commission ~~department~~ shall establish rules under which sub-subparagraph b. is applied to such plan or coverage with respect to mental health benefits by substituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to such categories.

Section 1169. Paragraph (d) of subsection (5) and subsection (9) of section 627.6692, Florida Statutes, are amended to read:

627.6692 Florida Health Insurance Coverage Continuation Act.—

(5) CONTINUATION OF COVERAGE UNDER GROUP HEALTH PLANS.—

(d)1. A qualified beneficiary must give written notice to the insurance carrier within 30 days after the occurrence of a qualifying event. Unless otherwise specified in the notice, a notice by any qualified beneficiary constitutes notice on behalf of all qualified beneficiaries. The written notice must inform the insurance carrier of the occurrence and type of the qualifying event giving rise to the potential election by a qualified beneficiary of continuation of coverage under the group health plan issued by that insurance carrier, except that in cases where the covered employee has been involuntarily discharged, the nature of such discharge need not be disclosed. The written notice must, at a minimum, identify the employer, the group health plan number, the name and address of all qualified beneficiaries, and such other information required by the insurance carrier under the terms of the group health plan or the commission ~~department~~ by rule, to the extent that such information is known by the qualified beneficiary.

2. Within 14 days after the receipt of written notice under subparagraph 1., the insurance carrier shall send each qualified beneficiary by certified mail an election and premium notice form, approved by the office ~~department~~, which form must provide for the qualified beneficiary's election or nonelection of continuation of coverage under the group health plan and the applicable premium amount due after the election to continue coverage. This

subparagraph does not require separate mailing of notices to qualified beneficiaries residing in the same household, but requires a separate mailing for each separate household.

(9) RULES.—The commission ~~department~~ shall adopt rules establishing standards for the initial notice of rights and as otherwise necessary to administer this section.

Section 1170. Paragraph (a) of subsection (3), paragraphs (c), (d), (e), and (i) of subsection (5), paragraphs (a) and (b) of subsection (6), paragraphs (b), (c), and (d) of subsection (8), paragraphs (a) and (b) of subsection (9), subsection (10), paragraphs (b), (c), (d), (e), (g), (h), (j), and (m) of subsection (11), subsection (12), paragraph (i) of subsection (13), paragraph (a) of subsection (15), and subsection (16) of section 627.6699, Florida Statutes, are amended to read:

627.6699 Employee Health Care Access Act.—

(3) DEFINITIONS.—As used in this section, the term:

(a) "Actuarial certification" means a written statement, by a member of the American Academy of Actuaries or another person acceptable to the office ~~department~~, that a small employer carrier is in compliance with subsection (6), based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable health benefit plans.

(5) AVAILABILITY OF COVERAGE.—

(c) Every small employer carrier must, as a condition of transacting business in this state:

1. ~~Beginning July 1, 2000,~~ Offer and issue all small employer health benefit plans on a guaranteed-issue basis to every eligible small employer, with 2 to 50 eligible employees, that elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section.

~~2. Beginning July 1, 2000, and until July 31, 2001, offer and issue basic and standard small employer health benefit plans on a guaranteed-issue basis to every eligible small employer which is eligible for guaranteed renewal, has less than two eligible employees, is not formed primarily for the purpose of buying health insurance, elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section. For purposes of this subparagraph, a person, his or her spouse, and his or her dependent children shall constitute~~

~~a single eligible employee if that person and spouse are employed by the same small employer and either one has a normal work week of less than 25 hours.~~

2.~~3. Beginning August 1, 2001,~~ Offer and issue basic and standard small employer health benefit plans on a guaranteed-issue basis, during a 31-day open enrollment period of August 1 through August 31 of each year, to every eligible small employer, with fewer than two eligible employees, which small employer is not formed primarily for the purpose of buying health insurance and which elects to be covered under such plan, agrees to make the required premium payments, and satisfies the other provisions of the plan. Coverage provided under this subparagraph shall begin on October 1 of the same year as the date of enrollment, unless the small employer carrier and the small employer agree to a different date. A rider for additional or increased benefits may be medically underwritten and may only be added to the standard health benefit plan. The increased rate charged for the additional or increased benefit must be rated in accordance with this section. For purposes of this subparagraph, a person, his or her spouse, and his or her dependent children constitute a single eligible employee if that person and spouse are employed by the same small employer and either that person or his or her spouse has a normal work week of less than 25 hours.

3.~~4.~~ This paragraph does not limit a carrier's ability to offer other health benefit plans to small employers if the standard and basic health benefit plans are offered and rejected.

(d) A small employer carrier must file with the office ~~department~~, in a format and manner prescribed by the committee, a standard health care plan and a basic health care plan to be used by the carrier.

(e) The office ~~department~~ at any time may, after providing notice and an opportunity for a hearing, disapprove the continued use by the small employer carrier of the standard or basic health benefit plan on the grounds that such plan does not meet the requirements of this section.

(i)1. A small employer carrier need not offer coverage or accept applications pursuant to paragraph (a):

a. To a small employer if the small employer is not physically located in an established geographic service area of the small employer carrier, provided such geographic service area shall not be less than a county;

b. To an employee if the employee does not work or reside within an established geographic service area of the small employer carrier; or

c. To a small employer group within an area in which the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the office ~~department~~, that it cannot, within its network of providers, deliver service adequately to the members of such groups because of obligations to existing group contract holders and enrollees.

2. A small employer carrier that cannot offer coverage pursuant to subsubparagraph 1.c. may not offer coverage in the applicable area to new cases

of employer groups having more than 50 eligible employees or small employer groups until the later of 180 days following each such refusal or the date on which the carrier notifies the office ~~department~~ that it has regained its ability to deliver services to small employer groups.

3.a. A small employer carrier may deny health insurance coverage in the small-group market if the carrier has demonstrated to the office ~~department~~ that:

(I) It does not have the financial reserves necessary to underwrite additional coverage; and

(II) It is applying this sub-subparagraph uniformly to all employers in the small-group market in this state consistent with this section and without regard to the claims experience of those employers and their employees and their dependents or any health-status-related factor that relates to such employees and dependents.

b. A small employer carrier, upon denying health insurance coverage in connection with health benefit plans in accordance with sub-subparagraph a., may not offer coverage in connection with group health benefit plans in the small-group market in this state for a period of 180 days after the date such coverage is denied or until the insurer has demonstrated to the office ~~department~~ that the insurer has sufficient financial reserves to underwrite additional coverage, whichever is later. The office ~~department~~ may provide for the application of this sub-subparagraph on a service-area-specific basis.

4. ~~Beginning in 1994,~~ The commission ~~department~~ shall, by rule, require each small employer carrier to report, on or before March 1 of each year, its gross annual premiums for all health benefit plans issued to small employers during the previous calendar year, and also to report its gross annual premiums for new, but not renewal, standard and basic health benefit plans subject to this section issued during the previous calendar year. No later than May 1 of each year, the office ~~department~~ shall calculate each carrier's percentage of all small employer group health premiums for the previous calendar year and shall calculate the aggregate gross annual premiums for new, but not renewal, standard and basic health benefit plans for the previous calendar year.

(6) RESTRICTIONS RELATING TO PREMIUM RATES.—

(a) The commission ~~department~~ may, by rule, establish regulations to administer this section and to assure that rating practices used by small employer carriers are consistent with the purpose of this section, including assuring that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans.

(b) For all small employer health benefit plans that are subject to this section and are issued by small employer carriers on or after January 1, 1994, premium rates for health benefit plans subject to this section are subject to the following:

1. Small employer carriers must use a modified community rating methodology in which the premium for each small employer must be determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area as determined under paragraph (5)(j) and in which the premium may be adjusted as permitted by this paragraph.

2. Rating factors related to age, gender, family composition, tobacco use, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to office ~~department~~ review and approval.

3. Small employer carriers may not modify the rate for a small employer for 12 months from the initial issue date or renewal date, unless the composition of the group changes or benefits are changed. However, a small employer carrier may modify the rate one time prior to 12 months after the initial issue date for a small employer who enrolls under a previously issued group policy that has a common anniversary date for all employers covered under the policy if:

a. The carrier discloses to the employer in a clear and conspicuous manner the date of the first renewal and the fact that the premium may increase on or after that date.

b. The insurer demonstrates to the office ~~department~~ that efficiencies in administration are achieved and reflected in the rates charged to small employers covered under the policy.

4. A carrier may issue a group health insurance policy to a small employer health alliance or other group association with rates that reflect a premium credit for expense savings attributable to administrative activities being performed by the alliance or group association if such expense savings are specifically documented in the insurer's rate filing and are approved by the office ~~department~~. Any such credit may not be based on different morbidity assumptions or on any other factor related to the health status or claims experience of any person covered under the policy. Nothing in this subparagraph exempts an alliance or group association from licensure for any activities that require licensure under the insurance code. A carrier issuing a group health insurance policy to a small employer health alliance or other group association shall allow any properly licensed and appointed agent of that carrier to market and sell the small employer health alliance or other group association policy. Such agent shall be paid the usual and customary commission paid to any agent selling the policy.

5. Any adjustments in rates for claims experience, health status, or duration of coverage may not be charged to individual employees or dependents. For a small employer's policy, such adjustments may not result in a rate for the small employer which deviates more than 15 percent from the carrier's approved rate. Any such adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer. A small employer carrier may make an adjustment to a small employer's renewal premium, not to exceed 10 percent annually, due to the claims experience, health status, or duration of coverage of the employees or dependents of the

small employer. Semiannually, small group carriers shall report information on forms adopted by rule by the commission ~~department~~, to enable the office ~~department~~ to monitor the relationship of aggregate adjusted premiums actually charged policyholders by each carrier to the premiums that would have been charged by application of the carrier's approved modified community rates. If the aggregate resulting from the application of such adjustment exceeds the premium that would have been charged by application of the approved modified community rate by 5 percent for the current reporting period, the carrier shall limit the application of such adjustments only to minus adjustments beginning not more than 60 days after the report is sent to the office ~~department~~. For any subsequent reporting period, if the total aggregate adjusted premium actually charged does not exceed the premium that would have been charged by application of the approved modified community rate by 5 percent, the carrier may apply both plus and minus adjustments. A small employer carrier may provide a credit to a small employer's premium based on administrative and acquisition expense differences resulting from the size of the group. Group size administrative and acquisition expense factors may be developed by each carrier to reflect the carrier's experience and are subject to office ~~department~~ review and approval.

6. A small employer carrier rating methodology may include separate rating categories for one dependent child, for two dependent children, and for three or more dependent children for family coverage of employees having a spouse and dependent children or employees having dependent children only. A small employer carrier may have fewer, but not greater, numbers of categories for dependent children than those specified in this subparagraph.

7. Small employer carriers may not use a composite rating methodology to rate a small employer with fewer than 10 employees. For the purposes of this subparagraph, a "composite rating methodology" means a rating methodology that averages the impact of the rating factors for age and gender in the premiums charged to all of the employees of a small employer.

8.a. A carrier may separate the experience of small employer groups with less than 2 eligible employees from the experience of small employer groups with 2-50 eligible employees for purposes of determining an alternative modified community rating.

b. If a carrier separates the experience of small employer groups as provided in sub-subparagraph a., the rate to be charged to small employer groups of less than 2 eligible employees may not exceed 150 percent of the rate determined for small employer groups of 2-50 eligible employees. However, the carrier may charge excess losses of the experience pool consisting of small employer groups with less than 2 eligible employees to the experience pool consisting of small employer groups with 2-50 eligible employees so that all losses are allocated and the 150-percent rate limit on the experience pool consisting of small employer groups with less than 2 eligible employees is maintained. Notwithstanding s. 627.411(1), the rate to be charged to a small employer group of fewer than 2 eligible employees, insured as of July 1, 2002, may be up to 125 percent of the rate determined

for small employer groups of 2-50 eligible employees for the first annual renewal and 150 percent for subsequent annual renewals.

(8) MAINTENANCE OF RECORDS.—

(b) Each small employer carrier must file with the office ~~department~~ on or before March 15 of each year an actuarial certification that the carrier is in compliance with this section and that the rating methods of the carrier are actuarially sound. The certification must be in a form and manner and contain the information prescribed by the commission ~~department~~. The carrier must retain a copy of the certification at its principal place of business.

(c) A small employer carrier must make the information and documentation described in paragraph (a) available to the office ~~department~~ upon request. The information constitutes proprietary and trade secret information and may not be disclosed by the office ~~department~~ to persons outside the office ~~department~~, except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

(d) Each small employer carrier must file with the office ~~department~~ quarterly an enrollment report as directed by the office ~~department~~. Such report shall not constitute proprietary or trade secret information.

(9) SMALL EMPLOYER CARRIER'S ELECTION TO BECOME A RISK-ASSUMING CARRIER OR A REINSURING CARRIER.—

(a) A small employer carrier must elect to become either a risk-assuming carrier or a reinsuring carrier. Each small employer carrier must make an initial election, binding through January 1, 1994. The carrier's initial election must be made no later than October 31, 1992. By October 31, 1993, all small employer carriers must file a final election, which is binding for 2 years, from January 1, 1994, through December 31, 1995, after which an election shall be binding for a period of 5 years. Any carrier that is not a small employer carrier on October 31, 1992, and intends to become a small employer carrier after October 31, 1992, must file its designation when it files the forms and rates it intends to use for small employer group health insurance; such designation shall be binding for 2 years after the date of approval of the forms and rates, and any subsequent designation is binding for 5 years. The office ~~department~~ may permit a carrier to modify its election at any time for good cause shown, after a hearing.

(b) The commission ~~department~~ shall establish an application process for small employer carriers seeking to change their status under this subsection.

(10) ELECTION PROCESS TO BECOME A RISK-ASSUMING CARRIER.—

(a)1. A small employer carrier may become a risk-assuming carrier by filing with the office ~~department~~ a designation of election under subsection (9) in a format and manner prescribed by the commission ~~department~~. The office ~~department~~ shall approve the election of a small employer carrier to become a risk-assuming carrier if the office ~~department~~ finds that the car-

rier is capable of assuming that status pursuant to the criteria set forth in paragraph (b).

2. The office ~~department~~ must approve or disapprove any designation as a risk-assuming carrier within 60 days after filing.

(b) In determining whether to approve an application by a small employer carrier to become a risk-assuming carrier, the office ~~department~~ shall consider:

1. The carrier's financial ability to support the assumption of the risk of small employer groups.

2. The carrier's history of rating and underwriting small employer groups.

3. The carrier's commitment to market fairly to all small employers in the state or its service area, as applicable.

4. The carrier's ability to assume and manage the risk of enrolling small employer groups without the protection of the reinsurance program provided in subsection (11).

(c) A small employer carrier that becomes a risk-assuming carrier pursuant to this subsection is not subject to the assessment provisions of subsection (11).

(d) The office ~~department~~ shall provide public notice of a small employer carrier's designation of election under subsection (9) to become a risk-assuming carrier and shall provide at least a 21-day period for public comment prior to making a decision on the election. The office ~~department~~ shall hold a hearing on the election at the request of the carrier.

(e) The office ~~department~~ may rescind the approval granted to a risk-assuming carrier under this subsection if the office ~~department~~ finds that the carrier no longer meets the criteria of paragraph (b).

(11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.—

(b)1. The program shall operate subject to the supervision and control of the board.

2. Effective upon this act becoming a law, the board shall consist of the Chief Financial Officer ~~commissioner~~ or his or her designee, who shall serve as the chairperson, and 13 additional members who are representatives of carriers and insurance agents and are appointed by the Chief Financial Officer ~~commissioner~~ and serve as follows:

a. The Chief Financial Officer ~~commissioner~~ shall include representatives of small employer carriers subject to assessment under this subsection. If two or more carriers elect to be risk-assuming carriers, the membership must include at least two representatives of risk-assuming carriers; if one carrier is risk-assuming, one member must be a representative of such

carrier. At least one member must be a carrier who is subject to the assessments, but is not a small employer carrier. Subject to such restrictions, at least five members shall be selected from individuals recommended by small employer carriers pursuant to procedures provided by rule of the commission ~~department~~. Three members shall be selected from a list of health insurance carriers that issue individual health insurance policies. At least two of the three members selected must be reinsuring carriers. Two members shall be selected from a list of insurance agents who are actively engaged in the sale of health insurance.

b. A member appointed under this subparagraph shall serve a term of 4 years and shall continue in office until the member's successor takes office, except that, in order to provide for staggered terms, the Chief Financial Officer ~~commissioner~~ shall designate two of the initial appointees under this subparagraph to serve terms of 2 years and shall designate three of the initial appointees under this subparagraph to serve terms of 3 years.

3. The Chief Financial Officer ~~commissioner~~ may remove a member for cause.

4. Vacancies on the board shall be filled in the same manner as the original appointment for the unexpired portion of the term.

5. The Chief Financial Officer ~~commissioner~~ may require an entity that recommends persons for appointment to submit additional lists of recommended appointees.

(c)1. ~~No later than August 15, 1992,~~ The board shall submit to the office ~~department~~ a plan of operation to assure the fair, reasonable, and equitable administration of the program. The board may at any time submit to the office ~~department~~ any amendments to the plan that the board finds to be necessary or suitable.

2. ~~No later than September 15, 1992,~~ The office ~~department~~ shall, after notice and hearing, approve the plan of operation if it determines that the plan submitted by the board is suitable to assure the fair, reasonable, and equitable administration of the program and provides for the sharing of program gains and losses equitably and proportionately in accordance with paragraph (j).

3. The plan of operation, or any amendment thereto, becomes effective upon written approval of the office ~~department~~.

(d) The plan of operation must, among other things:

1. Establish procedures for handling and accounting for program assets and moneys and for an annual fiscal reporting to the office ~~department~~.

2. Establish procedures for selecting an administering carrier and set forth the powers and duties of the administering carrier.

3. Establish procedures for reinsuring risks.

4. Establish procedures for collecting assessments from participating carriers to provide for claims reinsured by the program and for administrative expenses, other than amounts payable to the administrative carrier, incurred or estimated to be incurred during the period for which the assessment is made.

5. Provide for any additional matters at the discretion of the board.

(e) The board shall recommend to the office ~~department~~ market conduct requirements and other requirements for carriers and agents, including requirements relating to:

1. Registration by each carrier with the office ~~department~~ of its intention to be a small employer carrier under this section;

2. Publication by the office ~~department~~ of a list of all small employer carriers, including a requirement applicable to agents and carriers that a health benefit plan may not be sold by a carrier that is not identified as a small employer carrier;

3. The availability of a broadly publicized, toll-free telephone number for access by small employers to information concerning this section;

4. Periodic reports by carriers and agents concerning health benefit plans issued; and

5. Methods concerning periodic demonstration by small employer carriers and agents that they are marketing or issuing health benefit plans to small employers.

(g) A reinsuring carrier may reinsure with the program coverage of an eligible employee of a small employer, or any dependent of such an employee, subject to each of the following provisions:

1. With respect to a standard and basic health care plan, the program must reinsure the level of coverage provided; and, with respect to any other plan, the program must reinsure the coverage up to, but not exceeding, the level of coverage provided under the standard and basic health care plan.

2. Except in the case of a late enrollee, a reinsuring carrier may reinsure an eligible employee or dependent within 60 days after the commencement of the coverage of the small employer. A newly employed eligible employee or dependent of a small employer may be reinsured within 60 days after the commencement of his or her coverage.

3. A small employer carrier may reinsure an entire employer group within 60 days after the commencement of the group's coverage under the plan. The carrier may choose to reinsure newly eligible employees and dependents of the reinsured group pursuant to subparagraph 1.

4. The program may not reimburse a participating carrier with respect to the claims of a reinsured employee or dependent until the carrier has paid incurred claims of at least $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier shall be responsible for 10

percent of the next $50,000 and 5 percent of the next $100,000 of incurred claims during a calendar year and the program shall reinsure the remainder.

5. The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "Consumer Price Index for All Urban Consumers" of the Bureau of Labor Statistics of the Department of Labor, unless the board proposes and the office ~~department~~ approves a lower adjustment factor.

6. A small employer carrier may terminate reinsurance for all reinsured employees or dependents on any plan anniversary.

7. The premium rate charged for reinsurance by the program to a health maintenance organization that is approved by the Secretary of Health and Human Services as a federally qualified health maintenance organization pursuant to 42 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to requirements that limit the amount of risk that may be ceded to the program, which requirements are more restrictive than subparagraph 4., shall be reduced by an amount equal to that portion of the risk, if any, which exceeds the amount set forth in subparagraph 4. which may not be ceded to the program.

8. The board may consider adjustments to the premium rates charged for reinsurance by the program for carriers that use effective cost containment measures, including high-cost case management, as defined by the board.

9. A reinsuring carrier shall apply its case-management and claims-handling techniques, including, but not limited to, utilization review, individual case management, preferred provider provisions, other managed care provisions or methods of operation, consistently with both reinsured business and nonreinsured business.

(h)1. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of basic reinsurance premium rates, which shall be multiplied by the factors set for them in this paragraph to determine the premium rates for the program. The basic reinsurance premium rates shall be established by the board, subject to the approval of the office ~~department~~, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard and basic health benefit plan. The premium rates set by the board may vary by geographical area, as determined under this section, to reflect differences in cost. The multiplying factors must be established as follows:

a. The entire group may be reinsured for a rate that is 1.5 times the rate established by the board.

b. An eligible employee or dependent may be reinsured for a rate that is 5 times the rate established by the board.

2. The board periodically shall review the methodology established, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the rates which shall be subject to the approval of the office ~~department~~.

(j)1. Before March 1 of each calendar year, the board shall determine and report to the office ~~department~~ the program net loss for the previous year, including administrative expenses for that year, and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.

2. Any net loss for the year shall be recouped by assessment of the carriers, as follows:

a. The operating losses of the program shall be assessed in the following order subject to the specified limitations. The first tier of assessments shall be made against reinsuring carriers in an amount which shall not exceed 5 percent of each reinsuring carrier's premiums from health benefit plans covering small employers. If such assessments have been collected and additional moneys are needed, the board shall make a second tier of assessments in an amount which shall not exceed 0.5 percent of each carrier's health benefit plan premiums. Except as provided in paragraph (n), risk-assuming carriers are exempt from all assessments authorized pursuant to this section. The amount paid by a reinsuring carrier for the first tier of assessments shall be credited against any additional assessments made.

b. The board shall equitably assess carriers for operating losses of the plan based on market share. The board shall annually assess each carrier a portion of the operating losses of the plan. The first tier of assessments shall be determined by multiplying the operating losses by a fraction, the numerator of which equals the reinsuring carrier's earned premium pertaining to direct writings of small employer health benefit plans in the state during the calendar year for which the assessment is levied, and the denominator of which equals the total of all such premiums earned by reinsuring carriers in the state during that calendar year. The second tier of assessments shall be based on the premiums that all carriers, except risk-assuming carriers, earned on all health benefit plans written in this state. The board may levy interim assessments against carriers to ensure the financial ability of the plan to cover claims expenses and administrative expenses paid or estimated to be paid in the operation of the plan for the calendar year prior to the association's anticipated receipt of annual assessments for that calendar year. Any interim assessment is due and payable within 30 days after receipt by a carrier of the interim assessment notice. Interim assessment payments shall be credited against the carrier's annual assessment. Health benefit plan premiums and benefits paid by a carrier

that are less than an amount determined by the board to justify the cost of collection may not be considered for purposes of determining assessments.

c. Subject to the approval of the office ~~department~~, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved as federally qualified health maintenance organizations by the Secretary of Health and Human Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

3. Before March 1 of each year, the board shall determine and file with the office ~~department~~ an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

4. If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in subparagraph 2., the board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the office ~~department~~ within 90 days following the end of the calendar year in which the losses were incurred. The evaluation shall include an estimate of future assessments, the administrative costs of the program, the appropriateness of the premiums charged and the level of carrier retention under the program, and the costs of coverage for small employers. If the board fails to file a report with the office ~~department~~ within 90 days following the end of the applicable calendar year, the office ~~department~~ may evaluate the operations of the program and implement such amendments to the plan of operation the office ~~department~~ deems necessary to reduce future losses and assessments.

5. If assessments exceed the amount of the actual losses and administrative expenses of the program, the excess shall be held as interest and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, the term "future losses" includes reserves for incurred but not reported claims.

6. Each carrier's proportion of the assessment shall be determined annually by the board, based on annual statements and other reports considered necessary by the board and filed by the carriers with the board.

7. Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of an assessment.

8. A carrier may seek, from the office ~~commissioner~~, a deferment, in whole or in part, from any assessment made by the board. The office ~~department~~ may defer, in whole or in part, the assessment of a carrier if, in the opinion of the office ~~department~~, the payment of the assessment would place the carrier in a financially impaired condition. If an assessment against a carrier is deferred, in whole or in part, the amount by which the assessment is deferred may be assessed against the other carriers in a manner consistent with the basis for assessment set forth in this section. The carrier receiving such deferment remains liable to the program for the amount deferred and is prohibited from reinsuring any individuals or groups in the program if it fails to pay assessments.

(m) The board shall monitor compliance with this section, including the market conduct of small employer carriers, and shall report to the office ~~department~~ any unfair trade practices and misleading or unfair conduct by a small employer carrier that has been reported to the board by agents, consumers, or any other person. The office ~~department~~ shall investigate all reports and, upon a finding of noncompliance with this section or of unfair or misleading practices, shall take action against the small employer carrier as permitted under the insurance code or chapter 641. The board is not given investigatory or regulatory powers, but must forward all reports of cases or abuse or misrepresentation to the office ~~department~~.

(12) STANDARD, BASIC, AND LIMITED HEALTH BENEFIT PLANS.—

(a)1. ~~By May 15, 1993,~~ The Chief Financial Officer ~~commissioner~~ shall appoint a health benefit plan committee composed of four representatives of carriers which shall include at least two representatives of HMOs, at least one of which is a staff model HMO, two representatives of agents, four representatives of small employers, and one employee of a small employer. The carrier members shall be selected from a list of individuals recommended by the board. The Chief Financial Officer ~~commissioner~~ may require the board to submit additional recommendations of individuals for appointment.

2. The plans shall comply with all of the requirements of this subsection.

3. The plans must be filed with and approved by the office ~~department~~ prior to issuance or delivery by any small employer carrier.

4. After approval of the revised health benefit plans, if the office ~~department~~ determines that modifications to a plan might be appropriate, the Chief Financial Officer ~~commissioner~~ shall appoint a new health benefit plan committee in the manner provided in subparagraph 1. to submit recommended modifications to the office ~~department~~ for approval.

(b)1. Each small employer carrier issuing new health benefit plans shall offer to any small employer, upon request, a standard health benefit plan and a basic health benefit plan that meets the criteria set forth in this section.

2. For purposes of this subsection, the terms "standard health benefit plan" and "basic health benefit plan" mean policies or contracts that a small employer carrier offers to eligible small employers that contain:

a. An exclusion for services that are not medically necessary or that are not covered preventive health services; and

b. A procedure for preauthorization by the small employer carrier, or its designees.

3. A small employer carrier may include the following managed care provisions in the policy or contract to control costs:

a. A preferred provider arrangement or exclusive provider organization or any combination thereof, in which a small employer carrier enters into a written agreement with the provider to provide services at specified levels of reimbursement or to provide reimbursement to specified providers. Any such written agreement between a provider and a small employer carrier must contain a provision under which the parties agree that the insured individual or covered member has no obligation to make payment for any medical service rendered by the provider which is determined not to be medically necessary. A carrier may use preferred provider arrangements or exclusive provider arrangements to the same extent as allowed in group products that are not issued to small employers.

b. A procedure for utilization review by the small employer carrier or its designees.

This subparagraph does not prohibit a small employer carrier from including in its policy or contract additional managed care and cost containment provisions, subject to the approval of the office ~~department~~, which have potential for controlling costs in a manner that does not result in inequitable treatment of insureds or subscribers. The carrier may use such provisions to the same extent as authorized for group products that are not issued to small employers.

4. The standard health benefit plan shall include:

a. Coverage for inpatient hospitalization;

b. Coverage for outpatient services;

c. Coverage for newborn children pursuant to s. 627.6575;

d. Coverage for child care supervision services pursuant to s. 627.6579;

e. Coverage for adopted children upon placement in the residence pursuant to s. 627.6578;

f. Coverage for mammograms pursuant to s. 627.6613;

g. Coverage for handicapped children pursuant to s. 627.6615;

h. Emergency or urgent care out of the geographic service area; and

i. Coverage for services provided by a hospice licensed under s. 400.602 in cases where such coverage would be the most appropriate and the most cost-effective method for treating a covered illness.

5. The standard health benefit plan and the basic health benefit plan may include a schedule of benefit limitations for specified services and procedures. If the committee develops such a schedule of benefits limitation for the standard health benefit plan or the basic health benefit plan, a small employer carrier offering the plan must offer the employer an option for increasing the benefit schedule amounts by 4 percent annually.

6. The basic health benefit plan shall include all of the benefits specified in subparagraph 4.; however, the basic health benefit plan shall place additional restrictions on the benefits and utilization and may also impose additional cost containment measures.

7. Sections 627.419(2), (3), and (4), 627.6574, 627.6612, 627.66121, 627.66122, 627.6616, 627.6618, 627.668, and 627.66911 apply to the standard health benefit plan and to the basic health benefit plan. However, notwithstanding said provisions, the plans may specify limits on the number of authorized treatments, if such limits are reasonable and do not discriminate against any type of provider.

8. Each small employer carrier that provides for inpatient and outpatient services by allopathic hospitals may provide as an option of the insured similar inpatient and outpatient services by hospitals accredited by the American Osteopathic Association when such services are available and the osteopathic hospital agrees to provide the service.

(c) If a small employer rejects, in writing, the standard health benefit plan and the basic health benefit plan, the small employer carrier may offer the small employer a limited benefit policy or contract.

(d)1. Upon offering coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract for any small employer, the small employer carrier shall provide such employer group with a written statement that contains, at a minimum:

a. An explanation of those mandated benefits and providers that are not covered by the policy or contract;

b. An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and

c. An explanation of the primary and preventive care features of the policy or contract.

Such disclosure statement must be presented in a clear and understandable form and format and must be separate from the policy or certificate or evidence of coverage provided to the employer group.

2. Before a small employer carrier issues a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, it must obtain from the prospective policyholder a signed written statement in which the prospective policyholder:

a. Certifies as to eligibility for coverage under the standard health benefit plan, basic health benefit plan, or limited benefit policy or contract;

b. Acknowledges the limited nature of the coverage and an understanding of the managed care and cost control features of the policy or contract;

c. Acknowledges that if misrepresentations are made regarding eligibility for coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the person making such misrepresentations forfeits coverage provided by the policy or contract; and

d. If a limited plan is requested, acknowledges that the prospective policyholder had been offered, at the time of application for the insurance policy or contract, the opportunity to purchase any health benefit plan offered by the carrier and that the prospective policyholder had rejected that coverage.

A copy of such written statement shall be provided to the prospective policyholder no later than at the time of delivery of the policy or contract, and the original of such written statement shall be retained in the files of the small employer carrier for the period of time that the policy or contract remains in effect or for 5 years, whichever period is longer.

3. Any material statement made by an applicant for coverage under a health benefit plan which falsely certifies as to the applicant's eligibility for coverage serves as the basis for terminating coverage under the policy or contract.

4. Each marketing communication that is intended to be used in the marketing of a health benefit plan in this state must be submitted for review by the office ~~department~~ prior to use and must contain the disclosures stated in this subsection.

(e) A small employer carrier may not use any policy, contract, form, or rate under this section, including applications, enrollment forms, policies, contracts, certificates, evidences of coverage, riders, amendments, endorsements, and disclosure forms, until the insurer has filed it with the office ~~department~~ and the office ~~department~~ has approved it under ss. 627.410 and 627.411 and this section.

(13) STANDARDS TO ASSURE FAIR MARKETING.—

(i) The commission ~~department~~ may establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(15) APPLICABILITY OF OTHER STATE LAWS.—

(a) Except as expressly provided in this section, a law requiring coverage for a specific health care service or benefit, or a law requiring reimbursement, utilization, or consideration of a specific category of licensed health care practitioner, does not apply to a standard or basic health benefit plan policy or contract or a limited benefit policy or contract offered or delivered to a small employer unless that law is made expressly applicable to such policies or contracts. A law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments does not apply to any health plan policy, including a standard or basic health benefit plan policy or contract, offered or delivered to a small employer unless such law is made expressly applicable to such policy or contract. However, every small employer carrier must offer to eligible small employers the standard benefit

plan and the basic benefit plan, as required by subsection (5), as such plans have been approved by the office ~~department~~ pursuant to subsection (12).

(16) RULEMAKING AUTHORITY.—The commission ~~department~~ may adopt rules to administer this section, including rules governing compliance by small employer carriers and small employers.

Section 1171. Subsection (2) of section 627.673, Florida Statutes, is amended to read:

627.673 Designation as Medicare supplement policy; penalties for violations.—

(2) A violation of this part is punishable under s. 624.4211. In addition, the office ~~department~~ may require insurers violating this part to cease marketing any Medicare supplement policy in this state which is related directly or indirectly to a violation of this part, or the office ~~department~~ may require the insurer to take any action necessary to comply with this part.

Section 1172. Section 627.6735, Florida Statutes, is amended to read:

627.6735 Order to discontinue certain advertising.—An insurer must file with the office ~~department~~ all advertisements for Medicare supplement policies pursuant to rules adopted by the commission ~~department~~. If, in the opinion of the office ~~department~~, any advertisement by a Medicare supplement policy insurer violates any of the provisions of part IX of chapter 626 or any rule of the commission ~~department~~, the office ~~department~~ may enter an immediate order requiring that the use of the advertisement be discontinued. If requested by the insurer, the office ~~department~~ shall conduct a hearing within 10 days of the entry of such order. If, after the hearing or by agreement with the insurer, a final determination is made that the advertising was in fact violative of any provision of part IX of chapter 626 or of any rule of the commission ~~department~~, the office ~~department~~ may, in lieu of revocation of the certificate of authority, require the publication of a corrective advertisement; impose an administrative penalty of up to $10,000; and, in the case of an initial solicitation, require that the insurer, prior to accepting any application received in response to the advertisement, provide an acceptable clarification of the advertisement to each individual applicant.

Section 1173. Section 627.674, Florida Statutes, is amended to read:

627.674 Minimum standards; filing requirements.—

(1) An insurance policy or subscriber contract may not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless it meets the minimum standards adopted under this section. The minimum standards do not preclude other provisions or benefits which are not inconsistent with the minimum standards.

(2)(a) The commission ~~department~~ must adopt rules establishing minimum standards for Medicare supplement policies that, taken together with the requirements of this part, are no less comprehensive or beneficial to persons insured or covered under Medicare supplement policies issued, delivered, or issued for delivery in this state, including certificates under group

or blanket policies issued, delivered, or issued for delivery in this state, than the standards provided in 42 U.S.C. s. 1395ss, or the most recent version of the NAIC Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act adopted by the National Association of Insurance Commissioners.

(b) The rules must establish specific standards, including standards of full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of group, blanket, franchise, and individual Medicare supplement policies and Medicare supplement subscriber contracts of dental service plans and nonprofit health care services plans. The standards may cover, but not be limited to:

1. Terms of renewability.

2. Initial and subsequent conditions of eligibility.

3. Nonduplication of coverage.

4. Probationary periods.

5. Benefit limitations, exceptions, and reductions.

6. Elimination periods.

7. Requirements for replacement coverage.

8. Recurrent conditions.

9. Definitions of terms.

10. Application forms.

(c) The commission ~~department~~ may adopt rules that specify prohibited policies or policy provisions, not otherwise specifically authorized by statute, which in the opinion of the office ~~department~~ are unjust, unfair, or unfairly discriminatory to the policyholder, the person insured under the policy, or the beneficiary.

(d) For policies issued on or after January 1, 1991, the commission ~~department~~ may adopt rules to establish minimum policy standards to authorize the types of policies specified by 42 U.S.C. s. 1395ss(p)(2)(C) and any optional benefits to facilitate policy comparisons.

(3) A policy may not be filed with the office ~~department~~ as a Medicare supplement policy unless the policy meets or exceeds the requirements of 42 U.S.C. s. 1395ss, or the most recent version of the NAIC Medicare Supplement Insurance Minimum Standards Model Act, adopted by the National Association of Insurance Commissioners.

(4) A policy filed with the office ~~department~~ as a Medicare supplement policy must:

(a) Have a definition of "Medicare eligible expense" that is not more restrictive than health care expenses of the kinds covered by Medicare or to

the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as apply to Medicare claims.

(b) Provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factor. Premiums may be modified to correspond with such changes, subject to prior approval by the office ~~department~~.

(c) Be written in simplified language, be easily understood by purchasers, and otherwise comply with s. 627.602.

(d) Contain a prominently displayed no-loss cancellation clause enabling the applicant to return the policy within 30 days after receiving the policy, or the certificate issued thereunder, with return in full of any premium paid. The insurer must, in a timely manner, pay a refund under this paragraph directly to the individual who paid the premium.

(e) Contain a prominently displayed notice of any coordination-of-benefits clause which might in any way restrict payment under the policy.

(f)1. Be accompanied by a copy of the Medicare Supplement Buyer's Guide developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration of the United States Department of Health and Human Services.

2. A policy referred to in subparagraph (g)4. that does not qualify as a Medicare supplement policy under this part must also be accompanied by the buyer's guide pursuant to this paragraph.

3. Except in the case of a direct response insurer, delivery of the buyer's guide shall be made at the time of application, and acknowledgment of receipt or certification of delivery of the buyer's guide shall be provided to the insurer. Direct response insurers shall deliver the buyer's guide upon request, but not later than at the time the policy is delivered.

(g)1. Be accompanied by an outline of coverage in the form prescribed by the National Association of Insurance Commissioners in the NAIC Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, adopted by the National Association of Insurance Commissioners on July 31, 1991, and as prescribed in s. 627.6743.

2. The outline shall be delivered to the applicant at the time application is made, and, except for the direct response policy, acknowledgment of receipt or certification of delivery of the outline of coverage shall be provided to the insurer.

3. If the policy is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy, contract, or group certificate must accompany the policy, when it is delivered, and contain the following statement, in no less than 12-point type, immediately above the company name: "NOTICE: Read this outline of coverage

carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued."

4. The following language must be printed on or attached to the first page of the outline of coverage delivered in conjunction with an individual policy of hospital confinement insurance, indemnity insurance, specified disease insurance, specified accident insurance, supplemental health insurance other than Medicare supplement insurance, or nonconventional health insurance coverage, as defined by law in this state, to a person eligible for Medicare: "This policy IS NOT A MEDICARE SUPPLEMENT policy. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

(5) A Medicare supplement policy may not contain benefits which duplicate benefits provided by Medicare.

Section 1174. Subsection (5) of section 627.6741, Florida Statutes, is amended to read:

627.6741 Issuance, cancellation, nonrenewal, and replacement.—

(5) The commission ~~department~~ shall by rule prescribe standards relating to the guaranteed issue of coverage, without exclusions for preexisting conditions, for continuously covered individuals consistent with the provisions of 42 U.S.C. s. 1395ss(s)(3).

Section 1175. Subsection (1) of section 627.6742, Florida Statutes, is amended to read:

627.6742 Permitted compensation arrangements.—

(1) The commission ~~department~~ shall adopt rules governing the permitted compensation arrangements between insurers and agents with respect to Medicare supplement policies.

Section 1176. Subsection (1) of section 627.6744, Florida Statutes, is amended to read:

627.6744 Recommended purchase and excessive insurance.—

(1) Medicare supplement insurance may not be issued or sold, whether directly, through the mail, or otherwise, to an individual unless the issuer or seller obtains from the individual, as a part of the application, a written statement signed by the individual stating what Medicare supplement policies the individual has, from what source, and whether the individual has applied for and been determined to be entitled to Medicaid. The written statement must be accompanied by a written acknowledgment, signed by the seller, of the request for and receipt of the statement. The written acknowledgment does not constitute a verification or affirmation by the seller of the truth of any information supplied by the individual in the written statement. The written statement shall be on forms prescribed by the commission ~~department~~ in accordance with the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).

Section 1177. Subsections (4) and (7) of section 627.6745, Florida Statutes, are amended to read:

627.6745 Loss ratio standards; public rate hearings.—

(4) Each insurer providing Medicare supplement insurance to residents of this state shall annually submit to the office ~~department~~ information on actual loss ratios on forms prescribed by the National Association of Insurance Commissioners pursuant to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).

(7) The commission ~~department~~ shall adopt a written policy statement regarding the holding of public hearings prior to approval of any premium increases for Medicare supplement insurance policies.

Section 1178. Section 627.678, Florida Statutes, is amended to read:

627.678 Rules.—

(1) For the effective protection of the public interest, the commission ~~department~~ shall have full power and authority to adopt, ~~promulgate,~~ and the office shall enforce, separate rules pertaining to issuance and use of each type of credit insurance defined in s. 627.677.

(2) Rules made pursuant to this section shall be principally designed, and shall be promulgated with the purpose of protecting the borrower from excessive charges by or collected through the lender for insurance in relation to the amount of the loan, to avoid duplication or overlapping of insurance coverage and to avoid loss of the borrower's funds by short-rate cancellation or termination of such insurance. However, nothing in such rules shall be construed to authorize the department, commission, or office to prohibit operation of normal dividend distributions under participating insurance contracts.

Section 1179. Subsections (1) and (2) of section 627.6785, Florida Statutes, are amended to read:

627.6785 Filing of rates with department.—

(1) Credit disability and credit life insurers shall file with the office ~~department~~ a copy of all rates and any rate changes used in this state.

(2) No credit disability rate and no credit life rate shall exceed the maximum allowable rate promulgated by the commission ~~department~~.

Section 1180. Section 627.682, Florida Statutes, is amended to read:

627.682 Filing, approval of forms.—All forms of policies, certificates of insurance, statements of insurance, applications for insurance, binders, endorsements, and riders of credit life or disability insurance delivered or issued for delivery in this state shall be filed with and approved by the office ~~department~~ before use as provided in ss. 627.410 and 627.411. In addition to grounds as specified in s. 627.411, the office ~~department~~, upon compliance with the procedures set forth in s. 627.410, shall disapprove any such form

and may withdraw any previous approval thereof if the benefits provided therein are not reasonable in relation to the premiums charged, or if it contains provisions which are unjust, unfair, inequitable, misleading, or deceptive or which encourage misrepresentation of such policy.

Section 1181. Section 627.6844, Florida Statutes, is amended to read:

627.6844 Replacement rules.—Group-to-group consolidations are exempt from any rule of the commission ~~department~~ relating to the replacement of existing life or health insurance. Sections 627.6841-627.6845 do not create an exemption from any such rule for consolidations that involve individual policies.

Section 1182. Section 627.6845, Florida Statutes, is amended to read:

627.6845 Policy forms used in connection with consolidations.—A policy or group certificate of credit insurance used in connection with any consolidation, or an application, endorsement, or rider which becomes a part of any such policy or certificate, may not be issued or delivered in this state until a copy of the form has been filed with and approved by the office ~~department~~ pursuant to s. 627.682.

Section 1183. Subsection (2), paragraph (b) of subsection (3), paragraph (d) of subsection (5), and subsections (6) and (8) of section 627.701, Florida Statutes, are amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(2) Unless the office ~~department~~ determines that the deductible provision is clear and unambiguous, a property insurer may not issue an insurance policy or contract covering real property in this state which contains a deductible provision that:

(a) Applies solely to hurricane losses.

(b) States the deductible as a percentage rather than as a specific amount of money.

(3)

(b)1. Except as otherwise provided in this paragraph, prior to issuing a personal lines residential property insurance policy on or after April 1, 1996, or prior to the first renewal of a residential property insurance policy on or after April 1, 1996, the insurer must offer alternative deductible amounts applicable to hurricane or wind losses equal to $500 and 2 percent of the policy dwelling limits, unless the 2 percent deductible is less than $500. The written notice of the offer shall specify the hurricane or wind deductible to be applied in the event that the applicant or policyholder fails to affirmatively choose a hurricane deductible. The insurer must provide such policyholder with notice of the availability of the deductible amounts specified in this paragraph in a form approved ~~specified~~ by the office ~~department~~ in conjunction with each renewal of the policy. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy.

2. This paragraph does not apply with respect to a deductible program lawfully in effect on June 14, 1995, or to any similar deductible program, if the deductible program requires a minimum deductible amount of no less than 2 percent of the policy limits.

3. With respect to a policy covering a risk with dwelling limits of at least $100,000, but less than $250,000, the insurer may, in lieu of offering a policy with a $500 hurricane or wind deductible as required by subparagraph 1., offer a policy that the insurer guarantees it will not nonrenew for reasons of reducing hurricane loss for one renewal period and that contains up to a 2 percent hurricane or wind deductible as required by subparagraph 1.

4. With respect to a policy covering a risk with dwelling limits of $250,000 or more, the insurer need not offer the $500 hurricane or wind deductible as required by subparagraph 1., but must, except as otherwise provided in this subsection, offer the 2 percent hurricane or wind deductible as required by subparagraph 1.

(5)

(d) The office ~~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 office ~~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.

(6) Prior to issuing a personal lines residential property insurance policy on or after April 1, 1997, or prior to the first renewal of a residential property insurance policy on or after April 1, 1997, the insurer must offer a deductible equal to $500 applicable to losses from perils other than hurricane. The insurer must provide the policyholder with notice of the availability of the deductible specified in this subsection in a form approved ~~specified~~ by the office ~~department~~ at least once every 3 years. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy. An insurer may require a higher deductible only as part of a deductible program lawfully in effect on June 1, 1996, or as part of a similar deductible program.

(8) Notwithstanding the other provisions of this section or of other law, but only as to hurricane coverage as defined in s. 627.4025 for commercial lines residential coverages, an insurer may offer a deductible in an amount not exceeding 5 percent of the insured value with respect to a condominium association or cooperative association policy, or in an amount not exceeding 10 percent of the insured value with respect to any other commercial lines residential policy, if, at the time of such offer and at each renewal, the insurer also offers to the policyholder a deductible in the amount of 3 percent of the insured value. Nothing in this subsection prohibits any deductible otherwise authorized by this section. All forms by which the offers authorized in this subsection are made or required to be made shall be on forms that are adopted or approved by the commission or office ~~department~~.

Section 1184. Subsection (2) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(2) Unless the insurer obtains the policyholder's written refusal of the policies or endorsements specified in subsection (1), any policy covering the dwelling is deemed to include the coverage specified in paragraph (1)(b). The rejection or selection of alternative coverage shall be made on a form approved by the office ~~department~~. The form shall fully advise the applicant of the nature of the coverage being rejected. If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of the coverage or election of the alternative coverage on behalf of all insureds. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy when the policyholder has rejected the coverage specified in this section or has selected alternative coverage. The insurer must provide such policyholder with notice of the availability of such coverage in a form approved ~~specified~~ by the office ~~department~~ at least once every 3 years. The failure to provide such notice constitutes a violation of this code, but does not affect the coverage provided under the policy.

Section 1185. Section 627.7012, Florida Statutes, is amended to read:

627.7012 Pools of insurance adjusters.—The Commission ~~Department of Insurance~~ may, by rule, establish a pool of qualified insurance adjusters. The rules must provide that, if a hurricane occurs or an emergency is declared, the office ~~department~~ may assign members of the pool to the affected area and that an insurer may request that a member of the pool adjust claims in the assigned area. The rules may not require that an insurer use those adjusters assigned by the office ~~department~~.

Section 1186. Section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(1) PURPOSE AND SCOPE.—This section sets forth a nonadversarial alternative dispute resolution procedure for a mediated claim resolution conference prompted by the need for effective, fair, and timely handling of property insurance claims. There is a particular need for an informal, nonthreatening forum for helping parties who elect this procedure to resolve their claims disputes because most homeowner's insurance policies obligate insureds to participate in a potentially expensive and time-consuming adversarial appraisal process prior to litigation. The procedure set forth in this section is designed to bring the parties together for a mediated claims settlement conference without any of the trappings or drawbacks of an adversarial process. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible. This section is available with respect to claims under personal lines policies for all claimants and insurers prior to commencing the appraisal process, or commencing litigation. If requested by the insured, participation by legal counsel shall be permitted. Mediation under this section is also available to litigants referred to the department by a county court or circuit court. This section does not apply to commercial coverages, to private passenger motor vehicle insurance coverages, or to disputes relating to liability coverages in policies of property insurance.

(2) At the time a first-party claim within the scope of this section is filed, the insurer shall notify all first-party claimants of their right to participate in the mediation program under this section. The department shall prepare a consumer information pamphlet for distribution to persons participating in mediation under this section.

(3) The costs of mediation shall be reasonable, and the insurer shall bear all of the cost of conducting mediation conferences, except as otherwise provided in this section. If an insured fails to appear at the conference, the conference shall be rescheduled upon the insured's payment of the costs of a rescheduled conference. If the insurer fails to appear at the conference, the insurer shall pay the insured's actual cash expenses incurred in attending the conference if the insurer's failure to attend was not due to a good cause acceptable to the department. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full value of the claim. The insurer shall incur an additional fee for a rescheduled conference necessitated by the insurer's failure to appear at a scheduled

conference. The fees assessed by the administrator shall include a charge necessary to defray the expenses of the department related to its duties under this section and shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

(4) The department shall adopt by rule a property insurance mediation program to be administered by the department or its designee. The department may also adopt special rules which are applicable in cases of an emergency within the state. The rules shall be modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court. The rules shall provide for:

(a) Reasonable requirement for processing and scheduling of requests for mediation.

(b) Qualifications of mediators as provided in s. 627.745 and in the Florida Rules of Certified and Court Appointed Mediators, and for such other individuals as are qualified by education, training, or experience as the department determines to be appropriate.

(c) Provisions governing who may attend mediation conferences.

(d) Selection of mediators.

(e) Criteria for the conduct of mediation conferences.

(f) Right to legal counsel.

(5) All statements made and documents produced at a mediation conference shall be deemed to be settlement negotiations in anticipation of litigation within the scope of s. 90.408. All parties to the mediation must negotiate in good faith and must have the authority to immediately settle the claim. Mediators are deemed to be agents of the department and shall have the immunity from suit provided in s. 44.107.

(6) Mediation is nonbinding; however, if a written settlement is reached, the insured has 3 business days within which the insured may rescind the settlement unless the insured has cashed or deposited any check or draft disbursed to the insured for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, it shall be binding and act as a release of all specific claims that were presented in that mediation conference.

(7) If the insurer requests the mediation, and the mediation results are rejected by either party, the insured shall not be required to submit to or participate in any contractual loss appraisal process of the property loss damage as a precondition to legal action for breach of contract against the insurer for its failure to pay the policyholder's claims covered by the policy.

(8) The department may designate an entity or person to serve as administrator to carry out any of the provisions of this section and may take this action by means of a written contract or agreement.

Section 1187. Section 627.7017, Florida Statutes, is amended to read:

627.7017 Hurricane loss mitigation projects.—In addition to any other hurricane loss mitigation activities authorized or required by law, the office ~~department~~ may contract with public or private entities for hurricane loss mitigation projects.

Section 1188. Subsection (6) of section 627.702, Florida Statutes, is amended to read:

627.702 Valued policy law.—

(6) With regard to mobile homes included in subsection (1), any total loss shall be adjusted on the basis of the amount of money for which such property was insured as specified in the policy, whether on an actual cash value basis, replacement cost basis, or stated amount, and for which a premium has been charged and paid only if the insured has elected to purchase such coverage at the inception of the policy. However, when coverage is written for a mobile home on any basis other than stated value, a complete disclosure of the relative cost between that policy and the stated value policy shall be made to the insured on a form and in a format approved by the office ~~department~~. Such forms shall disclose and describe the differences between the types of policies and shall be signed by the insured. Copies shall be maintained in the insurer's file, and a copy shall be made available to the insured. Each insurer licensed to write insurance covering mobile homes shall make such stated value coverage available at the option of the insured.

Section 1189. Subsection (4) of section 627.706, Florida Statutes, is amended to read:

627.706 Sinkhole insurance.—

(4) Every insurer authorized to transact property insurance in this state shall make a proper filing with the office ~~department~~ for the purpose of extending the appropriate forms of property insurance to include coverage for insurable sinkhole losses.

Section 1190. Subsections (1), (5), and (9) of section 627.727, Florida Statutes, are amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(1) No motor vehicle liability insurance policy which provides bodily injury liability coverage shall be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable when, or to the extent that, an insured named in the policy makes a written rejection of the coverage on

behalf of all insureds under the policy. When a motor vehicle is leased for a period of 1 year or longer and the lessor of such vehicle, by the terms of the lease contract, provides liability coverage on the leased vehicle, the lessee of such vehicle shall have the sole privilege to reject uninsured motorist coverage or to select lower limits than the bodily injury liability limits, regardless of whether the lessor is qualified as a self-insurer pursuant to s. 324.171. Unless an insured, or lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage or requests higher uninsured motorist limits in writing, the coverage or such higher uninsured motorist limits need not be provided in or supplemental to any other policy which renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits when an insured or lessee had rejected the coverage. When an insured or lessee has initially selected limits of uninsured motorist coverage lower than her or his bodily injury liability limits, higher limits of uninsured motorist coverage need not be provided in or supplemental to any other policy which renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits unless an insured requests higher uninsured motorist coverage in writing. The rejection or selection of lower limits shall be made on a form approved by the office ~~Insurance Commissioner~~. The form shall fully advise the applicant of the nature of the coverage and shall state that the coverage is equal to bodily injury liability limits unless lower limits are requested or the coverage is rejected. The heading of the form shall be in 12-point bold type and shall state: "You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds. The insurer shall notify the named insured at least annually of her or his options as to the coverage required by this section. Such notice shall be part of, and attached to, the notice of premium, shall provide for a means to allow the insured to request such coverage, and shall be given in a manner approved by the office ~~department~~. Receipt of this notice does not constitute an affirmative waiver of the insured's right to uninsured motorist coverage where the insured has not signed a selection or rejection form. The coverage described under this section shall be over and above, but shall not duplicate, the benefits available to an insured under any workers' compensation law, personal injury protection benefits, disability benefits law, or similar law; under any automobile medical expense coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident; and such coverage shall cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section. The amount of coverage available under this section shall not be reduced by a setoff against any coverage, including liability insurance. Such coverage shall not inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or similar law.

(5) Any person having a claim against an insolvent insurer as defined in s. 631.54(5) ~~s. 631.54(6)~~ under the provisions of this section shall present such claim for payment to the Florida Insurance Guaranty Association only. In the event of a payment to any person in settlement of a claim arising under the provisions of this section, the association is not subrogated or entitled to any recovery against the claimant's insurer. The association, however, has the rights of recovery as set forth in chapter 631 in the proceeds recoverable from the assets of the insolvent insurer.

(9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the office ~~department~~, establishing that if the insured accepts this offer:

(a) The coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident, except as provided in paragraph (c).

(b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to her or him is the coverage available as to that motor vehicle.

(c) If the injured person is occupying a motor vehicle which is not owned by her or him or by a family member residing with her or him, the injured person is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which she or he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle the injured person is occupying.

(d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in her or his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

(e) If, at the time of the accident the injured person is not occupying a motor vehicle, she or he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under which she or he is insured as a named insured or as an insured resident of the named insured's household.

In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant, or lessee, on a form approved by the office ~~department~~, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations. When the named insured, applicant, or lessee has initially accepted such limitations, such acceptance shall apply to any policy which renews, extends, changes, supersedes, or replaces an existing policy unless the named insured requests deletion of such limitations and pays the appropriate premium for such coverage. Any insurer who provides coverage which includes the limitations provided in this subsection shall file revised premium rates with the office ~~department~~ for such uninsured motorist coverage

to take effect prior to initially providing such coverage. The revised rates shall reflect the anticipated reduction in loss costs attributable to such limitations but shall in any event reflect a reduction in the uninsured motorist coverage premium of at least 20 percent for policies with such limitations. Such filing shall not increase the rates for coverage which does not contain the limitations authorized by this subsection, and such rates shall remain in effect until the insurer demonstrates the need for a change in uninsured motorist rates pursuant to s. 627.0651.

Section 1191. Subsection (1) of section 627.7275, Florida Statutes, is amended to read:

627.7275 Motor vehicle property damage liability.—

(1) No motor vehicle insurance policy providing personal injury protection as set forth in s. 627.736 shall be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state unless the policy also provides coverage for property damage liability in the amount of at least $10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle or provides coverage in the amount of at least $30,000 for combined property damage liability and bodily injury liability in any one accident arising out of the use of the motor vehicle. The policy, as to coverage of property damage liability, shall meet the applicable requirements of s. 324.151, subject to the usual policy exclusions such as have been approved in policy forms by the office ~~department~~.

Section 1192. Subsections (7), (8), and (9) of section 627.728, Florida Statutes, are amended to read:

627.728 Cancellations; nonrenewals.—

(7) Except in the case of cancellation for nonpayment of premium or nonrenewal of the policy, the notice of cancellation as provided by this section must contain the following words which are to be prominently displayed: "You are permitted by law to appeal this cancellation. An appeal must be filed no later than 20 days before the effective date of cancellation set forth in this notice. Forms for such appeal and the regulations pertaining thereto may be obtained from the office ~~offices of the Department of Insurance~~. The office ~~Department of Insurance~~ does not have the authority to extend the effective date of cancellation; therefore you should obtain replacement coverage prior to the effective date of cancellation."

(8)(a) Within 2 working days after receipt of a timely appeal of the notice of cancellation, the office ~~department~~ shall initiate a proceeding. If informal procedures fail to resolve the appeal, the office ~~department~~ shall, upon request of the insured, call a hearing upon 10 days' notice to the parties to be held by a disinterested employee of the office ~~department~~. Proceedings pursuant to this subsection are not subject to the provisions of chapter 120.

(b) Each insurer subject to this section shall maintain on file with the office ~~department~~ the name and address of the person authorized to receive notices pursuant to this section on behalf of the insurer.

(c) The office ~~department~~ shall, at the conclusion of the proceeding or hearing or not later than 2 working days thereafter, issue its written findings to the parties; and, if it finds for the named insured, it shall either order the insurer to rescind its notice of cancellation or, if the date cancellation is to be effective has elapsed, order the policy reinstated from the date of cancellation, and such coverage shall be continuous to, and shall operate prospectively from, the date of cancellation. However, no policy shall be reinstated while the named insured is in arrears in payment of premium on such policy. If the office ~~department~~ finds for the insurer, its written findings shall so state.

(d) Reinstatement of a policy under this subsection shall not operate in any way to extend the expiration, termination, or anniversary date provided in the policy. Upon such reinstatement, costs and attorney's fees may be assessed by the office ~~department~~ and paid to the named insured by an insurer who has wrongfully canceled a policy, as determined by the proceeding or hearing provided for in paragraph (c).

(9) The office ~~department~~ shall deposit all fees provided for in this section into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1193. Subsection (5) of section 627.7282, Florida Statutes, is amended to read:

627.7282 Notice of additional premium; cancellation upon nonpayment.—

(5) The commission ~~department~~ may adopt rules prescribing the format of the notice.

Section 1194. Paragraph (a) of subsection (5) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(5)(a) A licensed general lines agent may charge a per-policy fee not to exceed $10 to cover the administrative costs of the agent associated with selling the motor vehicle insurance policy if the policy covers only personal injury protection coverage as provided by s. 627.736 and property damage liability coverage as provided by s. 627.7275 and if no other insurance is sold or issued in conjunction with or collateral to the policy. The per-policy fee must be a component of the insurer's rate filing and may not be charged by an agent unless the fee is included in the filing. The fee is not considered part of the premium except for purposes of the office's ~~department's~~ review of expense factors in a filing made pursuant to s. 627.062.

Section 1195. Paragraph (c) of subsection (4), paragraphs (a) and (e) of subsection (5), paragraph (a) of subsection (6), and paragraph (c) of subsection (11) of section 627.736, Florida Statutes, are amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(4) BENEFITS; WHEN DUE.—Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the Agency for Health Care Administration provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of the Medicaid program.

(c) All overdue payments shall bear simple interest at the rate established ~~by the Comptroller~~ under s. 55.03 or the rate established in the insurance contract, whichever is greater, for the year in which the payment became overdue, calculated from the date the insurer was furnished with written notice of the amount of covered loss. Interest shall be due at the time payment of the overdue claim is made.

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment or his or her guardian has countersigned the invoice, bill, or claim form approved by the office ~~Department of Insurance~~ upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like services or supplies in cases involving no insurance.

(e) All statements and bills for medical services rendered by any physician, hospital, clinic, or other person or institution shall be submitted to the insurer on a Health Care Finance Administration 1500 form, UB 92 forms, or any other standard form approved by the office or adopted by the commission ~~department~~ for purposes of this paragraph. All billings for such services shall, to the extent applicable, follow the Physicians' Current Procedural Terminology (CPT) in the year in which services are rendered. No statement of medical services may include charges for medical services of a person or entity that performed such services without possessing the valid licenses required to perform such services. For purposes of paragraph (4)(b), an insurer shall not be considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph.

(6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—

(a) Every employer shall, if a request is made by an insurer providing personal injury protection benefits under ss. 627.730-627.7405 against

whom a claim has been made, furnish forthwith, in a form approved by the office ~~department~~, a sworn statement of the earnings, since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(11) DEMAND LETTER.—

(c) Each notice required by this section must be delivered to the insurer by United States certified or registered mail, return receipt requested. Such postal costs shall be reimbursed by the insurer if so requested by the provider in the notice, when the insurer pays the overdue claim. Such notice must be sent to the person and address specified by the insurer for the purposes of receiving notices under this section, on the document denying or reducing the amount asserted by the filer to be overdue. Each licensed insurer, whether domestic, foreign, or alien, may file with the office ~~department~~ designation of the name and address of the person to whom notices pursuant to this section shall be sent when such document does not specify the name and address to whom the notices under this section are to be sent or when there is no such document. The name and address on file with the office ~~department~~ pursuant to s. 624.422 shall be deemed the authorized representative to accept notice pursuant to this section in the event no other designation has been made.

Section 1196. Subsection (5) of section 627.739, Florida Statutes, is amended to read:

627.739 Personal injury protection; optional limitations; deductibles.—

(5) All such offers shall be made in clear and unambiguous language at the time the initial application is taken and prior to each annual renewal and shall indicate that a premium reduction will result from each election. At the option of the insurer, the requirements of the preceding sentence are met by using forms of notice approved by the office ~~department~~, or by providing the following notice in 10-point type in the insurer's application for initial issuance of a policy of motor vehicle insurance and the insurer's annual notice of renewal premium:

> For personal injury protection insurance, the named insured may elect a deductible and to exclude coverage for loss of gross income and loss of earning capacity ("lost wages"). These elections apply to the named insured alone, or to the named insured and all dependent resident relatives. A premium reduction will result from these elections. The named insured is hereby advised not to elect the lost wage exclusion if the named insured or dependent resident relatives are employed, since lost wages will not be payable in the event of an accident.

Section 1197. Section 627.7401, Florida Statutes, is amended to read:

627.7401 Notification of insured's rights.—

(1) The commission ~~department~~, by rule, shall adopt a form for the notification of insureds of their right to receive personal injury protection benefits under the Florida Motor Vehicle No-Fault Law. Such notice shall include a

description of the benefits provided by personal injury protection, including, but not limited to, the specific types of services for which medical benefits are paid, disability benefits, death benefits, significant exclusions from and limitations on personal injury protection benefits, when payments are due, how benefits are coordinated with other insurance benefits that the insured may have, penalties and interest that may be imposed on insurers for failure to make timely payments of benefits, and rights of parties regarding disputes as to benefits.

(2) Each insurer issuing a policy in this state providing personal injury protection benefits must mail or deliver the notice as specified in subsection (1) to an insured within 21 days after receiving from the insured notice of an automobile accident or claim involving personal injury to an insured who is covered under the policy. The office ~~department~~ may allow an insurer additional time to provide the notice specified in subsection (1) not to exceed 30 days, upon a showing by the insurer that an emergency justifies an extension of time.

(3) The notice required by this section does not alter or modify the terms of the insurance contract or other requirements of this act.

Section 1198. Paragraph (h) of subsection (2) and subsections (4), (5), and (7) of section 627.744, Florida Statutes, are amended to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(2) This section does not apply:

(h) To any other vehicle or policy exempted by rule of the commission ~~department~~. The commission ~~department~~ may base a rule under this paragraph only on a determination that the likelihood of a fraudulent physical damage claim is remote or that the inspection would cause a serious hardship to the insurer or the applicant.

(4) The inspection required by this section shall be provided by the insurer or by a person or organization authorized by the insurer. The applicant may be required to pay the cost of the inspection, not to exceed $5. The inspection shall be recorded on a form prescribed by the commission ~~department~~, and the form or a copy shall be retained by the insurer with its policy records for the insured. The insurer shall provide a copy of the form to the insured upon request. Any inspection fee paid directly by the applicant may not be considered part of the premium. However, an insurer that provides the inspection at no cost to the applicant may include the expense of the inspection within a rate filing.

(5) The inspection shall include at least the following:

(a) Taking a physical imprint of the vehicle identification number of the vehicle or otherwise recording the vehicle identification number in a manner prescribed by the commission ~~department~~.

(b) Recording the presence of accessories required by the commission ~~department~~ to be recorded.

(c) Recording the locations of and a description of existing damage to the vehicle.

(7) The commission ~~department~~ may, by rule, establish such procedures and notice requirements that it finds necessary to implement this section.

Section 1199. Subsections (1) and (2) of section 627.758, Florida Statutes, are amended to read:

627.758 Surety on auto club traffic arrest bond; conditions, limit; bail bond.—

(1) Any authorized surety insurer may, in any year, become surety in an amount not to exceed $1,000 with respect to any guaranteed traffic arrest bond certificate issued in such year by an automobile club or association by filing with the office ~~department~~ an undertaking to become surety.

(2) The undertaking shall be in the form prescribed by the commission ~~department~~ and shall state the following:

(a) The name and address of the automobile club or association with respect to the guaranteed traffic arrest bond certificates for which the surety insurer undertakes to be surety.

(b) The unqualified obligation of the surety insurer to pay the fine or forfeiture in an amount not to exceed $1,000 for any person who, after posting a guaranteed traffic arrest bond certificate with respect to which the insurer has undertaken to be surety, fails to make the appearance for which the certificate was posted.

Section 1200. Subsection (2) of section 627.7711, Florida Statutes, is amended to read:

627.7711 Definitions.—As used in this part, the term:

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

Section 1201. Section 627.777, Florida Statutes, is amended to read:

627.777 Approval of forms.—A title insurer may not issue or agree to issue any form of title insurance commitment, title insurance policy, other contract of title insurance, or related form until it is filed with and approved by the office ~~department~~. The office ~~department~~ may not disapprove a title guarantee or policy form on the ground that it has on it a blank form for an attorney's opinion on the title.

Section 1202. Subsection (2) of section 627.7773, Florida Statutes, is amended to read:

627.7773 Accounting and auditing of forms by title insurers.—

(2) If the office ~~department~~ has reason to believe that an audit of outstanding forms should be required of any title insurer as to a title insurance agent or agency, the office ~~department~~ may require the title insurer to make a special audit of the forms. The title insurer shall complete the audit not later than 60 days after the request is received from the office ~~department~~, and shall report the results of the special audit to the office ~~department~~ no later than 90 days after the request is received.

Section 1203. Subsection (1) of section 627.780, Florida Statutes, is amended to read:

627.780 Illegal dealings in risk premium.—

(1) A person may not knowingly quote, charge, accept, collect, or receive a premium for title insurance other than the premium adopted by the commission ~~department~~.

Section 1204. Subsections (1), (2), (7), and (8) of section 627.782, Florida Statutes, are amended to read:

627.782 Adoption of rates.—

(1) Subject to the rating provisions of this code, the commission ~~department~~ must adopt a rule specifying the premium to be charged in this state by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer which shall not be less than 30 percent. However, in a transaction subject to the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq., as amended, no portion of the premium attributable to providing a primary title service shall be paid to or retained by any person who does not actually perform or is not liable for the performance of such service. The commission ~~department~~ may, by rule, establish limitations on related title services charges made in addition to the premium based upon the expenses associated with the services rendered and other relevant factors.

(2) In adopting premium rates, the commission ~~department~~ must give due consideration to the following:

(a) The title insurers' loss experience and prospective loss experience under closing protection letters and policy liabilities.

(b) A reasonable margin for underwriting profit and contingencies, including contingent liability under s. 627.7865, sufficient to allow title insurers, agents, and agencies to earn a rate of return on their capital that will attract and retain adequate capital investment in the title insurance business and maintain an efficient title insurance delivery system.

(c) Past expenses and prospective expenses for administration and handling of risks.

(d) Liability for defalcation.

(e) Other relevant factors.

(7) The commission ~~department~~ shall, in accordance with the standards provided in subsection (2), review the premium as needed, but not less frequently than once every 3 years, and shall, based upon the review required by this subsection, revise the premium if the results of the review so warrant.

(8) The commission ~~department~~ may, by rule, require licensees under this part to annually submit statistical information, including loss and expense data, as the department determines to be necessary to analyze premium rates, retention rates, and the condition of the title insurance industry.

Section 1205. Section 627.783, Florida Statutes, is amended to read:

627.783 Rate deviation.—

(1) A title insurer may petition the office ~~department~~ for an order authorizing a specific deviation from the adopted premium, and a title insurer or title insurance agent may petition the office ~~department~~ for an order authorizing and permitting a specific deviation above the reasonable charge for related title services rendered specified in s. 627.782(1). The petition shall be in writing and sworn to and shall set forth allegations of fact upon which the petitioner will rely, including the petitioner's reasons for requesting the deviation. Any authorized title insurer, agent, or agency may join in the petition for like authority to deviate or may file a separate petition praying for like authority or opposing the deviation. The office ~~department~~ shall rule on all such petitions simultaneously.

(2) If, in the judgment of the office ~~department~~, the requested deviation is not justified, the office ~~department~~ may enter an order denying the petition. An order granting a petition constitutes an amendment to the adopted premium as to the petitioners named in the order, and is subject to s. 627.782.

Section 1206. Subsection (3) of section 627.7843, Florida Statutes, is amended to read:

627.7843 Ownership and encumbrance reports.—

(3) Any ownership and encumbrance report or similar report that is relied on or intended to be relied on by a consumer must be on forms approved by the office ~~department~~, and must provide for a maximum liability for incorrect information of not more than $1,000.

Section 1207. Subsections (2) and (3) of section 627.7845, Florida Statutes, are amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(2) The title insurer shall cause the evidence of the reasonable search and examination of the title to be preserved and retained in its files or in the files of its title insurance agent or agency for a period of not less than 7 years after the title insurance commitment, title insurance policy, or guarantee of title was issued. The title insurer or agent or agency must produce the evidence required to be maintained by this subsection at its offices upon the demand of the office ~~department~~. Instead of retaining the original evidence, the title insurer or the title insurance agent or agency may, in the regular course of business, establish a system under which all or part of the evidence is recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original.

(3) The title insurer or its agent or agency must maintain a record of the actual risk premium and related title service charges made for issuance of the policy and any endorsements in its files for a period of not less than 7 years. The title insurer, agent, or agency must produce the record at its office upon demand of the office ~~department~~.

Section 1208. Subsection (3) of section 627.786, Florida Statutes, is amended to read:

627.786 Transaction of title insurance and any other kind of insurance prohibited.—

(3) Subsection (1) does not preclude a title insurer from providing instruments to any prospective insured, in the form and content approved by the office ~~department~~, under which the title insurer assumes liability for loss due to the fraud of, dishonesty of, misappropriation of funds by, or failure to comply with written closing instructions by, its contract agents, agencies, or approved attorneys in connection with a real property transaction for which the title insurer is to issue a title insurance policy.

Section 1209. Section 627.7865, Florida Statutes, is amended to read:

627.7865 Title insurer assessments.—As a condition of doing business in this state, each title insurer shall be liable for an assessment to pay all unpaid title insurance claims on real property in this state for any title insurer which is liquidated with unpaid outstanding claims. The office ~~department~~ shall assess all title insurers on a pro rata basis determined by their writings in this state for amounts necessary to pay the claims. A title insurer is not required to pay an amount in excess of one-tenth of its surplus as to policyholders.

Section 1210. Section 627.791, Florida Statutes, is amended to read:

627.791 Penalties against title insurers for violations by persons or entities not licensed.—A title insurer is subject to the penalties in ss. 624.418(2) and 624.4211 for any violation of a lawful order or rule of the office or commission ~~department~~, or for any violation of this code, committed by:

(1) A person, firm, association, corporation, cooperative, joint-stock company, or other legal entity not licensed under this part when issuing and countersigning commitments or policies of title insurance on behalf of the title insurer.

(2) An attorney when issuing and countersigning commitments or policies of title insurance on behalf of the title insurer.

Section 1211. Section 627.793, Florida Statutes, is amended to read:

627.793 Rulemaking authority.—The commission may ~~department is authorized to~~ adopt rules implementing the provisions of this part.

Section 1212. Section 627.798, Florida Statutes, is amended to read:

627.798 Rulemaking authority.—The commission ~~department~~ shall by rule adopt a form to be used to provide notice to a purchaser-mortgagor that the purchaser-mortgagor is not protected by the title policy of the mortgagee.

Section 1213. Section 627.805, Florida Statutes, is amended to read:

627.805 ~~Departmental~~ Regulation of variable and indeterminate value contracts; rules.—The office ~~department~~, notwithstanding any other provision of law, shall have the sole authority to regulate the issuance and sale of variable and indeterminate value contracts, and the commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

Section 1214. Section 627.8055, Florida Statutes, is amended to read:

627.8055 Qualification of companies to issue variable or indeterminate value contracts.—No insurance company shall issue or deliver any contract on a variable or indeterminate value basis until it has satisfied the office ~~department~~ that its financial condition, management, history, and methods of operation are not such as would render its operation harmful to the public welfare.

Section 1215. Section 627.828, Florida Statutes, is amended to read:

627.828 License required.—

(1) Except as provided in ss. 627.901 and 627.902, no person shall engage in the business of a premium finance company unless licensed by the office ~~department~~. Every premium finance company licensed under the provisions of this part shall maintain at all times a net worth of $35,000. However, in lieu of having a net worth of $35,000, a premium finance company that has a net worth of $10,000 may file a surety bond with the office or other acceptable collateral with the department as approved by the office or department ~~it~~ in the amount of $35,000, which bond or collateral must be maintained.

(2) The application for a license shall be in writing and in the form prescribed by the commission ~~department~~. Every applicant shall provide

evidence of a net worth of $35,000 attested by two officers of the company, or a $35,000 surety bond and evidence of a net worth of $10,000 attested by two officers of the company. Assets to be used in computing the required net worth shall be determined by rules adopted by the commission ~~department~~.

(3)(a) Each premium finance company authorized under the provisions of this part shall maintain at all times an errors and omissions insurance policy of no less than $500,000 covering the acts of its officers, employees, and agents. The policy may contain reasonable deductibles not to exceed 2 percent of the policy limits.

(b)1. A premium finance company with an unencumbered net worth of at least $15 million may self-insure the errors and omissions coverage if it meets the requirements of this paragraph.

2. To qualify as a self-insurer the premium finance company must:

a. Have and maintain an unencumbered net worth of $15 million, which shall be determined based on assets permissible for insurers pursuant to ss. 625.012 and 625.031;

b. Annually demonstrate as part of its annual report, to the satisfaction of the department, that the net-worth requirement is being met; and

c. Obtain, as a part of its annual application for licensure as a premium finance company, a certificate of self-insurance from the office ~~department~~ to be renewed annually.

3. If the office ~~department~~ finds that the premium finance company:

a. Is not maintaining at all times an unencumbered net worth of at least $15 million; or

b. Is not, in good faith, covering the errors and omissions of its officers, employees and agents,

the office ~~department~~ shall, in addition to other penalties under this code, revoke or suspend the certificate of self-insurance, and the premium finance company shall be subject to the requirements of paragraph (a).

(c) The commission ~~department~~ may adopt rules necessary to administer this subsection, including rules prescribing the necessary forms.

(4) A single license shall entitle the holder to operate more than one office.

(5) At the time of filing an application for a license, the applicant shall pay to the office ~~department~~ the license fee and, upon original application or upon application subsequent to denial of application, or revocation, suspension or surrender of a license, an investigation fee.

(6) Such license shall state the name and address of the licensee, and a copy shall be kept conspicuously posted in each office of the licensee and shall not be transferable or assignable.

(7) Prior to moving an existing office to another location, a licensee shall notify the office ~~department~~ in writing of its intention to do so.

Section 1216. Section 627.829, Florida Statutes, is amended to read:

627.829 Approval, disapproval of application; license renewal.—

(1) The office ~~department~~ shall issue the license, unless it finds that the management of the premium finance company filing the application is so lacking in managerial experience as to make the proposed operation hazardous to the insurance-buying public or unless it has good reason to believe the management of the premium finance company is affiliated directly or indirectly through ownership, control, or in other business relations with any person whose business operations are or have been marked as detrimental to the public, policyholders, stockholders, investors, or creditors by manipulation of assets or of accounts or by bad faith.

(2) If the office ~~department~~ refuses to issue a license, it shall notify the applicant of the denial and return to the applicant the sum paid as a license fee, but shall retain the investigation fee to cover the costs of investigating the applicant.

(3) Each license shall remain in force until September 30 of the year for which issued, unless earlier surrendered, suspended, or revoked, and may be renewed for the ensuing license year upon the filing of an application therefor. If an application for renewal is filed with the office ~~department~~ before October 1 of any year, the license sought to be renewed shall be continued in force either until the issuance by the office ~~department~~ of the renewal license applied for or until 5 days after the office ~~department~~ refuses to renew the license.

Section 1217. Section 627.832, Florida Statutes, is amended to read:

627.832 Grounds for refusal, suspension, or revocation of license.—

(1) The office ~~department~~ may deny, suspend, revoke, or refuse to renew any license, if it finds:

(a) That the licensee has failed to pay the annual license fee or any sum of money lawfully demanded under authority of any other section of this part or has failed to comply with any order of the office ~~department~~.

(b) That the licensee has violated any provision of this part or any rule of the commission ~~department~~.

(c) That any fact or condition exists which, if it had existed at the time of the original application, clearly would have warranted a refusal to issue the license.

(d) Material misstatement, misrepresentation, or fraud in obtaining the license or permit, or in attempting to obtain the license or permit.

(e) That the license or permit is being willfully used, or is to be used, to circumvent any of the requirements or prohibitions of this code.

(f) Willful misrepresentation of any premium finance contract or willful deception with regard to any such contract, accomplished either in person or by any form of dissemination of information.

(g) A demonstrated lack of fitness or trustworthiness.

(h) Fraudulent or dishonest practices in the conduct of business.

(i) Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers, insureds, or beneficiaries or to others and received in the conduct of business.

(j) That the licensee has been found guilty of, or has pleaded guilty to, a felony in this state or any other state.

(2) A licensee may surrender a license by delivering to the office ~~department~~ written notice that she or he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(3) No revocation, suspension, or surrender of a license shall impair or affect the obligation of any insured under any lawful premium finance agreement previously acquired or held by the licensee.

(4) Every license issued hereunder shall remain in force and effect until it has been surrendered, revoked, or suspended or expires in accordance with the provisions of this part; but the office may ~~department shall have authority to~~ reinstate a suspended license or to issue a new license to a licensee whose license has been revoked, if no fact or condition then exists which clearly would have warranted office ~~departmental~~ refusal originally to issue such license under this part.

Section 1218. Section 627.833, Florida Statutes, is amended to read:

627.833 Administrative fine and probation in lieu of suspension, revocation, or refusal to renew license.—The office ~~department~~ may, in its discretion in lieu of a suspension, revocation, or refusal to renew or continue any license, impose on the licensee an administrative penalty or place such licensee on probation pursuant to ss. 626.681 and 626.691.

Section 1219. Section 627.834, Florida Statutes, is amended to read:

627.834 Examinations.—

(1) The office ~~department~~ may conduct examinations and investigations of premium finance companies under the provisions of ss. 624.307 and 626.601.

(2) As often as it deems necessary and not less frequently than each 3 years, the office ~~department~~ shall examine each licensed premium finance company. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of this code.

Section 1220. Section 627.836, Florida Statutes, is amended to read:

627.836 Licensee's books and records; reports.—

(1) The licensee shall keep and use in her or his business such books, accounts, and records as will enable the office ~~department~~ to determine whether the licensee is complying with the provisions of this part and with the rules pertaining thereto. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least 3 years after making the final entry in respect to any premium finance agreement recorded therein; however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this requirement.

(2) Each licensee shall annually, on or before March 1, file a report with the office ~~department~~ giving such information as the office ~~department~~ may require. The report shall be made under oath and in the form prescribed by the commission ~~department~~ and shall be accompanied by the annual report filing fee specified in s. 627.849. The office ~~department~~ may make and publish annually an analysis and recapitulation of such reports. In addition, the office ~~department~~ may require such additional regular or special reports as it may deem necessary.

Section 1221. Section 627.838, Florida Statutes, is amended to read:

627.838 Filing and approval of forms; service charges.—

(1) No premium finance agreement form or related form shall be used in this state by a premium finance company unless it has been filed with and approved by the office ~~department~~. Every filing shall be made within 30 days of issuance or use.

(2) Each premium finance company shall file with the office ~~department~~ the service charge and interest rate plan, including all modifications thereto, for informational purposes only. Every filing shall be made within 30 days of its effective date.

(3) Each filing shall be accompanied by the filing fee specified in s. 627.849.

Section 1222. Paragraph (b) of subsection (3) of section 627.840, Florida Statutes, is amended to read:

627.840 Limitation on service and other charges.—

(3)

(b) The service charge shall be a maximum of $12 per $100 per year plus an additional charge not exceeding $20, which additional charge need not be refunded upon prepayment. Such additional charge may be charged only once in a 12-month period for any one customer unless that customer's policy has been canceled due to nonpayment within the immediately preceding 12-month period. However, any insured may prepay her or his premium finance agreement in full at any time before the due date of the final payment; and in such event the unearned service charge shall be refunded in accordance

with the "Rule of 78ths," or any other method at least as beneficial to the insured and approved by the office ~~department~~, and shall represent at least as great a proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of payments in the agreement. When the amount of the refund is less than $1, no refund need be made if the agreement so states.

Section 1223. Section 627.8405, Florida Statutes, is amended to read:

627.8405 Prohibited acts; financing companies.—No premium finance company shall, in a premium finance agreement or other agreement, finance the cost of or otherwise provide for the collection or remittance of dues, assessments, fees, or other periodic payments of money for the cost of:

(1) A membership in an automobile club. The term "automobile club" means a legal entity which, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or maintenance of a motor vehicle; however, this definition of "automobile club" does not include persons, associations, or corporations which are organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon racecourses established and marked as such for the duration of such particular events. The words "motor vehicle" used herein have the same meaning as defined in chapter 320.

(2) An accidental death and dismemberment policy sold in combination with a personal injury protection and property damage only policy.

(3) Any product not regulated under the provisions of this insurance code.

This section also applies to premium financing by any insurance agent or insurance company under part XVI. The commission ~~department~~ shall adopt rules to assure disclosure, at the time of sale, of coverages financed with personal injury protection and shall prescribe the form of such disclosure.

Section 1224. Paragraph (e) of subsection (1) and subsection (3) of section 627.848, Florida Statutes, are amended to read:

627.848 Cancellation of insurance contract upon default.—

(1) When a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract listed in the agreement, the insurance contract shall not be canceled unless cancellation is in accordance with the following provisions:

(e) Whenever an insurance contract is canceled in accordance with this section, the insurer shall promptly return the unpaid balance due under the finance contract, up to the gross amount available upon the cancellation of the policy, to the premium finance company and any remaining unearned premium to the agent or the insured, or both, for the benefit of the insured

or insureds. The insurer shall notify the insured and the agent of the amount of unearned premium returned to the premium finance company and the amount of unearned commission held by the agent. The premium finance company within 15 days shall notify the insured and the agent of the amount of unearned premium. Within 15 days of receipt of notification from the premium finance company, the agent shall return such amount including any unearned commission to the insured or with the written approval of the insured apply such amount to the purchase of other insurance products regulated by the office ~~department~~. The commission ~~department~~ may adopt rules necessary to implement the provisions of this subsection.

(3) The commission ~~department~~ shall adopt a standard cancellation notice for use by premium finance companies in canceling insurance policies. The commission ~~department~~ shall specify the color of the notice so as to promote usability and standardization.

Section 1225. Section 627.849, Florida Statutes, is amended to read:

627.849 Fees.—

(1) The office ~~department~~ shall collect in advance, and the persons so served shall pay to it in advance, the following fees:

(a) Annual license fee $250

(b) Investigation fee 100

(c) Annual report filing fee 25

(d) Form filing fee 10

(2) The fees received under this section shall be credited to the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1226. Section 627.912, Florida Statutes, is amended to read:

627.912 Professional liability claims and actions; reports by insurers.—

(1) Each self-insurer authorized under s. 627.357 and each insurer or joint underwriting association providing professional liability insurance to a practitioner of medicine licensed under chapter 458, to a practitioner of osteopathic medicine licensed under chapter 459, to a podiatric physician licensed under chapter 461, to a dentist licensed under chapter 466, to a hospital licensed under chapter 395, to a crisis stabilization unit licensed under part IV of chapter 394, to a health maintenance organization certificated under part I of chapter 641, to clinics included in chapter 390, to an ambulatory surgical center as defined in s. 395.002, or to a member of The Florida Bar shall report in duplicate to the office ~~Department of Insurance~~ any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of such insured's professional services or based on a claimed performance of professional services without consent, if the claim resulted in:

(a) A final judgment in any amount.

(b) A settlement in any amount.

Reports shall be filed with the office ~~department~~ and, if the insured party is licensed under chapter 458, chapter 459, chapter 461, or chapter 466, with the Department of Health, no later than 30 days following the occurrence of any event listed in paragraph (a) or paragraph (b). The Department of Health shall review each report and determine whether any of the incidents that resulted in the claim potentially involved conduct by the licensee that is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply. The Department of Health, as part of the annual report required by s. 456.026, shall publish annual statistics, without identifying licensees, on the reports it receives, including final action taken on such reports by the Department of Health or the appropriate regulatory board.

(2) The reports required by subsection (1) shall contain:

(a) The name, address, and specialty coverage of the insured.

(b) The insured's policy number.

(c) The date of the occurrence which created the claim.

(d) The date the claim was reported to the insurer or self-insurer.

(e) The name and address of the injured person. This information is confidential and exempt from the provisions of s. 119.07(1), and must not be disclosed by the office ~~department~~ without the injured person's consent, except for disclosure by the office ~~department~~ to the Department of Health. This information may be used by the office ~~department~~ for purposes of identifying multiple or duplicate claims arising out of the same occurrence.

(f) The date of suit, if filed.

(g) The injured person's age and sex.

(h) The total number and names of all defendants involved in the claim.

(i) The date and amount of judgment or settlement, if any, including the itemization of the verdict, together with a copy of the settlement or judgment.

(j) In the case of a settlement, such information as the office ~~department~~ may require with regard to the injured person's incurred and anticipated medical expense, wage loss, and other expenses.

(k) The loss adjustment expense paid to defense counsel, and all other allocated loss adjustment expense paid.

(l) The date and reason for final disposition, if no judgment or settlement.

(m) A summary of the occurrence which created the claim, which shall include:

1. The name of the institution, if any, and the location within the institution at which the injury occurred.

2. The final diagnosis for which treatment was sought or rendered, including the patient's actual condition.

3. A description of the misdiagnosis made, if any, of the patient's actual condition.

4. The operation, diagnostic, or treatment procedure causing the injury.

5. A description of the principal injury giving rise to the claim.

6. The safety management steps that have been taken by the insured to make similar occurrences or injuries less likely in the future.

(n) Any other information required by the office ~~department~~ to analyze and evaluate the nature, causes, location, cost, and damages involved in professional liability cases.

(3) Upon request by the Department of Health, the office ~~department~~ shall provide the Department of Health with any information received under this section related to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466. For purposes of safety management, the office ~~department~~ shall annually provide the Department of Health with copies of the reports in cases resulting in an indemnity being paid to the claimants.

(4) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer reporting hereunder or its agents or employees or the office ~~department~~ or its employees for any action taken by them under this section. The office ~~department~~ may impose a fine of $250 per day per case, but not to exceed a total of $1,000 per case, against an insurer that violates the requirements of this section. This subsection applies to claims accruing on or after October 1, 1997.

(5) Any self-insurance program established under s. 1004.24 shall report in duplicate to the office ~~Department of Insurance~~ any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of professional services provided by the state university board of trustees through an employee or agent of the state university board of trustees, including practitioners of medicine licensed under chapter 458, practitioners of osteopathic medicine licensed under chapter 459, podiatric physicians licensed under chapter 461, and dentists licensed under chapter 466, or based on a claimed performance of professional services without consent if the claim resulted in a final judgment in any amount, or a settlement in any amount. The reports required by this subsection shall contain the information required by subsection (3) and the name, address, and specialty of the employee or agent of the state university board of trustees whose performance or professional services is alleged in the claim or action to have caused personal injury.

Section 1227. Section 627.9122, Florida Statutes, is amended to read:

627.9122 Officers' and directors' liability claims; reports by insurers.—

(1) Each insurer providing coverage for officers' and directors' liability coverage shall report to the office ~~Department of Insurance~~ any claim or action for damages claimed to have been caused by error, omission, or negligence in the performance of the officer's or director's services, if the claim resulted in:

(a) A final judgment in any amount.

(b) A settlement in any amount.

(c) A final disposition not resulting in payment on behalf of the insured.

Reports shall be filed with the office ~~department~~ no later than 60 days following the occurrence of any event listed in paragraph (a), paragraph (b), or paragraph (c).

(2) The reports required by subsection (1) shall contain:

(a) The name, address, and position held by the insured, and the type of corporation or organization, including classifications as provided in s. 501(c) of the Internal Revenue Code of 1986, as amended.

(b) The insured's policy number.

(c) The date of the occurrence which created the claim.

(d) The date the claim was reported to the insurer.

(e) The name of the injured person. This information is confidential and exempt from the provisions of s. 119.07(1), and must not be disclosed by the office ~~department~~ without the consent of the injured person. This information may be used by the office ~~department~~ for purposes of identifying multiple or duplicate claims arising out of the same occurrence.

(f) The date of suit, if filed.

(g) The total number and names of all defendants involved in the claim.

(h) The date and amount of judgment or settlement, together with a copy of the settlement or judgment.

(i) In the case of a settlement, such information as the office ~~department~~ may require with regard to the claimant's anticipated future losses.

(j) The loss adjustment expense paid to defense counsel, and all other allocated loss adjustment expenses paid.

(k) The date and reason for final disposition, if no judgment or settlement.

(l) A summary of the occurrence which created the claim, which shall include:

1. Whether the injuries claimed were the result of physical damage to the claimant, were the result of damage to the reputation of the claimant, were based on self-dealing by the defendant, or were in the nature of a shareholder dispute.

2. A description of the type of activity which caused the injury.

3. The steps taken by the officers or directors to assure that similar occurrences are less likely in the future.

(m) Any other information required by the office ~~department~~ to analyze and evaluate the nature, causes, costs, and damages involved in officers' and directors' liability cases.

(3) The office ~~department~~ shall include a summary of this information in its annual report.

Section 1228. Section 627.9126, Florida Statutes, is amended to read:

627.9126 Reports by liability insurers.—

(1) Each insurer transacting commercial multiperil, products liability, commercial automobile liability, private passenger automobile liability, or other line of liability insurance shall maintain information as specified in this section. Such information shall be maintained for each line of insurance and for direct Florida business only. The office ~~department~~ may conduct a sampling of claims or actions for damages for personal injury or property damage claimed to have been caused by error, omission, or negligence of insureds if the claim resulted in:

(a) A final judgment in any amount.

(b) A settlement in any amount.

(c) A final disposition not resulting in payment on behalf of the insured.

(2) Upon request of the office ~~department~~, an insurer shall, within 60 days, submit to the office ~~department~~ a report that contains:

(a) A final judgment in any amount.

(b) A settlement in any amount.

(c) A final disposition not resulting in payment on behalf of the insured.

(3) The reports required by subsection (2) shall contain:

(a)1. The name, address, and class or line of coverage of the insured.

2. The insured's policy number.

3. The date of the occurrence which created the claim.

4. The date the claim was reported to the insurer or self-insurer.

5. The date of suit, if filed.

6. The claimant's name, age, and sex; however, the name of the claimant is confidential and exempt from the provisions of s. 119.07(1).

7. The total number and names of all defendants involved in the claim.

8. Claims settled after a suit was filed.

9. Claims paid based on a judgment.

10. Judgments appealed by the insurer, together with the total results of such appeals.

11. The date and amount of final judgment or settlement, if any, including the itemization of the verdict, together with a copy of the settlement or final judgment.

12. In the case of a settlement, such information as the office ~~department~~ may require with regard to the injured person's incurred and anticipated medical expense, wage loss, and other expenses.

13. The loss adjustment expense paid to defense counsel and other allocated loss adjustment expense paid.

14. The date and reason for final disposition, if no judgment or settlement.

(b) A summary of the occurrence which created the claim, which shall include:

1. The name of the facility, business, or institution, if any, and the location within the facility, business, or institution at which the injury occurred.

2. A description of the principal injury giving rise to the claim.

3. The safety management steps that have been taken by the insured to make similar occurrences or injuries less likely in the future.

(c) Any other information required by the office ~~department~~ to analyze and evaluate the nature, causes, location, cost, and damages involved in liability cases.

(4) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer reporting hereunder or its agents or employees or the office ~~department~~ or its employees for any action taken by them pursuant to this section.

Section 1229. Section 627.913, Florida Statutes, is amended to read:

627.913 Reports by products liability insurers.—The office ~~department~~ may require any insurer authorized to write a policy of products liability insurance in the state to transmit the following information, based on its statewide products liability insurance writings. Upon the request of the

office ~~department~~, an insurer shall, within 60 days, submit to the office ~~department~~ a report that contains:

(1) Premiums written;

(2) Premiums earned;

(3) Unearned premiums;

(4) The dollar amount of claims paid;

(5) Incurred claims, not including claims incurred but not reported;

(6) Claims closed without payment, and the amount reserved for such claims;

(7) Loss reserves for all claims except claims incurred but not reported;

(8) Reserves for claims incurred but not reported;

(9) Losses paid as a percentage of the amount reserved for such losses;

(10) Net investment gain or loss and other income gain or loss allocated to products liability lines according to the allocation formula used in the annual insurance expense exhibit;

(11) Underwriting income or loss;

(12) Actual expenses in detail, including, but not limited to, loss adjustment expense; commissions; general expense; and advertising, home office, and defense costs;

(13) Claims settled after a suit was filed;

(14) Claims paid based on a judgment; and

(15) Judgments appealed by the insurer, together with the total results of such appeals.

Section 1230. Section 627.914, Florida Statutes, is amended to read:

627.914 Reports of information by workers' compensation insurers required.—

(1) The commission ~~department~~ shall adopt rules and statistical plans that must thereafter be used by each insurer and self-insurance fund as defined in s. 624.461 in the recording and reporting of loss, expense, and claims experience, in order that the experience of all insurers and self-insurance funds may be made available at least annually in such form and detail as may be necessary to aid the office ~~department~~ in determining whether Florida experience for workers' compensation insurance is sufficient for establishing rates.

(2) Each insurer and self-insurance fund authorized to write a policy of workers' compensation insurance shall transmit the following information annually on both Florida experience and nationwide experience separately:

(a) Payrolls by classification.

(b) Manual premiums by classification.

(c) Standard premiums by classification.

(d) Losses by classification and injury type.

(e) Expenses.

A report of this information shall be filed no later than July 1 of each year. All reports shall be filed in accordance with standard reporting procedures for insurers, which procedures have received approval by the office ~~department~~, and shall contain data for the most recent policy period available. A statistical or rating organization may be used by insurers and self-insurance funds to report the data required by this section. The statistical or rating organization shall report each data element in the aggregate only for insurers and self-insurance funds required to report under this section who elect to have the organization report on their behalf. Such insurers and self-insurance funds shall be named in the report.

(3) Individual self-insurers as defined in s. 440.02 shall report only Florida data as prescribed in paragraphs (2)(a)-(e) to the office ~~department~~.

(a) The office ~~department~~ shall publish the dates and forms necessary to enable individual self-insurers to comply with this section.

(b) A statistical or rating organization may be used by individual self-insurers for the purposes of reporting the data required by this section and calculating experience ratings.

(4) The office ~~department~~ shall provide a summary of information provided pursuant to subsection (2) in its annual report.

Section 1231. Section 627.915, Florida Statutes, is amended to read:

627.915 Insurer experience reporting.—

(1) Each insurer transacting private passenger automobile insurance in this state shall report certain information annually to the office ~~department~~. The information will be due on or before July 1 of each year. The information shall be divided into the following categories: bodily injury liability; property damage liability; uninsured motorist; personal injury protection benefits; medical payments; comprehensive and collision. The information given shall be on direct insurance writings in the state alone and shall represent total limits data. The information set forth in paragraphs (a)-(f) is applicable to voluntary private passenger and Joint Underwriting Association private passenger writings and shall be reported for each of the latest 3 calendar-accident years, with an evaluation date of March 31 of the current year. The information set forth in paragraphs (g)-(j) is applicable to voluntary private passenger writings and shall be reported on a calendar-accident year basis ultimately seven times at seven different stages of development.

(a) Premiums earned for the latest 3 calendar-accident years.

(b) Loss development factors and the historic development of those factors.

(c) Policyholder dividends incurred.

(d) Expenses for other acquisition and general expense.

(e) Expenses for agents' commissions and taxes, licenses, and fees.

(f) Profit and contingency factors as utilized in the insurer's automobile rate filings for the applicable years.

(g) Losses paid.

(h) Losses unpaid.

(i) Loss adjustment expenses paid.

(j) Loss adjustment expenses unpaid.

(2) Each insurer transacting fire, homeowner's multiple peril, commercial multiple peril, medical malpractice, products liability, workers' compensation, private passenger automobile liability, commercial automobile liability, private passenger automobile physical damage, commercial automobile physical damage, officers' and directors' liability insurance, or other liability insurance shall report, for each such line of insurance, the information specified in this subsection to the office ~~department~~. The information shall be reported for direct Florida business only and shall be reported on a calendar-year basis annually by April 1 for the preceding calendar year:

(a) Direct premiums written.

(b) Direct premiums earned.

(c) Loss reserves for all known claims:

1. At beginning of the year.

2. At end of the year.

(d) Reserves for losses incurred but not reported:

1. At beginning of the year.

2. At end of the year.

(e) Allocated loss adjustment expense:

1. Reserve at beginning of the year.

2. Reserve at end of the year.

3. Paid during the year.

(f) Unallocated loss adjustment expense:

1. Reserve at beginning of the year.

2. Reserve at end of the year.

3. Paid during the year.

(g) Direct losses paid.

(h) Underwriting income or loss.

(i) Commissions and brokerage fees.

(j) Taxes, licenses, and fees.

(k) Other acquisition costs.

(l) General expenses.

(m) Policyholder dividends.

(n) Net investment gain or loss and other income gain or loss allocated pro rata by earned premium to Florida business utilizing the investment allocation formula contained in the National Association of Insurance Commissioner's Profitability Report by line by state.

(3) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer reporting hereunder or its agents or employees or the office ~~department~~ or its employees for any action taken by them pursuant to this section unless such action otherwise constitutes a violation of this code.

(4) The office ~~department~~ shall provide a summary of information provided pursuant to subsections (1) and (2) in its annual report.

(5) Any insurer or insurer group which does not write at least 0.5 percent of the Florida market based on premiums written shall not have to file any report required by subsection (2) other than a report indicating its percentage of the market share. That percentage shall be calculated by dividing the current premiums written by the preceding year's total premiums written in the state for that line of insurance.

Section 1232. Section 627.917, Florida Statutes, is amended to read:

627.917 Uniform risk classification reporting system for motor vehicle insurance.—

(1) The commission ~~department~~ shall establish and promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating rates and premiums and for the purpose of evaluating competition and the availability of motor vehicle insurance in the voluntary market. The system shall divide risks into classifications based upon variations in hazards or expenses of claims. The classification system may include any difference among risks that can be demonstrated to have a probable effect upon

losses or expenses, but in no event shall the system adopted by the commission ~~department~~ discriminate among risks based upon race, creed, color, or national origin. The classification system shall divide the state into geographical areas based upon hazards or expenses of claims.

(2) Each insurer shall annually file with the office ~~department~~ a statement reflecting the total number of persons insured by the insurer within each classification by coverage, the premium volume in each classification by coverage, the paid and reserved losses incurred in each classification by coverage, the number of cancellations or nonrenewals by the insurer during the period, and the number of new insureds during the period. This statement shall be filed annually on a date determined by the commission ~~department~~ and shall cover a 1-year period.

(3) The commission ~~department~~ may adopt ~~promulgate~~ rules to require each insurer to report its loss and expense experience by classification, in such detail and as often as may be necessary to aid the office ~~department~~ in determining the reasonableness of rates, the validity of loss projections, and the validity of the risk classification system.

Section 1233. Section 627.9175, Florida Statutes, is amended to read:

627.9175 Reports of information on health insurance.—

(1) Each health insurer shall submit annually to the office ~~department~~ as to policies of individual health insurance:

(a) A summary of typical benefits, exclusions, and limitations for each type of individual policy form currently being issued in the state. The summary shall include, as appropriate:

1. The deductible amount;

2. The coinsurance percentage;

3. The out-of-pocket maximum;

4. Outpatient benefits;

5. Inpatient benefits; and

6. Any exclusions for preexisting conditions.

The commission ~~department~~ shall determine other appropriate benefits, exclusions, and limitations to be reported for inclusion in the consumer's guide published pursuant to this section.

(b) A schedule of rates for each type of individual policy form reflecting typical variations by age, sex, region of the state, or any other applicable factor which is in use and is determined to be appropriate for inclusion by the commission ~~department~~.

The commission ~~department~~ shall provide by rule a uniform format for the submission of this information in order to allow for meaningful comparisons

of premiums charged for comparable benefits. The office ~~department~~ shall provide this information to the department, which shall publish annually a consumer's guide which summarizes and compares the information required to be reported under this subsection.

(2)(a) Every insurer transacting health insurance in this state shall report annually to the office ~~department~~, not later than April 1, information relating to any measure the insurer has implemented or proposes to implement during the next calendar year for the purpose of containing health insurance costs or cost increases. The reports shall identify each measure and the forms to which the measure is applied, shall provide an explanation as to how the measure is used, and shall provide an estimate of the cost effect of the measure.

(b) The commission ~~department~~ shall promulgate forms to be used by insurers in reporting information pursuant to this subsection and shall utilize such forms to analyze the effects of health care cost containment programs used by health insurers in this state.

(c) The office ~~department~~ shall analyze the data reported under this subsection and shall annually make available to the department which shall provide to the public a summary of its findings as to the types of cost containment measures reported and the estimated effect of these measures.

Section 1234. Section 627.918, Florida Statutes, is amended to read:

627.918 Reporting formats.—

(1) The office ~~department~~ shall require that the reporting provided for in this part be made on forms established by the commission ~~department~~ or in a format compatible with the office's ~~its~~ electronic data processing equipment.

(2) The reporting forms and formats established by the commission ~~department~~ shall not provide for repeated collection of identical information relating to a single independent data element except when repeated collection of such information is necessary to accomplish the purpose of the section under which the information is reported.

Section 1235. Section 627.919, Florida Statutes, is amended to read:

627.919 Maintenance of insurance data.—The office ~~department~~ shall maintain data elements required in insurers' annual statements and information reported by insurers pursuant to this part in a computer file which will be available for the generation of reports and calculations on a scheduled or demand basis by the office ~~department~~ and Legislature. The acquisition by the office ~~department~~ of data processing software, hardware, and services necessary to carry out the provisions of this section ~~by the Treasurer's Management Information Center~~ shall be exempt from the provisions of part I of chapter 287.

Section 1236. Section 627.9403, Florida Statutes, is amended to read:

627.9403 Scope.—The provisions of this part shall apply to long-term care insurance policies delivered or issued for delivery in this state, and to policies delivered or issued for delivery outside this state to the extent provided in s. 627.9406, by an insurer, a fraternal benefit society as defined in s. 632.601, a health maintenance organization as defined in s. 641.19, a prepaid health clinic as defined in s. 641.402, or a multiple-employer welfare arrangement as defined in s. 624.437. A policy which is advertised, marketed, or offered as a long-term care policy and as a Medicare supplement policy shall meet the requirements of this part and the requirements of ss. 627.671-627.675 and, to the extent of a conflict, be subject to the requirement that is more favorable to the policyholder or certificateholder. The provisions of this part shall not apply to a continuing care contract issued pursuant to chapter 651 and shall not apply to guaranteed renewable policies issued prior to October 1, 1988. Any limited benefit policy that limits coverage to care in a nursing home or to one or more lower levels of care required or authorized to be provided by this part or by commission ~~department~~ rule must meet all requirements of this part that apply to long-term care insurance policies, except ss. 627.9407(3)(c), (9), (10)(f), and (12) and 627.94073(2). If the limited benefit policy does not provide coverage for care in a nursing home, but does provide coverage for one or more lower levels of care, the policy shall also be exempt from the requirements of s. 627.9407(3)(d).

Section 1237. Subsections (6) and (7) of section 627.9404, Florida Statutes, are amended to read:

627.9404 Definitions.—For the purposes of this part:

(6) "Licensed health care practitioner" means any physician, nurse licensed under part I of chapter 464, or psychotherapist licensed under chapter 490 or chapter 491, or any individual who meets any requirements prescribed by rule by the commission ~~department~~.

(7) "Limited benefit policy" means any policy that limits coverage to care in a nursing home or to one or more lower levels of care required or authorized to be provided by this part or by commission ~~department~~ rule.

Section 1238. Paragraph (d) of subsection (1) and subsection (3) of section 627.9405, Florida Statutes, are amended to read:

627.9405 Authorized groups; filing requirements.—

(1) No group long-term care insurance policy shall be delivered or issued for delivery in this state insuring more than one individual unless issued to one of the following groups:

(d) A group other than as described in paragraph (a), paragraph (b), or paragraph (c), subject to a determination by the office ~~department~~ that:

1. The issuance of the group policy is not contrary to the best interest of the public;

2. The issuance of the group policy would result in economies of acquisition or administration; and

3. The benefits are reasonable in relation to the premiums charged.

(3) Prior to advertising, marketing, or soliciting a group long-term care insurance policy in this state, the insurer shall demonstrate to the office ~~department~~ that the requirements of this section have been met pursuant to the filing procedures specified in s. 627.410.

Section 1239. Section 627.9406, Florida Statutes, is amended to read:

627.9406 Out-of-state group long-term care insurance.—No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state to a group described in s. 627.9405(1)(c) or (d), unless this state or such other state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state has made a determination that such requirements have been met. Evidence to this effect shall be filed by the insurer with the office ~~department~~ pursuant to the procedures specified in s. 627.410.

Section 1240. Subsections (1) and (2), paragraphs (a) and (c) of subsection (3), paragraph (c) of subsection (4), and subsection (6) of section 627.9407, Florida Statutes, are amended to read:

627.9407 Disclosure, advertising, and performance standards for long-term care insurance.—

(1) STANDARDS.—The commission ~~department~~ shall adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures of the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, disclosure of tax consequences, benefit triggers, prohibition against post-claims underwriting, reporting requirements, standards for marketing, and definitions of terms.

(2) ADVERTISING.—The commission ~~department~~ shall adopt rules setting forth standards for advertising, marketing, and sale of long-term care policies in order to protect applicants from unfair or deceptive sales or enrollment practices. An insurer shall file with the office ~~department~~ any long-term care insurance advertising material intended for use in this state at least 30 days before the date of use of the advertisement in this state. Within 30 days after the date of receipt of the advertising material, the office ~~department~~ shall review the material and shall disapprove any advertisement if, in the opinion of the office ~~department~~, such advertisement violates any of the provisions of this part or of part IX of chapter 626 or any rule of the commission ~~department~~. The office ~~department~~ may disapprove an advertisement at any time and enter an immediate order requiring that the use of the advertisement be discontinued if it determines that the advertisement violates any of the provisions of this part or of part IX of chapter 626 or any rule of the commission ~~department~~.

(3) RESTRICTIONS.—A long-term care insurance policy may not:

(a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificateholder; however, the office ~~department~~ may authorize nonrenewal for an insurer on a statewide basis on terms and conditions determined to be necessary by the office ~~department~~ to protect the interests of the insureds, if the insurer demonstrates that renewal will jeopardize the insurer's solvency or that substantial and unexpected loss experience cannot reasonably be mitigated or remedied.

(c) Restrict its coverage to care only in a nursing home licensed pursuant to part II of chapter 400 or provide significantly more coverage for such care than coverage for lower levels of care. The commission ~~department~~ shall adopt rules defining what constitutes significantly more coverage in nursing homes licensed pursuant to part II of chapter 400 than for lower levels of care.

(4) PREEXISTING CONDITION.—

(c) The office ~~department~~ may extend the limitation periods set forth in paragraphs (a) and (b) as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(6) LOSS RATIO AND RESERVE STANDARDS.—The commission ~~department~~ shall adopt rules establishing loss ratio and reserve standards for long-term care insurance policies. The rules must contain a specific reference to long-term care insurance policies. Such loss ratio and reserve standards shall be established at levels at which benefits are reasonable in relation to premiums and that provide for adequate reserving of the long-term care insurance risk.

Section 1241. Subsection (2) of section 627.94072, Florida Statutes, is amended to read:

627.94072 Mandatory offers.—

(2) An insurer that offers a long-term care insurance policy, certificate, or rider in this state must offer a nonforfeiture protection provision providing reduced paid-up insurance, extended term, shortened benefit period, or any other benefits approved by the office ~~department~~ if all or part of a premium is not paid. Nonforfeiture benefits and any additional premium for such benefits must be computed in an actuarially sound manner, using a methodology that has been filed with and approved by the office ~~department~~.

Section 1242. Subsection (1) of section 627.94074, Florida Statutes, is amended to read:

627.94074 Standards for benefit triggers.—

(1)(a) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of

benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment; or

(b) If a policy is a qualified long-term care insurance policy, the policy shall condition the payment of benefits on a determination of the insured's being chronically ill; having a level of disability similar, as provided by rule of the commission ~~Insurance Commissioner~~, to the insured's ability to perform activities of daily living; or being cognitively impaired as described in paragraph (6)(b). Eligibility for the payment of benefits shall not be more restrictive than requiring a deficiency in the ability to perform not more than three of the activities of daily living.

Section 1243. Section 627.9408, Florida Statutes, is amended to read:

627.9408 Rules.—

(1) The commission ~~department~~ may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this part.

(2) The commission ~~department~~ may adopt by rule the provisions of the Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners in the second quarter of the year 2000 which are not in conflict with the Florida Insurance Code.

Section 1244. Paragraph (g) of subsection (6) of section 627.942, Florida Statutes, is amended to read:

627.942 Definitions.—As used in this part, unless the context otherwise requires:

(6) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group, including, at a minimum:

(g) Such other matters as are ~~may be~~ requested by the office ~~department~~.

Section 1245. Subsections (2) and (3) of section 627.943, Florida Statutes, are amended to read:

627.943 Risk retention groups certified in Florida.—

(2) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the office ~~department~~ a plan of operation or a feasibility study. Before additional lines of liability insurance are offered in this or any other state approval shall be obtained from the office ~~department~~.

(3) A proposed risk retention group shall provide to the office ~~department~~ a summary of the application for a certificate of authority at the time it files the application. The summary information shall include the name of the risk retention group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization,

and the states in which the group intends to operate. A copy of the summary shall be provided by the office ~~department~~ to the National Association of Insurance Commissioners.

Section 1246. Subsections (1), (2), (5), (6), and (11) of section 627.944, Florida Statutes, are amended to read:

627.944 Risk retention groups not certificated in this state.—Risk retention groups certificated or licensed in states other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) NOTICE OF OPERATIONS AND DESIGNATION OF CHIEF FINANCIAL OFFICER ~~COMMISSIONER~~ AS AGENT.—Before offering insurance in this state, a risk retention group shall submit to the office ~~department~~:

(a) A statement identifying the state or states in which the risk retention group is certificated or licensed as a liability insurance company, date of certification or licensing, its principal place of business, and such other information, including information on its membership, as the office ~~department~~ may require to verify that the risk retention group is qualified as a risk retention group under the provisions of this part.

(b) A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and which was offered before such date by any risk retention group which had been certificated or licensed and operating for not less than 3 years before such date.

(c) A statement of registration which designates the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ or her or his designee as its agent for the purpose of receiving service of legal documents of process.

(2) FINANCIAL CONDITION.—Any risk retention group doing business in this state shall submit to the office ~~department~~:

(a) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by rule of the commission ~~department~~ after considering any criteria established by the National Association of Insurance Commissioners.

(b) A copy of each examination of the risk retention group as certified by the insurance commissioner or public official conducting the examination.

(c) Upon request by the office ~~department~~, a copy of any audit performed with respect to the risk retention group.

(d) Such information as may be required to verify its continuing qualification as a risk retention group under the provisions of this part.

(5) DECEPTIVE, FALSE, OR FRAUDULENT PRACTICES.—Any risk retention group shall comply with and be subject to the laws of this state regarding deceptive, false, or fraudulent acts or practices, including the provisions of part IX of chapter 626. If the office ~~department~~ seeks an injunction regarding conduct in violation of these laws, the injunction may be obtained from any Florida court of competent jurisdiction.

(6) EXAMINATION REGARDING FINANCIAL CONDITION.—Any risk retention group must submit to an examination by the office ~~department~~ to determine its financial condition if the insurance commissioner of the jurisdiction in which the group is certificated or licensed has not initiated an examination or does not initiate an examination within 30 days after a request by the office ~~department~~. Any examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner.

(11) DELINQUENCY PROCEEDINGS.—A risk retention group not domiciled in this state but doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the office ~~department~~ if there has been a finding of financial impairment after an examination under subsection (6).

Section 1247. Section 627.948, Florida Statutes, is amended to read:

627.948 Notice and registration requirements of purchasing groups.—

(1) A purchasing group which intends to do business in this state shall furnish notice to the office ~~department~~ which shall:

(a) Identify the state in which the group is domiciled.

(b) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase.

(c) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of such company or companies.

(d) Identify the principal place of business of the group.

(e) Provide such other information as may be required by the office ~~department~~ to verify that the purchasing group is qualified as a purchasing group under the provisions of this part.

(2) The purchasing group shall register with and designate the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ or her or his designee as its agent solely for the purpose of receiving service of legal documents or process. This requirement shall not apply in the case of a purchasing group:

(a) Which:

1. Was domiciled before April 1, 1986.

2. Is domiciled on and after October 27, 1986, in any state of the United States.

(b) Which:

1. Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state; and

2. Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state.

(c) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

(d) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

Section 1248. Section 627.950, Florida Statutes, is amended to read:

627.950 Administrative and procedural authority regarding risk retention and purchasing groups.—The office ~~department~~ is authorized to make use of any of the powers established under the Florida Insurance Code to enforce the laws of this state so long as those powers are not specifically preempted by the Product Liability Risk Retention Act of 1981 as amended by the Risk Retention Amendments of 1986. This includes, but is not limited to, the office's ~~department's~~ administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the office ~~department~~ may rely on the procedural law and regulations of the state. The injunctive authority of the office ~~department~~ in regard to risk retention groups is restricted to the extent that any injunction shall be issued by a court of competent jurisdiction.

Section 1249. Section 627.951, Florida Statutes, is amended to read:

627.951 Penalties; cease and desist orders; injunctions.—

(1) A risk retention group which violates any applicable provision of the Florida Insurance Code shall be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license or the right to do business in this state. In addition, any such risk retention group shall be subject to the issuance of a cease and desist order of the office ~~department~~ or an injunction issued by a court of competent jurisdiction prohibiting such violation or prohibiting the soliciting, selling, or transacting of insurance or otherwise operating or conducting business in this state in violation of the laws of this state. The office ~~department~~ may obtain an order from a court of competent jurisdiction to enjoin a risk retention group from further operation or from transacting insurance in this state if the risk retention group is in hazardous financial condition or financially impaired or to enjoin a risk retention group from the soliciting, selling, or transacting of insurance with respect to any person who is not eligible for membership in the group under state or federal law.

(2) A purchasing group which violates any applicable provision of the Florida Insurance Code shall be subject to fines and penalties applicable to licensed insurers and agents generally. In addition, any such purchasing group shall be subject to the issuance of a cease and desist order of the office ~~department~~ or an injunction issued by any court of competent jurisdiction prohibiting the soliciting, selling, transacting, or purchasing of insurance or otherwise operating or conducting business in this state.

Section 1250. Subsection (4) of section 627.952, Florida Statutes, is amended to read:

627.952 Risk retention and purchasing group agents.—

(4) Any person retained or employed to solicit, offer, sell, or purchase memberships in a purchasing group may be ordered to cease any such enrollment activity in this state whenever the office ~~department~~ has reason to believe that any such purchasing group has liability insurance coverage from a risk retention group or insurance company which is insolvent or in a hazardous financial condition. Orders entered under this subsection shall be issued in accordance with the procedures set forth in s. 627.951.

Section 1251. Section 627.954, Florida Statutes, is amended to read:

627.954 Rules.—The commission ~~department~~ may establish and from time to time amend such rules relating to risk retention groups and purchasing groups as may be necessary or desirable to carry out the provisions of this part.

Section 1252. Subsections (1), (4), (10), and (11) of section 627.971, Florida Statutes, are amended to read:

627.971 Definitions.—As used in this part:

(1)(a) "Financial guaranty insurance" means a surety bond, insurance policy, an indemnity contract issued by an insurer, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of:

1. The failure of an obligor on a debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to make principal, interest, premium, dividend, or purchase price payments when due, if the failure is the result of a financial default or insolvency, whether such obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted;

2. Changes in the levels of interest rates or the differential in interest rates between various markets or products;

3. Changes in the rate of exchange of currency;

4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or

5. Other events which the office ~~department~~ determines are substantially similar to any of the foregoing.

(b) However, "financial guaranty insurance" does not include:

1. Insurance of a loss resulting from an event described in paragraph (a), if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

a. A fortuitous physical event;

b. A failure of or deficiency in the operation of equipment; or

c. An inability to extract or recover a natural resource;

2. An individual or schedule public official bond;

3. A court bond required in connection with judicial, probate, bankruptcy, or equity proceedings, including a waiver, probate, open estate, or life tenant bond;

4. A bond running to a federal, state, county, municipal government, or other political subdivision, as a condition precedent to the granting of a license to engage in a particular business or of a permit to exercise a particular privilege;

5. A loss security bond or utility payment indemnity bond running to a governmental unit, railroad, or charitable organization;

6. A lease, purchase and sale, or concessionaire surety bond;

7. Credit unemployment insurance on a debtor in connection with a specific loan or other credit transaction, to provide payments to a creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed;

8. Credit insurance indemnifying a manufacturer, merchant, or educational institution which extends credit against loss or damage resulting from nonpayment of debts owed to her or him for goods or services provided in the normal course of her or his business;

9. Guaranteed investment contracts that are issued by life insurance companies and that provide that the life insurer will make specified payments in exchange for specific premiums or contributions;

10. Mortgage guaranty insurance as defined in s. 635.011(1) or s. 635.021;

11. Indemnity contracts or similar guaranties, to the extent that they are not otherwise limited or proscribed by this part, in which a life insurer guarantees:

a. Its obligations or indebtedness or the obligations or indebtedness of a subsidiary of which it owns more than 50 percent, other than a financial guaranty insurance corporation, if:

(I) For any such obligations or indebtedness that are backed by specific assets, such assets are at all times owned by the insurer or the subsidiary; and

(II) For the obligations or indebtedness of the subsidiary that are not backed by specific assets of the life insurer, the guaranty terminates once the subsidiary ceases to be a subsidiary; or

b. The obligations or indebtedness, including the obligation to substitute assets where appropriate, with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guarantees obligations or indebtedness acquired by its subsidiary, provided that the assets so acquired have been:

(I) Acquired by a special purpose entity where the sole purpose is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by such assets; or

(II) Sold to an independent third party; or

c. The obligations or indebtedness of an employee or agent of the life insurer;

12. Any form of surety insurance as defined in s. 624.606; or

13. Any other form of insurance covering risks which the office ~~department~~ determines to be substantially similar to any of the foregoing.

(4) "Collateral" means:

(a) Cash;

(b) The market value of investment grade securities, other than securities evidencing an interest in the projects financed with the proceeds of the insured obligations;

(c) The scheduled cash flow from investment grade obligations scheduled to be received on or prior to the date of scheduled debt service on the insured obligation;

(d) A conveyance or mortgage of real property; or

(e) A letter of credit;

if deposited with or held by the corporation; held in trust by a trustee, acceptable to the office ~~department~~, for the benefit of the corporation; or held in trust, pursuant to the bond indenture, by a trustee acceptable to the office ~~department~~, for the benefit of bondholders in the form of sinking funds or other reserves which may be used solely for the payment of debt service.

(10) An "investment grade obligation" means an obligation that:

(a) Has been determined to be in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the office ~~department~~;

(b) Has been identified in writing by such a rating agency as an insurable risk deemed to be of investment grade quality for purposes of insurance;

(c) Has received a "yes" rating by the Securities Valuation Office of the National Association of Insurance Commissioners; or

(d) Has been submitted for review to the appropriate rating agency or Securities Valuation Office and will be qualified pursuant to paragraph (a), paragraph (b), or paragraph (c).

(11) "Letter of credit" means:

(a) The stated amount of a clean unconditional, irrevocable letter of credit issued by a bank or trust company whose debt rating applicable to the term of the insured obligation is in one of the two highest generic lettered rating classifications by a securities rating agency acceptable to the office ~~department~~; or

(b) Fifty percent of the stated amount of a clean unconditional, irrevocable letter of credit issued by a bank or trust company whose debt rating applicable to the term of the insured obligation is in a rating classification other than as set forth in paragraph (a).

(c) An issuing or confirming bank referred to in paragraph (a) or paragraph (b) shall be:

1. Determined by the Securities Valuation office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of banks and trust companies whose letters of credit shall be acceptable to insurance regulatory authorities; provided, that the letter of credit is issued for the full term of the insured obligation, or the insured obligation is subject to mandatory call and redemption from the proceeds of the letter of credit if the letter of credit is not renewed or replaced; and

2.a. A member of the federal reserve system or chartered by a state of the United States; or

b. Organized and existing under the laws of a foreign country whose sovereign debt is rated in the highest major rating classification by a securities rating agency acceptable to the office ~~department~~; and which has been licensed as a domestic branch or agency by the Federal Government or a state of the United States; and which is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies.

Section 1253. Paragraph (b) of subsection (1), paragraph (d) of subsection (3), and subsections (4) and (5) of section 627.972, Florida Statutes, are amended to read:

627.972 Organization; financial requirements.—

(1) A financial guaranty insurance corporation must be organized and licensed in the manner prescribed in this code for stock property and casualty insurers except that:

(b)1. Prior to the issuance of a license, a corporation must submit to the office ~~department~~ for approval, a plan of operation detailing:

a. The types and projected diversification of guaranties to be issued;

b. The underwriting procedures to be followed;

c. The managerial oversight methods;

d. The investment policies; and

e. Any other matters prescribed by the office ~~department~~;

2. An insurer which is writing only the types of insurance allowed under this part on July 1, 1988, and otherwise meets the requirements of this part, is exempt from the requirements of this paragraph.

(3) An insurer may not transact financial guaranty insurance unless it establishes a contingency reserve, net of reinsurance, as follows:

(d) Withdrawals from the contingency reserve, to the extent of any excess, may be made with the approval of the office ~~department~~ from the earliest contributions to the reserve remaining therein:

1. In any year in which the actual incurred losses exceed 35 percent of earned premiums, or

2. If the contingency reserve has been in existence for 40 quarters for reserves subject to subparagraph (b)1., and 20 quarters for reserves subject to subparagraph (b)2., upon demonstration that the amount carried is excessive in relation to the insurer's outstanding obligations.

(4) In addition to the contingency reserve, the case basis method or other method prescribed by the office ~~department~~ is used to determine loss reserves, in a manner consistent with the requirements of part I of chapter 625, which must include a reserve for claims reported and unpaid net of collateral. A deduction from loss reserves shall be allowed for the time value of money by application of a discount rate equal to the average rate of return on the admitted assets of the insurer as of the date of the computation of any such reserve. The discount rate must be adjusted at the end of each calendar year.

(5) The insurer maintains an unearned premium reserve, net of reinsurance, computed on the monthly pro rata basis, where the premiums are paid on an installment basis. All other such premiums paid must be earned proportionately with the expiration of exposure or by such other method the office ~~department~~ prescribes or approves.

Section 1254. Section 627.973, Florida Statutes, is amended to read:

627.973 Limitations.—

(1) Financial guaranty insurance shall be transacted in this state only by a corporation licensed for such purpose, except that a property and casualty insurer transacting business pursuant to the provisions of this code may transact financial guaranty insurance in this state if the following conditions are met:

(a) Total policyholders' surplus exceeds $100 million;

(b) Not more than 20 percent of total net premiums written are applicable to or for financial guaranty insurance;

(c) The provisions of this part are applied to the insurer's financial guaranty insurance business;

(d) Not more than 20 percent of the insurer's total policyholder's surplus is applied toward meeting the provisions of this part;

(e) The policyholders' surplus once utilized to meet the requirements of this part shall not be available for meeting any policyholders' surplus requirements for any other type of insurance;

(f) The insurer is licensed to write financial guaranty insurance; and

(g) Unless the insurer is transacting financial guaranty insurance prior to July 1, 1988, and otherwise meets the requirements of this section, prior to the issuance of a license, the insurer must submit to the office ~~department~~ for approval, a plan of operation complying with s. 627.972(1)(b).

(2) Financial guaranty insurance shall be written only to insure obligations defined in s. 627.971(1)(a)1., except that obligations defined in s. 627.971(1)(a)2., 3., 4., and 5. may be written with the prior written approval of the office ~~department~~ pursuant to limitations and restrictions promulgated by rule that the commission ~~department~~ deems appropriate and necessary to protect the policyholders of the insurer.

(3) At least 95 percent of the outstanding total liability on municipal obligation bonds of an insurer transacting financial guaranty insurance must be investment grade.

(4) An insurer transacting financial guaranty insurance must at all times maintain capital, surplus, and contingency reserves, subject to the restrictions in paragraph (1)(d) if applicable, in the aggregate no less than the sum of:

(a) One-third of one percent of the total liabilities outstanding under guaranties of municipal obligation bonds;

(b) One percent of the total liabilities outstanding under guaranties of investment grade obligations, including industrial development bonds and investment grade consumer debt obligations;

(c) One and one-third percent of the total liabilities outstanding under guaranties of noninvestment grade consumer debt obligations;

(d) Two percent of the total liabilities outstanding under guaranties of other obligations not of investment grade, other than consumer debt obligations; and

(e) Surplus determined by the office ~~department~~ to be adequate to support the writing of residual value insurance, surety insurance, and credit insurance, if the corporation has elected to transact these kinds of insurance pursuant to s. 627.972(1).

(5) An insurer transacting financial guaranty insurance must limit its exposure to loss, net of collateral and reinsurance, as follows:

(a) For municipal bonds:

1. The insured average annual debt service with respect to any one entity and backed by a single revenue source may not exceed 10 percent of the aggregate of the corporation's capital, surplus, and contingency reserves, subject to the restrictions of paragraph (1)(d) if applicable; and

2. The insured unpaid principal issued by a single entity and backed by a single revenue source may not exceed 75 percent of the aggregate of the corporation's capital, surplus, and contingency reserves, subject to the restrictions in paragraph (1)(d) if applicable; and

(b) For all other financial guaranties, the insured unpaid principal for any one risk may not exceed 10 percent of the aggregate of the corporation's capital, surplus, and contingency reserves, subject to the restrictions in paragraph (1)(d) if applicable. Single risk liability shall be defined with respect to any one issuer, except that, if the risk is payable from a specified revenue source or adequately secured by loan obligations or other assets, such risk shall be defined by the revenue source.

(6) If the exposure to loss of an insurer transacting financial guaranty insurance exceeds the limitations in subsection (4), it may not transact any new financial guaranty insurance business until its exposure to loss no longer exceeds those limitations.

(7) An insurer which wrote financial guaranty insurance in this state during the 12-month period immediately preceding July 1, 1988, but which does not meet the requirements of subsection (1) or of s. 627.972(2), may, nevertheless, continue to write financial guaranty insurance as authorized by subsection (2) after July 1, 1988, subject to all other provisions of this part, provided:

(a) Within 45 days after such date the insurer files with the office ~~department~~ a statement of its intentions to limit its writings to financial guaranty, surety, and fidelity insurance. Effective upon such filing, the insurer shall be subject to the requirements of this part except that the surplus to policyholders requirement of s. 627.972(2) shall not apply to such insurer until July 1, 1998, at which time such insurer shall have and thereafter maintain

the minimum surplus requirement of at least $35 million. Failure of the insurer to meet the conditions of such statement of intent filed with the office ~~department~~, until such time as it meets the requirements of subsection (1), shall be grounds to subject the insurer to the penalties provided under this code, including immediate suspension or revocation of its certificate of authority. If the insurer does not file such statement of intent, it shall cease writing any new financial guaranty insurance business within 6 months after the effective date of this act. The insurer may:

1. Reinsure its net in-force business with a licensed financial guaranty insurance corporation or an insurer exempt under subsection (1);

2. Subject to the prior approval of its domiciliary insurance commissioner, reinsure all or part of its net in-force business pursuant to s. 627.975(1)(b), except that subparagraphs 2. and 4. do not apply. The assuming insurer must maintain reserves for the reinsured business in the manner applicable to the ceding insurer under paragraph (b); or

3. May continue the risks in force and, with 30 days prior written notice to its domiciliary insurance commissioner, write new financial guaranty policies if the writing of those policies is reasonably prudent to mitigate either the amount of or possibility of loss in connection with business written prior to July 1, 1988. However, an insurer must receive the prior approval of its domiciliary insurance commissioner before writing any new financial guaranty insurance policies that would increase its risk of loss.

(b) Must, for all guaranties in force prior to July 1, 1988, including those which fall under the definition of financial guaranty insurance, maintain the reserves applicable for municipal bond guaranties in effect prior to July 1, 1988. If the insurer's contingency reserves maintained as of July 1, 1988, are less than those required for municipal bond guaranties, the insurer has 3 years to bring its reserves into compliance, except that a part of the reserve may be released proportional to the reduction in net total liabilities resulting from reinsurance if the reinsurer, on the effective date of the reinsurance, establishes a reserve in an amount equal to the amount released and except that a part of the reserve may be released with office ~~departmental~~ approval, upon demonstration that the amount carried is excessive in relation to the corporation's outstanding obligations.

(c) Shall be subject to the reserve requirements applicable to financial guaranty insurance corporations, for business written on or after July 1, 1988.

(d) This subsection shall not apply to insurers permitted to write financial guaranty insurance pursuant to the exception set forth in subsection (1) and such insurers may write financial guaranty insurance subject to the requirements of the Florida Insurance Code.

Section 1255. Section 627.974, Florida Statutes, is amended to read:

627.974 Filing of policy forms and rates.—

(1) Policy forms and any amendments thereto must be filed with the office ~~department~~ within 30 days after their use by the insurer. A policy may

not provide coverage of the acceleration of payments due under the guaranteed obligations, including any payment in advance of scheduled maturity to be made by the issuer of the guaranteed obligations at the sole option of the owner of the guaranteed obligations, unless the acceleration is at the sole option of the insurer. Each policy must disclose that the insurance provided by the policy is not covered by the Florida Insurance Guaranty Association created under part II of chapter 631. The commission ~~department~~ may prescribe additional minimum policy provisions which are determined by the commission ~~department~~ to be necessary or appropriate to protect policyholders, claimants, obligees, or indemnitees.

(2) Rates may not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of the insurer.

(3) Criteria and guidelines used by insurers transacting financial guaranty insurance in establishing rating categories and ranges of rates to be used must be filed with the office ~~department~~ for information prior to their use by the insurer.

(4) All such filings must be available for public inspection at the office ~~department~~.

(5) This section is in lieu of the requirements of ss. 627.062 and 627.410.

Section 1256. Section 627.986, Florida Statutes, is amended to read:

627.986 Replacement rules.—Group-to-group consolidations shall be exempt from any rule of the commission ~~department~~ relating to the replacement of existing life or health insurance. Nothing in this part shall be interpreted as creating an exemption for consolidations which involve individual policies.

Section 1257. Section 627.987, Florida Statutes, is amended to read:

627.987 Policy forms.—No policy or group certificate of mortgage insurance used in connection with any consolidation, and no application, endorsement, or rider which becomes a part of any such policy or certificate, shall be issued or delivered in this state until a copy of the form has been filed with and approved by the office ~~department~~.

Section 1258. Section 628.051, Florida Statutes, is amended to read:

628.051 Application for permit to form insurer; contents; fee.—

(1) No domestic insurer shall be formed unless the persons so proposing have received a permit from the office ~~department~~.

(2) Written application for such permit shall be filed with the office ~~department~~. Such application and filing shall include:

(a) The name, type, and purpose of insurer.

(b) The name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the insurer. Each such person with an ownership interest of 10 percent

or more, or who will hold a position as an officer or director, must furnish on forms adopted by the commission and supplied by the office ~~department~~ a sworn biographical statement, legible copies of fingerprints, and authority for release of information in regard to the investigation of such person's background.

(c) A full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the insurer, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding.

(d) A full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive agency contracts.

(e) A copy of all proposed articles or certificates of incorporation and proposed bylaws of the proposed insurer.

(f) A copy of all articles or certificates of incorporation of involved corporations, if a copy of the same is not already on file in the office ~~department~~.

(g) A copy of all syndicate, association, firm, partnership, organization, or other similar agreements, by whatever name called, involved in the formation of the proposed insurer or its financing.

(h) If the applicant is a reciprocal insurer, a copy of the power of attorney and of other agreements existing or proposed as affecting investors, subscribers, the attorney in fact, or the applicant.

(i) A copy of any security, or of any proposed document evidencing any right or interest, proposed to be offered.

(j) Such other pertinent information and documents as reasonably requested by the commission or office ~~department~~.

(3) The application shall be accompanied by the filing fee specified in s. 624.501.

Section 1259. Section 628.061, Florida Statutes, is amended to read:

628.061 Investigation of proposed organization.—In connection with any proposal to incorporate a domestic insurer, the office ~~department~~ shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer.

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

(3) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.

Section 1260. Section 628.071, Florida Statutes, is amended to read:

628.071 Granting, denial of permit.—

(1) The office ~~department~~ shall expeditiously examine and investigate the application for a permit as referred to in s. 628.051. If the office ~~department~~ finds that:

(a) The application is complete;

(b) The documents therewith filed are in compliance with law;

(c) None of the stockholders, organizers, incorporators, subscribers, and other persons who directly or indirectly exercise or have the ability to exercise effective control of the proposed insurer or who will be involved in its management have been found guilty of, or have pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or any state thereof, or under the law of any other country, which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases;

(d) The proposed financial structure is adequate; and

(e) All stockholders, organizers, incorporators, subscribers, and other persons who directly or indirectly exercise or have the ability to exercise effective control of the proposed insurer or who will be involved in management of the proposed insurer possess the financial standing and business experience to form an insurer;

it shall issue to the applicant a permit to form the proposed insurer.

(2) If the office ~~department~~ does not so find, or finds that the insurer if formed or financed would not be able to qualify for or retain a certificate of authority by reason of the provisions of s. 624.404(3), a permit shall not be granted.

(3) A permit granted under the provisions of this section shall be valid for 1 year from the date of issue, and during any extension of such period, not to exceed an additional year, as may be authorized by the office ~~department~~ upon cause shown. The articles of incorporation and all other proceedings thereunder shall become void 1 year from the issue date of such permit or upon the expiration of such extended period, unless the formation of the proposed insurer has been completed and a certificate of authority has been issued by the office ~~department~~.

Section 1261. Section 628.091, Florida Statutes, is amended to read:

628.091 Filing, approval of articles of incorporation.—

(1) No domestic stock or mutual insurer shall be formed unless its articles of incorporation are approved by the office ~~department~~ prior to filing the same with and approval by the Department of State as provided by law.

(2) The incorporators shall file the triplicate originals of the articles of incorporation with the office ~~department~~, accompanied by the filing fee specified in s. 624.501.

(3) The office ~~department~~ shall promptly examine the articles of incorporation. If it finds that the articles of incorporation conform to law, and that a permit has been or will be issued, it shall endorse its approval on each of the triplicate originals of the articles of incorporation, retain one copy for its files, and return the remaining copies to the incorporators for filing with the Department of State.

(4) If the office ~~department~~ does not so find, it shall refuse to approve the articles of incorporation and shall return the originals.

Section 1262. Section 628.101, Florida Statutes, is amended to read:

628.101 Amendment of certificate of incorporation; stock insurer.—A domestic stock insurer shall not amend its certificate of incorporation until a copy of the proposed amendment has been filed with and approved by the office ~~department~~. The office ~~department~~ shall promptly examine any such proposed amendment and shall approve the same unless it finds that the proposed amendment does not comply with law.

Section 1263. Subsections (2) and (3) of section 628.111, Florida Statutes, are amended to read:

628.111 Amendment of articles of incorporation; mutual insurer.—

(2)(a) Upon adoption of the amendment, the insurer shall make in triplicate under its corporate seal a certificate thereof, setting forth the amendment and the date and manner of the adoption thereof, which certificate shall be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged before an officer authorized to take acknowledgments. The insurer shall deliver the triplicate originals of the certificate to the office ~~department~~, together with the filing fee specified in s. 624.501.

(b) The office ~~department~~ shall promptly examine the certificate of amendment; and, if it finds that the certificate and the amendment comply with law, it shall endorse its approval upon each of the triplicate originals, place one on file in its office, and return the remaining sets to the insurer. The insurer shall forthwith file such endorsed certificates of amendment with the Department of State. The amendment shall be effective when filed with and approved by the Department of State.

(3) If the office ~~department~~ finds that the proposed amendment or certificate does not comply with the law, it shall not approve the same, and shall return the triplicate certificate of amendment to the insurer.

Section 1264. Subsections (1) and (3) of section 628.152, Florida Statutes, are amended to read:

628.152 Domestic stock insurers; proxies, consents, and authorizations with respect to any voting security.—

(1) The commission ~~department~~ may, by rule, prescribe the form, content, and manner of solicitation of any proxy, consent, or authorization with

respect to any voting security issued by a domestic stock insurer, as may be necessary or appropriate in the public interest or for the proper protection of investors in the voting securities issued by such insurer or to ensure the fair dealing in such voting securities.

(3) Any proxy or consent obtained in violation of this section is void. The domestic stock insurer, any stockholder of record, or the office ~~department~~ may enforce compliance with this section, by an appropriate civil action.

Section 1265. Subsection (6) of section 628.161, Florida Statutes, is amended to read:

628.161 Initial qualifications; mutuals.—

(6) A self-insured fund organized under s. 624.4621 ~~s. 440.57~~ and holding a certificate of authority as a self-insurer's fund on December 31, 1993, may become a mutual insurer under this part, pursuant to a plan of reorganization approved by the office ~~department~~. A plan of reorganization must be approved by the office ~~department~~ if:

(a) The self-insurer's fund has sufficient financial resources to satisfy all of its obligations under all policies and coverages afforded by the fund before the reorganization and has sufficient financial resources to satisfy all of its other liabilities;

(b) The self-insurer's fund has a minimum of $5 million of surplus;

(c) The self-insurer's fund submits a plan that demonstrates its ability to satisfy the requirements of this chapter pertaining to mutual insurers on an ongoing basis; and

(d) The mutual insurer resulting from the reorganization of the self-insurer's fund retains ownership of all of the assets of the self-insurer's fund, retains all of the liabilities of the self-insurer's fund, and agrees to hold all fund members harmless from any assessment for liabilities of the self-insurer's fund before the date of reorganization.

Upon approval of the plan by the office ~~department~~, any contingent liability of the members or former members of the self-insurer's fund for assessment for losses of the self-insurer's fund is considered satisfied, and all liability for any such contingent assessment is extinguished as of the date the self-insurer's fund becomes an authorized mutual insurer and retains all of the assets and liabilities of the self-insurer's fund.

Section 1266. Section 628.171, Florida Statutes, is amended to read:

628.171 Formation of mutual insurer; bond.—The incorporators of the proposed insurer shall file with the office ~~department~~ a copy of a fidelity bond or insurance policy providing coverage in an amount equal to not less than 10 percent of the funds handled annually and issued in the name of the insurer covering its directors, employees, administrator, or other individuals managing or handling the funds or assets of the insurer. In no case may such bond or policy be less than $1,000 or more than $500,000.

Section 1267. Subsection (3) of section 628.221, Florida Statutes, is amended to read:

628.221 Bylaws of mutual insurer.—

(3) The insurer shall promptly file with the office ~~department~~ a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The office ~~department~~ shall disapprove any bylaw provision deemed by it to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

Section 1268. Subsections (1) and (3) of section 628.251, Florida Statutes, are amended to read:

628.251 Management and exclusive agency contracts.—

(1) No domestic mutual insurer or stock insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, unless the contract is filed with and approved by the office ~~department~~.

(3) The office ~~department~~ shall disapprove any such contract if it finds that it:

(a) Subjects the insurer to excessive charges; ~~or~~

(b) Is to extend for an unreasonable length of time; ~~or~~

(c) Does not contain fair and adequate standards of performance; or

(d) Contains other inequitable provision or provisions which impair the proper interests of policyholders or members of the insurer.

Section 1269. Subsection (1) of section 628.255, Florida Statutes, is amended to read:

628.255 Person with effective control cannot receive commission unless contract approved; penalties.—

(1) No director, officer, or other person having effective control of a domestic insurer shall receive, and no such insurer shall pay to such person, a commission or other compensation with respect to particular risks insured by the insurer, unless such commission or other compensation is paid pursuant to a contract filed with and approved by the office ~~department~~.

Section 1270. Section 628.261, Florida Statutes, is amended to read:

628.261 Notice of change of director or officer.—An insurer shall give the office ~~department~~ written notice of any change of personnel among the

directors or principal officers of the insurer within 45 days of such change. The written notice shall include all information necessary to allow the office ~~department~~ to determine that the insurer will be in compliance with s. 624.404(3) and at a minimum shall contain the information required by s. 628.051(2)(b), (c), and (d).

Section 1271. Subsections (1) and (3) of section 628.271, Florida Statutes, are amended to read:

628.271 Office and records; penalty for unlawful removal of records.—

(1) Every domestic insurer shall have an office in this state and shall keep therein complete records of its assets, transactions, and affairs, specifically including:

(a) Financial records;

(b) Corporate records;

(c) Reinsurance documents;

(d) Access to all accounting transactions and access in this state, upon demand by the office ~~department~~, to all original accounting documents;

(e) Claim files; and

(f) Payment of claims,

in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(3) The removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the office ~~department~~ under this code or for such reasonable purposes and periods of time as may be approved by the office ~~department~~ in writing in advance of such removal, or the concealment of such records or assets or material part thereof from the office ~~department~~, is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state, or who conceals or attempts to conceal the same from the office ~~department~~, in violation of this subsection, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state, beyond the period therefor specified in the consent of the office ~~department~~ under which consent the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the office ~~department~~ may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 631.

Section 1272. Subsection (1) of section 628.281, Florida Statutes, is amended to read:

628.281 Exceptions to requirement that office, records, and assets be maintained in this state.—

(1) The provisions of s. 628.271 shall not be deemed to prohibit or prevent an insurer from:

(a) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and reasonably necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the Office of Insurance Regulation ~~department~~ at its request.

(b) Having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside this state as required by other jurisdictions as a condition of transacting insurance in such jurisdictions reasonably and customarily required in the regular course of its business.

(c) Establishing and maintaining its principal operations offices, its usual operations records, and such of its assets as may be necessary or convenient for the purpose, in another state in which the insurer is authorized to transact insurance in order that general administration of its affairs may be combined with that of an affiliated insurer or insurers, but subject to the following conditions:

1. That the office ~~department~~ consent in writing to such removal of offices, records, and assets from this state upon evidence satisfactory to it that the same will facilitate and make more economical the operations of the insurer and will not unreasonably diminish the service or protection thereafter to be given the insurer's policyholders in this state and elsewhere;

2. That the insurer will continue to maintain in this state its principal corporate office or place of business, and maintain therein available to the inspection of the office ~~department~~ complete records of its corporate proceedings and a copy of each financial statement of the insurer current within the preceding 5 years, including a copy of each interim financial statement prepared for the information of the insurer's officers or directors;

3. That, upon the written request of the office ~~department~~, the insurer will with reasonable promptness produce at its principal corporate offices in this state for examination or for subpoena its records or copies thereof relative to a particular transaction or transactions of the insurer as designated by the office ~~department~~ in its request; and

4. That, if at any time the office ~~department~~ finds that the conditions justifying the maintenance of such offices, records, and assets outside this state no longer exist, or that the insurer has willfully and knowingly violated any of the conditions stated in subparagraphs 2. and 3., the office ~~department~~ may order the return of such offices, records, and assets to this state within such reasonable time, not less than 6 months, as may be specified in the order; and that for failure to comply with such order, as thereafter

modified or extended, if any, the office ~~department~~ shall suspend or revoke the insurer's certificate of authority.

Section 1273. Subsection (1) of section 628.341, Florida Statutes, is amended to read:

628.341 Nonassessable policies; mutual insurers.—

(1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the order of the office ~~department~~ so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued so long as such surplus funds meet such requirement as to amount.

Section 1274. Section 628.351, Florida Statutes, is amended to read:

628.351 Nonassessable policies; revocation of authority of mutual insurer.—The office ~~department~~ shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked. During the absence of such authority, the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder, nor renew any policy which is renewable at the option of the insurer without endorsing the same to provide for such contingent liability. Such renewal or endorsement shall bear conspicuously on its face the provision for contingent liability of the policyholder.

Section 1275. Section 628.371, Florida Statutes, is amended to read:

628.371 Dividends to stockholders.—

(1) A domestic stock insurer shall not pay any dividend or distribute cash or other property to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains.

(2) Dividend payments or distributions to stockholders, without prior written approval of the office ~~department~~, shall not exceed the larger of:

(a) The lesser of 10 percent of surplus or net gain from operations (life and health companies) or net income (property and casualty companies), not including realized capital gains, plus a 2-year carryforward for property and casualty companies;

(b) Ten percent of surplus, with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains;

(c) The lesser of 10 percent of surplus or net investment income (net gain before capital gains for life and health companies) plus a 3-year carryforward (2-year carryforward for life and health companies) with dividends

payable constrained to unassigned funds minus 25 percent of unrealized capital gains.

(3) In lieu of the provisions in subsection (2), an insurer may pay a dividend or make a distribution without the prior written approval of the office ~~department~~ when:

(a) The dividend is equal to or less than the greater of:

1. Ten percent of the insurer's surplus as to policyholders derived from realized net operating profits on its business and net realized capital gains; or

2. The insurer's entire net operating profits and realized net capital gains derived during the immediately preceding calendar year; and

(b) The insurer will have surplus as to policyholders equal to or exceeding 115 percent of the minimum required statutory surplus as to policyholders after the dividend or distribution is made; and

(c) The insurer has filed notice with the office ~~department~~ at least 10 business days prior to the dividend payment or distribution, or such shorter period of time as approved by the office ~~department~~ on a case-by-case basis. Such notice shall not create a right in the office ~~department~~ to approve or disapprove a dividend otherwise properly payable hereunder; and

(d) The notice includes a certification by an officer of the insurer attesting that after payment of the dividend or distribution the insurer will have at least 115 percent of required statutory surplus as to policyholders.

(4) The office ~~department~~ shall not approve a dividend or distribution in excess of the maximum amount allowed in subsection (1) unless, considering the following factors, it determines that the distribution or dividend would not jeopardize the financial condition of the insurer:

(a) The liquidity, quality, and diversification of the insurer's assets and the effect on its ability to meet its obligations.

(b) Reduction of investment portfolio and investment income.

(c) Effects on the written premium to surplus ratios as required by the Florida Insurance Code.

(d) Industrywide financial conditions.

(e) Prior dividend distributions of the insurer.

(f) Whether the dividend is only a "pass-through" dividend from a subsidiary of the insurer.

Section 1276. Subsection (3) of section 628.391, Florida Statutes, is amended to read:

628.391 Illegal dividends; penalty.—

(3) The office ~~department~~ may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend.

Section 1277. Subsections (3) and (4) of section 628.401, Florida Statutes, are amended to read:

628.401 Borrowed surplus.—

(3) Any such loan to a domestic stock or mutual insurer shall be subject to the approval of the office ~~department~~ for the issue and the rate of interest to be paid. The insurer shall, in advance of the loan, file with the office ~~department~~ a statement of the purpose of the loan and a copy of the proposed loan agreement. The office ~~department~~ shall disapprove any proposed loan or agreement if it finds that the loan is unnecessary or excessive for the purpose intended; that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer; or that the information so filed by the insurer is inadequate.

(4) Any such loan to a domestic stock or mutual insurer, or a substantial portion thereof, shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made by a domestic stock or mutual insurer unless approved in advance by the office ~~department~~.

Section 1278. Subsections (1) and (4) of section 628.411, Florida Statutes, are amended to read:

628.411 Impairment of capital or assets.—

(1) If a domestic stock insurer's capital, as represented by the aggregate par value of its outstanding capital stock, becomes impaired, or if the assets of a mutual insurer are less than the sum of its liabilities and the minimum amount of surplus required to be maintained by it, the office ~~department~~ shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 90 days after service of such notice.

(4) If the deficiency is not made good and proof thereof filed with the office ~~department~~ within such 90-day period, the insurer shall be deemed insolvent and the office ~~department~~ shall institute delinquency proceedings against it under chapter 631; except that if such deficiency exists because of increased loss reserves required by the office ~~department~~, or because of disallowance by the office ~~department~~ of certain assets or reduction of the value at which carried in the insurer's accounts, the office ~~department~~ may, in its discretion and upon application and good cause shown, and if it finds that the establishment or maintenance of such inadequate reserves or overvalued assets was not willful on the part of the insurer, extend for not more than an additional 60 days the period within which such deficiency may be so made good and such proof thereof so filed.

Section 1279. Subsection (1) of section 628.421, Florida Statutes, is amended to read:

628.421 Assessment of stockholders or members.—

(1) Any insurer receiving the notice of the office ~~department~~ mentioned in s. 628.411(1):

(a) If a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its certificate of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him or her in person or by advertisement in such time and manner as approved by the office ~~department~~, the insurer may require the return of the original certificate of stock held by the stockholder and, in cancellation and in lieu thereof, issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the office ~~department~~ to be remaining at the time of determination of the amount of impairment under s. 628.411, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or issue fractional shares under this subsection.

(b) If a mutual insurer, shall levy such an assessment upon members as is provided for under s. 628.321.

Section 1280. Subsections (1) and (2) of section 628.431, Florida Statutes, are amended to read:

628.431 Mutualization of stock insurers.—

(1) A stock insurer other than a title insurer may become a mutual insurer under such plan and procedure as may be approved by the office ~~department~~.

(2) The office ~~department~~ shall not approve any such plan, procedure, or mutualization unless:

(a) It is equitable to stockholders and policyholders;

(b) It is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the office ~~department~~;

(c) If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies, and whose policies have been in force for more than 1 year;

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable condi-

tions as provided by s. 607.247, as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its certificates of authority in such states.

Section 1281. Section 628.441, Florida Statutes, is amended to read:

628.441 Converting mutual insurer.—

(1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the office ~~department~~.

(2) The office ~~department~~ shall not approve any such plan or procedure unless:

(a) It is equitable to the insurer's members;

(b) It is subject to approval by vote of not less than three-fourths of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the office ~~department~~; if a life insurer, the right to vote may be limited to members who hold policies other than term or group policies, and whose policies have been in force for not less than 1 year;

(c) The corporate equity of each policyholder in the insurer, other than as to unearned premiums, nonforfeiture rights, and benefit claims under his or her policy, is determinable under a fair formula approved by the office ~~department~~, which equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) The policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been policyholders of the insurer within 3 years prior to the date such plan was submitted to the office ~~department~~;

(e) The plan gives to each policyholder of the insurer as specified in paragraph (d) a preemptive right to acquire his or her proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his or her equity in the insurer as determined under paragraph (c);

(f) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others;

(g) The plan provides for payment of cash to each policyholder not electing to apply his or her equity in the insurer toward the purchase price of stock to which he or she is preemptively entitled. The amount so paid shall be not less than 50 percent of the amount of the policyholder's equity not so used for the purchase of stock. Such cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's corporate equity in such mutual insurer; and

(h) The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amounts not less than one-half of such required capital.

Section 1282. Subsection (2) of section 628.451, Florida Statutes, is amended to read:

628.451 Merger or share exchange of stock insurers and other entities.—

(2) No such merger or share exchange shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the office ~~department~~ and approved by it. The office ~~department~~ shall give such approval provided it finds such plan or agreement:

(a) Is in compliance with law;

(b) Is fair to the stockholders of or other holders of interests in any insurer or self-insurer involved; and

(c) Would not substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

Section 1283. Section 628.461, Florida Statutes, is amended to read:

628.461 Acquisition of controlling stock.—

(1) No person shall, individually or in conjunction with any affiliated person of such person, acquire directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 5 percent or more of, the outstanding voting securities of a domestic stock insurer or of a controlling company, unless:

(a) The person or affiliated person has filed with the office ~~department~~ and sent to the insurer and controlling company a statement as specified in subsection (3) no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities if no tender offer or exchange offer is involved; and

(b) The office ~~department~~ has approved the tender or exchange offer, or acquisition if no tender offer or exchange offer is involved, and approval is in effect.

In lieu of a filing as required under this subsection, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file

a disclaimer of affiliation and control. The disclaimer shall fully disclose all material relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the office ~~department~~ disallows the disclaimer. The office ~~department~~ shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance. A filing as required under this subsection must be made as to any acquisition that equals or exceeds 10 percent of the outstanding voting securities.

(2) This section does not apply to any acquisition of voting securities of a domestic stock insurer or of a controlling company by any person who, on July 1, 1976, is the owner of a majority of such voting securities or who, on or after July 1, 1976, becomes the owner of a majority of such voting securities with the approval of the office ~~department~~ pursuant to this section.

(3) The statement to be filed with the office ~~department~~ and furnished to the insurer and controlling company shall contain the following information and any additional information as the office deems ~~department may deem~~ necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the policyholders and shareholders of the insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by, or on behalf of, a corporation, association, or trust, as to the corporation, association, or trust and as to any person who controls either directly or indirectly the corporation, association, or trust, the identity of, and the background information specified in subsection (4) on, each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust;

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition;

(c) Any plans or proposals which such persons may have made to liquidate such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals which such persons may have made to liquidate any controlling company of such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management;

(d) The number of shares or other securities which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired; and

(e) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the insurer or controlling company, including, but not limited to, information relating to the transfer

of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(4)(a) The information as to the background and identity of each person, which information is required to be furnished pursuant to paragraph (3)(a), shall include:

1. The person's occupations, positions of employment, and offices held during the past 10 years.

2. The principal business and address of any business, corporation, or other organization in which each such office of the person was held or in which each such occupation or position of employment was carried on.

3. Whether the person was, at any time during such 10-year period, convicted of any crime other than a traffic violation.

4. Whether the person has been, during such 10-year period, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

5. Whether, during the 10-year period, the person has been the subject of any proceeding under the federal Bankruptcy Act or whether, during the 10-year period, any corporation, partnership, firm, trust, or association in which the person was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which the person was a director, officer, trustee, partner, or other official or within 12 months thereafter.

6. Whether, during the 10-year period, the person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(b) Any corporation, association, or trust filing the statement required by this section shall give all required information that is within the knowledge of the directors, officers, or trustees (or others performing functions similar to those of a director, officer, or trustee) of the corporation, association, or trust making the filing and of any person controlling either directly or indirectly such corporation, association, or trust. A copy of the statement and any amendments to the statement shall be sent by registered mail to the insurer at its principal office within the state and to any controlling company at its principal office. If any material change occurs in the facts set forth in the statement filed with the office ~~department~~ and sent to such insurer or controlling company pursuant to this section, an amendment setting forth such changes shall be filed immediately with the office ~~department~~ and sent immediately to such insurer and controlling company.

(5)(a) The acquisition of voting securities shall be deemed approved unless the office ~~department~~ disapproves the proposed acquisition within 90

days after the statement required by subsection (1) has been filed. The office ~~department~~ may on its own initiate, or if requested to do so in writing by a substantially affected party shall conduct, a proceeding to consider the appropriateness of the proposed filing. The 90-day time period shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the office ~~department~~ within 10 days of the date notice of the filing is given. During the pendency of the proceeding or review period by the office ~~department~~, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining office ~~departmental~~ approval. The office ~~department~~ shall, however, at any time that it finds an immediate danger to the public health, safety, and welfare of the domestic policyholders exists, immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition temporarily disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's ~~department's~~ review of any acquisition subject to the provisions of this section, the acquiring person shall not make any material change in the operation of the insurer or controlling company unless the office ~~department~~ has specifically approved the change nor shall the acquiring person make any material change in the management of the insurer unless advance written notice of the change in management is furnished to the office ~~department~~. A material change in the operation of the insurer is a transaction which disposes of or obligates 5 percent or more of the capital and surplus of the insurer. A material change in the management of the insurer is any change in management involving officers or directors of the insurer or any person of the insurer or controlling company having authority to dispose of or obligate 5 percent or more of the insurer's capital or surplus. The office ~~department~~ shall approve a material change in operation if it finds the applicable provisions of subsection (7) have been met. The office ~~department~~ may disapprove a material change in management if it finds that the applicable provisions of subsection (7) have not been met and in such case the insurer shall promptly change management as acceptable to the office ~~department~~.

(c) If a request for a proceeding is filed, the proceeding shall be conducted within 60 days after the date the written request for a proceeding is received by the office ~~department~~. A recommended order shall be issued within 20 days of the date of the close of the proceedings. A final order shall be issued within 20 days of the date of the recommended order or, if exceptions to the recommended order are filed, within 20 days of the date the exceptions are filed.

(6) The office ~~department~~ may disapprove any acquisition subject to the provisions of this section by any person or any affiliated person of such person who:

(a) Willfully violates this section;

(b) In violation of an order of the office ~~department~~ issued pursuant to subsection (10), fails to divest himself or herself of any stock obtained in violation of this section, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(c) In violation of an order issued by the office ~~department~~ pursuant to subsection (10), acquires additional stock of the domestic insurance company or controlling company, or direct or indirect control of such stock, without complying with this section.

(7) The person or persons filing the statement required by subsection (1) shall have the burden of proof. The office ~~department~~ shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(a) Upon completion of the acquisition, the domestic stock insurer will be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the insurer or prejudice the interests of its policyholders or the public;

(c) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

1. To liquidate the insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

2. To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the insurer

is fair and free of prejudice to the policyholders of the domestic stock insurer or to the public;

(d) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the domestic stock insurer indicate that the acquisition is in the best interest of the policyholders of the insurer and in the public interest;

(e) The natural persons for whom background information is required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the policyholders of the domestic stock insurer, and in the public interest, to permit such persons to exercise control over such domestic stock insurer;

(f) The officers and directors to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation;

(g) The management of the insurer after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the insurer not hazardous to the insurance-buying public;

(h) The management of the insurer after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto;

(i) The acquisition is not likely to be hazardous or prejudicial to the insurer's policyholders or the public; and

(j) The effect of the acquisition of control would not substantially lessen competition in insurance in this state or would not tend to create a monopoly therein.

(8) No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this section is valid. Any acquisition of any security contrary to the provisions of this section is void. Upon the petition of the domestic stock insurer or controlling company, the circuit court for the county in which the principal office of such domestic stock insurer is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this section. There shall be a private right of action in favor of the domestic stock insurer or controlling company to enforce the provisions of this section. No demand upon the office ~~department~~ that it perform its functions shall be required as a prerequisite to any suit by the domestic stock insurer or controlling company against any other person, and in no case shall the office ~~department~~ be deemed a necessary party to any action by such domestic stock insurer or controlling company to enforce the provisions of this section. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this section, or who files such a statement, shall be deemed to have thereby designated the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this section, and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office ~~department~~ and to the jurisdiction of the circuit court.

(9) Any approval by the office ~~department~~ under this section does not constitute a recommendation by the office ~~department~~ for an acquisition, tender offer, or exchange offer. It is unlawful for a person to represent that the office's ~~department's~~ approval constitutes a recommendation. A person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this subsection is 5 years.

(10) Upon notification to the office ~~department~~ by the domestic stock insurer or a controlling company that any person or any affiliated person of such person has acquired 5 percent or more of the outstanding voting securities of the domestic stock insurer or controlling company without complying with the provisions of this section, the office ~~department~~ shall order that the person and any affiliated person of such person cease acquisition of any further securities of the domestic stock insurer or controlling company;

however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 5 percent or more of the outstanding voting securities of a domestic stock insurer or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this subsection that the person or affiliated person has acquired voting securities of a domestic stock insurer or controlling company in violation of this section, the office ~~department~~ may order the person and affiliated person to divest themselves of any voting securities so acquired.

(11)(a) The office ~~department~~ shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any insurer or controlling company:

1. The control of which is acquired in violation of this section;

2. That is controlled, directly or indirectly, by any person or any affiliated person of such person who, in violation of this section, has obtained control of a domestic stock insurer or controlling company; or

3. That is controlled, directly or indirectly, by any person who, directly or indirectly, controls any other person who, in violation of this section, acquires control of a domestic stock insurer or controlling company.

(b) If any insurer is subject to suspension or revocation pursuant to paragraph (a), the insurer shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, or stockholders or to the public.

(12)(a) For the purpose of this section, the term "affiliated person" of another person means:

1. The spouse of such other person;

2. The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;

3. Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;

4. Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

5. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;

6. Any officer, director, partner, copartner, or employee of such other person;

7. If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

8. If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

9. Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.

(b) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more domestic stock insurance companies.

(13) The commission may ~~department is authorized to~~ adopt, amend, or repeal rules that are necessary to implement the provisions of this section, pursuant to chapter 120.

Section 1284. Section 628.4615, Florida Statutes, is amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(1) For the purposes of this section, the term "specialty insurer" means any person holding a license or certificate of authority as:

(a) A motor vehicle service agreement company authorized to issue motor vehicle service agreements as those terms are defined in s. 634.011(7) and (8) ~~s. 634.011(8) and (9)~~;

(b) A home warranty association authorized to issue "home warranties" as those terms are defined in s. 634.301(3) and (4) ~~s. 634.301(4) and (5)~~;

(c) A service warranty association authorized to issue "service warranties" as those terms are defined in s. 634.401(13) and (14) ~~s. 634.401(14) and (15)~~;

(d) A prepaid limited health service organization authorized to issue prepaid limited health service contracts, as those terms are defined in chapter 636 ~~An optometric service plan corporation authorized to issue optometric service plan contracts as those terms are defined in s. 637.001(2) and (3)~~;

~~(e) A pharmaceutical service plan corporation authorized to issue pharmaceutical service plan contracts as those terms are defined in s. 637.1701(2) and (3);~~

~~(f) A dental service plan corporation licensed to issue contracts for dental services pursuant to a dental service plan as that term is defined in s. 637.401(1);~~

~~(g) An ambulance service association authorized to issue ambulance service contracts as those terms are defined in s. 638.021(1) and (2);~~

(e)~~(h)~~ An authorized health maintenance organization operating pursuant to s. 641.21;

(f)~~(i)~~ An authorized prepaid health clinic operating pursuant to s. 641.405;

(g)~~(j)~~ A legal expense insurance corporation authorized to engage in a legal expense insurance business pursuant to s. 642.021;

(h)~~(k)~~ A provider which is licensed to operate a facility which undertakes to provide continuing care as those terms are defined in s. 651.011(2), (4), (5), and (6)~~, and (7)~~;

(i)~~(l)~~ A multiple-employer welfare arrangement operating pursuant to ss. 624.436-624.446;

(j)~~(m)~~ A premium finance company authorized to finance insurance premiums pursuant to s. 627.828; or

(k)~~(n)~~ A corporation authorized to accept donor annuity agreements pursuant to s. 627.481.

(2) No person shall, individually or in conjunction with any affiliated person of such person, directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire, 10 percent or more of the outstanding voting securities of a specialty insurer which is a stock corporation or of a controlling company of a specialty insurer which is a stock corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of a specialty insurer which is not a stock corporation or of a controlling company of a specialty insurer which is not a stock corporation, unless:

(a) The person or affiliated person has filed with the office ~~department~~ and sent by registered mail to the principal office of the specialty insurer and controlling company an application, signed under oath and prepared on forms prescribed by the commission ~~department~~, that contains the information specified in subsection (4) no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if no tender offer or exchange offer is involved.

(b) The office ~~department~~ has approved the tender offer or exchange offer, or acquisition if no tender offer or exchange offer is involved.

(3) This section does not apply to any acquisition of voting securities or ownership interest of a specialty insurer or of a controlling company by any person who, on July 9, 1986, is the owner of a majority of such voting securities or ownership interest or who, on or after July 9, 1986, becomes the owner of a majority of such voting securities or ownership interest with the approval of the office ~~department~~ pursuant to this section.

(4) The application to be filed with the office ~~department~~ and furnished to the specialty insurer and controlling company shall contain the following information and any additional information as the office deems ~~department may deem~~ necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the insureds of the insurer and of the public:

(a)1. The identity of, and the background information specified in subsection (5) on, each natural person by whom, or on whose behalf, the acquisition is to be made; and,

2. If the acquisition is to be made by, or on behalf of, a person other than a natural person and as to any person who controls, either directly or indirectly, such other person, the identity of, and the background information specified in subsection (5) on:

a. Each director, officer, or trustee, if a corporation, or

b. Each partner, owner, manager, or joint venturer, or other person performing duties similar to those of persons in the aforementioned positions, if not a corporation,

for the person.

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

(c) Any plans or proposals which such persons may have made to liquidate the specialty insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals which such persons may have made to liquidate any controlling company of the specialty insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management.

(d) The nature and the extent of the controlling interest which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of a specialty insurer or controlling company which is not a stock corporation.

(e) The number of shares or other securities which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.

(f) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the specialty insurer or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(5)(a) The information as to the background and identity of each natural person, which information is required to be furnished pursuant to paragraph (4)(a), shall include:

1. The natural person's occupations, positions of employment, and offices held during the past 10 years.

2. The principal business and address of any business, corporation, or organization in which each such office of the natural person was held, or in which each such occupation or position of employment was carried on.

3. Whether the natural person was, at any time during such 10-year period, convicted of any crime other than a traffic violation.

4. Whether the natural person has been, during such 10-year period, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

5. Whether, during the 10-year period, the natural person has been the subject of any proceeding under the federal Bankruptcy Act; or whether, during the 10-year period, any person or other business or organization in which the natural person was a director, officer, trustee, partner, owner, manager, or other official has been subject to any such proceeding, either during the time in which the natural person was a director, officer, or trustee, if a corporation, or a partner, owner, manager, joint venturer, or other official, if not a corporation, or within 12 months thereafter.

6. Whether, during the 10-year period, the natural person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

7. Fingerprints of each person referred to in subsection (4).

(b) Any person filing the statement required by this section shall give all required information that is within the knowledge of:

1. The directors, officers, or trustees, if a corporation, or

2. The partners, owners, managers, or joint venturers, or others performing functions similar to those of a director, officer, or trustee, if not a corporation,

of the person making the filing and of any person controlling either directly or indirectly such person. If any material change occurs in the facts set forth in the application filed with the office ~~department~~ pursuant to this section, an amendment setting forth such changes shall be filed immediately with the office ~~department~~, and a copy of the amendment shall be sent by registered mail to the principal office of the specialty insurer and to the principal office of the controlling company.

(6)(a) The acquisition application shall be reviewed in accordance with chapter 120. The office ~~department~~ may on its own initiate, or, if requested to do so in writing by a substantially affected person, shall conduct, a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the office ~~department~~ within 10 days of the date notice of the filing is given. During the pendency of the proceeding or review period by the office ~~department~~, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining office ~~departmental~~ approval. The office ~~department~~ shall, however, at any time it finds an immediate danger to the public health, safety, and welfare of the insureds exists, immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's ~~department's~~ review of any acquisition subject to the provisions of this section, the acquiring person shall not make any material change in the operation of the specialty insurer or controlling company unless the office ~~department~~ has specifically approved the change nor shall the acquiring person make any material change in the management of the specialty insurer unless advance written notice of the change in management is furnished to the office ~~department~~. A material change in the operation of the specialty insurer is a transaction which disposes of or obligates 5 percent or more of the capital and surplus of the specialty insurer. A material change in the management of the specialty insurer is any change in management involving officers or directors of the specialty insurer or any person of the specialty insurer or controlling company having authority to dispose of or obligate 5 percent or more of the specialty insurer's capital or surplus. The office ~~department~~ shall approve a material change in operations if it finds the applicable provisions of subsection (8) have been met. The office ~~department~~ may disapprove a material change in management if it finds that the applicable provisions of subsection (8) have not been met and in such case the specialty insurer shall promptly change management as acceptable to the office ~~department~~.

(c) If a request for a proceeding is filed, the proceeding shall be conducted within 60 days after the date the written request for a proceeding is received by the office ~~department~~. A recommended order shall be issued within 20 days of the date of the close of the proceedings. A final order shall be issued within 20 days of the date of the recommended order or, if exceptions to the recommended order are filed, within 20 days of the date the exceptions are filed.

(7) The office ~~department~~ may disapprove any acquisition subject to the provisions of this section by any person or any affiliated person of such person who:

(a) Willfully violates this section;

(b) In violation of an order of the office ~~department~~ issued pursuant to subsection (11), fails to divest himself or herself of any stock or ownership

interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office ~~department~~ pursuant to subsection (11), acquires an additional stock or ownership interest in a specialty insurer or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(8) The person or persons filing the application required by subsection (2) shall have the burden of proof. The office ~~department~~ shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed application if no proceeding is conducted, that:

(a) Upon completion of the acquisition, the specialty insurer will be able to satisfy the requirements for the issuance of a license or certificate to write the line of insurance for which it is presently licensed or certificated.

(b) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the specialty insurer or prejudice the interests of its insureds or the public.

(c) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

1. To liquidate the specialty insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management, or

2. To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the specialty insurer,

is fair and free of prejudice to the insureds of the specialty insurer or to the public.

(d) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the specialty insurer indicate that the acquisition is in the best interest of the insureds of the insurer and in the public interest.

(e) The natural persons for whom background information is required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the insureds of the specialty insurer and in the public interest to permit such persons to exercise control over the specialty insurer.

(f) The directors and officers, if such specialty insurer or controlling company is a stock corporation, or the trustees, partners, owners, managers, or joint venturers or other persons performing duties similar to those of persons in the aforementioned positions, if such specialty insurer or controlling company is not a stock corporation, to be employed after the acquisition have

sufficient insurance experience and ability to assure reasonable promise of successful operation.

(g) The management of the specialty insurer after the acquisition will be competent and trustworthy, and will possess sufficient managerial experience so as to make the proposed operation of the specialty insurer not hazardous to the insurance-buying public.

(h) The management of the specialty insurer after the acquisition shall not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto.

(i) The acquisition is not likely to be hazardous or prejudicial to the insureds of the insurer or to the public.

(j) The effect of the acquisition would not substantially lessen competition in the line of insurance for which the specialty insurer is licensed or certified in this state or would not tend to create a monopoly therein.

(9) No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this section is valid. Any acquisition contrary to the provisions of this section is void. Upon the petition of the specialty insurer or the controlling company, the circuit court for the county in which the principal office of the specialty insurer is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this section. There shall be a private right of action in favor of the specialty insurer or controlling company to enforce the provisions of this section. No demand upon the office ~~department~~ that it perform its functions shall be required as a prerequisite to any suit by the specialty insurer or controlling company against any other person, and in no case shall the office ~~department~~ be deemed a necessary party to any action by the specialty insurer or controlling company to enforce the provisions of this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, shall be deemed to have thereby designated the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this section and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office ~~department~~ and to the jurisdiction of the circuit court.

(10) Any approval by the office ~~department~~ under this section does not constitute a recommendation by the office ~~department~~ of the tender offer or exchange offer, or acquisition, if no tender offer or exchange offer is involved. It is unlawful for a person to represent that the office's ~~department's~~ approval constitutes a recommendation. A person who violates the provisions of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this subsection is 5 years.

(11) If the office ~~department~~ determines that any person or any affiliated person of such person has acquired 10 percent or more of the outstanding voting securities of a specialty insurer or controlling company which is a stock corporation, or 10 percent or more of the ownership interest of a specialty insurer or controlling company which is not a stock corporation, without complying with the provisions of this section, the office ~~department~~ may order that the person and any affiliated person of such person cease acquisition of the specialty insurer or controlling company and, if appropriate, divest itself of any stock or ownership interest acquired in violation of this section.

(12)(a) The office ~~department~~ shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any specialty insurer or controlling company acquired in violation of this section.

(b) If any specialty insurer is subject to suspension or revocation pursuant to paragraph (a), the specialty insurer shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its insureds, creditors, or stockholders or to the public.

(13)(a) For the purpose of this section, the term "acquisition" includes:

1. A tender offer or exchange offer for securities, assets, or other ownership interest;

2. An agreement to exchange securities for other securities, assets, or other ownership interest;

3. A merger of a person or affiliated person into a specialty insurer or a merger of any person with a specialty insurer;

4. A consolidation; or

5. Any other form of change of control

whereby any person or affiliated person acquires or attempts to acquire, directly or indirectly, 10 percent or more of the ownership interest or assets of a specialty insurer or of a controlling company. However, in the case of a health maintenance organization organized as a for-profit corporation, the provisions of s. 628.451 shall govern with respect to any merger or consolidation, and, in the case of a health maintenance organization organized as a not-for-profit corporation, the provisions of s. 628.471 shall govern with respect to any merger or consolidation.

(b) For the purpose of this section, the term "affiliated person" of another person includes:

1. The spouse of such other natural person;

2. The parents of such other natural person and their lineal descendants and the parents of such other natural person's spouse and their lineal descendants;

3. Any person who directly or indirectly owns or controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of such other person;

4. Any person who directly or indirectly owns 10 percent or more of the outstanding voting securities which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

5. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;

6. Any director, officer, trustee, partner, owner, manager, joint venturer, or employee, or other person performing duties similar to those of persons in the aforementioned positions, of such other person;

7. If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

8. If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

9. Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring, or limiting the disposition of, securities of a specialty insurer or controlling company which is a stock corporation or in acquiring, or limiting the disposition of, an ownership interest of a specialty insurer or controlling company which is not a stock corporation.

(c) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more specialty insurance companies which are stock corporations, or 25 percent or more of the ownership interest of one or more specialty insurance companies which are not stock corporations.

(d) For the purpose of this section, the term "natural person" means an individual.

(e) For the purpose of this section, the term "person" includes a natural person, corporation, association, trust, general partnership, limited partnership, joint venture, firm, proprietorship, or any other entity which may hold a license or certificate as a specialty insurer.

(14) The commission may ~~department is authorized to~~ adopt, amend, or repeal rules that are necessary to implement the provisions of this section, pursuant to chapter 120.

Section 1285. Subsections (3) and (4) of section 628.471, Florida Statutes, are amended to read:

628.471 Mergers; mutual insurers.—

(3) The plan and agreement for merger shall be submitted to and approved by at least two-thirds of the members of each mutual insurer voting

thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the office ~~department~~. If a life insurer, the right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than 1 year.

(4) No such merger shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the office ~~department~~ and approved by it. The office ~~department~~ shall give such approval unless it finds such plan or agreement:

(a) Is inequitable to the policyholders of any domestic insurer involved; or

(b) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

Section 1286. Section 628.481, Florida Statutes, is amended to read:

628.481 Bulk reinsurance; stock insurers.—

(1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof, with another insurer by an agreement of bulk reinsurance; but no such agreement shall become effective unless filed with the office ~~department~~ and approved by it in writing.

(2) The office ~~department~~ shall approve such agreement unless it finds that it is inequitable to the stockholders of the domestic insurer or it would substantially reduce the protection or service to its policyholders.

Section 1287. Section 628.491, Florida Statutes, is amended to read:

628.491 Mergers and consolidations; mutual insurers; agreement of bulk reinsurance.—

(1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the office ~~department~~ and approved by it.

(2) The office ~~department~~ shall approve such agreement if it finds it to be fair and equitable to each domestic insurer involved, and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders.

(3) The plan and agreement for such reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the office ~~department~~ may approve. If a life insurer, the right to vote may be limited to members whose policies are other than term or group policies and have been in effect for more than 1 year.

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto, as upon conversion of such insurer pursuant to s. 628.441, of his or her equity in the business reinsured as determined under a fair formula approved by the office ~~department~~, which equity shall be based upon such member's equity in the reserves, assets (whether or not admitted assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

Section 1288. Section 628.501, Florida Statutes, is amended to read:

628.501 Mutual member's share of assets on liquidation.—

(1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within 5 years next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is the earlier; except, that if the office ~~department~~ has reason to believe that those in charge of the management of the insurer have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be entitled to share in distribution of the insurer's assets, it may enlarge the 5 years' qualification period above provided for by such additional period as it may deem to be reasonable.

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his or her membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the office ~~department~~.

Section 1289. Subsections (1), (2), and (4) of section 628.511, Florida Statutes, are amended to read:

628.511 Book entry accounting system.—

(1) The purpose of this section is to authorize domestic insurers to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate rules of the commission ~~department~~.

(2) The following terms are defined for use in this section:

(a) "Securities" means instruments as defined in s. 678.1021 ~~s. 678.102(1)~~.

(b) "Clearing corporation" means a clearing corporation as defined in s. 678.1021 ~~s. 678.102(3)~~.

(c) "Direct participant" means a national bank, state bank or trust company which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

(d) "Federal Reserve book-entry system" means the computerized systems sponsored by the United States Department of the Treasury and agencies and instrumentalities of the United States for holding and transferring securities of the United States Government and such agencies and instrumentalities, respectively, in Federal Reserve banks through banks which are members of the Federal Reserve System or which otherwise have access to such computerized systems.

(e) "Member bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System and through which an insurer participates in the Federal Reserve book-entry system.

(4) The commission may adopt ~~department is authorized to promulgate~~ rules governing the deposit by insurers of securities with clearing corporations and in the Federal Reserve book-entry system.

Section 1290. Section 628.520, Florida Statutes, is amended to read:

628.520 Change of domicile of a foreign insurer.—Any insurer which is organized under the laws of any other state for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this state upon approval by the office ~~department~~. Such domestic insurer shall be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state.

Section 1291. Section 628.525, Florida Statutes, is amended to read:

628.525 Change of domicile of a domestic insurer.—Any domestic insurer may, upon the approval of the office ~~department~~, transfer its domicile to any other state in which it is admitted to transact the business of insurance; upon such a transfer it shall cease to be a domestic insurer and shall be admitted to this state, if qualified, as a foreign insurer. The office ~~department~~ shall approve any such proposed transfer unless it shall determine that such transfer is not in the interest of the policyholders of this state.

Section 1292. Section 628.530, Florida Statutes, is amended to read:

628.530 Effects of redomestication.—The certificate of authority, agents appointments and licenses, rates, and other items which the office or department allows, in its discretion, which are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation, merger pursuant to s. 607.1107(5), or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect and

need not be endorsed as to the new name of the company or its new location unless so ordered by the office ~~department~~. Every transferring insurer shall file new policy forms with the office ~~department~~ on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as are approved by, the office ~~department~~. However, every such transferring insurer shall notify the office ~~department~~ of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the office ~~department~~.

Section 1293. Section 628.535, Florida Statutes, is amended to read:

628.535 Authority to adopt ~~promulgate~~ rules.—The commission may ~~department has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

Section 1294. Subsections (1) and (9) of section 628.6013, Florida Statutes, are amended to read:

628.6013 Converted self-insurance fund; trade association; board of directors.—

(1) Any self-insurance fund regulated under the insurance code other than a commercial self-insurance fund may, with the approval of a majority of the members of the fund and after written notice to the sponsoring association and approved by the office ~~department~~, elect to convert to an assessable mutual insurer in accordance with part I.

(9) A management company may be authorized by the office ~~department~~ to manage and operate an assessable mutual insurer only if its owners, partners, stockholders, officers, or directors, and other persons who directly or indirectly exercise or have the ability to exercise effective control of the management company, possess the competency and business experience to manage and operate an assessable mutual insurer.

Section 1295. Subsection (2) of section 628.6014, Florida Statutes, is amended to read:

628.6014 Annual reports.—

(2) For financial statements filed on or after January 1, 1998, future investment income may only be reported as an admitted asset by an assessable mutual which reported future investment income in financial statements filed with the former Department of Insurance prior to December 31, 1996.

Section 1296. Subsections (1) and (4) of section 628.6017, Florida Statutes, are amended to read:

628.6017 Converting assessable mutual insurer.—

(1) An assessable mutual insurer may become a stock insurer by filing an application which complies with s. 628.051 and by submitting a plan of

conversion which is approved by the office ~~department~~. The office ~~department~~ shall not approve any such plan unless the plan:

(a) Is equitable to the insurer's members.

(b) Is subject to approval by vote of not less than two-thirds of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the office ~~department~~. In no event shall the failure to vote constitute a vote for approval.

(c) Provides for the determination of the membership interests of each policyholder in the insurer, taking into account the relative corporate equity of the policyholder, other than as to unearned premiums and benefit claims under the policy, under a fair formula approved by the office ~~department~~.

(d) Provides for the payment of consideration to each policyholder in return for his or her membership interests in the assessable mutual insurer.

(e) Provides for the payment of consideration to be given in exchange for the policyholders' membership interests in cash, securities of the reorganized insurer, securities of another company, surplus notes or other evidence of borrowed surplus, additional insurance, premium credits, additional benefits, increased dividends, cancellation of future assessment obligations, or other consideration or any combination of any such forms of consideration.

(f) Provides that persons who had been policyholders of the insurer within 3 years prior to the date such plan was submitted to the office ~~department~~ shall participate in the distribution of consideration to policyholders.

When the plan of reorganization becomes effective, the assessable mutual insurer shall become a stock insurer and the stock insurer shall be deemed to be a continuation of the corporate existence of the assessable mutual insurer. The provisions of s. 628.441 do not apply to the conversion of an assessable mutual insurer into a stock insurer. The provisions of s. 628.441 shall not apply to the conversion of an assessable mutual insurer to a stock insurer.

(4) An assessable mutual insurer becoming a stock insurer or a nonassessable mutual insurer shall not be subject to s. 627.215 or s. 627.351(5) for 5 years following authorization of the conversion by the office ~~department~~. However, the converted stock insurer or nonassessable mutual insurer shall file all necessary data required by s. 627.215. Such amounts otherwise subject to s. 627.215(10) shall be maintained as surplus as to policyholders and not be available for dividends for a period of 5 years.

Section 1297. Subsection (2) of section 628.705, Florida Statutes, is amended to read:

628.705 Prohibition of stock transfers.—

(2) Voting shares of the capital stock of a subsidiary insurance company or the intermediate holding company may not be acquired by any affiliated member of the holding company system except where the affiliated member of the mutual holding company system is the majority shareholder. A number of shares equal to 5 percent of the outstanding voting shares of the capital stock of one corporate member of the Mutual Insurance Holding Company System selected by the mutual insurance holding company may be issued or sold to directors and officers as part of a plan of compensation, and such shares shall not be considered part of the majority shares to be owned by the mutual insurance company under subsection (1). A number of shares equal to an additional 5 percent of the outstanding voting shares of the capital stock of one corporate member of the Mutual Insurance Holding Company System selected by the mutual insurance holding company may be issued or sold to employees, which may not include any officer or director, as part of an employee stock dividend or benefit plan, and such shares shall not be considered part of the majority shares to be owned by the mutual insurance company under subsection (1). Prior to issuance of shares in excess of the authorized 5 percent to either officers and directors or employees, pursuant to this section, a fairness opinion shall be rendered by an independent authority acceptable to the office ~~department~~ to assure that the long term interests of the shareholders and policyholders are adequately protected. The office ~~department~~ shall approve or disapprove the transaction within 30 days after receipt of the fairness opinion. Nothing in this section prohibits any officer or director from purchasing shares of stock at market value which are not part of a plan of compensation, in accordance with the requirements of s. 628.461, and, if such stock is not regularly traded on a national stock exchange, the officer or director purchasing the shares of stock is responsible for establishing its market value.

Section 1298. Subsection (2) of section 628.707, Florida Statutes, is amended to read:

628.707 Applicability of general corporation statutes.—The applicable statutes of this state relating to the powers and procedures of domestic private corporations formed for profit shall apply to domestic mutual insurance holding companies, except:

(2) The articles of incorporation of the mutual insurance holding company, and any amendment to such articles or restatement of such articles shall be subject to the approval of the office ~~department~~ for compliance with the provisions of this act prior to filing with the Department of State, and shall contain the name of the mutual insurance holding company, which shall include the word "Mutual."

Section 1299. Subsections (3), (4), and (5) of section 628.711, Florida Statutes, are amended to read:

628.711 Plan of reorganization.—

(3) Following the adoption of a plan of reorganization, and prior to the meeting of the mutual insurance company members to approve the plan, the mutual insurance company shall submit to the office ~~department~~ the following:

(a) The plan of reorganization, as adopted.

(b) The form of notice to be sent to the mutual insurance company members, informing them of their right to vote on the plan of reorganization.

(c) The form of proxy statement to be sent to the mutual insurance company members, informing them of their right to vote by proxy on the plan of reorganization, and describing the plan.

(d) The form of proxy to be sent to the mutual insurance company members to solicit their vote on the plan of reorganization.

(e) Proposed articles of incorporation, merger, or consolidation, restatements of or amendments to articles of incorporation or bylaws, and plans of merger or consolidation, with respect to each entity to be organized, reorganized, or otherwise subject to such action under the plan of reorganization.

(f) A proposed business plan for the 3 years following the date of the reorganization.

(g) An audited financial statement prepared on a statutory basis consistent with the Florida Insurance Code, including an actuarial opinion for the most recent calendar year ended, or a copy thereof, if the statement was previously filed with the office ~~department~~.

(4) The office ~~department~~ may hold a public hearing to allow public comment on the plan of reorganization. Any hearing must be held within 30 days after receipt by the office ~~department~~ of a completed plan of reorganization. The office ~~department~~ may not approve a plan of reorganization unless it finds that it is fair and equitable to the members of the mutual insurance company. Ninety days after filing, the plan of reorganization shall be deemed approved unless it has previously been approved or disapproved by the office ~~department~~. The office ~~department~~ shall inform the mutual insurer of the specific reasons for the disapproval of any plan of reorganization.

(5)(a) A plan of reorganization adopted by the board of directors of the applicant may be:

1. Amended by the board of directors of the applicant in response to the comments or recommendations of the office ~~department~~, or any other state or federal agency or governmental entity, before any solicitation of proxies from members of the mutual insurance company to vote on the plan of reorganization, or at any time with the consent of the office ~~department~~, except that any material amendment after the members' approval shall require the members' approval; or

2. Terminated by the board of directors of the applicant at any time before members of the mutual insurance company vote on the plan of reorganization and, otherwise, at any time with the consent of the office ~~department~~.

(b) The plan of reorganization is approved upon the affirmative vote of at least a majority of the votes cast by members of the mutual insurance

company, notwithstanding quorum or voting action requirements otherwise applicable to the mutual insurance company to the contrary.

(c) Within 30 days after members have approved the plan of reorganization, the applicant must file with the office ~~department~~ the minutes of the meeting at which the plan of reorganization was approved.

Section 1300. Section 628.713, Florida Statutes, is amended to read:

628.713 Dividends.—A mutual insurance holding company shall not be authorized to pay dividends or make distributions to mutual insurance holding company members except as may be expressly approved by the office ~~department~~. Neither the adoption nor the implementation of a plan of reorganization shall be deemed to give rise to any obligation by or on behalf of a mutual insurance company to make any distribution or payment to any member or policyholder, or to any other person, fund, or entity of any nature whatsoever, in connection with the ownership, control, benefits, policies, purpose, or nature of the mutual insurance company or otherwise, including, but not limited to, requirements imposed by the conversion and bulk reinsurance provisions of ss. 628.441 and 628.491.

Section 1301. Section 628.715, Florida Statutes, is amended to read:

628.715 Merger and acquisitions.—Subject to applicable requirements of this chapter, a mutual insurance holding company may:

(1)(a) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company licensed pursuant to this act or any similar entity organization pursuant to laws of any other state;

(b) Either alone or together with one or more intermediate stock holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes under this act or the law of its state of organization;

(c) Together with one or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company;

(d) Acquire a stock insurance company through the merger of such stock insurance subsidiary with a stock insurance company or interim stock insurance company subsidiary of the mutual insurance holding company;

(e) Acquire the stock or assets of any other person to the same extent as would be permitted for any not-for-profit corporation under chapter 617 or, if the mutual insurance holding company writes insurance, a mutual insurance company;

(f) Jointly, with a domestic or foreign mutual insurance company which redomesticates pursuant to s. 628.520, file an application with the office ~~department~~, pursuant to the provisions of this part, to merge the domestic or foreign mutual insurance company policyholder's membership interests into the mutual insurance holding company. The reorganizing mutual insurance company may merge with the mutual insurance holding company's

stock subsidiary or continue its corporate existence as a domestic stock insurance company subsidiary. The members of the foreign mutual insurance company may approve in a contemporaneous vote both the redomestication plan and the agreement for merger and reorganization; or

(g) Merge or consolidate with, or acquire the assets of, a domestic or foreign reciprocal insurance company, a group self-insurance fund, or any other similar entity.

(2) A reorganization pursuant to this section is subject to the applicable procedures prescribed by the laws of this state applying to corporations formed for profit, except as otherwise provided in this subsection.

(a) The plan and agreement for merger shall be submitted to and approved by a majority of the members, policyholders, or subscribers of each domestic mutual insurance holding company, mutual insurance company, stock insurance company, or domestic or foreign reciprocal insurance company, involved in the merger who vote either in person or by proxy thereon at meetings called for the purposes pursuant to such reasonable notice and procedure as has been approved by the office ~~department~~.

(b) No such merger shall be effectuated unless in advance thereof, the plan and agreement therefor have been filed with the office ~~department~~ and approved by it after a public hearing, which shall be held within 90 days after receipt by the office ~~department~~ of such plan and agreement. The office ~~department~~ may retain outside consultants to evaluate the merger. The domestic mutual insurance holding company shall pay reasonable costs associated with retaining such consultants. Such payments shall be made directly to the consultant. The office ~~department~~ shall give such approval unless it finds such plan or agreement:

1. Is inequitable to the policyholders of any domestic insurer involved in the merger or the members of any domestic mutual insurance holding company involved in the merger; or

2. Would substantially reduce the security of and service to be rendered to policyholders of a domestic insurer in this state.

(c) All of the initial shares of the capital stock of the reorganized subsidiary insurance company shall be issued either to the mutual insurance holding company, or to an intermediate holding company which is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized subsidiary insurance company.

(d) For property and casualty insurers, the rights of the members of the merging entities under s. 628.729, for a period of 3 years after the merger, shall be the proportionate share of the total surplus of the merging entities

as determined by the percentage of the surplus contributed by each of the merging entities to the total surplus of the surviving entity on the date of the merger.

Section 1302. Section 628.717, Florida Statutes, is amended to read:

628.717 Filing of articles of incorporation.—

(1) No mutual insurance holding company shall be formed unless its articles of incorporation are approved by the office ~~department~~ prior to filing the same with and approval by the Department of State as provided by law.

(2) The office ~~department~~ shall promptly examine the articles of incorporation; and, if it finds that the articles of incorporation comply with law, the office ~~department~~ shall endorse its approval upon each of the originals, place one on file in its office, and return the remaining sets to the incorporators. The incorporators shall promptly file such endorsed articles of incorporation with the Department of State. The articles of incorporation shall be effective when filed with and approved by the Department of State.

Section 1303. Subsection (2) of section 628.719, Florida Statutes, is amended to read:

628.719 Amendment of articles of incorporation.—

(2)(a) Upon adoption of an amendment, the mutual insurance holding company shall make under its corporate seal a certificate thereof, setting forth the amendment and the date and manner of the adoption thereof, which certificate shall be executed by the mutual insurance holding company's president or vice president and secretary or assistant secretary and acknowledged before an officer authorized to take acknowledgments. The mutual insurance holding company shall deliver the originals of the certificate to the office ~~department~~.

(b) The office ~~department~~ shall promptly examine the certificate of amendment, and, if the office ~~department~~ finds that the certificate and the amendment comply with law, the office ~~department~~ shall endorse its approval upon each of the originals, place one on file in its office, and return the remaining sets to the mutual insurance holding company. The mutual insurance holding company shall promptly file such endorsed certificates of amendment with the Department of State. The amendment shall be effective when filed with and approved by the Department of State.

Section 1304. Subsection (3) of section 628.721, Florida Statutes, is amended to read:

628.721 Bylaws.—

(3) The mutual insurance holding company shall file within 30 days with the office ~~department~~ a copy, certified by the mutual insurance holding company's secretary, of its bylaws and of every modification thereof or addition thereto. The office ~~department~~ shall promptly disapprove any bylaw provision deemed by it to be unlawful, unreasonable, inadequate, unfair, or

detrimental to the proper interests or protection of the mutual insurance holding company's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision disapproved.

Section 1305. Section 628.725, Florida Statutes, is amended to read:

628.725 Notice of change of director or officer.—A mutual insurance holding company shall give the office ~~department~~ written notice of any change of personnel among the directors or principal officers of the mutual insurance holding company within 45 days after such change. The written notice shall include all information necessary to allow the office ~~department~~ to determine that the mutual insurance holding company's subsidiary stock insurers will be in compliance with s. 624.404(3) and, at a minimum, shall contain information similar to the information required by s. 628.051(2)(b), (c), and (d) for directors of insurance companies.

Section 1306. Subsection (1) of section 628.729, Florida Statutes, is amended to read:

628.729 Member's share of assets on voluntary dissolution.—

(1) Upon any voluntary dissolution of a domestic mutual insurance holding company, its assets remaining after discharge of its indebtedness, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within the 3-year period preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is earlier; except, if the office ~~department~~ has reason to believe that those in charge of the management of the mutual insurance holding company have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be entitled to share in distribution of the insurer's assets, the office ~~department~~ may enlarge the 3-year qualification period by such additional time as the office ~~department~~ may deem to be reasonable.

Section 1307. Section 628.730, Florida Statutes, is amended to read:

628.730 Merger with intermediate holding company.—

(1) A mutual insurance holding company may, pursuant to a plan and agreement of merger approved by the office ~~department~~, in accordance with s. 628.715(2)(b), merge into its intermediate holding company. The surviving intermediate holding company shall assume all of the assets and liabilities of the mutual insurance holding company, and all of the stock of the intermediate holding company owned by the mutual insurance holding company immediately prior to the merger shall be distributed to existing persons who were members of the mutual insurance holding company at any time within the 3-year period preceding the date of such merger.

(2) The distributive share of each such member shall be determined by a formula based upon such reasonable classifications of members as the office ~~department~~ may approve.

(3) For purposes of creating a public market for the shares of the intermediate holding company, the mutual insurance holding company may, immediately prior to the merger, sell or cause the intermediate holding company to sell to the public up to 25 percent of its capital stock representing no more than 25 percent of the voting stock of the intermediate holding company.

(4) The office ~~department~~ shall hold a public hearing to allow public comment on the plan and agreement of merger. The hearing must be held within 90 days after receipt of the office ~~department~~ of the proposed plan and agreement of merger.

(5) The plan and agreement of merger shall be submitted to the members of the mutual holding company for their approval and shall take effect only if approved by a majority of the members of the mutual insurance holding company who vote either in person or by proxy on such merger at a meeting called for the purpose of voting on such merger, pursuant to reasonable notice and procedures as approved by the office ~~department~~.

Section 1308. Section 628.733, Florida Statutes, is amended to read:

628.733 Converting mutual insurance holding company.—

(1) A mutual insurance holding company may become a stock holding company under such plan and procedure as may be approved by the office ~~department~~.

(2) The office ~~department~~ shall not approve any such plan and procedure unless:

(a) The plan and procedure is subject to approval by vote of not less than a majority of the company's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the office ~~department~~.

(b) The corporate equity of each member is determinable under a fair formula approved by the office ~~department~~, which equity shall be based upon not more than the company's net assets.

(c) The persons entitled to participate in the distribution of stock shall include all current members and all existing persons who had been members within 3 years prior to the date such plan was submitted to the office ~~department~~.

(d) The plan calls for the distribution to each person as specified in paragraph (c) of capital stock or other property of the stock holding company, using each person's equity as determined under paragraph (b).

(e) The plan gives to each member as specified in paragraph (c) a preemptive right to acquire his or her proportionate part of all of the proposed capital stock of the new stock holding company, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity as determined under paragraph (b).

(f) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others.

(g) The plan provides for payment of cash to each member not electing to apply his or her equity towards the purchase price of stock to which he or she is preemptively entitled. The amount so paid shall be not less than 50 percent of the amount of his or her equity not so used for the purchase of stock. Such cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the member's corporate equity in such mutual insurance holding company.

Section 1309. Section 628.801, Florida Statutes, is amended to read:

628.801 Insurance holding companies; registration; regulation.—Every insurer which is authorized to do business in this state and which is a member of an insurance holding company shall register with the office ~~department~~ and be subject to regulation with respect to its relationship to such holding company as provided by rule or statute. The commission ~~department~~ shall adopt rules establishing the information and form required for registration and the manner in which registered insurers and their affiliates shall be regulated. The rules shall apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except a foreign insurer domiciled in states that are accredited by the National Association of Insurance Commissioners by December 31, 1995. Except to the extent of any conflict with this code, the rules must include all requirements and standards of ss. 4 and 5 of the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners, as the Regulatory Act and the Model Regulation existed on January 1, 1997, and may include a prohibition on oral contracts between affiliated entities. Upon request, the office ~~department~~ may waive filing requirements under this section for a domestic insurer that is the subsidiary of an insurer that is in full compliance with the insurance holding company registration laws of its state of domicile, which state is accredited by the National Association of Insurance Commissioners.

Section 1310. Subsection (1) of section 628.802, Florida Statutes, is amended to read:

628.802 Injunction.—

(1) Whenever it appears to the office ~~department~~ that any insurer or any director, officer, or employee thereof, or appears to the department that any agent thereof has committed or is about to commit a violation of this part or of any rule or order issued by the commission, office, or department pursuant to this part, the office or department may apply to the circuit court in and for Leon County for an order enjoining the insurer, director, officer, employee, or agent from violating or continuing to violate this part or the rule or order and for other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

Section 1311. Section 628.803, Florida Statutes, is amended to read:

628.803 Sanctions.—

(1) Any company failing, without just cause, to file any registration statement or certificate of exemption required to be filed pursuant to commission ~~department~~ rules relating to this part shall, in addition to other penalties prescribed under the Florida Insurance Code, be subject to pay a penalty of $100 for each day's delay, not to exceed a total of $10,000.

(2) Every director or officer of an insurance holding company system who knowingly violates or participates in, or who knowingly directs any of the officers or agents of the company to engage in transactions or make investments which have not been properly filed or approved or which violate commission ~~department~~ rules relating to this part, shall pay, in their individual capacity, a civil forfeiture of not more than $5,000 per violation. In determining the amount of the civil forfeiture, the office ~~department~~ shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, and the history of previous violations.

(3) Whenever it appears to the office ~~department~~ that any insurer subject to this part or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which violates commission ~~department~~ rules relating to this part, the office ~~department~~ may order the insurer to cease and desist immediately any further activity under that transaction or contract. The office ~~department~~ may also order the insurer to void any such transaction or contract and restore the status quo if this action is in the best interest of the policyholders, creditors, or public.

(4) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to, or makes or causes to be made, any false statements, false reports, or false filings with the intent to deceive the office ~~department~~ in the performance of its duties under this part is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1312. Subsections (1) and (3) of section 628.905, Florida Statutes, are amended to read:

628.905 Licensing; authority.—

(1) Any captive insurer, when permitted by its charter or articles of incorporation, may apply to the office ~~department~~ for a license to provide commercial property, commercial casualty, and commercial marine insurance coverage other than workers' compensation and employer's liability insurance coverage, except that an industrial insured captive insurer may apply for a license to provide workers' compensation and employer's liability insurance as set forth in subsection (6).

(3) In addition to information otherwise required by this code, each applicant captive insurer shall file with the office ~~department~~ evidence of the adequacy of the loss prevention program of its insureds.

Section 1313. Subsection (2) of section 628.911, Florida Statutes, is amended to read:

628.911 Reports and statements.—

(2) A captive insurer shall, within 60 days after the end of its fiscal year and as often as the office ~~department~~ may deem necessary, submit to the office ~~department~~ a report of its financial condition verified by oath of two of its executive officers. The commission ~~department~~ may adopt ~~promulgate~~ by rule the form in which captive insurers shall report.

Section 1314. Subsections (1), (2), and (3) of section 628.913, Florida Statutes, are amended to read:

628.913 Reinsurance.—

(1)(a) A ceding captive insurer may reinsure all or any part of any particular risk or class of risks with:

1. An assuming insurer authorized by the office ~~department~~ to transact such line of insurance or reinsurance in this state. Subject to the other requirements of this code, credit may be taken for reinsurance with an authorized insurer.

2. An assuming insurer approved by the office ~~department~~ to transact such line of reinsurance in this state. The office ~~department~~ shall approve only solvent insurers meeting the criteria established for authorized insurers in this state. From time to time, the office ~~department~~ shall publish a list of insurers approved pursuant to this subsection. Subject to the other requirements of this code, credit may be taken for reinsurance with an approved reinsurer.

3. An assuming underwriting member of an insurance exchange domiciled in any other state or jurisdiction in the United States provided the insurance exchange presents to the office ~~department~~ for its approval, and maintains, satisfactory evidence that such assuming underwriting member maintains the standards and meets the financial requirements applicable to an authorized insurer. Subject to the other provisions of this code, credit may be taken for reinsurance with members approved under this subsection by the office ~~department~~.

4. A group of individual unincorporated alien insurers which maintains funds in an amount not less than $50 million held in trust for United States policyholders and beneficiaries in a bank or trust company that is subject to supervision by any state of the United States or that is a member of the Federal Reserve System and which group satisfies the office ~~department~~ by annually filing evidence that it can meet its obligations under its reinsurance agreements. Subject to the other provisions of this code, credit may be taken for reinsurance with groups approved under this subsection by the office ~~department~~.

(b) Credit in accounting and financial statements on account of reinsurance ceded to an unauthorized or unapproved reinsurer may be allowed only:

1. When it is demonstrated by the ceding captive insurer to the satisfaction of the office ~~department~~ that such reinsurer maintains the standards and meets the financial requirements applicable to an authorized insurer;

2. To the extent of deposits by, or funds withheld from, such reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding captive insurer or such deposits or funds are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding captive insurer. The funds withheld may be cash or securities which are qualified as admitted assets under part II of chapter 625 and which have a market value equal to or greater than the credit taken; or

3. To the extent that the amount of a clean and irrevocable letter of credit, issued for a term of not less than 1 year and in conformity with the requirements set forth in this subparagraph, equals or exceeds the liability of an unauthorized or unapproved reinsurer for unearned premiums, outstanding losses, and an adequate reserve for incurred but not reported losses under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit be issued under arrangements satisfactory to the office ~~department~~ as constituting security to the ceding captive insurer substantially equal to that of a deposit under subparagraph 2. and that the letter be issued by a banking institution which is a member of the Federal Reserve System and which has financial standing satisfactory to the office ~~commissioner~~.

(2) The office ~~department~~ shall disallow any credit which it finds would be contrary to the proper interests of the policyholders or stockholders of a ceding captive insurer.

(3) No credit may be allowed for reinsurance in an unauthorized or unapproved assuming insurer unless such insurer designates the Chief Financial Officer ~~commissioner~~ or a person resident in the United States as agent for service of process in any action arising out of, or in connection with, such reinsurance.

Section 1315. Section 628.917, Florida Statutes, is amended to read:

628.917 Insolvency and liquidation.—In the event that a captive insurer is insolvent as defined in chapter 631, the office ~~department~~ shall liquidate the captive insurer pursuant to the provisions of part I of chapter 631; except that the office ~~department~~ shall make no attempt to rehabilitate such insurer.

Section 1316. Section 629.081, Florida Statutes, is amended to read:

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the office ~~department~~ for a certificate of authority to transact insurance.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the office ~~department~~, when applying for a certificate of authority, a declaration setting forth:

(a) The name of the insurer;

(b) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) The kinds of insurance proposed to be transacted;

(d) The names and addresses of the original subscribers;

(e) The designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) The names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if other than a corporation;

(g) The powers of the subscribers' advisory committee, and the names and terms of office of the members thereof;

(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(i) A copy of the subscribers' agreement;

(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office ~~department~~;

(k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and

(l) A copy of each policy, endorsement, and application form it then proposes to issue or use.

Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.

Section 1317. Subsection (4) of section 629.101, Florida Statutes, is amended to read:

629.101 Power of attorney.—

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this state unless filed with the office ~~department~~.

Section 1318. Subsection (1) and (3) of section 629.121, Florida Statutes, are amended to read:

629.121 Attorney's bond.—

(1) Concurrently with the filing of the declaration provided for in s. 629.081, the attorney of a domestic reciprocal insurer shall file with the office ~~department~~ a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his or her bond as set forth in subsection (2). The bond shall be executed by the attorney and by an authorized corporate surety and shall be subject to the approval of the office ~~department~~.

(3) The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the office ~~department~~.

Section 1319. Section 629.131, Florida Statutes, is amended to read:

629.131 Deposit in lieu of bond.—In lieu of the bond required under s. 629.121, the attorney may maintain on deposit with ~~through~~ the ~~office of the~~ department a like amount in value of securities qualified for deposit under s. 625.52 and subject to the same conditions as the bond.

Section 1320. Section 629.161, Florida Statutes, is amended to read:

629.161 Contributions to insurer.—The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the office ~~department~~. This section does not apply as to bank loans or to loans made upon security.

Section 1321. Subsection (2) of section 629.171, Florida Statutes, is amended to read:

629.171 Annual statement.—

(2) The statement shall be supplemented by such information as may be required by the office ~~department~~ relative to the affairs and transactions of the attorney insofar as they relate to the reciprocal insurer.

Section 1322. Section 629.181, Florida Statutes, is amended to read:

629.181 Financial condition; method of determining.—In determining the financial condition of a reciprocal insurer, the office ~~department~~ shall apply the following rules:

(1) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.

(2) An assessment levied upon subscribers, but not collected, shall not be allowed as an asset.

(3) The contingent liability of subscribers shall not be allowed as an asset.

Section 1323. Subsection (1) of section 629.231, Florida Statutes, is amended to read:

629.231 Assessments.—

(1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the office ~~department~~, or by the department as receiver ~~in liquidation~~ of the insurer.

Section 1324. Section 629.241, Florida Statutes, is amended to read:

629.241 Time limit for assessments.—Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his or her share of, any assessment, as computed and limited in accordance with this chapter, if:

(1) While his or her policy is in force or within 4 years after its termination, the subscriber is notified by either the attorney or the office ~~department~~ of its intentions to levy such assessment; or

(2) An order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while the subscriber's policy is in force or within 4 years after its termination.

Section 1325. Section 629.261, Florida Statutes, is amended to read:

629.261 Nonassessable policies.—

(1) If a reciprocal insurer has a surplus as to policyholders required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the office ~~department~~ shall issue its certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the office ~~department~~ shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but, after such revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The office ~~department~~ shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in

any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that, if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

Section 1326. Section 629.281, Florida Statutes, is amended to read:

629.281 Subscribers' share in assets.—Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in s. 629.161, and the return of any unused premium, savings, or credits then standing on subscribers' accounts shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the office approves ~~department may approve~~.

Section 1327. Subsections (1) and (3) of section 629.291, Florida Statutes, are amended to read:

629.291 Merger or conversion.—

(1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the office ~~department~~ of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(3) The office ~~department~~ shall not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer, as determined in accordance with s. 629.281, and a reasonable length of time within which to exercise such right.

Section 1328. Subsections (2) and (3) of section 629.301, Florida Statutes, are amended to read:

629.301 Impaired reciprocal insurers.—

(2) If the attorney fails to make up such deficiency or to make the assessment within 30 days after the office ~~department~~ orders him or her to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the office ~~department~~ determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

Section 1329. Section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(1) There may be created one or more insurance exchanges, with one or more offices each, subject to such rules as are adopted ~~may be promulgated~~ by the commission ~~commissioner~~. For the purposes of this section, the term "exchange" applies to any such insurance exchange proposed or created under this section. The purposes of the exchange are:

(a) To provide a facility for the underwriting of:

1. Reinsurance of all kinds of insurance.

2. Direct insurance of all kinds on risks located entirely outside the United States.

3. Surplus lines insurance for risks located in this state eligible for export under s. 626.916 or s. 626.917 and placed through a licensed Florida surplus lines agent subject to compliance with the provisions of ss. 626.921, 626.922, 626.923, 626.924, 626.929, 626.9295, 626.930, and 626.931. With respect to compliance with s. 626.924, the required legend may refer to any coverage provided for by a security fund established under paragraph (3)(d).

4. Surplus lines insurance in any other state subject to the applicable surplus lines laws of such other state for risks located entirely outside of this state.

(b) To manage the facility authorized by this section, in accordance with rules adopted ~~promulgated~~ by the commission ~~commissioner~~.

(c) In no event shall the exchange be considered to be an underwriter or broker with respect to any contract of insurance or reinsurance written by a member of the exchange, and the exchange shall not incur any liability therefor.

(2) The operation of this subsection shall become effective with respect to any exchange only after a determination by the office ~~Insurance Commissioner and Treasurer~~ that the exchange may operate in an economic and beneficial manner. A committee shall be appointed to write the constitution and bylaws of the proposed exchange, to make such other recommendations as may be necessary to assure maximum coordination of the operations of the exchange with existing insurance industry operations, and to assure maximum economic benefits to the state from the operations of the exchange. The committee shall consist of 13 members, 6 to be appointed by the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~, 2 each to be appointed by the Speaker of the House of Representatives and the President of the Senate, 1 each to be appointed by the minority leader of the House of Representatives and the minority leader of the Senate, and 1 to be the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ or his or her designated representative. The chair shall be elected by a majority of the committee. The committee shall transmit such proposed constitution and bylaws and such other recommendations to the office ~~Insurance Commissioner and Treasurer~~ and to the Legislature no later than 5 days prior

to the adjournment of a regular annual legislative session or no later than 5 days prior to the commencement of any special or organizational legislative session. Subject to the disapproval of the constitution and bylaws by either house of the Legislature by resolution before the end of such legislative session, the exchange shall have full authority to function pursuant to its constitution and bylaws 60 days after the end of the session. The initial board of governors of the exchange shall consist of 14 members, 3 appointed by the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~, 3 by the Speaker of the House of Representatives, 3 by the President of the Senate, 1 by the minority leader of the House of Representatives, 1 by the minority leader of the Senate, and 3 by the Governor, to serve until the first election pursuant to the constitution or bylaws.

(3) The constitution and bylaws of the exchange shall provide for, but shall not be limited to:

(a) The selection of 13 governors, at least 7 of whom shall be appointed by and serve at the pleasure of the Chief Financial Officer ~~Insurance Commissioner~~. Five of the governors appointed by the Chief Financial Officer ~~Insurance Commissioner~~ shall not be members of the exchange. One of the remaining two governors appointed by the Chief Financial Officer ~~Insurance Commissioner~~ shall be a broker member, and one shall be a representative of an underwriting member. The remainder of the governors shall be elected by the membership of the exchange in accordance with the constitution and bylaws, except that at least five governors shall be elected by the underwriting members of the exchange.

(b) The location of the principal offices of the exchange and the principal offices of its members to be within this state for the purpose of the transaction of the type of business described in subsection (1). A principal office shall be one where officers and qualified personnel who are engaged in the administration, underwriting, claims, policyholders' service, marketing, accounting, recordkeeping, and all supportive services shall be located.

(c) The submission by members and all applicants for membership on the exchange of such financial information as may be required by the office ~~commissioner~~.

(d)1. The establishment by the exchange of a security fund in such form and amount as approved by the office ~~commissioner~~.

2. With respect to contracts of insurance written or renewed on or after July 2, 1987:

a. The security fund shall pay that amount of each covered claim which is determined to be payable in accordance with the constitution and bylaws and is in excess of $100 and less than $300,000, except that the fund shall not be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent underwriting member under the policy from which the claim arises.

b. The security fund shall have no obligation and shall make no payment of any obligation arising under any such contract or with respect to any

contract of reinsurance written or renewed on or after July 2, 1987, to the extent the payment or payments exceed, either individually or in the aggregate, 10 percent of the insolvent underwriting member's surplus as to policyholders as reflected on the most recent sworn annual statement of the insolvent underwriting member filed with the office ~~department~~ prior to issuance of such contract.

c. For the purposes of this subparagraph, each reinsurance treaty and each contract of insurance inuring to the benefit of multiple parties shall constitute only one contract, and covered claims include unpaid claims, including claims of unearned premiums, which arise out of and are within the coverage and are not in excess of the applicable limits of an insurance policy issued by an insolvent underwriting member through the facilities of the exchange.

(e) The voting power of members who are underwriting syndicates.

(f) The voting power and other rights granted under the provisions of the not-for-profit corporation law, chapter 617, to participate in the conduct and management of the affairs of the exchange, by brokers, agents, and intermediaries transacting business on the exchange, each of whom shall be considered "members" only under the provisions of such law.

(g) The rights and duties of exchange members, which may include, but shall not be limited to, the manner and form of conducting business, financial stability, dues, membership fees, mandatory arbitration, and all other matters necessary or appropriate to conduct any business permitted herein.

Any amendments to the constitution and bylaws shall be subject to the approval of the office ~~commissioner~~.

(4) Any insurance exchange formed under the provisions of this section shall not be subject to any state or local taxes or fees measured by income, premiums, or gross receipts; except that for purposes of taxation under s. 624.509, direct premiums written, procured, or received by a member or members through the exchange on risks located in this state shall be construed to be written, procured, or received by the exchange, and the premium tax due on said premium shall be reported and paid by the exchange.

(5) The exchange shall reimburse the office ~~department~~ for any expenses incurred by the office ~~department~~ relating to the regulation of the exchange and its members.

(6)(a)1. The provisions of ss. 625.012 and 625.031 shall be applicable to the underwriting members of an exchange in the same manner as those sections apply to domestic insurers authorized to do business in this state.

2. The provisions of ss. 625.302-625.338 shall be applicable to the underwriting members of an exchange in the same manner as those sections apply to domestic insurers authorized to transact business in this state.

(b) In addition to the insurance laws specified in paragraph (a), the office ~~department~~ shall regulate the exchange pursuant to the following powers, rights, and duties:

1. General examination powers.—The office ~~department~~ shall examine the affairs, transactions, accounts, records, and assets of any security fund, exchange, members, and associate brokers as often as it deems advisable. The examination may be conducted by the accredited examiners of the office ~~department~~ at the offices of the entity or person being examined. The office ~~department~~ shall examine in like manner each prospective member or associate broker applying for membership in an exchange.

2. Office ~~Departmental~~ approval and applications of underwriting members.—No underwriting member shall commence operation without the approval of the office ~~department~~. Before commencing operation, an underwriting member shall provide a written application containing:

a. Name, type, and purpose of the underwriting member.

b. Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the underwriting member.

c. Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the underwriting member, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding.

d. Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive agency contracts.

3. Investigation of underwriting member applications.—In connection with any proposal to establish an underwriting member, the office ~~department~~ shall make an investigation of:

a. The character, reputation, financial standing, and motives of the organizers, incorporators, or subscribers organizing the proposed underwriting member.

b. The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

c. The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, or owners.

4. Notice of management changes.—An underwriting member shall promptly give the office ~~department~~ written notice of any change among the directors or principal officers of the underwriting member within 30 days after such change. The office ~~department~~ shall investigate the new directors or principal officers of the underwriting member. The office's ~~department's~~ investigation shall include an investigation of the character, financial responsibility, insurance experience, and business qualifications of any new directors or principal officers. As a result of the investigation, the office ~~department~~ may require the underwriting member to replace any new directors or principal officers.

5. Alternate financial statement.—In lieu of any financial examination, the office ~~department~~ may accept an audited financial statement.

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

7. Obstruction of examinations.—Any person or entity who or which willfully obstructs the office ~~department~~ or its examiner in an examination is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

8. Filing of annual statement.—Each underwriting member shall file with the office ~~department~~ a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed on or before March 1 of each year, or within such extension of time as the office ~~department~~ for good cause grants, and shall be for the preceding calendar year. The statement shall contain information generally included in insurer financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the underwriting member. The form of the financial statements shall be the approved form of the National Association of Insurance Commissioners or its successor organization. The commission ~~department~~ may by rule require each insurer to submit any part of the information contained in the financial statement in a computer-readable form compatible with the office's ~~department's~~ electronic data processing system. In addition to information furnished in connection with its annual statement, an underwriting member must furnish to the office ~~department~~ as soon as reasonably possible such information about its transactions or affairs as the office ~~department~~ requests in writing. All information furnished pursuant to the office's ~~department's~~ request must be verified by the oath of two executive officers of the underwriting member.

9. Record maintenance.—Each underwriting member shall have and maintain its principal place of business in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of insurance transacted.

10. Examination of agents.—If the department has reason to believe that any agent, as defined in s. 626.015 or s. 626.914, has violated or is violating any provision of the insurance law, or upon receipt of a written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such examination as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of such agent.

11. Written reports of office ~~department~~.—The office ~~department~~ or its examiner shall make a full and true written report of any examination. The report shall contain only information obtained from examination of the

records, accounts, files, and documents of or relative to the person or entity examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The office ~~department~~ shall furnish a copy of the report to the person or entity examined not less than 30 days prior to filing the report in its office. If such person or entity so requests in writing within such 30-day period, the office ~~department~~ shall grant a hearing with respect to the report and shall not file the report until after the hearing and after such modifications have been made therein as the office ~~department~~ deems proper.

12. Admissibility of reports.—The report of an examination when filed shall be admissible in evidence in any action or proceeding brought by the office ~~department~~ against the person or entity examined, or against his or her or its officers, employees, or agents. The office ~~department~~ or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the office ~~department~~.

13. Publication of reports.—After an examination report has been filed, the office ~~department~~ may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

14. Consideration of examination reports by entity examined.—After the examination report of an underwriting member has been filed, an affidavit shall be filed with the office ~~department~~, not more than 30 days after the report has been filed, on a form furnished by the office ~~department~~ and signed by the person or a representative of any entity examined, stating that the report has been read and that the recommendations made in the report will be considered within a reasonable time.

15. Examination costs.—Each person or entity examined by the office ~~department~~ shall pay to the office ~~department~~ the expenses incurred in such examination.

16. Exchange costs.—An exchange shall reimburse the office ~~department~~ for any expenses incurred by it relating to the regulation of the exchange and its members, except as specified in subparagraph 15.

17. Powers of examiners.—Any examiner appointed by the office ~~department~~, as to the subject of any examination, investigation, or hearing being conducted by him or her, may administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which the examiner deems relevant to the inquiry. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he or she may be lawfully interrogated, the Circuit Court of Leon County or the circuit court of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the office's ~~department's~~ application may issue an order requiring such person to comply with

the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof. Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

18. False testimony.—Any person willfully testifying falsely under oath as to any matter material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

19. Self-incrimination.—

a. If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the office ~~department~~ or its examiner, on the ground that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and the person notwithstanding is directed to give such testimony or produce such evidence, he or she shall, if so directed by the office ~~department~~ and the Department of Legal Affairs, nonetheless comply with such direction; but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence so produced shall be received against him or her upon any criminal action, investigation, or proceeding; except that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury, nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law.

b. Any such individual may execute, acknowledge, and file with ~~in~~ the office ~~of the department~~ a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and if such testimony or evidence is so received or produced, such individual shall not be entitled to any immunity or privileges on account of any testimony so given or evidence so produced.

20. Penalty for failure to testify.—Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any member, associate broker, or other person when subpoenaed and requested by the office ~~department~~ to so testify, as provided in subparagraph 17., shall, in addition to the penalty provided in subparagraph 17., be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

21. Name selection.—No underwriting member shall be formed or authorized to transact insurance in this state under a name which is the same as that of any authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion or under a name which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using any name, the underwriting syndicate or proposed underwriting syndicate shall submit its name or proposed name to the office ~~department~~ for the approval of the office ~~department~~.

22. Capitalization.—An underwriting member approved on or after July 2, 1987, shall provide an initial paid-in capital and surplus of $3 million and thereafter shall maintain a minimum policyholder surplus of $2 million in order to be permitted to write insurance. Underwriting members approved prior to July 2, 1987, shall maintain a minimum policyholder surplus of $1 million. After June 29, 1988, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.5 million to write insurance. After June 29, 1989, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.75 million to write insurance. After December 30, 1989, all underwriting members, regardless of the date they were approved, must maintain a minimum policyholder surplus of $2 million to write insurance. Except for that portion of the paid-in capital and surplus which shall be maintained in a security fund of an exchange, the paid-in capital and surplus shall be invested by an underwriting member in a manner consistent with ss. 625.301-625.340. The portion of the paid-in capital and surplus in any security fund of an exchange shall be invested in a manner limited to investments for life insurance companies under the Florida insurance laws.

23. Limitations on coverage written.—

a. Limit of risk.—No underwriting member shall expose itself to any loss on any one risk in an amount exceeding 10 percent of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in an assuming reinsurer authorized or approved to do such business in this state shall be deducted in determining the limitation of risk prescribed in this section.

b. Restrictions on premiums written.—If the office ~~department~~ has reason to believe that the underwriting member's ratio of actual or projected annual gross written premiums to policyholder surplus exceeds 8 to 1 or the underwriting member's ratio of actual or projected annual net premiums to policyholder surplus exceeds 4 to 1, the office ~~department~~ may establish maximum gross or net annual premiums to be written by the underwriting member consistent with maintaining the ratios specified in this sub-subparagraph.

(I) Projected annual net or gross premiums shall be based on the actual writings to date for the underwriting member's current calendar year, its writings for the previous calendar year, or both. Ratios shall be computed on an annualized basis.

(II) For purposes of this sub-subparagraph, the term "gross written premiums" means direct premiums written and reinsurance assumed.

c. Surplus as to policyholders.—For the purpose of determining the limitation on coverage written, surplus as to policyholders shall be deemed to include any voluntary reserves, or any part thereof, which are not required by or pursuant to law and shall be determined from the last sworn statement of such underwriting member with the office ~~department~~, or by the last report or examination filed by the office ~~department~~, whichever is more recent at the time of assumption of such risk.

24. Unearned premium reserves.—All unearned premium reserves for business written on the exchange shall be calculated on a monthly or more frequent basis or on such other basis as determined by the office ~~department~~; except that all premiums on any marine or transportation insurance trip risk shall be deemed unearned until the trip is terminated.

25. Loss reserves.—All underwriting members of an exchange shall maintain loss reserves, including a reserve for incurred but not reported claims. The reserves shall be subject to review by the office ~~department~~, and, if loss experience shows that an underwriting member's loss reserves are inadequate, the office ~~department~~ shall require the underwriting member to maintain loss reserves in such additional amount as is needed to make them adequate.

26. Distribution of profits.—An underwriting member shall not distribute any profits in the form of cash or other assets to owners except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains. In any one year such payments to owners shall not exceed 30 percent of such surplus as of December 31 of the immediately preceding year, unless otherwise approved by the office ~~department~~. No distribution of profits shall be made that would render an underwriting member either impaired or insolvent.

27. Stock dividends.—A stock dividend may be paid by an underwriting member out of any available surplus funds in excess of the aggregate amount of surplus advanced to the underwriting member under subparagraph 29.

28. Dividends from earned surplus.—A dividend otherwise lawful may be payable out of an underwriting member's earned surplus even though the total surplus of the underwriting member is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

29. Borrowing of money by underwriting members.—

a. An underwriting member may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the underwriting member's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 15 percent simple interest per annum. The interest shall or shall not constitute a liability of the underwriting member as to its funds other than such

excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan. The use of any surplus note and any repayments thereof shall be subject to the approval of the office ~~department~~.

b. Money so borrowed, together with any interest thereon if so stipulated in the agreement, shall not form a part of the underwriting member's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, nor be the basis of any setoff; but until repayment, financial statements filed or published by an underwriting member shall show as a footnote thereto the amount thereof then unpaid, together with any interest thereon accrued but unpaid.

30. Liquidation, rehabilitation, and restrictions.—The office ~~department~~, upon a showing that a member or associate broker of an exchange has met one or more of the grounds contained in part I of chapter 631, may restrict sales by type of risk, policy or contract limits, premium levels, or policy or contract provisions; increase surplus or capital requirements of underwriting members; issue cease and desist orders; suspend or restrict a member's or associate broker's right to transact business; place an underwriting member under conservatorship or rehabilitation; or seek an order of liquidation as authorized by part I of chapter 631.

31. Prohibited conduct.—The following acts by a member, associate broker, or affiliated person shall constitute prohibited conduct:

a. Fraud.

b. Fraudulent or dishonest acts committed by a member or associate broker prior to admission to an exchange, if the facts and circumstances were not disclosed to the office ~~department~~ upon application to become a member or associate broker.

c. Conduct detrimental to the welfare of an exchange.

d. Unethical or improper practices or conduct, inconsistent with just and equitable principles of trade as set forth in, but not limited to, ss. 626.951-626.9641 and 626.973.

e. Failure to use due diligence to ascertain the insurance needs of a client or a principal.

f. Misstatements made under oath or upon an application for membership on an exchange.

g. Failure to testify or produce documents when requested by the office ~~department~~.

h. Willful violation of any law of this state.

i. Failure of an officer or principal to testify under oath concerning a member, associate broker, or other person's affairs as they relate to the operation of an exchange.

j. Violation of the constitution and bylaws of the exchange.

32. Penalties for participating in prohibited conduct.—

a. The office ~~department~~ may order the suspension of further transaction of business on the exchange of any member or associate broker found to have engaged in prohibited conduct. In addition, any member or associate broker found to have engaged in prohibited conduct may be subject to reprimand, censure, and/or a fine not exceeding $25,000 imposed by the office ~~department~~.

b. Any member which has an affiliated person who is found to have engaged in prohibited conduct shall be subject to involuntary withdrawal or in addition thereto may be subject to suspension, reprimand, censure, and/or a fine not exceeding $25,000.

33. Reduction of penalties.—Any suspension, reprimand, censure, or fine may be remitted or reduced by the office ~~department~~ on such terms and conditions as are deemed fair and equitable.

34. Other offenses.—Any member or associate broker that is suspended shall be deprived, during the period of suspension, of all rights and privileges of a member or of an associate broker and may be proceeded against by the office ~~department~~ for any offense committed either before or after the date of suspension.

35. Reinstatement.—Any member or associate broker that is suspended may be reinstated at any time on such terms and conditions as the office ~~department~~ may specify.

36. Remittance of fines.—Fines imposed under this section shall be remitted to the office ~~department~~ and shall be paid into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

37. Failure to pay fines.—When a member or associate broker has failed to pay a fine for 15 days after it becomes payable, such member or associate broker shall be suspended, unless the office ~~department~~ has granted an extension of time to pay such fine.

38. Changes in ownership or assets.—In the event of a major change in the ownership or a major change in the assets of an underwriting member, the underwriting member shall report such change in writing to the office ~~department~~ within 30 days of the effective date thereof. The report shall set forth the details of the change. Any change in ownership or assets of more than 5 percent shall be considered a major change.

39. Retaliation.—

a. When by or pursuant to the laws of any other state or foreign country any taxes, licenses, or other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon an exchange or upon the agents or representatives of such exchange which are in excess of such taxes, licenses,

and other fees, in the aggregate, or which are in excess of such fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar exchanges or upon the agents or representatives of such exchanges of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the office ~~department~~ upon the exchanges, or upon the agents or representatives of such exchanges, of such other state or country doing business or seeking to do business in this state.

b. Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of a state, jurisdiction, or foreign country on an exchange, or on the agents or representatives on an exchange, shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of sub-subparagraph a.

40. Agents.—

a. Agents as defined in ss. 626.015 and 626.914 who are broker members or associate broker members of an exchange shall be allowed only to place on an exchange the same kind or kinds of business that the agent is licensed to place pursuant to Florida law. Direct Florida business as defined in s. 626.916 or s. 626.917 shall be written through a broker member who is a surplus lines agent as defined in s. 626.914. The activities of each broker member or associate broker with regard to an exchange shall be subject to all applicable provisions of the insurance laws of this state, and all such activities shall constitute transactions under his or her license as an insurance agent for purposes of the Florida insurance law.

b. Premium payments and other requirements.—If an underwriting member has assumed the risk as to a surplus lines coverage and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the underwriting member and the insured, the underwriting member shall be deemed to have received the premium due to it for such coverage; and the underwriting member shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the underwriting member with respect to such insurance or for any other cause.

41. Improperly issued contracts, riders, and endorsements.—

a. Any insurance policy, rider, or endorsement issued by an underwriting member and otherwise valid which contains any condition or provision not in compliance with the requirements of this section shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this section. In the event an underwriting member issues or delivers any policy for an amount which exceeds any limitations otherwise provided

in this section, the underwriting member shall be liable to the insured or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed.

b. Any insurance contract delivered or issued for delivery in this state governing a subject or subjects of insurance resident, located, or to be performed in this state which, pursuant to the provisions of this section, the underwriting member may not lawfully insure under such a contract shall be cancelable at any time by the underwriting member, any provision of the contract to the contrary notwithstanding; and the underwriting member shall promptly cancel the contract in accordance with the request of the office ~~department~~ therefor. No such illegality or cancellation shall be deemed to relieve the underwriting syndicate of any liability incurred by it under the contract while in force or to prohibit the underwriting syndicate from retaining the pro rata earned premium thereon. This provision does not relieve the underwriting syndicate from any penalty otherwise incurred by the underwriting syndicate.

42. Satisfaction of judgments.—

a. Every judgment or decree for the recovery of money heretofore or hereafter entered in any court of competent jurisdiction against any underwriting member shall be fully satisfied within 60 days from and after the entry thereof or, in the case of an appeal from such judgment or decree, within 60 days from and after the affirmance of the judgment or decree by the appellate court.

b. If the judgment or decree is not satisfied as required under sub-subparagraph a., and proof of such failure to satisfy is made by filing with the office ~~department~~ a certified transcript of the docket of the judgment or the decree together with a certificate by the clerk of the court wherein the judgment or decree remains unsatisfied, in whole or in part, after the time provided in sub-subparagraph a., the office ~~department~~ shall forthwith prohibit the underwriting member from transacting business. The office ~~department~~ shall not permit such underwriting member to write any new business until the judgment or decree is wholly paid and satisfied and proof thereof is filed with the office ~~department~~ under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the judgment or decree is satisfied of record, and until the expenses and fees incurred in the case are also paid by the underwriting syndicate.

43. Tender and exchange offers.—No person shall conclude a tender offer or an exchange offer or otherwise acquire 5 percent or more of the outstanding voting securities of an underwriting member or controlling company or purchase 5 percent or more of the ownership of an underwriting member or controlling company unless such person has filed with, and obtained the approval of, the office ~~department~~ and sent to such underwriting member a statement setting forth:

a. The identity of, and background information on, each person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by or on behalf of a corporation, association, or trust, the identity of and background information on each director, officer, trustee, or other

natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.

b. The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

c. Any plans or proposals which such person may have to liquidate such member, to sell its assets, or to merge or consolidate it.

d. The percentage of ownership which such person proposes to acquire and the terms of the offer or exchange, as the case may be.

e. Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such member or controlling company, including, but not limited to, information relating to the transfer of any securities, option arrangements, or puts or calls or the giving or withholding of proxies, naming the party with whom such contract, arrangements, or understandings have been entered and giving the details thereof.

f. The office ~~department~~ may disapprove any acquisition subject to the provisions of this subparagraph by any person or any affiliated person of such person who:

(I) Willfully violates this subparagraph;

(II) In violation of an order of the office ~~department~~ issued pursuant to sub-subparagraph j., fails to divest himself or herself of any stock obtained in violation of this subparagraph, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(III) In violation of an order issued by the office ~~department~~ pursuant to sub-subparagraph j., acquires additional stock of the underwriting member or controlling company, or direct or indirect control of such stock, without complying with this subparagraph.

g. The person or persons filing the statement required by this subparagraph have the burden of proof. The office ~~department~~ shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(I) Upon completion of the acquisition, the underwriting member will be able to satisfy the requirements for the approval to write the line or lines of insurance for which it is presently approved;

(II) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the underwriting member or prejudice the interests of its policyholders or the public;

(III) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

(A) To liquidate the insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

(B) To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the underwriting member

is fair and free of prejudice to the policyholders of the underwriting member or to the public;

(IV) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the underwriting member indicate that the acquisition is in the best interest of the policyholders of the underwriting member and in the public interest;

(V) The natural persons for whom background information is required to be furnished pursuant to this subparagraph have such backgrounds as to indicate that it is in the best interests of the policyholders of the underwriting member, and in the public interest, to permit such persons to exercise control over such underwriting member;

(VI) The officers and directors to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation;

(VII) The management of the underwriting member after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the underwriting member not hazardous to the insurance-buying public;

(VIII) The management of the underwriting member after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or underwriting member or otherwise acted in bad faith with respect thereto;

(IX) The acquisition is not likely to be hazardous or prejudicial to the underwriting member's policyholders or the public; and

(X) The effect of the acquisition of control would not substantially lessen competition in insurance in this state or would not tend to create a monopoly therein.

h. No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this subparagraph is valid. Any acquisition of any security contrary to the provisions of this subparagraph is void. Upon the petition of the underwriting member or controlling company, the circuit court for the county in which the principal office of such underwriting member is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this subparagraph. There shall be a private right of action in favor of the underwriting member or controlling company to enforce the provisions of this subparagraph. No demand upon the office ~~department~~ that it perform its functions shall be required as a

prerequisite to any suit by the underwriting member or controlling company against any other person, and in no case shall the office ~~department~~ be deemed a necessary party to any action by such underwriting member or controlling company to enforce the provisions of this subparagraph. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this subparagraph, or who files such a statement, shall be deemed to have thereby designated the Chief Financial Officer ~~Insurance Commissioner, or his or her assistant or deputy or another person in charge of his or her office,~~ as such person's agent for service of process under this subparagraph and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office ~~department~~ and to the jurisdiction of the circuit court.

i. Any approval by the office ~~department~~ under this subparagraph does not constitute a recommendation by the office ~~department~~ for an acquisition, tender offer, or exchange offer. It is unlawful for a person to represent that the office's ~~department's~~ approval constitutes a recommendation. A person who violates the provisions of this sub-subparagraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this sub-subparagraph is 5 years.

j. Upon notification to the office ~~department~~ by the underwriting member or a controlling company that any person or any affiliated person of such person has acquired 5 percent or more of the outstanding voting securities of the underwriting member or controlling company without complying with the provisions of this subparagraph, the office ~~department~~ shall order that the person and any affiliated person of such person cease acquisition of any further securities of the underwriting member or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 5 percent or more of the outstanding voting securities of an underwriting member or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this sub-subparagraph that the person or affiliated person has acquired voting securities of an underwriting member or controlling company in violation of this subparagraph, the office ~~department~~ may order the person and affiliated person to divest themselves of any voting securities so acquired.

k.(I) The office ~~department~~ shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any underwriting member or controlling company:

(A) The control of which is acquired in violation of this subparagraph;

(B) That is controlled, directly or indirectly, by any person or any affiliated person of such person who, in violation of this subparagraph, has obtained control of an underwriting member or controlling company; or

(C) That is controlled, directly or indirectly, by any person who, directly or indirectly, controls any other person who, in violation of this subparagraph, acquires control of an underwriting member or controlling company.

(II) If any underwriting member is subject to suspension or revocation pursuant to sub-sub-subparagraph (I), the underwriting member shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, or stockholders or to the public.

l.(I) For the purpose of this sub-sub-subparagraph, the term "affiliated person" of another person means:

(A) The spouse of such other person;

(B) The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;

(C) Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(D) Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(E) Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person; or any officer, director, partner, copartner, or employee of such other person;

(F) If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

(G) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(H) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of an underwriting member or controlling company.

(II) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more underwriting members.

m. The commission may ~~department is authorized to~~ adopt, amend, or repeal rules that are necessary to implement the provisions of this subparagraph, pursuant to chapter 120.

44. Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to sub-subparagraph 43.a. shall include, but shall not be limited to:

a. Such person's occupations, positions of employment, and offices held during the past 10 years.

b. The principal business and address of any business, corporation, or other organization in which each such office was held or in which such occupation or position of employment was carried on.

c. Whether, at any time during such 10-year period, such person was convicted of any crime other than a traffic violation.

d. Whether, during such 10-year period, such person has been the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

e. Whether, during such 10-year period, such person has been the subject of any proceeding under the federal Bankruptcy Act or whether, during such 10-year period, any corporation, partnership, firm, trust, or association in which such person was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner, or other official, or within 12 months thereafter.

f. Whether, during such 10-year period, such person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details of any such event.

45. Security fund.—All underwriting members shall be members of the security fund of any exchange.

46. Underwriting member defined.—Whenever the term "underwriting member" is used in this subsection, it shall be construed to mean "underwriting syndicate."

47. Offsets.—Any action, requirement, or constraint imposed by the office ~~department~~ shall reduce or offset similar actions, requirements, or constraints of any exchange.

48. Restriction on member ownership.—

a. Investments existing prior to July 2, 1987.—The investment in any member by brokers, agents, and intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall in each case be limited in the aggregate to less than 20 percent of the total investment in such member, broker, agent, or intermediary, as the case may be. After December 31, 1987, the aggregate percent of the total investment in such member by any broker, agent, or intermediary and the aggregate percent of the total investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall not exceed 15 percent. After June 30, 1988, such aggregate percent shall not exceed 10 percent and after December 31, 1988, such aggregate percent shall not exceed 5 percent.

b. Investments arising on or after July 2, 1987.—The investment in any underwriting member by brokers, agents, or intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any underwriting member, directly or indirectly, shall in each case be limited in the aggregate to less than 5 percent of the total investment in such underwriting member, broker, agent, or intermediary.

49. "Underwriting manager" defined.—"Underwriting manager" as used in this subparagraph includes any person, partnership, corporation, or organization providing any of the following services to underwriting members of the exchange:

a. Office management and allied services, including correspondence and secretarial services.

b. Accounting services, including bookkeeping and financial report preparation.

c. Investment and banking consultations and services.

d. Underwriting functions and services including the acceptance, rejection, placement, and marketing of risk.

50. Prohibition of underwriting manager investment.—Any direct or indirect investment in any underwriting manager by a broker member or any affiliated person of a broker member or any direct or indirect investment in a broker member by an underwriting manager or any affiliated person of an underwriting manager is prohibited. "Affiliated person" for purposes of this subparagraph is defined in subparagraph 43.

51. An underwriting member may not accept reinsurance on an assumed basis from an affiliate or a controlling company, nor may a broker member or management company place reinsurance from an affiliate or controlling company of theirs with an underwriting member. "Affiliate and controlling company" for purposes of this subparagraph is defined in subparagraph 43.

52. Premium defined.—"Premium" is the consideration for insurance, by whatever name called. Any "assessment" or any "membership," "policy," "survey," "inspection," "service" fee or charge or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

53. Rules.—The commission ~~department~~ shall adopt ~~promulgate~~ rules necessary for or as an aid to the effectuation of any provision of this section.

(7) The performance of the contractual obligations of the exchange or its members entered into pursuant to subsection (1) shall not be covered by any of the Florida state security or guaranty funds.

Section 1330. Section 629.520, Florida Statutes, is amended to read:

629.520 Authority of a limited reciprocal insurer.—The authority of any limited reciprocal insurer to accept new business or renewals shall not continue beyond October 1, 1992; however, such limited reciprocal insurer shall continue to service its obligations previously incurred or with the

approval of the office ~~department~~, arrange for the transfer of these obligations to an authorized insurer. All power of the office ~~department~~ with respect to limited reciprocal insurers shall continue undiminished. This section does not affect any other power of the office ~~department~~ or any other function of the office ~~department~~.

Section 1331. Subsection (1) of section 630.021, Florida Statutes, is amended to read:

630.021 Required deposit of assets.—

(1) An alien insurer may use Florida as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company or savings and loan association approved by the office ~~department~~.

Section 1332. Section 630.031, Florida Statutes, is amended to read:

630.031 Existing trusts.—All trusts of trusteed assets heretofore created and now existing shall be continued under the instruments creating them, unless inconsistent with the provisions of this chapter. No amendment of the deed of trust under which such assets are so held shall be effective unless approved by the office ~~department~~ in accordance with the provisions of this chapter.

Section 1333. Section 630.051, Florida Statutes, is amended to read:

630.051 Trust agreement; approval; amendment.—

(1) The deposit referred to in s. 630.021 shall be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this chapter; and the agreement and any amendments thereto shall be authenticated in such form and manner as the office ~~department~~ may designate or approve.

(2) The agreement shall not be effective until filed with and approved in writing by the office ~~department~~. If the office ~~department~~ finds that the trust agreement is sufficient in form and in conformity with law, that the trustee or trustees are eligible as such, and that the trust agreement is adequate to protect the interests of the beneficiaries of the trust, it shall give its written approval thereof. If the office ~~department~~ finds that any of the above-mentioned requisites do not exist, it shall refuse to approve the trust agreement.

(3) If after a trust agreement has become effective the office ~~department~~ finds that the requisites for approval of the agreement no longer exist, it may withdraw its approval.

(4) A trust agreement may be amended, but no amendment shall be effective unless the agreement as so amended is found by the office ~~department~~ to be consistent with the provisions of this chapter and the amendment is approved by it.

Section 1334. Subsection (2) of section 630.071, Florida Statutes, is amended to read:

630.071 Requirements and contents of trust agreement.—Trusteed assets of an alien insurer held in this state under this chapter shall be subject to, and the trust agreement shall make provisions consistent with, the following conditions:

(2) Substitution of a new trustee or trustees in case of a vacancy by death, resignation or otherwise may be made, subject to the office's ~~department's~~ approval.

Section 1335. Section 630.081, Florida Statutes, is amended to read:

630.081 Withdrawal of assets, in general.—

(1) The trust agreement shall provide, in substance, that no withdrawals of trusteed assets shall be made by the insurer or permitted by the trustee or trustees without the written authorization or approval of the office ~~department~~ in advance thereof, except as follows:

(a) Any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager.

(b) For substitution, coincidentally with such withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn, if such substituted securities or assets are likewise such as are eligible for investment of the funds of domestic insurers under part II of chapter 625; and if such withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or delegated by the insurer's board of directors or other similar governing body, and a copy of such authority has been filed with the trustee or trustees.

(c) For the purpose of making deposits required by law in any state in which the insurer is or thereafter becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if such withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under s. 624.412. The trustee or trustees shall transfer any assets so withdrawn, and in the amount so required to be deposited in the other state, directly to the depository required to receive such deposit in such other state, as certified in writing by the public official having supervision of insurance in the other state.

(d) For the purpose of transferring the trusteed assets to an official liquidator, conservator, or rehabilitator pursuant to the order of a court of competent jurisdiction.

(2) The office ~~department~~ shall so authorize or approve withdrawal of only such assets as are in excess of the amount of assets required to be so held in trust under s. 630.021, or as may otherwise be consistent with the provisions of this chapter.

(3) If at any time the insurer becomes insolvent, or if its assets held in the United States are less in amount than as required under s. 624.412(1), upon determination thereof the office ~~department~~ shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as otherwise authorized under paragraphs (1)(a), (b), and (c); and the trustee shall comply with such order until the further order of the office ~~department~~.

(4) In the case of withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the trust agreement requires similar written approval of the insurance supervisory official of such state in lieu of any required approval of the office ~~department~~. In all such cases, the insurer shall notify the office ~~department~~ in writing of the nature and extent of such withdrawal.

Section 1336. Section 630.091, Florida Statutes, is amended to read:

630.091 Statement of trustee.—

(1) The trustee or trustees of trusteed assets shall from time to time file with the office ~~department~~ statements, in such form as it may designate and request in writing, certifying the character of such assets and the amounts thereof.

(2) If the trustee or trustees fail to file any such statement after request therefor and expiration of a reasonable time thereafter, the office ~~department~~ may suspend or revoke the certificate of authority of the insurer.

Section 1337. Section 630.101, Florida Statutes, is amended to read:

630.101 Examination of assets.—The office ~~department~~ may from time to time examine trusteed assets of any insurer in accordance with the same conditions and procedures governing the examination of insurers in general under part II of chapter 624.

Section 1338. Section 630.131, Florida Statutes, is amended to read:

630.131 Domestication procedure.—

(1) Upon compliance with ss. 630.131-630.161, any alien insurer authorized to do business in this state which owns beneficially, directly or indirectly, all of the outstanding capital stock of a domestic insurer may, with the prior written approval of the office ~~department~~ and subject to the final approval of the office ~~department~~, domesticate its United States branch, if entered through this state, by entering into an agreement in writing with the domestic insurer providing for the acquisition by the domestic insurer of all the liabilities of the United States branch for no consideration other than the assumption of such liabilities; except that the agreement may further provide for additional consideration payable by the issuance by the acquiring domestic insurer of shares of its capital stock.

(2) Such shares of capital stock of the acquiring domestic insurer, or voting trust certificates representing such shares, as are held among the

trusteed assets of the United States branch of the alien insurer or are held in a trust created by the alien insurer and of which the alien insurer is a beneficiary shall be deemed to be shares held beneficially, but indirectly, by an alien insurer.

(3) The acquisition of assets and assumption of liabilities of the United States branch by the domestic insurer shall be effected by the filing with the office ~~department~~ of an instrument of transfer and assumption in form satisfactory to the office ~~department~~ and executed by the alien insurer and the domestic insurer.

(4) A domestic insurer may either be authorized to transact insurance in this state prior to entering into such domestication agreement or may, if the office ~~department~~ so approves, be authorized effective with the consummation of the domestication agreement in accordance with the provisions of s. 630.161.

Section 1339. Section 630.151, Florida Statutes, is amended to read:

630.151 Office ~~Departmental~~ approval of domestication agreement.—An executed counterpart of the domestication agreement, together with certified copies of the corporate proceedings of the domestic insurer and the alien insurer, approving, adopting, and authorizing the execution of the domestication agreement, shall be submitted to the office ~~department~~ for its approval. The office ~~department~~ shall thereupon consider the agreement; and, if it finds that the same is in accordance with the provisions hereof and that the interests of policyholders and creditors of the United States branch of the alien insurer are not materially adversely affected, it may approve the domestication agreement and authorize the consummation thereof in compliance with the provisions of s. 630.161.

Section 1340. Section 630.161, Florida Statutes, is amended to read:

630.161 Consummation of domestication; transfer of assets and deposits.—

(1) Upon the filing with the office ~~department~~ of a certified copy of the instrument of transfer and assumption pursuant to which a domestic insurer succeeds to the business and assets of the United States branch of an alien insurer and assumes all its liabilities as provided by ss. 630.131-630.161, the domestication of the United States branch shall be deemed to be effective; and thereupon all the rights, franchises, and interests of the United States branch in and to every species of property, real, personal, and mixed, and things in action thereunto belonging shall be deemed as transferred to and vested in the domestic insurer, and simultaneously therewith the domestic insurer shall be deemed to have assumed all of the liabilities of the United States branch.

(2) All deposits of the United States branch held by the department, or state officers or other state regulatory agencies pursuant to requirements of state laws, shall be deemed to be held as security that the domestic insurer will fully perform its assumption as direct liabilities of all the liabilities to policyholders or policyholders and creditors within the United States

of the United States branch; and such deposits shall be deemed to be assets of the domestic insurer and shall be reported as such in the annual financial statements and other reports which the domestic insurer may be required to file. Upon the ultimate release by any such state officer or agency of any such deposits, the securities and cash constituting such released deposit shall be delivered and paid over to the domestic insurer as the lawful successor in interest to the United States branch.

(3) Contemporaneously with the consummation of the domestication of the United States branch, notwithstanding any provision of the statutes to the contrary, the department shall transfer to the insurer the securities deposited by the United States branch in compliance with the provisions of this law, and the department shall consent that the trustee of the trusteed assets deposited by the United States branch in compliance with the provisions of this law shall withdraw from the trusteed assets and transfer and deliver over to the domestic insurer all assets held by such trustee.

Section 1341. Subsection (5) is added to section 631.021, Florida Statutes, to read:

631.021 Jurisdiction of delinquency proceeding; venue change of venue; exclusiveness of remedy; appeal.—

(5) No service of process against the department in its capacity as receiver shall be effective unless served upon a person designated by the receiver and filed with the circuit court having jurisdiction over the delinquency proceeding. The designated person shall refuse to accept service if acceptance would violate a stay against legal proceedings involving an insurer that is the subject of delinquency proceedings or would violate any orders of the circuit court governing a delinquency proceeding. The person denied service may petition the circuit court having jurisdiction over the delinquency proceeding for relief from the receiver's refusal to accept service. This subsection shall be strictly construed and any purported service on the receiver or the department that is not in accordance with this subsection shall be null and void.

Section 1342. Section 631.025, Florida Statutes, is amended to read:

631.025 Persons subject to this part.—Delinquency proceedings authorized by this part may be initiated against any insurer, as defined in s. 631.011(15), if the statutory grounds are present as to that insurer, and the court may exercise jurisdiction over any person required to cooperate with the department and office pursuant to s. 631.391 and over all persons made subject to the court's jurisdiction by other provisions of law. Such persons include, but are not limited to:

(1) A person transacting, or that has transacted, insurance business in or from this state and against whom claims arising from that business may exist now or in the future.

(2) A person purporting to transact an insurance business in this state and any person who acts as an insurer, transacts insurance, or otherwise engages in insurance activities in or from this state, with or without a

certificate of authority or proper authority from the department or office, against whom claims arising from that business may exist now or in the future.

(3) An insurer with policyholders resident in this state.

(4) All other persons organized or in the process of organizing with the intent to transact an insurance business in this state.

Section 1343. Section 631.031, Florida Statutes, is amended to read:

631.031 Initiation and commencement of delinquency proceeding.—

(1) Upon a determination by the office that one or more grounds for the initiation of delinquency proceedings exist pursuant to this chapter and that delinquency proceedings must be initiated, the Director of the Office of Insurance Regulation shall notify the department of such determination and shall provide the department with all necessary documentation and evidence. The department shall then initiate such delinquency proceedings.

(2) The department may commence any such proceeding by application to the court for an order directing the insurer to show cause why the department should not have the relief prayed for. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders, members, subscribers, or public may require. The department may also commence any such proceeding by application to the court by petition for the entry of a consent order of conservation, rehabilitation, or liquidation.

Section 1344. Section 631.051, Florida Statutes, is amended to read:

631.051 Grounds for rehabilitation; domestic insurers.—The department may petition for an order directing it to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds, that the insurer:

(1) Is impaired or insolvent;

(2) Has failed to comply with an order of the office ~~department~~ to make good an impairment of capital or surplus or both;

(3) Is found by the office ~~department~~ to be in such condition or is using or has been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, stockholders, or the public;

(4) Has failed, or its parent corporation, subsidiary, or affiliated person controlled by either the insurer or the parent corporation has failed, to submit its books, documents, accounts, records, and affairs pertaining to the insurer to the reasonable inspection or examination of the office ~~department~~ or its authorized representative; or any individual exercising any executive authority in the affairs of the insurer, or parent corporation, or subsidiary, or affiliated person has refused to be examined under oath by the office

~~department~~ or its authorized representative, whether within this state or otherwise, concerning the pertinent affairs of the insurer, or parent corporation or subsidiary or affiliated person; or if examined under oath refuses to divulge pertinent information reasonably known to her or him; or officers, directors, agents, employees, or other representatives of the insurer or parent corporation, subsidiary, or affiliated person have failed to comply promptly with the reasonable requests of the office ~~department~~ or its authorized representative for the purposes of, and during the conduct of, any such examination;

(5) Has concealed or removed records or assets or otherwise violated s. 628.271 or s. 628.281;

(6) Through its board of directors or governing body is deadlocked in the management of the insurer's affairs and that the members of a mutual, reciprocal, or any other type of organization or stockholders are unable to break the deadlock and that irreparable injury to the insurer, its creditors, its policyholders, its members or subscribers, or the public is threatened by reason thereof;

(7) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business into that of any other insurer or entity without having first obtained the written approval of the office ~~department~~ under the provisions of s. 628.451, s. 628.461, or s. 628.4615, as the case may be;

(8) Has willfully violated its charter or certificate of incorporation or any law of this state;

(9) Is in such a position that control of it, whether by stock ownership or otherwise, and whether direct or indirect, is in one or more persons found by the office ~~department~~ after notice and hearing to be dishonest or untrustworthy; or that the insurer has failed, upon order of the office ~~department~~ and expiration of such reasonable time for such removal as the office ~~department~~ shall specify in the order, to remove any person who in fact has executive authority, directly or indirectly, in the insurer, whether as an officer, director, manager, agent, employee, or otherwise, and if such person has been found by the office ~~department~~ after notice and hearing, to be incompetent, dishonest, untrustworthy, or so lacking in insurance company managerial experience as to be hazardous to the insurance-buying public;

(10) Has been or is the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or its property otherwise than pursuant to the provisions of this code, but only if such an appointment has been made or is imminent;

(11) Has consented to such an order through a majority of its directors, stockholders, members, or subscribers;

(12) Has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within 60 days after the judgment became final, within 60 days after the time for taking an

appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later;

(13) Has been the victim of embezzlement, wrongful sequestration, conversion, diversion, or encumbering of its assets; forgery or fraud affecting it; or other illegal conduct in, by, or with respect to it, which if established would threaten its solvency; or that the office ~~department~~ has reasonable cause to so believe any of the foregoing has occurred or may occur;

(14) Is engaging in a systematic practice of reaching settlements with and obtaining releases from policyholders or third-party claimants and then unreasonably delaying payment of, or failing to pay, the agreed-upon settlements; or

(15) Within the previous 12 months has systematically attempted to compromise with creditors on the ground that it is financially unable to pay its claims in full.

Section 1345. Section 631.081, Florida Statutes, is amended to read:

631.081 Grounds for conservation; alien insurers.—The department may apply to the court for an order appointing it as receiver or ancillary receiver, and directing it to conserve the assets within this state, of any alien insurer upon any of the following grounds:

(1) Upon any of the grounds specified in s. 631.051 or s. 631.061;

(2) Upon the ground that the insurer has failed to comply, within the time designated by the office ~~department~~, with an order made by it to make good an impairment of its trusteed funds; or

(3) Upon the ground that the property of the insurer has been sequestrated in its domiciliary sovereignty or elsewhere.

Section 1346. Subsection (1) of section 631.152, Florida Statutes, is amended to read:

631.152 Conduct of delinquency proceeding; foreign insurers.—

(1) Whenever under this chapter an ancillary receiver is to be appointed in a delinquency proceeding for an insurer not domiciled in this state, the court shall appoint the department as ancillary receiver. The department shall file a petition requesting the appointment on the grounds set forth in s. 631.091:

(a) If it finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver, or

(b) If 10 or more persons resident in this state having claims against such insurer file a petition with the department or office requesting the appointment of such ancillary receiver.

Section 1347. Section 631.221, Florida Statutes, is amended to read:

631.221 Deposit of moneys collected.—The moneys collected by the department in a proceeding under this chapter shall be deposited in a qualified public depository as defined in s. 280.02, which depository with regards to such funds shall conform to and be bound by all the provisions of chapter 280, or invested with the Chief Financial Officer ~~State Treasurer~~ pursuant to chapter 18. For the purpose of accounting for the assets and transactions of the estate, the receiver shall use such accounting books, records, and systems as the court directs after it hears and considers the recommendations of the receiver.

Section 1348. Section 631.231, Florida Statutes, is amended to read:

631.231 Exemption from fees.—The department or office shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the department or office of any of the powers or duties conferred upon it under this chapter, whether or not such paper or instrument be executed by the department or office or their ~~its~~ employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the department or office, or with the subsequent conduct of such action or proceeding.

Section 1349. Section 631.391, Florida Statutes, is amended to read:

631.391 Cooperation of officers and employees.—

(1) Any officer, director, manager, trustee, agent, adjuster, employee, or independent contractor of any insurer or affiliate and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of the insurer or affiliate shall fully cooperate with the department and office in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding. An order of rehabilitation or liquidation which results in the discharge or suspension of any of the persons listed above does not operate to release such person from the duty to cooperate with the department and office as set out herein. To "cooperate" includes, but is not limited to, the following:

(a) To reply promptly in writing to any inquiry from the department or office requesting such a reply;

(b) Promptly to make available and deliver to the department or office any books, accounts, documents, other records, information, data processing software, or property of or pertaining to the insurer and in her or his possession, custody, or control; or

(c) Promptly to provide access to all data processing records in hard copy and in electronic form and to data processing facilities and services.

(2) No person shall obstruct or interfere with the department or office in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section does not prohibit any person from seeking legal relief from a court when aggrieved by the petition for liquidation or other delinquency proceeding or by other orders.

(4) Any person referred to in subsection (1) who fails to cooperate with the department or office, or any other person who obstructs or interferes with the department or office, in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by fine of not more than $10,000.

(5) Refusal by any person referred to in subsection (1) to provide records upon the request of the department or office is grounds for revocation of any insurance-related license, including, but not limited to, agent and third-party administrator licenses.

Section 1350. Section 631.392, Florida Statutes, is amended to read:

631.392 Immunity.—There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Chief Financial Officer, ~~Insurance Commissioner or~~ the department, the office, or any of their ~~its~~ employees or agents for any action taken by them in the performance of their powers and duties under this chapter.

Section 1351. Section 631.398, Florida Statutes, is amended to read:

631.398 Prevention of insolvencies.—To aid in the detection and prevention of insurer insolvencies or impairments:

(1) Any member insurer; agent, employee, or member of the board of directors; or representative of any insurance guaranty association may make reports and recommendations to the department or office upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations are confidential and exempt from the provisions of s. 119.07(1) until the termination of a delinquency proceeding.

(2) The office ~~department~~ shall:

(a) Report to the board of directors of the appropriate insurance guaranty association when it has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that such insurer may be an impaired or insolvent insurer.

(b) Seek the advice and recommendations of the board of directors of the appropriate insurance guaranty association concerning any matter affecting the duties and responsibilities of the office ~~department~~ in relation to the financial condition of member companies and companies seeking admission to transact insurance business in this state.

(3) The department shall, no later than the conclusion of any domestic insurer insolvency proceeding, prepare a summary report containing such information as is in its possession relating to the history and causes of such insolvency, including a statement of the business practices of such insurer which led to such insolvency.

Section 1352. Section 631.54, Florida Statutes, is amended to read:

631.54 Definitions.—As used in this part:

(1) "Account" means any one of the three accounts created by s. 631.55.

(2) "Association" means the Florida Insurance Guaranty Association, Incorporated.

(3) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer after October 1, 1970, and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation, contribution, indemnification, or otherwise. Member insurers shall have no right of subrogation against the insured of any insolvent member.

~~(4) "Department" means the Department of Insurance.~~

(4)~~(5)~~ "Expenses in handling claims" means allocated and unallocated expenses, including, but not limited to, general administrative expenses and those expenses which relate to the investigation, adjustment, defense, or settlement of specific claims under, or arising out of, a specific policy.

(5)~~(6)~~ "Insolvent insurer" means a member insurer authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review.

(6)~~(7)~~ "Member insurer" means any person who writes any kind of insurance to which this part applies under s. 631.52, including the exchange of reciprocal or interinsurance contracts, and is licensed to transact insurance in this state.

(7)~~(8)~~ "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8)~~(9)~~ "Person" means individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Section 1353. Subsection (1) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.—

(1) There is created a nonprofit corporation to be known as the "Florida Insurance Guaranty Association, Incorporated." All insurers defined as member insurers in s. 631.54(6) ~~s. 631.54(7)~~ shall be members of the association as a condition of their authority to transact insurance in this state, and, further, as a condition of such authority, an insurer shall agree to reimburse the association for all claim payments the association makes on said insurer's behalf if such insurer is subsequently rehabilitated. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all those powers granted or permitted nonprofit corporations, as provided in chapter 617.

Section 1354. Subsection (1) of section 631.56, Florida Statutes, is amended to read:

631.56 Board of directors.—

(1) The board of directors of the association shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. The department shall approve and appoint to the board persons recommended by the member insurers. In the event the department finds that any recommended person does not meet the qualifications for service on the board, the department shall request the member insurers to recommend another person. Each member shall serve for a 4-year term and may be reappointed. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. ~~If no members are selected by November 30, 1970, the department may appoint the initial members of the board of directors.~~

Section 1355. Subsections (1) and (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. shall include only that amount of each covered claim which is in excess of $100 and is less than $300,000, except with respect to policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, the obligation shall include that amount of each covered property insurance claim

which is less than $100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

~~The foregoing notwithstanding, the association shall have no obligation to pay covered claims to be paid from the proceeds of bonds issued under s. 166.111(2). However, the association shall cause assessments to be made under paragraph (3)(e) for such covered claims, and such assessments shall be assigned and pledged under paragraph (3)(e) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.~~

(b) Be deemed the insurer to the extent of its obligation on the covered claims, and, to such extent, shall have all rights, duties, defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent. In no event shall the association be liable for any penalties or interest.

(3)(a) To the extent necessary to secure the funds for the respective accounts for the payment of covered claims and also to pay the reasonable costs to administer the same, the office ~~department~~, upon certification of the board of directors, shall levy assessments in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(b) If sufficient funds from such assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(c) Assessments shall be included as an appropriate factor in the making of rates.

(d) No state funds of any kind shall be allocated or paid to said association or any of its accounts.

~~(e)1.a. In addition to assessments otherwise authorized in paragraph (a), as a temporary measure related to insolvencies caused by Hurricane Andrew, and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c), or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 166.111(2), and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the department, upon certification of the board of directors, shall levy assessments upon insurers holding a certificate of authority as follows:~~

~~(I) Except as provided in sub-sub-subparagraph (II), the assessments payable under this paragraph by any insurer shall not exceed in any 1 year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(c).~~

~~(II) If the amount levied under sub-sub-subparagraph (I) is less than 2 percent of the insurer's direct written premiums, net of refunds, in this state during calendar year 1991 for the kinds of insurance within the account specified in s. 631.55(2)(c), in addition to and separate from such assessment, the assessment shall also include the difference between the amount calculated based on calendar year 1991 and the amount determined under sub-sub-subparagraph (I). If this sub-sub-subparagraph is held invalid, the invalidity shall not affect other provisions of this section, and to this end the provisions of this section are declared severable.~~

~~(III) In addition to any other insurers subject to this subparagraph, this subparagraph also applies to any insurer that held a certificate of authority on August 24, 1992. If this sub-sub-subparagraph is held invalid, the invalidity shall not affect other provisions of this section, and to this end the provisions of this section are declared severable.~~

~~b. Any assessments authorized under this paragraph shall be levied by the department upon insurers referred to in sub-subparagraph a., upon certification as to the need therefor by the board of directors, in 1992 and in each year that bonds issued under s. 166.111(2) are outstanding, in such amounts up to such 2 percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of, issuance of bonds issued under s. 166.111(2). The assessments provided for in this paragraph are hereby assigned and pledged to a municipality issuing bonds under s. 166.111(2)(b), for the benefit of the holders of such bonds, in order to enable such municipality to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the department, or any other party. To the extent that bonds are issued under~~

~~s. 166.111(2), the proceeds of assessments levied under this paragraph shall be remitted directly to and administered by the trustee appointed for such bonds.~~

~~c. Assessments under this paragraph shall be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an assessment is levied, and subsequent installments being due not later than the end of each succeeding month.~~

~~d. The association shall issue a monthly report on the status of the use of the bond proceeds as related to insolvencies caused by Hurricane Andrew. The report must contain the number of claims paid and the amount of claims paid. The association shall also include an analysis of the revenue generated from the additional assessment levied under this subsection. The report must be sent to the Legislature and the Insurance Commissioner monthly.~~

~~2. In order to assure that insurers paying assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall make a rate filing for coverage included within the account specified in s. 631.55(2)(c) and for which rates are required to be filed under s. 627.062. If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made, subject to the department's continuing authority to require actuarial justification as to the adequacy of any rate at any time. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.~~

Section 1356. Section 631.59, Florida Statutes, is amended to read:

631.59 Duties and powers of department and office ~~of Insurance~~.—

(1) The department shall~~:~~

~~(a)~~ notify the association of the existence of an insolvent insurer not later than 3 days after it receives notice of the determination of the insolvency.~~,~~ ~~and~~

~~(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.~~

(2) The department may~~:~~

~~(a)~~ require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. Such notification shall be by mail at their last known addresses, when available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(3) The office shall, upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(4)~~(b)~~ The office may:

(a) Suspend or revoke the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the office ~~department~~ may levy a fine on any member insurer which fails to pay an assessment when due. Such fine may not exceed 5 percent of the unpaid assessment per month, except that no fine shall be less than $100 per month.

(b)~~(c)~~ Revoke the designation of any servicing facility if it finds claims are being handled unsatisfactorily.

Section 1357. Section 631.62, Florida Statutes, is amended to read:

631.62 Prevention of insolvencies.—To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the office ~~department~~ of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the office ~~department~~ order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the office ~~department~~ shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the office ~~department~~ designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports pursuant to s. 624.319. In no event shall such examination report be released to the board of directors prior to its release to the public. The office ~~department~~ shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the office ~~department~~; such request is confidential and exempt from the provisions of s. 119.07(1) until the examination report is released to the public.

(3) The board of directors may, upon majority vote, make reports and recommendations to the department or office upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations are confidential and exempt from the provisions of s. 119.07(1) until the termination of a delinquency proceeding.

(4) The board of directors may, upon majority vote, make recommendations to the office ~~department~~ for the detection and prevention of insurer insolvencies.

Section 1358. Section 631.66, Florida Statutes, is amended to read:

631.66 Immunity.—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, the

association or its agents or employees, the board of directors, the Chief Financial Officer, or the department or office or their ~~its~~ representatives for any action taken by them in the performance of their powers and duties under this part. Such immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

Section 1359. Section 631.714, Florida Statutes, is amended to read:

631.714 Definitions.—As used in this part, the term:

(1) "Account" means any of the three accounts created in s. 631.715.

(2) "Association" means the Florida Life and Health Insurance Guaranty Association created in s. 631.715.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract set out in s. 631.713 and reduced to written, printed, or other tangible form.

~~(5) "Department" means the Department of Insurance.~~

(5)~~(6)~~ "Impaired insurer" means a member insurer deemed by the department to be potentially unable to fulfill its contractual obligations and not an insolvent insurer.

(6)~~(7)~~ "Insolvent insurer" means a member insurer authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction, if such order has become final by the exhaustion of appellate review.

(7)~~(8)~~ "Member insurer" means any person licensed to transact in this state any kind of insurance as set out in s. 631.713.

(8)~~(9)~~ "Premium" means any direct gross insurance premium and any annuity consideration written on covered policies, less return premium and consideration thereon and dividends paid or credited to policyholders on such direct business. "Premium" does not include premium and consideration on contracts between insurers and reinsurers.

(9)~~(10)~~ "Person" means any individual, corporation, partnership, association, or voluntary organization.

(10)~~(11)~~ "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed by such impaired or insolvent member insurer.

Section 1360. Subsections (2) and (3) of section 631.72, Florida Statutes, are amended to read:

631.72 Premium or income tax credits for assessments paid.—

(2) If a member insurer ceases doing business in this state and surrenders to the office ~~department~~ its certificate of authority to transact insurance in this state, all uncredited assessments may be credited as provided in this section against either its premium or corporate income tax liabilities imposed pursuant to ss. 624.509 and 220.11 for the year it ceases doing business.

(3) Any sums acquired by refund pursuant to s. 631.718(6) from the association which have theretofore been written off by contributing insurers and offset against premium or corporate income taxes as provided in subsection (1) and which are not needed for purposes of this part shall be paid by the insurer to the Department of Revenue for deposit with the Chief Financial Officer ~~Treasurer~~ to the credit of the General Revenue Fund.

Section 1361. Section 631.722, Florida Statutes, is amended to read:

631.722 Powers and duties of department and office.—

(1) The office ~~department~~ shall:

(a) Upon request of the board of directors, provide the association with a statement of the premiums in each of the appropriate states for each member insurer.

(b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this part.

(2)~~(c)~~ The department shall, in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the department shall be appointed conservator.

(3)~~(2)~~ The office ~~department~~ may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the approved plan of operation of the association. As an alternative, the office ~~department~~ may levy a forfeiture on any member insurer that fails to pay an assessment when due. Such forfeiture shall not exceed 5 percent of the unpaid assessment per month, but no forfeiture shall be less than $100 per month.

(4)~~(3)~~ Any action of the board of directors or of the association may be appealed to the office ~~department~~ by any member insurer if such appeal is taken within 30 days of the action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of the appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order

of the office ~~department~~ shall be subject to judicial review in a court of competent jurisdiction.

(5)~~(4)~~ The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this part.

Section 1362. Section 631.723, Florida Statutes, is amended to read:

631.723 Prevention of insolvencies.—To aid in the detection and prevention of insurer insolvencies or impairments:

(1) The board of directors may, upon majority vote, make reports and recommendations to the department or office upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations are confidential and exempt from the provisions of s. 119.07(1) until the termination of a delinquency proceeding.

(2) It is the duty of the board of directors, upon a majority vote, to notify the office ~~department~~ of any information indicating that any member insurer may be an impaired or insolvent insurer.

(3) The board of directors may, upon majority vote, request that the office ~~department~~ order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days of the receipt of such a request, the office ~~department~~ shall begin such an examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the office ~~Insurance Commissioner~~ designates. The cost of such examination shall be paid by the association, and the examination report shall be treated in a manner similar to other examination reports pursuant to s. 624.319. In no event may such examination report be released to the board of directors before its release to the public, but this does not preclude the office ~~department~~ from complying with s. 631.398(2). The office ~~department~~ shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the office ~~department~~; such request is confidential and exempt from the provisions of s. 119.07(1) until the examination report is released to the public.

(4) The board of directors may, upon majority vote, make recommendations to the office ~~department~~ for the detection and prevention of insurer insolvencies.

Section 1363. Section 631.727, Florida Statutes, is amended to read:

631.727 Immunity.—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, the Chief Financial Officer, or the department or office or their ~~its~~ representatives for any action taken by them in the performance of their powers and duties under this part. Such immunity shall extend to the participation in any organization of one or more other state

associations of similar purposes and to any such organization and its agents or employees.

Section 1364. Section 631.813, Florida Statutes, is amended to read:

631.813 Application of part.—This part shall apply to HMO contractual obligations to residents of Florida by HMOs possessing a valid certificate of authority issued ~~by the Florida Department of Insurance~~ as provided by part I of chapter 641. The provisions of this part shall not apply to persons participating in medical assistance programs under the Medicaid program.

Section 1365. Section 631.814, Florida Statutes, is amended to read:

631.814 Definitions.—As used in this part, the term:

(1) "Plan" means the Florida Health Maintenance Organization Consumer Assistance Plan created by this part.

(2) "Board" means the board of directors of the plan.

(3) "Contractual obligations" means any obligation under covered health care policies.

(4) "Covered policy" means any policy or contract issued by an HMO for health care services.

(5) "Date of insolvency" means the effective date of an order of liquidation entered by a court of competent jurisdiction.

~~(6) "Department" means the Florida Department of Insurance.~~

(6)~~(7)~~ "Health care services" means comprehensive health care services as defined in s. 641.19.

(7)~~(8)~~ "HMO" means a health maintenance organization possessing a valid certificate of authority issued by the office ~~department~~ pursuant to part I of chapter 641.

(8)~~(9)~~ "Insolvent HMO" means an HMO against which an order of rehabilitation or liquidation has been entered by a court of competent jurisdiction, with the department appointed as receiver, even if such order has not become final by the exhaustion of appellate reviews.

(9)~~(10)~~ "Person" means any individual, corporation, partnership, association, or voluntary organization.

(10)~~(11)~~ "Subscriber" means any resident of this state who is enrolled for benefits provided by an HMO and who makes premium payments or for whom premium payments are made.

Section 1366. Paragraph (b) of subsection (1) of section 631.818, Florida Statutes, is amended to read:

631.818 Powers and duties of the plan.—

(1) In the event that an HMO is insolvent, the plan shall:

(b) Cover all services that would have been covered by the subscribers' contracts with the insolvent HMO during any period from the date of insolvency until the effective date of the replacement coverage with another HMO or other entity that provides health care services or reimbursement or with a product determined by the plan and approved by the office ~~department~~.

Section 1367. Subsection (1) and paragraph (d) of subsection (4) of section 631.820, Florida Statutes, are amended to read:

631.820 Plan of operation.—

(1) The plan shall submit to the office ~~department~~ a proposed plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the plan. The proposed plan of operation and any amendments thereto shall become effective upon approval in writing by the office ~~department~~.

(4)

(d) A delegation under this subsection shall take effect only with the approval of both the board of directors and the office ~~department~~ and may be made only to an administrator which extends protection not substantially less favorable and effective than that provided by this part.

Section 1368. Section 631.821, Florida Statutes, is amended to read:

631.821 Powers and duties of the department.—

(1) The office ~~department~~ may suspend or revoke, after notice and hearing, the certificate of authority of a member HMO that fails to pay an assessment when due, fails to comply with the approved plan of operation of the plan, or fails either to timely comply with or to timely appeal pursuant to subsection (2) its appointment ~~under s. 631.818(2)~~.

(2) Any action of the board of directors of the plan may be appealed to the office ~~department~~ by any member HMO if such appeal is taken within 21 days of the action being appealed; however, the HMO must comply with such action pending exhaustion of appeal under s. 631.818(2). Any appeal shall be promptly determined by the office ~~department~~, and final action or order of the office ~~department~~ shall be subject to judicial review in a court of competent jurisdiction.

(3) The department may~~:~~

~~(a)~~ require that the plan notify the subscriber of the insolvent HMO and any other interested parties of the determination of insolvency and of their rights under this part. Such notification shall be by mail at their last known addresses, when available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(4)~~(b)~~ The office may revoke the designation of any servicing facility or administrator if it finds claims are being handled unsatisfactorily.

Section 1369. Section 631.823, Florida Statutes, is amended to read:

631.823 Examination of the plan; annual report.—The plan shall be subject to examination and regulation by the office ~~department~~. The board of directors shall submit to the office and the department, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commission ~~department~~ and a report of its activities during the preceding calendar year.

Section 1370. Section 631.825, Florida Statutes, is amended to read:

631.825 Immunity.—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member HMO or its agents or employees, the plan or its agents or employees, members of the board of directors, the Chief Financial Officer, or the department or office or their ~~its~~ representatives for any action taken by them in the performance of their powers and duties under this part.

Section 1371. Section 631.904, Florida Statutes, is amended to read:

631.904 Definitions.—As used in this part, the term:

(1) "Corporation" means the Florida Workers' Compensation Insurance Guaranty Association, Incorporated.

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision shall be applied retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the ~~Department of Insurance filed a~~ petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

~~(3) "Department" means the Department of Insurance.~~

(3)~~(4)~~ "Insolvency" means that condition in which all of the assets of the insurer, if made immediately available, would not be sufficient to discharge all of its liabilities or that condition in which the insurer is unable to pay its debts as they become due in the usual course of business. When the context of any provision of this part so indicates, insolvency also includes impairment of surplus or impairment of capital.

(4)~~(5)~~ "Insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review.

(5)~~(6)~~ "Insurer" means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385.

(6)~~(7)~~ "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385.

Section 1372. Subsection (1) of section 631.911, Florida Statutes, is amended to read:

631.911 Creation of the Florida Workers' Compensation Insurance Guaranty Association, Incorporated; merger; effect of merger.—

(1)(a) The Florida Self-Insurance Fund Guaranty Association established in former part V of chapter 631 and the workers' compensation insurance account, which includes excess workers' compensation insurance, established in former s. 631.55(2)(a) shall be merged, ~~effective October 1, 1997, or as provided in paragraph (b),~~ in accordance with the plan of operation adopted by the interim board of directors. The successor nonprofit corporation shall be known as the "Florida Workers' Compensation Insurance Guaranty Association, Incorporated."

~~(b) The merger may be effected prior to October 1, 1997, if:~~

~~1. The interim board of directors of the Workers' Compensation Insurance Guaranty Association provides the Department of Insurance with written notice of its intent to effectuate the merger as of a date certain and its functional readiness to initiate operations, such notice setting forth the plan or summary thereof for effecting the merger; and,~~

~~2. The department, upon review of the plan or summary thereof, determines the Workers' Compensation Insurance Guaranty Association is functionally ready to initiate operations and so certifies to the interim board of directors.~~

~~(c) Prior to the effective date of the merger, the Florida Self-Insurance Fund Guaranty Association shall be the entity responsible for the claims of insolvent self-insurance funds resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the Department of Insurance filed a petition in circuit court alleging insolvency and the date the court entered an order appointing a receiver.~~

(b)~~(d)~~ Upon the effective date of the merger:

1. The Florida Self-Insurance Fund Guaranty Association and the workers' compensation insurance account within the Florida Insurance Guaranty Association cease to exist and are succeeded by the Florida Workers' Compensation Insurance Guaranty Association.

2. Title to all assets of any description, all real estate and other property, or any interest therein, owned by each party to the merger is vested in the successor corporation without reversion or impairment.

3. The successor corporation shall be responsible and liable for all the liabilities and obligations of each party to the merger.

4. Any claim existing or action or proceeding pending by or against any party to the merger may be continued as if the merger did not occur or the successor corporation may be substituted in the proceeding for the corporation or account which ceased existence.

5. Neither the rights of creditors nor any liens upon the property of any party to the merger shall be impaired by such merger.

6. Outstanding assessments levied by the Florida Self-Insurance Guaranty Association or the Florida Insurance Guaranty Association on behalf of the workers' compensation insurance account remain in full force and effect and shall be paid when due.

Section 1373. Subsections (1) and (3) of section 631.912, Florida Statutes, are amended to read:

631.912 Board of directors.—

(1) The board of directors of the corporation shall consist of 11 persons, 1 of whom is the insurance consumer advocate appointed under s. 627.0613 or designee and 1 of whom is designated by the Chief Financial Officer ~~Insurance Commissioner~~. The department shall appoint to the board 6 persons selected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium as determined by the department, and 3 persons selected by the self-insurance funds. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The Chief Financial Officer ~~commissioner~~ may remove any board member for cause. Each board member shall serve for a 4-year term and may be reappointed~~, except that four members of the initial board shall have 2-year terms so as to stagger the periods of service~~. A vacancy on the board shall be filled for the remaining period of the term in the same manner by which the original appointment was made.

~~(3) Effective upon this act becoming a law, the persons on the board of directors created pursuant to s. 627.311(4)(a) who evidence a willingness to serve in writing, shall serve as an interim board of directors of the corporation until the initial board of directors has been appointed for the corporation in accordance with the provisions of subsection (1). The interim board~~

~~of directors shall serve for a period not to exceed 6 months. The initial meeting shall be called by the commissioner within 30 days after this act becomes a law. The interim board of directors shall establish a process for the selection of persons to serve on the board of the Florida Workers' Compensation Insurance Guaranty Association in accordance with the terms of subsection (1). The board of directors shall adopt an interim plan of operation to effect the merger in s. 631.911 and avoid any interruption of benefit payments to injured workers. When necessary and upon approval of the chairs of their respective board of directors, the Florida Self-Insurance Fund Guaranty Association and the Florida Insurance Guaranty Association shall provide staff support to the interim board of directors. The board shall submit the interim plan to the commissioner, who shall approve or disapprove the plan within 30 days after receipt.~~

Section 1374. Section 631.917, Florida Statutes, is amended to read:

631.917 Prevention of insolvencies.—To aid in the detection and prevention of insolvencies or impairments:

(1)(a) The board may make reasonable and lawful investigation into the practices of any third-party administrator or service company for a self-insurance fund declared insolvent by the court.

(b) If the results of an investigation reasonably lead to a finding that certain actions taken or not taken by those handling, processing, or preparing covered claims for payment or other benefit pursuant to any workers' compensation insurance policy contributed to the insolvency of an insurer, such information may, in the discretion of the board, be provided to the department or office in an expedited manner.

(2) The board of directors may make reports and recommendations to the department or office upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any insurer seeking to do insurance business in this state.

(3) The board of directors, in its discretion, may notify the office ~~department~~ of any information indicating that any member insurer may be an impaired or insolvent insurer.

(4) The board of directors, in its discretion, may request that the office ~~department~~ order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days after receipt of such a request, the office ~~department~~ shall begin such an examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the office ~~Insurance Commissioner~~ designates. The cost of such examination shall be paid by the corporation, and the examination report shall be treated in a manner similar to other examination reports pursuant to s. 624.319. In no event may such examination report be released to the board of directors before its release to the public, but this requirement does not preclude the office ~~department~~ from complying with s. 631.398(2). The office ~~department~~ shall notify the board of directors when the examination

is completed. The request for an examination shall be kept on file by the office ~~department~~.

(5) The board is authorized to assist and aid the department or office, in any manner consistent with existing laws and this chapter, in the department's or office's investigation or referral for prosecution of those whose action or inaction may have contributed to the impairment or insolvency of the insurer.

(6) The board may make recommendations to the office ~~department~~ for the detection and prevention of insurer insolvencies.

Section 1375. Section 631.918, Florida Statutes, is amended to read:

631.918 Immunity.—There is no liability on the part of, and a cause of action may not arise against, the corporation, its agents or employees, or members of its board of directors, the Chief Financial Officer, or the department or office or their ~~its~~ agents or employees, for any action taken by them in the performance of their powers and duties under this section, unless such action is found to be a violation of antitrust laws, was in bad faith, or was undertaken with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 1376. Section 631.931, Florida Statutes, is amended to read:

631.931 Reports and recommendations by board; public records exemption.—Reports and recommendations made by the Board of Directors of the Florida Workers' Compensation Insurance Guaranty Association ~~to the Department of Insurance~~ under s. 631.917 upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the termination of a delinquency proceeding.

Section 1377. Subsections (2), (3), (4), and (5) of section 632.611, Florida Statutes, are amended to read:

632.611 Organization.—A domestic society organized on or after June 24, 1986, shall be formed as follows:

(2) Such articles of incorporation; duly certified copies of the society's bylaws and rules; copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society; and a bond, conditioned upon the return to the applicants of the advanced payments if the organization is not completed within 1 year, shall be filed with the office ~~department~~, which may require such further information as it deems necessary. The bond with sureties approved by the office ~~department~~ shall be in such amount, not less than $300,000 nor more than $1.5 million, as required by the office ~~department~~. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the office ~~department~~ shall so certify, retain, and file the articles of incorporation and shall furnish the incorporators a preliminary certificate authorizing the society to solicit members as hereinafter provided.

(3) No preliminary certificate granted under the provisions of this section shall be valid after 1 year from its date or after such further period, not exceeding 1 year, as may be authorized by the office ~~department~~ upon cause shown. The articles of incorporation and all other proceedings thereunder shall become null and void in 1 year from the date of the preliminary certificate, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

(4) Upon receipt of a preliminary certificate of authority from the office ~~department~~, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit, to any person until:

(a) Actual bona fide applications for benefits have been secured on not less than 500 applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

(b) At least 10 subordinate lodges have been established into which the 500 applicants have been admitted;

(c) There has been submitted to the office ~~department~~, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted and the premiums therefor; and

(d) It shall have been shown to the office ~~department~~, by sworn statement of the treasurer or corresponding officer of such society, that at least 500 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least $150,000. Such advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within 1 year, as herein provided, such premiums shall be returned to said applicants.

(5) The office ~~department~~ may make such examination and require such further information as it deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the office ~~department~~ shall issue to the society a certificate of authority to that effect and to the effect that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate of authority shall be prima facie evidence of the existence of the society at the date of such certificate. The office ~~department~~ shall cause a record of such certificate of authority to be made. A certified copy of such record may be given in evidence with like effect as the original certificate of authority.

Section 1378. Subsections (2), (3), and (4) of section 632.612, Florida Statutes, are amended to read:

632.612 Amendments to laws.—

(2) No amendment to the laws of any domestic society shall take effect unless approved by the office ~~department~~, which shall approve such amendment if it finds that the amendment has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society. Unless the office ~~department~~ shall disapprove any such amendment within 90 days after the filing of same, the amendment shall be considered approved. The approval or disapproval of the office ~~department~~ shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case the office ~~department~~ disapproves the amendment, the reasons therefor shall be stated in the written notice.

(3) Within 90 days from the approval thereof by the office ~~department~~, all such amendments or a synopsis thereof shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or a synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or a synopsis thereof have been furnished the addressee.

(4) Every foreign or alien society authorized to do business in this state shall file with the office ~~department~~ a duly certified copy of all amendments of, or additions to, its laws within 90 days after the enactment of same.

Section 1379. Section 632.614, Florida Statutes, is amended to read:

632.614 Reinsurance.—

(1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance and authorized to do business in this state, or if not so authorized, to an insurer which is approved by the office ~~department~~. However, no domestic society may reinsure 75 percent or more of its insurance in force without the written permission of the office ~~department~~. The domestic society may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after the effective date of this act, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

(2) Notwithstanding the limitation in subsection (1), a society may reinsure the risks of another society in a consolidation or merger approved by the office ~~department~~ under s. 632.615.

Section 1380. Subsections (1) and (2) of section 632.615, Florida Statutes, are amended to read:

632.615 Consolidations and mergers.—

(1) A domestic society may not consolidate or merge with any other insurer other than another society. It may consolidate or merge with another society by complying with the provisions of this section. It shall file with the office ~~department~~:

(a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the office ~~department~~ but not earlier than December 31 next preceding the date of the contract;

(c) A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, such vote being conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail; and

(d) Evidence that at least 60 days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

(2) If the office ~~department~~ finds that the contract is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the office ~~department~~ shall approve the contract and issue a certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval filed with the office ~~department~~ or, if the laws of such state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the insurance supervisory official of such state or territory and a certificate of such approval filed with the office ~~department~~.

Section 1381. Section 632.616, Florida Statutes, is amended to read:

632.616 Conversion of fraternal benefit society into mutual life insurance company.—Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of chapter 628. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of such plan. No such conversion shall take effect unless and until approved by the office ~~department~~, which may give such approval if it

finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificateholders of the society.

Section 1382. Subsection (6) of section 632.621, Florida Statutes, is amended to read:

632.621 The benefit contract.—

(6) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the office ~~department~~ in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from June 24, 1986, shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of 1 full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

Section 1383. Subsection (2) of section 632.622, Florida Statutes, is amended to read:

632.622 Nonforfeiture benefits, cash surrender values, certificate loans, and other options.—

(2) For certificates issued on or after October 1, 1982, reserves shall be computed utilizing the appropriate mortality tables approved by the office ~~department~~ for policies containing life insurance benefits made applicable to life insurers under s. 625.121.

Section 1384. Subsection (3) of section 632.627, Florida Statutes, is amended to read:

632.627 Valuation.—

(3) The office ~~department~~ may, in its discretion, accept other standards for valuation if it finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The office ~~department~~ may, in its discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

Section 1385. Section 632.628, Florida Statutes, is amended to read:

632.628 Reports.—

(1) Reports shall be filed in accordance with the provisions of this section. Every society transacting business in this state shall annually, on or before March 1, unless for cause shown such time has been extended by the office ~~department~~, file with the office ~~department~~ a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee for filing same, as provided in s. 624.501(4). The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefits societies and as supplemented by additional information required by the office ~~department~~.

(2) As part of the annual statement herein required, each society shall, on or before March 1, file with the office ~~department~~ a valuation of its certificates in force on December 31 last preceding, provided the office ~~department~~ may, in its discretion for cause shown, extend the time for filing such valuation for not more than 2 calendar months. Such valuation shall be done in accordance with the standards specified in s. 632.627. Such valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the insurance regulatory agency ~~department of insurance~~ of the state of domicile of the society.

(3) A society neglecting to file the annual statement in the form and within the time provided by this section shall be subject to an administrative fine in an amount up to $100 for each day during which such neglect continues, and, upon notice by the office ~~department~~ to that effect, its authority to do business in this state shall cease while such default continues.

(4) The office ~~department~~ shall deposit all fees received under this section to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1386. Section 632.629, Florida Statutes, is amended to read:

632.629 Annual license.—

(1) A fraternal benefit society may not transact business in this state unless authorized therefor under a subsisting license issued to the society by the office ~~department~~.

(2) A license issued or renewed under this chapter shall continue in force as long as the society is entitled thereto under this chapter and until suspended or revoked by the office ~~department~~ or terminated at the request of the society, provided:

(a) The society pays, prior to June 1, the annual license tax provided for in s. 624.501(3); and

(b) The office ~~department~~ is satisfied that the society has met the applicable requirements of the Florida Insurance Code.

(3) If the license is not continued by the society, the license shall expire at midnight on May 31 following failure of the society to continue it. The office ~~department~~ shall promptly notify the society of the impending expiration of its license.

(4) The office ~~department~~ may reinstate a license which the society has inadvertently permitted to expire, after the society has fully cured all its failures which resulted in the expiration and upon payment by the society of the fee for reinstatement in the amount provided in s. 624.501(1)(b). Otherwise, the society shall be granted another license only after filing application therefor and meeting all other requirements for an original license in this state.

(5) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

Section 1387. Section 632.631, Florida Statutes, is amended to read:

632.631 Examination of societies; no adverse publications.—

(1) The office ~~department~~, or any person it may appoint, may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the office ~~department~~.

Section 1388. Section 632.632, Florida Statutes, is amended to read:

632.632 Foreign or alien society; admission.—No foreign or alien society shall transact business in this state without a license issued by the office ~~department~~. Any such society desiring admission to this state shall have the qualifications required of domestic societies organized under this chapter. Any such society may be licensed to transact business in this state upon filing with the office ~~department~~:

(1) A duly certified copy of its articles of incorporation;

(2) A copy of its bylaws, certified by its secretary or corresponding officer;

(3) A power of attorney to the office ~~department~~;

(4) A copy of its most recent annual statement certified under oath by its president and secretary or corresponding officers in a form prescribed by the commission ~~department~~;

(5) A copy of an examination report conducted within the most recent 3-year period by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the office ~~department~~;

(6) Certification from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business therein;

(7) Copies of its certificate forms; and

(8) Such other information as the office ~~department~~ may deem necessary;

and upon a showing satisfactory to the office ~~department~~ that its assets are invested in accordance with the provisions of this chapter.

Section 1389. Section 632.633, Florida Statutes, is amended to read:

632.633 Additional grounds for suspension, revocation, or denial of certificate of authority; receivership; insolvency.—

(1) In addition to the grounds set forth in s. 624.418, the office ~~department~~ may, in its discretion, suspend, revoke, or deny the certificate of authority of a society, if it finds that the society:

(a) Has exceeded its powers;

(b) Has failed to comply with any provision of this chapter;

(c) Is not fulfilling its contracts in good faith;

(d) Has a membership of less than 400 after an existence of 1 year or more; or

(e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) In addition to the grounds set forth in s. 626.9571, whenever the office ~~department~~ has reason to believe that any society is operating in violation of this chapter or of any provision of the Florida Insurance Code applicable to societies, the provisions of ss. 626.9571, 626.9581, 626.9591, and 626.9601 shall apply.

(3) Any rehabilitation, liquidation, conservation, or dissolution of a society shall be conducted under the supervision of the department. The department and office shall have all the powers with respect to such rehabilitation, liquidation, conservation, or dissolution that are granted to the department and office under the laws governing the rehabilitation, liquidation, conservation, or dissolution of life insurance companies.

Section 1390. Subsection (5) of section 632.637, Florida Statutes, is amended to read:

632.637 Exemption of certain societies.—

(5) The office ~~department~~ may require from any society or association, by examination or otherwise, such information as will enable the office ~~department~~ to determine whether such society or association is exempt from the provisions of this chapter.

Section 1391. Subsection (1) of section 633.01, Florida Statutes, is amended to read:

633.01 State Fire Marshal; powers and duties; rules.—

(1) The Chief Financial Officer is ~~head of the Department of Insurance shall be~~ designated as "State Fire Marshal." The State Fire Marshal has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon the department. Rules shall be in substantial conformity with generally accepted standards of firesafety; shall take into consideration the direct supervision of children in nonresidential child care facilities; and shall balance and temper the need of the State Fire Marshal to protect all Floridians from fire hazards with the social and economic inconveniences that may be caused or created by the rules. The department shall adopt the Florida Fire Prevention Code and the Life Safety Code.

Section 1392. Subsection (1) of section 633.022, Florida Statutes, is amended to read:

633.022 Uniform firesafety standards.—The Legislature hereby determines that to protect the public health, safety, and welfare it is necessary to provide for firesafety standards governing the construction and utilization of certain buildings and structures. The Legislature further determines that certain buildings or structures, due to their specialized use or to the special characteristics of the person utilizing or occupying these buildings or structures, should be subject to firesafety standards reflecting these special needs as may be appropriate.

(1) The department ~~of Insurance~~ shall establish uniform firesafety standards that apply to:

(a) All new, existing, and proposed state-owned and state-leased buildings.

(b) All new, existing, and proposed hospitals, nursing homes, assisted living facilities, adult family-care homes, correctional facilities, public schools, transient public lodging establishments, public food service establishments, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps, residential and nonresidential child care facilities, facilities for the developmentally disabled, motion picture and television special effects productions, and self-service gasoline stations, of which standards the State Fire Marshal is the final administrative interpreting authority.

In the event there is a dispute between the owners of the buildings specified in paragraph (b) and a local authority requiring a more stringent uniform firesafety standard for sprinkler systems, the State Fire Marshal shall be the final administrative interpreting authority and the State Fire Marshal's interpretation regarding the uniform firesafety standards shall be considered final agency action.

Section 1393. Subsection (4) of section 633.025, Florida Statutes, 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, when evaluating building code enforcement.

Section 1394. Paragraph (a) of subsection (1) of section 633.052, Florida Statutes, is amended to read:

633.052 Ordinances relating to firesafety; definitions; penalties.—

(1) As used in this section:

(a) A "firesafety inspector" is an individual certified by the Division of State Fire Marshal ~~of the Department of Insurance~~, officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis, investigating civil infractions relating to firesafety, and issuing citations pursuant to this section on behalf of the state or any county, municipality, or special district with firesafety responsibilities.

Section 1395. Subsection (7) of section 633.061, Florida Statutes, is amended to read:

633.061 Fire suppression equipment; license to install or maintain.—

(7) The fees collected for any such licenses and permits and the filing fees for license and permit examination are hereby appropriated for the use of the State Fire Marshal in the administration of this chapter and shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1396. Subsections (4) and (7) of section 633.081, Florida Statutes, are amended to read:

633.081 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents shall, at any reasonable hour, when the department has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule promulgated thereunder, or a minimum firesafety code adopted by a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules promulgated thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located within the premises of any such building or structure.

(4) A firefighter certified pursuant to s. 633.35 may conduct firesafety inspections, under the supervision of a certified firesafety inspector, while on duty as a member of a fire department company conducting inservice firesafety inspections without being certified as a firesafety inspector, if such firefighter has satisfactorily completed an inservice fire department

company inspector training program of at least 24 hours' duration as provided by rule of the department ~~of Insurance~~.

(7) The department ~~of Insurance~~ shall provide by rule for the certification of firesafety inspectors.

Section 1397. Section 633.111, Florida Statutes, is amended to read:

633.111 State Fire Marshal to keep records of fires; reports of agents.—The State Fire Marshal shall keep in her or his office a record of all fires occurring in this state upon which she or he had caused an investigation to be made and all facts concerning the same. These records, obtained or prepared by the State Fire Marshal pursuant to her or his investigation, include documents, papers, letters, maps, diagrams, tapes, photographs, films, sound recordings, and evidence. These records are confidential and exempt from the provisions of s. 119.07(1) until the investigation is completed or ceases to be active. For purposes of this section, an investigation is considered "active" while such investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the department or other administrative or law enforcement agency. Further, these documents, papers, letters, maps, diagrams, tapes, photographs, films, sound recordings, and evidence relative to the subject of an investigation shall not be subject to subpoena until the investigation is completed or ceases to be active, unless the State Fire Marshal consents. These records shall be made daily from the reports furnished the State Fire Marshal by her or his agents or others. Whenever the State Fire Marshal releases an investigative report, any person requesting a copy of the report shall pay in advance, and the State Fire Marshal shall collect in advance, notwithstanding the provisions of s. 624.501(19)(a) and (b), a fee of $10 for the copy of the report, which fee shall be deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund. The State Fire Marshal may release the report without charge to any state attorney or to any law enforcement agency or fire department assisting in the investigation.

Section 1398. Subsection (1) of section 633.161, Florida Statutes, is amended to read:

633.161 Violations; orders to cease and desist, correct hazardous conditions, preclude occupancy, or vacate; enforcement; penalties.—

(1) If it is determined by the department ~~of Insurance~~ that a violation specified in this subsection exists, the State Fire Marshal or her or his deputy may issue and deliver to the person committing the violation an order to cease and desist from such violation, to correct any hazardous condition, to preclude occupancy of the affected building or structure, or to vacate the premises of the affected building or structure. Such violations are:

(a) Except as set forth in paragraph (b), a violation of any provision of this chapter, of any rule adopted pursuant thereto, of any applicable uniform

firesafety standard adopted pursuant to s. 633.022 which is not adequately addressed by any alternative requirements adopted on a local level, or of any minimum firesafety standard adopted pursuant to s. 394.879.

(b) A substantial violation of an applicable minimum firesafety standard adopted pursuant to s. 633.025 which is not reasonably addressed by any alternative requirement imposed at the local level, or an unreasonable interpretation of an applicable minimum firesafety standard, and which violation or interpretation clearly constitutes a danger to lifesafety.

(c) A building or structure which is in a dilapidated condition and as a result thereof creates a danger to life, safety, or property.

(d) A building or structure which contains explosive matter or flammable liquids or gases constituting a danger to life, safety, or property.

Section 1399. Subsection (5) of section 633.162, Florida Statutes, is amended to read:

633.162 Fire suppression system contractors; disciplinary action.—

(5) In addition, the department ~~of Insurance~~ shall not issue a new license or permit if it finds that the circumstance or circumstances for which the license or permit was previously revoked or suspended still exist or are likely to recur.

Section 1400. Section 633.30, Florida Statutes, is amended to read:

633.30 Standards for firefighting; definitions.—As used in this chapter, the term:

(1) "Firefighter" means any person initially employed as a full-time professional firefighter by any employing agency, as defined herein, whose primary responsibility is the prevention and extinguishment of fires, the protection and saving of life and property, and the enforcement of municipal, county, and state fire prevention codes, as well as of any law pertaining to the prevention and control of fires.

(2) "Employing agency" means any municipality or county, the state, or any political subdivision of the state, including authorities and special districts, employing firefighters as defined in subsection (1).

(3) "Department" means the Department of Financial Services ~~Insurance~~.

(4) "Council" means the Firefighters Employment, Standards, and Training Council.

(5) "Division" means the Division of State Fire Marshal of the Department of Financial Services ~~Insurance~~.

Section 1401. Subsection (1) of section 633.31, Florida Statutes, is amended to read:

633.31 Firefighters Employment, Standards, and Training Council.—

(1) There is created within the department ~~of Insurance~~ a Firefighters Employment, Standards, and Training Council of 13 members. Two members shall be fire chiefs appointed by the Florida Fire Chiefs Association, two members shall be firefighters who are not officers, appointed by the Florida Professional Firefighters Association, two members shall be firefighter officers who are not fire chiefs, appointed by the State Fire Marshal, one member appointed by the Florida League of Cities, one member appointed by the Florida Association of Counties, one member appointed by the Florida Association of Special Districts, one member appointed by the Florida Fire Marshal's Association, and one member appointed by the State Fire Marshal, and one member shall be a director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal. To be eligible for appointment as a fire chief member, firefighter officer member, firefighter member, or a director or instructor of a state-certified firefighting facility, a person shall have had at least 4 years' experience in the firefighting profession. The remaining member, who shall be appointed by the State Fire Marshal, shall not be a member or representative of the firefighting profession or of any local government. Members shall serve only as long as they continue to meet the criteria under which they were appointed, or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.

Section 1402. Section 633.353, Florida Statutes, is amended to read:

633.353 Falsification of qualifications.—Any person who willfully and knowingly falsifies the qualifications of a new employee to the Bureau of Fire Standards and Training of the division ~~of State Fire Marshal of the Department of Insurance~~ is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1403. Subsection (1) of section 633.382, Florida Statutes, is amended to read:

633.382 Firefighters; supplemental compensation.—

(1) DEFINITIONS.—As used in this section, the term:

~~(a) "Division" means the Division of State Fire Marshal of the Department of Insurance created and existing under the provisions of this chapter.~~

(a)~~(b)~~ "Employing agency" means any municipality or any county, the state, or any political subdivision of the state, including authorities and special districts employing firefighters.

(b)~~(c)~~ "Firefighter" means any person who meets the definition of the term "firefighter" in s. 633.30(1) who is certified in compliance with s. 633.35 and who is employed solely within the fire department of the employing agency or is employed by the division.

Section 1404. Section 633.43, Florida Statutes, is amended to read:

633.43 Florida State Fire College established.—There is hereby established a state institution to be known as the Florida State Fire College, to be located at or near Ocala, Marion County. The institution shall be operated by the Division of State Fire Marshal of the department ~~of Insurance~~.

Section 1405. Subsections (1), (2), (3), (7), (8), (9), and (10) of section 633.445, Florida Statutes, are amended to read:

633.445 State Fire Marshal Scholarship Grant Program.—

(1) All payments, gifts, or grants received pursuant to this section shall be deposited in the State Treasury to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund for the State Fire Marshal Scholarship Grant Program. Such funds shall provide, from grants to the state from moneys raised from public and private sources, scholarships for qualified applicants to the Florida State Fire College as created by s. 633.43.

(2) The Chief Financial Officer ~~Comptroller~~ shall authorize expenditures from the Insurance ~~Commissioner's~~ Regulatory Trust Fund upon receipt of vouchers approved by the division ~~State Fire Marshal~~. All moneys collected from public and private sources pursuant to this section shall be deposited into the trust fund. Any balance in the trust fund at the end of any fiscal year shall remain therein and shall be available for carrying out the purposes of the fund in the ensuing year.

(3) All funds deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund shall be invested pursuant to s. 17.61 ~~s. 18.125~~. Interest income accruing to moneys so invested shall increase the total funds available for the purposes for which the trust fund is created.

(7) The criteria and procedures for establishing standards of eligibility shall be recommended by the council to the department ~~of Insurance~~. The council shall recommend to the department ~~of Insurance~~ a rating system upon which to base the approval of scholarship grants. However, to be eligible to receive a scholarship pursuant to this section, an applicant must:

(a) Be a full-time employee or volunteer of a local municipal, county, regional or district firefighter unit;

(b) Have graduated from high school, have earned an equivalency diploma issued by the Department of Education pursuant to s. 1003.435, or have earned an equivalency diploma issued by the United States Armed Forces Institute;

(c) Be accepted for full-time enrollment, with the intent to maintain such enrollment at the Florida State Fire College;

(d) Have the firefighter unit by whom the applicant is employed or for which the applicant is a volunteer, recommend her or him and certify that, because of financial need, the scholarship is necessary for her or him to attend the State Fire College; and

(e) Agree that she or he intends to return to duty with the firefighter unit by whom she or he was recommended, or, by agreement with such unit, that

she or he will remain in some capacity relating to the firefighting profession for a period of at least 1 year.

(8) The department ~~of Insurance~~ may adopt rules to implement this section, including rules detailing the eligibility standards and an approval rating system which are based on financial need, need for additional certified firefighters from the applicant's community, and the applicant's employment record.

(9) After selection and approval of an applicant for a grant by the council, payment in the applicant's name for scholarship funds shall be transmitted from the Insurance ~~Commissioner's~~ Regulatory Trust Fund by the Chief Financial Officer ~~Comptroller~~ upon receipt of vouchers authorized by the division ~~State Fire Marshal~~. If a recipient terminates her or his enrollment during the course of her or his curriculum at the State Fire College, unless excused by the council and allowed to resume training at a later time, any unused portion of the scholarship funds shall be refunded to the trust fund. A recipient who terminates her or his enrollment is not liable for any portion of a scholarship.

(10) The council may accept payments, gifts, and grants of money from any federal agency, private agency, county, city, town, corporation, partnership, or individual for deposit in the Insurance ~~Commissioner's~~ Regulatory Trust Fund to implement this section and for authorized expenses incurred by the council in performing its duties.

Section 1406. Subsection (1) of section 633.45, Florida Statutes, is amended to read:

633.45 Division of State Fire Marshal; powers, duties.—

(1) The division ~~of State Fire Marshal of the Department of Insurance~~ shall:

(a) Establish uniform minimum standards for the employment and training of firefighters.

(b) Establish minimum curriculum requirements for schools operated by or for any employing agency for the specific purpose of training firefighter recruits or firefighters.

(c) Approve institutions, instructors, and facilities for school operation by or for any employing agency for the specific purpose of training firefighters and firefighter recruits.

(d) Specify, by rule, standards for the approval, denial of approval, probation, and revocation of approval of institutions, instructors, and facilities for training firefighters and firefighter recruits; including a rule that an instructor must complete 40 hours of continuing education every 3 years in order to maintain the approval of the department.

(e) Issue certificates of competency to persons who, by reason of experience and completion of basic inservice training, advanced education, or

specialized training, are especially qualified for particular aspects or classes of firefighter duties.

(f) Establish minimum training qualifications for persons serving as firesafety coordinators for their respective departments of state government and certify all persons who satisfy such qualifications.

(g) Establish a uniform lesson plan to be followed by firesafety instructors in the training of state employees in firesafety and emergency evacuation procedures.

(h) Have complete jurisdiction over, and complete management and control of, the Florida State Fire College and be invested with full power and authority to make all rules and regulations necessary for the governance of said institution.

(i) Appoint a superintendent of the Florida State Fire College and such other instructors, experimental helpers, and laborers as may be necessary and remove the same as in its judgment and discretion may be best, fix their compensation, and provide for their payment.

(j) Have full management, possession, and control of the lands, buildings, structures, and property belonging to the Florida State Fire College.

(k) Provide for the courses of study and curriculum of the Florida State Fire College.

(l) Make rules and regulations for the admission of trainees to the Florida State Fire College.

(m) Visit and inspect the Florida State Fire College and every department thereof and provide for the proper keeping of accounts and records thereof.

(n) Make and prepare all necessary budgets of expenditures for the enlargement, proper furnishing, maintenance, support, and conduct of the Florida State Fire College.

(o) Select and purchase all property, furniture, fixtures, and paraphernalia necessary for the Florida State Fire College.

(p) Build, construct, change, enlarge, repair, and maintain any and all buildings or structures of the Florida State Fire College that may at any time be necessary for said institution and purchase and acquire all lands and property necessary for same, of every nature and description whatsoever.

(q) Care for and maintain the Florida State Fire College and do and perform every other matter or thing requisite to the proper management, maintenance, support, and control of said institution, necessary or requisite to carry out fully the purpose of this act and for raising it to, and maintaining it at, the proper efficiency and standard as required in and by the provisions of ss. 633.43-633.49.

Section 1407. Section 633.46, Florida Statutes, is amended to read:

633.46 Fees.—The division may fix and collect admission fees and other fees which it deems necessary to be charged for training given. All fees so collected shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1408. Section 633.461, Florida Statutes, is amended to read:

633.461 Use of Insurance ~~Commissioner's~~ Regulatory Trust Fund.—The funds received from the Insurance ~~Commissioner's~~ Regulatory Trust Fund shall be used by the staff of the Florida State Fire College to provide all necessary services, training, equipment, and supplies to carry out the college's responsibilities, including, but not limited to, the State Fire Marshal Scholarship Grant Program and the procurement of training films, videotapes, audiovisual equipment, and other useful information on fire, firefighting, and fire prevention, including public fire service information packages.

Section 1409. Section 633.47, Florida Statutes, is amended to read:

633.47 Procedure for making expenditures.—No moneys shall be spent for and on behalf of the Florida State Fire College except upon a written voucher drawn by the division, stating the nature of the expenditures and the person to whom the same shall be made payable, which voucher shall be submitted to the Chief Financial Officer ~~Comptroller~~ and audited for approval by her or him; upon such approval, the Chief Financial Officer ~~Comptroller~~ shall draw a warrant ~~upon the Treasurer~~ for the payment thereof, filing the original voucher in her or his office.

Section 1410. Section 633.50, Florida Statutes, is amended to read:

633.50 Division powers and duties; Florida State Fire College.—

(1) The division ~~of State Fire Marshal of the Department of Insurance~~, in performing its duties related to the Florida State Fire College, specified in ss. 633.43-633.49, shall:

(a) Enter into agreements with public or private school districts, community colleges, junior colleges, or universities to carry out its duties and responsibilities.

(b) Review and approve budget requests for the fire college educational program.

(c) Prepare the legislative budget request for the Florida State Fire College education program. The superintendent is responsible for all expenditures pursuant to appropriations.

(d) Implement procedures to obtain appropriate entitlement funds from federal and state grants to supplement the annual legislative appropriation. Such funds must be used expressly for the fire college educational programs.

(e) Develop a staffing and funding formula for the Florida State Fire College. The formula shall include differential funding levels for various

types of programs, shall be based on the number of full-time equivalent students and information obtained from scheduled attendance counts taken the first day of each program, and shall provide the basis for the legislative budget request. As used in this section, a full-time equivalent student is equal to a minimum of 900 hours in a technical certificate program and 400 hours in a degree-seeking program. The funding formula shall be as prescribed pursuant to s. 1011.62, shall include procedures to document daily attendance, and shall require that attendance records be retained for audit purposes.

(2) Funds generated by the formula per full-time equivalent student may not exceed the level of state funding per full-time equivalent student generated through the Florida Education Finance Program or the State Community College Program Fund for students enrolled in comparable education programs provided by public school districts and community colleges. Funds appropriated for education and operational costs shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund to be used solely for purposes specified in s. 633.461 and may not be transferred to any other budget entity for purposes other than education.

Section 1411. Subsection (2) of section 633.524, Florida Statutes, is amended to read:

633.524 Certificate fees; use and deposit of collected funds.—

(2) All moneys collected by the State Fire Marshal pursuant to this chapter are hereby appropriated for the use of the State Fire Marshal in the administration of this chapter and shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1412. Section 633.802, Florida Statutes, is amended to read:

633.802 Definitions.—Unless the context clearly requires otherwise, the following definitions shall apply to ss. 633.801-633.821:

~~(1) "Department" means the Department of Insurance.~~

~~(2) "Division" means the Division of State Fire Marshal of the department.~~

(1)~~(3)~~ "Firefighter employee" means any person engaged in any employment, public or private, as a firefighter under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, responding to or assisting with fire or medical emergencies, whether or not the firefighter is on duty, except those appointed under s. 590.02(1)(d).

(2)~~(4)~~ "Firefighter employer" means the state and all political subdivisions of this state, all public and quasi-public corporations in this state, and every person carrying on any employment for this state, political subdivisions of this state, and public and quasi-public corporations in this state which employs firefighters, except those appointed under s. 590.02(1)(d).

(3)~~(5)~~ "Firefighter employment" or "employment" means any service performed by a firefighter employee for the firefighter employer.

(4)~~(6)~~ "Firefighter place of employment" or "place of employment" means the physical location at which the firefighter is employed.

Section 1413. Section 633.811, Florida Statutes, is amended to read:

633.811 Firefighter employer penalties.—If any firefighter employer violates or fails or refuses to comply with ss. 633.801-633.821, or with any rule adopted by the division under such sections in accordance with chapter 120 for the prevention of injuries, accidents, or occupational diseases or with any lawful order of the division in connection with ss. 633.801-633.821, or fails or refuses to furnish or adopt any safety device, safeguard, or other means of protection prescribed by division rule under ss. 633.801-633.821 for the prevention of accidents or occupational diseases, the division may assess against the firefighter employer a civil penalty of not less than $100 nor more than $5,000 for each day the violation, omission, failure, or refusal continues after the firefighter employer has been given written notice of such violation, omission, failure, or refusal. The total penalty for each violation shall not exceed $50,000. The division shall adopt rules requiring penalties commensurate with the frequency or severity of safety violations. A hearing shall be held in the county in which the violation, omission, failure, or refusal is alleged to have occurred, unless otherwise agreed to by the firefighter employer and authorized by the division. All penalties assessed and collected under this section shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1414. Section 633.814, Florida Statutes, is amended to read:

633.814 Expenses of administration.—The amounts that are needed to administer ss. 633.801-633.821 shall be disbursed from the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1415. Section 634.011, Florida Statutes, is amended to read:

634.011 Definitions.—As used in this part, the term:

(1) "Acquisition cost" means all costs specifically associated with acquiring new business, including, but not limited to, underwriting costs, commissions, contingent fees, and cost of sales material.

(2) "Additive product" means any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle.

(3) "Affiliate" means any entity which exercises control over or is controlled by the motor vehicle service agreement company or insurer, directly or indirectly, through:

(a) Equity ownership of voting securities;

(b) Common managerial control; or

(c) Collusive participation by the management of the motor vehicle service agreement company or insurer and affiliate in the management of the motor vehicle service agreement company or insurer or the affiliate.

~~(4) "Department" means the Department of Insurance.~~

(4)~~(5)~~ "Gross premium written" means the total amount of premiums paid by the agreement holder, inclusive of commissions, for those agreements which are in force.

(5)~~(6)~~ "Insurer" means any property or casualty insurer duly authorized to transact such business in this state.

(6)~~(7)~~ "Motor vehicle" means:

(a) A self-propelled device operated solely or primarily upon roadways to transport people or property, or the component part of such a self-propelled device, except such term does not include any self-propelled vehicle, or component part of such vehicle, which:

1. Has a gross vehicle weight rating of 10,000 pounds or more, and is not a recreational vehicle as defined by s. 320.01(1)(b);

2. Is designed to transport more than 10 passengers, including the driver; or

3. Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended, 49 U.S.C. ss. 1801 et seq.; or

(b) A self-propelled device operated solely or primarily upon water for noncommercial, personal use, the engine of such a vehicle, or a trailer or other device used to transport such vehicle or device.

(7)~~(8)~~ "Motor vehicle service agreement" or "service agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125 are expressly excluded from this definition and are exempt from the provisions of this part. The term "motor vehicle service agreement" includes any contract or agreement that provides:

(a) For the coverage or protection defined in this subsection and which is issued or provided in conjunction with an additive product applied to the motor vehicle that is the subject of such contract or agreement; or

(b) For payment of vehicle protection expenses.

1.a. "Vehicle protection expenses" means expenses incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses specified in the agreement.

b. "Vehicle protection product" means a product or system installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.

2. Vehicle protection expenses shall be payable in the event of loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in the recovery of the stolen motor vehicle. Vehicle protection expenses covered under the agreement shall be clearly stated in the service agreement form.

3. Motor vehicle service agreements providing for the payment of vehicle protection expenses shall:

a. Reimburse a service agreement holder for the following expenses, at a minimum: deductibles applicable to comprehensive coverage under the service agreement holder's motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; and the difference between the benefits paid to the service agreement holder for the stolen vehicle under the service agreement holder's comprehensive coverage and the actual cost of a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; or

b. Pay a preestablished flat amount to the service agreement holder.

Payments shall not duplicate any benefits or expenses paid to the service agreement holder by the insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle.

(8)~~(9)~~ "Motor vehicle service agreement company" or "service agreement company" means any corporation, sole proprietorship, or partnership (other than an authorized insurer) issuing motor vehicle service agreements.

(9)~~(10)~~ "Net assets" means the amount by which the total statutory assets exceed total liability, except that assets pledged to secure debts not reflected on the books of the service agreement company shall not be included in net assets.

(10)~~(11)~~ "Person" shall have the same meaning as defined in s. 624.04.

(11)~~(12)~~ "Premium" means the total amount paid by the agreement holder. No "assessment" or any "membership fee," "policy fee," "survey fee,"

"inspection fee," "service fee," "finance fee," or similar fee shall be charged by the service agreement company.

(12)~~(13)~~ "Rate" means the unit charge by which the measure of exposure in a service agreement is multiplied to determine the premium.

(13)~~(14)~~ "Salesperson" means any dealership, corporation, partnership, or sole proprietorship employed or otherwise retained by an insurer or motor vehicle service agreement company for the purpose of selling or issuing motor vehicle service agreements or for the purpose of soliciting or retaining other salespersons.

(14)~~(15)~~ "Unearned premium" means that portion of the gross written premium which has not been earned on a straight pro rata basis.

(15)~~(16)~~ "Unearned premium reserve" means unencumbered assets equal to 50 percent of the unearned premium.

(16)~~(17)~~ "Unearned gross written premium" means that portion of the gross written premium which has not been amortized or earned on a pro rata basis.

Section 1416. Section 634.021, Florida Statutes, is amended to read:

634.021 Powers of department, commission, and office; rules.—The office ~~department~~ shall administer this act and the commission may ~~to that end it has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act related to motor vehicle agreement companies and motor vehicle service agreements. The department shall administer this act and may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this act related to sales representatives.

Section 1417. Section 634.031, Florida Statutes, is amended to read:

634.031 License required.—

(1) A person may not transact, administer, or market, attempt to transact, administer, or market, or in any manner hold itself out as transacting, administering, or marketing the service agreement business, on behalf of herself or himself or itself, in this state or from this state unless it is authorized to do so under a subsisting license issued to it by the office ~~department~~. The company shall pay to the office ~~department~~ an annual nonrefundable license fee for the license.

(2) No person shall, from offices or by personnel or facilities in this state, solicit applications or otherwise transact service agreement sales in another state or country unless it holds a subsisting license issued to it by the office ~~department~~ authorizing it to transact the same kind or kinds of service agreement business in this state.

(3) No person shall transact, administer, or market service agreements unless it holds a subsisting license issued by the office ~~department~~ authorizing it to transact the same kind or kinds of service agreement business in this state.

(4) The office ~~department~~ may, pursuant to s. 120.569, in its discretion and without advance notice or hearing issue an immediate final order to cease and desist to any person or entity which violates this section. The Legislature finds that a violation of this section constitutes an imminent and immediate threat to the public health, safety, and welfare of the residents of this state.

Section 1418. Section 634.041, Florida Statutes, is amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission ~~department~~, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(1) Any service agreement company applying for a license must be a solvent corporation formed under the laws of this state or of another state or district of the United States and must meet minimum requirements under this section.

(2) The service agreement company must furnish the office ~~department~~ with evidence satisfactory to the office ~~department~~ that the management of the company is competent and trustworthy and can successfully and lawfully manage its affairs.

(3) The service agreement company must make the deposit required under s. 634.052.

(4) A service agreement company may not be licensed to transact service agreement business in this state unless it maintains the required reserves and the required ratio of liquid assets to the required reserves.

(5) A service agreement company may not be licensed to transact service agreement business in this state if, during the 3 years immediately preceding its application for a license, it has violated any requirement of this part or a rule adopted thereunder.

(6) In order to obtain or maintain a license, a service agreement company must have and maintain minimum net assets of $500,000. However, a service agreement company that maintains a gross written premium of less than $750,000 at all times, that has been licensed in Florida for more than 5 years, and that has never had an administrative complaint filed by the office ~~department~~ against its operations under this part may reach this net asset requirement in equal increments over a 5-year period beginning on October 1, 1991.

(7) All assets used to maintain the minimum net asset requirement must be maintained in the United States.

(8)(a) A service agreement company must establish and maintain an unearned premium reserve in accordance with the following:

1. It must consist of unencumbered assets equal to a minimum of 50 percent of the unearned gross written premium on each service agreement

and must amortize this reserve pro rata over the duration of the service agreement. Such assets must be held in the form of cash or invested in securities for investment under ss. 625.301-625.340.

2. In addition to the net asset requirements set forth in subsection (6), a company utilizing the 50-percent reserve must not allow its ratio of gross written premium in force to net assets to exceed 10 to 1. For companies that have utilized both contractual liability insurance and the 50-percent reserve, this ratio must be calculated based only on that portion of gross written premium in force which is covered by the 50-percent reserve.

3. A company that uses an unearned premium reserve must deposit with the department securities of the type eligible for deposit by insurers under s. 625.52 equal to 15 percent of the unearned premium reserve. This reserve deposit may be included as an asset for calculating the requirement of subparagraph 1. A request for release of the reserve deposit may be made quarterly only after the office ~~department~~ has approved the company's current quarterly or annual financial statement and a statement sworn to by two officers of the company, verifying that the release will not reduce the reserve deposit to less than 15 percent of the unearned premium reserve.

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it purchases and maintains contractual liability insurance in accordance with the following:

1. The insurance covers 100 percent of its claim exposure and is obtained from an insurer approved by the office ~~department~~ which holds a certificate of authority to do business within this state.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(5). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the office ~~department~~ by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the office ~~department~~ with the claims statistics.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

(9) In meeting the requirements of this part, a service agreement company may not utilize both the 50-percent reserve and contractual liability insurance simultaneously. However, a company may have contractual liability coverage on service agreements previously sold and sell new service agreements covered by the 50-percent reserve, and the converse of this is also allowed. A service agreement company must be able to distinguish how each individual service agreement is covered.

(10) In addition to information called for and furnished with its annual statement, a service agreement company must furnish to the office ~~department~~, as soon as reasonably possible, any information as to its transactions or affairs that the office ~~department~~ requests in writing. All information furnished pursuant to the request of the office ~~department~~ must be verified by the oath of two executive officers of the service agreement company.

(11) A service agreement company offering service agreements providing vehicle protection expenses may meet the requirements for this part only by maintaining contractual liability insurance in accordance with paragraph (8)(b), which insurance must be issued by an insurance company not affiliated with the service agreement company, unless the insurance company had issued a contractual liability insurance policy to a service agreement company on or before January 1, 2002. Service agreements providing vehicle protection expenses may be sold only to a service agreement holder that has in-force comprehensive motor vehicle insurance coverage for the vehicle to be covered by the service agreement.

Section 1419. Section 634.044, Florida Statutes, is amended to read:

634.044 Assets and liabilities.—

(1) ASSETS.—In any determination of the financial condition of a service agreement company, there shall be allowed as assets only those assets that are owned by the service agreement company and which assets consist of:

(a) Cash in the possession of the service agreement company, or in transit under its control, including the true balance of any deposit in a solvent bank, savings and loan association, or trust company which is domiciled in the United States.

(b) Investments, securities, properties, and loans acquired or held in accordance with this part, and in connection therewith the following items:

1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

2. Declared and unpaid dividends on stock and shares, unless the amount of the dividends has otherwise been allowed as an asset.

3. Interest due or accrued upon a collateral loan which is not in default in an amount not to exceed 1 year's interest thereon.

4. Interest due or accrued on deposits or certificates of deposit in solvent banks, savings and loan associations, and trust companies domiciled in the United States, and interest due or accrued on other assets, if such interest is in the judgment of the office ~~department~~ a collectible asset.

5. Interest due or accrued on current mortgage loans, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.

6. Rent due or accrued on real property if such rent is not in arrears for more than 3 months. However, in no event shall rent accrued for a period in excess of 90 days be allowed as an asset.

7. The unaccrued portion of taxes paid prior to the due date on real property.

(c) Furniture, fixtures, furnishings, vehicles, and equipment, if the original cost of each item is at least $200, which cost shall be amortized in full over a period not to exceed 5 calendar years, unless otherwise approved by the office ~~department~~.

(d) Part inventories maintained for the purpose of servicing products warranted. Part inventories must be listed at cost. Service agreement companies are required to maintain records to support valuation of part inventories.

(e) The liquidation value of prepaid expenses.

(f) Other assets or receivables, not inconsistent with the provisions of this section, deemed by the office ~~department~~ to be available for the payment of losses and claims, at values to be determined by the office ~~department~~.

The office ~~department~~, upon determining that a service agreement company's asset has not been evaluated according to applicable law or that it does not qualify as an asset, shall require the service agreement company to properly reevaluate the asset or replace the asset with an asset suitable to the office ~~department~~ within 30 days of written notification by the office ~~department~~ of this determination, if the removal of the asset from the organization's assets would impair the company's solvency.

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets expressly shall not be allowed as assets in any determination of the financial condition of a service agreement company:

(a) Goodwill, agreement holder lists, patents, trade names, agreements not to compete, and other like intangible assets.

(b) Any note or account receivable from or advances to officers, directors, or controlling stockholders, whether secured or not, and advances to employees, agents, or other persons on personal security only.

(c) Stock of the service agreement company owned by it directly or owned by it through any entity in which the organization owns or controls, directly or indirectly, more than 25 percent of the ownership interest.

(d) Leasehold improvements, stationery, and literature, except that leasehold improvements made prior to October 1, 1991, shall be allowed as an asset and shall be amortized over the shortest of the following periods:

1. The life of the lease.

2. The useful life of the improvements.

3. The 3-year period following October 1, 1991.

(e) Furniture, fixtures, furnishings, vehicles, and equipment, other than those items authorized under paragraph (1)(c).

(f) Notes or other evidences of indebtedness which are secured by mortgages or deeds of trust which are in default and beyond the express period specified in the instrument for curing the default.

(g) Bonds in default for more than 60 days.

(h) Deferred costs other than the liquidation value of prepaid expenses except for those companies that reserve 100 percent of gross written premium.

(i) Any note, account receivable, advance, or other evidence of indebtedness, or investment in:

1. The parent of the service agreement company;

2. Any entity directly or indirectly controlled by the service agreement company parent;

3. An affiliate of the parent or the service agreement company; however, receivables from the parent or affiliated companies shall be considered an admitted asset of the company when the office ~~department~~ is satisfied that the repayment of receivables, loans, and advances from the parent or the affiliated company are guaranteed by an organization in accordance with s. 634.045; or

4. Officers, directors, shareholders, employees, or salespersons of the service agreement company; however, premium receivables under 45 days old may be considered an admitted asset.

The office ~~department~~ may, however, allow all or a portion of such asset, at values to be determined by the office ~~department~~, if deemed by the office ~~department~~ to be available for the payment of losses and claims.

(3) LIABILITIES.—In any determination of the financial condition of a service agreement company, liabilities to be charged against its assets shall include, but not be limited to:

(a) The amount, in conformity with generally accepted accounting principles, necessary to pay all of its unpaid losses and claims incurred for or on behalf of an agreement holder, on or prior to the end of the reporting period, whether reported or unreported.

(b) Taxes, expenses, and other obligations due or accrued at the date of the statement.

(c) Reserve for unearned premiums.

The office ~~department~~, upon determining that the service agreement company has failed to report liabilities that should have been reported, shall require a correct report which reflects the proper liabilities to be submitted by the service agreement company to the office ~~department~~ within 10 working days of receipt of written notification.

Section 1420. Subsections (2) and (4) of section 634.045, Florida Statutes, are amended to read:

634.045 Guarantee agreements.—In order to include receivables from affiliated companies as assets under s. 634.041, the motor vehicle service agreement company shall provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies, provided that the written guarantee is made by a guaranteeing organization which:

(2) Submits a guarantee that is approved by the office ~~department~~ as meeting the requirements of this part, provided that the written guarantee contains a provision which requires that the guarantee be irrevocable unless the guaranteeing organization can demonstrate to the office ~~department~~ that the cancellation of the guarantee will not result in the net assets of the motor vehicle service agreement company falling below its minimum net asset requirement and the office ~~department~~ approves cancellation of the guarantee.

(4) Submits annually, within 3 months after the end of its fiscal year, an audited financial statement certified by an independent certified public accountant, prepared in accordance with generally accepted accounting principles. The office ~~department~~ may, as it deems necessary, require quarterly financial statements from the guaranteeing organization.

Section 1421. Section 634.052, Florida Statutes, is amended to read:

634.052 Required deposit.—

(1) To assure the faithful performance of its obligations to its members or subscribers, each motor vehicle service agreement company shall, prior to issuance of its license by the office ~~department~~, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52 and having at all times a market value of not less than $200,000; however, service agreement companies maintaining an unearned gross written premium of less than $750,000 shall have on deposit with the department $100,000. After 1 year from the date of initial licensure, a service agreement company may file a request for the release of a portion of the deposit and thereafter requests may be made quarterly. A request may be granted only after the office ~~department~~ has received and approved the company's current quarterly or annual financial statement. However, at no time shall the deposit be less than $100,000.

(2) In addition to the deposits otherwise required pursuant to this section, the office ~~department~~ may, after notice and hearing, require any company for good cause shown to deposit and maintain deposited in trust for the protection of the contract holders and creditors of the company, for such time as the office ~~department~~ deems necessary, securities eligible for such deposit under s. 625.52 having a value of not less than the amount which the office ~~department~~ determines is necessary, which amount shall be neither less than $100,000, nor more than $500,000, depending on the obligation of the company in this state.

(3) The state shall be responsible for the safekeeping of all securities deposited with the department under this act. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the faithful performance by the company of its obligations to its members or subscribers.

(4) The depositing company shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(5) Such deposit shall be maintained unimpaired as long as the company continues in business or from offices in this state. Whenever the company ceases to do business in or from offices in this state and furnishes to the office ~~department~~ proof satisfactory to it that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the office and department shall release the deposited securities to the parties entitled thereto, on presentation of the receipts of the department for such securities.

Section 1422. Section 634.053, Florida Statutes, is amended to read:

634.053 Levy upon deposit limited.—A judgment creditor or other claimant of a motor vehicle service agreement company does not have the right to levy upon any of the assets or securities held in this state as a deposit

under s. 634.052. However, to pay any unpaid obligation to this state, the office ~~department~~ may levy upon any of the assets of a motor vehicle service agreement company found to be insolvent or found to be bankrupt by any court.

Section 1423. Subsections (1), (2), and (4) of section 634.061, Florida Statutes, are amended to read:

634.061 Application for and issuance of license.—

(1) A sworn application for a license as a motor vehicle service agreement company shall be made to and filed with the office ~~department~~ on forms as prescribed by the commission and furnished by the office ~~it~~.

(2) In addition to information relative to its qualifications as called for under s. 634.041, the application shall show:

(a) The location of the applicant's home office.

(b) The name and residence address of each director, officer, and 10-percent or greater stockholder of the applicant.

(c) Other pertinent information as required by the commission or office ~~department~~.

(4) Upon completion of the application for license, the office ~~department~~ shall examine the same and make such further investigation of the applicant as it deems advisable. If it finds that the applicant is qualified therefor under this part, it shall issue to the applicant a license as a motor vehicle service agreement company. If the office ~~department~~ does not so find, it shall refuse to issue the license.

Section 1424. Subsections (1), (2), (3), and (5) of section 634.081, Florida Statutes, are amended to read:

634.081 Suspension or revocation of license; grounds.—

(1) The office ~~department~~ may, in its discretion, suspend or revoke the license of any motor vehicle service agreement company if it finds that the company has violated any lawful order of the office ~~department~~ or any provision of this part.

(2) The office ~~department~~ shall suspend or revoke the license of a motor vehicle service agreement company if it finds that the company:

(a) Is impaired or insolvent as defined in s. 631.011 or in unsound condition, or in a condition, or using methods and practices in the conduct of its business, as to render its further transaction of service agreements in this state hazardous or injurious to its service agreement holders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to the examination, when required by the office ~~department~~.

(c) Has failed to pay any fees, taxes, or other assessments within 90 days after their due date.

(d) Has failed to pay any final judgment rendered against it in this state within 90 days after the judgment became final.

(e) With a frequency as to indicate its general business practice in this state, has without just cause refused to pay proper claims arising under its service agreements, or without just cause compels service agreement holders to accept less than the amount due them or to employ attorneys or to bring suit against the service agreement company to secure full payment or settlement of proper claims.

(f) Is affiliated with, or under the same general management or interlocking directorate or ownership of, another motor vehicle service agreement company or person who transacts service agreements in or from this state without a subsisting license.

(g) Fails to affirm or deny coverage of a claim upon written request of the agreement holder within a reasonable time after notification of the claim.

(h) Fails to promptly provide a reasonable explanation in writing if requested by the agreement holder of the basis in the service agreement in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(3) The office ~~department~~ may, in its discretion, suspend the license of any motor vehicle service agreement company as to which a proceeding for receivership, conservatorship, or rehabilitation or other delinquency proceeding has been commenced against it or its affiliate in any state.

(5) The office ~~department~~ shall suspend or revoke the license of a company if it finds that the ratio of gross written premiums written to net assets exceeds 10 to 1 unless the company has in excess of $750,000 in net assets and is utilizing contractual liability insurance which cedes 100 percent of the service agreement company's claims liabilities to the contractual liability insurer or is utilizing contractual liability insurance which reimburses the service agreement company for 100 percent of its paid claims. However, if a service agreement company has been licensed by the office ~~department~~ in excess of 10 years, is in compliance with all applicable provisions of this part, and has net assets at all times in excess of $3 million that comply with the provisions of part II of chapter 625, such company may not exceed a ratio of gross written premiums written to net assets of 15 to 1.

Section 1425. Paragraph (b) of subsection (3) of section 634.095, Florida Statutes, is amended to read:

634.095 Prohibited acts.—Any service agreement company or salesperson that engages in one or more of the following acts is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(3) Issuing or causing to be issued any advertisement which:

(b) In any respect is in violation of or does not comply with this part, applicable provisions of the Florida Insurance Code, or applicable rule of the commission ~~department~~.

Section 1426. Section 634.101, Florida Statutes, is amended to read:

634.101 Order, notice of suspension or revocation of license; effect; publication.—

(1) Suspension or revocation of the license of a company shall be by the order of the office ~~department~~ mailed to the company by registered or certified mail. The office ~~department~~ shall promptly also give notice of such suspension or revocation to the salespersons of the company in this state of record with ~~in the office of~~ the department. The company shall not solicit or write any new service agreements in this state during the period of any such suspension or revocation, nor after such revocation renew any business previously written.

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

(3) When the license is surrendered or revoked, the service agreement company shall proceed immediately, following the effective date of the surrender or order of revocation, to conclude its affairs transacted under this part. The service agreement company shall not solicit, negotiate, advertise, or effectuate new or renewal of service agreements. The office ~~department~~ retains jurisdiction over the service agreement company as it may find to be in the best interest of the insured until all contracts have been fulfilled, canceled, or expired.

Section 1427. Section 634.111, Florida Statutes, is amended to read:

634.111 Duration of suspension; obligations of company during suspension period; reinstatement.—

(1) The suspension of the license of a company shall be for such period not to exceed 1 year as is fixed by the office ~~department~~ in the order of suspension, unless the office ~~department~~ shortens or rescinds such suspension or the order upon which the suspension is based is modified, rescinded, or reversed.

(2) During the period of suspension, the company shall file its annual statement and quarterly reports, pay fees, pay licenses, and pay taxes as required under this chapter as if the license had continued in full force.

(3) Upon expiration of the suspension period, if within such period the license has not otherwise terminated, the license of the company shall be reinstated automatically unless the office ~~department~~ finds that the causes of the suspension have not been removed or that the company is otherwise not in compliance with the requirements of this chapter. The office ~~department~~ shall give the company notice of any such finding not less than 30 days

in advance of the expiration of the suspension period. If not so automatically reinstated, the license shall be deemed to have expired as of the end of the suspension period or upon failure of the company to continue the license during the suspension period, whichever event first occurs.

(4) Upon reinstatement of the license of a company or reinstatement of the certificate of authority of an insurer following suspension, the authority of its salespersons in this state to represent the company or insurer shall likewise be reinstated. The office ~~department~~ shall promptly notify the company or insurer and its salespersons of record in this state of such reinstatement.

Section 1428. Subsections (1), (2), (3), and (7) of section 634.121, Florida Statutes, are amended to read:

634.121 Filing of forms, required procedures, provisions.—

(1) A service agreement form or related form may not be issued or used in this state unless it has been filed with and approved by the office ~~department~~. Upon application for a license, the office ~~department~~ shall require the applicant to submit for approval each brochure, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution. The office ~~department~~ shall disapprove any document which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material facts.

(a) After an application has been approved, a licensee is not required to submit brochures or advertisement to the office ~~department~~ for approval; however, a licensee may not have published, and a person may not publish, any brochure or advertisement which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material fact.

(b) For purposes of this section, brochures and advertising includes, but is not limited to, any report, circular, public announcement, certificate, or other printed matter or advertising material which is designed or used to solicit or induce any persons to enter into any motor vehicle service agreement.

(c) The office ~~department~~ shall disapprove any service agreement form providing vehicle protection expenses which does not clearly indicate the method for calculating the benefit to be paid or provided to the service agreement holder. All service agreement forms providing vehicle protection expenses shall clearly indicate the term of the service agreement, whether new or used cars are eligible for the vehicle protection product, and that the service agreement holder may not make any claim against the Florida Insurance Guarantee Association for vehicle protection expenses. The service agreement shall be provided to a service agreement holder on a form that provides only vehicle protection expenses. A service agreement form providing vehicle protection expenses must state that the service agreement holder must have in force at the time of loss comprehensive motor vehicle insurance coverage as a condition precedent to requesting payment of vehicle protection expenses.

(2) Every filing required under this section must be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from the date of filing, a form so filed becomes approved unless prior thereto it has been affirmatively disapproved by written notice of the office ~~department~~. The office ~~department~~ may extend by not more than an additional 15 days the period within which it may affirmatively approve or disapprove any form by giving notice of extension before the expiration of the initial 30-day period. At the expiration of any period as so extended and in the absence of prior affirmative disapproval, the form becomes approved.

(3) Before the sale of any service agreement, written notice must be given to the prospective purchaser by the service agreement company or its agent or salesperson, on an office-approved ~~a department-approved~~ form, that purchase of the service agreement is not required in order to purchase or obtain financing for a motor vehicle.

(7) If a service agreement company violates any lawful order of the office ~~department~~ or fails to meet its contractual obligations under this part, upon notice from the office ~~department~~, the sales representative or agent must refund to the service agreement holder the unearned pro rata commission, unless the sales representative or agent has made other arrangements, satisfactory to the office ~~department~~, with the service agreement holder.

Section 1429. Section 634.1213, Florida Statutes, is amended to read:

634.1213 Grounds for disapproval.—The office ~~department~~ may disapprove any service agreement form or service agreement company sales brochures filed under s. 634.121, or withdraw any previous approval thereof, if the form or brochure:

(1) Is in any respect in violation of or does not comply with this part, any applicable provision of the Florida Insurance Code, or any applicable rule of the commission ~~department~~.

(2) Contains or incorporates by reference when such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the service agreement.

(3) Has any title, heading, or other indication of its provisions which is misleading.

(4) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

(5) Contains any provision which is unfair or inequitable or which encourages misrepresentation.

(6) Contains any provision which makes it difficult to determine the actual insurer or service agreement company issuing the form.

(7) Contains any provision for reducing claim payments due to depreciation of parts, except for marine engines.

Section 1430. Section 634.1216, Florida Statutes, is amended to read:

634.1216 Rate filings.—Each insurer and each motor vehicle service agreement company shall file with the office ~~department~~ the rates, rating schedules, or rating manuals used, including all modifications of rates and premiums, to be paid by the service agreement holder. Every filing shall state the proposed effective date thereon. The filing shall be made not less than 30 days before its effective date.

Section 1431. Section 634.137, Florida Statutes, is amended to read:

634.137 Financial and statistical reporting requirements.—

(1) Each service agreement company shall submit to the office ~~department~~ financial reports on forms prescribed by the commission and furnished by the office ~~department~~ as follows:

(a) Reports for a period ending December 31 are due by March 1.

(b) Reports for a period ending March 31 are due by May 15.

(c) Reports for a period ending June 30 are due by August 15.

(d) Reports for a period ending September 30 are due by November 15.

(2) Any motor vehicle service agreement company engaged in the business of issuing service agreements in this state must transmit the following information, based on Florida data, to the office ~~department~~ each year with the annual report of the company:

(a) Net assets.

(b) Premiums written.

(c) Premiums earned.

(d) Unearned premium reserve.

(e) Percent of claim exposure for which contractual liability insurance has been obtained.

(f) Incurred claims, not including claims incurred but not reported.

(g) Claims incurred but not reported.

(h) Loss reserve for all claims except those incurred but not reported.

(i) Reserves for claims incurred but not reported.

(j) Number and dollar amount of claims paid.

(k) Itemized acquisition costs.

(l) Net gain or loss from operations before income taxes.

(m) Net investment income from all reserves.

(n) Net investment income from surplus.

(o) Ratio of claims paid to premium earned.

(p) Ratio of all claims incurred to premium earned plus investment income from all reserves.

(q) Number of claims resisted.

(r) Any additional information that the commission ~~department~~ requires in order to evaluate the financial condition or trade practices of companies issuing service agreements in this state.

(3) Any service agreement company that does not file an annual statement in the form and within the time provided by this section shall forfeit up to $100 for each day during which the default continues, and, upon notice by the office ~~department~~, the authority of the company to do business in this state shall cease while the default continues. The office ~~department~~ shall deposit all sums collected under this subsection in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

(4) The office ~~department~~ shall provide a summary of the information provided pursuant to subsection (2) in its annual report.

(5) The commission ~~department~~ may by rule require each motor vehicle service agreement company to submit to the office ~~department~~, as the commission ~~department~~ may designate, all or part of the information contained in the financial reports required by this section in a computer-readable form compatible with the electronic data processing system specified by the office ~~department~~.

Section 1432. Section 634.141, Florida Statutes, is amended to read:

634.141 Examination of companies.—Motor vehicle service agreement companies licensed under this part shall be subject to periodic examination by the office ~~department~~ in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624. The commission ~~department~~ may by rule establish provisions whereby a company may be exempted from examination.

Section 1433. Section 634.151, Florida Statutes, is amended to read:

634.151 Service of process; appointment of commissioner as process agent.—

(1) Each company applying for authority to transact business in this state, whether domestic or foreign, shall file with the office ~~department~~ its appointment of the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ and her or his successors in office, on a form as furnished by the office ~~department~~, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state and agreeing that

process so served shall be valid and binding upon the company. The appointment shall be irrevocable, shall bind the company and any successor in interest as to the assets or liabilities of the company, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the company resulting from its service agreement transactions therein.

(2) At the time of such appointment of the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as its process agent the company shall file with the department a designation of the name and address of the person to whom process against it served upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ is to be forwarded. The company may change the designation at any time by a new filing.

Section 1434. Section 634.161, Florida Statutes, is amended to read:

634.161 Service of process; method.—

(1) Service of process upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as process agent of the company shall be made by serving copies in triplicate of the process upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer or upon her or his assistant, deputy, or other person in charge of her or his office~~. Upon receiving such service, the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall file one copy with the department, return one copy with her or his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the company to receive the same, as provided under s. 634.151.

(2) Process served upon the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the company.

Section 1435. Subsections (2) and (10) of section 634.181, Florida Statutes, are amended to read:

634.181 Grounds for compulsory refusal, suspension, or revocation of license or appointment of salespersons.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any such salesperson if it finds that as to the salesperson any one or more of the following applicable grounds exist:

(2) If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part, any applicable provision of the Florida Insurance Code, or rule of the department or commission.

(10) Willful failure to comply with, or willful violation of any proper order of the department or office, or willful violation of any provision of this part, or of any applicable provision of the insurance code, or applicable rule of the department or commission.

Section 1436. Subsection (3) 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:

(3) Has violated any lawful order or rule of the department or commission.

Section 1437. Section 634.211, Florida Statutes, is amended to read:

634.211 Administrative fine in lieu of suspension or revocation of license or appointment.—

(1) If the department or office finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any license or appointment issued under this part, the department or office may, in its discretion, in lieu of such suspension, revocation, or refusal, on a first offense and except where such suspension, revocation, or refusal is mandatory, impose upon the licensee or appointee an administrative penalty in an amount of up to $500 per violation, or if the department or office has found willful misconduct or willful violation on the part of the licensee or appointee, an administrative fine of up to $1,000 per violation. The administrative penalty may, in the department's or office's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the licensee or appointee in connection with any transaction as to which the grounds for suspension, revocation, or refusal related.

(2) The department or office may allow the licensee or appointee a reasonable period, not to exceed 30 days, within which to pay to the department or office the amount of the penalty so imposed. If the licensee or appointee fails to pay the penalty in its entirety to the department or office ~~at its office at Tallahassee~~ within the period so allowed, the license and appointment of the licensee or appointee shall stand suspended, revoked, or renewal or continuation refused, as the case may be, upon expiration of such period.

Section 1438. Section 634.221, Florida Statutes, is amended to read:

634.221 Disposition of taxes and fees.—All license taxes, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this act from motor vehicle service agreement companies shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1439. Section 634.231, Florida Statutes, is amended to read:

634.231 Insurance business not authorized.—Nothing in the Florida Insurance Code or in this part shall be deemed to authorize any motor vehicle service agreement company to transact any insurance business other than that of motor vehicle service agreement as herein defined or otherwise to engage in any other type of insurance unless the company is authorized

under a certificate of authority issued by the office ~~department~~ under the provisions of the Florida Insurance Code.

Section 1440. Section 634.242, Florida Statutes, is amended to read:

634.242 Injunctive proceedings.—In addition to the penalties and other enforcement provisions of this part, if any person violates s. 634.031 or s. 634.171 or any rule adopted pursuant thereto, the department or office may resort to a proceeding for injunction in the circuit court of the county where such person resides or has her or his or its principal place of business, and therein apply for such temporary and permanent orders as the department or office may deem necessary to restrain such person from engaging in any such activity, until such person has complied with such provision or rule.

Section 1441. Section 634.253, Florida Statutes, is amended to read:

634.253 Delinquency proceedings.—

(1) If any of the grounds for rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceedings of an insurer as set forth in ss. 631.051, 631.061, and 631.071 exist as to a company, the office ~~department~~ may petition for an appropriate court order or may pursue such other relief as is afforded in part I of chapter 631.

(2) In the event an order of rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceedings has been entered against a company, the department and office shall be vested with all of the powers and duties they have ~~it has~~ under the provisions of part I of chapter 631 in regard to delinquency proceedings of insurance companies.

Section 1442. Section 634.261, Florida Statutes, is amended to read:

634.261 Voluntary compliance in lieu of suspension or revocation.—The department or office may terminate an investigation or an action upon acceptance of the written assurance of a company or salesperson of voluntary compliance with this part. An acceptance of assurance may be conditioned on a commitment to reimburse agreement purchasers or to take other appropriate corrective action. An assurance is not evidence of a prior violation of this part. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, the subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this part. No such assurance shall act as a limitation upon any action or remedy available to a person aggrieved by a violation of this part.

Section 1443. Subsections (7) and (13) of section 634.282, Florida Statutes, are amended to read:

634.282 Unfair methods of competition and unfair or deceptive acts or practices defined.—The following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

(7) UNLAWFUL REBATES.—Except as otherwise expressly provided by law, or in an applicable filing with the office ~~department~~, knowingly:

(a) Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the motor vehicle service agreement issued thereon;

(b) Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such motor vehicle service agreement, any unlawful rebate of premiums payable on the agreement, any special favor or advantage in the benefits thereon, or any valuable consideration or inducement not specified in the agreement;

(c) Giving, selling, or purchasing, or offering to give, sell, or purchase, as an inducement to such motor vehicle service agreement or in connection therewith, any stocks, bonds, or other securities of any insurance company, service agreement company, or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the motor vehicle service agreement.

(13) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED CHARGES FOR MOTOR VEHICLE SERVICE AGREEMENTS.—

(a) Knowingly collecting any sum as a premium or charge for a motor vehicle service agreement, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by a service agreement company or an insurer, by a motor vehicle service agreement issued by a service agreement company or an insurer as permitted by this part.

(b) Knowingly collecting as a premium or charge for a motor vehicle service agreement any sum in excess of or less than the premium or charge applicable to such motor vehicle service agreement, in accordance with the applicable classifications and rates as filed with the office ~~department~~, and as specified in the motor vehicle service agreement.

No provision of this section shall be deemed to prohibit a service agreement company or a licensed insurer from giving to service agreement holders, prospective service agreement holders, and others for the purpose of advertising, any article of merchandise having a value of not more than $25.

Section 1444. Section 634.283, Florida Statutes, is amended to read:

634.283 Power of department and office to examine and investigate.—The department and office may, within their respective regulatory jurisdictions, examine and investigate the affairs of every person involved in the business of motor vehicle service agreements in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by s. 634.2815, and each shall have the powers and duties specified in ss. 634.284-634.289 in connection therewith.

Section 1445. Section 634.284, Florida Statutes, is amended to read:

634.284 Prohibited practices; hearings; procedure; service of process.—

(1) Whenever the department or office has reason to believe that any person has engaged, or is engaging, in this state in any unfair method of

competition or any unfair or deceptive act or practice as defined in s. 634.282, or is engaging in the business of motor vehicle service agreements without being properly licensed as required by this part, and that a proceeding by the department or office in respect thereto would be in the interest of the public, the department or office shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The department or office, a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569; however, the penalty for failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed $1,000 per violation.

(3) A statement of charges, notice, or order under this part may be served by anyone duly authorized by the department or office, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at her or his residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

Section 1446. Section 634.285, Florida Statutes, is amended to read:

634.285 Cease and desist and penalty orders.—After the hearing provided for in s. 634.284, the department or office shall enter a final order in accordance with s. 120.569. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of a service agreement business, the department or office also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of service agreement business. Further, the department or office may, at its discretion, order any one or more of the following penalties:

(1) The suspension or revocation of such person's license, or eligibility for any license, if the person knew, or reasonably should have known, that she or he was in violation of this part.

(2) If it is determined that the person charged has provided or offered to provide motor vehicle service agreements without proper licensure, the imposition of an administrative penalty not to exceed $1,000 for each service agreement contract offered or effectuated.

Section 1447. Section 634.286, Florida Statutes, is amended to read:

634.286 Appeals from orders of the department or office.—Any person subject to an order of the department or office under s. 634.285 may obtain a review of such order by filing an appeal therefrom in accordance with the provisions and procedures for appeal from the orders of the department or office in general under s. 120.68.

Section 1448. Section 634.287, Florida Statutes, is amended to read:

634.287 Penalty for violation of cease and desist order.—Any person who violates a cease and desist order of the department or office under s. 634.285 while such order is in effect, after notice and hearing as provided in s. 634.284, is subject, at the discretion of the department or office, to any one or more of the following penalties:

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

(2) The suspension or revocation of such person's license or eligibility to hold a license.

Section 1449. Section 634.288, Florida Statutes, is amended to read:

634.288 Civil liability.—The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department or office will abrogate such rights to damages or other relief in any court.

Section 1450. Section 634.289, Florida Statutes, is amended to read:

634.289 Rules.—The department or commission may adopt rules, in accordance with chapter 120, to identify specific methods of competition or acts or practices that are prohibited by s. 634.282, but these rules shall not enlarge upon or extend the provisions of that section.

Section 1451. Section 634.301, Florida Statutes, is amended to read:

634.301 Definitions.—As used in this part, the term:

~~(1) "Department" means the Department of Insurance.~~

(1)~~(2)~~ "Gross written premiums" means the total amount of premiums, paid for the entire period of the home warranty, inclusive of commissions, for which the association is obligated under home warranties issued.

(2)~~(3)~~ "Home improvement" means major remodeling, enclosure of a garage, addition of a room, addition of a pool, and other like items that add value to the residential property. The term does not include normal maintenance for items such as painting, reroofing, and other like items subject to normal wear and tear.

(3)~~(4)~~ "Home warranty" or "warranty" means any contract or agreement:

(a) Offered in connection with the sale of residential property;

(b) Offered in connection with a loan of $5,000 or more which is secured by residential property that is the subject of the warranty, but not in connection with the sale of such property; or

(c) Offered in connection with a home improvement of $7,500 or more for residential property that is the subject of the warranty, but not in connection with the sale of such property;

whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. However, this part does not prohibit the giving of usual performance guarantees by either the builder of a home or the manufacturer or seller of an appliance, as long as no identifiable charge is made for such guarantee. This part does not permit the provision of indemnification against consequential damages arising from the failure of any structural component or appliance of a home, which practice constitutes the transaction of insurance subject to all requirements of the insurance code. This part does not apply to service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners and which perform repairs and maintenance for appliances or maintenance of the residential property.

(4)~~(5)~~ "Home warranty association" means any corporation or any other organization, other than an authorized insurer, issuing home warranties.

(5)~~(6)~~ "Impaired" means having liabilities in excess of assets.

(6)~~(7)~~ "Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its business.

(7)~~(8)~~ "Insurance code" means the Florida Insurance Code.

(8)~~(9)~~ "Insurer" means any property or casualty insurer duly authorized to transact such business in this state.

(9)~~(10)~~ "Listing period" means the period of time residential property is listed for sale with a licensed real estate broker, beginning on the date the residence is first listed for sale and ending on either the date the sale of the residence is closed, the date the residence is taken off the market, or the date the listing contract with the real estate broker expires.

(10)~~(11)~~ "Net assets" means the amount by which the total statutory assets of an association exceed the total liabilities of the association.

(11)~~(12)~~ "Person" includes an individual, company, corporation, association, insurer, agent, and every other legal entity.

(12)~~(13)~~ "Premium" means the total consideration received, or to be received, by an insurer or home warranty association for or related to the issuance and delivery of any binder or warranty, including any charges designated as assessments or fees for policies, surveys, inspections, or service or any other charges.

(13)~~(14)~~ "Sales representative" means any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties.

(14)~~(15)~~ "Structural component" means the roof, plumbing system, electrical system, foundation, basement, walls, ceilings, or floors of a home.

Section 1452. Section 634.302, Florida Statutes, is amended to read:

634.302 Powers of department, commission, and office; rules.—The office ~~department~~ shall administer this part, and the commission may~~, to that end, it has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part related to home warranty associations and home warranties. The department shall administer this part and may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this part related to sales representatives. Such rules by the commission or department may ~~include rules that~~ identify specific methods of competition or acts or practices that are prohibited by s. 634.336, but ~~the rules~~ shall not enlarge upon or extend the provisions of that section.

Section 1453. Subsection (1) of section 634.303, Florida Statutes, is amended to read:

634.303 License required.—

(1) No person in this state shall provide or offer to provide home warranties unless authorized therefor under a subsisting license issued by the office ~~department~~. The home warranty association shall pay to the office ~~department~~ a license tax of $200 for such license for each license year, or part thereof, the license is in force.

Section 1454. Section 634.304, Florida Statutes, is amended to read:

634.304 Qualifications for license.—The office ~~department~~ may not issue or renew a license to any home warranty association unless the association:

(1) Is a solvent corporation formed under the laws of this state or of another state, district, territory, or possession of the United States.

(2) Furnishes the office ~~department~~ with evidence satisfactory to it that the management of the association is competent and trustworthy and can successfully manage the affairs of the association in compliance with law.

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other association, corporation, or organization already doing business in this state as will tend to mislead or confuse the public.

(4) Meets the deposit requirements under s. 634.305.

(5) Is otherwise in compliance with this part.

Section 1455. Subsections (1), (2), and (6) of section 634.305, Florida Statutes, are amended to read:

634.305 Required deposit or bond.—

(1) To assure the faithful performance of its obligations to its members or subscribers in the event of insolvency, every home warranty association shall, before the issuance of its license by the office ~~department~~, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52, which securities shall have at all times a market value of not less than $100,000.

(2) In lieu of any deposit of securities required under subsection (1), the association may:

(a) Deposit with the department securities of the type eligible for deposit by insurers under s. 625.52, which securities shall have at all times a market value of not less than $25,000; and

(b) File with the office ~~department~~ a surety bond in the amount of $75,000. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the approval of the office ~~department~~. The bond shall guarantee that the home warranty association will faithfully and truly perform all the conditions of any home warranty contract. No such bond may be canceled or subject to cancellation unless at least 60 days' advance notice thereof in writing is filed with the office ~~department~~. In the event that notice of termination of the bond is filed with the office ~~department~~, the home warranty association insured thereunder shall, within 30 days of the filing of notice of termination, provide the office ~~department~~ with a replacement bond meeting the requirements of this part or deposit additional securities as required under subsection (1). The cancellation of a bond will not relieve the obligation of the issuer of the bond for claims arising out of contracts issued before cancellation of the bond unless a replacement bond or securities are filed pursuant to this section. In no event may the liability of the issuer under the bond exceed the face amount of the bond. If within 30 days of filing the notice of termination no replacement bond or additional security is provided, the office ~~department~~ shall suspend the license of the association until the deposit requirements are satisfied.

(6) Such deposit or bond shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes the office ~~department~~ proof satisfactory to the office ~~department~~ that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the office and department shall release the deposited securities to the parties entitled thereto, on presentation of the receipts of the department for such securities, or shall release any bond filed with it pursuant to this section.

Section 1456. Section 634.306, Florida Statutes, is amended to read:

634.306 Application for and issuance of license.—

(1) An application for license as a home warranty association must be made to and must be filed with the office ~~department~~ on printed forms prescribed by the commission and furnished by the office ~~it~~.

(2) In addition to information relative to its qualifications as required under s. 634.304, the application must show:

(a) The location of the applicant's home office.

(b) The name and residence address of each director or officer of the applicant and the name and residence address of each shareholder who owns or controls 10 percent or more shares of the applicant.

(c) Such other pertinent information as is required by the office or commission ~~department~~.

(3) The application must be accompanied by:

(a) A copy of the applicant's articles of incorporation, certified by the public official having custody of the original, and a copy of the applicant's bylaws, certified by the applicant's secretary.

(b) A copy of the most recent financial statement of the applicant, verified under oath of at least two of its principal officers.

(c) A license fee in the amount of $200, as required under s. 634.303.

(4) Upon completion of the application for license, the office ~~department~~ shall examine the application and make any further investigation of the applicant as it deems advisable. If it finds that the applicant is qualified therefor, the office ~~department~~ shall issue to the applicant a license as a home warranty association. If the office ~~department~~ does not so find, it shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor.

Section 1457. Section 634.307, Florida Statutes, is amended to read:

634.307 License expiration; renewal.—Each license as a home warranty association issued under this part shall expire on June 1 next following the date of issuance. If the association is then qualified therefor under the provisions of this part, its license may be renewed annually, upon its request and upon payment to the office ~~department~~ of the license tax in the amount of $200, in advance, for each such license year.

Section 1458. Subsections (3) and (4) of section 634.3077, Florida Statutes, are amended to read:

634.3077 Financial requirements.—

(3) An association shall not be required to set up an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the office ~~department~~ that 100 percent of its claim exposure is covered by such insurance. Such contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state or from an insurer approved by the office ~~department~~ as financially capable of meeting the obligations incurred pursuant to the policy. For purposes of this subsection, the contractual liability policy shall contain the following provisions:

(a) In the event that the home warranty association is unable to fulfill its obligation under its contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to persons making claims under such contracts.

(b) The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

(c) The policy may not be canceled or not renewed by either the insurer or the association unless 60 days' written notice thereof has been given to the office ~~department~~ by the insurer before the date of such cancellation or nonrenewal.

(4) An association that purchases contractual liability insurance on the warranties that it issues shall provide the office ~~department~~ with claim statistics required to be filed by associations not purchasing such insurance.

Section 1459. Section 634.3078, Florida Statutes, is amended to read:

634.3078 Assets and liabilities.—

(1) ASSETS.—In any determination of the financial condition of a home warranty association, there shall be allowed as assets only those assets that are owned by the home warranty association company and which assets consist of:

(a) Cash in the possession of the home warranty association, or in transit under its control, including the true balance of any deposit in a solvent bank, savings and loan association, or trust company that is domiciled in the United States.

(b) Investments, securities, properties, and loans acquired or held in accordance with this part and, in connection therewith, the following items:

1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

2. Declared and unpaid dividends on stock and shares, unless the amount of the dividends has otherwise been allowed as an asset.

3. Interest due or accrued upon a collateral loan that is not in default in an amount not to exceed 1 year's interest thereon.

4. Interest due or accrued on deposits or certificates of deposit in solvent banks, savings and loan associations, and trust companies domiciled in the United States, and interest due or accrued on other assets, if such interest is in the judgment of the office ~~department~~ a collectible asset.

5. Interest due or accrued on current mortgage loans, in an amount not exceeding the amount, if any, of the excess of the value of the property less

delinquent taxes thereon over the unpaid principal; but interest accrued for a period in excess of 90 days may not be allowed as an asset.

6. Rent due or accrued on real property if such rent is not in arrears for more than 3 months. However, rent accrued for a period in excess of 90 days may not be allowed as an asset.

7. The unaccrued portion of taxes paid prior to the due date on real property.

(c) Furniture, fixtures, furnishings, vehicles, and equipment, if the original cost of each item is at least $200, which cost shall be amortized in full over a period not to exceed 5 calendar years, unless otherwise approved by the office ~~department~~.

(d) Part inventories maintained for the purpose of servicing products warranted. Part inventories must be listed at cost. Home warranty associations companies are required to maintain records to support valuation of part inventories.

(e) The liquidation value of prepaid expenses.

(f) Other assets or receivables, not inconsistent with the provisions of this section, deemed by the office ~~department~~ to be available for the payment of losses and claims, at values to be determined by the office ~~department~~.

The office ~~department~~, upon determining that a home warranty association's asset has not been evaluated according to applicable law or that it does not qualify as an asset, shall require the home warranty association to properly reevaluate the asset or replace the asset with an asset suitable to the office ~~department~~ within 30 days after written notification by the office ~~department~~ of this determination, if the removal of the asset from the organization's assets would impair the company's solvency.

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets expressly shall not be allowed as assets in any determination of the financial condition of a home warranty association:

(a) Goodwill, agreement holder lists, patents, trade names, agreements not to compete, and other like intangible assets.

(b) Any note or account receivable from or advances to officers, directors, or controlling stockholders, whether secured or not, and advances to employees, agents, or other persons on personal security only.

(c) Stock of the home warranty association owned by it directly or owned by it through any entity in which the organization owns or controls, directly or indirectly, more than 25 percent of the ownership interest.

(d) Leasehold improvements, stationery, and literature, except that leasehold improvements made prior to October 1, 2001, shall be allowed as an asset and shall be amortized over the shortest of the following periods:

1. The life of the lease.

2. The useful life of the improvements.

3. The 3-year period following October 1, 2001.

(e) Furniture, fixtures, furnishings, vehicles, and equipment, other than those items authorized under paragraph (1)(c).

(f) Notes or other evidences of indebtedness which are secured by mortgages or deeds of trust which are in default and beyond the express period specified in the instrument for curing the default.

(g) Bonds in default for more than 60 days.

(h) Deferred costs other than the liquidation value of prepaid expenses except for those companies that reserve 100 percent of gross written premium.

(i) Any note, account receivable, advance, or other evidence of indebtedness, or investment in:

1. The parent of the home warranty association;

2. Any entity directly or indirectly controlled by the home warranty association's parent;

3. An affiliate of the parent or the home warranty association; or

4. Officers, directors, shareholders, employees, or salespersons of the home warranty association; however, premium receivables under 45 days old may be considered an admitted asset.

The office ~~department~~ may, however, allow all or a portion of such asset, at values to be determined by the office ~~department~~, if deemed by the office ~~department~~ to be available for the payment of losses and claims.

(3) LIABILITIES.—In any determination of the financial condition of a home warranty association, liabilities to be charged against its assets shall include, but not be limited to:

(a) The amount, in conformity with generally accepted accounting principles, necessary to pay all of its unpaid losses and claims incurred for or on behalf of an agreement holder, on or prior to the end of the reporting period, whether reported or unreported.

(b) Taxes, expenses, and other obligations due or accrued at the date of the statement.

(c) Reserve for unearned premiums.

The office ~~department~~, upon determining that the home warranty association has failed to report liabilities that should have been reported, shall require a correct report which reflects the proper liabilities to be submitted

by the home warranty association to the office ~~department~~ within 10 working days after receipt of written notification.

Section 1460. Subsections (1), (2), and (3) of section 634.308, Florida Statutes, are amended to read:

634.308 Grounds for suspension or revocation of license.—

(1) The license of any home warranty association may be revoked or suspended, or the office ~~department~~ may refuse to renew any such license, if it is determined that:

(a) The association has violated any lawful rule or order of the commission or office ~~department~~ or any provision of this part.

(b) The association has not maintained a funded, unearned premium reserve account as required by s. 634.3077(1).

(c) The association has not maintained, at a minimum, net assets as required by s. 634.3077(2).

(2) The license of any home warranty association shall be suspended, revoked, or not renewed if it is determined that such association:

(a) Is in unsound financial condition or is in such condition or is using such methods and practices in the conduct of its business as to render its further transaction of warranties in this state hazardous or injurious to its warranty holders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the office ~~department~~.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) Has, without just cause, refused to pay proper claims arising under its warranties or, without just cause, has compelled warranty holders to accept less than the amount due them or to employ attorneys, or to bring suit against the association, to secure full payment or settlement of such claims.

(e) Is affiliated with, and under the same general management, interlocking directorate, or ownership as, another home warranty association which transacts direct warranties in this state without having a license therefor.

(f) Has issued warranty contracts which renewal contracts provide that the cost of renewal exceeds the then-current cost for new warranty contracts or impose a fee for inspection of the premises.

(3) The office ~~department~~ may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the license of any home warranty association if it finds that one or more of the following circumstances exist:

(a) The association is insolvent or impaired.

(b) The reserve account or net asset ratio requirement of s. 634.3077 is not being maintained.

(c) A proceeding for receivership, conservatorship or rehabilitation or any other delinquency proceeding regarding the association has been commenced in any state.

(d) The financial condition or business practices of the association otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

Section 1461. Section 634.310, Florida Statutes, is amended to read:

634.310 Order, notice of suspension or revocation of license; effect; publication.—

(1) A suspension or revocation of the license of a home warranty association shall be effected by order mailed to the association by registered or certified mail. The office ~~department~~ also shall promptly give notice of such suspension or revocation to the sales representatives of the association in this state who are of record with ~~in the office of~~ the department. The association may not solicit or write any new warranties in this state during the period of any such suspension or revocation.

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

Section 1462. Subsection (4) of section 634.311, Florida Statutes, is amended to read:

634.311 Duration of suspension; obligations of association during suspension period; reinstatement.—

(4) Upon reinstatement of the license of an association, or reinstatement of the certificate of authority of an insurer, following suspension, the authority of the sales representatives of the association in this state to represent the association or insurer shall likewise be reinstated. The office ~~department~~ shall promptly notify the association.

Section 1463. Section 634.3112, Florida Statutes, is amended to read:

634.3112 Administrative fine in lieu of suspension or revocation of license of association.—

(1) If it is found that one or more grounds exist for the suspension, revocation, or refusal to renew the license of any association issued under this part, the office ~~department~~ may, in lieu of such revocation or suspension, impose a fine upon the association.

(2) With respect to any nonwillful violation, such fine may not exceed $500 per violation. In no event may such fine exceed an aggregate amount

of $5,000 for all nonwillful violations arising out of the same action. When an association discovers a nonwillful violation, the association shall correct the violation and, if restitution is due, make restitution to all affected persons. Such restitution shall include interest at 12 percent per year from either the date of the violation or the date of inception of the affected person's policy, at the option of the association.

(3) With respect to any knowing and willful violation of a lawful order or rule of the office or commission ~~department~~ or a provision of this part, the office ~~department~~ may impose a fine upon the association in an amount not to exceed $2,500 for each such violation. In no event may such fine exceed an aggregate amount of $25,000 for all knowing and willful violations arising out of the same action. In addition to such fines, an association shall make restitution when due in accordance with the provisions of subsection (2).

(4) The failure of an association to make restitution when due, as required under this section, constitutes a willful violation of this code. However, if an insurer in good faith is uncertain as to whether any restitution is due or as to the amount of such restitution, it shall promptly notify the office ~~department~~ of the circumstances, and the failure to make restitution pending a determination thereof will not constitute a violation of this part.

Section 1464. Subsections (1), (2), and (3) of section 634.312, Florida Statutes, are amended to read:

634.312 Filing, approval of forms.—

(1) No warranty form or related form shall be issued or used in this state unless it has been filed with and approved by the office ~~department~~. Also upon application for a license, the office ~~department~~ shall require the applicant to submit for approval each brochure, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution. Approval of the application constitutes approval of such documents, unless the applicant has consented otherwise in writing. The office ~~department~~ shall disapprove any document which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material facts.

(a) After an application has been approved, a licensee is not required to submit brochures or advertisement to the office ~~department~~ for approval; however, a licensee may not have published, and a person may not publish, any brochure or advertisement which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material fact.

(b) For purposes of this section, brochures and advertising includes, but is not limited to, any report, circular, public announcement, certificate, or other printed matter or advertising material which is designed or used to solicit or induce any persons to enter into any home warranty agreement.

(2) Every such filing shall be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from date of filing, a form so

filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the office ~~department~~.

(3) The office ~~department~~ shall not approve any such form which allows for more than nine annual renewals or which renewal contracts provide that the cost of renewal exceeds the then-current cost for new warranty contracts or impose a fee for inspection of the premises.

Section 1465. Section 634.3123, Florida Statutes, is amended to read:

634.3123 Grounds for disapproval of forms.—The office ~~department~~ shall disapprove any form filed under s. 634.312 or withdraw any previous approval if the form:

(1) Is in violation of or does not comply with this part.

(2) Contains or incorporates by reference, when such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions or conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(3) Has any title, heading, or other indication of its provisions which is misleading.

(4) Is printed or otherwise reproduced in such a manner as to render any material provision of the form illegible.

(5) Provides that the cost of renewal exceeds the then-current cost for new warranty contracts or impose a fee for inspection of the premises.

Section 1466. Section 634.3126, Florida Statutes, is amended to read:

634.3126 Rate filings.—Each insurer and home warranty association shall file with the office ~~department~~ for informational purposes the rate to be charged for each warranty and the premium, including all modifications of rates and premiums. Each filing shall state the proposed effective date.

Section 1467. Section 634.313, Florida Statutes, is amended to read:

634.313 Tax on premiums; annual statement; reports.—

(1) In addition to paying the license taxes provided for in this part for home warranty associations and license taxes provided in the insurance code as to insurers, each such association and each such insurer must, annually on or before March 1, file with the office ~~department~~ its annual statement, in the form prescribed by the commission ~~department~~, showing all premiums received by it in connection with the issuance of warranties in this state during the preceding calendar year and using accounting principles that will enable the office ~~department~~ to ascertain whether the reserve required by s. 634.3077 has been maintained. Each annual statement must contain a balance sheet listing all assets and liabilities; a statement of operations and retained earnings; and a schedule used to report all claims statistics. The annual statement must be completed using generally accepted accounting principles except as otherwise provided in this part. Fur-

ther, each association and each insurer must pay to the Chief Financial Officer ~~Treasurer~~ a tax in an amount equal to 2 percent of the amount of such premiums so received.

(2) Premiums received by insurers and taxed under this section are not subject to any premium tax provided for in the insurance code.

(3) Any association or insurer neglecting to file the annual statement in the form and within the time provided by this section shall forfeit up to $100 for each day during which such neglect continues; and, upon notice by the office ~~department~~ to that effect, its authority to do business in this state shall cease while such default continues. The office ~~department~~ shall deposit all sums collected by it under this section to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

(4) In addition to an annual statement, the office ~~department~~ may require of licensees, under oath and in the form prescribed by it, such additional regular or special reports as it may deem necessary to the proper supervision of licensees under this part.

(5) The commission ~~department~~ may by rule require each home warranty association to submit to the office ~~department~~, as the commission ~~department~~ may designate, all or part of the information contained in the financial reports required by this section in a computer-readable form compatible with the electronic data processing system specified by the office ~~department~~.

Section 1468. Section 634.314, Florida Statutes, is amended to read:

634.314 Examination of associations.—Home warranty associations licensed under this part shall be subject to periodic examinations by the office ~~department~~, in the same manner and subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the insurance code.

Section 1469. Subsection (10) of section 634.320, Florida Statutes, is amended to read:

634.320 Grounds for compulsory refusal, suspension, or revocation of license or appointment of sales representatives.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist:

(10) Willful failure to comply with, or willful violation of, any proper order or rule of the department or commission or willful violation of any provision of this part.

Section 1470. Subsection (3) of section 634.321, Florida Statutes, is amended to read:

634.321 Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the

license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.320:

(3) Violation of any lawful order or rule of the department or commission.

Section 1471. Section 634.324, Florida Statutes, is amended to read:

634.324 Disposition of taxes and fees.—All license taxes, taxes on premiums, license and appointment fees, and administrative fines and penalties collected under this part from home warranty associations and sales representatives shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1472. Section 634.325, Florida Statutes, is amended to read:

634.325 Insurance business not authorized.—Nothing in the Florida Insurance Code or in this part shall be deemed to authorize any home warranty association to transact any insurance business other than that of home warranty as herein defined or otherwise to engage in any other type of insurance unless the association is authorized under a certificate of authority issued by the office ~~department~~ under the provisions of the Florida Insurance Code.

Section 1473. Section 634.327, Florida Statutes, is amended to read:

634.327 Applicability to warranty on new home.—This part shall not apply to any program offering a warranty on a new home which is underwritten by an insurer licensed to do business in the state when the insurance policy underwriting such program has been filed with and approved by the office ~~Department of Insurance~~ as required by law.

Section 1474. Subsection (4) of section 634.3284, Florida Statutes, is amended to read:

634.3284 Civil remedy.—

(4) This section shall not be construed to authorize a class action suit against a home warranty association or a civil action against the department or office or their~~, its~~ employees~~,~~ or the Chief Financial Officer ~~Insurance Commissioner~~.

Section 1475. Subsection (8) of section 634.336, Florida Statutes, is amended to read:

634.336 Unfair methods of competition and unfair or deceptive acts or practices defined.—The following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

(8) COERCION OF DEBTORS.—When a home warranty is sold as authorized by s. 634.301(3)(b) ~~s. 634.301(4)(b)~~:

(a) Requiring, as a condition precedent or condition subsequent to the lending of the money or the extension of the credit or any renewal thereof,

that the person to whom such credit is extended purchase a home warranty; or

(b) Failing to provide the advice required by s. 634.344; or

(c) Failing to comply with the provisions of s. 634.345.

Section 1476. Section 634.337, Florida Statutes, is amended to read:

634.337 Power of department and office to examine and investigate.—The department and office have ~~has~~ the power, within their respective regulatory jurisdictions, to examine and investigate the affairs of every person involved in the business of home warranty in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by s. 634.335, and each shall have the powers and duties specified in ss. 634.338-634.342 in connection therewith.

Section 1477. Section 634.338, Florida Statutes, is amended to read:

634.338 Prohibited practices; hearings; procedure; service of process.—

(1) Whenever the department or office has reason to believe that any person has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 634.336, or is engaging in the business of home warranty without being properly licensed as required by this part, and that a proceeding by the department or office in respect thereto would be in the interest of the public, the department or office shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The department or office, a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569; however, the penalty for failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed $1,000 per violation.

(3) A statement of charges, notice, or order under this part may be served by anyone duly authorized by the department or office, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at her or his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

Section 1478. Section 634.339, Florida Statutes, is amended to read:

634.339 Cease and desist and penalty orders.—After the hearing provided for in s. 634.338, the department or office shall enter a final order in accordance with s. 120.569. If it is determined that the person charged has

engaged in an unfair or deceptive act or practice or the unlawful transaction of home warranty business, the department or office also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of home warranty business. Further, the department or office may, at its discretion, order any one or more of the following penalties:

(1) The suspension or revocation of such person's license, or eligibility for any license, if the person knew, or reasonably should have known, that she or he was in violation of this part.

(2) If it is determined that the person charged has provided or offered to provide home warranties without proper licensure, the imposition of an administrative penalty not to exceed $1,000 for each home warranty contract offered or effectuated.

Section 1479. Section 634.34, Florida Statutes, is amended to read:

634.34 Appeals from orders of the department or office.—Any person subject to an order of the department or office under s. 634.339 may obtain a review of such order by filing an appeal therefrom in accordance with the provisions and procedures for appeal from the orders of the department or office in general under s. 120.68.

Section 1480. Section 634.341, Florida Statutes, is amended to read:

634.341 Penalty for violation of cease and desist order.—Any person who violates a cease and desist order of the department or office under s. 634.339 while such order is in effect, after notice and hearing as provided in s. 634.338, is subject, at the discretion of the department or office, to any one or more of the following penalties:

(1) A monetary penalty of not more than $25,000 as to all matters determined in such hearing.

(2) The suspension or revocation of such person's license or eligibility to hold a license.

Section 1481. Section 634.342, Florida Statutes, is amended to read:

634.342 Injunctive proceedings.—In addition to the penalties and other enforcement provisions of this part, in the event any person violates s. 634.303 or s. 634.318 or any rule adopted or promulgated pursuant thereto, the department or office is authorized to resort to a proceeding for injunction in the circuit court of the county where such person resides or has her or his principal place of business, and therein apply for such temporary and permanent orders as the department or office may deem necessary to restrain such person from engaging in any such activities, until such person has complied with such provision or rule.

Section 1482. Section 634.343, Florida Statutes, is amended to read:

634.343 Civil liability.—The provisions of this part are cumulative to rights under the general civil and common law, and no action of the depart-

ment or office will abrogate such rights to damages or other relief in any court.

Section 1483. Section 634.344, Florida Statutes, is amended to read:

634.344 Coercion of debtor prohibited.—

(1) When a home warranty is sold as authorized by s. 634.301(3)(b) ~~s. 634.301(4)(b)~~, no person may require, as a condition precedent or condition subsequent to the lending of the money or the extension of the credit or any renewal thereof, that the person to whom such money or credit is extended purchase a home warranty.

(2) When a home warranty is purchased in connection with the lending of money as authorized by s. 634.301(3)(b) ~~s. 634.301(4)(b)~~, the insurer or home warranty association or the sales representative of the insurer or home warranty association shall advise the borrower or purchaser in writing that Florida law prohibits the lender from requiring the purchase of a home warranty as a condition precedent or condition subsequent to the making of the loan.

Section 1484. Section 634.345, Florida Statutes, is amended to read:

634.345 Buyer's right to cancel.—Every warranty sold in connection with a loan as authorized by s. 634.301(3)(b) ~~s. 634.301(4)(b)~~ shall contain a provision providing that the purchaser or borrower may cancel the warranty within 10 days of purchase without penalty and, upon such cancellation, the insurer or home warranty association shall promptly refund the premium paid. This provision may be included in the warranty or by rider or endorsement thereto.

Section 1485. Section 634.348, Florida Statutes, is amended to read:

634.348 Investigatory records.—All active examination or investigatory records of the department or office made or received pursuant to this part are confidential and exempt from the provisions of s. 119.07(1) until such investigation is completed or ceases to be active. For the purposes of this section, an investigation is considered "active" while the investigation is being conducted by the department or office with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department or office is proceeding with reasonable dispatch, and there is good faith belief that action may be initiated by the department or office or other administrative or law enforcement agency.

Section 1486. Section 634.401, Florida Statutes, is amended to read:

634.401 Definitions.—As used in this part, the term:

(1) "Consumer product" means tangible property primarily used for personal, family, or household purposes.

~~(2) "Department" means the Department of Insurance.~~

(2)~~(3)~~ "Gross income" means the total amount of revenue received in connection with business-related activity.

(3)~~(4)~~ "Gross written premiums" means the total amount of premiums, paid or to be paid by the consumer for the entire period of the service warranty inclusive of commissions, for which the association is obligated under service warranties issued.

(4)~~(5)~~ "Impaired" means having liabilities in excess of assets.

(5)~~(6)~~ "Indemnify" means to undertake repair or replacement of a consumer product, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

(6)~~(7)~~ "Insolvent" means unable to pay debts as they become due in the usual course of business.

(7)~~(8)~~ "Insurance code" means the Florida Insurance Code as defined in s. 624.01.

(8)~~(9)~~ "Insurer" means any property or casualty insurer duly authorized to transact such business in this state.

(9)~~(10)~~ "Net assets" means total statutory assets in excess of liabilities, except that assets pledged to secure debts not reflected on the books of the service warranty association shall not be included in net assets.

(10)~~(11)~~ "Person" includes an individual, company, corporation, association, insurer, agent, and any other legal entity.

(11)~~(12)~~ "Premium" means the total amount paid by the consumer, including any charges designated as assessments or fees for membership, policy, survey, inspection, finance, service, or other charges by the association.

(12)~~(13)~~ "Sales representative" means any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative.

(13)~~(14)~~ "Service warranty" means any warranty, guaranty, extended warranty or extended guaranty, maintenance service contract greater than 1 year in length or which does not meet the exemption in paragraph (a), contract agreement, or other written promise to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge by the consumer; however:

(a) Maintenance service contracts written for 1 year or less which do not contain provisions for indemnification and which do not provide a discount to the consumer for any combination of parts and labor in excess of 20 percent during the effective period of such contract, motor vehicle service agreements, transactions exempt under s. 624.125, and home warranties

subject to regulation under parts I and II of this chapter are excluded from this definition; and

(b) The term "service warranty" does not include service contracts between consumers and condominium associations.

(14)~~(15)~~ "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties.

(15)~~(16)~~ "Warrantor" means any person engaged in the sale of service warranties and deriving not more than 50 percent of its gross income from the sale of service warranties.

(16)~~(17)~~ "Warranty seller" means any person engaged in the sale of service warranties and deriving more than 50 percent of its gross income from the sale of service warranties.

(17)~~(18)~~ "Manufacturer" means any entity or its affiliate which:

(a) Derives a majority of its revenues from products manufactured, built, assembled, constructed, or produced under a product name wholly controlled by the applicant or an affiliate thereof;

(b) Issues service warranties only for consumer products manufactured, built, assembled, constructed, or produced under a product name wholly controlled by the applicant or an affiliate thereof;

(c) Is listed and traded on a recognized stock exchange, is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities markets, is required to file either of Forms 10-K, 10-Q, or 20-G with the United States Securities and Exchange Commission, or whose American Depository Receipts are listed on a recognized stock exchange and publicly traded;

(d) Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;

(e) Has and maintains at all times, a minimum net worth of at least $10 million as evidenced by certified financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

(f) Is authorized to do business in this state.

(18)~~(19)~~ "Affiliate" means any entity which exercises control over or is controlled by, the service warranty association or insurer, directly or indirectly, through:

(a) Equity ownership of voting securities;

(b) Common managerial control; or

(c) Collusive participation by the management of the service warranty association or insurer or the affiliate.

Section 1487. Section 634.402, Florida Statutes, is amended to read:

634.402 Powers of department, commission, and office; rules.—The office ~~department~~ shall administer this part, and the commission may ~~to that end it has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part related to service warranty associations and service warranties. The department shall administer this part and may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this part related to sales representatives. Such rules by the commission or department may identify specific methods of competition or acts or practices that are prohibited by s. 634.436, but shall not enlarge upon or extend the provisions of that section.

Section 1488. Subsections (1) and (3) of section 634.403, Florida Statutes, are amended to read:

634.403 License required.—

(1) No person in this state shall provide or offer to provide service warranties unless authorized therefor under a subsisting license issued by the office ~~department~~. The service warranty association shall pay to the office ~~department~~ a license fee of $200 for such license for each license year, or part thereof, the license is in force.

(3) The office ~~department~~ may, pursuant to s. 120.569, in its discretion and without advance notice and hearing, issue an immediate final order to cease and desist to any person or entity which violates this section. The Legislature finds that a violation of this section constitutes an imminent and immediate threat to the public health, safety, and welfare of the residents of this state.

Section 1489. section 634.404, Florida Statutes, is amended to read:

634.404 Qualifications for license.—The office ~~department~~ may not issue or allow a service warranty association to maintain a license unless the association:

(1) Is a warrantor with minimum net assets of $25,000 or a warranty seller with minimum net assets of $300,000.

(2) Furnishes the office ~~department~~ with evidence satisfactory to it that the management of the association is competent and trustworthy and can successfully manage the affairs of the association in compliance with law.

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other person already doing business in this state as will tend to mislead or confuse the public.

(4) Makes the deposit or files the bond required under s. 634.405.

(5) Is formed under the laws of this state or another state, district, territory, or possession of the United States, if the association is other than a natural person.

(6) In lieu of the provisions of subsections (1)-(5) of this section and s. 634.407, a manufacturer or affiliate as defined in this part is eligible for licensure as a service warranty association under the provisions of this part and shall complete an application evidencing its qualifications as set forth in this section. The application for license as a service warranty association from a manufacturer or affiliate shall be made to, and filed with, the office ~~department~~ on printed forms as promulgated by the commission ~~department~~ to be specifically and exclusively applicable to qualifying manufacturers.

(a) The commission ~~department~~ may require that the applicant show:

1. The state of the applicant's incorporation;

2. The location of the applicant's home office; and

3. The names and business addresses of the applicant's board of directors and managing executive officer.

(b) The ~~department shall require that the~~ application, when filed, must be accompanied by:

1. A copy of the applicant's articles of incorporation, certified by the public official having custody of the original, and a copy of the applicant's bylaws, certified by the applicant's corporate secretary;

2. Evidence that the applicant has complied with all applicable statutory requirements regarding registering to do business in this state; and

3. A license fee in the amount of $500.

(c) Upon submission of the application for license, the office ~~department~~ shall examine the application to determine its compliance with applicable sections of this part. Applicants shall be advised of any inadequate responses or missing information.

(d) Information as required in this section shall be updated as to changes thereto no less than two times annually, once at the time of the submission of the service warranty association's submission of its annual report, and the second time, no later than September 30 of each year.

Section 1490. Section 634.405, Florida Statutes, is amended to read:

634.405 Required deposit or bond.—

(1) To assure the faithful performance of its obligations to its members or subscribers in the event of insolvency, each service warranty association shall, before the issuance of its license by the office ~~department~~ and during such time as the association may have premiums in force in this state, deposit and maintain with the department securities of the type eligible for deposit by insurers under s. 625.52. Whenever the market value of the securities deposited with the department is less than 95 percent of the amount required, the association shall deposit additional securities or otherwise increase the deposit to the amount required. Such securities shall have at all times a market value as follows:

(a) Warrantors.—

1. Any warrantor which:

a. Was licensed under this part before October 1, 1983;

b. Was transacting service warranty business in this state before June 14, 1978;

c. Has continuously transacted service warranty business in this state since June 14, 1978; and

d. Has not during any year since June 14, 1978, written more than $100,000 of gross written premiums,

shall place and maintain in trust with the department an amount equal to 50 percent of the gross written premiums in force.

2. A warrantor which has $300,000 or less of gross written premiums in this state and to which the provisions of subparagraph 1. do not apply shall place and maintain in trust with the department an amount not less than $50,000. A new warrantor, before the issuance of its license and before receiving any premiums, shall place and maintain in trust with the department the amount of $50,000.

3. A warrantor which has more than $300,000 but less than $750,000 of gross written premiums in this state shall place and maintain in trust with the department an amount not less than $75,000.

4. A warrantor which has $750,000 or more of gross written premiums in this state shall place and maintain in trust with the department an amount equal to $100,000.

5. All warrantors, upon receipt of written notice from the office ~~department~~, shall have 30 calendar days in which to make additional deposits.

(b) Warranty sellers.—A warranty seller shall, before the issuance of its license, place in trust with the department an amount not less than $100,000.

(2) In lieu of any deposit of securities required under subsection (1) and subject to the approval of the office ~~department~~, the service warranty association may file with the office ~~department~~ a surety bond issued by an authorized surety insurer. The bond shall be for the same purpose as the deposit in lieu of which it is filed. The office ~~department~~ may not approve any bond under the terms of which the protection afforded against insolvency is not equivalent to the protection afforded by those securities provided for in subsection (1). When a bond is deposited in lieu of the required securities, no warranties may be written which provide coverage for a time period beyond the duration of such bond. The bond shall guarantee that the service warranty association will faithfully and truly perform all the conditions of any service warranty contract. No such bond may be canceled or subject to cancellation unless at least 60 days' advance notice thereof, in writing, is

filed with the office ~~department~~. In the event that notice of termination of the bond is filed with the office ~~department~~, the service warranty association insured thereunder shall, within 30 days of the filing of notice of termination, provide the office ~~department~~ with a replacement bond meeting the requirements of this part or deposit additional securities as required under subsection (1). The cancellation of a bond will not relieve the obligation of the issuer of the bond for claims arising out of contracts issued before cancellation of the bond unless a replacement bond or securities are filed. In no event may the liability of the issuer under the bond exceed the face amount of the bond. If within 30 days of filing the notice of termination no replacement bond or additional security is provided, the office ~~department~~ shall suspend the license of the association until the deposit requirements are satisfied.

(3) Securities and bonds posted by an association pursuant to this section are for the benefit of, and subject to action thereon in the event of insolvency or impairment of any association or insurer by, any person or persons sustaining an actionable injury due to the failure of the association to faithfully perform its obligations to its warranty holders.

(4) The state is responsible for the safekeeping of all securities deposited with the department under this part. Such securities are not, on account of being in this state, subject to taxation, but shall be held exclusively and solely to guarantee the faithful performance by the association of its obligations to its members or subscribers.

(5) The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities on deposit, to receive the interest and other income accruing to such securities, and to inspect the deposit at all reasonable times.

(6) Such deposit or bond shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes the office ~~department~~ proof satisfactory to the office ~~department~~ that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the office and department shall release the deposited securities to the parties entitled thereto, on presentation of the receipts of the department for such securities, or shall release any bond filed with it in lieu of such deposit.

(7) Any business, or its affiliate, whose primary source of income is the sale of goods to the final consumer and derives more than 50 percent of its revenue through such sales and maintains a net worth of $100 million, as evidenced by either filing a form 10-K or other similar statement with the Securities and Exchange Commission or which has an annual financial statement that is audited and certified by an independent public accounting firm, shall be presumed to have complied with this subsection if such forms or statement are filed with the office ~~department~~.

Section 1491. Subsections (2), (3), (6), and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(2) An association utilizing an unearned premium reserve shall deposit with the department a reserve deposit equal to 10 percent of the gross written premium received on all warranty contracts in force. Such reserve deposit shall be of a type eligible for deposit by insurers under s. 625.52. Request for release of all or part of the reserve deposit may be made quarterly and only after the office ~~department~~ has received and approved the association's current financial statements, as well as a statement sworn to by two officers of the association verifying such release will not reduce the reserve deposit to less than 10 percent of the gross written premium. The reserve deposit required under this part shall be included in calculating the reserve required by subsection (1). The deposit required in s. 634.405(1)(b) shall be included in calculating the reserve requirements of this section.

(3) An association will not be required to establish an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the office ~~department~~ that 100 percent of its claim exposure is covered by such policy. The contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state. For the purposes of this subsection, the contractual liability policy shall contain the following provisions:

(a) In the event that the service warranty association does not fulfill its obligation under contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premium refunds under such plans directly to the person making a claim under the contract.

(b) The insurer issuing the contractual liability policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

(c) The policy may not be canceled or not renewed by either the insurer or the association unless 60 days' written notice thereof has been given to the office ~~department~~ by the insurer before the date of such cancellation or nonrenewal.

(d) The contractual liability insurance policy shall insure all service warranty contracts which were issued while the policy was in effect whether or not the premium has been remitted to the insurer.

(e) In the event the issuer of the contractual liability policy is fulfilling the service warranty covered by policy and in the event the service warranty holder cancels the service warranty, it is the responsibility of the contractual liability policy issuer to effectuate a full refund of unearned premium to the consumer. This refund shall be subject to the cancellation fee provisions of s. 634.414(3). The salesperson or agent shall refund to the contractual liability policy issuer the unearned pro rata commission.

(f) An association may not utilize both the unearned premium reserve and contractual liability insurance simultaneously. However, an association shall be allowed to have contractual liability coverage on service warranties

previously sold and sell new service warranties covered by the unearned premium reserve, and the converse of this shall also be allowed. An association must be able to distinguish how each individual service warranty is covered.

(6) An association which holds a license under this part and which does not hold any other license under this chapter may allow its premiums to exceed the ratio to net assets limitations of this section if the association meets all of the following:

(a) Maintains net assets of at least $750,000.

(b) Utilizes a contractual liability insurance policy approved by the office ~~department~~ which reimburses the service warranty association for 100 percent of its claims liability.

(c) The insurer issuing the contractual liability insurance policy:

1. Maintains a policyholder surplus of at least $100 million.

2. Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office ~~department~~.

3. Is in no way affiliated with the warranty association.

4. In conjunction with the warranty association's filing of the quarterly and annual reports, provides, on a form prescribed by the commission ~~department~~, a statement certifying the gross written premiums in force reported by the warranty association and a statement that all of the warranty association's gross written premium in force is covered under the contractual liability policy, whether or not it has been reported.

(7) ~~The department shall require that~~ A contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, wherever written, unless all of the following are satisfied:

(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;

(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;

(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5 years, and:

1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is re-

quired to file either of Forms 10-K, 100, or 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;

2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;

3. Has and maintains at all times a minimum net worth of not less than $10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office ~~department~~ annually; and

4. Is authorized to do business in this state; and

(d) The insurer issuing the contractual liability policy:

1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least $100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office ~~department~~;

2. Holds a certificate of authority to do business in this state and is approved to write this type of coverage; and

3. Acknowledges to the office ~~department~~ quarterly that it insures all of the association's claims exposure under contracts delivered in this state.

If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.

Section 1492. Section 634.4061, Florida Statutes, is amended to read:

634.4061 Assets and liabilities.—

(1) ASSETS.—In any determination of the financial condition of a service warranty association, there shall be allowed as assets only those assets that are owned by the service warranty association and which assets consist of:

(a) Cash in the possession of the service warranty association, or in transit under its control, including the true balance of any deposit in a solvent bank, savings and loan association, or trust company which is domiciled in the United States.

(b) Investments, securities, properties, and loans acquired or held in accordance with this part, and in connection therewith the following items:

1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

2. Declared and unpaid dividends on stock and shares, unless the amount of the dividends has otherwise been allowed as an asset.

3. Interest due or accrued upon a collateral loan which is not in default in an amount not to exceed 1 year's interest thereon.

4. Interest due or accrued on deposits or certificates of deposit in solvent banks, savings and loan associations, and trust companies domiciled in the United States, and interest due or accrued on other assets, if such interest is in the judgment of the office ~~department~~ a collectible asset.

5. Interest due or accrued on current mortgage loans, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.

6. Rent due or accrued on real property if such rent is not in arrears for more than 3 months. However, in no event shall rent accrued for a period in excess of 90 days be allowed as an asset.

7. The unaccrued portion of taxes paid prior to the due date on real property.

(c) Furniture, fixtures, furnishings, vehicles, and equipment, if the original cost of each item is at least $200, which cost shall be amortized in full over a period not to exceed 5 calendar years, unless otherwise approved by the office ~~department~~.

(d) Part inventories maintained for the purpose of servicing products warranted. Part inventories must be listed at cost. Associations are required to maintain records to support valuation of parts inventories.

(e) The liquidation value of prepaid expenses.

(f) Other assets, not inconsistent with the provisions of this section, deemed by the office ~~department~~ to be available for the payment of losses and claims, at values to be determined by it.

The office ~~department~~, upon determining that a service warranty association's asset has not been evaluated according to applicable law or that it does not qualify as an asset, shall require the service warranty association to properly reevaluate the asset or replace the asset with an asset suitable to the office ~~department~~ within 30 days of written notification by the office ~~department~~ of this determination, if the removal of the asset from the organization's assets would impair the company's solvency.

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets expressly shall not

be allowed as assets in any determination of the financial condition of a service warranty association:

(a) Goodwill, agreement holder lists, patents, trade names, agreements not to compete, and other like intangible assets.

(b) Any note or account receivable from or advances to officers, directors, or controlling stockholders, whether secured or not, and advances to employees, agents, or other persons on personal security only.

(c) Stock of the service warranty association owned by it directly or owned by it through any entity in which the organization owns or controls, directly or indirectly, more than 25 percent of the ownership interest.

(d) Leasehold improvements, stationery, and literature, except that leasehold improvements made prior to October 1, 1991, shall be allowed as an asset and shall be amortized over the shortest of the following periods:

1. The life of the lease.

2. The useful life of the improvements.

3. The 3-year period following October 1, 1991.

(e) Furniture, fixtures, furnishings, vehicles, and equipment, other than those items authorized under paragraph (1)(c).

(f) Notes or other evidences of indebtedness which are secured by mortgages or deeds of trust which are in default and beyond the express period specified in the instrument for curing the default.

(g) Bonds in default for more than 60 days.

(h) Deferred costs other than the liquidation value of prepaid expenses.

(i) Any note, account receivable, advance, or other evidence of indebtedness, or investment in:

1. The parent of the service warranty association;

2. Any entity directly or indirectly controlled by the service warranty association parent; or

3. An affiliate of the parent or the service warranty association; however, receivables from the parent or affiliated companies shall be considered an admitted asset of the company when the office ~~department~~ is satisfied that the repayment of receivables, loans, and advances from the parent or the affiliated company are guaranteed by an organization in accordance with s. 634.4065.

4. Officers, directors, shareholders, employees, or salespersons of the association. However, premium receivables under 45 days old may be considered an admitted asset.

The office ~~department~~ may, however, allow all or a portion of such asset, at values to be determined by the office ~~department~~, if deemed by the office ~~department~~ to be available for the payment losses and claims.

(3) LIABILITIES.—In any determination of the financial condition of a service warranty association, liabilities to be charged against its assets shall include, but not be limited to:

(a) The amount, in conformity with generally accepted accounting principles, necessary to pay all of its unpaid losses and claims incurred for or on behalf of an agreement holder, on or prior to the end of the reporting period, whether reported or unreported.

(b) Taxes, expenses, and other obligations due or accrued at the date of the statement.

(c) Reserve for unearned premiums.

The office ~~department~~, upon determining that the service warranty association has failed to report liabilities that should have been reported, shall require a correct report which reflects the proper liabilities to be submitted by the service warranty association to the office ~~department~~ within 10 working days of receipt of written notification.

Section 1493. Subsections (2) and (4) of section 634.4065, Florida Statutes, are amended to read:

634.4065 Guarantee agreements.—In order to include receivables from affiliated companies as assets under s. 634.401(9) ~~s. 634.401(10)~~, the service warranty association may provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies, provided that the written guarantee is made by a guaranteeing organization which:

(2) Submits a guarantee that is approved by the office ~~department~~ as meeting the requirements of this part, provided that the written guarantee contains a provision which requires that the guarantee be irrevocable unless the guaranteeing organization can demonstrate to the office ~~department~~ that the cancellation of the guarantee will not result in the net assets of the service warranty association falling below its minimum net assets requirement and the office ~~department~~ approves cancellation of the guarantee.

(4) Submits annually, within 3 months after the end of its fiscal year, an audited financial statement certified by an independent certified public accountant, prepared in accordance with generally accepted accounting principles. The office ~~department~~ may, as it deems necessary, require quarterly financial statements from the guaranteeing organization.

Section 1494. Section 634.407, Florida Statutes, is amended to read:

634.407 Application for and issuance of license.—

(1) An application for license as a service warranty association shall be made to, and filed with, the office ~~department~~ on printed forms as prescribed by the commission and furnished by the office ~~it~~.

(2) In addition to information relative to its qualifications as required under s. 634.404, the commission ~~department~~ may require that the application show:

(a) The location of the applicant's home office.

(b) The name and residence address of each director, officer, and 10-percent or greater stockholder of the applicant.

(c) Such other pertinent information as may be required by the commission ~~department~~.

(3) The commission ~~department~~ may require that the application, when filed, be accompanied by:

(a) A copy of the applicant's articles of incorporation, certified by the public official having custody of the original, and a copy of the applicant's bylaws, certified by the applicant's secretary.

(b) A copy of the most recent financial statement of the applicant, verified under oath of at least two of its principal officers.

(c) A license fee in the amount of $200, as required under s. 634.403.

(4) Upon completion of the application for license, the office ~~department~~ shall examine the application and make such further investigation of the applicant as it deems advisable. If it finds that the applicant is qualified therefor, the office ~~department~~ shall issue to the applicant a license as a service warranty association. If the office ~~department~~ does not find the applicant to be qualified, it shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor.

Section 1495. Subsections (1), (2), and (3) of section 634.409, Florida Statutes, are amended to read:

634.409 Grounds for suspension or revocation of license.—

(1) The license of any service warranty association may be revoked or suspended, or the office ~~department~~ may refuse to renew any such license, if it is determined that the association has violated any lawful rule or order of the commission or office ~~department~~ or any provision of this part.

(2) The license of any service warranty association shall be suspended or revoked if it is determined that such association:

(a) Is in an unsound financial condition, or is in such condition as would render its further transaction of service warranties in this state hazardous or injurious to its warranty holders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the office ~~department~~.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) Has, without just cause, refused to pay proper claims arising under its service warranties or, without just cause, has compelled warranty holders to accept less than the amount due them, or to employ attorneys, or to bring suit against the association to secure full payment or settlement of such claims.

(e) Is affiliated with, and under the same general management or interlocking directorate or ownership as, another service warranty association which transacts direct warranties in this state without having a license therefor.

(f) Is using such methods or practices in the conduct of its business as would render its further transaction of service warranties in this state hazardous or injurious to its warranty holders or to the public.

(3) The office ~~department~~ may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the license of any service warranty association if it finds that one or more of the following circumstances exist:

(a) The association is insolvent or impaired as defined in s. 631.011.

(b) The association's reserve account required by s. 634.406(1) is not being maintained.

(c) A proceeding for receivership, conservatorship, or rehabilitation or any other delinquency proceeding regarding the association has been commenced in any state.

(d) The financial condition or business practices of the association otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(e) The association fails to affirm or deny coverage of claims upon the written request of the agreement holder within a reasonable time after notification of the claim.

(f) The association fails to promptly provide a reasonable explanation in writing to the agreement holder of the basis in the service agreement, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement.

Section 1496. Section 634.411, Florida Statutes, is amended to read:

634.411 Order; notice of suspension or revocation of license; effect; publication.—

(1) Suspension or revocation of a service warranty association's license shall be by order of the office ~~department~~ mailed to the association by registered or certified mail. The office ~~department~~ shall also promptly give

notice of such suspension or revocation to the association's sales representatives in this state which are of record with the department ~~in the department's office~~. The association shall not solicit or write any new service warranties in this state during the period of any such suspension or revocation.

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

(3) When the license is surrendered, nonrenewed, or revoked, the association shall proceed, immediately following the effective date of the surrender, nonrenewal, or order of revocation, to conclude the affairs transacted under this part. The association shall not solicit, negotiate, advertise, or effectuate new or renewal service warranty contracts. The office ~~department~~ retains jurisdiction over the association as it may find to be in the best interest of the contract holders until all contracts have been fulfilled, canceled, or expired.

Section 1497. Section 634.413, Florida Statutes, is amended to read:

634.413 Administrative fine in lieu of suspension or revocation.—If the office ~~department~~ finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under this part, the office ~~department~~ may, in lieu of such suspension or revocation, impose a fine upon the insurer or service warranty association in an amount not to exceed $1,000 per violation; however, if it is found that an insurer or service warranty association has knowingly and willfully violated a lawful rule or order of the commission or office ~~department~~ or a provision of this part, the office ~~department~~ may impose a fine upon the insurer or association in an amount not to exceed $10,000 for each violation.

Section 1498. Subsections (1) and (2) of section 634.414, Florida Statutes, are amended to read:

634.414 Filing; approval of forms.—

(1) No service warranty form or related form shall be issued or used in this state unless it has been filed with and approved by the office ~~department~~. Upon application for a license, the office ~~department~~ shall require the applicant to submit for approval each brochure, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution. The office ~~department~~ shall disapprove any document which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material facts.

(a) After an application has been approved, a licensee is not required to submit brochures or advertisement to the office ~~department~~ for approval; however, a licensee may not have published, and a person may not publish, any brochure or advertisement which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material fact.

(b) For purposes of this section, brochures and advertising includes, but is not limited to, any report, circular, public announcement, certificate, or

other printed matter or advertising material which is designed or used to solicit or induce any persons to enter into any service warranty agreement.

(2) Each filing shall be made not less than 30 days in advance of its issuance or use. At the expiration of 30 days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively disapproved by written order of the office ~~department~~.

Section 1499. Section 634.4145, Florida Statutes, is amended to read:

634.4145 Grounds for disapproval of forms.—The office ~~department~~ shall disapprove any form filed under s. 634.414 if the form:

(1) Violates this part;

(2) Is misleading in any respect;

(3) Is reproduced so that any material provision is substantially illegible; or

(4) Contains provisions which are unfair or inequitable or which encourage misrepresentation.

Section 1500. Section 634.415, Florida Statutes, is amended to read:

634.415 Tax on premiums; annual statement; reports; quarterly statements.—

(1) In addition to the license fees provided in this part for service warranty associations and license taxes as provided in the insurance code as to insurers, each such association and insurer shall, annually on or before March 1, file with the office ~~department~~ its annual statement, in the form prescribed by the commission ~~department~~, showing all premiums or assessments received by it in connection with the issuance of service warranties in this state during the preceding calendar year and using accounting principles which will enable the office ~~department~~ to ascertain whether the financial requirements set forth in s. 634.406 have been satisfied.

(2) The gross amount of premiums and assessments is subject to the sales tax imposed by s. 212.0506.

(3) The office ~~department~~ may levy a fine of up to $100 a day for each day an association neglects to file the annual statement in the form and within the time provided by this part. The amount of the fine shall be established by rules adopted ~~promulgated~~ by the commission ~~department~~. The office ~~department~~ shall deposit all sums collected by it under this section to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

(4) In addition to an annual statement, the office ~~department~~ may require of licensees, under oath and in the form prescribed by it, quarterly statements or special reports which it deems necessary to the proper supervision of licensees under this part. For manufacturers as defined in s. 634.401, the office ~~department~~ shall require only the annual audited financial statements of the warranty operations and corporate reports as filed by

the manufacturer with the Securities and Exchange Commission, provided that the office ~~department~~ may require additional reporting by manufacturers upon a showing by the office ~~department~~ that annual reporting is insufficient to protect the interest of purchasers of service warranty agreements in this state or fails to provide sufficient proof of the financial status required by this part.

(5) The office ~~department~~ may suspend or revoke the license of a service warranty association failing to file its annual statement or quarterly report when due.

(6) The commission ~~department~~ may by rule require each service warranty association to submit to the office ~~department~~, as the commission ~~department~~ may designate, all or part of the information contained in the financial statements and reports required by this section in a computer-readable form compatible with the electronic data processing system specified by the office ~~department~~.

Section 1501. Section 634.416, Florida Statutes, is amended to read:

634.416 Examination of associations.—

(1) Service warranty associations licensed under this part are subject to periodic examination by the office ~~department~~, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624. However, the rate charged a service warranty association by the office ~~department~~ for examination may be adjusted to reflect the amount collected for the Form 10-K filing fee as provided in this section. On or before May 1 of each year, an association may submit to the office ~~department~~ the Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended. Upon receipt and review of the most current Form 10-K, the office ~~department~~ may waive the examination requirement; if the office ~~department~~ determines not to waive the examination, such examination will be limited to that examination necessary to ensure compliance with this part. The Form 10-K shall be accompanied by a filing fee of $2,000 to be deposited into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

(2) The office ~~department~~ is not required to examine an association that has less than $20,000 in gross written premiums as reflected in its most recent annual statement. The office ~~department~~ may examine such an association if it has reason to believe that the association may be in violation of this part or is otherwise in an unsound financial condition. If the office ~~department~~ examines an association that has less than $20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

Section 1502. Subsection (10) of section 634.422, Florida Statutes, is amended to read:

634.422 Grounds for compulsory refusal, suspension, or revocation of license or appointment of sales representatives.—The department shall

deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist:

(10) Willful failure to comply with, or willful violation of, any proper order or rule of the department or commission, or willful violation of any provision of this part.

Section 1503. Subsection (3) of section 634.423, Florida Statutes, is amended to read:

634.423 Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.—The department may deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.422:

(3) Violation of any lawful order or rule of the department or commission.

Section 1504. Subsection (2) of section 634.426, Florida Statutes, is amended to read:

634.426 Administrative fine in lieu of suspension or revocation of license or appointment.—

(2) The order may allow the licensee or appointee a reasonable period, not to exceed 30 days, within which to pay to the department or office the amount of the penalty so imposed. If the licensee or appointee fails to pay the penalty in its entirety to the department or office ~~at its office in Tallahassee~~ within the period so allowed, the license and appointment of the licensee or appointee shall stand suspended or revoked or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further proceedings.

Section 1505. Section 634.427, Florida Statutes, is amended to read:

634.427 Disposition of taxes and fees.—All license fees, taxes on premiums, registration fees, and administrative fines and penalties collected under this part from service warranty associations and sales representatives shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1506. Section 634.428, Florida Statutes, is amended to read:

634.428 Insurance business not authorized.—Nothing in the Florida Insurance Code or in this part shall be deemed to authorize any service warranty association to transact any insurance business other than that of service warranty as herein defined or otherwise to engage in any other type of insurance unless the association is authorized under a certificate of authority issued by the office ~~department~~ under the provisions of the Florida Insurance Code.

Section 1507. Subsection (2) of section 634.430, Florida Statutes, is amended to read:

634.430 Dissolution or liquidation.—

(2) The department and office shall be notified of the commencement of voluntary dissolution proceedings of a manufacturer licensed under this part. As to the warranty operations of a manufacturer in this state, the department shall supervise the voluntary dissolution and shall require protection of the interests of the department, office, and consumers who have been issued service warranties by the manufacturer by the continuation of deposits or bonds as required by this part until that time as all warranties issued by the manufacturer are no longer in effect or all outstanding warranties have been assigned to another association approved by the department and office. The notification as provided herein shall be made by the manufacturer within 30 days of the commencement of any legal action for dissolution.

Section 1508. Subsection (4) of section 634.433, Florida Statutes, is amended to read:

634.433 Civil remedy.—

(4) This section shall not be construed to authorize a class action suit against a service warranty association or a civil action against the department, the office, their ~~its~~ employees, or the Chief Financial Officer ~~Insurance Commissioner~~.

Section 1509. Section 634.437, Florida Statutes, is amended to read:

634.437 Power of department and office to examine and investigate.—The department and office have ~~has~~ the power, within their respective regulatory jurisdictions, to examine and investigate the affairs of every person involved in the business of service warranty in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by s. 634.435, and each shall have the powers and duties specified in ss. 634.438-634.442 in connection therewith.

Section 1510. Section 634.438, Florida Statutes, is amended to read:

634.438 Prohibited practices; hearings; procedure; service of process.—

(1) Whenever the department or office has reason to believe that any person has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 634.436, or is engaging in the business of service warranty without being properly licensed as required by this part, and that a proceeding by the department or office in respect thereto would be in the interest of the public, the department or office shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The department or office, a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have

those powers enumerated in s. 120.569; however, the penalty for failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed $1,000 per violation.

(3) A statement of charges, notice, or order under this part may be served by anyone duly authorized by the department or office, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at her or his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

Section 1511. Section 634.439, Florida Statutes, is amended to read:

634.439 Cease and desist and penalty orders.—After the hearing provided for in s. 634.438, the department or office shall enter a final order in accordance with s. 120.569. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of service warranty business, the department or office also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of service warranty business. Further, the department or office may, at its discretion, order any one or more of the following penalties:

(1) The suspension or revocation of such person's license, or eligibility for any license, if the person knew, or reasonably should have known, she or he was in violation of this part.

(2) If it is determined that the person charged has provided or offered to provide service warranties without proper licensure, the imposition of an administrative penalty not to exceed $1,000 for each service warranty contract offered or effectuated.

Section 1512. Section 634.44, Florida Statutes, is amended to read:

634.44 Appeals from orders of the department or office.—Any person subject to an order of the department or office under s. 634.439 may obtain a review of such order by filing an appeal therefrom in accordance with the provisions and procedures for appeal from the orders of the department or office in general under s. 120.68.

Section 1513. Section 634.441, Florida Statutes, is amended to read:

634.441 Penalty for violation of cease and desist order.—Any person who violates a cease and desist order of the department or office under s. 634.439 while such order is in effect, after notice and hearing as provided in s. 634.438, is subject, at the discretion of the department or office, to any one or more of the following penalties:

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

(2) The suspension or revocation of such person's license or eligibility to hold a license.

Section 1514. Section 634.442, Florida Statutes, is amended to read:

634.442 Injunctive proceedings.—In addition to the penalties and other enforcement provisions of this part, if any person violates s. 634.403 or s. 634.420 or any rule adopted pursuant thereto, the department or office may resort to a proceeding for injunction in the circuit court of the county where such person resides or has her or his or its principal place of business, and therein apply for such temporary and permanent orders as the department or office deems ~~may deem~~ necessary to restrain such person from engaging in any such activities, until such person has complied with such provision or rule.

Section 1515. Section 634.443, Florida Statutes, is amended to read:

634.443 Civil liability.—The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department or office will abrogate such rights to damages or other relief in any court.

Section 1516. Section 634.444, Florida Statutes, is amended to read:

634.444 Investigatory records.—All active examination or investigatory records of the department or office made or received pursuant to this part are confidential and exempt from the provisions of s. 119.07(1) until such investigation is completed or ceases to be active. For the purposes of this section, an investigation is considered "active" while the investigation is being conducted by the department or office with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department or office is proceeding with reasonable dispatch, and there is good faith belief that action may be initiated by the department or office or other administrative law enforcement agency.

Section 1517. Subsection (3) of section 635.011, Florida Statutes, is amended to read:

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

~~(3) "Department" means the Department of Insurance of this state.~~

Section 1518. Subsection (1) of section 635.031, Florida Statutes, is amended to read:

635.031 Additional limitations.—In addition to laws otherwise applicable, mortgage guaranty insurers are subject to the following limitations:

(1) No such insurer may retain risk as to any one subject of insurance in any amount exceeding 10 percent of its surplus as to policyholders. In determining the amount of risk retained, applicable reinsurance in any assuming insurer authorized to transact insurance in this state or approved by the office ~~department~~ shall be deducted from the total direct risk insured.

Section 1519. Subsection (2) of section 635.041, Florida Statutes, is amended to read:

635.041 Contingency reserve.—

(2) Subject to approval by the insurance department of the insurer's state of domicile and upon 30 days' prior notice to the office ~~Department of Insurance of this state~~, the contingency reserve shall be available for loss payments only when the insurer's incurred losses in any one calendar year exceed 35 percent of the corresponding earned premiums.

Section 1520. Subsection (3) of section 635.042, Florida Statutes, is amended to read:

635.042 Minimum surplus requirement.—

(3) If a mortgage guaranty insurer is not in compliance with this section, the office ~~department~~ may take any action against the insurer that the office ~~department~~ may take against an insurer that is not in compliance with s. 624.408.

Section 1521. Subsections (1) and (2) of section 635.071, Florida Statutes, are amended to read:

635.071 Filings, approval of forms; rate filings.—

(1) No policy form or related form may be issued or used in this state unless it has been filed with and approved by the office ~~department~~ as provided by laws applicable to casualty or surety insurance.

(2) Each insurer shall file with the office ~~department~~ for informational purposes the rate to be charged and the premium to be paid by the policyholder, including all modifications of rates and premiums.

Section 1522. Section 635.081, Florida Statutes, is amended to read:

635.081 Administration and enforcement.—The commission may ~~department has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and shall have the same powers of administration and enforcement of the provisions of this chapter as it has with respect to casualty or surety insurers in general under the Florida Insurance Code.

Section 1523. Section 636.003, Florida Statutes, is amended to read:

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

(1) "Capitation" means the fixed amount paid by a prepaid limited health service organization to a health care provider under contract with the prepaid limited health service organization in exchange for the rendering of covered limited health services.

~~(2) "Commissioner" means the Commissioner of Insurance.~~

~~(3) "Department" means the Department of Insurance.~~

(2)~~(4)~~ "Enrollee" means an individual, including dependents, who is entitled to limited health services pursuant to a contract, or any other evidence of coverage, with an entity authorized to provide or arrange for such services under this act.

(3)~~(5)~~ "Evidence of coverage" means the certificate, agreement, membership card, or contract issued pursuant to this act setting forth the coverage to which an enrollee is entitled.

(4)~~(6)~~ "Insolvent" means that all the statutory assets of the prepaid limited health service organization, if made immediately available, would not be sufficient to discharge all of its statutory liabilities or that the prepaid limited health service organization is unable to pay its debts as they become due in the usual course of business.

(5)~~(7)~~ "Limited health service" means ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services. "Limited health service" does not include inpatient, hospital surgical services, or emergency services except as such services are provided incident to the limited health services set forth in this subsection.

(6)~~(8)~~ "Prepaid limited health service contract" means any contract entered into by a prepaid limited health service organization with a subscriber or group of subscribers to provide limited health services in exchange for a prepaid per capita or prepaid aggregate fixed sum.

(7)~~(9)~~ "Prepaid limited health service organization" means any person, corporation, partnership, or any other entity which, in return for a prepayment, undertakes to provide or arrange for, or provide access to, the provision of a limited health service to enrollees through an exclusive panel of providers. Prepaid limited health service organization does not include:

(a) An entity otherwise authorized pursuant to the laws of this state to indemnify for any limited health service;

(b) A provider or entity when providing limited health services pursuant to a contract with a prepaid limited health service organization, a health maintenance organization, a health insurer, or a self-insurance plan; or

(c) Any person who, in exchange for fees, dues, charges or other consideration, provides access to a limited health service provider without assuming any responsibility for payment for the limited health service or any portion thereof.

(8)~~(10)~~ "Provider" means, but is not limited to, any physician, dentist, health facility, or other person or institution which is duly licensed in this state to deliver limited health services.

(9)~~(11)~~ "Qualified independent actuary" means an actuary who is a member of the American Academy of Actuaries or the Society of Actuaries and

has experience in establishing rates for limited health services and who has no financial or employment interest in the prepaid limited health service organization.

(10)~~(12)~~ "Reporting period" means the annual accounting period or fiscal year, or any part thereof, of the prepaid limited health service organization. The calendar year shall be the fiscal year for each such organization other than those holding an existing certificate of authority as of October 1, 1993.

(11)~~(13)~~ "Subscriber" means an individual who has contracted, or arranged, or on whose behalf a contract or arrangement has been entered into, with a prepaid limited health service organization for health care services or other persons who also receive health care services as a result of the contract.

(12)~~(14)~~ "Surplus" means total statutory assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the prepaid limited health service organization shall not be included in surplus. Surplus includes capital stock, capital in excess of par, other contributed capital, retained earnings, and surplus notes.

(13)~~(15)~~ "Surplus notes" means debt which has been subordinated to all claims of subscribers and general creditors of the organization and the debt instrument shall so state.

(14)~~(16)~~ "Statutory accounting principles" means generally accepted accounting principles, except as modified by this act.

(15)~~(17)~~ "Qualified employee" means an employee of the organization:

(a) Who has a minimum of 5 years of experience in rate determinations for prepaid health services, and who demonstrates through filings with the office ~~department~~ that the person is in fact qualified under the terms of this act; or

(b) Who is a member of the American Academy of Actuaries or the Society of Actuaries and has experience in establishing rates for limited health service.

Section 1524. Section 636.006, Florida Statutes, is amended to read:

636.006 Insurance business not authorized.—Nothing in the Florida Insurance Code or this act authorizes any prepaid limited health service organization to transact any insurance business other than that specifically authorized by this act, or otherwise to engage in any other type of insurance unless it is authorized under a certificate of authority issued by the office ~~department~~ under the provisions of the Florida Insurance Code.

Section 1525. Section 636.007, Florida Statutes, is amended to read:

636.007 Certificate of authority required.—A person, corporation, partnership, or other entity may not operate a prepaid limited health service organization in this state without obtaining and maintaining a certificate of authority from the office ~~department~~ pursuant to this act. A political

subdivision of this state which is operating an emergency medical services system and offers a prepaid ambulance service plan as a part of its emergency medical services system shall be exempt from the provisions of this act and all other provisions of the insurance code. An insurer, while authorized to transact health insurance in this state, or a health maintenance organization possessing a valid certificate of authority in this state, may also provide services under this act without additional qualification or authority, but shall be otherwise subject to the applicable provisions of this act.

Section 1526. Section 636.008, Florida Statutes, is amended to read:

636.008 Application for certificate of authority.—Before any entity may operate a prepaid limited health service organization, it must obtain a certificate of authority from the office ~~department~~. An application for a certificate of authority to operate a prepaid limited health service organization must be filed with the office ~~department~~ on a form prescribed by the commission ~~department~~. Such application must be sworn to by an officer or authorized representative of the applicant and be accompanied by the following:

(1) A copy of the applicant's basic organizational document, including the articles of incorporation, articles of association, partnership agreements, trust agreement, or other applicable documents and all amendments to such documents.

(2) A copy of all bylaws, rules, and regulations, or similar documents, if any, regulating the conduct of the applicant's internal affairs.

(3) A list of the names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including, but not limited to, all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the officers, contracted management company personnel, and any person or entity owning or having the right to acquire 10 percent or more of the voting securities of the applicant. Such listing must fully disclose the extent and nature of any contracts or arrangements between any individual who is responsible for conducting the applicant's affairs and the prepaid limited health service organization, including any possible conflicts of interest.

(4) A complete biographical statement, on forms prescribed by the commission ~~department~~, an independent investigation report, and a set of fingerprints, as provided in chapter 624, with respect to each individual identified under subsection (3).

(5) A statement generally describing the applicant, its facilities and personnel, and the limited health service or services to be offered.

(6) A copy of the form of all contracts made or to be made between the applicant and any providers regarding the provision of limited health services to enrollees.

(7) A copy of the form of any contract made or arrangement to be made between the applicant and any person listed in subsection (3).

(8) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any function, including, but not limited to, marketing, administration, enrollment, investment management, and subcontracting for the provision of limited health services to enrollees.

(9) A copy of the form of any prepaid limited health service contract which is to be issued to employers, unions, trustees, individuals, or other organizations and a copy of any form of evidence of coverage to be issued to subscribers.

(10) A copy of the applicant's most recent financial statements audited by an independent certified public accountant.

(11) A copy of the applicant's financial plan, including a 3-year projection of anticipated operating results, a statement of the sources of funding, and provisions for contingencies, for which projection all material assumptions shall be disclosed.

(12) A schedule of rates and charges for each contract to be used which contains an opinion from a qualified independent actuary or a qualified employee that the rates are not inadequate, excessive, or discriminatory. If a prepaid limited health service organization does not employ or otherwise retain the services of an independent actuary, the chief executive officer of the prepaid limited health service organization must review and sign the certification indicating her or his agreement with its conclusions. If the office ~~department~~ determines that, based upon documents filed with the office ~~department~~, the qualified employee is not qualified, the organization shall retain the services of a qualified independent actuary.

(13) A description of the proposed method of marketing.

(14) A description of the subscriber complaint procedures to be established and maintained as required under s. 636.038.

(15) A description of how the applicant will comply with s. 636.046.

(16) The fee for issuance of a certificate of authority as provided in s. 636.057.

(17) Such other information as the commission or office ~~department~~ may reasonably require to make the determinations required by this act.

The office ~~department~~ shall issue a certificate of authority which shall expire on June 1 each year and which the office ~~department~~ shall renew if the applicant pays the license fees provided in s. 636.057 and if the office ~~department~~ is satisfied that the organization is in compliance with this act.

Section 1527. Section 636.009, Florida Statutes, is amended to read:

636.009 Issuance of certificate of authority; denial.—

(1) Following receipt of an application filed pursuant to s. 636.008, the office ~~department~~ shall review such application and notify the applicant of any deficiencies contained therein. The office ~~department~~ shall issue a certificate of authority to an applicant who has filed a completed application in conformity with s. 636.008, upon payment of the fees specified by s. 636.057 and upon the office ~~department~~ being satisfied that the following conditions are met:

(a) The requirements of s. 636.008 have been fulfilled.

(b) The entity is actuarially sound.

(c) The entity has met the applicable minimum surplus requirements specified in s. 636.045.

(d) The procedures for offering limited health services and offering and terminating contracts to subscribers will not unfairly discriminate on the basis of age, sex, race, handicap, health, or economic status. However, this paragraph does not prohibit reasonable underwriting classifications for the purposes of establishing contract rates, nor does it prohibit prospective experience rating.

(e) The entity furnished evidence of adequate insurance coverage, including, but not limited to, general liability or professional liability coverage, or an adequate plan for self-insurance to respond to claims for injuries arising out of the furnishing covered services.

(f) The ownership, control, and management of the entity are competent and trustworthy and possess managerial experience that would make the proposed operation beneficial to the subscribers. The office ~~department~~ shall not grant or continue authority to transact the business of a prepaid limited health service organization in this state at any time during which the office ~~department~~ has good reason to believe that the ownership, control, or management of the organization includes any person whose business operations are or have been marked by business practices or conduct that is to the detriment of the public, stockholders, investors, or creditors.

(g) The entity has demonstrated compliance with s. 636.047 by obtaining a blanket fidelity bond in the amount of at least $50,000, issued by a licensed insurance carrier in this state, that will reimburse the entity in the event that anyone handling the funds of the entity either misappropriates or absconds with the funds. All employees handling the funds must be covered by the blanket fidelity bond. However, the fidelity bond need not cover an individual who owns 100 percent of the stock of the organization if such stockholder maintains total control of the organization's financial assets, books and records, and fidelity bond coverage is not available for such individual. An agent licensed under the provisions of the Florida Insurance Code may, either directly or indirectly, represent the prepaid limited health service organization in the solicitation, negotiation, effectuation, procurement, receipt, delivery, or forwarding of any subscriber's contract, or collect or forward any consideration paid by the subscriber to the prepaid limited health service organization. The licensed agent shall not be required to post the bond required by this subsection.

(h) The prepaid limited health service organization has a grievance procedure that will facilitate the resolution of subscriber grievances and that includes both formal and informal steps available within the organization.

(i) The applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and to prospective enrollees. In making this determination, the office ~~department~~ may consider:

1. The financial soundness of the applicant's arrangements for limited health services and the minimum standard rates, deductibles, copayments, and other patient charges used in connection therewith.

2. The adequacy of surplus, other sources of funding, and provisions for contingencies.

3. The manner in which the requirements of s. 636.046 have been fulfilled.

(j) The agreements with providers for the provision of limited health services contain the provisions required by s. 636.035.

(k) Any deficiencies identified by the office ~~department~~ have been corrected.

(l) All requirements of this chapter have been met.

(2) If the certificate of authority is denied, the office ~~department~~ shall notify the applicant and shall specify the reasons for denial in the notice.

Section 1528. Section 636.015, Florida Statutes, is amended to read:

636.015 Language used in contracts and advertisements; translations.—

(1)(a) All contracts or forms must be printed in English.

(b) If the negotiations leading up to the effectuation of a prepaid limited health service organization contract are conducted in a language other than English, the prepaid limited health service organization must supply to the member a written translation of the contract, which translation accurately reflects the substance of the contract and is in the language used to negotiate the contract. The written translation must be affixed to, and shall become a part of, the contract or form, including a certification that the written translation is identical to the English version. Any such translation must be furnished to the office ~~department~~ as part of the filing of the prepaid limited health services contract form. No translation of a prepaid limited health services contract form may be approved by the office ~~department~~ unless the translation accurately reflects the substance of the prepaid limited health services contract form in translation.

(2) The text of all advertisements by a prepaid limited health service organization, if printed or broadcast in a language other than English, also must be available in English and must be furnished to the office ~~department~~ upon request. As used in this subsection, the term "advertisement" means any advertisement, circular, pamphlet, brochure, or other printed material

disclosing or disseminating advertising material or information by a prepaid limited health service organization to prospective or existing subscribers and includes any radio or television transmittal of an advertisement or information.

Section 1529. Paragraph (a) of subsection (1) of section 636.016, Florida Statutes, is amended to read:

636.016 Prepaid limited health service contracts.—For any entity licensed prior to October 1, 1993, all subscriber contracts in force at such time shall be in compliance with this section upon renewal of such contract.

(1) Any entity issued a certificate of authority and otherwise in compliance with this act may enter into contracts in this state to provide an agreed-upon set of limited health services to subscribers in exchange for a prepaid per capita sum or a prepaid aggregate fixed sum.

(a) The office ~~department~~ shall disapprove any form filed under this subsection, or withdraw any previous approval thereof, if the form:

1. Is in any respect in violation of, or does not comply with, any provision of this act or rule adopted thereunder.

2. Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

3. Has any title, heading, or other indication of its provisions which is misleading.

4. Is printed or otherwise reproduced in such a manner as to render any material provision of the form substantially illegible.

5. Contains provisions which are unfair, inequitable, or contrary to the public policy of this state or which encourage misrepresentation.

6. Charges rates that are determined by the office ~~department~~ to be inadequate, excessive, or unfairly discriminatory, or if the rating methodology followed by the prepaid limited health service organization is determined by the office ~~department~~ to be inconsistent with the provisions of s. 636.017.

Section 1530. Section 636.017, Florida Statutes, is amended to read:

636.017 Rates and charges.—

(1) The rates charged by any prepaid limited health service organization to its subscribers shall not be excessive, inadequate, or unfairly discriminatory. The commission or office ~~department~~ may require whatever information it deems necessary to determine that a rate or proposed rate meets the requirements of this section.

(2) In determining whether a rate is in compliance with subsection (1), the office ~~department~~ must take into consideration the limited services

provided, the method in which the services are provided, and the method of provider payment. This section may not be construed as authorizing the commission ~~department~~ to establish by rule minimum loss ratios for prepaid limited health service organizations' rates.

Section 1531. Section 636.018, Florida Statutes, is amended to read:

636.018 Changes in rates and benefits; material modifications; addition of limited health services.—

(1)(a) No prepaid limited health services contract, certificate of coverage, application, enrollment form, rider, endorsement, and applicable rates to be charged may be delivered in this state unless the forms and rates have been filed with the office ~~department~~ by or on behalf of the prepaid limited health service organization and have been approved by the office ~~department~~. Every form filed shall be identified by a unique form number placed in the lower left corner of each form. If a prepaid limited health service organization desires to amend any contract with its subscribers or any certificate or member handbook, or desires to change any rate charged for the contract or to change any basic prepaid limited health services contract, certificate, grievance procedure, or member handbook form, or application form where written application is required and is to be made a part of the contract, or printed amendment, addendum, rider, or endorsement form or form renewal certificate, it must file such changes 30 days prior to the effective date of the proposed change. At least 30 days' written notice must be provided to the subscriber before application of any approved change in rates. In the case of a group enrollee, there may be a contractual agreement with the prepaid limited health service organization to have the contract holder provide the required notice to the individual enrollees of the group. Any proposed change must contain information as required by s. 636.017.

(b) The prepaid limited health service organization's certification must be prepared by an independent actuary or a qualified employee. The chief executive officer of the prepaid limited health service organization must review and sign the certification indicating her or his agreement with its conclusions. Following receipt of notice of any disapproval or withdrawal of approval, no prepaid limited health service organization may issue or use any form disapproved by the office ~~department~~ or as to which the office ~~department~~ has withdrawn approval.

(2) If such filings are disapproved, the office ~~department~~ shall notify the prepaid limited health service organization and shall specify the reasons for disapproval in the notice. The prepaid limited health service organization has 21 days from the date of receipt of notice to request a hearing before the office ~~department~~ pursuant to chapter 120.

Section 1532. Subsection (2) of section 636.025, Florida Statutes, is amended to read:

636.025 Validity of noncomplying contracts.—

(2) Any prepaid limited health services contract delivered or issued for delivery in this state covering a subscriber, which subscriber pursuant to the

provisions of this act the organization may not lawfully cover under the contract, is cancelable at any time by the organization, any provision of the contract to the contrary notwithstanding, and the organization must promptly cancel the contract in accordance with the request of the office ~~department~~ therefor. No such illegality or cancellation may be deemed to relieve the organization of any liability incurred by it under the contract while in force or to prohibit the organization from retaining the pro rata earned premium or rate thereon. This subsection does not relieve the organization from any penalty otherwise incurred by the organization under this act for any such violation.

Section 1533. Subsection (3) of section 636.029, Florida Statutes, is amended to read:

636.029 Construction and relationship with other laws.—

(3) The department and office are ~~is~~ vested with all powers granted to it under the insurance code with respect to the investigation of any violation of this act within their respective regulatory jurisdictions.

Section 1534. Section 636.036, Florida Statutes, is amended to read:

636.036 Administrative, provider, and management contracts.—

(1) The office ~~department~~ may require a prepaid limited health service organization to submit any contract for administrative services, contract with a provider physician, contract for management services, or contract with an affiliated entity to the office ~~department~~ if the office ~~department~~ has information that the prepaid limited health service organization has entered into a contract which requires it to pay a fee which is unreasonably high in relation to the service provided.

(2) After review of a contract, the office ~~department~~ may order the prepaid limited health service organization to cancel the contract if it determines that the fees to be paid by the prepaid limited health service organization under the contract are so unreasonably high as compared with similar contracts entered into by the prepaid limited health service organization in similar circumstances that the contract is detrimental to the subscribers, stockholders, investors, or creditors of the prepaid limited health service organization.

(3) All contracts for administrative services, management services, or provider services or contracts with affiliated entities, entered into or renewed by a prepaid limited health service organization on or after October 1, 1993, must contain a provision that the contract will be canceled upon issuance of an order by the office ~~department~~ pursuant to this section.

Section 1535. Section 636.037, Florida Statutes, is amended to read:

636.037 Contract providers.—Each prepaid limited health service organization must, upon the request of the office ~~department~~, file financial statements for all contract providers of limited health care services who have assumed through capitation or other means more than 10 percent of the health care risks of the prepaid limited health service organization.

Section 1536. Section 636.038, Florida Statutes, is amended to read:

636.038 Complaint system; annual report.—

(1) Every prepaid limited health service organization must establish and maintain a complaint system providing reasonable procedures for resolving written complaints initiated by enrollees and providers. This section does not preclude an enrollee or a provider from filing a complaint with the department or office or limit the department's or office's ability to investigate such complaints.

(2) Every prepaid limited health service organization shall report annually to the department and office the total number of grievances handled, a categorization of the cases underlying the grievances, and the final disposition of the grievances.

Section 1537. Section 636.039, Florida Statutes, is amended to read:

636.039 Examination by the office ~~department~~.—The office ~~department~~ shall examine the affairs, transactions, accounts, business records, and assets of any prepaid limited health service organization, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624, as often as it deems it expedient for the protection of the people of this state, but not less frequently than once every 3 years. In lieu of making its own financial examination, the office ~~department~~ may accept an independent certified public accountant's audit report prepared on a statutory accounting basis consistent with this act. However, except when the medical records are requested and copies furnished pursuant to s. 456.057, medical records of individuals and records of physicians providing service under contract to the prepaid limited health service organization are not subject to audit, but may be subject to subpoena by court order upon a showing of good cause. For the purpose of examinations, the office ~~department~~ may administer oaths to and examine the officers and agents of a prepaid limited health service organization concerning its business and affairs. The expenses of examination of each prepaid limited health service organization by the office ~~department~~ are subject to the same terms and conditions as apply to insurers under part II of chapter 624. Expenses of all examinations of a prepaid limited health service organization may never exceed a maximum of $20,000 for any 1-year period.

Section 1538. Section 636.043, Florida Statutes, is amended to read:

636.043 Annual, quarterly, and miscellaneous reports.—

(1) Each prepaid limited health service organization must file with the office ~~department~~ annually, within 3 months after the end of its fiscal year, a report verified by the oath of at least two officers covering the preceding calendar year. Any organization licensed prior to October 1, 1993, shall not be required to file a financial statement, as required by paragraph (2)(a), based on statutory accounting principles until the first annual report for fiscal years ending after December 31, 1994.

(2) Such report must be on forms prescribed by the commission ~~department~~ and must include:

(a)1. A statutory financial statement of the organization prepared in accordance with statutory accounting principles, including its balance sheet, income statement, and statement of changes in cash flow for the preceding year, certified by an independent certified public accountant, or a consolidated audited financial statement of its parent company prepared on the basis of statutory accounting principles, certified by an independent certified public accountant, attached to which must be consolidating financial statements of the parent company, including the prepaid limited health service organization.

2. Any entity subject to this chapter may make written application to the office ~~department~~ for approval to file audited financial statements prepared in accordance with generally accepted accounting principles in lieu of statutory financial statements. The office ~~department~~ shall approve the application if it finds it to be in the best interest of the subscribers. An application for exemption is required each year and must be filed with the office ~~department~~ at least 2 months prior to the end of the fiscal year for which the exemption is being requested.

(b) A list of the names and residence addresses of all persons responsible for the conduct of its affairs, together with a disclosure of the extent and nature of any contracts or arrangements between such persons and the prepaid limited health service organization, including any possible conflicts of interest.

(c) The number of prepaid limited health services contracts, issued and outstanding, and the number of prepaid limited health services contracts terminated.

(d) The number and amount of damage claims for medical injury initiated against the prepaid limited health service organization, and if known, any of the providers engaged by it during the reporting year, broken down into claims with and without formal legal process, and the disposition, if any, of each such claim.

(e) An actuarial report certified by a qualified independent actuary or qualified employee that:

1. The prepaid limited health service organization is actuarially sound, which certification shall consider the rates, benefits, and expenses of, and any other funds available for, the payment of obligations of the organization.

2. The rates being charged or to be charged are actuarially adequate to the end of the period for which rates have been guaranteed.

3. Incurred but not reported claims and claims reported but not fully paid have been adequately provided for.

(f) Such other information relating to the performance of the prepaid limited health service organization as is reasonably required by the commission or office ~~department~~.

(3) Every prepaid limited health service organization which fails to file an annual report or quarterly report in the form and within the time re-

quired by this section shall forfeit up to $500 for each day for the first 10 days during which the neglect continues and shall forfeit up to $1,000 for each day after the first 10 days during which the neglect continues; and, upon notice by the office ~~department~~ to that effect, the organization's authority to enroll new subscribers or to do business in this state ceases while such default continues. The office ~~department~~ shall deposit all sums collected by it under this section to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund. The office ~~department~~ may not collect more than $50,000 for each report.

(4) Each authorized prepaid limited health service organization must file a quarterly report for each calendar quarter within 45 days after the end of the quarter. The report shall contain:

(a) A financial statement prepared in accordance with statutory accounting principles. Any entity licensed before October 1, 1993, shall not be required to file a financial statement based on statutory accounting principles until the first quarterly filing after the entity files its annual financial statement based on statutory accounting principles as required by subsection (1).

(b) A listing of providers.

(c) Such other information relating to the performance of the prepaid limited health service organization as is reasonably required by the commission or office ~~department~~.

(5) The office ~~department~~ may require monthly reports if the financial condition of the prepaid limited health service organization has deteriorated from previous periods or if the financial condition of the organization is such that it may be hazardous to subscribers if not monitored more frequently.

(6) Each authorized prepaid limited health service organization shall retain an independent certified public accountant, hereinafter referred to as "CPA," who agrees by written contract with the prepaid limited health service organization to comply with the provisions of this act. The contract must state that:

(a) The CPA will provide to the prepaid limited health service organization audited statutory financial statements consistent with this act.

(b) Any determination by the CPA that the prepaid limited health service organization does not meet minimum surplus requirements as set forth in this act will be stated by the CPA, in writing, in the audited financial statement.

(c) The completed workpapers and any written communications between the CPA and the prepaid limited health service organization relating to the audit of the prepaid limited health service organization will be made available for review on a visual-inspection-only basis by the office ~~department~~ at the offices of the prepaid limited health service organization, at the office ~~department~~, or at any other reasonable place as mutually agreed between the office ~~department~~ and the prepaid limited health service organization.

The CPA must retain for review the workpapers and written communications for a period of not less than 6 years.

Section 1539. Subsection (2) of section 636.045, Florida Statutes, is amended to read:

636.045 Minimum surplus requirements.—

(2) The office ~~department~~ may not issue a certificate of authority unless the prepaid limited health service organization has a minimum surplus in an amount of $150,000 or 10 percent of liabilities, whichever is the greater amount.

Section 1540. Subsections (1) and (2) of section 636.046, Florida Statutes, are amended to read:

636.046 Insolvency protection.—

(1) Except as required in subsection (2), each prepaid limited health service organization must deposit with the department cash or securities of the type eligible under s. 641.35 which must have at all times a market value in the amount set forth in this subsection. The amount of the deposit shall be reviewed annually or more often as the office ~~department~~ deems necessary. The market value of the deposit must be $50,000.

(2)(a) If securities or assets deposited by a prepaid limited health service organization under this act are subject to material fluctuations in market value, the office ~~department~~ may in its discretion require the organization to deposit and maintain on deposit additional securities or assets in an amount as may be reasonably necessary to assure that the deposit will at all times have a market value of not less than the amount specified under this section.

(b) If for any reason the market value of assets and securities of a prepaid limited health service organization held on deposit under this act falls below the amount required, the organization must promptly deposit other or additional assets or securities eligible for deposit sufficient to cure the deficiency. If the prepaid limited health service organization has failed to cure the deficiency within 30 days after receipt of notice by certified mail from the office ~~department~~, the office ~~department~~ may revoke the certificate of authority of the prepaid limited health service organization.

(c) A prepaid limited health service organization may, at its option, deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this act for the purpose of absorbing fluctuations in the value of securities and assets deposited and to facilitate the exchange and substitution of securities and assets. During the solvency of the prepaid limited health service organization any excess must be released to the organization upon its request. During the insolvency of the prepaid limited health service organization, any excess deposit may be released only as provided in s. 625.62.

Section 1541. Section 636.047, Florida Statutes, is amended to read:

636.047 Officers' and employees' fidelity bond.—

(1) A prepaid limited health service organization must maintain in force a fidelity bond in its own name on its officers and employees, in an amount not less than $50,000 or in any other amount prescribed by the commission ~~department~~. Except as otherwise provided by this subsection, the bond must be issued by an insurance company that is licensed to do business in this state.

(2) In lieu of the bond specified in subsection (1), a prepaid limited health service organization may deposit with the department cash or securities or other investments of the types set forth in s. 636.042. Such a deposit must be maintained in joint custody with the department ~~commissioner~~ in the amount and subject to the same conditions required for a bond under this subsection.

Section 1542. Section 636.048, Florida Statutes, is amended to read:

636.048 Suspension or revocation of certificate of authority; suspension of enrollment of new subscribers; terms of suspension.—

(1) The office ~~department~~ may suspend the authority of a prepaid limited health service organization to enroll new subscribers or revoke any certificate issued to a prepaid limited health service organization or order compliance within 30 days, if it finds that any of the following conditions exist:

(a) The organization is not operating in compliance with this act.

(b) The plan is no longer actuarially sound or the organization does not have the minimum surplus as required by this act.

(c) The organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising.

(d) The organization is insolvent.

(e) The prepaid limited health service organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to ss. 636.008 and 636.009, unless amendments to such submissions have been filed with and approved by the office ~~department~~.

(f) The prepaid limited health service organization is unable to fulfill its obligations to furnish limited health services.

(g) The prepaid limited health service organization has no subscribers 12 months after the issuance of the certificate of authority.

(h) The continued operation of the prepaid limited health service organization would be hazardous to its enrollees.

(2) If the office ~~department~~ has cause to believe that grounds for the suspension or revocation of a certificate of authority exist, it shall notify the prepaid limited health service organization in writing specifically stating the grounds for suspension or revocation and shall pursue a hearing on the matter in accordance with the provisions of chapter 120.

(3) When the certificate of authority of a prepaid limited health service organization is surrendered or revoked, such organization must proceed, immediately following the effective date of the order of revocation, to wind up its affairs transacted under the certificate of authority. It may not engage in any further advertising, solicitation, or renewal of contracts. The office ~~department~~ may, by written order, permit such further operation of the organization as it finds to be in the best interest of enrollees, so that enrollees will be afforded the greatest practical opportunity to obtain continuing limited health services.

(4) The office ~~department~~ shall, in its order suspending the authority of a prepaid limited health service organization to enroll new subscribers, specify the period during which the suspension is to be in effect and the conditions, if any, which must be met by the prepaid limited health service organization prior to reinstatement of its authority to enroll new subscribers. The order of suspension is subject to rescission or modification by further order of the office ~~department~~ prior to the expiration of the suspension period. Reinstatement may not be made unless requested by the prepaid limited health service organization; however, the office ~~department~~ may not grant reinstatement if it finds that the circumstances for which the suspension occurred still exist or are likely to recur.

Section 1543. Section 636.049, Florida Statutes, is amended to read:

636.049 Administrative penalty in lieu of suspension or revocation.—In lieu of suspending or revoking a certificate of authority, or when no penalty is specifically provided, whenever any prepaid limited health service organization or other person, corporation, partnership, or entity subject to this act has been found to have violated any provision of this act, the office or department, within its respective regulatory jurisdiction, may:

(1) Issue and cause to be served upon the organization, person, or entity charged with the violation a copy of such findings and an order requiring such organization, person, or entity to cease and desist from engaging in the act or practice which constitutes the violation.

(2) Impose a monetary penalty of not less than $100 for each violation, but not to exceed an aggregate penalty of $100,000.

Section 1544. Section 636.052, Florida Statutes, is amended to read:

636.052 Civil remedy.—In any civil action brought to enforce the terms and conditions of a prepaid limited health service organization contract, the prevailing party is entitled to recover reasonable attorney's fees and court costs. This section does not authorize a civil action against the office or ~~department,~~ its employees~~, or the commissioner~~ or against the Agency for Health Care Administration, its employees, or the director of that agency.

Section 1545. 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 office and department, subject to their respective jurisdiction, are ~~is~~ vested with the power to seek both temporary and permanent injunctive relief when:

(1) A prepaid limited health service organization is being operated by any person or entity without a subsisting certificate of authority.

(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.

(3) Any prepaid limited health service organization, person, or entity is renewing, issuing, or delivering a prepaid limited health services contract without a subsisting certificate of authority.

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

Section 1546. Section 636.055, Florida Statutes, is amended to read:

636.055 Levy upon deposit limited.—No judgment creditor or other claimant, other than the office or department, of a prepaid limited health service organization shall have the right to levy upon any of the assets or securities held in this state as a deposit under s. 636.046.

Section 1547. Subsection (1) of section 636.056, Florida Statutes, is amended to read:

636.056 Rehabilitation, conservation, liquidation, or reorganization; exclusive methods of remedy.—

(1) A delinquency proceeding under part I of chapter 631 or supervision ~~by the department~~ pursuant to ss. 624.80-624.87 constitute the sole and exclusive means of liquidating, reorganizing, rehabilitating, or conserving a prepaid limited health service organization.

Section 1548. Section 636.057, Florida Statutes, is amended to read:

636.057 Fees.—Every prepaid limited health service organization subject to this act must pay to the office ~~department~~ the following fees:

(1) For filing an application for a certificate of authority or amendment thereto: $500.

(2) For filing each annual report: $200.

(3) For each renewal of certificate of authority: $500.

Section 1549. Section 636.058, Florida Statutes, is amended to read:

636.058 Investigative power of department and office.—The department and office, within their respective regulatory jurisdictions, have ~~has~~ the

power to examine and investigate the affairs of every person, entity, or prepaid limited health service organization in order to determine whether the person, entity, or prepaid limited health service organization is operating in accordance with the provisions of this act or has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by s. 641.3903. The office ~~department~~ also has the powers enumerated in ss. 641.3907, 641.3909, and 641.3913.

Section 1550. Section 636.062, Florida Statutes, is amended to read:

636.062 Appeals from the office or department.—Any person, entity, or prepaid limited health service organization subject to an order of the office or department under s. 641.3909 or s. 641.3913 may obtain a review of the order by filing an appeal therefrom in accordance with the provisions and procedures for appeal under s. 120.68.

Section 1551. Section 636.063, Florida Statutes, is amended to read:

636.063 Civil liability.—The provisions of this act are cumulative to rights under the general civil and common law, and no action of the office or department abrogates such rights to damage or other relief in any court.

Section 1552. Subsection (3) of section 636.064, Florida Statutes, is amended to read:

636.064 Confidentiality.—

(3) Any information obtained or produced by the department or office pursuant to an examination or investigation is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the examination report has been filed pursuant to s. 624.319 or until such investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered "active" while such investigation is being conducted by the department or office with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department or office is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the department or office or other administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information, as defined in s. 119.011; personal financial and medical information; information that would defame or cause unwarranted damage to the good name or reputation of an individual; information that would impair the safety and financial soundness of the licensee or affiliated party; proprietary financial information; or information that would reveal the identity of a confidential source, all information obtained by the department or office pursuant to an examination or investigation shall be available after the examination report has been filed or the investigation is completed or ceases to be active.

Section 1553. Section 636.067, Florida Statutes, is amended to read:

636.067 Rules.—The commission may ~~department has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of

this act. A violation of any such rule subjects the violator to the provisions of s. 636.048.

Section 1554. Section 641.185, Florida Statutes, is 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 commission, the office, 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:

(a) A health maintenance organization shall ensure that the health care services provided to its subscribers shall be rendered under reasonable standards of quality of care which are at a minimum consistent with the prevailing standards of medical practice in the community pursuant to ss. 641.495(1) and 641.51.

(b) A health maintenance organization subscriber should receive quality health care from a broad panel of providers, including referrals, preventive care pursuant to s. 641.402(1), emergency screening and services pursuant to ss. 641.31(12) and 641.513, and second opinions pursuant to s. 641.51.

(c) A health maintenance organization subscriber should receive assurance that the health maintenance organization has been independently accredited by a national review organization pursuant to s. 641.512, and is financially secure as determined by the state pursuant to ss. 641.221, 641.225, and 641.228.

(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).

(e) A health maintenance organization subscriber should receive timely, concise information regarding the health maintenance organization's reimbursement to providers and services pursuant to ss. 641.31 and 641.31015 and should receive prompt payment from the organization pursuant to s. 641.3155.

(f) A health maintenance organization subscriber should receive the flexibility to transfer to another Florida health maintenance organization, regardless of health status, pursuant to ss. 641.228, 641.3104, 641.3107, 641.3111, 641.3921, and 641.3922.

(g) A health maintenance organization subscriber should be eligible for coverage without discrimination against individual participants and beneficiaries of group plans based on health status pursuant to s. 641.31073.

(h) A health maintenance organization that issues a group health contract must: provide coverage for preexisting conditions pursuant to s. 641.31071; guarantee renewability of coverage pursuant to s. 641.31074;

provide notice of cancellation pursuant to s. 641.3108; provide extension of benefits pursuant to s. 641.3111; provide for conversion on termination of eligibility pursuant to s. 641.3921; and provide for conversion contracts and conditions pursuant to s. 641.3922.

(i) A health maintenance organization subscriber should receive timely and, if necessary, urgent grievances and appeals within the health maintenance organization pursuant to ss. 641.228, 641.31(5), 641.47, and 641.511.

(j) A health maintenance organization should receive timely and, if necessary, urgent review by an independent state external review organization for unresolved grievances and appeals pursuant to s. 408.7056.

(k) A health maintenance organization subscriber shall be given written notice at least 30 days in advance of a rate change pursuant to s. 641.31(3)(b). In the case of a group member, there may be a contractual agreement with the health maintenance organization to have the employer provide the required notice to the individual members of the group pursuant to s. 641.31(3)(b).

(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), and 641.513; and where and in what manner services may be obtained pursuant to s. 641.31(4).

(2) This section shall not be construed as creating a civil cause of action by any subscriber or provider against any health maintenance organization.

Section 1555. Section 641.19, Florida Statutes, is amended to read:

641.19 Definitions.—As used in this part, the term:

(1) "Affiliate" means any entity <u>that</u> ~~which~~ exercises control over or is controlled by the health maintenance organization, directly or indirectly, through:

(a) Equity ownership of voting securities;

(b) Common managerial control; or

(c) Collusive participation by the management of the health maintenance organization and affiliate in the management of the health maintenance organization or the affiliate.

(2) "Agency" means the Agency for Health Care Administration.

(3) "Capitation" means the fixed amount paid by an HMO to a health care provider under contract with the health maintenance organization in exchange for the rendering of covered medical services.

(4) "Comprehensive health care services" means services, medical equipment, and supplies furnished by a provider, which may include, but which

are not limited to, medical, surgical, and dental care; psychological, optometric, optic, chiropractic, podiatric, nursing, physical therapy, and pharmaceutical services; health education, preventive medical, rehabilitative, and home health services; inpatient and outpatient hospital services; extended care; nursing home care; convalescent institutional care; technical and professional clinical pathology laboratory services; laboratory and ambulance services; appliances, drugs, medicines, and supplies; and any other care, service, or treatment of disease, or correction of defects for human beings.

(5) "Copayment" means a specific dollar amount, except as otherwise provided for by statute, that the subscriber must pay upon receipt of covered health care services. Copayments may not be established in an amount that will prevent a person from receiving a covered service or benefit as specified in the subscriber contract approved by the office ~~department~~.

~~(6) "Department" means the Department of Insurance.~~

(6)~~(7)~~ "Emergency medical condition" means:

(a) A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain or other acute symptoms, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. Serious jeopardy to the health of a patient, including a pregnant woman or a fetus.

2. Serious impairment to bodily functions.

3. Serious dysfunction of any bodily organ or part.

(b) With respect to a pregnant woman:

1. That there is inadequate time to effect safe transfer to another hospital prior to delivery;

2. That a transfer may pose a threat to the health and safety of the patient or fetus; or

3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

(7)~~(8)~~ "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery for a covered service by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of a hospital.

(8)~~(9)~~ "Entity" means any legal entity with continuing existence, including, but not limited to, a corporation, association, trust, or partnership.

(9)~~(10)~~ "Geographic area" means the county or counties, or any portion of a county or counties, within which the health maintenance organization

provides or arranges for comprehensive health care services to be available to its subscribers.

(10)~~(11)~~ "Guaranteeing organization" is an organization that ~~which~~ is domiciled in the United States; that ~~which~~ has authorized service of process against it; and that ~~which~~ has appointed the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as its agent for service of process issuing upon any cause of action arising in this state, based upon any guarantee entered into under this part.

(11)~~(12)~~ "Health maintenance contract" means any contract entered into by a health maintenance organization with a subscriber or group of subscribers to provide comprehensive health care services in exchange for a prepaid per capita or prepaid aggregate fixed sum.

(12)~~(13)~~ "Health maintenance organization" means any organization authorized under this part which:

(a) Provides emergency care, inpatient hospital services, physician care including care provided by physicians licensed under chapters 458, 459, 460, and 461, ambulatory diagnostic treatment, and preventive health care services;

(b) Provides, either directly or through arrangements with other persons, health care services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis;

(c) Provides, either directly or through arrangements with other persons, comprehensive health care services which subscribers are entitled to receive pursuant to a contract;

(d) Provides physician services, by physicians licensed under chapters 458, 459, 460, and 461, directly through physicians who are either employees or partners of such organization or under arrangements with a physician or any group of physicians; and

(e) If offering services through a managed care system, then the managed care system must be a system in which a primary physician licensed under chapter 458 or chapter 459 and chapters 460 and 461 is designated for each subscriber upon request of a subscriber requesting service by a physician licensed under any of those chapters, and is responsible for coordinating the health care of the subscriber of the respectively requested service and for referring the subscriber to other providers of the same discipline when necessary. Each female subscriber may select as her primary physician an obstetrician/gynecologist who has agreed to serve as a primary physician and is in the health maintenance organization's provider network.

(13)~~(14)~~ "Insolvent" or "insolvency" means that all the statutory assets of the health maintenance organization, if made immediately available, would not be sufficient to discharge all of its liabilities or that the health maintenance organization is unable to pay its debts as they become due in the usual course of business. In the event that all the assets of the health maintenance organization, if made immediately available, would not be

sufficient to discharge all of its liabilities, but the organization has a written guarantee of the type and subject to the same provisions as outlined in s. 641.225, the organization shall not be considered insolvent unless it is unable to pay its debts as they become due in the usual course of business.

(14)~~(15)~~ "Provider" means any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed or otherwise authorized to practice in the state.

(15)~~(16)~~ "Reporting period" means the annual calendar year accounting period or any part thereof.

(16)~~(17)~~ "Statutory accounting principles" means accounting principles as defined in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual as of 2002 ~~effective January 1, 2001~~.

(17(~~(18)~~ "Subscriber" means an entity or individual who has contracted, or on whose behalf a contract has been entered into, with a health maintenance organization for health care services or other persons who also receive health care services as a result of the contract.

(18)~~(19)~~ "Surplus" means total statutory assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the health maintenance organization shall not be included in surplus. Surplus includes capital stock, capital in excess of par, other contributed capital, retained earnings, and surplus notes.

(19)~~(20)~~ "Uncovered expenditures" means the cost of health care services that are covered by a health maintenance organization, for which a subscriber would also be liable in the event of the insolvency of the organization.

(20)~~(21)~~ "Health care risk contract" means a contract under which an individual or entity receives consideration or other compensation in an amount greater than 1 percent of the health maintenance organization's annual gross written premium in exchange for providing to the health maintenance organization a provider network or other services, which may include administrative services. The 1-percent threshold shall be calculated on a contract-by-contract basis for each such individual or entity and not in the aggregate for all health care risk contracts.

Section 1556. Section 641.2017, Florida Statutes, is amended to read:

641.2017 Insurance business not authorized.—Nothing in the Florida Insurance Code or this part shall be deemed to authorize any health maintenance organization to transact any insurance business other than that of health maintenance organization type insurance or otherwise to engage in any other type of insurance unless it is authorized under a certificate of authority issued by the office ~~department~~ under the provisions of the Florida Insurance Code. However, a health maintenance organization may by contract:

(1) Enter into arrangements whereby the expected cost of health care services provided directly or through arrangements with other persons by

the health maintenance organization is self-funded by the person contracting with the health maintenance organization, but the health maintenance organization assumes the risks that costs will exceed that amount on a prepaid per capita or prepaid aggregate fixed-sum basis; or

(2) Enter into arrangements whereby the cost of health care services provided directly or through arrangements with other persons by the health maintenance organization is self-funded by the person contracting with the health maintenance organization.

Section 1557. Subsections (1) and (2) of section 641.2018, Florida Statutes, are amended to read:

641.2018 Limited coverage for home health care authorized.—

(1) Notwithstanding other provisions of this chapter, a health maintenance organization may issue a contract that limits coverage to home health care services only. The organization and the contract shall be subject to all of the requirements of this part that do not require or otherwise apply to specific benefits other than home care services. To this extent, all of the requirements of this part apply to any organization or contract that limits coverage to home care services, except the requirements for providing comprehensive health care services as provided in ss. 641.19(4), (11), and (12), ~~and (13)~~, and 641.31(1), except ss. 641.31(9), (12), (17), (18), (19), (20), (21), and (24) and 641.31095.

(2) Notwithstanding the other provisions of this chapter, a health maintenance organization may apply for and obtain a certificate of authority from the office ~~department~~ pursuant to this part and a health care provider certificate pursuant to part III, which certificate limits the authority of the organization to the issuance of contracts that limit coverage to home health care services pursuant to subsection (1). In addition to all applicable requirements of this part, as specified in subsection (1), all of the requirements of part III apply to an organization applying for such a limited certificate, except to the extent that such requirements directly conflict with the limited nature of the coverage provided.

Section 1558. Subsections (1) and (2) of section 641.21, Florida Statutes, are amended to read:

641.21 Application for certificate.—

(1) Before any entity may operate a health maintenance organization, it shall obtain a certificate of authority from the office ~~department~~. The office ~~department~~ shall accept and shall begin its review of an application for a certificate of authority anytime after an organization has filed an application for a health care provider certificate pursuant to part III of this chapter. However, the office may ~~department shall~~ not issue a certificate of authority to any applicant which does not possess a valid health care provider certificate issued by the agency. Each application for a certificate shall be on such form as the commission ~~department~~ shall prescribe, shall be verified by the oath of two officers of the corporation and properly notarized, and shall be accompanied by the following:

(a) A copy of the articles of incorporation and all amendments thereto;

(b) A copy of the bylaws, rules and regulations, or similar form of document, if any, regulating the conduct of the affairs of the applicant;

(c) A list of the names, addresses, and official capacities with the organization of the persons who are to be responsible for the conduct of the affairs of the health maintenance organization, including all officers, directors, and owners of in excess of 5 percent of the common stock of the corporation. Such persons shall fully disclose to the office ~~department~~ and the directors of the health maintenance organization the extent and nature of any contracts or arrangements between them and the health maintenance organization, including any possible conflicts of interest;

(d) A complete biographical statement on forms prescribed by the commission ~~department~~, and an independent investigation report and fingerprints obtained pursuant to chapter 624, of all of the individuals referred to in paragraph (c);

(e) A statement generally describing the health maintenance organization, its operations, and its grievance procedures;

(f) Forms of all health maintenance contracts, certificates, and member handbooks the applicant proposes to offer the subscribers, showing the benefits to which they are entitled, together with a table of the rates charged, or proposed to be charged, for each form of such contract. A certified actuary shall:

1. Certify that the rates are neither inadequate nor excessive nor unfairly discriminatory;

2. Certify that the rates are appropriate for the classes of risks for which they have been computed; and

3. File an adequate description of the rating methodology showing that such methodology follows consistent and equitable actuarial principles;

(g) A statement describing with reasonable certainty the geographic area or areas to be served by the health maintenance organization;

(h) As to any applicant whose business plan indicates that it will receive Medicaid funds, a list of all contracts and agreements and any information relative to any payment or agreement to pay, directly or indirectly, a consultant fee, a broker fee, a commission, or other fee or charge related in any way to the application for a certificate of authority or the issuance of a certificate of authority, including, but not limited to, the name of the person or entity paying the fee; the name of the person or entity receiving the fee; the date of payment; and a brief description of the work performed. The contract, agreement, and related information shall, if requested, be provided to the office ~~department~~.

(i) An audited financial statement prepared on the basis of statutory accounting principles and certified by an independent certified public

accountant, except that surplus notes acceptable to the office ~~department~~ and meeting the requirements of this act shall be included in the calculation of surplus; and

(j) Such additional reasonable data, financial statements, and other pertinent information as the commissioner or office requires ~~department may require~~ with respect to the determination that the applicant can provide the services to be offered.

(2) After submission of the application for a certificate of authority, the entity may engage in initial group marketing activities solely with respect to employers, representatives of labor unions, professional associations, and trade associations, so long as it does not enter into, issue, deliver, or otherwise effectuate health maintenance contracts, effectuate or bind coverage or benefits, provide health care services, or collect premiums or charges until it has been issued a certificate of authority by the office ~~department~~. Any such activities, oral or written, shall include a statement that the entity does not possess a valid certificate of authority and cannot enter into health maintenance contracts until such time as it has been issued a certificate of authority by the office ~~department~~.

Section 1559. Section 641.215, Florida Statutes, is amended to read:

641.215 Conditions precedent to issuance or maintenance of certificate of authority; effect of bankruptcy proceedings.—

(1) As a condition precedent to the issuance or maintenance of a certificate of authority, a health maintenance organization insurer must file or have on file with the office ~~department~~:

(a) An acknowledgment that a delinquency proceeding pursuant to part I of chapter 631, or supervision by the department pursuant to ss. 624.80-624.87, constitutes the sole and exclusive method for the liquidation, rehabilitation, reorganization, or conservation of a health maintenance organization.

(b) A waiver of any right to file or be subject to a bankruptcy proceeding.

(2) The commencement of a bankruptcy proceeding either by or against a health maintenance organization shall, by operation of law:

(a) Terminate the health maintenance organization's certificate of authority.

(b) Vest in the office ~~department~~ for the use and benefit of the subscribers of the health maintenance organization the title to any deposits of the insurer held by the department.

If the proceeding is initiated by a party other than the health maintenance organization, the operation of subsection (2) shall be stayed for a period of 60 days following the date of commencement of the proceeding.

Section 1560. Section 641.22, Florida Statutes, is amended to read:

641.22 Issuance of certificate of authority.—The office ~~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 office's ~~department's~~ being satisfied that:

(1) As a condition precedent to the issuance of any certificate, the entity has obtained a health care provider certificate from the Agency for Health Care Administration pursuant to part III of this chapter.

(2) The health maintenance organization is actuarially sound.

(3) The entity has met the applicable requirements specified in s. 641.225.

(4) The procedures for offering comprehensive health care services and offering and terminating contracts to subscribers will not unfairly discriminate on the basis of age, sex, race, health, or economic status. However, this section does not prohibit reasonable underwriting classifications for the purposes of establishing contract rates, nor does it prohibit experience rating.

(5) The entity furnishes evidence of adequate insurance coverage or an adequate plan for self-insurance to respond to claims for injuries arising out of the furnishing of comprehensive health care.

(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 office ~~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 office ~~department~~ has good reason to believe that:

(a) The ownership, control, or management of the organization includes any person:

1. Who is incompetent or untrustworthy;

2. Who is so lacking in health maintenance organization expertise as to make the operation of the health maintenance organization hazardous to potential and existing subscribers;

3. Who is so lacking in health maintenance organization experience, ability, and standing as to jeopardize the reasonable promise of successful operation;

4. Who is affiliated, directly or indirectly, through ownership, control, reinsurance transactions, or other business relations, with any person whose business operations are or have been marked by business practices or conduct that is to the detriment of the public, stockholders, investors, or creditors; or

5. Whose business operations are or have been marked by business practices or conduct that is to the detriment of the public, stockholders, investors, or creditors;

(b) 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, does not possess the financial standing and business experience for the successful operation of the health maintenance organization;

(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 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 office ~~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

(d) 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, is now or was in the past affiliated, directly or indirectly, through ownership interest of 10 percent or more, control, or reinsurance transactions, with any business, corporation, or other entity that has been found guilty of or has pleaded guilty or nolo contendere to any felony or crime punishable by imprisonment for 1 year or more under the laws of the United States, any state, or any other country, regardless of adjudication. In the case of a health maintenance organization operating under a subsisting certificate of authority, the health maintenance organization shall immediately remove such person or immediately notify the office ~~department~~ of such person upon discovery of the conditions set forth in this paragraph, either when applicable to such person or upon order of the office ~~department~~. The failure to remove such person, provide such notice, or comply with such order constitutes grounds for suspension or revocation of the health maintenance organization's certificate of authority.

(7) The entity has a blanket fidelity bond in the amount of $100,000, issued by a licensed insurance carrier in this state, that will reimburse the entity in the event that anyone handling the funds of the entity either misappropriates or absconds with the funds. All employees handling the funds shall be covered by the blanket fidelity bond. An agent licensed under the provisions of the Florida Insurance Code may either directly or indirectly represent the health maintenance organization in the solicitation, negotiation, effectuation, procurement, receipt, delivery, or forwarding of

any health maintenance organization subscriber's contract or collect or forward any consideration paid by the subscriber to the health maintenance organization; and the licensed agent shall not be required to post the bond required by this subsection.

(8) The entity has filed with the office ~~department~~, and obtained approval from the office ~~department~~ of, all reinsurance contracts as provided in s. 641.285.

(9) The health maintenance organization has a grievance procedure that will facilitate the resolution of subscriber grievances and that includes both formal and informal steps available within the organization.

Section 1561. Subsections (2) and (4), and paragraphs (b) and (d) of subsection (6) of section 641.225, Florida Statutes, are amended to read:

641.225 Surplus requirements.—

(2) The office ~~department~~ shall not issue a certificate of authority, except as provided in subsection (3), unless the health maintenance organization has a minimum surplus in an amount which is the greater of:

(a) Ten percent of their total liabilities based on their startup projection as set forth in this part;

(b) Two percent of their total projected premiums based on their startup projection as set forth in this part; or

(c) $1,500,000, plus all startup losses, excluding profits, projected to be incurred on their startup projection until the projection reflects statutory net profits for 12 consecutive months.

(4) The commission ~~department~~ may adopt rules to set uniform standards and criteria for the early warning that the continued operation of any health maintenance organization might be hazardous to its subscribers, creditors, or the general public, and to set standards for evaluating the financial condition of any health maintenance organization.

(6) In lieu of having any minimum surplus, the health maintenance organization may provide a written guarantee to assure payment of covered subscriber claims and all other liabilities of the health maintenance organization, provided that the written guarantee is made by a guaranteeing organization which:

(b) Submits a guarantee that is approved by the office ~~department~~ as meeting the requirements of this part, provided that the written guarantee contains a provision which requires that the guarantee be irrevocable unless the guaranteeing organization can demonstrate to the office ~~department~~ that the cancellation of the guarantee will not result in the insolvency of the health maintenance organization and the office ~~department~~ approves cancellation of the guarantee.

(d) Submits annually, within 3 months after the end of its fiscal year, an audited financial statement certified by an independent certified public

accountant, prepared in accordance with generally accepted accounting principles. The office ~~department~~ may, as it deems necessary, require quarterly financial statements from the guaranteeing organization.

Section 1562. Subsection (1) of section 641.227, Florida Statutes, is amended to read:

641.227 Rehabilitation Administrative Expense Fund.—

(1) The office ~~department~~ shall not issue or permit to exist a certificate of authority to operate a health maintenance organization in this state unless the organization has deposited with the department $10,000 in cash for use in the Rehabilitation Administrative Expense Fund as established in subsection (2).

Section 1563. Subsections (1) and (3) of section 641.228, Florida Statutes, are amended to read:

641.228 Florida Health Maintenance Organization Consumer Assistance Plan.—

(1) The office ~~department~~ shall not issue a certificate to any health maintenance organization after July 1, 1989, until the applicant health maintenance organization has paid in full its special assessment as set forth in s. 631.819(2)(a).

(3) The office ~~department~~ may suspend or revoke the certificate of authority of any health maintenance organization which does not timely pay its assessment to the Florida Health Maintenance Organization Consumer Assistance Plan.

Section 1564. Section 641.23, Florida Statutes, is amended to read:

641.23 Revocation or cancellation of certificate of authority; suspension of enrollment of new subscribers; terms of suspension.—

(1) The maintenance of a valid and current health care provider certificate issued pursuant to part III of this chapter is a condition of the maintenance of a valid and current certificate of authority issued by the office ~~department~~ to operate a health maintenance organization. Denial or revocation of a health care provider certificate shall be deemed to be an automatic and immediate cancellation of a health maintenance organization's certificate of authority. At the discretion of the office ~~Department of Insurance~~, nonrenewal of a health care provider certificate may be deemed to be an automatic and immediate cancellation of a health maintenance organization's certificate of authority if the Agency for Health Care Administration notifies the office ~~Department of Insurance~~, in writing, that the health care provider certificate will not be renewed.

(2) The office ~~department~~ may suspend the authority of a health maintenance organization to enroll new subscribers or revoke any certificate issued to a health maintenance organization, or order compliance within 30 days, if it finds that any of the following conditions exists:

(a) The organization is not operating in compliance with this part;

(b) The plan is no longer actuarially sound or the organization does not have the minimum surplus as required by this part;

(c) The existing contract rates are excessive, inadequate, or unfairly discriminatory;

(d) The organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising; or

(e) The organization is insolvent.

(3) Whenever the financial condition of the health maintenance organization is such that, if not modified or corrected, its continued operation would result in impairment or insolvency, the office ~~department~~ may order the health maintenance organization to file with the office ~~department~~ and implement a corrective action plan designed to do one or more of the following:

(a) Reduce the total amount of present potential liability for benefits by reinsurance or other means.

(b) Reduce the volume of new business being accepted.

(c) Reduce the expenses of the health maintenance organization by specified methods.

(d) Suspend or limit the writing of new business for a period of time.

(e) Require an increase in the health maintenance organization's net worth.

If the health maintenance organization fails to submit a plan within 30 days of the office's ~~department's~~ order or submits a plan which is insufficient to correct the health maintenance organization's financial condition, the office ~~department~~ may order the health maintenance organization to implement one or more of the corrective actions listed in this subsection.

(4) The office ~~department~~ shall, in its order suspending the authority of a health maintenance organization to enroll new subscribers, specify the period during which the suspension is to be in effect and the conditions, if any, which must be met by the health maintenance organization prior to reinstatement of its authority to enroll new subscribers. The order of suspension is subject to rescission or modification by further order of the office ~~department~~ prior to the expiration of the suspension period. Reinstatement shall not be made unless requested by the health maintenance organization; however, the office ~~department~~ shall not grant reinstatement if it finds that the circumstances for which the suspension occurred still exist or are likely to recur.

(5) The commission ~~department~~ shall adopt ~~promulgate~~ rules establishing an actuarially sound medical loss ratio for Medicaid. In determining the appropriate medical loss ratio, the commission ~~department~~ shall consider factors, including but not limited to, plan age, plan structure, geographic service area, product mix, provider network, medical inflation, provider services, other professional services, out of network referrals and expenditures, in and out of network emergency room expenditures, inpatient expenditures, other medical expenditures, incentive pool adjustments, copayments, coordination of benefits, subrogation, and any other expenses associated with the delivery of medical benefits. The commission ~~department~~ shall utilize assistance from the Agency for Health Care Administration, the State University System, an independent actuary, and representatives from health maintenance organizations in developing the rule for appropriate medical loss ratios.

(6) The office ~~department~~ shall calculate and publish at least annually the medical loss ratios of all licensed health maintenance organizations. The publication shall include an explanation of what the medical loss ratio means and shall disclose that the medical loss ratio is not a direct reflection of quality, but must be looked at along with patient satisfaction and other standards that define quality.

Section 1565. Subsections (1), (2), and (3) of section 641.234, Florida Statutes, are amended to read:

641.234 Administrative, provider, and management contracts.—

(1) The office ~~department~~ may require a health maintenance organization to submit any contract for administrative services, contract with a provider other than an individual physician, contract for management services, and contract with an affiliated entity to the office ~~department~~.

(2) After review of a contract the office ~~department~~ may order the health maintenance organization to cancel the contract in accordance with the terms of the contract and applicable law if it determines:

(a) That the fees to be paid by the health maintenance organization under the contract are so unreasonably high as compared with similar contracts entered into by the health maintenance organization or as compared with similar contracts entered into by other health maintenance organizations in similar circumstances that the contract is detrimental to the subscribers, stockholders, investors, or creditors of the health maintenance organization; or

(b) That the contract is with an entity that is not licensed under state statutes, if such license is required, or is not in good standing with the applicable regulatory agency.

(3) All contracts for administrative services, management services, provider services other than individual physician contracts, and with affiliated entities entered into or renewed by a health maintenance organization on or after October 1, 1988, shall contain a provision that the contract shall be

canceled upon issuance of an order by the office ~~department~~ pursuant to this section.

Section 1566. Section 641.2342, Florida Statutes, is amended to read:

641.2342 Contract providers.—Each health maintenance organization shall file, upon the request of the office ~~department~~, financial statements for all contract providers of comprehensive health care services who have assumed, through capitation or other means, more than 10 percent of the health care risks of the health maintenance organization. However, this provision shall not apply to any individual physician.

Section 1567. Section 641.25, Florida Statutes, is amended to read:

641.25 Administrative penalty in lieu of suspension or revocation.—If the office ~~department~~ finds that one or more grounds exist for the revocation or suspension of a certificate issued under this part, the office ~~department~~ may, in lieu of revocation or suspension, impose a fine upon the health maintenance organization. With respect to any nonwillful violation, the fine must not exceed $2,500 per violation. Such fines may not exceed an aggregate amount of $25,000 for all nonwillful violations arising out of the same action. With respect to any knowing and willful violation of a lawful order or rule of the office or commission ~~department~~ or a provision of this part, the office ~~department~~ may impose upon the organization a fine in an amount not to exceed $20,000 for each such violation. Such fines may not exceed an aggregate amount of $250,000 for all knowing and willful violations arising out of the same action. The commission ~~department~~ must adopt by rule ~~by January 1, 1997,~~ penalty categories that specify varying ranges of monetary fines for willful violations and for nonwillful violations.

Section 1568. Subsection (2) of section 641.255, Florida Statutes, is amended to read:

641.255 Acquisition, merger, or consolidation.—

(2) In addition to the requirements set forth in ss. 628.451, 628.4615, and 628.471, each party to any transaction involving any licensee which, as indicated in its most recent quarterly or annual statement, derives income from Medicaid funds shall in the filing made with the office ~~department~~ identify:

(a) Any person who has received any payment from either party or any person on that party's behalf; or

(b) The existence of any agreement entered into by either party or by any person on that party's behalf to pay a consultant fee, a broker fee, a commission, or other fee or charge,

which in any way relates to the acquisition, merger, or consolidation. The commission ~~department~~ may adopt a form to be made part of the application which is to be sworn to by an officer of the entity which made or will make the payment. The form shall include the name of the person or entity paying

the fee; the name of the person or entity receiving the fee; the date of payment; and a brief description of the work performed.

Section 1569. Section 641.26, Florida Statutes, is amended to read:

641.26 Annual and quarterly reports.—

(1) Every health maintenance organization shall, annually within 3 months after the end of its fiscal year, or within an extension of time therefor as the office ~~department~~, for good cause, may grant, in a form prescribed by the commission ~~department~~, file a report with the office ~~department~~, verified by the oath of two officers of the organization or, if not a corporation, of two persons who are principal managing directors of the affairs of the organization, properly notarized, showing its condition on the last day of the immediately preceding reporting period. Such report shall include:

(a) A financial statement of the health maintenance organization filed by electronic means in a computer-readable form ~~on a computer diskette~~ using a format acceptable to the office ~~department~~.

(b) A financial statement of the health maintenance organization filed on forms acceptable to the office ~~department~~.

(c) An audited financial statement of the health maintenance organization, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant, prepared in accordance with statutory accounting principles.

(d) The number of health maintenance contracts issued and outstanding and the number of health maintenance contracts terminated.

(e) The number and amount of damage claims for medical injury initiated against the health maintenance organization and any of the providers engaged by it during the reporting year, broken down into claims with and without formal legal process, and the disposition, if any, of each such claim.

(f) An actuarial certification that:

1. The health maintenance organization is actuarially sound, which certification shall consider the rates, benefits, and expenses of, and any other funds available for the payment of obligations of, the organization.

2. The rates being charged or to be charged are actuarially adequate to the end of the period for which rates have been guaranteed.

3. Incurred but not reported claims and claims reported but not fully paid have been adequately provided for.

4. The health maintenance organization has adequately provided for all obligations required by s. 641.35(3)(a).

(g) A report prepared by the certified public accountant and filed with the office ~~department~~ describing material weaknesses in the health maintenance organization's internal control structure as noted by the certified

public accountant during the audit. The report must be filed with the annual audited financial report as required in paragraph (c). The health maintenance organization shall provide a description of remedial actions taken or proposed to correct material weaknesses, if the actions are not described in the independent certified public accountant's report.

(h) Such other information relating to the performance of health maintenance organizations as is required by the commission or office ~~department~~.

(2) The office ~~department~~ may require updates of the actuarial certification as to a particular health maintenance organization if the office ~~department~~ has reasonable cause to believe that such reserves are understated to the extent of materially misstating the financial position of the health maintenance organization. Workpapers in support of the statement of the updated actuarial certification must be provided to the office ~~department~~ upon request.

(3) Every health maintenance organization shall file quarterly, for the first three calendar quarters of each year, an unaudited financial statement of the organization as described in paragraphs (1)(a) and (b). The statement for the quarter ending March 31 shall be filed on or before May 15, the statement for the quarter ending June 30 shall be filed on or before August 15, and the statement for the quarter ending September 30 shall be filed on or before November 15. The quarterly report shall be verified by the oath of two officers of the organization, properly notarized.

(4) Any health maintenance organization that neglects to file an annual report or quarterly report in the form and within the time required by this section shall forfeit up to $1,000 for each day for the first 10 days during which the neglect continues and shall forfeit up to $2,000 for each day after the first 10 days during which the neglect continues; and, upon notice by the office ~~department~~ to that effect, the organization's authority to enroll new subscribers or to do business in this state shall cease while such default continues. The office ~~department~~ shall deposit all sums collected by it under this section to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund. The office ~~department~~ shall not collect more than $100,000 for each report.

(5) Each authorized health maintenance organization shall retain an independent certified public accountant, referred to in this section as "CPA," who agrees by written contract with the health maintenance organization to comply with the provisions of this part.

(a) The CPA shall provide to the HMO audited financial statements consistent with this part.

(b) Any determination by the CPA that the health maintenance organization does not meet minimum surplus requirements as set forth in this part shall be stated by the CPA, in writing, in the audited financial statement.

(c) The completed work papers and any written communications between the CPA firm and the health maintenance organization relating to the audit of the health maintenance organization shall be made available for review

on a visual-inspection-only basis by the office ~~department~~ at the offices of the health maintenance organization, at the office ~~department~~, or at any other reasonable place as mutually agreed between the office ~~department~~ and the health maintenance organization. The CPA must retain for review the work papers and written communications for a period of not less than 6 years.

(d) The CPA shall provide to the office ~~department~~ a written report describing material weaknesses in the health maintenance organization's internal control structure as noted during the audit.

(6) To facilitate uniformity in financial statements and to facilitate office ~~department~~ analysis, the commission ~~department~~ may by rule adopt the form for financial statements of a health maintenance organization, including supplements as approved by the National Association of Insurance Commissioners in 1995, and may adopt subsequent amendments thereto if the methodology remains substantially consistent, and may by rule require each health maintenance organization to submit to the office ~~department~~ all or part of the information contained in the annual statement in a computer-readable form compatible with the electronic data processing system specified by the office ~~department~~.

(7) In addition to information called for and furnished in connection with its annual or quarterly statements, the health maintenance organization shall furnish to the office ~~department~~ as soon as reasonably possible such information as to its material transactions which, in the office's ~~department's~~ opinion, may have a material adverse effect on the health maintenance organization's financial condition, as the office requests ~~department may request~~ in writing. All such information furnished pursuant to the office's ~~department's~~ request must be verified by the oath of two executive officers of the health maintenance organization.

(8) Each health maintenance organization shall file one copy of its annual statement convention blank in electronic form, along with such additional filings as prescribed by the commission ~~department~~ for the preceding calendar year or quarter, with the National Association of Insurance Commissioners. Each health maintenance organization shall pay fees assessed by the National Association of Insurance Commissioners to cover costs associated with the filing and analysis of the documents by the National Association of Insurance Commissioners.

Section 1570. Section 641.27, Florida Statutes, is amended to read:

641.27 Examination by the department.—

(1) The office ~~department~~ shall examine the affairs, transactions, accounts, business records, and assets of any health maintenance organization as often as it deems it expedient for the protection of the people of this state, but not less frequently than once every 3 years. In lieu of making its own financial examination, the office ~~department~~ may accept an independent certified public accountant's audit report prepared on a statutory accounting basis consistent with this part. However, except when the medical records are requested and copies furnished pursuant to s. 456.057, medical records

of individuals and records of physicians providing service under contract to the health maintenance organization shall not be subject to audit, although they may be subject to subpoena by court order upon a showing of good cause. For the purpose of examinations, the office ~~department~~ may administer oaths to and examine the officers and agents of a health maintenance organization concerning its business and affairs. The examination of each health maintenance organization by the office ~~department~~ shall be subject to the same terms and conditions as apply to insurers under chapter 624. In no event shall expenses of all examinations exceed a maximum of $20,000 for any 1-year period. Any rehabilitation, liquidation, conservation, or dissolution of a health maintenance organization shall be conducted under the supervision of the department, which shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, reorganization, conservation, or dissolution of life insurance companies.

(2) The office ~~department~~ may contract, at reasonable fees for work performed, with qualified, impartial outside sources to perform audits or examinations or portions thereof pertaining to the qualification of an entity for issuance of a certificate of authority or to determine continued compliance with the requirements of this part, in which case the payment must be made directly to the contracted examiner by the health maintenance organization examined, in accordance with the rates and terms agreed to by the office ~~department~~ and the examiner. Any contracted assistance shall be under the direct supervision of the office ~~department~~. The results of any contracted assistance shall be subject to the review of, and approval, disapproval, or modification by, the office ~~department~~.

Section 1571. Section 641.28, Florida Statutes, is amended to read:

641.28 Civil remedy.—In any civil action brought to enforce the terms and conditions of a health maintenance organization contract, the prevailing party is entitled to recover reasonable attorney's fees and court costs. This section shall not be construed to authorize a civil action against the commission, office, or department, their ~~its~~ employees, or the Chief Financial Officer ~~Insurance Commissioner~~ or against the Agency for Health Care Administration, its employees, or the director of the agency.

Section 1572. Section 641.281, Florida Statutes, is amended to read:

641.281 Injunction.—In addition to the penalties and other enforcement provisions of this part, the office and department, within the scope of their regulatory jurisdictions, are ~~is~~ vested with the power to seek both temporary and permanent injunctive relief when:

(1) A health maintenance organization is being operated by any person or entity without a subsisting certificate of authority.

(2) Any person, entity, or health maintenance organization has engaged in any activity prohibited by this part or any rule adopted pursuant thereto.

(3) Any health maintenance organization, person, or entity is renewing, issuing, or delivering a health maintenance contract or contracts without a subsisting certificate of authority.

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

Section 1573. Section 641.284, Florida Statutes, is amended to read:

641.284 Liquidation, rehabilitation, reorganization, and conservation; exclusive methods of remedy.—A delinquency proceeding under part I of chapter 631, or supervision by the office ~~department~~ under ss. 624.80-624.87, constitute the sole and exclusive means of liquidating, reorganizing, rehabilitating, or conserving a health maintenance organization.

Section 1574. Subsections (1), (2), and (3) of section 641.285, Florida Statutes, are amended to read:

641.285 Insolvency protection.—

(1) Each health maintenance organization shall deposit with the department cash or securities of the type eligible under s. 625.52, which shall have at all times a market value in the amount set forth in this subsection. The amount of the deposit shall be reviewed annually, or more often, as the office ~~department~~ deems necessary. The market value of the deposit shall be a minimum of $300,000.

(2) If securities or assets deposited by a health maintenance organization under this part are subject to material fluctuations in market value, the office ~~department~~ may, in its discretion, require the organization to deposit and maintain on deposit additional securities or assets in an amount as may be reasonably necessary to assure that the deposit will at all times have a market value of not less than the amount specified under this section. If for any reason the market value of assets and securities of a health maintenance organization held on deposit in this state under this code falls below the amount required, the organization shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure the deficiency. If the health maintenance organization has failed to cure the deficiency within 30 days after receipt of notice thereof by registered or certified mail from the office ~~department~~, the office ~~department~~ may revoke the certificate of authority of the health maintenance organization.

(3) Whenever the office ~~department~~ determines that the financial condition of a health maintenance organization has deteriorated to the point that the policyholders' or subscribers' best interests are not being preserved by the activities of a health maintenance organization, the office ~~department~~ may require such health maintenance organization to deposit and maintain deposited in trust with the department for the protection of the health maintenance organization's policyholders, subscribers, and creditors, for such time as the office ~~department~~ deems necessary, securities eligible for such deposit under s. 625.52 having a market value of not less than the amount that the office ~~department~~ determines is necessary, which amount must not be less than $100,000 or greater than $2 million. The deposit required under this subsection is in addition to any other deposits required of a health maintenance organization pursuant to subsections (1) and (2).

Section 1575. Section 641.29, Florida Statutes, is amended to read:

641.29 Fees.—Every health maintenance organization shall pay to the office ~~department~~ the following fees:

(1) For filing a copy of its application for a certificate of authority or amendment thereto, a nonrefundable fee in the amount of $1,000.

(2) For filing each annual report, which must be filed by electronic means in a computer-readable form ~~on computer diskettes~~, $150.

Section 1576. Paragraph (b) of subsection (4) of section 641.3007, Florida Statutes, is amended to read:

641.3007 HIV infection and AIDS for contract

(4) UTILIZATION OF MEDICAL TESTS.—

(b) Prior to testing, the health maintenance organization must disclose its intent to test the person for the HIV infection or for a specific sickness or medical condition derived therefrom and must obtain the person's written informed consent to administer the test. Written informed consent shall include a fair explanation of the test, including its purpose, potential uses, and limitations, and the meaning of its results and the right to confidential treatment of information. Use of a form approved by the office ~~department~~ shall raise a conclusive presumption of informed consent.

Section 1577. Section 641.305, Florida Statutes, is amended to read:

641.305 Language used in contracts and advertisements; translations.—

(1)(a) All health maintenance contracts or forms shall be printed in English.

(b) If the negotiations by a health maintenance organization with a member leading up to the effectuation of a health maintenance contract are conducted in a language other than English, the health maintenance organization shall supply to the member a written translation of the contract, which translation accurately reflects the substance of the contract and is in the language used to negotiate the contract. The written translation shall be affixed to and shall become a part of the contract or form. Any such translation shall be furnished to the office ~~department~~ as part of the filing of the health maintenance contract form. No translation of a health maintenance contract form shall be approved by the department unless the translation accurately reflects the substance of the health maintenance contract form in translation.

(2) The text of all advertisements by a health maintenance organization, if printed or broadcast in a language other than English, also shall be available in English and shall be furnished to the office ~~department~~ upon request. As used in this subsection, the term "advertisement" means any advertisement, circular, pamphlet, brochure, or other printed material disclosing or disseminating advertising material or information by a health

maintenance organization to prospective or existing subscribers and includes any radio or television transmittal of an advertisement or information.

Section 1578. Subsections (2), (3), (5), and (12) and paragraphs (c) and (e) of subsection (38) of section 641.31, Florida Statutes, are amended to read:

641.31 Health maintenance contracts.—

(2) The rates charged by any health maintenance organization to its subscribers shall not be excessive, inadequate, or unfairly discriminatory or follow a rating methodology that is inconsistent, indeterminate, or ambiguous or encourages misrepresentation or misunderstanding. The commission ~~department~~, in accordance with generally accepted actuarial practice as applied to health maintenance organizations, may define by rule what constitutes excessive, inadequate, or unfairly discriminatory rates and may require whatever information it deems necessary to determine that a rate or proposed rate meets the requirements of this subsection.

(3)(a) If a health maintenance organization desires to amend any contract with its subscribers or any certificate or member handbook, or desires to change any basic health maintenance contract, certificate, grievance procedure, or member handbook form, or application form where written application is required and is to be made a part of the contract, or printed amendment, addendum, rider, or endorsement form or form of renewal certificate, it may do so, upon filing with the office ~~department~~ the proposed change or amendment. Any proposed change shall be effective immediately, subject to disapproval by the office ~~department~~. Following receipt of notice of such disapproval or withdrawal of approval, no health maintenance organization shall issue or use any form disapproved by the office ~~department~~ or as to which the office ~~department~~ has withdrawn approval.

(b) Any change in the rate is subject to paragraph (d) and requires at least 30 days' advance written notice to the subscriber. In the case of a group member, there may be a contractual agreement with the health maintenance organization to have the employer provide the required notice to the individual members of the group.

(c) The office ~~department~~ shall disapprove any form filed under this subsection, or withdraw any previous approval thereof, if the form:

1. Is in any respect in violation of, or does not comply with, any provision of this part or rule adopted thereunder.

2. Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

3. Has any title, heading, or other indication of its provisions which is misleading.

4. Is printed or otherwise reproduced in such a manner as to render any material provision of the form substantially illegible.

5. Contains provisions which are unfair, inequitable, or contrary to the public policy of this state or which encourage misrepresentation.

6. Excludes coverage for human immunodeficiency virus infection or acquired immune deficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of such contract, for human immunodeficiency virus infection or acquired immune deficiency syndrome which are different than those which apply to any other sickness or medical condition.

(d) Any change in rates charged for the contract must be filed with the office ~~department~~ not less than 30 days in advance of the effective date. At the expiration of such 30 days, the rate filing shall be deemed approved unless prior to such time the filing has been affirmatively approved or disapproved by order of the office ~~department~~. The approval of the filing by the office ~~department~~ constitutes a waiver of any unexpired portion of such waiting period. The office ~~department~~ may extend by not more than an additional 15 days the period within which it may so affirmatively approve or disapprove any such filing, by giving notice of such extension before expiration of the initial 30-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such filing shall be deemed approved.

(e) It is not the intent of this subsection to restrict unduly the right to modify rates in the exercise of reasonable business judgment.

(5) Every subscriber shall receive a clear and understandable description of the method of the health maintenance organization for resolving subscriber grievances, and the method shall be set forth in the contract, certificate, and member handbook. The organization shall also furnish, at the time of initial enrollment and when necessary due to substantial changes to the grievance process a separate and additional communication prepared or approved by the office ~~department~~ notifying the contract holder of a group contract or subscriber of an individual contract of their rights and responsibilities under the grievance process.

(12) Each health maintenance contract, certificate, or member handbook shall state that emergency services and care shall be provided to subscribers in emergency situations not permitting treatment through the health maintenance organization's providers, without prior notification to and approval of the organization. Not less than 75 percent of the reasonable charges for covered services and supplies shall be paid by the organization, up to the subscriber contract benefit limits. Payment also may be subject to additional applicable copayment provisions, not to exceed $100 per claim. The health maintenance contract, certificate, or member handbook shall contain the definitions of "emergency services and care" and "emergency medical condition" as specified in s. 641.19(6) and (7) ~~s. 641.19(7) and (8)~~, shall describe procedures for determination by the health maintenance organization of whether the services qualify for reimbursement as emergency services and

care, and shall contain specific examples of what does constitute an emergency. In providing for emergency services and care as a covered service, a health maintenance organization shall be governed by s. 641.513.

(38)

(c) Premiums paid in for the point-of-service riders may not exceed 15 percent of total premiums for all health plan products sold by the health maintenance organization offering the rider. If the premiums paid for point-of-service riders exceed 15 percent, the health maintenance organization must notify the office ~~department~~ and, once this fact is known, must immediately cease offering such a rider until it is in compliance with the rider premium cap.

(e) The term "point of service" may not be used by a health maintenance organization except with riders permitted under this section or with forms approved by the office ~~department~~ in which a point-of-service product is offered with an indemnity carrier.

Section 1579. Subsection (2) of section 641.3105, Florida Statutes, is amended to read:

641.3105 Validity of noncomplying contracts.—

(2) Any health maintenance contract delivered or issued for delivery in this state covering a subscriber, which subscriber, pursuant to the provisions of this part, the organization may not lawfully cover under the contract, shall be cancelable at any time by the organization, any provision of the contract to the contrary notwithstanding; and the organization shall promptly cancel the contract in accordance with the request of the office ~~department~~ therefor. No such illegality or cancellation shall be deemed to relieve the organization of any liability incurred by it under the contract while in force or to prohibit the organization from retaining the pro rata earned premium or rate thereon. This provision does not relieve the organization from any penalty otherwise incurred by the organization under this part on account of any such violation.

Section 1580. Subsection (5), paragraph (b) of subsection (7), paragraphs (a) and (e) of subsection (8), paragraph (c) of subsection (9), and paragraph (b) of subsection (10) of section 641.31071, Florida Statutes, are amended to read:

641.31071 Preexisting conditions.—

(5)(a) The term "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

1. A group health plan, as defined in s. 2791 of the Public Health Service Act.

2. Health insurance coverage consisting of medical care, provided directly, through insurance or reimbursement or otherwise, and including terms and services paid for as medical care, under any hospital or medical

service policy or certificate, hospital or medical service plan contract, or health maintenance contract offered by a health insurance issuer.

3. Part A or part B of Title XVIII of the Social Security Act.

4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under s. 1928.

5. Chapter 55 of Title 10, United States Code.

6. A medical care program of the Indian Health Service or of a tribal organization.

7. The Florida Comprehensive Health Association or another state health benefit risk pool.

8. A health plan offered under chapter 89 of Title 5, United States Code.

9. A public health plan as defined by rule of the commission ~~department~~. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

10. A health benefit plan under s. 5(e) of the Peace Corps Act (22 U.S.C. s. 2504(e)).

(b) Creditable coverage does not include coverage that consists solely of one or more or any combination thereof of the following excepted benefits:

1. Coverage only for accident, or disability income insurance, or any combination thereof.

2. Coverage issued as a supplement to liability insurance.

3. Liability insurance, including general liability insurance and automobile liability insurance.

4. Workers' compensation or similar insurance.

5. Automobile medical payment insurance.

6. Credit-only insurance.

7. Coverage for onsite medical clinics.

8. Other similar insurance coverage, specified in rules adopted by the commission ~~department~~, under which benefits for medical care are secondary or incidental to other insurance benefits. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(c) The following benefits are not subject to the creditable coverage requirements, if offered separately;

1. Limited scope dental or vision benefits.

2. Benefits or long-term care, nursing home care, home health care, community-based care, or any combination of these.

3. Such other similar, limited benefits as are specified in rules adopted by the commission ~~department~~. To the greatest extent possible, such rules must be consistent with regulations adopted by the United States Department of Health and Human Services.

(d) The following benefits are not subject to creditable coverage requirements if offered as independent, noncoordinated benefits:

1. Coverage only for a specified disease or illness.

2. Hospital indemnity or other fixed indemnity insurance.

(e) Benefits provided through Medicare supplemental health insurance, as defined under s. 1882(g)(1) of the Social Security Act, coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code, and similar supplemental coverage provided to coverage under a group health plan are not considered creditable coverage if offered as a separate insurance policy.

(7)

(b) A health maintenance organization may elect to count as creditable coverage, coverage of benefits within each of several classes or categories of benefits specified in rules adopted by the commission ~~department~~ rather than as provided under paragraph (a). Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election, a health maintenance organization shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.

(8)(a) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in this subsection or in such other manner as may be specified in rules adopted by the commission ~~department~~.

(e) The commission ~~department~~ shall adopt rules to prevent an insurer's or health maintenance organization's failure to provide information under this subsection with respect to previous coverage of an individual from adversely affecting any subsequent coverage of the individual under another group health plan or health maintenance organization coverage.

(9)

(c) As an alternative to the method authorized by paragraph (a), a health maintenance organization may address adverse selection in a method approved by the office ~~department~~.

(10)

(b) The commission ~~department~~ shall adopt rules that provide a process whereby individuals who need to establish creditable coverage for periods

before July 1, 1996, and who would have such coverage credited but for paragraph (a), may be given credit for creditable coverage for such periods through the presentation of documents or other means.

Section 1581. Paragraph (b) of subsection (3) of section 641.31074, Florida Statutes, is amended to read:

641.31074 Guaranteed renewability of coverage.—

(3)

(b)1. In any case in which a health maintenance organization elects to discontinue offering all coverage in the small group market or the large group market, or both, in this state, coverage may be discontinued by the insurer only if:

a. The health maintenance organization provides notice to the office ~~department~~ and to each contract holder, and participants and beneficiaries covered under such coverage, of such discontinuation at least 180 days prior to the date of the nonrenewal of such coverage; and

b. All health insurance issued or delivered for issuance in this state in such market is discontinued and coverage under such health insurance coverage in such market is not renewed.

2. In the case of a discontinuation under subparagraph 1. in a market, the health maintenance organization may not provide for the issuance of any health maintenance organization contract coverage in the market in this state during the 5-year period beginning on the date of the discontinuation of the last insurance contract not renewed.

Section 1582. Subsection (2) of section 641.315, Florida Statutes, is amended to read:

641.315 Provider contracts.—

(2)(a) For all provider contracts executed after October 1, 1991, and within 180 days after October 1, 1991, for contracts in existence as of October 1, 1991:

1. The contracts must require the provider to give 60 days' advance written notice to the health maintenance organization and the office ~~department~~ before canceling the contract with the health maintenance organization for any reason; and

2. The contract must also provide that nonpayment for goods or services rendered by the provider to the health maintenance organization is not a valid reason for avoiding the 60-day advance notice of cancellation.

(b) All provider contracts must provide that the health maintenance organization will provide 60 days' advance written notice to the provider and the office ~~department~~ before canceling, without cause, the contract with the provider, except in a case in which a patient's health is subject to imminent

danger or a physician's ability to practice medicine is effectively impaired by an action by the Board of Medicine or other governmental agency.

Section 1583. Subsections (4) and (5) of section 641.3154, Florida Statutes, are amended to read:

641.3154 Organization liability; provider billing prohibited.—

(4) A provider or any representative of a provider, regardless of whether the provider is under contract with the health maintenance organization, may not collect or attempt to collect money from, maintain any action at law against, or report to a credit agency a subscriber of an organization for payment of services for which the organization is liable, if the provider in good faith knows or should know that the organization is liable. This prohibition applies during the pendency of any claim for payment made by the provider to the organization for payment of the services and any legal proceedings or dispute resolution process to determine whether the organization is liable for the services if the provider is informed that such proceedings are taking place. It is presumed that a provider does not know and should not know that an organization is liable unless:

(a) The provider is informed by the organization that it accepts liability;

(b) A court of competent jurisdiction determines that the organization is liable;

(c) The office ~~department~~ or agency makes a final determination that the organization is required to pay for such services subsequent to a recommendation made by the Statewide Provider and Subscriber Assistance Panel pursuant to s. 408.7056; or

(d) The agency issues a final order that the organization is required to pay for such services subsequent to a recommendation made by a resolution organization pursuant to s. 408.7057.

(5) An organization, the office, and the department shall report any suspected violation of this section by a health care practitioner to the Department of Health and by a facility to the agency, which shall take such action as authorized by law.

Section 1584. Subsection (12) of section 641.3155, Florida Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(12) A permissible error ratio of 5 percent is established for health maintenance organizations' claims payment violations of paragraphs (3)(a), (b), (c), and (e) and (4)(a), (b), (c), and (e). If the error ratio of a particular insurer does not exceed the permissible error ratio of 5 percent for an audit period, no fine shall be assessed for the noted claims violations for the audit period. The error ratio shall be determined by dividing the number of claims with violations found on a statistically valid sample of claims for the audit period by the total number of claims in the sample. If the error ratio exceeds the

permissible error ratio of 5 percent, a fine may be assessed according to s. 624.4211 for those claims payment violations which exceed the error ratio. Notwithstanding the provisions of this section, the office ~~department~~ may fine a health maintenance organization for claims payment violations of paragraphs (3)(e) and (4)(e) which create an uncontestable obligation to pay the claim. The office ~~department~~ shall not fine organizations for violations which the office ~~department~~ determines were due to circumstances beyond the organization's control.

Section 1585. Subsection (4), (6), and (7) of section 641.316, Florida Statutes, are amended to read:

641.316 Fiscal intermediary services.—

(4) A fiscal intermediary services organization, as described in subsection (3), shall secure and maintain a surety bond on file with the office ~~department~~, naming the intermediary as principal. The bond must be obtained from a company authorized to write surety insurance in the state, and the office ~~department~~ shall be obligee on behalf of itself and third parties. The penal sum of the bond may not be less than 5 percent of the funds handled by the intermediary in connection with its fiscal and fiduciary services during the prior year or $250,000, whichever is less. The minimum bond amount must be $10,000. The condition of the bond must be that the intermediary shall register with the office ~~department~~ and shall not misappropriate funds within its control or custody as a fiscal intermediary or fiduciary. The aggregate liability of the surety for any and all breaches of the conditions of the bond may not exceed the penal sum of the bond. The bond must be continuous in form, must be renewed annually by a continuation certificate, and may be terminated by the surety upon its giving 30 days' written notice of termination to the office ~~department~~.

(6) Any fiscal intermediary services organization, other than a fiscal intermediary services organization owned, operated, or controlled by a hospital licensed under chapter 395, an insurer licensed under chapter 624, a third-party administrator licensed under chapter 626, a prepaid limited health service organization licensed under chapter 636, a health maintenance organization licensed under this chapter, or physician group practices as defined in s. 456.053(3)(h), must register with the office ~~department~~ and meet the requirements of this section. In order to register as a fiscal intermediary services organization, the organization must comply with ss. 641.21(1)(c) and (d) and 641.22(6). Should the office ~~department~~ determine that the fiscal intermediary services organization does not meet the requirements of this section, the registration shall be denied. In the event that the registrant fails to maintain compliance with the provisions of this section, the office ~~department~~ may revoke or suspend the registration. In lieu of revocation or suspension of the registration, the office ~~department~~ may levy an administrative penalty in accordance with s. 641.25.

(7) The commission ~~department~~ shall adopt rules necessary to administer this section.

Section 1586. Subsections (1), (2), (3), and (4), paragraph (b) of subsection (6), subsection (8), paragraph (c) of subsection (10), subsections (11) and (12),

paragraph (a) of subsection (14), and subsections (15), (16), and (17) of section 641.35, Florida Statutes, are amended to read:

641.35 Assets, liabilities, and investments.—

(1) ASSETS.—In any determination of the financial condition of a health maintenance organization, there shall be allowed as "assets" only those assets that are owned by the health maintenance organization and that consist of:

(a) Cash or cash equivalents in the possession of the health maintenance organization, or in transit under its control, including the true balance of any deposit in a solvent bank, savings and loan association, or trust company which is domiciled in the United States. Cash equivalents are short-term, highly liquid investments, with original maturities of 3 months or less, which are both readily convertible to known amounts of cash and so near their maturity that they present insignificant risk of changes in value because of changes in interest rates.

(b) Investments, securities, properties, and loans acquired or held in accordance with this part, and in connection therewith the following items:

1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

2. Declared and unpaid dividends on stock and shares, unless the amount of the dividends has otherwise been allowed as an asset.

3. Interest due or accrued upon a collateral loan which is not in default in an amount not to exceed 1 year's interest thereon.

4. Interest due or accrued on deposits or certificates of deposit in solvent banks, savings and loan associations, and trust companies domiciled in the United States, and interest due or accrued on other assets, if such interest is in the judgment of the <u>office</u> ~~department~~ a collectible asset.

5. Interest due or accrued on current mortgage loans, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.

(c) Premiums in the course of collection, not more than 3 months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by any governmental body in the United States or by any of their instrumentalities.

(d) The full amount of reinsurance recoverable from a solvent reinsurer, which reinsurance is authorized under s. 624.610.

(e) Pharmaceutical and medical supply inventories.

(f) Goodwill created by acquisitions and mergers occurring on or after January 1, 2001.

(g) Loans or advances by a health maintenance organization to its parent or principal owner if approved by the office ~~department~~.

(h) Other assets, not inconsistent with the provisions of this section, deemed by the office ~~department~~ to be available for the payment of losses and claims, at values to be determined by it.

The office ~~department~~, upon determining that a health maintenance organization's asset has not been evaluated according to applicable law or that it does not qualify as an asset, shall require the health maintenance organization to properly reevaluate the asset or replace the asset with an asset suitable to the office ~~department~~ within 30 days of receipt of written notification by the office ~~department~~ of this determination, if the removal of the asset from the organization's assets would impair the organization's solvency.

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets expressly shall not be allowed as assets in any determination of the financial condition of a health maintenance organization:

(a) Subscriber lists, patents, trade names, agreements not to compete, and other like intangible assets.

(b) Any note or account receivable from or advances to officers, directors, or controlling stockholders, whether secured or not, and advances to employees, agents, or other persons on personal security only, other than those transactions authorized under paragraph (1)(g).

(c) Stock of the health maintenance organization owned by it directly or owned by it through any entity in which the organization owns or controls, directly or indirectly, more than 25 percent of the ownership interest.

(d) Leasehold improvements, nonmedical libraries, stationery, literature, and nonmedical supply inventories, except that leasehold improvements made prior to October 1, 1985, shall be allowed as an asset and shall be amortized over the shortest of the following periods:

1. The life of the lease.

2. The useful life of the improvements.

3. The 3-year period following October 1, 1985.

(e) Furniture, fixtures, furnishings, vehicles, medical libraries, and equipment.

(f) Notes or other evidences of indebtedness which are secured by mortgages or deeds of trust which are in default and beyond the express period specified in the instrument for curing the default.

(g) Bonds in default for more than 60 days.

(h) Prepaid and deferred expenses.

(i) Any note, account receivable, advance, or other evidence of indebtedness, or investment in:

1. The parent of the health maintenance organization;

2. Any entity directly or indirectly controlled by the health maintenance organization parent; or

3. An affiliate of the parent or the health maintenance organization,

except as allowed in subsections (1), (11), and (12). The office ~~department~~ may, however, allow all or a portion of such asset, at values to be determined by the office ~~department~~, if deemed by the office ~~department~~ to be available for the payment of losses and claims.

(3) LIABILITIES.—In any determination of the financial condition of a health maintenance organization, liabilities to be charged against its assets shall include:

(a) The amount, estimated consistently with the provisions of this part, necessary to pay all of its unpaid losses and claims incurred for or on behalf of a subscriber, on or prior to the end of the reporting period, whether reported or unreported, including contract and premium deficiency reserves. If a health maintenance organization, through a health care risk contract, transfers to any entity the obligation to pay any provider for any claim arising from services provided to or for the benefit of any subscriber, the liabilities of the health maintenance organization under this section shall include the amount of those losses and claims to the extent that the provider has not received payment. No liability need be established if the entity has provided to the health maintenance organization a financial instrument acceptable to the office ~~department~~ securing the obligations under the contract or if the health maintenance organization has in place an escrow or withhold agreement approved by the office ~~department~~ which assures full payment of those claims. Financial instruments may include irrevocable, clean, and evergreen letters of credit. As used in this paragraph, the term "entity" does not include this state, the United States, or an agency thereof or an insurer or health maintenance organization authorized in this state.

(b) The amount equal to the unearned portions of the gross premiums charged on health maintenance contracts in force.

(c) Taxes, expenses, and other obligations due or accrued at the date of the statement.

The office ~~department~~, upon determining that a health maintenance organization has failed to report liabilities that should have been reported, shall require a corrected report which reflects the proper liabilities to be submitted by the organization to the office ~~department~~ within 10 working days of receipt of written notification.

(4) INVESTMENTS GENERALLY.—Health maintenance organizations may invest their funds only in accordance with the provisions of this part. Notwithstanding the provisions of this part, however, the office ~~department~~ may, after notice and hearing, order a health maintenance organization to limit or withdraw from certain investments or to discontinue certain investment practices, to the extent that the office ~~department~~ finds the investment practices hazardous to the financial condition of the organization. At any such hearing, the office ~~department~~ shall have the burden of presenting a prima facie case that the investment or investment practices are hazardous to the financial condition of the organization. If the office ~~department~~ presents such a prima facie case, then it shall be the organization's burden to demonstrate that the investment or investment practices are not hazardous to the financial condition of the organization.

(6) GENERAL QUALIFICATIONS.—

(b) No security or investment shall be eligible for purchase at a price above its market value unless it is approved by the office ~~department~~.

(8) EXCESSIVE COMMISSIONS AND CERTAIN INTERESTS PROHIBITED.—

(a) No health maintenance organization shall pay any commission or brokerage for the purchase or sale of property, whether real or personal, in excess of that usual and customary at the time and in the locality where the purchases or sales are made. Information regarding payments of commissions and brokerage shall be maintained from the date of the most recent examination by the office ~~department~~ pursuant to s. 641.27 until the date of completion of the following examination.

(b) No health maintenance organization shall knowingly invest in or loan upon any property, directly or indirectly, whether real or personal, in which any officer or director of the organization has a financial interest, nor shall any organization make a loan of any kind to any officer or director of the organization, except that:

1. This paragraph shall not apply to loans in circumstances in which the financial interest of the officer or director is only nominal, trifling, or so remote as not to give rise to a conflict of interest; and

2. In any case, the office ~~department~~ may approve a transaction between an organization and its officers or directors under this paragraph if it is satisfied that:

a. The transaction is entered into in good faith for the advantage and benefit of the organization,

b. The amount of the proposed investment or loan does not violate any other provision of this part or exceed the reasonable, normal value of the property or the interest which the company proposed to acquire,

c. The transaction is otherwise fair and reasonable, and

d. The transaction will not adversely affect, to any substantial degree, the liquidity of the organization's investments or its ability thereafter to comply with requirements of this part or the payment of its claims and obligations.

(10) PROPERTY USED IN THE HEALTH MAINTENANCE ORGANIZATION'S BUSINESS.—Real estate, including leasehold estates, for the convenient accommodation of the organization's business operations, including home office, branch administrative offices, hospitals, medical clinics, medical professional buildings, and any other facility to be used in the provision of health care services, or real estate for rental to any health care provider under contract with the organization to provide health care services which shall be used in the provision of health care services to members of the organization by that provider, is acceptable as an investment on the following conditions:

(c) The greater of the admitted value of the asset, as determined by statutory accounting principles, or, if approved by the office ~~department~~, the health maintenance organization's equity in the real estate plus all encumbrances on the real estate owned by the organization under this subsection, when added to the value of all personal and mixed property used in the organization's business, shall not exceed 75 percent of its admitted assets unless, with the permission of the office ~~department~~, it finds that the percentage of its admitted assets is insufficient to provide convenient accommodation for the organization's business and the operations of the organization would not otherwise be impaired.

(11) INVESTMENTS IN ADMINISTRATIVE AND MANAGEMENT SERVICE ENTITIES AND OTHER HEALTH CARE PROVIDERS.—A health maintenance organization may invest directly or indirectly in real estate, common and preferred stocks, bonds or debentures, including convertible debentures, or other evidences of debts of or equity in an entity if the entity is owned by or, with the approval of the office ~~department~~, under contract to the organization to provide management services, administrative services, or health care services for the organization, on the following conditions:

(a) Investments authorized under this subsection shall not exceed 50 percent of admitted assets, and these investments shall be included in the calculation of the overall limitation in paragraph (10)(c) relating to all real and personal property.

(b) Investments may qualify under this section only insofar as a provider of management, administrative, or health care service relationship as defined herein exists. Upon cessation of such relationship, each investment shall be subject to the rules applicable to an investment of that type and must qualify under the appropriate limitation or, failing that, become ineligible and subject to disposal under subsection (17).

(12) EXCHANGES OF FACILITIES OR ASSETS.—Health care or administrative service entities, if subsidiaries of or under contract to the health maintenance organization to provide administrative or health care services to the organization's members, may exchange facilities or similar

assets to be used in the organization's business for stock of the organization. However, any exchange involving an entity under contract with the health maintenance organization must have the approval of the office ~~department~~ prior to the exchange. These facilities or assets shall be valued in accordance with statutory accounting principles.

(14) SPECIAL LIMITATION INVESTMENTS.—

(a) After satisfying the requirements of this part, any funds of the health maintenance organization may be invested in the following investments, subject to a cost limitation of 10 percent of its admitted assets in each category of investment:

1. Anticipation obligations of political subdivisions of a state.—Anticipation obligations of any political subdivision of any state of the United States, including, but not limited to, bond anticipation notes, tax anticipation notes, preliminary loan anticipation notes, revenue anticipation notes, and construction anticipation notes, for the payment of money within 12 months from the issuance of the obligation, on the following conditions:

a. The anticipation notes are a direct obligation of the issuer under conditions set forth in subsection (9).

b. The political subdivision is not in default in the payment of the principal or interest on any of its direct general obligations or any obligation guaranteed by such political subdivision.

c. The anticipated funds are specifically pledged to secure the obligations.

2. Revenue obligations of state or municipal public utilities.—Obligations of any state of the United States, a political subdivision thereof, or a public instrumentality of any one or more of the foregoing for the payment of money, on the following conditions:

a. The obligations are payable from revenues or earnings of a public utility of such state, political subdivision, or public instrumentality which are specifically pledged therefor.

b. The law under which the obligations are issued requires that such rates for service shall be charged and collected at all times so as to produce sufficient revenue or earning, together with any other revenues or moneys pledged, to pay all operating and maintenance charges of the public utility and all principal and interest on such charges.

c. No prior or parity obligations payable from the revenues or earnings of that public utility are in default at the date of such investment.

3. Other revenue obligations.—Obligations of any state of the United States, a political subdivision thereof, or a public instrumentality of any of the foregoing for the payment of money, on the following conditions:

a. The obligations are payable from revenues or earnings, excluding revenues or earnings from public utilities, specifically pledged therefor by such state, political subdivision, or public instrumentality.

b. No prior or parity obligation of the same issuer payable from revenues or earnings from the same source has been in default as to principal or interest during the 5 years next preceding the date of the investment, but the issuer need not have been in existence for that period, and obligations acquired under this paragraph may be newly issued.

4. Corporate stocks.—Stocks, common or preferred, of any corporation created or existing under the laws of the United States or any state thereof. The organization may invest in stocks, common or preferred, of any corporation created or existing under the laws of any foreign country if such stocks are listed and traded on a national securities exchange in the United States or, in the alternative, if such investment in stocks of any corporation created or existing under the laws of any foreign country are first approved by the office ~~department~~. Investment in common stock of any one corporation shall not exceed 3 percent of the health maintenance organization's admitted assets.

(15) INVESTMENT OF EXCESS FUNDS.—

(a) After satisfying the requirements of this part, any funds of a health maintenance organization in excess of its statutorily required reserves and surplus may be invested:

1. Without limitation in any investments otherwise authorized by this part; or

2. In such other investments not specifically authorized by this part, provided such investments do not exceed the lesser of 5 percent of the health maintenance organization's admitted assets or 25 percent of the amount by which a health maintenance organization's surplus exceeds its statutorily required minimum surplus. A health maintenance organization may exceed the limitations of this subparagraph only with the prior written approval of the office ~~department~~.

(b) Nothing in this section authorizes a health maintenance organization to:

1. Invest any funds in excess of the amount by which its actual surplus exceeds its statutorily required minimum surplus; or

2. Make any investment prohibited by this code.

(16) PROHIBITED INVESTMENTS AND INVESTMENT UNDERWRITING.—

(a) In addition to investments excluded pursuant to other provisions of this act, a health maintenance organization shall not directly or indirectly invest in or lend its funds upon the security of:

1. Issued shares of its own capital stock, except in connection with a plan approved by the office ~~department~~ for purchase of the shares by the organization's officers, employees, or agents. However, no such stock shall constitute an asset of the organization in any determination of its financial condition.

2. Except with the consent of the office ~~department~~, securities issued by any corporation or enterprise the controlling interest of which is, or will after such acquisition by the organization be, held directly or indirectly by the organization or any combination of the organization and its directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in health care providers under subsections (11) and (12) shall not be subject to this provision.

3. Any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the health maintenance organization.

(b) No health maintenance organization shall underwrite or participate in the underwriting of an offering of securities or property by any other person.

(17) TIME LIMIT FOR DISPOSAL OF INELIGIBLE PROPERTY AND SECURITIES; EFFECT OF FAILURE TO DISPOSE.—

(a) Any property or securities lawfully acquired by a health maintenance organization which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition shall be disposed of within 6 months from the date of acquisition, unless within such period the security has attained to the standard of eligibility; except that any security or property acquired under any agreement of merger or consolidation may be retained for a longer period if so provided in the plan for such merger or consolidation, as approved by the office ~~department~~. Upon application by the organization and proof to the office ~~department~~ that forced sale of any such property or security would materially injure the interests of the health maintenance organization, the office ~~department~~ shall extend the disposal period for an additional reasonable time.

(b) Notwithstanding the provisions of paragraph (a), any ineligible property or securities shall not be allowed as an asset of the organization.

Section 1587. Section 641.36, Florida Statutes, is amended to read:

641.36 Adoption of rules; penalty for violation.—The commission ~~department~~ shall adopt rules necessary to carry out the provisions of this part. The office ~~department~~ shall collect and make available all health maintenance organization rules adopted by the commission ~~department~~. Any violation of a rule adopted under this section shall subject the violating entity to the provisions of s. 641.23.

Section 1588. Subsections (1), (2), and (5) of section 641.365, Florida Statutes, are amended to read:

641.365 Dividends.—

(1)(a) A health maintenance organization shall not pay any dividend or distribute cash or other property to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains.

(b) Unless prior written approval is obtained from the office ~~department~~, a health maintenance organization may not pay or declare any dividend or distribute cash or other property to or on behalf of any stockholder if, immediately before or after such distribution, the health maintenance organization's available and accumulated surplus funds, which are derived from realized net operating profits on its business and net realized gains, are or would be less than zero.

(c) A health maintenance organization may make dividend payments or distributions to stockholders without the prior written approval of the office ~~department~~ when:

1. The dividend is equal to or less than the greater of:

a. Ten percent of the health maintenance organization's accumulated surplus funds which are derived from realized net operating profits on its business and net realized capital gains as of the immediate preceding calendar year; or

b. The health maintenance organization's entire net operating profit and realized net capital gains derived during the immediately preceding calendar year.

2. The health maintenance organization will have surplus equal to or exceeding 115 percent of the minimum required statutory surplus after the dividend or distribution is made.

3. The health maintenance organization has filed a notice with the office ~~department~~ at least 30 days prior to the dividend payment or distribution, or such shorter period of time as approved by the office ~~department~~ on a case-by-case basis.

4. The notice includes a certification by an officer of the health maintenance organization attesting that after payment of the dividend or distribution the health maintenance organization will have at least 115 percent of required statutory surplus.

5. The health maintenance organization has negative retained earnings, statutory surplus in excess of $50 million, and statutory surplus greater than or equal to 150 percent of its required statutory surplus before and after the dividend distribution is made based upon the health maintenance organization's most recently filed annual financial statement.

(2) The office ~~department~~ shall not approve a dividend or distribution in excess of the maximum amount allowed in subsection (1) unless it determines that the distribution or dividend would not jeopardize the financial condition of the health maintenance organization, considering:

(a) The liquidity, quality, and diversification of the health maintenance organization's assets and the effect on its ability to meet its obligations.

(b) Any reduction of investment portfolio and investment income.

(c) History of capital contributions.

(d) Prior dividend distributions of the health maintenance organization.

(e) Whether the dividend is only a pass-through dividend from a subsidiary of the health maintenance organization.

(5) The office ~~department~~ may revoke or suspend the certificate of authority of a health maintenance organization which has declared or paid such an illegal dividend.

Section 1589. Section 641.385, Florida Statutes, is amended to read:

641.385 Order to discontinue certain advertising.—If in the opinion of the office ~~department~~ any advertisement by a health maintenance organization violates any of the provisions of this part, the department may enter an immediate order requiring that the use of the advertisement be discontinued. If requested by the health maintenance organization, the office ~~department~~ shall conduct a hearing within 10 days of the entry of such order. If, after the hearing or by agreement with the health maintenance organization, a final determination is made that the advertising was in fact violative of any provision of this part, the office ~~department~~ may, in lieu of revocation of the certificate of authority, require the publication of a corrective advertisement; impose an administrative penalty of up to $10,000; and, in the case of an initial solicitation, require that the health maintenance organization, prior to accepting any application received in response to the advertisement, provide an acceptable clarification of the advertisement to each individual applicant.

Section 1590. Subsection (1) of section 641.39001, Florida Statutes, is amended to read:

641.39001 Soliciting or accepting new or renewal health maintenance contracts by insolvent or impaired health maintenance organization prohibited; penalty.—

(1) Whether or not delinquency proceedings as to a health maintenance organization have been or are to be initiated, a director or officer of a health maintenance organization, except with the written permission of the office ~~Department of Insurance~~, may not authorize or permit the health maintenance organization to solicit or accept new or renewal health maintenance contracts or provider contracts in this state after the director or officer knew, or reasonably should have known, that the health maintenance organization was insolvent or impaired. As used in this section, the term "impaired" means that the health maintenance organization does not meet the requirements of s. 641.225.

Section 1591. Subsections (6) and (10) of section 641.3903, Florida Statutes, are amended to read:

641.3903 Unfair methods of competition and unfair or deceptive acts or practices defined.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(6) FAILURE TO MAINTAIN COMPLAINT-HANDLING PROCEDURES.—Failure of any person to maintain a complete record of all the complaints received since the date of the most recent examination of the health maintenance organization by the office ~~department~~. For the purposes of this subsection, the term "complaint" means any written communication primarily expressing a grievance and requesting a remedy to the grievance.

(10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED CHARGES FOR HEALTH MAINTENANCE COVERAGE.—

(a) Knowingly collecting any sum as a premium or charge for health maintenance coverage which is not then provided or is not in due course to be provided, subject to acceptance of the risk by the health maintenance organization, by a health maintenance contract issued by a health maintenance organization as permitted by this part.

(b) Knowingly collecting as a premium or charge for health maintenance coverage any sum in excess of or less than the premium or charge applicable to health maintenance coverage, in accordance with the applicable classifications and rates as filed with the office ~~department~~, and as specified in the health maintenance contract.

Section 1592. Section 641.3905, Florida Statutes, is amended to read:

641.3905 General powers and duties of the department and office.—In addition to the powers and duties set forth in s. 624.307, the department and office shall each have the power within its respective regulatory jurisdiction to examine and investigate the affairs of every person, entity, or health maintenance organization in order to determine whether the person, entity, or health maintenance organization is operating in accordance with the provisions of this part or has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by s. 641.3901, and each shall have the powers and duties specified in ss. 641.3907-641.3913 in connection therewith.

Section 1593. Section 641.3907, Florida Statutes, is amended to read:

641.3907 Defined unfair practices; hearings, witnesses, appearances, production of books, and service of process.—

(1) Whenever the department or office has reason to believe that any person, entity, or health maintenance organization has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 641.3903 or is operating a health maintenance organization without a certificate of authority as required by this part and that a proceeding by it in respect thereto would be to the interest of the public, the department or office shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The department or office, a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569; however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed $1,000 per violation.

(3) Statements of charges, notices, and orders under this part may be served by anyone duly authorized by the department or office, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person, entity, or health maintenance organization affected by the statement, notice, order, or other process at her or his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as aforesaid, shall be proof of service of the same.

Section 1594. Section 641.3909, Florida Statutes, is amended to read:

641.3909 Cease and desist and penalty orders.—After the hearing provided in s. 641.3907, the department or office shall enter a final order in accordance with s. 120.569. If it is determined that the person, entity, or health maintenance organization charged has engaged in an unfair or deceptive act or practice or the unlawful operation of a health maintenance organization without a subsisting certificate of authority, the department or office shall also issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or unlawful operation of a health maintenance organization. Further, if the act or practice constitutes a violation of s. 641.3155, s. 641.3901, or s. 641.3903, the department or office may, at its discretion, order any one or more of the following:

(1) Suspension or revocation of the health maintenance organization's certificate of authority if it knew, or reasonably should have known, it was in violation of this part.

(2) If it is determined that the person or entity charged has engaged in the business of operating a health maintenance organization without a certificate of authority, an administrative penalty not to exceed $1,000 for each health maintenance contract offered or effectuated.

Section 1595. Section 641.3911, Florida Statutes, is amended to read:

641.3911 Appeals from the department or office.—Any person, entity, or health maintenance organization subject to an order of the department or office under s. 641.3909 or s. 641.3913 may obtain a review of the order by filing an appeal therefrom in accordance with the provisions and procedures for appeal under s. 120.68.

Section 1596. Section 641.3913, Florida Statutes, is amended to read:

641.3913 Penalty for violation of cease and desist orders.—Any person, entity, or health maintenance organization which violates a cease and desist order of the department or office under s. 641.3909 while such order is in effect, after notice and hearing as provided in s. 641.3907, shall be subject, at the discretion of the department or office, to any one or more of the following:

(1) A monetary penalty of not more than $200,000 as to all matters determined in such hearing.

(2) Suspension or revocation of the health maintenance organization's certificate of authority.

Section 1597. Section 641.3917, Florida Statutes, is amended to read:

641.3917 Civil liability.—The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department or office shall abrogate such rights to damage or other relief in any court.

Section 1598. Subsections (3), (10), and (14) of section 641.3922, Florida Statutes, are amended to read:

641.3922 Conversion contracts; conditions.—Issuance of a converted contract shall be subject to the following conditions:

(3) CONVERSION PREMIUM.—The premium for the converted contract shall be determined in accordance with premium rates applicable to the age and class of risk of each person to be covered under the converted contract and to the type and amount of coverage provided. However, the premium for the converted contract may not exceed 200 percent of the standard risk rate, as established by the office ~~department~~ under s. 627.6675(3). The mode of payment for the converted contract shall be quarterly or more frequently at the option of the organization, unless otherwise mutually agreed upon between the subscriber and the organization.

(10) ALTERNATE PLANS.—The health maintenance organization shall offer a standard health benefit plan as established pursuant to s. 627.6699(12). The health maintenance organization may, at its option, also offer alternative plans for group health conversion in addition to those required by this section, provided any alternative plan is approved by the office ~~department~~ or is a converted policy, approved under s. 627.6675 and issued by an insurance company authorized to transact insurance in this state. Approval by the office ~~department~~ of an alternative plan shall be based on compliance by the alternative plan with the provisions of this part and the rules promulgated thereunder, applicable provisions of the Florida Insurance Code and rules promulgated thereunder, and any other applicable law.

(14) NOTIFICATION.—A notification of the conversion privilege shall be included in each health maintenance contract and in any certificate or member's handbook. The organization shall mail an election and premium notice form, including an outline of coverage, on a form approved by the office ~~department~~, within 14 days after any individual who is eligible for a converted health maintenance contract gives notice to the organization that the individual is considering applying for the converted contract or otherwise requests such information. The outline of coverage must contain a description of the principal benefits and coverage provided by the contract and its principal exclusions and limitations, including, but not limited to, deductibles and coinsurance.

Section 1599. Section 641.402, Florida Statutes, is amended to read:

641.402 Definitions.—As used in this part, the term:

(1) "Basic services" includes any of the following: emergency care, physician care other than hospital inpatient physician services, ambulatory diagnostic treatment, and preventive health care services.

~~(2) "Department" means the Department of Insurance.~~

(2)~~(3)~~ "Guaranteeing organization" means an organization that ~~which~~ is domiciled in the United States; that ~~which~~ has authorized service of process against it; and that ~~which~~ has appointed the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as its agent for service of process in connection with any cause of action arising in this state, based upon any guarantee entered into under this part.

(3)~~(4)~~ "Insolvent" or "insolvency" means the inability of a prepaid health clinic to discharge its liabilities as they become due in the normal course of business.

(4)~~(5)~~ "Prepaid health clinic" means any organization authorized under this part which provides, either directly or through arrangements with other persons, basic services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis, including those basic services which subscribers might reasonably require to maintain good health. However, no clinic that ~~which~~ provides or contracts for, either directly or indirectly, inpatient hospital services, hospital inpatient physician services, or indemnity against the cost of such services shall be a prepaid health clinic.

(5)~~(6)~~ "Prepaid health clinic contract" means any contract entered into by a prepaid health clinic with a subscriber or group of subscribers to provide any of the basic services in exchange for a prepaid per capita or prepaid aggregate fixed sum.

(6)~~(7)~~ "Provider" means any physician or person other than a hospital that furnishes health care services and is licensed or authorized to practice in this state.

(7)~~(8)~~ "Reporting period" means the particular span of time by or for which accounts are redeemed on an annualized basis.

(8)~~(9)~~ "Subscriber" means an individual who has contracted, or on whose behalf a contract has been entered into, with a prepaid health clinic for health care services.

(9)~~(10)~~ "Surplus" means total unencumbered assets in excess of total liabilities. Surplus includes capital stock, capital in excess of par, and retained earnings and may include surplus notes.

(10)~~(11)~~ "Surplus notes" means debt that ~~which~~ has been guaranteed by the United States Government or its agencies or debt that ~~which~~ has been subordinated to all claims of subscribers and general creditors of the prepaid health clinic.

Section 1600. Section 641.403, Florida Statutes, is amended to read:

641.403 Rulemaking authority.—The commission may ~~Department of Insurance has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

Section 1601. Section 641.405, Florida Statutes, is amended to read:

641.405 Application for certificate of authority to operate prepaid health clinic.—

(1) No person may operate a prepaid health clinic without first obtaining a certificate of authority from the office ~~department~~. The office ~~department~~ shall not issue a certificate of authority to any applicant which does not possess a valid Health Care Provider Certificate issued by the Agency for Health Care Administration.

(2) Each application for a certificate of authority shall be on such form as the commission ~~department~~ prescribes, and such application shall be accompanied by:

(a) A copy of the basic organizational document of the applicant, if any, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable document, and all amendments to such document.

(b) A copy of the constitution, bylaws, rules and regulations, or similar form of document, if any, regulating the conduct of the affairs of the applicant.

(c) A list of the names, addresses, and official capacities with the applicant of the persons who are to be responsible for the conduct of the affairs of the clinic, including all members of the governing body, the officers and directors in the case of a corporation, and the partners or associates in the case of a partnership or association. Such persons shall fully disclose to the office ~~department~~ and the governing body of the clinic the extent and nature of any contracts or arrangements between them and the clinic, including any possible conflicts of interest.

(d) A statement generally describing the clinic and its operations.

(e) Each form of prepaid health clinic contract that the applicant proposes to offer the subscribers, showing for each form of contract the benefits to which the subscribers are entitled, together with a table of the rates charged, or proposed to be charged.

(f) A copy of the applicant's Health Care Provider Certificate from the Agency for Health Care Administration, issued pursuant to part III of this chapter.

(g) A financial statement prepared on the basis of generally accepted accounting principles, except that surplus notes acceptable to the office ~~department~~ may be included in the calculation of surplus.

Section 1602. Section 641.406, Florida Statutes, is amended to read:

641.406 Issuance of certificate of authority.—The office ~~department~~ shall issue a certificate of authority for a prepaid health clinic to any applicant filing a properly completed application in conformity with s. 641.405, upon payment of the prescribed fees and upon the office's ~~department's~~ being satisfied that:

(1) As a condition precedent to the issuance of any certificate, the applicant has obtained a Health Care Provider Certificate from the Agency for Health Care Administration pursuant to part III of this chapter.

(2) The proposed rates are actuarially sound for the benefits provided, including administrative costs.

(3) The applicant has met the minimum surplus requirements of s. 641.407.

(4) The procedures for offering basic services and offering and terminating contracts to subscribers will not unfairly discriminate on the basis of age, health, or economic status. However, this subsection does not prohibit reasonable underwriting classifications for the purposes of establishing contract rates, nor does it prohibit experience rating.

(5) The procedures for offering basic services and offering and terminating contracts to subscribers will not discriminate on the basis of sex, race, or national origin.

(6) The applicant furnishes evidence of adequate insurance coverage or an adequate plan for self-insurance to respond to claims for injuries arising out of the furnishing of basic services.

(7) The ownership, control, or management of the applicant is competent and trustworthy and possesses managerial experience that would make the proposed clinic operation beneficial to the subscribers. The office ~~department~~ shall not grant or continue authority to transact the business of a prepaid health clinic in this state at any time during which the office ~~department~~ has good reason to believe that the ownership, control, or management of the clinic is under the control of any person whose business operations are or have been marked by business practices or conduct that is to the detriment of the public, stockholders, investors, or creditors; by the improper manipulation of assets or of accounts; or by bad faith.

(8) The application and the applicant are in conformity with all requirements of this part.

Section 1603. Section 641.4065, Florida Statutes, is amended to read:

641.4065 Insurance business not authorized.—Nothing in the Florida Insurance Code or this part shall be deemed to authorize any prepaid health clinic to transact any insurance business other than that issuing prepaid health clinic contracts or otherwise to engage in any other type of insurance unless it is authorized under a certificate of authority issued by the office ~~department~~ under the provisions of the Florida Insurance Code.

Section 1604. Subsection (2) of section 641.407, Florida Statutes, is amended to read:

641.407 Minimum surplus.—

(2) In lieu of having any minimum surplus, the prepaid health clinic may provide a written guaranty to assure payment of covered subscriber claims if the guaranteeing organization has been in operation for at least 3 years and has a surplus, not including land, buildings, and equipment, equal to the product of 2 times the amount of the required statutory surplus. Such guaranteeing organization and such written guaranty must be acceptable to, and approved by, the office ~~department~~. The office ~~department~~ shall consider the likelihood of the payment of subscriber claims in granting or withholding such approval.

Section 1605. Section 641.409, Florida Statutes, is amended to read:

641.409 Insolvency protection.—

(1) Every prepaid health clinic shall comply with one of the following paragraphs:

(a) The prepaid health clinic shall secure insurance to the satisfaction of the office ~~department~~ to protect subscribers in the event the prepaid health clinic is unable to meet its obligations to subscribers under the terms of any prepaid health clinic contract issued to a subscriber.

(b) The prepaid health clinic shall file with the office ~~department~~ a surety bond issued by an authorized surety insurer. The bond shall be for the same purpose as the insurance in lieu of which the bond is filed. The office ~~department~~ shall not approve any bond under the terms of which the protection afforded against insolvency is not equivalent to the protection afforded by such insurance. The bond shall guarantee that the prepaid health clinic will faithfully and truly perform all the conditions of any prepaid health clinic contract. No such bond shall be canceled or subject to cancellation unless at least 60 days' notice of the cancellation, in writing, is filed with the office ~~department~~. In the event that the notice of termination of the bond is filed with the office ~~department~~, the prepaid health clinic insured under the bond shall, within 30 days of the filing of the notice of termination, provide the office ~~department~~ with a replacement bond meeting the requirements of this part or secure insurance as required by paragraph (a). The cancellation of a bond does not relieve the obligation of the issuer of the bond for claims arising out of contracts issued prior to the cancellation of the bond unless a replacement bond or insurance is secured. In no event shall the issuer's aggregate liability under the bond exceed the face amount of the bond. If, within 30 days of filing the notice of termination, a replacement bond or insurance has not been secured and filed with the office ~~department~~, the office ~~department~~ shall suspend the certificate of the prepaid health clinic until the deposit requirements are satisfied. Whenever the prepaid health clinic ceases to do business in this state and furnishes to the office ~~department~~ satisfactory proof that it has discharged or otherwise adequately provided for all of its obligations to its subscribers, the office ~~department~~ shall release any bond filed by the prepaid health clinic.

(2) In determining the sufficiency of the insurance required under paragraph (1)(a) or the surety bond required under paragraph (1)(b), the office ~~department~~ may consider the number of subscribers, the basic services included in subscriber contracts, and the cost of providing such basic services to subscribers in the geographic area served.

(3) Every prepaid health clinic shall deposit with the department a cash deposit in the amount of $30,000 to guarantee that the obligations to the subscribers will be performed.

Section 1606. Section 641.41, Florida Statutes, is amended to read:

641.41 Annual report of prepaid health clinic; administrative penalty.—

(1) Each prepaid health clinic shall file a report with the office ~~department~~, annually on or before March 1, or within 3 months of the end of the reporting period of the clinic, or within such extension of time for the filing of the report as the office ~~department~~, for good cause, may grant. The report of the prepaid health clinic must be filed on forms prescribed by the commission ~~department~~ and must be verified under oath by two executive officers of the clinic or, if the clinic is not a corporation, verified under oath by two persons who are principal managing directors of the affairs of the clinic. The report of the clinic shall show the condition of the clinic on the last day of the immediately preceding reporting period. Such report shall include:

(a) A financial statement of the clinic, including its balance sheet and a statement of operations for the preceding year;

(b) A list of the name and residence address of every person responsible for the conduct of the affairs of the clinic, together with a disclosure of the extent and nature of any contract or arrangement between such person and the clinic, including any possible conflicts of interest;

(c) The number of prepaid health clinic contracts issued and outstanding, and the number of prepaid health clinic contracts terminated and a compilation of the reasons for such terminations;

(d) Such statistical information as is requested by the commission or office ~~department~~, which information shows the rates of the clinic for all basic services provided under prepaid health clinic contracts;

(e) The number and amount of damage claims for medical injury initiated against the clinic and any of the providers engaged by it during the reporting year, broken down into claims with and without formal legal process, and the disposition, if any, of each such claim; and

(f) Such other information relating to the performance of the clinic as is required by the commission or office ~~department~~.

(2) Any clinic which neglects to file the annual report in the form and within the time required by this section is subject to an administrative penalty, not to exceed $100 for each day during which the neglect continues; and, upon notice by the office ~~department~~ to that effect, the authority of the clinic to do business in this state shall cease while such default continues.

Section 1607. Section 641.412, Florida Statutes, is amended to read:

641.412 Fees.—

(1) Every prepaid health clinic shall pay to the office ~~department~~ the following fees:

(a) For filing a copy of its application for a certificate of authority or an amendment to such certificate, a nonrefundable fee in the amount of $150.

(b) For filing each annual report, a fee in the amount of $150.

(2) The fees charged under this section shall be distributed as follows:

(a) One-third of the total amount of fees shall be distributed to the Agency for Health Care Administration; and

(b) Two-thirds of the total amount of fees shall be distributed to the office ~~Department of Insurance~~.

Section 1608. Section 641.418, Florida Statutes, is amended to read:

641.418 Examination of prepaid health clinic by the office ~~department~~.—The office ~~department~~ shall examine the affairs, transactions, accounts, business records, and assets of any prepaid health clinic as often as the office ~~department~~ deems it expedient for the protection of the people of this state. Every clinic shall submit its books and records and take other appropriate action as may be necessary to facilitate an examination. However, medical records of individuals and records of physicians providing services under contracts to the clinic are not subject to audit, although such records may be subject to subpoena by court order upon a showing of good cause. For the purpose of examinations, the office ~~department~~ may administer oaths to and examine the officers and agents of a clinic concerning its business and affairs. The expenses for the examination of each clinic by the office ~~department~~ are subject to the same terms and conditions that apply to insurers under part II of chapter 624. In no event shall the expenses of all examinations exceed the maximum amount of $15,000 per year.

Section 1609. Subsections (2), (3), (5), and (7) of section 641.42, Florida Statutes, is amended to read:

641.42 Prepaid health clinic contracts.—

(2) The rates charged by any clinic to its subscribers shall not be excessive, inadequate, or unfairly discriminatory. The commission ~~department~~, in accordance with generally accepted actuarial practice, may define by rule what constitutes excessive, inadequate, or unfairly discriminatory rates and may require whatever information the commission ~~department~~ deems necessary to determine that a rate or proposed rate meets the requirements of this subsection.

(3) No clinic shall issue or agree to issue any prepaid health clinic contract to a subscriber unless the contract has first been filed with, and approved by, the office ~~department~~.

(5) Every subscriber shall receive a clear and understandable description of the method of the clinic for resolving subscriber grievances; such method shall be set forth in the contract and shall be approved by the office ~~department~~ on the basis of its underlying fairness.

(7)(a) If a clinic desires to amend any contract with any of its subscribers or desires to change any rate charged for the contract, the clinic may do so, upon filing with the office ~~department~~ the proposed amendment or change in rates.

(b) No prepaid health clinic contract form or application form when written application is required and is to be made a part of the policy or contract, or no printed amendment, addendum, rider, or endorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with the office ~~department at its offices in Tallahassee~~ by or in behalf of the clinic which proposes to use such form and has been approved by the office ~~department~~. Every such filing shall be made not less than 30 days in advance of any such use or delivery. At the expiration of such 30 days, the form so filed shall be deemed approved unless prior to the end of the 30 days the form has been affirmatively approved or disapproved by the office ~~department~~. The approval of any such form by the office ~~department~~ constitutes a waiver of any unexpired portion of such waiting period. The office ~~department~~ may extend by not more than an additional 15 days the period within which the office ~~department~~ may so affirmatively approve or disapprove any such form, by giving notice of such extension before the expiration of the initial 30-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, such form shall be deemed approved. The office ~~department~~ may, for cause, withdraw a previous approval. No clinic shall issue or use any form which has been disapproved by the office ~~department~~ or any form for which the office ~~department~~ has withdrawn approval.

(c) The office ~~department~~ shall disapprove any form filed under this subsection, or withdraw any previous approval of the form, only if the form:

1. Is in any respect in violation of, or does not comply with, any provision of this part or rule adopted under this part.

2. Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

3. Has a misleading title, misleading heading, or other indication of the provisions of the form which is misleading.

4. Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

5. Provides benefits which are unreasonable in relation to the rate charged or contains provisions which are unfair, inequitable, or contrary to the public policy of this state or encourage misrepresentation.

(d) In determining whether the benefits are reasonable in relation to the rate charged, the office ~~department~~, in accordance with reasonable actuarial techniques, shall consider:

1. Past loss experience and prospective loss experience.

2. Allocation of expenses.

3. Risk and contingency margins, along with justification of such margins.

4. Acquisition costs.

5. Other factors deemed appropriate by the office ~~department~~, based on sound actuarial techniques.

Section 1610. Section 641.421, Florida Statutes, is amended to read:

641.421 Language used in contracts and advertisements; translations.—

(1)(a) All prepaid health clinic contracts or forms shall be printed in English.

(b) If the negotiations by a prepaid health clinic with a subscriber leading up to the effectuation of a prepaid health clinic contract are conducted in a language other than English, the prepaid health clinic shall supply to the subscriber a written translation of the contract, which translation accurately reflects the substance of the contract and is in the language used to negotiate the contract. Any such translation shall be furnished to the office ~~department~~ as part of the filing of the prepaid health clinic contract form and shall be approved by the office ~~department~~ prior to use. No translation of a prepaid health clinic contract form shall be approved by the office ~~department~~ unless the translation accurately reflects the substance of the prepaid health clinic contract form in translation. When a translation of a prepaid health clinic contract is used, the translation shall clearly and conspicuously state on its face and in the language of the translation:

READ THIS FIRST

This is a translation of the document that you are about to sign.

(2) All advertisements by a prepaid health clinic, if printed or broadcast in a language other than English, also shall be available in English and shall be furnished to the office ~~department~~ upon request. As used in this subsection, the term "advertisement" means any advertisement, circular, pamphlet, brochure, or other printed material disclosing or disseminating advertising material or information by a clinic to prospective or existing subscribers and includes any radio or television transmittal of an advertisement or information.

Section 1611. Subsection (2) of section 641.424, Florida Statutes, is amended to read:

641.424 Validity of noncomplying contracts.—

(2) Any contract delivered or issued for delivery in this state covering a subscriber resident, located, or to be performed in this state, which subscriber, pursuant to the provisions of this part, the clinic may not lawfully provide under such a contract, is cancelable at any time by the clinic, any provision of the contract to the contrary notwithstanding; and the clinic shall promptly cancel the contract in accordance with the request of the office ~~department~~ for such cancellation. No such illegality or cancellation shall be deemed to relieve the clinic of any liability incurred by the clinic under the contract while the contract was in force or to prohibit the clinic from retaining the pro rata earned premium on the contract. This provision does not relieve the clinic from any penalty otherwise incurred by the clinic under this part on account of any such violation.

Section 1612. Section 641.437, Florida Statutes, is amended to read:

641.437 Investigatory power of office ~~department~~.—The office ~~department~~ has the power to examine and investigate the affairs of every person, entity, or prepaid health clinic in order to determine whether the person, entity, or prepaid health clinic is operating in accordance with the provisions of this part or has been or is engaged in any unfair method of competition or any unfair or deceptive act or practice prohibited by s. 641.44.

Section 1613. Section 641.443, Florida Statutes, is amended to read:

641.443 Temporary restraining orders.—

(1) The office ~~department~~ is vested with the power to seek a temporary restraining order:

(a) On behalf of the office ~~department~~ or on behalf of a subscriber or subscribers of a prepaid health clinic that is being operated by a person or entity without a subsisting certificate of authority; or

(b) On behalf of the office ~~department~~ or on behalf of a subscriber or subscribers to whom a prepaid health clinic, person, or entity is issuing, delivering, or renewing prepaid health clinic contracts without an existing certificate of authority.

(2) The office ~~department~~ and the Agency for Health Care Administration are each vested with the power to seek a temporary restraining order on their behalf or on behalf of a subscriber or subscribers of a prepaid health clinic that is being operated in violation of any provision of this part or any rule promulgated under this part, or any other applicable law or rule.

Section 1614. Section 641.444, Florida Statutes, is amended to read:

641.444 Injunction.—In addition to the penalties and other enforcement provisions of this part, if a person, entity, or prepaid health clinic has engaged in any activity prohibited by this part or any rule adopted pursuant to this part, the office ~~department~~ may resort to a proceeding for injunction in the circuit court of the county where such person, entity, or prepaid health clinic is located or has her or his or its principal place of business; and the office ~~department~~ may apply in such court for such temporary and permanent orders as the office ~~department~~ may deem necessary to restrain the

person, entity, or prepaid health clinic from engaging in any such activity, until the person, entity, or prepaid health clinic complies with the provisions and rules.

Section 1615. Section 641.445, Florida Statutes, is amended to read:

641.445 Defined practices; hearings, witnesses, appearances, production of books, and service of process.—

(1) Whenever the office ~~department~~ has reason to believe that a person, entity, or prepaid health clinic has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 641.441, or is operating a prepaid health clinic without a certificate of authority as required by this part or otherwise operating in violation of any provision of this part or rule adopted pursuant to this part, and that a proceeding by the office ~~department~~ in respect thereto would be in the interest of the public, the office ~~department~~ shall conduct, or cause to have conducted, a hearing in accordance with chapter 120.

(2) The office ~~department~~, a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569; however, the penalty for the failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed $1,000 per violation.

(3) A statement of charges, notice, or order under this part may be served by anyone duly authorized by the office ~~department~~, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy of the statement of charges, notice, or order to the person, entity, or prepaid health clinic affected by the statement, notice, or order or other process at his or her or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, or order or other process, setting forth the manner of the service, is proof of such service; and the return postcard receipt for such statement, notice, or order or other process, certified and mailed as provided in this subsection, is proof of the service of the statement, notice, or order or other process.

Section 1616. Section 641.446, Florida Statutes, is amended to read:

641.446 Cease and desist and penalty orders.—After the hearing provided in s. 641.445, the office ~~department~~ shall enter a final order in accordance with s. 120.569. If it is determined that the person, entity, or prepaid health clinic charged has engaged in an unfair or deceptive act or practice or the unlawful operation of a prepaid health clinic, the office ~~department~~ also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or unlawful operation of a prepaid health clinic. Furthermore, the office ~~department~~ may, at its discretion, order any one or more of the following:

(1) The suspension or revocation of the certificate of authority of the prepaid health clinic if it knew, or reasonably should have known, that it was in violation of this part.

(2) If it is determined that the person or entity charged has engaged in the business of operating a prepaid health clinic without a certificate of authority, an administrative penalty not to exceed $1,000 for each prepaid health clinic contract offered or effectuated.

Section 1617. Section 641.447, Florida Statutes, is amended to read:

641.447 Appeal from ~~departmental~~ order.—Any person, entity, or prepaid health clinic that is subject to an order of the office ~~department~~ under s. 641.446 may obtain a review of the order by filing an appeal from the order in accordance with the provisions and procedures for appeal under s. 120.68.

Section 1618. Section 641.448, Florida Statutes, is amended to read:

641.448 Penalty for violation of cease and desist order.—Any person, entity, or prepaid health clinic that violates a cease and desist order of the office ~~department~~ under s. 641.446 while such order is in effect, after notice and hearing as provided in s. 641.445, is subject, at the discretion of the office ~~department~~, to any one or more of the following:

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

(2) The suspension or revocation of the certificate of authority of the prepaid health clinic.

Section 1619. Section 641.45, Florida Statutes, is amended to read:

641.45 Revocation or cancellation of certificate of authority; suspension of authority to enroll new subscribers; terms of suspension.—

(1) The maintenance of a valid and current Health Care Provider Certificate issued pursuant to part III of this chapter is a condition of the maintenance of a valid and current certificate of authority issued by the office ~~department~~ to operate a prepaid health clinic. Revocation or nonrenewal of a Health Care Provider Certificate shall be deemed to be an automatic and immediate cancellation of a prepaid health clinic's certificate of authority.

(2) The office ~~department~~ may suspend the authority of a clinic to enroll new subscribers or revoke any certificate of authority issued to a prepaid health clinic, or order compliance within 60 days, if the office ~~department~~ finds that any of the following conditions exist:

(a) The clinic is not operating in compliance with this part or any rule promulgated under this part.

(b) The plan is no longer actuarially sound or the clinic does not have the minimum surplus as required by this part.

(c) The existing contract rates are excessive, inadequate, or unfairly discriminatory.

(d) The clinic has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity

for services or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising.

(e) The organization is insolvent.

(f) The clinic has not complied with the grievance procedures for subscribers that are set forth in any prepaid health clinic contract.

(g) The clinic has not fully satisfied a judgment against the clinic within 10 days of the entry of the judgment by any court in the state or, in the case of an appeal from such judgment, has not fully satisfied the judgment within 60 days after affirmance of the judgment by the appellate court.

(3) The office ~~department~~ shall, in its order suspending the authority of a clinic to enroll new subscribers, specify the period during which the suspension is to be in effect and the conditions, if any, which must be met by the clinic prior to reinstatement of its authority to enroll new subscribers. The order of suspension is subject to rescission or modification by further order of the office ~~department~~ prior to the expiration of the suspension period. Reinstatement shall not be made unless requested by the clinic; however, the office ~~department~~ shall not grant reinstatement if it finds that the circumstances for which the suspension occurred still exist or are likely to recur.

Section 1620. Section 641.452, Florida Statutes, is amended to read:

641.452 Administrative penalty in lieu of suspension or revocation of certificate of authority.—The office ~~department~~ may, in lieu of suspension or revocation of a certificate of authority, levy an administrative penalty in an amount not more than $10,000 for each violation by a prepaid health clinic. In levying such fine, the office ~~department~~ shall consider the number of members and total revenues of the clinic and whether the violation was committed knowingly and willfully.

Section 1621. Section 641.453, Florida Statutes, is amended to read:

641.453 Civil liability.—The provisions of this part are cumulative to the rights under the general civil law and common law, and no action of the office ~~department~~ shall abrogate such rights to damages or other relief in any court.

Section 1622. Section 641.454, Florida Statutes, is amended to read:

641.454 Civil action to enforce prepaid health clinic contract; attorney's fees; court costs.—In any civil action brought to enforce the terms and conditions of a prepaid health clinic contract, the prevailing party is entitled to recover reasonable attorney's fees and court costs. This section shall not be construed to authorize a civil action against the commission or office ~~department~~, or their ~~its~~ employees, ~~or the Insurance Commissioner and Treasurer~~ or against the Agency for Health Care Administration, the employees of the Agency for Health Care Administration, or the Secretary of Health Care Administration.

Section 1623. Section 641.455, Florida Statutes, is amended to read:

641.455 Disposition of moneys collected under this part.—Fees, administrative penalties, examination expenses, and other sums collected by the office ~~department~~ under this part shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund; however, fees, examination expenses, and other sums collected by, or allocated to, the Agency for Health Care Administration under this part shall be deposited to the credit of the General Revenue Fund.

Section 1624. Section 641.457, Florida Statutes, is amended to read:

641.457 Exemption for certain operational prepaid health clinics.—The provisions of this part do not apply to those prepaid health clinics providing the services defined in ss. 641.40 through 641.459, which clinics have been continuously engaged in providing such services since January 1, 1947, provided that any prepaid health clinic claiming an exemption under this section notified ~~notifies~~ the former Department of Insurance of its claim on or before January 1, 1985. This exemption will terminate upon a change in controlling ownership of the organization.

Section 1625. Section 641.48, Florida Statutes, is amended to read:

641.48 Purpose and application of part.—The purpose of this part is to ensure that health maintenance organizations and prepaid health clinics deliver high-quality health care to their subscribers. To achieve this purpose, this part requires all such organizations to obtain a health care provider certificate from the agency as a condition precedent to obtaining a certificate of authority to do business in Florida from the office ~~Department of Insurance~~, under part I or part II of this chapter.

Section 1626. Subsection (2) of section 641.49, Florida Statutes, is amended to read:

641.49 Certification of health maintenance organization and prepaid health clinic as health care providers; application procedure.—

(2) The office ~~Department of Insurance~~ shall not issue a certificate of authority under part I or part II of this chapter to any applicant which does not possess a valid health care provider certificate issued by the agency under this part.

Section 1627. Subsection (4) of section 641.495, Florida Statutes, is amended to read:

641.495 Requirements for issuance and maintenance of certificate.—

(4) The organization shall ensure that the health care services it provides to subscribers, including physician services as required by s. 641.19(12)(d) and (e) ~~s. 641.19(13)(d) and (e)~~, are accessible to the subscribers, with reasonable promptness, with respect to geographic location, hours of operation, provision of after-hours service, and staffing patterns within generally accepted industry norms for meeting the projected subscriber needs. The

health maintenance organization must provide treatment authorization 24 hours a day, 7 days a week. Requests for treatment authorization may not be held pending unless the requesting provider contractually agrees to take a pending or tracking number.

Section 1628. Subsections (7), (8), and (11) of section 641.511, Florida Statutes, are amended to read:

641.511 Subscriber grievance reporting and resolution requirements.—

(7) Each organization shall send to the agency a copy of its quarterly grievance reports submitted to the office ~~Department of Insurance~~ pursuant to s. 408.7056(12).

(8) The agency shall investigate all reports of unresolved quality of care grievances received from:

(a) Annual and quarterly grievance reports submitted by the organization to the office ~~Department of Insurance~~.

(b) Review requests of subscribers whose grievances remain unresolved after the subscriber has followed the full grievance procedure of the organization.

(11) Each organization, as part of its contract with any provider, must require the provider to post a consumer assistance notice prominently displayed in the reception area of the provider and clearly noticeable by all patients. The consumer assistance notice must state the addresses and toll-free telephone numbers of the Agency for Health Care Administration, the Statewide Provider and Subscriber Assistance Program, and the Department of Financial Services ~~Insurance~~. The consumer assistance notice must also clearly state that the address and toll-free telephone number of the organization's grievance department shall be provided upon request. The agency may adopt ~~is authorized to promulgate~~ rules to implement this section.

Section 1629. Subsections (1), (3), and (6) of section 641.512, Florida Statutes, are amended to read:

641.512 Accreditation and external quality assurance assessment.—

(1)(a) To promote the quality of health care services provided by health maintenance organizations and prepaid health clinics in this state, the office ~~department~~ shall require each health maintenance organization and prepaid health clinic to be accredited within 1 year of the organization's receipt of its certificate of authority and to maintain accreditation by an accreditation organization approved by the office ~~department~~, as a condition of doing business in the state.

(b) In the event that no accreditation organization can be approved by the office ~~department~~, the office ~~department~~ shall require each health maintenance organization and prepaid health clinic to have an external quality assurance assessment performed by a review organization approved by the

office ~~department~~, as a condition of doing business in the state. The assessment shall be conducted within 1 year of the organization's receipt of its certificate of authority and every 2 years thereafter, or when the office ~~department~~ deems additional assessments necessary.

(3) A representative of the office ~~department~~ shall accompany the accreditation or review organization throughout the accreditation or assessment process, but shall not participate in the final accreditation or assessment determination. The accreditation or review organization shall monitor and evaluate the quality and appropriateness of patient care, the organization's pursuance of opportunities to improve patient care and resolve identified problems, and the effectiveness of the internal quality assurance program required for health maintenance organization and prepaid health clinic certification pursuant to s. 641.49(3)(p).

(6) The accreditation or review organization shall issue a written report of its findings to the health maintenance organization's or prepaid health clinic's board of directors. A copy of the report shall be submitted to the office ~~department~~ by the organization within 30 business days of its receipt by the health maintenance organization or prepaid health clinic.

Section 1630. Section 641.52, Florida Statutes, is amended to read:

641.52 Revocation of certificate; suspension of new enrollment; suspension of the health care provider certificate; administrative fine; notice of action to the office ~~Department of Insurance~~; penalty for use of unlicensed providers.—

(1) The agency may suspend the authority of an organization to enroll new subscribers or revoke the health care provider certificate of any organization, or order compliance within a time certain, if it finds that any of the following conditions exist:

(a) The organization is in substantial violation of its contracts.

(b) The organization is unable to fulfill its obligations under outstanding contracts entered into with its subscribers.

(c) The organization knowingly utilizes a provider who is furnishing or has furnished health care services and who does not have a subsisting license or other authority to practice or furnish health care services in this state.

(d) The organization no longer meets the requirements for the certificate as originally issued.

(e) The organization has violated any lawful rule or order of the agency or any provision of this part.

(f) The organization has refused to be examined or to produce its accounts, records, and files for examination or to perform any other legal obligation as to such examination, when required by the agency.

(g) The organization has not, after given reasonable notice, maintained accreditation or received favorable external quality assurance reviews under s. 641.512 or, following an investigation under s. 641.515, has been determined to not materially meet requirements under this part.

(2) Revocation of an organization's certificate shall be for a period of 2 years. After 2 years, the organization may apply for a new certificate by compliance with all application requirements applicable to first-time applicants.

(3) Suspension of an organization's authority to enroll new subscribers shall be for such period, not to exceed 1 year, as is fixed by the agency. The agency shall, in its order suspending the authority of an organization to enroll new subscribers, specify the period during which the suspension is to be in effect and the conditions, if any, which must be met by the organization prior to reinstatement of its authority to enroll new subscribers. The order of suspension is subject to rescission or modification by further order of the agency prior to the expiration of the suspension period. Authority to enroll new subscribers shall not be reinstated unless requested by the organization; however, the agency may not grant reinstatement if it finds that the circumstances for which the suspension of authority to enroll new subscribers occurred still exist or are likely to recur.

(4) The agency may suspend the health care provider certificate issued to an organization. The agency shall, in its order suspending the health care provider certificate, specify the period during which the suspension is to be in effect and the conditions, if any, which must be met by the organization for reinstatement. Upon expiration of the suspension period, the organization's certificate automatically reinstates unless the agency finds that the causes of the suspension have not been removed or that the organization is otherwise not in compliance with this part. If the agency makes such a finding, the health care provider certificate shall not be reinstated and is considered to have expired as of the end of the suspension period.

(5) If the agency finds that one or more grounds exist for the revocation or suspension of a certificate issued under this part, the agency may, in lieu of such revocation or suspension, impose a fine upon the organization. With respect to any nonwillful violation, the fine may not exceed $2,500 per violation. Such fines may not exceed an aggregate amount of $25,000 for all nonwillful violations arising out of the same action. With respect to any knowing and willful violation of a lawful order or rule of the agency or a provision of this part, the agency may impose a fine upon the organization in an amount not to exceed $20,000 for each such violation. Such fines may not exceed an aggregate amount of $250,000 for all knowing and willful violations arising out of the same action. The agency shall, by January 1, 1997, adopt by rule penalty categories that specify varying ranges of fines for willful violations and for nonwillful violations.

(6) The agency shall immediately notify the <u>office</u> ~~Department of Insurance~~ whenever it issues an administrative complaint or an order or otherwise initiates legal proceedings resulting in or which may result in suspension or revocation of an organization's health care provider certificate or suspension of new enrollment.

(7) Any organization that knowingly utilizes the services of a provider who is not licensed or otherwise authorized by law to provide such services is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1631. Subsection (2) of section 641.54, Florida Statutes, is amended to read:

641.54 Information disclosure.—

(2) The list shall be made available, upon request, to the office ~~department~~. The list shall also be made available, upon request:

(a) With respect to negotiation, application, or effectuation of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group. The list may be restricted to include only physicians and hospitals in the group's geographic area.

(b) With respect to an individual health maintenance contract or any contract offered to a person who is entitled to have payments for health care costs made under Medicare, to the person considering or making application to, or under contract with, the health maintenance organization. The list may be restricted to include only physicians and hospitals in the person's geographic area.

Section 1632. Subsection (4) of section 641.55, Florida Statutes, is amended to read:

641.55 Internal risk management program.—

(4) The Agency for Health Care Administration shall adopt rules necessary to carry out the provisions of this section, including rules governing the establishment of required internal risk management programs to meet the needs of individual organizations and each specific organization type governed by this part. The office ~~Department of Insurance~~ shall assist the agency in preparing these rules. Each internal risk management program shall include the use of incident reports to be filed with the risk manager. The risk manager shall have free access to all organization or provider medical records. The incident reports shall be considered to be a part of the workpapers of the attorney defending the organization in litigation relating thereto and shall be subject to discovery, but not be admissible as evidence in court, nor shall any person filing an incident report be subject to civil suit by virtue of the incident report and the matters it contains. As a part of each internal risk management program, the incident reports shall be utilized to develop categories of incidents which identify problem areas. Once identified, procedures must be adjusted to correct these problem areas.

The gross data compiled under this section or s. 395.0197 shall be furnished by the agency upon request to organizations to be utilized for risk management purposes. The agency shall adopt rules necessary to carry out the provisions of this section.

Section 1633. Subsection (2) of section 641.58, Florida Statutes, is amended to read:

641.58 Regulatory assessment; levy and amount; use of funds; tax returns; penalty for failure to pay.—

(2) The office ~~Department of Insurance~~ shall determine the amount of gross premiums for the purposes of the regulatory assessment, and then the agency shall determine on or before December 1 of each year the regulatory assessment percentage necessary to be imposed for that calendar year, payable on or before the following April 1, as herein prescribed, to provide the funds appropriated to the agency to carry out the provisions of subsection (4).

Section 1634. Section 642.015, Florida Statutes, is amended to read:

642.015 Definitions.—As used in ss. 642.011-642.049, the term:

~~(1) "Department" means the Department of Insurance.~~

(1)~~(2)~~ "Gross written premiums" means the total amount of premiums paid by the consumer for the entire period of the legal expense insurance contract, including commissions.

~~(3) "Insurance code" means the Florida Insurance Code as provided in s. 624.01.~~

(2)~~(4)~~ "Insurer" means any person authorized to conduct a life or casualty insurance business in this state or a legal expense insurance corporation authorized under ss. 642.011-642.049.

(3)~~(5)~~ "Legal expense insurance" means a contractual obligation to provide specific legal services, or to reimburse for specific legal expenses, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, but does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages.

Section 1635. Section 642.017, Florida Statutes, is amended to read:

642.017 Exemptions.—The provisions of the Florida Insurance Code ~~and ss. 642.011-642.049~~ do not apply to:

(1) Retainer contracts made by attorneys at law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.

(2) Any lawyer referral service authorized by The Florida Bar.

(3) The furnishing of legal assistance by labor unions or other employee organizations to their members in matters relating to employment or occupation.

(4) The furnishing of legal assistance to members, or their dependents, by a church, cooperative, educational institution, credit union, or organization of employees, in which the organization contracts directly with a lawyer or law firm for the provision of legal services and the administration and marketing of such legal services are conducted wholly by the organization.

(5) Employee welfare benefit plans to the extent that state laws are superseded by the Employee Retirement Income Security Act of 1974, 29 U.S.C. s. 1144, provided evidence of exemption from state laws is shown to the office ~~department~~.

Section 1636. Section 642.021, Florida Statutes, is amended to read:

642.021 Certificate of authority.—

(1) It is unlawful for any person to engage in a legal expense insurance business in this state without a valid certificate of authority issued by the office ~~department~~, pursuant to ss. 642.011-642.049, except that a domestic, foreign, or alien insurer authorized to transact life or casualty insurance in this state may transact legal expense insurance provided it complies with the applicable provisions of ss. 642.011-642.049. A certificate of authority under ss. 642.011-642.049 may be issued only to a legal expense insurance corporation.

(2) The corporation shall file with the office ~~department~~ an application for a certificate of authority upon a form adopted by the commission and ~~to be~~ furnished by the office ~~department~~, which shall include or have attached the following:

(a) The names, addresses, and occupations of all directors and officers and of each shareholder who owns or controls 10 percent or more of the shares of the applicant corporation.

(b) A certified copy of the corporate articles and bylaws and, for the 3 most recent years, the annual statements and reports of the corporation.

(c) Each agreement relating to the corporation to which any director or officer, or any shareholder who owns or controls 10 percent or more of the shares of the corporation, is a party.

(d) A statement of the amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons.

(e) A statement of compensation to be provided directors and officers.

(f) The forms to be used for any proposed contracts between the corporation and participating attorneys or between the corporation and corporations which perform administration, marketing, or management services and the forms relating to the provision of services to insureds.

(g) The plan for conducting the insurance business, which plan shall include all of the following:

1. The geographical area in which business is intended to be conducted in the first 5 years.

2. The types of insurance intended to be written in the first 5 years, including specification whether and to what extent indemnity rather than service benefits are to be provided.

3. The proposed marketing methods.

(h) A current statement of the assets and liabilities of the corporate applicant.

(i) Forms of all legal service contracts the applicant proposes to offer showing the rates to be charged for each form of contract.

(j) Such other documents and information as the commission or office ~~department~~ may reasonably require.

(3) Copies of the documents filed pursuant to paragraphs (f) and (i) of subsection (2) shall be filed with The Florida Bar within 5 days after filing with the office ~~department~~.

(4) The office ~~department~~ shall issue a certificate of authority only to a legal expense insurance corporation, provided it is satisfied that:

(a) All requirements of law have been met;

(b) All natural persons who are directors and officers, and each shareholder who owns or controls 10 percent or more of the shares of the applicant corporation, are trustworthy and collectively have the competence and experience to engage in the particular insurance business proposed; and

(c) The business plan is consistent with the interests of potential insureds and of the public.

Section 1637. Section 642.022, Florida Statutes, is amended to read:

642.022 Insurance business not authorized.—Nothing in the Florida Insurance Code or this chapter shall be deemed to authorize any legal expense corporation to transact any insurance business other than that of legal expense insurance or to otherwise engage in any other type of insurance unless it is authorized under a certificate of authority issued by the office ~~department~~ under the provisions of the Florida Insurance Code.

Section 1638. Subsections (2), (5), (6), and (7) of section 642.023, Florida Statutes, are amended to read:

642.023 Required deposit or bond.—

(2) In lieu of any deposit of securities required under subsection (1) and subject to the approval of the office ~~department~~, a legal service insurance corporation may file with the office ~~department~~ a surety bond issued by an authorized surety insurer. The bond shall be for the same purpose as the deposit in lieu of which it is filed. The office ~~department~~ may not approve

any bond under the terms of which the protection afforded against insolvency is not equivalent to the protection afforded by those securities provided for in subsection (1).

(5) Such deposit or bond shall be maintained unimpaired as long as the legal expense insurance corporation continues to do business in this state. Whenever the corporation ceases to do business in this state and furnishes proof satisfactory to the office ~~department~~ that it has discharged or otherwise adequately provided for all its obligations to its insureds in this state, the office and department shall release the deposited securities to the parties entitled thereto, on presentation of the receipts of the department for such securities, or shall release the bond filed with it in lieu of such deposit.

(6) The office ~~department~~, upon written request of the legal expense insurance corporation, may reduce the amount of deposit or bond required under subsection (1) if it finds that the policyholders and certificateholders of the corporation are adequately protected by:

(a) The terms and number of existing contracts with subscribers;

(b) Financial guarantees of financially sound public or private organizations or agencies;

(c) Other reliable financial guarantees; or

(d) Plan attorney agreements that provide for full plan benefits to subscribers without additional payments by the subscribers if the plan terminates.

(7) The office ~~department~~ may at any time enter an order modifying the amount of the deposit or bond specified under subsection (1) or subsection (2) if it finds that there has been a substantial change in the facts on which the determination was based.

Section 1639. Subsections (2), (3), and (4) of section 642.025, Florida Statutes, are amended to read:

642.025 Policy and certificate forms.—

(2) No policy or certificate of legal expense insurance may be issued in this state unless a copy of the form has been filed with and approved by the office ~~department~~ pursuant to s. 627.410.

(3) The office ~~department~~ shall not approve any policy or certificate form which does not meet the following requirements:

(a) Policies shall contain a list and description of the legal services to be supplied or the legal matters for which expenses are to be reimbursed and any limits on the amounts to be reimbursed.

(b) Policies and certificates shall indicate the name of the insurer and the full address of its principal place of business.

(c) Certificates issued under group policies shall contain a full statement of the benefits provided and exceptions thereto but may summarize the other terms of the master policy.

(d) Policies providing for legal services to be supplied by a limited number of attorneys who have executed provider contracts with the insurer, whether the attorney in an individual case is to be selected by the insured or by the insurer, shall provide for alternative benefits if the insured is unable to find a participating attorney willing to perform the services or the attorney selected by the insurer is disqualified or otherwise unable to perform the services. The alternative benefit may consist of furnishing the services of an attorney selected and paid by the insurer or paying the fee of an attorney selected by the insured. The policy shall also provide a procedure that includes impartial review for settling disagreements concerning the grounds for demanding an alternative benefit.

(e) No policy, except one issued by a mutual or reciprocal insurance company, may provide for assessments on policyholders or for reduction of benefits for the purpose of maintaining the insurer's solvency.

(f) Policies shall contain a statement that the subscriber has a right to file a complaint with The Florida Bar concerning attorney conduct pursuant to the plan.

(g) Policies shall contain a statement that the individual beneficiary has the right to retain, at his or her own expense, except when the policy provides otherwise, any attorney authorized to practice law in this state.

(4) The office ~~department~~ may disapprove a policy or certificate form if it finds that the form:

(a) Is unfair, unfairly discriminatory, misleading, or ambiguous or encourages misrepresentation or misunderstanding of the contract;

(b) Provides coverage or benefits or contains other provisions that would endanger the solvency of the insurer; or

(c) Is contrary to law.

Section 1640. Section 642.027, Florida Statutes, is amended to read:

642.027 Premium rates.—No policy of legal expense insurance may be issued in this state unless the premium rates for the insurance have been filed with and approved by the office ~~department~~. Premium rates shall be established and justified in accordance with generally accepted insurance principles, including, but not limited to, the experience or judgment of the insurer making the rate filing or actuarial computations. The office ~~department~~ may disapprove rates that are excessive, inadequate, or unfairly discriminatory. Rates are not unfairly discriminatory because they are averaged broadly among persons insured under group, blanket, or franchise policies. The office ~~department~~ may require the submission of any other information reasonably necessary in determining whether to approve or disapprove a filing made under this section or s. 642.025.

Section 1641. Section 642.029, Florida Statutes, is amended to read:

642.029 Contracts by insurers.—

(1) Contracts made between the insurer and participating attorneys, management contracts, or contracts with providers of other services covered by the legal expense insurance policy shall be filed with and approved by the office ~~department~~.

(2) An insurer shall annually report to the office ~~department~~ the number and geographical distribution of attorneys and providers of other services covered by the legal expense insurance policy with whom it maintains contractual relations and the nature of the relations. The office ~~department~~ may require more frequent reports from an insurer or group of insurers.

Section 1642. Section 642.0301, Florida Statutes, is amended to read:

642.0301 Filing, license, statement, and miscellaneous fees.—

(1) Every legal expense insurance corporation must pay to the office ~~department~~ the following fees:

(a) Certificate of authority of legal expense insurance corporation. Filing application for original certificate of authority, including all accompanying documents, filing fee $250

(b) Annual license fee for legal expense insurance corporations . . $300

(c) Statements of legal expense insurance corporation:

1. Annual statement $100

2. Quarterly statement $25

(2) For any service not described in subsection (1), the fee is that prescribed in s. 624.501.

Section 1643. Section 642.0331, Florida Statutes, is amended to read:

642.0331 Grounds for suspension or revocation of certificate.—

(1) The certificate of authority of an insurer, whether issued pursuant to this chapter or the insurance code, may be revoked or suspended, or the office ~~department~~ may refuse to renew a certificate of authority, if the office ~~department~~ determines that the insurer:

(a) Has violated any lawful rule or order of the commission or office ~~department~~ or any provision of this chapter.

(b) Is in an unsound financial condition which would render its further transaction of business in this state hazardous or injurious to its policyholders, its certificateholders, or the public.

(c) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to its policyholders, its certificateholders, or the public.

(d) Has refused to be examined or to produce its accounts, records, or files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the office ~~department~~.

(e) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(f) Without just cause has refused to pay proper claims or perform services arising under its policies or contracts; without just cause has compelled policyholders or certificateholders to accept less than the amount due them; or has employed attorneys, or has brought suit against the association, to secure full payment or settlement of such claims.

(g) Is affiliated with, and under the same general management or interlocking directorate or ownership as, another insurer which transacts business in this state without having a certificate of authority.

(2) The office ~~department~~ may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the certificate of any insurer, whether such certificate was issued pursuant to this chapter or the insurance code, if it finds that one or more of the following circumstances exist:

(a) The insurer is insolvent or impaired.

(b) The deposit required by s. 642.023 is not being maintained.

(c) Proceedings for receivership, conservatorship, or rehabilitation or other delinquency proceedings regarding the insurer have been commenced in any state.

(d) The financial condition or business practices of the insurer otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

Section 1644. Section 642.0334, Florida Statutes, is amended to read:

642.0334 Order; notice of suspension or revocation of certificate; effect; publication.—

(1) Suspension or revocation of a certificate of authority of an insurer shall be by order of the office ~~department~~ mailed to the corporation by registered or certified mail. The office ~~department~~ also shall promptly give notice of such suspension or revocation to the sales representatives in this state of the corporation who are of record in the office of the office ~~department~~. The insurer shall not solicit or write any new contracts in this state during the period of any such suspension or revocation.

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

Section 1645. Subsections (1), (3), and (4) of section 642.0338, Florida Statutes, are amended to read:

642.0338 Administrative fine in lieu of suspension or revocation.—

(1) If the office ~~department~~ finds that one or more grounds exist for the revocation or suspension of a certificate of authority issued under this chapter, the office ~~department~~ may, in lieu of such suspension or revocation, impose a fine upon the insurer.

(3) With respect to any knowing and willful violation of an order or rule of the office or commission ~~department~~ or a provision of this chapter, the office ~~department~~ may impose a fine upon the insurer in an amount not to exceed $5,000 for each such violation. In no event shall such fine exceed an aggregate amount of $25,000 for all knowing and willful violations arising out of the same action. In addition to such fines, such insurer shall make restitution when due in accordance with the provisions of subsection (2).

(4) The failure of an insurer to make restitution when due as required under this section constitutes a willful violation of this chapter. However, if an insurer in good faith is uncertain as to whether any restitution is due or as to the amount of such restitution, it shall promptly notify the office ~~department~~ of the circumstances, and the failure to make restitution pending a determination thereof will not constitute a violation of this chapter.

Section 1646. Subsection (10) of section 642.041, Florida Statutes, is amended to read:

642.041 Grounds for compulsory refusal, suspension, or revocation of license or appointment of contracting sales representatives.—The department shall, pursuant to the insurance code, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative or the license or appointment of any general lines agent if it finds that, as to the sales representative or general lines agent, any one or more of the following applicable grounds exist:

(10) Willful failure to comply with, or willful violation of, any proper order or rule of the office, commission, or department or willful violation of any provision of ss. 642.011-642.049.

Section 1647. Subsection (3) 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:

(3) Violation of any lawful order or rule of the office, commission, or department.

Section 1648. Subsection (2) of section 642.047, Florida Statutes, is amended to read:

642.047 Administrative fine in lieu of suspension or revocation of license or appointment.—

(2) The order may allow the licensee or appointee a reasonable period not to exceed 30 days, within which to pay to the department or office the amount of the penalty so imposed. If the licensee or appointee fails to pay the penalty in its entirety to the department or office ~~at its office in Tallahassee~~ within the period so allowed, the license or appointment of the licensee or appointee shall stand suspended or revoked, or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further proceedings.

Section 1649. Subsection (4) of section 642.0475, Florida Statutes, is amended to read:

642.0475 Civil remedy.—

(4) This section shall not be construed to authorize a class action suit against a legal expense insurance corporation or a civil action against the department, commission, or office or their ~~its~~ employees~~, or the Insurance Commissioner~~.

Section 1650. Section 648.25, Florida Statutes, is amended to read:

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

(1) "Bail bond agency" means:

(a) The building where a licensee maintains an office and where all records required by ss. 648.34 and 648.36 are maintained; or

(b) An entity that:

1. Charges a fee or premium to release an accused defendant or detainee from jail; or

2. Engages in or employs others to engage in any activity that may be performed only by a licensed and appointed bail bond agent.

(2) "Bail bond agent" means a limited surety agent or a professional bail bond agent as hereafter defined.

~~(3) "Department" means the Department of Insurance.~~

(3)~~(4)~~ "Managing general agent" means any individual, partnership, association, or corporation appointed or employed by an insurer to supervise or manage the bail bond business written in this state by limited surety agents appointed by the insurer.

(4)~~(5)~~ "Insurer" means any domestic, foreign, or alien surety company which has been authorized to transact surety business in this state.

(5)~~(6)~~ "Limited surety agent" means any individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings who receives or is promised money or other things of value therefor.

(6)~~(7)~~ "Primary bail bond agent" means a licensed bail bond agent who is responsible for the overall operation and management of a bail bond agency location and whose responsibilities include hiring and supervising all individuals within that location. A bail bond agent may be designated as primary bail bond agent for only one bail bond agency location.

(7)~~(8)~~ "Professional bail bond agent" means any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

(8)~~(9)~~ "Temporary bail bond agent" means a person employed by a bail bond agent or agency, insurer, or managing general agent, and such licensee has the same authority as a licensed bail bond agent, including presenting defendants in court; apprehending, arresting, and surrendering defendants to the proper authorities, while accompanied by a supervising bail bond agent or an agent from the same agency; and keeping defendants under necessary surveillance. However, a temporary licensee may not execute or sign bonds, handle collateral receipts, or deliver bonds to appropriate authorities. A temporary licensee may not operate an agency or branch agency separate from the location of the supervising bail bond agent, managing general agent, or insurer by whom the licensee is employed. This does not affect the right of a bail bond agent or insurer to hire counsel or to obtain the assistance of law enforcement officers.

Section 1651. Section 648.26, Florida Statutes, is amended to read:

648.26 Department of Financial Services ~~Insurance~~; administration.—

(1) The department shall administer the provisions of this chapter as provided in this chapter.

(a) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon it.

(b) The department may employ and discharge such employees, examiners, counsel, and other assistants as shall be deemed necessary, and it shall prescribe their duties; their compensation shall be the same as other state employees receive for similar services.

(2) The department shall adopt a seal by which its proceedings are authenticated. Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the department, or any record of the department authenticated by the seal, shall be accepted by all the courts of this state as prima facie evidence of the contents thereof.

(3) The papers, documents, reports, or any other investigatory records of the department are confidential and exempt from the provisions of s.

119.07(1) until such investigation is completed or ceases to be active. For the purpose of this section, an investigation is considered "active" while the investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch and there is good faith belief that action may be initiated by the department or other administrative or law enforcement agency.

Section 1652. Subsection (2) of section 648.33, Florida Statutes, is amended to read:

648.33 Bail bond rates.—

(2) It is unlawful for a bail bond agent to execute a bail bond without charging a premium therefor, and the premium rate may not exceed or be less than the premium rate as filed with and approved by the office ~~department~~.

Section 1653. Subsection (3) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(3) The department may collect a fee necessary to cover the cost of a character and credit report made by an established and reputable independent reporting service. The fee shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund. Any information so furnished is confidential and exempt from the provisions of s. 119.07(1).

Section 1654. Section 648.35, Florida Statutes, is amended to read:

648.35 Professional bail bond agent; qualifications.—In addition to the qualifications prescribed in s. 648.34, to qualify as a professional bail bond agent an applicant shall:

(1) File with his or her application for licensure and with each application for renewal or continuation of his or her appointment a detailed financial statement under oath; and

(2) File with his or her application for licensure the rating plan proposed for use in writing bail bonds. Such rating plan must be approved by the office ~~department~~ prior to issuance of the license.

Section 1655. Subsection (5) of section 648.355, Florida Statutes, is amended to read:

648.355 Temporary limited license as limited surety agent or professional bail bond agent; pending examination.—

(5) The department may collect a fee necessary to cover the cost of a character and credit report made by an established and reputable independent reporting service. The fee shall be deposited to the credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1656. Section 648.365, Florida Statutes, is amended to read:

648.365 Statistical reporting requirements; penalty for failure to comply.—

(1) Each insurer and each bail bond agent who writes bail bonds in this state, shall maintain and transmit the following information, based on their Florida bail bond business, to the department or office when requested and shall report the information separately for each company represented but only insurers shall report the information specified in paragraphs (a), (l), and (m):

(a) Commissions paid.

(b) The number of, and the total dollar amount of, bonds executed.

(c) The number of, and the total dollar amount of, bonds declared forfeited.

(d) The number of, and the total dollar amount of, forfeitures discharged, remitted, or otherwise recovered prior to payment for any reason.

(e) The number of, and the total dollar amount of, forfeitures discharged, remitted, or otherwise recovered prior to payment due to the apprehension of the defendant by the bail bond agent.

(f) The number of, and the total dollar amount of, judgments entered.

(g) The number of, and the total dollar amount of, forfeitures paid and subsequently recovered from the court by discharge or remission or otherwise.

(h) A list of every outstanding or unpaid forfeiture, estreature, and judgment, with the case number and the name of the court in which such forfeiture, estreature, or judgment is recorded and the name of each agency or firm that employs the bail bond agent.

(i) The number of, and the total dollar amount of, bonds for which collateral was accepted.

(j) The actual realized value of collateral converted, excluding the cost of converting the collateral.

(k) The cost of converting collateral.

(l) The underwriting gain or loss.

(m) The net investment gain or loss allocated to the flow of funds associated with Florida business.

(n) Such additional information as the department or office may require in order to:

1. Evaluate the reasonableness of rates or assure that such rates are not excessive or unfairly discriminatory.

2. Evaluate the financial condition or trade practices of bail bond agents and sureties executing bail bonds.

3. Evaluate the performance of the commercial bail bond industry in accordance with appropriate criminal justice system goals and standards.

Each bail bond agent shall submit a copy of such information to each insurer he or she represents.

(2) Any person who intentionally fails to provide the information in this section when requested by the department or office, intentionally provides incorrect or misleading information, or intentionally omits any required information commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1657. Subsections (1) and (2) of section 648.386, Florida Statutes, are amended to read:

648.386 Qualifications for prelicensing and continuing education schools and instructors.—

(1) SCHOOLS AND CURRICULUM FOR PRELICENSING SCHOOLS.—In order to be considered for approval and certification as an approved limited surety agent and professional bail bond agent prelicensing school, such entity must:

(a)1. Offer a minimum of two 120-hour classroom-instruction basic certification courses in the criminal justice system per calendar year unless a reduced number of course offerings per calendar year is warranted in accordance with rules promulgated by the department; or

2. Offer a department-approved correspondence course pursuant to department rules.

(b) Submit a prelicensing course curriculum to the department ~~of Insurance~~ for approval.

(c) If applicable, offer prelicensing classes which are taught by instructors approved by the department.

(2) SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION SCHOOLS.—In order to be considered for approval and certification as an approved limited surety agent and professional bail bond agent continuing education school, such entity must:

(a) Provide a minimum of three continuing education classes per calendar year.

(b) Submit a course curriculum to the department ~~of Insurance~~ for approval.

(c) Offer continuing education classes which are comprised of a minimum of 2 hours of approved coursework and are taught by an approved supervis-

ing instructor or guest lecturer approved by the entity or the supervising instructor.

Section 1658. Paragraph (j) of subsection (1) of section 648.44, Florida Statutes, is amended to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent or temporary bail bond agent may not:

(j) Accept anything of value from a principal for providing a bail bond except the premium and transfer fee authorized by the office ~~department~~, except that the bail bond agent may accept collateral security or other indemnity from the principal or another person in accordance with the provisions of s. 648.442, together with documentary stamp taxes, if applicable. No fees, expenses, or charges of any kind shall be permitted to be deducted from the collateral held or any return premium due, except as authorized by this chapter or rule of the department or commission. A bail bond agent may, upon written agreement with another party, receive a fee or compensation for returning to custody an individual who has fled the jurisdiction of the court or caused the forfeiture of a bond.

Section 1659. Subsection (10) of section 648.442, Florida Statutes, is amended to read:

648.442 Collateral security.—

(10) An indemnity agreement may not be entered into between a principal and either a surety or any agent of the surety, and an application may not be accepted either by a bail bond agent engaged in the bail bond business or by a surety company for a bail bond in which an indemnity agreement is required between a principal and either a surety or any agent of such surety, unless the indemnity agreement reads as follows: "For good and valuable consideration, the undersigned principal agrees to indemnify and hold harmless the surety company or its agent for all losses not otherwise prohibited by law or by rules of the Department of Financial Services ~~Insurance~~."

Section 1660. Paragraph (a) of subsection (3) of section 648.571, Florida Statutes, is amended to read:

648.571 Failure to return collateral; penalty.—

(3)(a) Fees or charges other than those provided in this chapter or by rule of the department or commission may not be deducted from the collateral due.

Section 1661. Subsection (4) of section 650.06, Florida Statutes, is amended to read:

650.06 Social Security Contribution Trust Fund.—

(4) The Chief Financial Officer ~~Treasurer of the state~~ shall be ex officio treasurer and custodian of the Social Security Contribution Trust Fund and shall administer such fund in accordance with the provisions of this chapter

and the directions of the state agency. The Chief Financial Officer ~~Treasurer~~ shall pay all warrants drawn ~~by the Comptroller~~ upon the fund in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

Section 1662. Section 651.011, Florida Statutes, is amended to read:

651.011 Definitions.—For the purposes of this chapter, the term:

(1) "Advisory council" means the Continuing Care Advisory Council established by s. 651.121.

(2) "Continuing care" or "care" means furnishing pursuant to a contract shelter and either nursing care or personal services as defined in s. 400.402, whether such nursing care or personal services are provided in the facility or in another setting designated by the contract for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee. Other personal services provided shall be designated in the continuing care contract. Contracts to provide continuing care include agreements to provide care for any duration, including contracts that are terminable by either party.

~~(3) "Department" means the Department of Insurance of this state.~~

(3)~~(4)~~ "Entrance fee" means an initial or deferred payment of a sum of money or property made as full or partial payment to assure the resident a place in a facility. An accommodation fee, admission fee, or other fee of similar form and application shall be considered to be an entrance fee.

(4)~~(5)~~ "Facility" means a place in which it is undertaken to provide continuing care.

(5)~~(6)~~ "Licensed" means that the provider has obtained a certificate of authority from the department.

(6)~~(7)~~ "Provider" means the owner or operator, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator undertakes to provide continuing care for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments, but does not mean any entity that has existed and continuously operated a facility located on no less than 63 acres in this state providing residential lodging to members and their spouses for at least 66 years on or before July 1, 1989, and such facility has the residential capacity of 500 persons, is directly or indirectly owned or operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its members and their spouses as residents at such a facility.

(7)~~(8)~~ "Records" means the permanent financial, directory, and personnel information and data maintained by a provider pursuant to this chapter.

(8)~~(9)~~ "Resident" means a purchaser of or a nominee of, or a subscriber to, a continuing care agreement. Such an agreement may not be construed to give the resident a part ownership of the facility in which the resident is to reside, unless expressly provided for in the agreement.

(9)~~(10)~~ "Generally accepted accounting principles" means those accounting principles and practices adopted by the Financial Accounting Standards Board and the American Institute of Certified Public Accountants, including Statement of Position 90-8 with respect to any full year to which the statement applies.

(10)~~(11)~~ "Insolvency" means the condition in which the provider is unable to pay its obligations as they come due in the normal course of business.

(11)~~(12)~~ "Advertising" means the dissemination of any written, visual, or electronic information by a provider, or any person affiliated with or controlled by a provider, to potential residents or their representatives for the purpose of inducing such persons to subscribe to or enter into a contract to reside in a continuing care community covered by this act.

Section 1663. Section 651.012, Florida Statutes, is amended to read:

651.012 Exempted facility; written disclosure of exemption.—Any facility exempted under ss. 632.637(1)(e) and 651.011(6) ~~651.011(7)~~ must provide written disclosure of such exemption to each person admitted to the facility after October 1, 1996. This disclosure must be written using language likely to be understood by the person and must briefly explain the provisions of ss. 632.637(1)(e) and 651.011(6) ~~651.011(7)~~.

Section 1664. Subsection (2) of section 651.013, Florida Statutes, is amended to read:

651.013 Chapter exclusive; applicability of other laws.—

(2) In addition to other applicable provisions cited in this chapter, the office ~~department~~ has the authority granted under ss. 624.302-624.305, 624.308-624.312, 624.319(1)-(3), 624.320-624.321, 624.324, and 624.34 of the Florida Insurance Code to regulate providers of continuing care.

Section 1665. Section 651.014, Florida Statutes, is amended to read:

651.014 Insurance business not authorized.—Nothing in the Florida Insurance Code or this chapter shall be deemed to authorize any provider of a continuing care facility to transact any insurance business other than that of continuing care insurance or otherwise to engage in any other type of insurance unless it is authorized under a certificate of authority issued by the office ~~department~~ under the provisions of the Florida Insurance Code.

Section 1666. Section 651.015, Florida Statutes, is amended to read:

651.015 Administration; forms; fees; rules; fines.—The administration of this chapter is vested in the commission, office, and department, which shall:

(1) Prepare and furnish all forms necessary under the provisions of this chapter in relation to applications for provisional certificates of authority, certificates of authority or renewals thereof, statements, examinations, and other required reports. The office ~~department~~ is authorized to accept any application statement, report, or information submitted electronically or by facsimile to comply with requirements in this chapter or rules adopted under this section. The commission ~~department~~ may adopt rules to implement the provisions of this subsection.

(2) Collect in advance, and the applicant shall pay in advance, the following fees:

(a) At the time of filing an application for a certificate of authority, an application fee in the amount of $75 for each facility.

(b) At the time of filing the annual report required by s. 651.026, a fee in the amount of $100 for each year or part thereof for each facility.

(c) A late fee not to exceed $50 a day for each day of noncompliance.

(d) A fee to cover the actual cost of a credit report and fingerprint processing.

(e) At the time of filing an application for a provisional certificate of authority, a fee in the amount of $50.

(3) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(4) Impose administrative fines and penalties pursuant to this chapter.

(5) Deposit all fees and fines collected under the provisions of this chapter into the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

Section 1667. Section 651.018, Florida Statutes, is amended to read:

651.018 Administrative supervision.—The office ~~department~~ may place a facility in administrative supervision pursuant to part VI of chapter 624.

Section 1668. Section 651.019, Florida Statutes, is amended to read:

651.019 New financing, additional financing, or refinancing.—

(1) After issuance of a certificate of authority, the provider shall submit to the office ~~department~~ a general outline, including intended use of proceeds, with respect to any new financing, additional financing, or refinancing at least 30 days before the closing date of such financing transaction.

(2) The provider shall furnish any information the office ~~department~~ may reasonably request in connection with any new financing, additional financing, or refinancing, including, but not limited to, the financing agreements and any related documents, escrow or trust agreements, and statistical or financial data. The provider shall also submit to the office ~~department~~ copies of executed financing documents within 30 days after the closing date.

Section 1669. Section 651.021, Florida Statutes, is amended to read:

651.021 Certificate of authority required.—

(1) No person may engage in the business of providing continuing care or issuing continuing care agreements or construct a facility for the purpose of providing continuing care in this state without a certificate of authority therefor obtained from the office ~~department~~ as provided in this chapter. This subsection shall not be construed to prohibit preparation of the construction site or construction of a model residence unit for marketing purposes, or both. The office ~~department~~ may allow the purchase of an existing building for the purpose of providing continuing care if the office ~~department~~ determines that the purchase is not being made for the purpose of circumventing the prohibitions contained in this section.

(2)(a) Before commencement of construction or marketing for any expansion of a certificated facility equivalent to the addition of at least 20 percent of existing units, written approval must be obtained from the office ~~department~~. This provision does not apply to construction for which a certificate of need from the Agency for Health Care Administration is required.

(b) The application for such approval shall be on forms adopted by the commission and provided by the office ~~department~~. The application shall include the feasibility study required by s. 651.022(3) or s. 651.023(1)(b) and such other information as required by s. 651.023.

(c) In determining whether an expansion should be approved, the office ~~department~~ shall utilize the criteria provided in ss. 651.022(6) and 651.023(2).

Section 1670. Subsection (2), paragraph (i) of subsection (3), and subsections (5), (6), (7), and (8) of section 651.022, Florida Statutes, are amended to read:

651.022 Provisional certificate of authority; application.—

(2) The application for a provisional certificate of authority shall be on a form prescribed by the commission ~~department~~ and shall contain the following information:

(a) If the applicant or provider is a corporation, a copy of the articles of incorporation and bylaws; if the applicant or provider is a partnership or other unincorporated association, a copy of the partnership agreement, articles of association, or other membership agreement; and, if the applicant or provider is a trust, a copy of the trust agreement or instrument.

(b) The full names, residences, and business addresses of:

1. The proprietor, if the applicant or provider is an individual.

2. Every partner or member, if the applicant or provider is a partnership or other unincorporated association, however organized, having fewer than 50 partners or members, together with the business name and address of the partnership or other organization.

3. The principal partners or members, if the applicant or provider is a partnership or other unincorporated association, however organized, having 50 or more partners or members, together with the business name and business address of the partnership or other organization. If such unincorporated organization has officers and a board of directors, the full name and business address of each officer and director may be set forth in lieu of the full name and business address of its principal members.

4. The corporation and each officer and director thereof, if the applicant or provider is a corporation.

5. Every trustee and officer, if the applicant or provider is a trust.

6. The manager, whether an individual, corporation, partnership, or association.

7. Any stockholder holding at least a 10-percent interest in the operations of the facility in which the care is to be offered.

8. Any person whose name is required to be provided in the application under the provisions of this paragraph and who owns any interest in or receives any remuneration from, either directly or indirectly, any professional service firm, association, trust, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, with a real or anticipated value of $500 or more, and the name and address of the professional service firm, association, trust, partnership, or corporation in which such interest is held. The applicant shall describe such goods, leases, or services and the probable cost to the facility or provider and shall describe why such goods, leases, or services should not be purchased from an independent entity.

9. Any person, corporation, partnership, association, or trust owning land or property leased to the facility, along with a copy of the lease agreement.

10. Any affiliated parent or subsidiary corporation or partnership.

(c)1. Evidence that the applicant is reputable and of responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, the form shall require evidence that the members or shareholders are reputable and of responsible character, and the person in charge of providing care under a certificate of authority shall likewise be required to produce evidence of being reputable and of responsible character.

2. Evidence satisfactory to the office ~~department~~ of the ability of the applicant to comply with the provisions of this chapter and with rules adopted by the commission ~~department~~ pursuant to this chapter.

3. A statement of whether a person identified in the application for a provisional certificate of authority or the administrator or manager of the facility, if such person has been designated, or any such person living in the same location:

a. Has been convicted of a felony or has pleaded nolo contendere to a felony charge, or has been held liable or has been enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

b. Is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, an action affecting a license under chapter 400.

The statement shall set forth the court or agency, the date of conviction or judgment, and the penalty imposed or damages assessed, or the date, nature, and issuer of the order. Before determining whether a provisional certificate of authority is to be issued, the office ~~department~~ may make an inquiry to determine the accuracy of the information submitted pursuant to subparagraphs 1. and 2.

(d) The agreements for continuing care to be entered into between the provider and residents which meet the minimum requirements of s. 651.055 and which include a statement describing the procedures required by law relating to the release of escrowed entrance fees. Such statement may be furnished through an addendum.

(e) Any advertisement or other written material proposed to be used in the solicitation of residents.

(f) Such other reasonable data, financial statements, and pertinent information as the commission or office ~~department~~ may reasonably require with respect to the provider or the facility, including the most recent audited financial statements of comparable facilities currently or previously owned, managed, or developed by the applicant or its principal, to assist in determining the financial viability of the project and the management capabilities of its managers and owners.

(3) In addition to the information required in subsection (2), an applicant for a provisional certificate of authority shall submit a market feasibility study. The market feasibility study shall include at least the following information:

(i) The application for a provisional certificate of authority shall be accompanied by the forms of the continuing care residency and reservation contracts and escrow agreements proposed to be used by the provider in the furnishing of care. If the office ~~department~~ finds that the continuing care contracts and escrow agreements comply with ss. 651.023(1)(c), 651.033, and 651.055, it shall approve them. Thereafter, no other form of contract or agreement may be used by the provider until it has been submitted to the office ~~department~~ and approved.

(5)(a) Within 30 days after receipt of an application for a provisional certificate of authority, the office ~~department~~ shall examine the application and shall notify the applicant in writing, specifically setting forth and specif-

ically requesting any additional information the office ~~department~~ is permitted by law to require. If the application submitted is determined by the office ~~department~~ to be substantially incomplete so as to require substantial additional information, including biographical information, the office ~~department~~ may return the application to the applicant with a written notice that the application as received is substantially incomplete and, therefore, unacceptable for filing without further action required by the office ~~department~~. Any filing fee received shall be refunded to the applicant.

(b) Within 15 days after receipt of all of the requested additional information, the office ~~department~~ shall notify the applicant in writing that all of the requested information has been received and the application is deemed to be complete as of the date of the notice. Failure to so notify the applicant in writing within the 15-day period shall constitute acknowledgment by the office ~~department~~ that it has received all requested additional information, and the application shall be deemed to be complete for purposes of review upon the date of the filing of all of the requested additional information.

(6) Within 45 days from the date an application is deemed to be complete, as set forth in paragraph (5)(b), the office ~~department~~ shall complete its review and shall issue a provisional certificate of authority to the applicant based upon its review and a determination that the application meets all requirements of law and that the feasibility study was based on sufficient data and reasonable assumptions and that the applicant will be able to provide continuing care as proposed and meet all financial obligations related to its operations, including the financial requirements of this chapter to provide continuing care as proposed. If the application is denied, the office ~~department~~ shall notify the applicant in writing, citing the specific failures to meet the provisions of this chapter. Such denial shall entitle the applicant to a hearing pursuant to the provisions of chapter 120.

(7) The issuance of a provisional certificate of authority entitles the applicant to collect entrance fees and reservation deposits from prospective residents. All or any part of an entrance fee or deposit collected shall be placed in an escrow account or on deposit with the department, pursuant to s. 651.033, until a certificate of authority is issued by the office ~~department~~.

(8) The office ~~department~~ shall not approve any application which includes in the plan of financing any encumbrance of the operating reserves required by this chapter.

Section 1671. Section 651.023, Florida Statutes, is amended to read:

651.023 Certificate of authority; application.—

(1) After issuance of a provisional certificate of authority, the office ~~department~~ shall issue to the holder of such provisional certificate of authority a certificate of authority; provided, however, that no certificate of authority shall be issued until the holder of such provisional certificate of authority provides the office ~~department~~ with the following information:

(a) Any material change in status with respect to the information required to be filed under s. 651.022(2) in the application for a provisional certificate of authority.

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(3) and contains financial forecasts or projections prepared in accordance with standards promulgated by the American Institute of Certified Public Accountants or financial forecasts or projections prepared in accordance with standards for feasibility studies or continuing care retirement communities promulgated by the Actuarial Standards Board. The study must also contain an independent evaluation and examination opinion, or a comparable opinion acceptable to the office ~~department~~, by the consultant who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and that the project as proposed is feasible. The study shall take into account project costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and any other factors which affect the feasibility of operating the facility.

(c) Subject to the requirements of subsection (2), a provider may submit an application for a certificate of authority and any required exhibits upon submission of proof that the project has a minimum of 30 percent of the units reserved for which the provider is charging an entrance fee; however, this provision shall not apply to an application for a certificate of authority for the acquisition of a facility for which a certificate of authority was issued prior to October 1, 1983, to a provider who subsequently becomes a debtor in a case under the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for which the department has been appointed receiver pursuant to the provisions of part II of chapter 631.

(d) Proof that commitments have been secured for both construction financing and long-term financing or a documented plan acceptable to the office ~~department~~ has been adopted by the applicant for long-term financing.

(e) Proof that all conditions of the lender have been satisfied to activate the commitment to disburse funds other than the obtaining of the certificate of authority, the completion of construction, or the closing of the purchase of realty or buildings for the facility.

(f) Proof that the aggregate amount of entrance fees received by or pledged to the applicant, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the applicant, equal not less than 100 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus 100 percent of the anticipated startup losses of the facility.

(g) Complete audited financial statements of the applicant, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, as of the date the applicant commenced business operations or for the fiscal year that ended immediately preceding the date of application, whichever is later, and complete unaudited quarterly financial statements attested to by the applicant subsequent to the date of the last audit.

(h) Proof that the applicant has complied with the escrow requirements of subsection (3) or subsection (5) and will be able to comply with s. 651.035.

(i) Such other reasonable data, financial statements, and pertinent information as the commission or office ~~department~~ may require with respect to the applicant or the facility, to determine the financial status of the facility and the management capabilities of its managers and owners.

(j) Within 30 days of the receipt of the information required under paragraphs (a)-(h), the office ~~department~~ shall examine such information and shall notify the provider in writing, specifically requesting any additional information the office ~~department~~ is permitted by law to require. Within 15 days after receipt of all of the requested additional information, the office ~~department~~ shall notify the provider in writing that all of the requested information has been received and the application is deemed to be complete as of the date of the notice. Failure to so notify the applicant in writing within the 15-day period shall constitute acknowledgment by the office ~~department~~ that it has received all requested additional information, and the application shall be deemed to be complete for purposes of review upon the date of the filing of all of the required additional information.

(k) Within 45 days after an application is deemed complete as set forth in paragraph (j), and upon completion of the remaining requirements of this section, the office ~~department~~ shall complete its review and shall issue, or deny, to the holder of a provisional certificate of authority a certificate of authority. If a certificate of authority is denied, the office ~~department~~ shall notify the holder of the provisional certificate of authority in writing, citing the specific failures to satisfy the provisions of this chapter. If denied, the holder of the provisional certificate of authority shall be entitled to an administrative hearing pursuant to chapter 120.

(2)(a) The office ~~department~~ shall issue a certificate of authority upon its determination that the applicant meets all requirements of law and has submitted all of the information required by this section, that all escrow requirements have been satisfied, and that the fees prescribed in s. 651.015(2) have been paid. Notwithstanding satisfaction of the 30-percent minimum reservation requirement of paragraph (1)(c), no certificate of authority shall be issued until the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee, and proof thereof is provided to the office ~~department~~.

(b) In order for a unit to be considered reserved under this section, the provider must collect a minimum deposit of 10 percent of the then-current entrance fee for that unit, and must assess a forfeiture penalty of 2 percent of the entrance fee due to termination of the reservation contract after 30 days for any reason other than the death or serious illness of the resident, the failure of the provider to meet its obligations under the reservation contract, or other circumstances beyond the control of the resident that equitably entitle the resident to a refund of the resident's deposit. The reservation contract shall state the cancellation policy and the terms of the continuing care contract to be entered into.

(3) No more than 25 percent of the moneys paid for all or any part of an initial entrance fee may be included or pledged for the construction or purchase of the facility, or included or pledged as security for long-term financing. The term "initial entrance fee" means the total entrance fee charged by

the facility to the first occupant of a unit. A minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee collected shall be placed in an escrow account or on deposit with the department as prescribed in s. 651.033.

(4) The provider shall be entitled to secure release of the moneys held in escrow within 7 days after receipt by the office ~~department~~ of an affidavit from the provider, along with appropriate copies to verify, and notification to the escrow agent by certified mail, that the following conditions have been satisfied:

(a) A certificate of occupancy has been issued.

(b) Payment in full has been received for no less than 70 percent of the total units of a phase or of the total of the combined phases constructed.

(c) The consultant who prepared the feasibility study required by this section or a substitute approved by the office ~~department~~ certifies that there has been no material adverse change in status with regard to the feasibility study, with such statement dated not more than 12 months from the date of filing for office ~~department~~ approval. If a material adverse change should exist at the time of submission, then sufficient information acceptable to the office ~~department~~ and the feasibility consultant shall be submitted which remedies the adverse condition.

(d) Proof that commitments have been secured or a documented plan adopted by the applicant has been approved by the office ~~department~~ for long-term financing.

(e) Proof that the provider has sufficient funds to meet the requirements of s. 651.035, which may include funds deposited in the initial entrance fee account.

(f) Proof as to the intended application of the proceeds upon release and proof that the entrance fees when released will be applied as represented to the office ~~department~~.

Notwithstanding any provision of chapter 120, no person, other than the provider, the escrow agent, and the office ~~department~~, shall have a substantial interest in any office ~~departmental~~ decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter regarding release of escrow funds.

(5) In lieu of the provider fulfilling the requirements in subsection (3) and paragraphs (4)(b) and (d), the office ~~department~~ may authorize the release of escrowed funds to retire all outstanding debts on the facility and equipment upon application of the provider and upon the provider's showing that the provider will grant to the residents a first mortgage on the land, buildings, and equipment that constitute the facility, and that the provider satisfies the requirements of paragraphs (4)(a), (c), and (e). Such mortgage shall secure the refund of the entrance fee in the amount required by this chapter. The granting of such mortgage shall be subject to the following:

(a) The first mortgage shall be granted to an independent trust which is beneficially held by the residents. The document creating the trust shall contain a provision that it agrees to an annual audit and will furnish to the office ~~department~~ all information the office ~~department~~ may reasonably require. The mortgage may secure payment on bonds issued to the residents or trustee. Such bonds shall be redeemable after termination of the residency contract in the amount and manner required by this chapter for the refund of an entrance fee.

(b) Before granting a first mortgage to the residents, all construction shall be substantially completed and substantially all equipment shall be purchased. No part of the entrance fees may be pledged as security for a construction loan or otherwise used for construction expenses before the completion of construction.

(c) If the provider is leasing the land or buildings used by the facility, the leasehold interest shall be for a term of at least 30 years.

(6) The timeframes provided under s. 651.022(5) and (6) apply to applications submitted under s. 651.021(2). The office ~~department~~ may not issue a certificate of authority under this chapter to any facility which does not have a component which is to be licensed pursuant to part II or part III of chapter 400 or which will not offer personal services or nursing services through written contractual agreement. Any written contractual agreement must be disclosed in the continuing care contract and is subject to the provisions of s. 651.1151, relating to administrative, vendor, and management contracts.

(7) The office ~~department~~ shall not approve an application which includes in the plan of financing any encumbrance of the operating reserves required by this chapter.

Section 1672. Section 651.0235, Florida Statutes, is amended to read:

651.0235 Validity of provisional certificates of authority and certificates of authority.—

(1) The provisional certificate of authority and certificate of authority shall be valid for as long as the office ~~department~~ determines that the provider continues to meet the requirements of this chapter.

(2) If the provider fails to meet the requirements of this chapter for a provisional certificate of authority or a certificate of authority, the office ~~department~~ may notify the provider of any deficiencies and require the provider to correct such deficiencies within a period to be determined by the office ~~department~~. If such deficiencies are not corrected within 20 days after the notice to the provider, or within less time at the discretion of the office ~~department~~, the office ~~department~~ shall notify the advisory council, which may assist the facility in formulating a remedial plan to be submitted to the office ~~department~~ no later than 60 days from the date of notification. The time period granted to correct deficiencies may be extended upon submission of a plan for corrective action approved by the office ~~department~~. If such deficiencies have not been cleared by the expiration of such time period, as extended, the office ~~department~~ shall petition for a delinquency proceeding

or pursue such other relief as is provided for under this chapter, as the circumstances may require.

(3) The office ~~Department of Insurance~~ shall notify the Agency for Health Care Administration of any facility for which a provisional certificate of authority or certificate of authority is no longer valid.

Section 1673. Section 651.026, Florida Statutes, is amended to read:

651.026 Annual reports.—

(1) Annually, on or before May 1, the provider shall file an annual report and such other information and data showing its condition as of the last day of the preceding calendar year, except as provided in subsection (5). If the office ~~department~~ does not receive the required information on or before May 1, a late fee may be charged pursuant to s. 651.015(2)(c). The office ~~department~~ may approve an extension of up to 30 days.

(2) The annual report shall be in such form as the commission ~~department~~ prescribes and shall contain at least the following:

(a) Any change in status with respect to the information required to be filed under s. 651.022(2).

(b) Financial statements audited by an independent certified public accountant, which shall contain, for two or more periods if the facility has been in existence that long, the following:

1. An accountant's opinion and, in accordance with generally accepted accounting principles:

a. A balance sheet;

b. A statement of income and expenses;

c. A statement of equity or fund balances; and

d. A statement of changes in cash flows; and

2. Notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial condition, and operation.

(c) The following financial information:

1. A detailed listing of the assets maintained in the liquid reserve as required in s. 651.035 and in accordance with part II of chapter 625;

2. A schedule giving additional information relating to property, plant, and equipment having an original cost of at least $25,000, so as to show in reasonable detail with respect to each separate facility original costs, accumulated depreciation, net book value, appraised value or insurable value and date thereof, insurance coverage, encumbrances, and net equity of appraised or insured value over encumbrances. Any property not used in con-

tinuing care shall be shown separately from property used in continuing care;

3. The level of participation in Medicare or Medicaid programs, or both;

4. A statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the provider, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases; and

5. Any change or increase in fees when the provider changes either the scope of, or the rates for, care or services, regardless of whether the change involves the basic rate or only those services available at additional costs to the resident.

6.a. If the provider has more than one certificated facility, it shall submit a statement of operations for each facility as supplemental information to the audited financial statements required as part of the annual report.

b. If the provider has operations that are not Florida certificated facilities, the provider shall also submit as supplemental information to the audited financial statements, balance sheets, statements of changes in equity, and statements of cash flows for each Florida certificated facility.

(d) Such other reasonable data, financial statements, and pertinent information as the commission or office ~~department~~ may require with respect to the provider or the facility, or its directors, trustees, members, branches, subsidiaries, or affiliates, to determine the financial status of the facility and the management capabilities of its managers and owners.

(e) Each facility shall file with the office ~~department~~ annually, together with the annual report required by this section, a computation of its minimum liquid reserve calculated in accordance with s. 651.035 on a form prescribed by the commission ~~department~~.

(3) The commission ~~department~~ shall adopt by rule meaningful measures of assessing the financial viability of a provider. The rule may include the following factors:

(a) Debt service coverage ratios.

(b) Current ratios.

(c) Adjusted current ratios.

(d) Cash flows.

(e) Occupancy rates.

(f) Other measures, ratios, or trends.

(g) Other factors as may be appropriate.

(4) If the provider is an individual, the annual statement shall be sworn to by him or her; if a limited partnership, by the general partner; if a partnership other than a limited partnership, by all the partners; if any other unincorporated association, by all its members or officers and directors; if a trust, by all its trustees and officers; and, if a corporation, by the president and secretary thereof.

(5) A provider may declare at the time of application a fiscal year other than the calendar year, and may use such fiscal year for its accounting period. A provider may subsequently adopt a fiscal year upon providing the office ~~department~~ with a copy of the Internal Revenue Service approval of such change, if such approval is required. The annual report filing with the office ~~department~~ must be made within 120 days of the last day of the fiscal year of the provider.

(6) The workpapers, account analyses, descriptions of basic assumptions, and other information necessary for a full understanding of the annual statement of a provider as filed with the office ~~department~~ shall be made available for visual inspection by the office ~~department~~ at the facility or, if the office ~~department~~ requests, at another agreed-upon site. Photocopies may not be made unless consented to by the provider.

(7) A filing fee in the amount of $100 shall accompany each annual report required by this section.

(8) All financial reports and any supplemental financial information submitted to the office ~~department~~ shall be prepared in conformity with generally accepted accounting principles.

Section 1674. Section 651.0261, Florida Statutes, is amended to read:

651.0261 Quarterly statements.—If the office ~~department~~ finds, pursuant to rules of the commission ~~department~~, that such information is needed to properly monitor the financial condition of a provider or facility or is otherwise needed to protect the public interest, the office ~~department~~ may require the provider to file, within 45 days after the end of each fiscal quarter, a quarterly unaudited financial statement of the provider or of the facility in the form prescribed by the commission ~~department~~ by rule.

Section 1675. Section 651.028, Florida Statutes, is amended to read:

651.028 Accredited facilities.—If a provider is accredited by a process found by the office ~~department~~ to be acceptable and substantially equivalent to the provisions of this chapter, the office ~~department~~ may, pursuant to rule of the commission, waive any requirements of this chapter with respect to the provider if the office ~~department~~ finds that such waivers are not inconsistent with the security protections intended by this chapter.

Section 1676. Section 651.033, Florida Statutes, is amended to read:

651.033 Escrow accounts.—

(1) When funds are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, s. 651.035, or s. 651.055:

(a) The escrow account shall be established in a Florida bank, Florida savings and loan association, or Florida trust company acceptable to the office ~~department~~ or on deposit with the department; and the funds deposited therein shall be kept and maintained in an account separate and apart from the provider's business accounts.

(b) An escrow agreement shall be entered into between the bank, savings and loan association, or trust company and the provider of the facility; the agreement shall state that its purpose is to protect the resident or the prospective resident; and, upon presentation of evidence of compliance with applicable portions of this chapter, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or portions thereof, together with any interest accrued thereon or earned from investment of the funds, to the provider or resident as directed.

(c) Any agreement establishing an escrow account required under the provisions of this chapter shall be subject to approval by the office ~~department~~. The agreement shall be in writing and shall contain, in addition to any other provisions required by law, a provision whereby the escrow agent agrees to abide by the duties imposed under this section.

(d) All funds deposited in an escrow account, if invested, shall be invested as set forth in part II of chapter 625; however, such investment shall not diminish the funds held in escrow below the amount required by this chapter. All funds deposited in an escrow account shall not be subject to any charges by the escrow agent except escrow agent fees associated with administering the accounts, or subject to any liens, judgments, garnishments, creditor's claims, or other encumbrances against the provider or facility except as provided in s. 651.035(2).

(e) At the request of either the provider or the office ~~department~~, the escrow agent shall issue a statement indicating the status of the escrow account.

(2) In addition, the escrow agreement shall provide that the escrow agent or another person designated to act in the escrow agent's place and the provider, except as otherwise provided in s. 651.035, shall notify the office ~~department~~ in writing at least 10 days before the withdrawal of any portion of any funds required to be escrowed under the provisions of s. 651.035. However, in the event of an emergency and upon petition by the provider, the office ~~department~~ may waive the 10-day notification period and allow a withdrawal of up to 10 percent of the required minimum liquid reserve. The office ~~department~~ shall have 3 working days to deny the petition for the emergency 10-percent withdrawal. If the office ~~department~~ fails to deny the petition within 3 working days, the petition shall be deemed to have been granted by the office ~~department~~. For the purpose of this section, "working day" means each day that is not a Saturday, Sunday, or legal holiday as defined by Florida law. Also for the purpose of this section, the day the petition is received by the office ~~department~~ shall not be counted as one of the 3 days.

(3) In addition, when entrance fees are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, or s. 651.055:

(a) The provider shall deliver to the resident a written receipt. The receipt shall show the payor's name and address, the date, the price of the care contract, and the amount of money paid. A copy of each receipt together with the funds shall be deposited with the escrow agent or as provided in paragraph (c). The escrow agent shall release such funds to the provider upon the expiration of 7 days after the date of receipt of the funds by the escrow agent if the provider, operating under a certificate of authority issued by the office ~~department~~, has met the requirements of s. 651.023(4). However, if the resident rescinds the contract within the 7-day period, the escrow agent shall release the escrowed fees to the resident.

(b) At the request of an individual resident of a facility, the escrow agent shall issue a statement indicating the status of the resident's portion of the escrow account.

(c) At the request of an individual resident of a facility, the provider may hold the check for the 7-day period and shall not deposit it during this time period. If the resident rescinds the contract within the 7-day period, the check shall be immediately returned to the resident. Upon the expiration of the 7 days, the provider shall deposit the check.

(4) Any fees of $1,500 or less which are assessed with respect to prospective residents to have their names placed on a facility's waiting list shall not be subject to the escrow provisions of this section.

(5) When funds are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, or s. 651.035, the following shall apply:

(a) The escrow agreement shall require that the escrow agent furnish the provider with a quarterly statement indicating the amount of any disbursements from or deposits to the escrow account and the condition of the account during the period covered by the statement. The agreement shall require that the statement be furnished to the provider by the escrow agent on or before the 10th day of the month following the end of the quarter for which the statement is due. If the escrow agent does not provide the quarterly statement to the provider on or before the 10th day of the month following the month for which the statement is due, the office ~~department~~ may, in its discretion, levy against the escrow agent a fine not to exceed $25 a day for each day of noncompliance with the provisions of this subsection.

(b) If the escrow agent does not provide the quarterly statement to the provider on or before the 10th day of the month following the quarter for which the statement is due, the provider shall, on or before the 15th day of the month following the quarter for which the statement is due, send a written request for the statement to the escrow agent by certified mail return receipt requested.

(c) On or before the 20th day of the month following the quarter for which the statement is due, the provider shall file with the office ~~department~~ a copy of the escrow agent's statement or, if the provider has not received the escrow agent's statement, a copy of the written request to the escrow agent for the statement.

(d) The office ~~department~~ may, in its discretion, in addition to any other penalty that may be provided for under this chapter, levy a fine against the provider not to exceed $25 a day for each day the provider fails to comply with the provisions of this subsection.

(e) Funds held on deposit with the department are exempt from the reporting requirements of this subsection.

Section 1677. Paragraphs (b) and (c) of subsection (2), paragraph (b) of subsection (4) and subsections (5), (6), (7), and (8) of section 651.035, Florida Statutes, are amended to read:

651.035 Minimum liquid reserve requirements.—

(2)

(b) A provider which has outstanding indebtedness which requires what is normally referred to as a "debt service reserve" to be held in escrow pursuant to a trust indenture or mortgage lien on the facility and for which the debt service reserve may only be used to pay principal and interest payments on the debt which the debtor is obligated to pay, and which may include taxes and insurance, may include such debt service reserve in its computation of its minimum liquid reserve to satisfy this subsection, provided that the provider furnishes to the office ~~Department of Insurance~~ a copy of the agreement under which such debt service is held, together with a statement of the amount being held in escrow for the debt service reserve, certified by the lender or trustee and the provider to be correct. The trustee shall provide the office ~~department~~ with any information concerning the debt service reserve account upon request of the provider or the office ~~department~~.

(c) Each provider shall maintain in escrow an operating reserve in an amount equal to 30 percent of the total operating expenses projected in the feasibility study required by s. 651.023 for the first 12 months of operation. Thereafter, each provider shall maintain in escrow an operating reserve in an amount equal to 15 percent of the total operating expenses in the annual report filed pursuant to s. 651.026. Where a provider has been in operation for more than 12 months, the total annual operating expenses shall be determined by averaging the total annual operating expenses reported to the office ~~department~~ by the number of annual reports filed with the office ~~department~~ within the immediate preceding 3-year period subject to adjustment in the event there is a change in the number of facilities owned. For purposes of this subsection, total annual operating expenses shall include all expenses of the facility except: depreciation and amortization; interest, insurance and taxes included in subsection (1); extraordinary expenses which are adequately explained and documented in accordance with generally accepted accounting principles; liability insurance premiums in excess of those paid in calendar year 1999; and changes in the obligation to provide future services to current residents. For providers initially licensed during or after calendar year 1999, liability insurance shall be included in the total operating expenses in an amount not to exceed the premium paid during the first 12 months of facility operation. Beginning January 1, 1993, the operating reserves required under this subsection shall be in an unencumbered

account held in escrow for the benefit of the residents. Such funds may not be encumbered or subject to any liens or charges by the escrow agent or judgments, garnishments, or creditors' claims against the provider or facility. However, if a facility had a lien, mortgage, trust indenture, or similar debt instrument in place prior to January 1, 1993, which encumbered all or any part of the reserves required by this subsection and such funds were used to meet the requirements of this subsection, then such arrangement may be continued, unless a refinancing or acquisition has occurred, and the provider shall be in compliance with this subsection.

(4)

(b) In facilities which have voluntarily and permanently discontinued marketing continuing care contracts, the office ~~department~~ may allow a reduced debt service reserve as required in subsection (1) based upon the ratio of residents under continuing care contracts to those residents who do not hold such contracts if the office ~~department~~ finds that such reduction is not inconsistent with the security protections intended by this chapter. In making this determination, the office ~~department~~ may consider such factors as the financial condition of the facility, the provisions of the outstanding continuing care contracts, the ratio of residents under continuing care agreements to those residents who do not hold a continuing care contract, current occupancy rates, previous sales and marketing efforts, life expectancy of the remaining contract holders, and the written policies of the board of directors of the provider or a similar board.

(5) When principal and interest payments are paid to a trust which is beneficially held by the residents as described in s. 651.023(5), the office ~~department~~ may waive all or any portion of the escrow requirements for mortgage principal and interest contained in subsection (1) if the office ~~department~~ finds that such waiver is not inconsistent with the security protections intended by this chapter.

(6) The office ~~department~~, upon approval of a plan for fulfilling the requirements of this section and upon demonstration by the facility of an annual increase in liquid reserves, may extend the time for compliance.

(7)(a) A provider may satisfy the minimum liquid reserve requirements of this section by acquiring from a financial institution, as specified in paragraph (b), a clean, unconditional irrevocable letter of credit in an amount equal to the requirements of this section. The letter of credit shall be issued by a financial institution participating in the State of Florida Treasury Certificate of Deposit Program, and the letter of credit shall be subject to the approval of the office ~~department~~ prior to issuance and prior to any renewal or modification thereof. At a minimum, the letter of credit shall provide for:

1. Ninety days' prior written notice to both the provider and the office ~~department~~ of the financial institution's determination not to renew or extend the term of the letter of credit.

2. Unless otherwise arranged by the provider to the satisfaction of the office ~~department~~, deposit by the financial institution of such letter of credit

funds in an account designated by the office ~~department~~ no later than 30 days prior to the expiration of the letter of credit.

3. Deposit by the financial institution of such letter of credit funds in an account designated by the office ~~department~~ no later than 4 business days following written instructions from the office ~~department~~ that, in the sole judgment of the office ~~department~~, funding of the minimum liquid reserve is required.

(b) The terms of such letter of credit shall be approved by the office ~~department~~ and the long-term debt of the financial institution providing such letter of credit shall be rated in one of their top three long-term debt rating categories by either Moody's Investors Service, Standard & Poor's Corporation, or a recognized securities rating agency acceptable to the office ~~department~~.

(c) The letter of credit shall name the office ~~department~~ as beneficiary.

(d) Notwithstanding any other provision of this section, a provider utilizing a letter of credit pursuant to this subsection shall, at all times, have and maintain in escrow an operating cash reserve equal to 2 months' operating expenses as determined pursuant to s. 651.026.

(e) In the event the issuing financial institution no longer participates in the State of Florida Treasury Certificate of Deposit Program, such financial institution shall deposit as collateral with the department ~~State of Florida Treasury~~ eligible securities, as prescribed by s. 625.52, having a market value equal to or greater than 100 percent of the stated amount of the letter of credit.

(8)(a) Each fiscal year, a provider may withdraw up to 33 percent of the total renewal and replacement reserve available. The reserve available is equal to the market value of the invested reserves at the end of the provider's prior fiscal year. The withdrawal is to be used for capital items or major repairs, and before any funds are eligible for withdrawal, the provider must obtain written permission from the office ~~department~~ by submitting the following information:

1. The amount of the withdrawal and the intended use of the proceeds.

2. A board resolution and sworn affidavit signed by two officers or general partners of the provider which indicates approval of the withdrawal and use of the funds.

3. Proof that the provider has met all funding requirements for the operating, debt service, and renewal and replacement reserves computed for the previous fiscal year.

4. Anticipated payment schedule for refunding the renewal and replacement reserve fund.

(b) Within 30 days after the withdrawal of funds from the renewal and replacement reserve fund, the provider must begin refunding the reserve

account in equal monthly payments which allow for a complete funding of such withdrawal within 36 months. If the payment schedule required under subparagraph (a)4. has changed, the provider must update the office ~~department~~ with the new payment schedule. If the provider fails to make a required monthly payment or the payment is late, the provider must notify the office ~~department~~ within 5 days after the due date of the payment. No additional withdrawals from the renewal and replacement reserve will be allowed until all scheduled payments are current.

Section 1678. Section 651.051, Florida Statutes, is amended to read:

651.051 Maintenance of assets and records in state.—No records or assets may be removed from this state by a provider unless the office ~~department~~ consents to such removal in writing before such removal. Such consent shall be based upon the provider's submitting satisfactory evidence that the removal will facilitate and make more economical the operations of the provider and will not diminish the service or protection thereafter to be given the provider's residents in this state. Prior to such removal, the provider shall give notice to the president or chair of the facility's residents' council. If such removal is part of a cash management system which has been approved by the office ~~department~~, disclosure of the system shall meet the notification requirements.

Section 1679. Subsection (1) of section 651.055, Florida Statutes, is amended to read:

651.055 Contracts; right to rescind.—

(1) Each continuing care contract and each addendum to such contract shall be submitted to and approved by the office ~~department~~ prior to its use in this state. Thereafter, no other form of contract shall be used by the provider unless it has been submitted to and approved by the office ~~department~~. Each contract shall:

(a) Provide for the continuing care of only one resident, or for two persons occupying space designed for double occupancy, under appropriate regulations established by the provider and shall list all properties transferred and their market value at the time of transfer, including donations, subscriptions, fees, and any other amounts paid or payable by, or on behalf of, the resident or residents.

(b) Specify all services which are to be provided by the provider to each resident, including, in detail, all items which each resident will receive, whether the items will be provided for a designated time period or for life, and whether the services will be available on the premises or at another specified location. The provider shall indicate which services or items are included in the contract for continuing care and which services or items are made available at or by the facility at extra charge. Such items shall include, but are not limited to, food, shelter, personal services or nursing care, drugs, burial, and incidentals.

(c) Describe the terms and conditions under which a contract for continuing care may be canceled by the provider or by a resident and the conditions,

if any, under which all or any portion of the entrance fee will be refunded in the event of cancellation of the contract by the provider or by the resident, including the effect of any change in the health or financial condition of a person between the date of entering a contract for continuing care and the date of initial occupancy of a living unit by that person.

(d) Describe the health and financial conditions required for a person to be accepted as a resident and to continue as a resident, once accepted, including the effect of any change in the health or financial condition of a person between the date of entering into a continuing care contract and the date of taking occupancy in a unit.

(e) Describe the circumstances under which the resident will be permitted to remain in the facility in the event of financial difficulties of the resident. The stated policy may not be less than the terms stated in s. 651.061.

(f) State the fees that will be charged if the resident marries while at the designated facility, the terms concerning the entry of a spouse to the facility, and the consequences if the spouse does not meet the requirements for entry.

(g) Provide that the contract may be canceled upon the giving of written notice of cancellation of at least 30 days by the provider, the resident, or the person who provided the transfer of property or funds for the care of such resident; however, if a contract is canceled because there has been a good faith determination that a resident is a danger to himself or herself or others, only such notice as is reasonable under the circumstances shall be required.

1. The contract shall further provide in clear and understandable language, in print no smaller than the largest type used in the body of the contract, the terms governing the refund of any portion of the entrance fee.

2. For a resident whose contract with the facility provides that the resident does not receive a transferable membership or ownership right in the facility, and who has occupied his or her unit, the refund shall be calculated on a pro rata basis with the facility retaining no more than 2 percent per month of occupancy by the resident and no more than a 4-percent fee for processing. Such refund shall be paid no later than 120 days after the giving of notice of intention to cancel.

3. If the contract provides for the facility to retain no more than 1 percent per month of occupancy by the resident, it may provide that such refund will be paid from the proceeds of the next entrance fees received by the provider for units for which there are no prior claims by any resident until paid in full or, if the provider has discontinued marketing continuing care contracts, within 200 days after the date of notice.

4. Unless the provisions of subsection (5) apply, for any prospective resident, regardless of whether or not such a resident receives a transferable membership or ownership right in the facility, who cancels the contract prior to occupancy of the unit, the refund shall be the entire amount paid toward the entrance fee, less a processing fee not to exceed 4 percent of the entire

entrance fee, but in no event shall such processing fee exceed the amount paid by the prospective resident. Such refund shall be paid no later than 60 days after the giving of notice of intention to cancel. For a resident who has occupied his or her unit and who has received a transferable membership or ownership right in the facility, the foregoing refund provisions shall not apply but shall be deemed satisfied by the acquisition or receipt of a transferable membership or an ownership right in the facility. The provider shall not charge any fee for the transfer of membership or sale of an ownership right.

(h) State the terms under which a contract is canceled by the death of the resident. These terms may contain a provision that, upon the death of a resident, the entrance fee of such resident shall be considered earned and shall become the property of the provider. When the unit is shared, the conditions with respect to the effect of the death or removal of one of the residents shall be included in the contract.

(i) Describe the policies which may lead to changes in monthly recurring and nonrecurring charges or fees for goods and services received. The contract shall provide for advance notice to the resident, of not less than 60 days, before any change in fees or charges or the scope of care or services may be effective, except for changes required by state or federal assistance programs.

(j) Provide that charges for care paid in one lump sum shall not be increased or changed during the duration of the agreed upon care, except for changes required by state or federal assistance programs.

(k) Specify whether or not the facility is, or is affiliated with, a religious, nonprofit, or proprietary organization or management entity; the extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider; and the provisions of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

Section 1680. Subsection (3) of section 651.083, Florida Statutes, is amended to read:

651.083 Residents' rights.—

(3) Any violation of the residents' rights set forth in subsection (1) constitutes grounds for disciplinary action by the <u>office</u> ~~department~~ under ss. 651.106 and 651.108.

Section 1681. Subsection (1) of section 651.085, Florida Statutes, is amended to read:

651.085 Quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.—

(1) The governing body of a provider, or the designated representative of the provider, shall hold quarterly meetings with the residents of the continuing care facility for the purpose of free discussion of subjects including, but

not limited to, income, expenditures, and financial trends and problems as they apply to the facility, as well as a discussion on proposed changes in policies, programs, and services. Upon request of the residents' organization, a member of the governing body of the provider, such as a board member, a general partner, or a principal owner shall attend such meetings. Residents shall be entitled to at least 7 days' advance notice of each quarterly meeting. An agenda and any materials that will be distributed by the governing body or representative of the provider shall be posted in a conspicuous place at the facility and shall be available upon request to residents of the facility. The office ~~department~~ shall request verification from a facility that quarterly meetings are held and open to all residents when it receives a complaint from the residents' council that a facility is not in compliance with the provisions of this subsection. In addition, a facility shall report to the office ~~department~~ in the annual report required under s. 651.026 the dates on which quarterly meetings were held during the reporting period.

Section 1682. Section 651.091, Florida Statutes, is amended to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(1) Each continuing care facility shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with or issued by any governmental agency. A copy of each such report shall be retained in such records for not less than 5 years from the date the report is filed or issued. Each facility shall also maintain as public information, available upon request, all annual statements that have been filed with the office ~~department~~.

(2) Every continuing care facility shall:

(a) Display the certificate of authority in a conspicuous place inside the facility.

(b) Post in a prominent position in the facility so as to be accessible to all residents and to the general public a concise summary of the last examination report issued by the office ~~department~~, with references to the page numbers of the full report noting any deficiencies found by the office ~~department~~, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.

(c) Post in a prominent position in the facility so as to be accessible to all residents and to the general public a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services shall also be posted.

(d) Distribute a copy of the full annual statement to the president or chair of the residents' council within 30 days after the filing of the annual report with the office ~~department~~, and designate a staff person to provide explanation thereof.

(e) Notify the residents' council of any plans filed with the office ~~department~~ to obtain new financing, additional financing, or refinancing for the facility and of any applications to the office ~~department~~ for any expansion of the facility.

(3) Before entering into a contract to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

(a) The contract to furnish continuing care.

(b) The summary listed in paragraph (2)(b).

(c) All ownership interests and lease agreements, including information specified in s. 651.022(2)(b)8.

(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review, master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans will not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

(e) Copies of the rules and regulations of the facility and an explanation of the responsibilities of the resident.

(f) The policy of the facility with respect to admission to and discharge from the various levels of health care offered by the facility.

(g) The amount and location of any reserve funds required by this chapter, and the name of the person or entity having a claim to such funds in the event of a bankruptcy, foreclosure, or rehabilitation proceeding.

(h) A copy of the resident's rights as described in s. 651.083.

A true and complete copy of the full disclosure document to be used shall be filed with the office ~~department~~ prior to its use. A resident or prospective resident or his or her legal representative shall be permitted to inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office ~~department~~ pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

Section 1683. 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 office ~~department~~ shall require the applicant to submit for approval all advertising. Approval of the application constitutes approval of the advertising, unless the office ~~department~~ has otherwise notified the applicant. The office ~~department~~ shall disapprove any document which is a violation of any provision of part IX of chapter 626.

(2) After an application has been approved, a provider is not required to submit new advertising to the office ~~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 of chapter 626 or which has previously been disapproved by the office ~~department~~.

Section 1684. Section 651.105, Florida Statutes, is amended to read:

651.105 Examination and inspections.—

(1) The office ~~department~~ may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for examination of insurance companies pursuant to s. 624.316. Such examinations shall be made by a representative or examiner designated by the office ~~department~~, whose compensation will be fixed by the office ~~department~~ pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the office ~~department~~; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, will be deemed adequate. The final written report of each such examination shall be filed with ~~in~~ the office ~~of the department~~ and, when so filed, will constitute a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the office ~~department~~ may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

(2) Any duly authorized officer, employee, or agent of the office ~~department~~ may, upon presentation of proper identification, have access to, and inspect, any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.

(3) Reports of the results of such financial examinations must be kept on file by the office ~~department~~. Any investigatory records, reports, or documents held by the office ~~department~~ are confidential and exempt from the provisions of s. 119.07(1), until the investigation is completed or ceases to be active. For the purpose of this section, an investigation is active while it is being conducted by the office ~~department~~ with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the office ~~department~~ is proceeding with reasonable dispatch and has a good faith belief that action could be initiated by the office ~~department~~ or other administrative or law enforcement agency.

(4) The office ~~department~~ shall notify the provider in writing of all deficiencies in its compliance with the provisions of this chapter and the rules adopted pursuant to this chapter and shall set a reasonable length of time for compliance by the provider. In addition, the office ~~department~~ shall require corrective action or request a corrective action plan from the provider which plan demonstrates a good faith attempt to remedy the deficiencies by a specified date. If the provider fails to comply within the established length of time, the office ~~department~~ may initiate action against the provider in accordance with the provisions of this chapter.

Section 1685. Section 651.106, Florida Statutes, is amended to read:

651.106 Grounds for discretionary refusal, suspension, or revocation of certificate of authority.—The office ~~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:

(1) Failure by the provider to continue to meet the requirements for the authority originally granted.

(2) Failure by the provider to meet one or more of the qualifications for the authority specified by this chapter.

(3) Material misstatement, misrepresentation, or fraud in obtaining the authority, or in attempting to obtain the same.

(4) Demonstrated lack of fitness or trustworthiness.

(5) Fraudulent or dishonest practices of management in the conduct of business.

(6) Misappropriation, conversion, or withholding of moneys.

(7) Failure to comply with, or violation of, any proper order or rule of the office or commission ~~department~~ or violation of any provision of this chapter.

(8) The insolvent condition of the provider or the provider's being in such condition or using such methods and practices in the conduct of its business as to render its further transactions in this state hazardous or injurious to the public.

(9) Refusal by the provider to be examined or to produce its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligation under this chapter when required by the office ~~department~~.

(10) Failure by the provider to comply with the requirements of s. 651.026 or s. 651.033.

(11) Failure by the provider to maintain escrow accounts or funds as required by this chapter.

(12) Failure by the provider to meet the requirements of this chapter for disclosure of information to residents concerning the facility, its ownership,

its management, its development, or its financial condition or failure to honor its continuing care contracts.

(13) Any cause for which issuance of the license could have been refused had it then existed and been known to the office ~~department~~.

(14) Having been found guilty of, or having pleaded guilty or nolo contendere to, a felony in this state or any other state, without regard to whether a judgment or conviction has been entered by the court having jurisdiction of such cases.

(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 of chapter 626.

(16) A pattern of bankrupt enterprises.

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 office ~~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 office ~~department~~ may seek an action in the circuit court of Leon County to enforce the office's ~~department's~~ order and the provisions of this section.

Section 1686. Subsections (1) and (3) of section 651.107, Florida Statutes, are amended to read:

651.107 Duration of suspension; obligations during suspension period; reinstatement.—

(1) Suspension of a certificate of authority shall be for such period, not to exceed 1 year, as is fixed by the office ~~department~~ in the order of suspension, unless the office ~~department~~ shortens or rescinds such suspension or the order of suspension is modified, rescinded, or reversed.

(3) Upon expiration of the suspension period, if within such period the certificate of authority has not otherwise terminated, the provider's certificate of authority shall automatically be reinstated unless the office ~~department~~ finds that the causes for the suspension have not been removed or that the provider is otherwise not in compliance with the requirements of this chapter. If not so automatically reinstated, the certificate of authority shall be deemed to be revoked as of the end of the suspension period or upon failure of the provider to continue the certificate during the suspension period, whichever event first occurs.

Section 1687. Section 651.108, Florida Statutes, is amended to read:

651.108 Administrative fines.—

(1) If the office ~~department~~ finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued

under this chapter, the office ~~department~~, in lieu of such revocation or suspension, may impose a fine upon the provider in an amount not to exceed $1,000 per violation.

(2) If it is found that the provider has knowingly and willfully violated a lawful order of the office ~~department~~ or a provision of this chapter, the office ~~department~~ may impose a fine in an amount not to exceed $10,000 for each such violation.

Section 1688. Subsections (1) and (2) of section 651.1081, Florida Statutes, are amended to read:

651.1081 Remedies available in cases of unlawful sale.—

(1) Upon a determination by the office ~~department~~ that a provider is or has been violating the provisions of this chapter, the office ~~department~~ may order the provider to cease sales and make a rescission offer to the resident in accordance with the provisions of this section.

(2) Upon such order by the office ~~department~~, every unlawful sale made in violation of this chapter may be rescinded at the election of the resident without penalty.

Section 1689. Subsections (1), (2), and (3) of section 651.111, Florida Statutes, are amended to read:

651.111 Requests for inspections.—

(1) Any interested party may request an inspection of the records and related financial affairs of a provider providing care in accordance with the provisions of this chapter by transmitting to the office ~~department~~ notice of an alleged violation of applicable requirements prescribed by statute or by rule, specifying to a reasonable extent the details of the alleged violation, which notice shall be signed by the complainant.

(2) The substance of the complaint shall be given to the provider no earlier than the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint which is provided to the provider nor any copy of the complaint or any record which is published, released, or otherwise made available to the provider shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the office ~~department~~ conducting the investigation or inspection pursuant to this chapter.

(3) Upon receipt of a complaint, the office ~~department~~ shall make a preliminary review; and, unless the office ~~department~~ determines that the complaint is without any reasonable basis, the office ~~department~~ shall make an inspection. The complainant shall be advised, within 30 days after the receipt of the complaint by the office ~~department~~, of the proposed course of action of the office ~~department~~.

Section 1690. Section 651.114, Florida Statutes, is amended to read:

651.114 Delinquency proceedings; remedial rights.—

(1) Upon determination by the office ~~department~~ that a provider is not in compliance with this chapter, the office ~~department~~ may notify the chair of the advisory council, who may assist the office ~~department~~ in formulating a corrective action plan.

(2) A provider shall make available to the advisory council, no later than 30 days after being requested to do so by the advisory council, a plan for obtaining compliance or solvency.

(3) The council shall, no later than 30 days after notification:

(a) Consider and evaluate the plan submitted by the provider.

(b) Discuss the problem and solutions with the provider.

(c) Conduct such other business as is necessary.

(d) Report its findings and recommendations to the office ~~department~~, which may require additional modification of the plan.

(4)(a) Upon approval of a plan by the office ~~department~~, the provider shall submit monthly a progress report to the council or the office ~~department~~, or both, in a manner prescribed by the office ~~department~~.

(b) After a period of 3 months, or at any earlier time deemed necessary, the council shall evaluate the progress by the provider and shall advise the office ~~department~~ of its findings.

(5) Should the office ~~department~~ find that sufficient grounds exist for rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceedings of an insurer as set forth in ss. 631.051, 631.061, and 631.071, the office ~~department~~ may petition for an appropriate court order or may pursue such other relief as is afforded in part I of chapter 631. Before invoking its powers under part I of chapter 631, the office ~~department~~ shall notify the chair of the advisory council.

(6) In the event an order of rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceeding has been entered against a provider, the department and office are ~~is~~ vested with all of the powers and duties they have ~~it has~~ under the provisions of part I of chapter 631 in regard to delinquency proceedings of insurance companies.

(7) If the financial condition of the continuing care facility or provider is such that, if not modified or corrected, its continued operation would result in insolvency, the office ~~department~~ may direct the provider to formulate and file with the office ~~department~~ a corrective action plan. If the provider fails to submit a plan within 30 days after the office's ~~department's~~ directive or submits a plan that is insufficient to correct the condition, the office ~~department~~ may specify a plan and direct the provider to implement the plan.

(8)(a) The rights of the office ~~department~~ described in this section shall be subordinate to the rights of a trustee or lender pursuant to the terms of a resolution, ordinance, loan agreement, indenture of trust, mortgage, lease, security agreement, or other instrument creating or securing bonds or notes issued to finance a facility, and the office ~~department~~, subject to the provisions of paragraph (c), shall not exercise its remedial rights provided under this section and ss. 651.018, 651.106, 651.108, and 651.116 with respect to a facility that is subject to a lien, mortgage, lease, or other encumbrance or trust indenture securing bonds or notes issued in connection with the financing of the facility, if the trustee or lender, by inclusion or by amendment to the loan documents or by a separate contract with the office ~~department~~, agrees that the rights of residents under a continuing care contract will be honored and will not be disturbed by a foreclosure or conveyance in lieu thereof as long as the resident:

1. Is current in the payment of all monetary obligations required by the continuing care contract;

2. Is in compliance and continues to comply with all provisions of the resident's continuing care contract; and

3. Has asserted no claim inconsistent with the rights of the trustee or lender.

(b) Nothing in this subsection requires a trustee or lender to:

1. Continue to engage in the marketing or resale of new continuing care contracts;

2. Pay any rebate of entrance fees as may be required by a resident's continuing care contract as of the date of acquisition of the facility by the trustee or lender and until expiration of the period described in paragraph (d);

3. Be responsible for any act or omission of any owner or operator of the facility arising prior to the acquisition of the facility by the trustee or lender; or

4. Provide services to the residents to the extent that the trustee or lender would be required to advance or expend funds that have not been designated or set aside for such purposes.

(c) Should the office ~~department~~ determine, at any time during the suspension of its remedial rights as provided in paragraph (a), that the trustee or lender is not in compliance with the provisions of paragraph (a), or that a lender or trustee has assigned or has agreed to assign all or a portion of a delinquent or defaulted loan to a third party without the office's ~~department's~~ written consent, the office ~~department~~ shall notify the trustee or lender in writing of its determination, setting forth the reasons giving rise to the determination and specifying those remedial rights afforded to the office ~~department~~ which the office ~~department~~ shall then reinstate.

(d) Upon acquisition of a facility by a trustee or lender and evidence satisfactory to the office ~~department~~ that the requirements of paragraph (a)

have been met, the office ~~department~~ shall issue a 90-day temporary certificate of authority granting the trustee or lender the authority to engage in the business of providing continuing care and to issue continuing care contracts subject to the office's ~~department's~~ right to immediately suspend or revoke the temporary certificate of authority if the office ~~department~~ determines that any of the grounds described in s. 651.106 apply to the trustee or lender or that the terms of the agreement used as the basis for the issuance of the temporary certificate of authority by the office ~~department~~ have not been or are not being met by the trustee or lender since the date of acquisition.

Section 1691. Section 651.1151, Florida Statutes, is amended to read:

651.1151 Administrative, vendor, and management contracts.—

(1) The office ~~department~~ may require a provider to submit any contract for administrative, vendor, or management services if the office ~~department~~ has information and belief that a provider has entered into a contract with an affiliate, an entity controlled by the provider, or an entity controlled by an affiliate of the provider, which has not been disclosed to the office ~~department~~ or which contract requires the provider to pay a fee that is unreasonably high in relation to the service provided.

(2) After review of the contract, the office ~~department~~ may order the provider to cancel the contract in accordance with the terms of the contract and applicable law if it determines that the fees to be paid are so unreasonably high as compared with similar contracts entered into by other providers in similar circumstances that the contract is detrimental to the facility or its residents.

(3) Any contract with an affiliate, an entity controlled by the provider, or an entity controlled by an affiliate of the provider for administrative, vendor, or management services entered into or renewed after October 1, 1991, shall contain a provision that the contract shall be canceled upon issuance of an order by the office ~~department~~ pursuant to this section. A copy of the current management services contract, pursuant to this section, if any, must be on file in the marketing office or other accessible area to residents and the appropriate resident organizations.

(4) Any action of the office ~~department~~ under this section is subject to review pursuant to the procedures provided in chapter 120.

Section 1692. Subsection (12) of section 651.118, Florida Statutes, is amended to read:

651.118 Agency for Health Care Administration; certificates of need; sheltered beds; community beds.—

(12) A facility that is under administrative supervision for financial problems pursuant to s. 651.018 may petition the Agency for Health Care Administration for the conversion of sheltered beds to community nursing home beds in accordance with the corrective action plan approved by the office ~~department~~. The agency shall, upon petition by the facility and through an

expedited review, issue a certificate of need converting the sheltered nursing home beds to community nursing home beds.

Section 1693. Section 52 of chapter 2001-45, Laws of Florida, is amended to read:

Section 52. Notwithstanding the establishment of need as provided for in chapter 408, Florida Statutes, no certificate of need for additional community nursing home beds shall be approved by the agency until July 1, 2006. The Legislature finds that the continued growth in the Medicaid budget for nursing home care has constrained the ability of the state to meet the needs of its elderly residents through the use of less restrictive and less institutional methods of long-term care. It is therefore the intent of the Legislature to limit the increase in Medicaid nursing home expenditures in order to provide funds to invest in long-term care that is community-based and provides supportive services in a manner that is both more cost-effective and more in keeping with the wishes of the elderly residents of this state. This moratorium on certificates of need shall not apply to sheltered nursing home beds in a continuing care retirement community certified by the former Department of Insurance or by the Office of Insurance Regulation pursuant to chapter 651, Florida Statutes.

Section 1694. Section 651.119, Florida Statutes, is amended to read:

651.119 Assistance to persons affected by closure due to liquidation or pending liquidation.—

(1) If a facility closes and ceases to operate as a result of liquidation or pending liquidation and residents are forced to relocate, the department shall become a creditor of the facility for the purpose of providing moving expenses for displaced residents and such other care or services as is made possible by the unencumbered assets of the facility. To the extent that another provider provides, as approved by the office ~~department~~, direct assistance to such residents, the cost of such direct assistance shall be offset against reserves pursuant to subsection (4). The department shall provide proportional reimbursements of such costs to the respective providers from such unencumbered assets.

(2) If the moneys and direct assistance made available under subsection (1) are not sufficient to cover moving costs, the office ~~department~~ may seek voluntary contributions from the reserves maintained by providers under s. 651.035 in amounts approved by the office ~~department~~ to provide for the moving expenses of the residents in moving to another residence within the state.

(3) If the moneys and direct assistance provided under subsections (1) and (2) are not sufficient to provide for the moving expenses of displaced residents in moving to other residences within the state, the office ~~department~~ may levy pro rata assessments on the reserves of providers maintained under s. 651.035 for such moving expenses of any displaced resident who lacks sufficient assets to pay for such moving expenses. The assessments for such moving expenses on any particular provider may not exceed for any 12-month period an aggregate of 1 percent of the unencumbered portion of the

reserves maintained by the provider under s. 651.035. If the office ~~department~~ determines that payment of an assessment under this subsection would impair the financial standing of a facility or its residents, the office ~~department~~ may waive or temporarily defer all or part of the assessment with respect to that provider. The office ~~department~~ shall apply any moneys voluntarily paid by a provider under subsection (1) or subsection (2) to satisfaction of assessments under this subsection.

(4) The office ~~department~~ shall permanently reduce the reserves required of a provider under s. 651.035 to the extent of the provider's costs under subsection (1), voluntary contributions under subsection (2), and assessments under subsection (3). However, the office ~~department~~ shall thereafter raise the reserve requirements of a provider to the extent of reimbursements paid to the provider under subsection (1) unless such increase would raise the reserve requirement above the amount required under s. 651.035.

(5) No payment, contribution, or assessment may be paid by a provider under this section if the release of funds from the reserves of the provider would violate a bond or lending commitment or covenant.

(6) Moneys received under this section for the support of residents shall be kept in a separate fund maintained and administered by the department. The Continuing Care Advisory Council shall monitor the collection and use of such funds and shall advise the office or department on plans for resident relocation. The council shall seek the assistance of providers licensed under this chapter and other service providers in locating alternative housing and care arrangements.

(7) For the purposes of this section, "moving expenses" means transportation expenses and the cost of packing and relocating personal belongings.

Section 1695. Subsections (1), (3), and (5) of section 651.121, Florida Statutes, are amended to read:

651.121 Advisory council.—

(1) The Continuing Care Advisory Council to the office ~~department of Insurance~~ is created to consist of 10 members who are residents of this state appointed by the Governor and geographically representative of this state. Three members shall be administrators of facilities which hold valid certificates of authority under this chapter and shall have been actively engaged in the offering of continuing care agreements in this state for 5 years before appointment. The remaining members shall include:

(a) A representative of the business community whose expertise is in the area of management.

(b) A representative of the financial community who is not a facility owner or administrator.

(c) A certified public accountant.

(d) An attorney.

(e) Three residents who hold continuing care agreements with a facility certified in this state.

(3) The council members shall serve without pay, but shall be reimbursed for per diem and travel expenses by the office ~~department~~ in accordance with s. 112.061.

(5) The council shall:

(a) Meet at least once a year and, at such annual meeting, elect a chair from their number and elect or appoint a secretary, each of whom shall hold office for 1 year and thereafter until a successor is elected and qualified.

(b) Hold other meetings at such times and places as the office ~~department~~ or the chair of the council may direct.

(c) Keep a record of its proceedings. The books and records of the council shall be prima facie evidence of all matters reported therein and, except for proceedings conducted under s. 651.018, shall be open to inspection at all times.

(d) Act in an advisory capacity to the office ~~department~~.

(e) Recommend to the office ~~department~~ needed changes in statutes and rules.

(f) Upon the request of the office ~~department~~, assist, with any corrective action, rehabilitation or cessation of business plan of a provider.

Section 1696. Section 651.123, Florida Statutes, is amended to read:

651.123 Alternative dispute resolution.—The commission ~~department~~ shall, by rule, adopt alternative procedures for resolution of disputes between residents and providers. The rules shall provide for an informal, nonbinding mediation process, and for binding arbitration when mediation fails to resolve a dispute, and shall provide minimum qualifications for arbitrators substantially similar to other arbitration programs under the Florida Insurance Code. The rules shall specify the types of disputes that are subject to mediation or arbitration, and shall provide that disputes over increases in monthly maintenance fees are not subject to mediation or arbitration. Arbitration is available only if all parties agree in advance to be bound by the result.

Section 1697. Subsections (2), (3), and (4) of section 651.125, Florida Statutes, are amended to read:

651.125 Criminal penalties; injunctive relief.—

(2) The state attorney for a circuit shall, upon application of the office ~~department~~ or its authorized representative, institute and conduct the prosecution of an action for violation, within such circuit, of any provision of this chapter.

(3) The office ~~department~~ may bring an action to enjoin a violation, threatened violation, or continued violation of this chapter in the circuit

court in and for the county in which the violation occurred, is occurring, or is about to occur.

(4) Any action brought by the office ~~department~~ against a provider shall not abate by reason of a sale or other transfer of ownership of the facility used to provide care, which provider is a party to the action, except with the express written consent of the director of the office ~~Treasurer and Insurance Commissioner~~.

Section 1698. Section 651.134, Florida Statutes, is amended to read:

651.134 Investigatory records.—Any active investigatory record of the office ~~department~~ made or received under this chapter, and any active examination record necessary to complete an active investigation, is confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be active. For the purpose of this section, an investigation is active while it is being conducted by the office ~~department~~ with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the office ~~department~~ is proceeding with reasonable dispatch and has a good faith belief that action could be initiated by the office ~~department~~ or other administrative or law enforcement agency.

Section 1699. Subsection (1) and paragraph (j) of subsection (2) of section 655.001, Florida Statutes, are amended to read:

655.001 Purpose; application.—The purposes of the financial institutions codes are to:

(1) Provide general regulatory powers to be exercised by the Financial Services Commission and the Office of Financial Regulation ~~Department of Banking and Finance~~ in relation to the regulation of financial institutions. The financial institutions codes apply to all state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to state-authorized or state-chartered financial institutions.

(2) Provide for and promote:

(j) The delegation to the commission ~~department~~ of adequate rulemaking power and to the office adequate administrative discretion, subject to the provisions of the financial institutions codes and to the purposes and policies stated in this section, in order that the supervision and regulation of financial institutions may be flexible and readily responsive to changes in economic conditions, in technology, and in financial institution practices.

Section 1700. Paragraphs (e), (i), (m), (q), and (r) of subsection (1) of section 655.005, Florida Statutes, are amended, and paragraph (s) is added to that subsection, to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(e) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(i) "Financial institution-affiliated party" means:

1. Any director, officer, employee, or controlling stockholder (other than a financial institution holding company) of, or agent for, a financial institution, subsidiary, or service corporation;

2. Any other person who has filed or is required to file a change-of-control notice with the appropriate state or federal regulatory agency;

3. Any stockholder (other than a financial institution holding company), any joint venture partner, or any other person as determined by the office ~~department~~ who participates in the conduct of the affairs of a financial institution, subsidiary, or service corporation; or

4. Any independent contractor (including any attorney, appraiser, consultant, or accountant) who knowingly or recklessly participates in:

a. Any violation of any law or regulation;

b. Any breach of fiduciary duty; or

c. Any unsafe and unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution, subsidiary, or service corporation.

(m) "Main office" or "principal office" of a financial institution means the main business office designated or provided for in the articles of incorporation or bylaws of a financial institution at such identified location as has been or is hereafter approved by the Office of Financial Regulation ~~department~~, in the case of a state financial institution, or by the appropriate federal regulatory agency, in the case of a federal financial institution; and, with respect to the trust department of a bank or association that has trust powers, each of these terms means the office or place of business of the trust department at such identified location, which need not be the same location as the main office of the bank or association exclusive of the trust department, as has been or is hereafter approved by the Office of Financial Regulation ~~department~~, in the case of a state bank or association that has a trust department, or by the appropriate federal regulatory agency, in the case of a national bank or federal association that has a trust department. "Main office" or "principal office" of a trust company means the office designated or provided for as such in its articles of incorporation, at such identified location as has been or is hereafter approved by the relevant chartering authority.

(q) "Subsidiary" means any organization permitted by the office ~~department~~ which is controlled by a financial institution.

(r) "Unsafe or unsound practice" means any practice or conduct found by the office ~~department~~ to be contrary to generally accepted standards applica-

ble to the specific financial institution, or a violation of any prior order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the specific financial institution or its depositors or members. In making this determination, the office ~~department~~ must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.

(s) "Office" means the Office of Financial Regulation.

Section 1701. Section 655.012, Florida Statutes, is amended to read:

655.012 General supervisory powers ~~of the department~~; rulemaking; seal.—

(1) In addition to other powers conferred by the financial institutions codes, the office ~~department~~ shall have:

(a)~~(1)~~ General supervision over all state financial institutions, their subsidiaries, and service corporations.

(b)~~(2)~~ Access to all books and records of all persons over whom the office ~~department~~ exercises general supervision as is necessary for the performance of the duties and functions of the office ~~department~~ prescribed by the financial institutions codes.

(c)~~(3)~~ Power to issue orders and declaratory statements, disseminate information, and otherwise exercise its discretion to effectuate the purposes, policies, and provisions of the financial institutions codes.

(2) In addition to other powers conferred by the financial institutions codes, the commission shall have the power ~~and~~ to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of such codes.

(3) The office shall have an official seal by which its proceedings are authenticated.

Section 1702. Section 655.015, Florida Statutes, is amended to read:

655.015 Construction; standards to be observed by commission and office ~~department~~.—

(1) The financial institutions codes shall be liberally construed and applied to promote their purposes and policies.

(2) The purposes and policies as stated in s. 655.001 constitute standards to be observed by the commission and office ~~department~~ in the exercise of their ~~its~~ discretionary powers under the financial institutions codes, in the adoption of rules, in the issuance of orders and declaratory statements, in the examination and supervision of financial institutions, and in all matters of construction and application of the financial institutions codes required for any determination or action ~~by the department~~.

(3) The headings, captions, and catchlines at the beginning of sections, subsections, and paragraphs are for convenience only, do not constitute any

part of the statutes comprising the financial institutions codes, do not constitute a complete index of the financial institutions codes, are not indicative of the intent of the financial institutions codes, and may not be used in construing or interpreting the financial institutions codes.

Section 1703. Section 655.016, Florida Statutes, is amended to read:

655.016 Liability when acting upon rule, order, or declaratory statement ~~issued by department.~~—No person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the commission or office ~~department~~ shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement which is not of general application, no person other than the person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances which are substantially the same as those upon which the order or declaratory statement was based.

Section 1704. Section 655.031, Florida Statutes, is amended to read:

655.031 Administrative enforcement guidelines.—

(1) In imposing any administrative remedy or penalty provided for in the financial institutions codes, the office ~~department~~ shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(2) All administrative proceedings under ss. 655.033 and 655.037 shall be conducted in accordance with chapter 120. Any service required or authorized to be made by the office ~~department~~ under the financial institutions codes may be made by certified mail, return receipt requested, delivered to addressee only; by personal delivery; or in accordance with chapter 48. The service provided for hereunder is effective from the date of delivery.

Section 1705. Section 655.032, Florida Statutes, is amended to read:

655.032 Investigations, subpoenas, hearings, and witnesses.—

(1) The office ~~department~~ may make investigations, within or outside this state, which it deems necessary to determine whether a person has violated or is about to violate any provision of the financial institutions codes or of the rules adopted by the commission ~~department~~ pursuant to such codes.

(2)(a) In the course of or in connection with an investigation by the office ~~department~~ pursuant to the provisions of subsection (1) or an investigation or examination in connection with any application to the office ~~department~~ for the organization or establishment of a state financial institution or a branch thereof, and in connection with an examination of a state financial institution, subsidiary, or service corporation by the office ~~department~~, the

office ~~department~~, or any of its officers holding no lesser title and position than examiner in charge or attorney at law, shall have the power:

1. To administer oaths and affirmations;

2. To take or cause to be taken testimony and depositions; and

3. To issue, revoke, quash, or modify subpoenas and subpoenas duces tecum under the seal of the office ~~department~~ or to cause any such subpoena or subpoena duces tecum to be issued by any county court judge or clerk of the circuit court or county court to require persons to be or appear before the office ~~department~~ at a time and place to be therein named and to bring such books, records, and documents for inspection as may be therein designated. Such subpoenas may be served by a representative of the office ~~department~~ or may be served as otherwise provided for by law for the service of subpoenas.

(b) In connection with any such investigation or examination, the office ~~department~~ may permit a person to file a statement in writing, under oath or otherwise as the office ~~department~~ determines, as to facts and circumstances specified by the office ~~department~~.

(3)(a) In the event of noncompliance with a subpoena issued or caused to be issued by the office ~~department~~ pursuant to this section, the office ~~department~~ may petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, records, and documents as are specified in such subpoena duces tecum. The office ~~department~~ is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar.

(b) A copy of the petition shall be served upon the person subpoenaed by any person authorized by this section to serve subpoenas, who shall make and file with the court an affidavit showing the time, place, and date of service.

(c) At any hearing on any such petition, the person subpoenaed, or any person whose interests will be substantially affected by the investigation, examination, or subpoena, may appear and object to the subpoena and to the granting of the petition. The court may make any order which justice requires to protect a party or other person and his or her personal and property rights, including, but not limited to, protection from annoyance, embarrassment, oppression, or undue burden or expense.

(d) Failure to comply with an order granting, in whole or in part, a petition for enforcement of a subpoena is a contempt of court.

(4) Witnesses shall be entitled to the same fees and mileage to which they might be entitled by law for attending as witnesses in the circuit court, except that no fees or mileage shall be allowed in the case of testimony of a financial institution-affiliated party if such testimony is taken at the principal office of the state financial institution, subsidiary, or service corporation or at the residence of the financial institution-affiliated party.

(5) Reasonable and necessary expenses incurred by the office ~~department~~ and payable to persons in investigations may be assessed against such an applicant, state financial institution, subsidiary, service corporation, or financial institution-affiliated party on the basis of actual costs incurred. Assessable expenses include, but are not limited to: expenses for interpreters; expenses for communications; expenses for legal representation; expenses for economic, legal, or other research, analyses, and testimony; and fees and expenses for witnesses. The failure to reimburse the office ~~department~~ is a ground for denial of the application or for revocation of any approval thereof.

Section 1706. Section 655.0321, Florida Statutes, is amended to read:

655.0321 Restricted access to certain hearings, proceedings, and related documents.—The office ~~department~~ shall consider the public purposes specified in s. 119.14(4)(b) in determining whether the hearings and proceedings conducted pursuant to s. 655.033 for the issuance of cease and desist orders and s. 655.037 for the issuance of suspension or removal orders shall be closed and exempt from the provisions of s. 286.011, and whether related documents shall be confidential and exempt from the provisions of s. 119.07(1).

Section 1707. Subsections (1), (3), and (4) of section 655.0322, Florida Statutes, are amended to read:

655.0322 Prohibited acts and practices; criminal penalties.—

(1) As used in this section, the term "financial institution" means a financial institution as defined in s. 655.50 which includes a state trust company, state or national bank, state or federal association, state or federal savings bank, state or federal credit union, Edge Act or agreement corporation, international bank agency, representative office or administrative office or other business entity as defined by the commission ~~department~~ by rule, whether organized under the laws of this state, the laws of another state, or the laws of the United States, which institution is located in this state.

(3) It is unlawful for any financial institution-affiliated party to:

(a) Knowingly receive or possess himself or herself of any of its property otherwise than in payment of a just demand, and, with intent to deceive or defraud, to omit to make or cause to be made a full and true entry thereof in its books and accounts, or concur in omitting to make any material entry thereof;

(b) Embezzle, abstract, or misapply any money, property, or thing of value of the financial institution, subsidiary, or service corporation with intent to deceive or defraud such financial institution, subsidiary, or service corporation;

(c) Knowingly make, draw, issue, put forth, or assign any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, mortgage, judgment, or decree without authority from the board of directors of such financial institution;

(d) Make any false entry in any book, report, or statement of such financial institution, subsidiary, or service corporation with intent to deceive or defraud such financial institution or another person, firm, or corporation, or with intent to deceive the office ~~department~~, any other appropriate federal regulatory agency, or any authorized representative appointed to examine the affairs of such financial institution, subsidiary, or service corporation; or

(e) Deliver or disclose to the office ~~department~~ or any of its employees any examination report, report of condition, report of income and dividends, internal audit, account, statement, or document known by him or her to be fraudulent or false as to any material matter.

Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any financial institution-affiliated party to knowingly place among the assets of such financial institution, subsidiary, or service corporation any note, obligation, or security which the financial institution, subsidiary, or service corporation does not own or which to the individual's knowledge is fraudulent or otherwise worthless or for any such individual to represent to the office ~~department~~ that any note, obligation, or security carried as an asset of such financial institution, subsidiary, or service corporation is the property of the financial institution, subsidiary, or service corporation and is genuine if it is known to such individual that such representation is false or that such note, obligation, or security is fraudulent or otherwise worthless. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1708. Subsections (1), (3), and (6) of section 655.033, Florida Statutes, are amended to read:

655.033 Cease and desist orders.—

(1) The office ~~department~~ may issue and serve upon any state financial institution, subsidiary, or service corporation, or upon any financial institution-affiliated party, a complaint stating charges whenever the office ~~department~~ has reason to believe that such state financial institution, subsidiary, service corporation, financial institution-affiliated party, or individual named therein is engaging in or has engaged in conduct that is:

(a) An unsafe or unsound practice;

(b) A violation of any law relating to the operation of a financial institution;

(c) A violation of any rule of the commission ~~department~~;

(d) A violation of any order of the office ~~department~~;

(e) A breach of any written agreement with the office ~~department~~;

(f) A prohibited act or practice pursuant to s. 655.0322; or

(g) A willful failure to provide information or documents to the office ~~department~~ or any appropriate federal agency, or any of its representatives, upon written request.

(3) If no hearing is requested within the time allowed by ss. 120.569 and 120.57, or if a hearing is held and the office ~~department~~ finds that any of the charges are true, the office ~~department~~ may enter an order directing the state financial institution, subsidiary, service corporation, financial institution-affiliated party, or the individual named therein to cease and desist from engaging in the conduct complained of and to take corrective action.

(6) Whenever the office ~~department~~ finds that conduct described in subsection (1) is likely to cause insolvency, substantial dissipation of assets or earnings of the state financial institution, subsidiary, or service corporation or substantial prejudice to the depositors, members, or shareholders, it may issue an emergency cease and desist order requiring the state financial institution, subsidiary, service corporation, or financial institution-affiliated party to immediately cease and desist from engaging in the conduct complained of and to take corrective action. The emergency order is effective immediately upon service of a copy of the order upon the state financial institution, subsidiary, service corporation, or financial institution-affiliated party and remains effective for 90 days. If the office ~~department~~ begins nonemergency cease and desist proceedings under subsection (1), the emergency order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57. Any emergency order entered under this subsection is confidential and exempt from s. 119.07(1) until the emergency order is made permanent, unless the office ~~department~~ finds that such confidentiality will result in substantial risk of financial loss to the public.

Section 1709. Section 655.034, Florida Statutes, is amended to read:

655.034 Injunctions.—Whenever a violation of the financial institutions codes is threatened or impending and such violation will cause substantial injury to a state financial institution or to the depositors, members, creditors, or stockholders thereof, the circuit court has jurisdiction to hear any complaint filed by the office ~~department~~ and, upon proper showing, to issue an injunction restraining such violation or granting other such appropriate relief.

Section 1710. Section 655.037, Florida Statutes, is amended to read:

655.037 Removal of a financial institution-affiliated party by the office ~~department~~.—

(1) The office ~~department~~ may issue and serve upon any financial institution-affiliated party and upon the state financial institution, subsidiary, or service corporation involved, a complaint stating charges whenever the office ~~department~~ has reason to believe that the financial institution-affiliated party is engaging or has engaged in conduct that is:

(a) An unsafe or unsound practice;

(b) A prohibited act or practice;

(c) A willful violation of any law relating to financial institutions;

(d) A violation of any other law involving fraud or moral turpitude which constitutes a felony;

(e) A violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law;

(f) A willful violation of any rule of the commission ~~department~~;

(g) A willful violation of any order of the office ~~department~~;

(h) A willful breach of any written agreement with the office ~~department~~; or

(i) An act of commission or omission or a practice which is a breach of trust or a breach of fiduciary duty.

(2) The complaint must contain the statement of facts and notice of opportunity for a hearing pursuant to ss. 120.569 and 120.57.

(3) If no hearing is requested within the time allowed by ss. 120.569 and 120.57, or if a hearing is held and the office ~~department~~ finds that any of the charges in the complaint are true and that the state financial institution has suffered or will likely suffer loss or other damage or that the interests of the depositors, members, or shareholders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the financial institution-affiliated party has received financial gain by reason of such violation, practice, or breach of fiduciary duty, and that such violation, practice, or breach of fiduciary duty is one involving personal dishonesty on the part of such financial institution-affiliated party or a continuing disregard for the safety or soundness of the state financial institution, subsidiary, or service corporation, the office ~~department~~ may enter an order removing the financial institution-affiliated party or restricting or prohibiting participation by such financial institution-affiliated party in the affairs of that particular state financial institution, subsidiary, or service corporation or any other state financial institution, subsidiary, or service corporation.

(4) If the financial institution-affiliated party fails to respond to the complaint within the time allowed in ss. 120.569 and 120.57, such failure constitutes a default and justifies the entry of an order of removal.

(5) A contested or default order of removal is effective when reduced to writing and served on the state financial institution, subsidiary, or service corporation and the financial institution-affiliated party. An uncontested order of removal is effective as agreed.

(6)(a) The chief executive officer, or the person holding the equivalent office, of a state financial institution shall promptly notify the office ~~department~~ if he or she has actual knowledge that any financial institution-affiliated party is charged with a felony in a state or federal court.

(b) Whenever any financial institution-affiliated party is charged with a felony in a state or federal court, or in the courts of any foreign country with which the United States maintains diplomatic relations, and such charge alleges violation of any law involving fraud, currency transaction reporting, money laundering, theft, or moral turpitude and the charge under such foreign law is equivalent to a felony charge under state or federal law, the office ~~department~~ may enter an emergency order suspending such financial institution-affiliated party or restricting or prohibiting participation by such financial institution-affiliated party in the affairs of that particular state financial institution, subsidiary, or service corporation or any other financial institution, subsidiary, or service corporation, upon service of the order upon the state financial institution, subsidiary, or service corporation and the financial institution-affiliated party so charged. The order shall contain notice of opportunity for a hearing pursuant to ss. 120.569 and 120.57, where the financial institution-affiliated party may request a postsuspension hearing to show that continued service to or participation in the affairs of the state financial institution, subsidiary, or service corporation does not pose a threat to the interests of the state financial institution's depositors, members, or stockholders, or threaten to impair public confidence in the state financial institution. In accordance with applicable commission ~~departmental~~ rules, the office ~~department~~ shall notify the financial institution-affiliated party whether the order suspending or prohibiting the financial institution-affiliated party from participation in the affairs of a state financial institution, subsidiary, or service corporation will be rescinded or otherwise modified. The emergency order will remain in effect, unless otherwise modified by the office ~~department~~, until the criminal charge is disposed of. The acquittal of the financial institution-affiliated party charged, or the final, unappealed dismissal of all charges against such person, will dissolve the emergency order, but will not prohibit the office ~~department~~ from instituting proceedings under subsection (1). If the financial institution-affiliated party charged is convicted or pleads guilty or nolo contendere, whether or not an adjudication of guilt is entered by the court, the emergency order becomes final.

(7) Any financial institution-affiliated party removed from office pursuant to this section is not eligible for reelection to such position or to any official position in any financial institution in this state except with the written consent of the office ~~department~~. Any financial institution-affiliated party who is removed, restricted, or prohibited from participation in the affairs of a state financial institution pursuant to this section may petition the office ~~department~~ for modification or termination of any such removal, restriction, or prohibition.

(8) The resignation, termination of employment or participation, or separation from a state financial institution, subsidiary, or service corporation of the financial institution-affiliated party does not affect the jurisdiction and authority of the office ~~department~~ to issue any notice and proceed under this section against such financial institution-affiliated party, if such notice is served before the end of the 6-year period beginning on the date such person ceases to be such a financial institution-affiliated party with respect to such state financial institution, subsidiary, or service corporation.

Section 1711. Section 655.0385, Florida Statutes, is amended to read:

655.0385 Disapproval of directors and executive officers.—

(1) Each state financial institution shall notify the office ~~department~~ of the proposed appointment of any individual to the board of directors or the employment of any individual as an executive officer or equivalent position at least 60 days before such appointment or employment becomes effective, if the state financial institution:

(a) Has been chartered for less than 2 years;

(b) Has undergone a change in control or conversion within the preceding 2 years. The office ~~department~~ may exempt a financial institution from this paragraph if it operates in a safe and sound manner;

(c) Is not in compliance with the minimum capital requirements applicable to such financial institution; or

(d) Is otherwise operating in an unsafe and unsound condition, as determined by the office ~~department~~, on the basis of such financial institution's most recent report of condition or report of examination.

(2) A state financial institution may not appoint any individual to the board of directors, or employ any individual as an executive officer or equivalent position, if the office ~~department~~ issues a notice of disapproval with respect to that person.

(3) The office ~~department~~ shall issue a notice of disapproval if the competence, experience, character, or integrity of the individual to be appointed or employed indicates that it is not in the best interests of the depositors, the members, or the public to permit the individual to be employed by or associated with the state financial institution.

(4) The commission ~~department~~ may adopt rules to implement this section.

Section 1712. Subsection (2) of section 655.0386, Florida Statutes, is amended to read:

655.0386 Transactions with financial institution-affiliated parties.—

(2) DISCLOSURE OF PERSONAL INTEREST.—Without limitation by any of the specific provisions of this section, the commission or office ~~department~~ may require the disclosure by financial institution-affiliated parties of their personal interests, directly or indirectly, in any business or transactions on behalf of or involving the state financial institution, subsidiary, or service corporation and of their control of or active participation in enterprises having activities related to the business of the state financial institution, subsidiary, or service corporation.

Section 1713. Section 655.0391, Florida Statutes, is amended to read:

655.0391 Retention of supervision by office ~~department~~.—A state financial institution may not cause to be performed, by contract or otherwise, any

financial-institution services for itself, whether at or away from its main or branch office or on or off its premises, unless assurances satisfactory to the office ~~department~~ are furnished to the office ~~department~~ by both the state financial institution and the person performing such services that the performance thereof will be subject to regulation and examination by the office ~~department~~ to the same extent as if such services were being performed by the state financial institution itself on its own premises.

Section 1714. Section 655.041, Florida Statutes, is amended to read:

655.041 Administrative fines; enforcement.—

(1) The office ~~department~~ may, by complaint, initiate a proceeding pursuant to chapter 120 to impose an administrative fine against any person found to have violated any provision of the financial institutions codes or a cease and desist order of the office ~~department~~ or any written agreement with the office ~~department~~. No such proceeding shall be initiated and no fine shall accrue pursuant to this section until after such person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

(2) Any such fine may not exceed $2,500 a day for each violation except as provided in this section.

(a) If the office ~~department~~ determines that any such person has recklessly violated any provision of the financial institutions codes or a cease and desist order of the office ~~department~~ or any written agreement with the office ~~department~~, which violation results in more than a minimal loss to a financial institution, subsidiary, or service corporation, or a pecuniary benefit to such person, the office ~~department~~ may impose a fine not exceeding $10,000 a day for each day the violation continues.

(b) If the office ~~department~~ determines that any such person has knowingly violated any provision of the financial institutions codes or a cease and desist order of the office ~~department~~ or any written agreement with the office ~~department~~, which violation results in more than a minimal loss to a financial institution, subsidiary, or service corporation, or a pecuniary benefit to such a person, the office ~~department~~ may impose a fine not exceeding the lesser of $500,000 per day or 1 percent of the total assets in the case of a financial institution, or $50,000 per day in any other case for each day the violation continues.

(c) The office ~~department~~ may by complaint impose an administrative fine, not exceeding $10,000 a day, upon any financial institution-affiliated party, and upon a state financial institution, subsidiary, service corporation, or affiliate, who refuses to permit an examiner to examine a state financial institution, subsidiary, or service corporation, who refuses to permit an examiner to review the books and records of an affiliate, or who refuses to give an examiner any information required in the course of any examination or review of the books and records.

(3) Any administrative fine levied by the office ~~department~~ may be enforced by the office ~~department~~ by appropriate proceedings in the circuit court of the county in which such person resides or in which the principal office of a state financial institution is located. In any administrative or judicial proceeding arising under this section, a party may elect to correct the violation asserted by the office ~~department~~ and, upon doing so, any fine ceases to accrue; however, an election to correct the violation does not render any administrative or judicial proceeding moot.

Section 1715. Section 655.043, Florida Statutes, is amended to read:

655.043 Articles of incorporation; amendments; approval.—A bank, trust company, or association may not amend its articles of incorporation without the written approval of the office ~~department~~.

Section 1716. Subsections (1) and (2) of section 655.044, Florida Statutes, are amended to read:

655.044 Accounting practices; bad debts ineligible to be carried as assets.—

(1) Except as otherwise provided by law, a state financial institution shall observe generally accepted accounting principles and practices. The commission ~~department~~ may authorize by rule exceptions to such accounting practices as necessary.

(2) A state financial institution, subsidiary, or service corporation may not carry as an asset any note, obligation, or security which it does not own absolutely or which is known by the state financial institution to be fraudulent or otherwise worthless; and a state financial institution may not carry as an asset, in any report to the office ~~department~~ or in any published report, any note or other obligation which is past due or upon which no interest has been paid for 1 year or longer or which has been determined by the office ~~department~~ to be a loss. However, past due paper may be carried to the extent of the reasonable value of any lien or other collateral given to secure such obligation; and, if the obligation is in the process of collection, it may be carried at its reasonable value as determined by the board of directors. The office ~~department~~ may order the revision of any value so determined hereunder.

Section 1717. Section 655.045, Florida Statutes, is amended to read:

655.045 Examinations, reports, and internal audits; penalty.—

(1)(a) The office ~~department~~ shall conduct an examination of the condition of each state financial institution during each 18-month period, beginning July 1, 1981. The office ~~department~~ may accept an examination made by the appropriate federal regulator, insuring or guaranteeing corporation, or agency with respect to the condition of the state financial institution or may make a joint or concurrent examination with the appropriate federal regulator, insuring or guaranteeing corporation, or agency. However, at least once during each 36-month period beginning on July 3, 1992, the office ~~department~~ shall conduct an examination of each state financial institution

in such a manner as to allow the preparation of a complete examination report not subject to the right of any federal or other non-Florida entity to limit access to the information contained therein. If, as a part of an examination or investigation of a state financial institution, subsidiary, or service corporation, the office ~~department~~ has reason to believe that an affiliate is engaged in an unsafe or unsound practice or that the affiliate has a negative impact on the state financial institution, subsidiary, or service corporation, then the office ~~department~~ may review such books and records as are reasonably related to the examination or investigation. The office ~~department~~ may furnish a copy of all examinations or reviews made of such financial institutions or their affiliates to the state or federal financial institution regulators participating in the examination of a bank holding company; an association holding company; or any of their subsidiaries, service corporations, or affiliates; an insuring or guaranteeing corporation or agency or its representatives; or state financial institution regulators participating in the examination of a holding company or its subsidiaries.

(b) The office ~~department~~ may recover the costs of examination and supervision of a state financial institution, subsidiary, or service corporation that is determined by the office ~~department~~ to be engaged in an unsafe or unsound practice. The office ~~department~~ may also recover the costs of any review conducted pursuant to paragraph (a) of any affiliate of a state financial institution determined by the office ~~department~~ to have contributed to an unsafe or unsound practice at a state financial institution, subsidiary, or service corporation.

(c) For the purposes of this section, the term "costs" means the salary and travel expenses directly attributable to the field staff examining the state financial institution, subsidiary, or service corporation, and the travel expenses of any supervisory staff required as a result of examination findings. The mailing of any costs incurred under this subsection must be postmarked not later than 30 days after the date of receipt of a notice stating that such costs are due. The office ~~department~~ may levy a late payment of up to $100 per day or part thereof that a payment is overdue, unless it is excused for good cause. However, for intentional late payment of costs, the office ~~department~~ may levy an administrative fine of up to $1,000 per day for each day the payment is overdue.

(d) The office ~~department~~ may require an audit of any state financial institution, subsidiary, or service corporation by an independent certified public accountant approved by the office ~~department~~ whenever the office ~~department~~, after conducting an examination of such state financial institution, subsidiary, or service corporation, or after accepting an examination of such state financial institution by the appropriate state or federal regulatory agency, determines that such an audit is necessary in order to ascertain the condition of the financial institution, subsidiary, or service corporation. The cost of such audit shall be paid by the state financial institution, subsidiary, or state service corporation.

(2)(a) ~~The department shall require~~ Each state financial institution, subsidiary, or service corporation shall ~~to~~ submit a report, at least four times each calendar year, as of such dates as the commission or office determines

~~department may determine~~. Such report must include such information as the commission ~~department~~ by rule requires for that type of institution.

(b) The office ~~department~~ shall levy an administrative fine of up to $100 per day for each day the report is past due, unless it is excused for good cause. However, for intentional late filing of the report required under paragraph (a), the office ~~department~~ shall levy an administrative fine of up to $1,000 per day for each day the report is past due.

(3)(a) ~~The department shall require~~ The board of directors of each state financial institution or, in the case of a credit union, the supervisory committee or audit committee shall ~~to~~ perform or cause to be performed, within each calendar year, an internal audit of each state financial institution, subsidiary, or service corporation and to file a copy of the report and findings of such audit with the office ~~department~~ on a timely basis. Such internal audit must include such information as the commission ~~department~~ by rule requires for that type of institution.

(b) With the approval of the office ~~department~~, the board of directors or, in the case of a credit union, the supervisory committee may elect, in lieu of such periodic audits, to adopt and implement an adequate continuous audit system and procedure which must include full, adequate, and continuous written reports to, and review by, the board of directors or, in the case of a credit union, the supervisory committee, together with written statements of the actions taken thereon and reasons for omissions to take actions, all of which shall be noted in the minutes and filed among the records of the board of directors or, in the case of a credit union, the supervisory committee. If at any time such continuous audit system and procedure, including the reports and statements, becomes inadequate, in the judgment of the office ~~department~~, the state financial institution shall promptly make such changes as may be required by the office ~~department~~ to cause the same to accomplish the purpose of this section.

(4) A copy of the report of each examination must be furnished to the financial institution examined. Such report of examination shall be presented to the board of directors at its next regular or special meeting.

Section 1718. Section 655.047, Florida Statutes, is amended to read:

655.047 Assessments; financial institutions.—

(1) Each state financial institution shall pay to the office ~~department~~ a semiannual assessment based on the total assets as shown on the statement of condition of the financial institution on the last business day in December and the last business day in June of each year.

(2) The mailing of a semiannual assessment must be postmarked on or before January 31 and July 31 of each year. The office ~~department~~ may levy a late payment penalty of up to $100 per day or part thereof that a semiannual assessment payment is overdue, unless it is excused for good cause. However, for intentional late payment of a semiannual assessment, the office ~~department~~ shall levy an administrative fine of up to $1,000 a day for each day the semiannual assessment is overdue.

(3) The assessments required by this section cover the 6-month period following the first day of the month in which they are due. The office ~~department~~ may prorate the amount of the semiannual assessment; however, no portion of a semiannual assessment is refundable.

Section 1719. Section 655.049, Florida Statutes, is amended to read:

655.049 Deposit of fees and assessments.—The assessments, application fees, late payment penalties, civil penalties, administrative fines, and other fees or penalties provided for in the financial institutions codes shall, in all cases, be paid directly to the office ~~department~~, which shall deposit all thereof in the Financial Institutions' Regulatory Trust Fund, which fund shall be used by the office ~~department~~ to pay its costs for administration of the financial institutions codes. The office ~~department~~ shall determine and report to the Legislature whether the fees and assessments provided in the financial institutions codes and assessed against and collected from the financial institutions that are subject to the financial institutions codes support the office's ~~department's~~ expenditures. The Financial Institutions' Regulatory Trust Fund is subject to the service charge imposed pursuant to chapter 215.

Section 1720. Section 655.057, Florida Statutes, is amended to read:

655.057 Records; limited restrictions upon public access.—

(1) Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the office ~~department~~ are confidential and exempt from the provisions of s. 119.07(1) until such investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered "active" while such investigation is being conducted by the office ~~department~~ with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the office ~~department~~ is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the office ~~department~~ or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of such records relating to the investigation shall be confidential and exempt from the provisions of s. 119.07(1) to the extent that disclosure would:

(a) Jeopardize the integrity of another active investigation;

(b) Impair the safety and soundness of the financial institution;

(c) Reveal personal financial information;

(d) Reveal the identity of a confidential source;

(e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

(f) Reveal investigative techniques or procedures.

(2) Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the office ~~department~~ or any state or federal agency responsible for the regulation or supervision of financial institutions in this state are confidential and exempt from the provisions of s. 119.07(1). However, such reports or papers or portions thereof may be released to:

(a) The financial institution under examination;

(b) Any holding company of which the financial institution is a subsidiary;

(c) Proposed purchasers if necessary to protect the continued financial viability of the financial institution, upon prior approval by the board of directors of such institution;

(d) Persons proposing in good faith to acquire a controlling interest in or to merge with the financial institution, upon prior approval by the board of directors of such financial institution;

(e) Any officer, director, committee member, employee, attorney, auditor, or independent auditor officially connected with the financial institution, holding company, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the financial institution; or

(f) A fidelity insurance company, upon approval of the financial institution's board of directors. However, a fidelity insurance company may receive only that portion of an examination report relating to a claim or investigation being conducted by such fidelity insurance company.

(g) Examination, operation, or condition reports of a financial institution shall be released by the office ~~department~~ within 1 year after the appointment of a liquidator, receiver, or conservator to such financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from the provisions of s. 119.07(1).

Any confidential information or records obtained from the office ~~department~~ pursuant to this paragraph shall be maintained as confidential and exempt from the provisions of s. 119.07(1).

(3) The provisions of this section do not prevent or restrict:

(a) Publishing reports required to be submitted to the office ~~department~~ pursuant to s. 655.045(2)(a) or required by applicable federal statutes or regulations to be published.

(b) Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks.

(c) Furnishing records or information, in the case of a credit union, to the Florida Credit Union Guaranty Corporation, Inc.

(d) Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.

(e) Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.

(f) Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services ~~State Treasurer~~ regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to chapter 280.

Any confidential information or records obtained from the office ~~department~~ pursuant to this subsection shall be maintained as confidential and exempt from the provisions of s. 119.07(1).

(4)(a) Orders of courts or of administrative law judges for the production of confidential records or information shall provide for inspection in camera by the court or the administrative law judge and, after the court or administrative law judge has made a determination that the documents requested are relevant or would likely lead to the discovery of admissible evidence, said documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality thereof. Any order directing the release of information shall be immediately reviewable, and a petition by the office ~~department~~ for review of such order shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of such petition by the reviewing court. If any other party files such a petition for review, it will operate as a stay of such proceedings only upon order of the reviewing court.

(b) Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body or committee which received the records or information, except in a case involving investigation of charges against a public official subject to impeachment or removal, and then disclosure of such information shall be only to the extent determined by the legislative body or committee to be necessary.

(5) Every credit union and mutual association shall maintain, in the principal office where its business is transacted, full and correct records of the names and residences of all the members of the credit union or mutual association. Such records shall be subject to the inspection of all the members of the credit union or mutual association, and the officers authorized to assess taxes under state authority, during business hours of each business day. A current list of members shall be made available to the office's ~~department's~~ examiners for their inspection and, upon the request of the office ~~department~~, shall be submitted to the office ~~department~~. Except as otherwise provided in this subsection, the list of the members of the credit

union or mutual association is confidential and exempt from the provisions of s. 119.07(1).

(6) Every bank, trust company, and stock association shall maintain, in the principal office where its business is transacted, full and complete records of the names and residences of all the shareholders of the bank, trust company, or stock association and the number of shares held by each. Such records shall be subject to the inspection of all the shareholders of the bank, trust company, or stock association, and the officers authorized to assess taxes under state authority, during business hours of each banking day. A current list of shareholders shall be made available to the office's ~~department's~~ examiners for their inspection and, upon the request of the office ~~department~~, shall be submitted to the office ~~department~~. Except as otherwise provided in this subsection, any portion of this list which reveals the identities of the shareholders is confidential and exempt from the provisions of s. 119.07(1).

(7) Materials supplied to the office ~~department~~ or to employees of any financial institution by other governmental agencies, federal or state, or the Florida Credit Union Guaranty Corporation, Inc., shall remain the property of the submitting agency or the corporation, and any document request must be made to the appropriate agency. Any confidential documents supplied to the office ~~department~~ or to employees of any financial institution by other governmental agencies, federal or state, or by the Florida Credit Union Guaranty Corporation, Inc., shall be confidential and exempt from the provisions of s. 119.07(1). Such information shall be made public only with the consent of such agency or the corporation.

(8) Examination reports, investigatory records, applications, and related information compiled by the office ~~department~~, or photographic copies thereof, shall be retained by the office ~~department~~ for a period of at least 10 years.

(9) A copy of any document on file with the office ~~department~~ which is certified by the office ~~department~~ as being a true copy may be introduced in evidence as if it were the original. The commission ~~department~~ shall establish a schedule of fees for preparing true copies of documents.

(10) Any person who willfully discloses information made confidential by this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 1721. Subsection (1) of section 655.059, Florida Statutes, is amended to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(1) The books and records of a financial institution are confidential and shall be made available for inspection and examination only:

(a) To the office ~~department~~ or its duly authorized representative;

(b) To any person duly authorized to act for the financial institution;

(c) To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;

(d) With respect to an international banking corporation, to the home-country supervisor of the corporation, provided:

1. The supervisor provides advance notice to the office ~~department~~ that the supervisor intends to examine the Florida office of the corporation.

2. The supervisor confirms to the office ~~department~~ that the purpose of the examination is to ensure the safety and soundness of the corporation.

3. The books and records pertaining to customer deposit, investment, and custodial accounts are not disclosed to the supervisor.

4. At any time during the conduct of the examination, the office ~~department~~ reserves the right to have an examiner present or to participate jointly in the examination.

For purposes of this paragraph, "home-country supervisor" means the governmental entity in the corporation's home country with responsibility for the supervision and regulation of the corporation;~~.~~

(e) As compelled by a court of competent jurisdiction;

(f) As compelled by legislative subpoena as provided by law, in which case the provisions of s. 655.057 apply;

(g) Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;

(h) As authorized by the board of directors of the financial institution; or

(i) As provided in subsection (2).

Section 1722. Section 655.061, Florida Statutes, is amended to read:

655.061 Competitive equality with federally organized or chartered financial institutions.—Subject to the prior approval of the office ~~department~~ pursuant to commission rule or office order of general application, state financial institutions subject to the financial institutions codes may make any loan or investment or exercise any power which they could make or exercise if incorporated or operating in this state as a federally chartered or regulated financial institution of the same type and are entitled to all privileges and protections granted federally chartered or regulated financial institutions of the same type under federal statutes and regulations. The provisions of this section take precedence over, and must be given effect over, any other general or specific provisions of the financial institutions codes to the contrary. In issuing an order or rule under this section, the office or commission ~~department~~ shall consider the importance of maintaining a

competitive dual system of financial institutions and whether such an order or rule is in the public interest.

Section 1723. Section 655.071, Florida Statutes, is amended to read:

655.071 International banking facilities; definitions; notice before establishment.—

(1) "International banking facility" means a set of asset and liability accounts segregated on the books and records of a banking organization, as that term is defined in s. 199.023, that includes only international banking facility deposits, borrowings, and extensions of credit, as those terms shall be defined by the commission ~~department~~ pursuant to subsection (2).

(2) The commission ~~department~~ shall by rule define the terms "deposit," "borrowing," and "extension of credit" as they relate to the activities of international banking facilities. These definitions shall take into account all transactions in which international banking facilities are permitted to engage by regulations of the Board of Governors of the Federal Reserve System, as from time to time amended. When adopting ~~promulgating~~ such rules, the commission ~~department~~ shall also consider the public interest, including the need to maintain a sound and competitive banking system, as well as the purpose of this act, which is to create an environment conducive to the conduct of an international banking business in the state.

(3) Before establishing an international banking facility, a state-chartered or state-licensed banking organization shall notify the office ~~department~~ in the manner prescribed by rule of the commission ~~department~~.

Section 1724. Subsections (1) and (2) of section 655.411, Florida Statutes, are amended to read:

655.411 Conversion of charter.—

(1) Any financial entity may apply to the office ~~department~~ for permission to convert its charter without a change of business form or convert its charter in order to do business as another type of financial entity in accordance with the following procedures:

(a) The board of directors must approve a plan of conversion by a vote of a majority of all the directors. The plan must include a statement of:

1. The type of financial entity which would result if the application were approved and the proposed name under which it would do business.

2. The method and schedule for terminating any activities and disposing of any assets or liabilities which would not conform to the requirements applicable to the resulting financial entity.

3. The competitive impact of such change, including any effect on the availability of particular financial services in the market area served by the financial entity.

4. Such financial data as may be required to determine compliance with the capital, reserve, and liquidity requirements applicable to the resulting financial entity.

5. Such other information as the commission ~~department~~ may by rule require.

(b) Following approval by the board of directors, the conversion plan, together with a certified copy of the authorizing resolution adopted by the board, must be submitted to the office ~~department~~ for approval before being submitted to the members or stockholders of the financial entity. The application for conversion must be in the ~~such~~ form prescribed by the commission, ~~and~~ contain such additional information as the commission or office ~~department~~ reasonably requires, and ~~must~~ be accompanied by a filing fee in accordance with s. 657.066(4) or s. 658.73. Additionally, the office ~~department~~ is authorized to assess any financial entity, applying to convert pursuant to this section, a nonrefundable examination fee to cover the actual costs of any examination required as a part of the application process.

(c) The office ~~department~~ shall approve the plan if it finds that:

1. The resulting financial entity would have an adequate capital structure with regard to its activities and its deposit liabilities.

2. The proposed conversion would not cause a substantially adverse effect on the financial condition of any financial entity already established in the primary service area.

3. The officers and directors have sufficient experience, ability, and standing to indicate reasonable promise for successful operation of the resulting financial entity.

4. The schedule for termination of any nonconforming activities and disposition of any nonconforming assets and liabilities is reasonably prompt, and the plan for such termination and disposition does not include any unsafe or unsound practice.

5. None of the officers or directors has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

If the office ~~department~~ disapproves the plan, it shall state its objections and give an opportunity to the parties to amend the plan to overcome such objections. The office ~~department~~ may deny an application by any financial entity which is subject to a cease and desist order or other supervisory restriction or order imposed by any state or federal supervisory authority, insurer, or guarantor.

(d) If the office ~~department~~ approves the plan, it may be submitted to the members or stockholders at an annual meeting or at any special meeting called to consider such action. Upon a favorable vote of a majority of the total number of votes eligible to be cast or, in the case of a credit union, a majority

of the members present at the meeting, the plan is adopted. Copies of the minutes of the proceedings of such meeting of the members or stockholders, verified by the affidavit of an officer, as established in the bylaws of the financial institution, must be filed with the office ~~department~~ within 10 days after such meeting. Such verified copies of the proceedings of such meeting are presumptive evidence of the holding and action of such meeting. If the members or stockholders approve the plan of conversion, the directors shall then execute new articles of incorporation or amendments to existing articles and two copies of the new bylaws. The directors shall insert in the articles of incorporation the following: "This ...(bank, association, etc.)... is incorporated by conversion from a ...(national bank, state association, etc.)...."

(e) If the members or stockholders adopt the plan of conversion, the financial entity shall apply to the appropriate insurer for a commitment for insurance of accounts for the shares and deposits of the resulting financial entity.

(f) The plan shall not take effect until the office ~~department~~ has received notice that the commitment for insurance of accounts has been given by the insurer. Upon receipt of such notice, the office ~~department~~ shall issue a new charter to the financial entity authorizing it to transact business pursuant to applicable law.

(2) The commission ~~department~~ may provide by rule for any additional procedures to be followed by any national or federal financial entity seeking to convert its charter pursuant to this section.

Section 1725. Subsection (1) of section 655.412, Florida Statutes, is amended to read:

655.412 Merger and consolidation.—

(1) With the approval of the office ~~department~~, any capital stock financial institution may be merged into or consolidated with another capital stock financial institution or a mutual financial institution. The provisions of ss. 658.41-658.45 govern any merger or consolidation pursuant to this subsection; and, for this purpose, references therein to banks and trust companies are deemed to refer to capital stock financial institutions.

Section 1726. Section 655.414, Florida Statutes. is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office ~~department~~ and upon such conditions as the commission ~~department~~ prescribes by rule, any financial entity may acquire all or substantially all of the assets of, or assume the liabilities of, any other financial entity in accordance with the procedures and subject to the following conditions and limitations:

(1) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial entity must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on such terms as are mutually agreed upon. The plan must include:

(a) The names and types of financial entities involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation of the transferring financial entity upon execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the office ~~department~~ and approval of the members or stockholders of the transferring financial entity.

(e) If a stock financial institution is the transferring financial entity and the proposed sale is not to be for cash, a clear and concise statement that dissenting stockholders of such financial entity are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of such acquisition, assumption, or sale and such other information and provisions as may be necessary to execute the transaction or as may be required by the office ~~department~~.

(2) APPROVAL OF OFFICE ~~DEPARTMENT~~.—Following approval by the board of directors of each participating financial entity, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office ~~department~~ for its approval or disapproval. The office ~~department~~ shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity would have an adequate capital structure in relation to its activities and its deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office ~~department~~ disapproves the plan, it shall state its objections and give an opportunity to the parties to amend the plan to overcome such objections.

(3) VOTE OF MEMBERS OR STOCKHOLDERS.—If the office ~~department~~ approves the plan, it may be submitted to the members or stockholders of the transferring financial entity at an annual meeting or at any special meeting called to consider such action. Upon a favorable vote of 51 percent or more of the total number of votes eligible to be cast or, in the case of a credit union, 51 percent or more of the members present at the meeting, the plan is adopted.

(4) ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial entity, the president or vice president and the cashier, manager, or corporate secretary of such financial entity shall submit the adopted

plan to the office ~~department~~, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial entities have complied with all applicable federal law and regulations, the office ~~department~~ shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders or certification by the office ~~department~~, the board of directors of the transferring financial entity may, in its discretion, abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(5) FEDERALLY CHARTERED INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial entity, all participants must also comply with such requirements as may be imposed by federal law for such an acquisition, assumption, or sale and provide evidence of such compliance to the office ~~department~~ as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial entity is a federally chartered financial entity, approval of the office ~~department~~ is not required.

(6) STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell all or substantially all of its assets to a stock financial entity until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations are deemed to refer also to credit unions; but, in the case of a credit union, the provision therein concerning proxy statements does not apply.

Section 1727. Section 655.416, Florida Statutes, is amended to read:

655.416 Book value of assets.—Upon the effective date of a merger, consolidation, conversion, or acquisition pursuant to ss. 655.41-655.419, an asset may not be carried on the books of the resulting financial entity at a valuation higher than that at which it was carried on the books of a participating or converting financial entity at the time of its last examination by a state or federal examiner before the effective date of such merger, consolidation, conversion, or acquisition, without written approval from the office ~~department~~.

Section 1728. Subsections (3) and (4) of section 655.418, Florida Statutes, are amended to read:

655.418 Nonconforming activities; cessation.—If, as a result of a merger, consolidation, conversion, or acquisition pursuant to ss. 655.41-655.419, the resulting financial entity is to be of a different type or of a different character than any one or all of the participating or converting financial entities, such resulting financial entity will be subject to the following conditions and limitations:

(3) COMPLIANCE WITH LENDING AND INVESTMENT LIMITATIONS.—If, as a result of such merger, consolidation, conversion, or acquisition, the resulting financial entity will exceed any lending, investment, or other limitations imposed by law, the financial entity shall conform to such limitations within such period of time as is established by the office ~~department~~.

(4) DIVESTITURE.—The office ~~department~~ may, as a condition to such merger, consolidation, conversion, or acquisition, require a nonconforming activity to be divested in accordance with such additional requirements as it considers appropriate under the circumstances.

Section 1729. Subsection (2), paragraph (f) of subsection (3), paragraph (a) of subsection (4), and subsections (5), (6), (7), (8), and (9) of section 655.50, Florida Statutes, are 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.—

(2) It is the purpose of this section to require submission to the office ~~department~~ of certain reports and maintenance of certain records of transactions involving currency or monetary instruments when such reports and records deter the use of financial institutions to conceal the proceeds of criminal activity and have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(3) As used in this section, the term:

(f) "Report" means a report of each deposit, withdrawal, exchange of currency, or other payments or transfer, by, through, or to that financial institution, that involves a transaction required or authorized to be reported by this section, and includes the electronic submission of such information in the manner provided for by rule of the commission ~~department~~.

(4)(a) Every financial institution shall keep a record of each financial transaction occurring in this state known to it to involve currency or other monetary instrument, as the commission ~~department~~ prescribes by rule, of a value in excess of $10,000, to involve the proceeds of specified unlawful activity, or to be designed to evade the reporting requirements of this section, chapter 896, or any similar state or federal law and shall maintain appropriate procedures to ensure compliance with this section, chapter 896, and any other similar state or federal law.

(5)(a) Each financial institution shall file a report with the office ~~department~~ of the record required under paragraphs (4)(a) and (b) and any record maintained pursuant to paragraph (4)(c). Each record filed pursuant to subsection (4) must be filed at such time and contain such information as the commission ~~department~~ requires by rule.

(b) The timely filing of the report required by 31 U.S.C. s. 5313 with the appropriate federal agency is deemed compliance with the reporting requirements of this subsection unless the reports are not regularly and comprehensively transmitted by the federal agency to the office ~~department~~.

(6) Each financial institution shall maintain a record of each designation of a person granted exemption under the authority of 31 U.S.C. s. 5313, including any name, address, and taxpayer identification number of the exempt person, as well as the name and address of the financial institution and the signature of the financial institution official designating the exempt person. Such record of exemptions shall be made available to the office ~~department~~ for inspection and copying and shall be submitted to the office ~~department~~ within 15 days after request.

(7) All reports and records filed with the office ~~department~~ pursuant to this section are confidential and exempt from s. 119.07(1). However, the office ~~department~~ shall provide any report filed pursuant to this section, or information contained therein, to federal, state, and local law enforcement and prosecutorial agencies, and any federal or state agency responsible for the regulation or supervision of financial institutions.

(8)(a) The office ~~department~~ shall retain a copy of all reports received under subsection (4) for a minimum of 5 calendar years after receipt of the report. However, if a report or information contained in a report is known by the office ~~department~~ to be the subject of an existing criminal proceeding, the report shall be retained for a minimum of 10 calendar years after receipt of the report.

(b) Each financial institution shall maintain for a minimum of 5 calendar years full and complete records of all financial transactions, including all records required by 31 C.F.R. parts 103.33 and 103.34.

(c) The financial institution shall retain a copy of all reports filed with the office ~~department~~ under subsection (4) for a minimum of 5 calendar years after submission of the report. However, if a report or information contained in a report is known by the financial institution to be the subject of an existing criminal proceeding, the report shall be retained for a minimum of 10 calendar years after submission of the report.

(d) The financial institution shall retain a copy of all records of exemption for each designation of exempt person made pursuant to subsection (6) for a minimum of 5 calendar years after termination of exempt status of such customer. However, if it is known by the financial institution that the customer or the transactions of the customer are the subject of an existing criminal proceeding, the records shall be retained for a minimum of 10 calendar years after termination of exempt status of such customer.

(9) In addition to any other power conferred upon it to enforce and administer this chapter and the financial institutions codes, the office ~~department~~ may:

(a) Bring an action in any court of competent jurisdiction to enforce or administer this section. In such action, the office ~~department~~ may seek award of any civil penalty authorized by law and any other appropriate relief at law or equity.

(b) Pursuant to s. 655.033, issue and serve upon a person an order requiring such person to cease and desist and take corrective action whenever the

office ~~department~~ finds that such person is violating, has violated, or is about to violate any provision of this section, chapter 896, or any similar state or federal law; any rule or order adopted under this section, chapter 896, or any similar state or federal law; or any written agreement related to this section, chapter 896, or any similar state or federal law and entered into with the office ~~department~~.

(c) Pursuant to s. 655.037, issue and serve upon any person an order of removal whenever the office ~~department~~ finds that such person is violating, has violated, or is about to violate any provision of this section, chapter 896, or any similar state or federal law; any rule or order adopted under this section, chapter 896, or any similar state or federal law; or any written agreement related to this section, chapter 896, or any similar state or federal law and entered into with the office ~~department~~.

(d) Impose and collect an administrative fine against any person found to have violated any provision of this section, chapter 896, or any similar state or federal law; any rule or order adopted under this section, chapter 896, or any similar state or federal law; or any written agreement related to this section, chapter 896, or any similar state or federal law and entered into with the office ~~department~~, in an amount not exceeding $10,000 a day for each willful violation or $500 a day for each negligent violation.

Section 1730. Section 655.60, Florida Statutes, is amended to read:

655.60 Appraisals.—

(1) The office ~~department~~ is authorized to cause to be made appraisals of real estate or other property held by any state financial institution, subsidiary, or service corporation or securing the assets of the state financial institution, subsidiary, or service corporation when specific facts or information with respect to real estate or other property held, secured loans, or lending, or when in its opinion the state financial institution's policies, practices, operating results, and trends give evidence that the state financial institution's appraisals or evaluations of ability to make payments may be excessive, that lending or investment may be of a marginal nature, that appraisal policies and loan practices may not conform with generally accepted and established professional standards, or that real estate or other property held by the state financial institution, subsidiary, or service corporation or assets secured by real estate or other property are overvalued. In lieu of causing such appraisals to be made, the office ~~department~~ may accept any appraisal caused to be made by an appropriate state or federal regulatory agency or other insuring agency or corporation of a state financial institution. Unless otherwise ordered by the office ~~department~~, an appraisal of real estate or other property pursuant to this section must be made by a licensed or certified appraiser or appraisers selected by the office ~~department~~, and the cost of such appraisal shall be paid promptly by such state financial institution, subsidiary, or service corporation directly to such appraiser or appraisers upon receipt by the state financial institution of a statement of such cost bearing the written approval of the office ~~department~~. A copy of the report of each appraisal caused to be made by the office ~~department~~ pursuant to this section shall be furnished to the state financial

institution, subsidiary, or service corporation within a reasonable time, not exceeding 60 days, following the completion of such appraisal and may be furnished to the insuring agency or corporation or federal or state regulatory agency.

(2) A state financial institution may not make loans based on the security of real estate unless appraisal standards and policies have been previously established by the board of directors. Such standards must be in written form and include, without limitation, information required by rules of the commission ~~department~~.

(3) If any appraisal required pursuant to this section discloses that any asset of a state financial institution, subsidiary, or service corporation is overvalued on its books, the office ~~department~~ may require the state financial institution, subsidiary, or service corporation to charge off such asset or portion thereof pursuant to s. 655.044.

Section 1731. Section 655.762, Florida Statutes, is amended to read:

655.762 Sale of assets.—A state financial institution may sell any asset in the ordinary course of business or with the approval of the office ~~department~~ in any other circumstances.

Section 1732. Subsection (6) of section 655.89, Florida Statutes, is amended to read:

655.89 Legal holidays; business days; business and transactions.—

(6) With prior written approval of the office ~~department~~, an institution may designate another day or other days on which the institution may be closed and which day or days will not be considered business days.

Section 1733. Paragraph (a) of subsection (1) of section 655.90, Florida Statutes, is amended to read:

655.90 Closing during emergencies and other special days.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Commissioner" means the director of the Office of Financial Regulation ~~officer of this state designated by law as the head of the Department of Banking and Finance~~ and any other person lawfully exercising such powers~~, whether as a deputy to such officer, as a director, bureau chief, or financial administrator of or within such department, or otherwise~~.

Section 1734. Subsection (3) of section 655.922, Florida Statutes, is amended to read:

655.922 Banking business by unauthorized persons; use of name.—

(3) Any court, in a proceeding brought by the office ~~department~~, by any financial institution the principal place of business of which is in this state, or by any other person residing, or whose principal place of business is located, in this state and whose interests are substantially affected thereby,

may enjoin any person from violating any of the provisions of this section. For the purposes of this subsection, the interests of a trade organization or association are deemed to be substantially affected if the interests of any of its members are so affected. In addition, the office ~~department~~ may issue and serve upon any person who violates any of the provisions of this section a complaint seeking a cease and desist order in accordance with the procedures and in the manner prescribed by s. 655.033.

Section 1735. Subsection (1) of section 655.942, Florida Statutes, is amended to read:

655.942 Standards of conduct; institutions.—

(1) A financial institution that ~~which~~ is licensed or authorized to do business pursuant to the financial institutions codes, or its officers, directors, or employees may not make or grant any loan or gratuity to any employee of the office ~~department~~ who has authority to examine or otherwise supervise such financial institution.

Section 1736. Section 655.943, Florida Statutes, is amended to read:

655.943 Applications; verification.—All information required by the financial institutions codes or rule of the commission ~~department~~ to be furnished in conjunction with applications to form, acquire or acquire assets of, merge, or change control of a financial institution must be verified by the office ~~department~~ by all reasonable means available. The office ~~department~~ shall conduct a detailed review of all financial information provided by an applicant, including a review of assets totaling 5 percent or more of the applicant's net worth.

Section 1737. Subsection (1), paragraph (b) of subsection (2), and paragraph (a) of subsection (4) of section 655.948, Florida Statutes, are amended to read:

655.948 Significant events; notice required.—

(1) Unless exempted by the office ~~department~~ pursuant to subsection (4), every financial institution shall notify the office ~~department~~ of the occurrence of any of the events listed in subsection (2) by filing with the office ~~department~~ a disclosure in a form to be specified by the commission ~~department~~. The form shall include the number and caption of all applicable events, along with a summary of each. Completed forms shall be certified for authenticity and accuracy by the chief executive officer of the financial institution.

(2) Events for which disclosure forms must be filed and the filing schedule for each are as follows:

(b) Every financial institution shall notify the office ~~department~~ within 30 days of the existence of any asset which is defined as a nonaccrual asset and which is in excess of 15 percent of total assets.

(4)(a) The office ~~department~~ must exempt a financial institution from any of the provisions of this section if the office ~~department~~ determines that

such financial institution is operating in a safe and sound manner pursuant to commission ~~departmental~~ rules relating to safe and sound operations. The commission ~~department, prior to granting any such exemption,~~ shall adopt rules defining the term "safe and sound" and explicitly stating the criteria which shall constitute operating in a safe and sound manner.

Section 1738. Section 655.949, Florida Statutes, is amended to read:

655.949 ~~Department~~ Personnel; qualifications.—~~Before January 1, 1993,~~ The office ~~department~~ shall establish and publish educational, professional, and other appropriate qualifications for each position in the office ~~department and the Office of the Comptroller~~ authorized to participate in the regulation of financial institutions, including positions with the authority to overrule the actions or decisions of professional examiners or legal staff in their exercise of their duties under the financial institutions codes ~~excepting the position of assistant comptroller~~. Such qualifications shall contain at a minimum sufficient experience and expertise in the regulation of financial institutions as to clearly justify the exercise of authority to overrule the actions or decisions of professional examiners or legal staff.

Section 1739. Section 655.963, Florida Statutes, is amended to read:

655.963 Access devices.—Customers receiving access devices shall be furnished by the respective issuers thereof with such information regarding safety precautions as the commission ~~department~~ may require by rule. This information shall be furnished by personally delivering or mailing the information to each customer whose mailing address as to the account to which the access device relates is in this state. Such information shall be furnished with respect to access devices issued on or after October 1, 1994, at or before the time the customer is furnished with his or her access device. With respect to a customer to whom an "accepted access device," as defined in Federal Reserve Board Regulation E, 12 C.F.R. part 205, has been issued prior to October 1, 1994, the information shall be delivered on or before 6 months from October 1, 1994. Only one notice need be furnished per household, and if access devices are furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for access devices, only a single notice need be furnished in satisfaction of the notification responsibilities as to those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with any initial or periodic disclosure statement furnished pursuant to the Electronic Fund Transfer Act.

Section 1740. Section 657.002, Florida Statutes, is amended to read:

657.002 Definitions.—As used in this part:

(1) "Capital" means shares, deposits, and equity.

(2) "Central credit union" means a credit union the membership of which includes, but is not limited to, other credit unions, members of credit unions, credit union employees, employees of organizations serving credit unions, and the families of such members.

(3) "Corporate credit union" means any central credit union organized pursuant to any state or federal act for the purpose of serving other credit unions.

(4) "The corporation" means the Florida Credit Union Guaranty Corporation, Inc.

(5) "Correspondent" means that person designated on an application to organize a credit union as the person to whom all correspondence regarding the application should be sent.

(6) "Credit union" means any cooperative society organized pursuant to this part.

~~(7) "Department" means the Department of Banking and Finance.~~

(7)~~(8)~~ "Deposits" means that portion of the capital paid into the credit union by members on which a contractual rate of interest will be paid.

(8)~~(9)~~ "Equity" means undivided earnings, reserves, and allowance for loan losses.

(9)~~(10)~~ "Foreign credit union" means a credit union organized and operating under the laws of another state.

(10)~~(11)~~ "Immediate family" means parents, children, spouse, or surviving spouse of the member, or any other relative by blood, marriage, or adoption.

(11)~~(12)~~ "Limited field of membership" means the defined group of persons designated as eligible for membership in the credit union who:

(a) Have a similar profession, occupation, or formal association with an identifiable purpose; or

(b) Reside within an identifiable neighborhood, community, rural district, or county; or

(c) Are employed by a common employer; or

(d) Are employed by the credit union; and

members of the immediate family of persons within such group.

(12)~~(13)~~ "Shares" means that portion of the capital paid into the credit union by members on which dividends may be paid.

(13)~~(14)~~ "Unimpaired capital" means capital which is not impaired by losses that exceed applicable reserves.

Section 1741. Section 657.005, Florida Statutes, is amended to read:

657.005 Notice of intent to organize; investigation ~~by department~~; application for authority to organize a credit union.—

(1) The proposed organizers of the proposed credit union shall file with the office ~~department~~ a notice of intent to organize, upon such form as the commission ~~department~~ may, by rule, prescribe.

(2) Any five or more residents of this state who represent a limited field of membership may apply to the office ~~department~~ for permission to organize a credit union. The fact that individuals within the proposed limited field of membership have credit union services available to them through another limited field of membership shall not preclude the granting of a certificate of authorization to engage in the business of a credit union.

(3) The application shall be submitted to the office ~~department~~ on forms and in the manner prescribed by rules adopted by the commission ~~department~~ and shall be accompanied by a nonrefundable filing fee of $250. Such application shall include:

(a) The proposed name and the proposed location where the proposed credit union is to have its principal place of business.

(b) Designation of the par value of each share of the credit union.

(c) Designation of at least five persons who agree to serve on the board of directors, and at least three other persons who agree to serve on the supervisory committee or audit committee, with a signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, executed by those who so agree.

(d) Any information required by the commission or office ~~department~~ to be submitted to the corporation or insuring agency.

(e) Bylaws of the credit union, which bylaws shall be in the form and substance as required by the commission ~~department~~.

(4) The office ~~department~~ shall have the power of investigation to the extent necessary to make the finding required under this section.

(5) The application shall be approved if the office ~~department~~ determines that:

(a) There is a showing of sufficient interest on the part of the proposed limited field of membership;

(b) The qualifications of the proposed board of directors and committee members are such as to indicate a reasonable likelihood that the affairs of the proposed credit union will be administered consistently with sound financial and credit union practices;

(c) The organization of the credit union would benefit its members; and

(d) The limited field of membership is of sufficient financial viability to indicate reasonable promise of successful operation of the proposed credit union. In determining the financial viability of the proposed limited field of membership and chances for reasonable promise of success of the proposed credit union, the office ~~department~~ shall consider:

1. The size of the proposed limited field of membership, excluding potential members based upon familial relationships; and

2. Any other evidence that tends to indicate the reasonable promise of success of the proposed credit union.

(6) If the organization of a proposed credit union would result in an overlapping limited field of membership, the office ~~department~~ may disapprove the application if it finds that the formation of the proposed credit union will result in a substantial, adverse financial impact to an existing credit union having the same or substantially the same limited field of membership.

(7) Concurrently with submission of the application to the office ~~department~~, the applicant shall apply for insurance of accounts with the National Credit Union Administration.

(8) The applicant shall not accept any payments for credit to share or deposit accounts, or commence business operations as a credit union, until the certificate of authorization and the insurance certificate have been delivered to the credit union.

(9) The office ~~department~~ shall perform a preopening examination to verify good faith compliance with all the requirements of law. If the office ~~department~~ finds that such requirements have been met, it shall issue and deliver the certificate of authorization to transact business. Any credit union which fails to open for business within 6 months after the issuance of such certificate will forfeit its existence as a credit union, and the certificate of authorization shall be revoked. For good cause shown, the office ~~department~~ may extend the opening date for an additional 6 months on its own motion or at the request of the credit union. Amounts credited on share accounts, less expenditures authorized by law, shall be returned pro rata to the respective account holders.

(10) All preopening costs and expenses in connection with the organization of the credit union and preparation for opening for business may be paid only from funds provided by the organizers or a sponsor and may be reimbursed by the credit union only out of undivided earnings, after provision has been made for reserves and dividends. However, the credit union may reimburse, as an operating expense, for forms and supplies, insurance, rent, and other expenses applicable to or consumed in the period after opening in accordance with rules adopted by the commission ~~department~~.

(11) The commission shall adopt and the office ~~department~~ shall provide a form certificate of authorization and bylaws consistent with this chapter which shall be used by applicants for credit unions.

Section 1742. Section 657.0061, Florida Statutes, is amended to read:

657.0061 Amendments to bylaws.—

(1) All bylaw amendments must be submitted to the office ~~department~~. The office ~~department~~ shall approve or disapprove bylaw amendments

within 60 days after receipt. The office ~~department~~ shall approve the proposed bylaw amendment unless it finds that the amendment:

(a) Is not in the best interest of the membership;

(b) Is not in accord with sound credit union practices; or

(c) Exposes the assets of the credit union to unnecessary risks.

(2) The commission ~~department~~ may, by rule, allow certain bylaw amendments that are ministerial in nature to become effective immediately upon filing with the office ~~department~~.

Section 1743. Paragraph (a) of subsection (2) and subsections (5) and (6) of section 657.008, Florida Statutes, are amended to read:

657.008 Place of doing business.—

(2)(a) With 30 days' ~~days~~ prior written notification to the office ~~department~~, a credit union may maintain branches at locations other than its main office or relocate branches previously established if the maintenance of such branches is determined by the board of directors to be reasonably necessary to furnish service to its members.

(5) A credit union may change its principal place of business within this state upon approval by the office ~~department~~.

(6)(a) The office ~~department~~ may authorize foreign credit unions to establish branches in Florida if all of the following criteria are met:

1. The state in which the foreign credit union's home office is located permits Florida credit unions to do business in the state under restrictions that are no greater than those placed upon a domestic credit union doing business in that state. For this purpose, such restrictions shall include, but are not limited to, any fees, bonds, or other charges levied on domestic credit unions doing business in that state.

2. The deposits of such foreign credit union and its proposed Florida branch will be insured or guaranteed by an insurer or guarantor acceptable to the office ~~department~~. Insurance or guarantee of accounts comparable to that provided by the Florida Credit Union Guaranty Corporation is deemed to be acceptable; however, acceptance of insurance or guarantee of accounts by any insuring or guaranteeing agencies or companies shall be subject to a determination by the office ~~department~~ that the insuring or guaranteeing agency or company is in sound financial condition and that its reserves with respect to its insured or guaranteed accounts are no less than those of the Florida Credit Union Guaranty Corporation.

3. The credit union's field of membership is so limited as to be within that meaning of that term as defined in s. 657.002.

(b) Every foreign credit union operating in Florida shall keep the office ~~department~~ informed of every location at which it is operating.

(c) If the office ~~department~~ has reason to believe that a foreign credit union is operating a branch in this state in an unsafe and unsound manner, it shall have the right to examine such branch. If, upon examination, the office ~~department~~ finds that such branch is operating in an unsafe and unsound manner, it shall require the branch office to make appropriate modifications to bring such branch operations into compliance with generally accepted credit union operation in this state. Such foreign credit union shall reimburse the office ~~department~~ for the full cost of this examination. Costs shall include examiner salaries, per diem, and travel expenses.

(d) Any foreign credit union operating in this state shall in any connection therewith be subject to suit in the courts of this state, by this state and the citizens of this state.

Section 1744. Subsection (3) and paragraphs (a) and (e) of subsection (7) of section 657.021, Florida Statutes, are amended to read:

657.021 Board of directors; executive committee.—

(3) Each director, upon assuming office, shall acknowledge that he or she is familiar with his or her responsibilities as a director and that he or she will diligently and honestly administer the affairs of such credit union and will not knowingly violate, or willfully permit to be violated, any of the provisions of the financial institution's codes or pertinent rules of the commission ~~department~~. The signed copy of such oath shall be filed with the office ~~department~~ within 30 days after election.

(7) The board of directors must exercise the following duties which are nondelegable:

(a) Require any officer or employee who has custody of or handles funds to give bond with good and sufficient surety in an amount and character determined by the board of directors in compliance with rules adopted by the commission ~~department~~.

(e) Adequately provide for reserves as required by this part or by rules or order of the commission or office ~~department~~ or as otherwise determined necessary by the board.

Section 1745. Subsections (3) and (4) of section 657.026, Florida Statutes, are amended to read:

657.026 Supervisory or audit committee.—

(3) The supervisory or audit committee shall:

(a) Make or cause to be made a comprehensive annual audit of the credit union, in accordance with the rules of the commission ~~department~~.

(b) Make or cause to be made such supplementary audits or examinations as it deems necessary or as are requested by the board of directors or the office ~~department~~.

(c) Submit a report of every required audit or examination within a reasonable time to the board of directors with a copy to the office ~~department~~ and, depending upon which organization is applicable, a copy to the corporation or the National Credit Union Administration.

(d) Make a summary report, to the membership at the annual meeting, of any audits or examinations conducted during the preceding year.

(4) The supervisory or audit committee shall notify the board of directors, the office ~~department~~, and, as applicable, either the corporation or the National Credit Union Administration of any violation of this part, any violation of the certificate of authorization or bylaws of the credit union, or any practice of the credit union deemed by the supervisory or audit committee to be unsafe, unsound, or unauthorized.

For the purposes of this subsection, two-thirds of the members of the supervisory or audit committee constitutes a quorum.

Section 1746. Subsections (3) and (6) of section 657.028, Florida Statutes, are amended to read:

657.028 Activities of directors, officers, committee members, employees, and agents.—

(3) A person may not serve as an officer, director, or committee member of a credit union if she or he:

(a) Has been convicted of a felony or of an offense involving dishonesty, a breach of trust, a violation of this chapter, or fraud, except with the prior approval of the office ~~department~~ upon a showing of rehabilitation;

(b) Has been adjudicated bankrupt within the previous 7 years;

(c) Has been removed by any regulatory agency as a director, officer, committee member, or employee of any financial institution, except with the prior approval of the office ~~department~~ upon a showing of rehabilitation and upon showing of ability to be bondable;

(d) Has performed acts of fraud or dishonesty, or has failed to perform duties, resulting in a loss which was subject to a paid claim under a fidelity bond, except with the prior approval of the office ~~department~~ upon a showing of rehabilitation and upon showing of ability to be bondable; or

(e) Has been found guilty of a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(6) Within 30 days after election or appointment, a record of the names and addresses of the members of the board, members of committees, and all officers of the credit union shall be filed with the office ~~department~~ on forms prescribed by the commission ~~department~~.

Section 1747. Subsections (19), (26), (27), and (29) of section 657.031, Florida Statutes, are amended to read:

657.031 Powers.—A credit union shall have the power to:

(19) Perform tasks and render any services requested by the Federal Government or by this state or any agency, political subdivision, or municipality thereof, if approved by the office ~~department~~.

(26) Participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, provided such participation is not inconsistent with those rules of the commission ~~department~~ adopted to further service to the members and to protect members' funds against unreasonable risks.

(27) Issue credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit, provided such issuance is not inconsistent with the rules of the commission ~~department~~. The commission ~~department~~ may, by rule, allow the use of devices similar to credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit.

(29) Exercise such incidental powers as are necessary or requisite to effectively carry out the purposes for which it is organized, provided such exercise is approved by rule or order of the commission or office ~~department~~.

Section 1748. Subsection (3) of section 657.033, Florida Statutes, is amended to read:

657.033 Accounts.—

(3) A credit union may receive deposits from its members and contract to pay interest thereon, subject to conditions the board of directors establishes and subject to rules of the commission ~~department~~.

Section 1749. Section 657.0335, Florida Statutes, is amended to read:

657.0335 Additional power to restrict withdrawals.—In extraordinary circumstances external to the operations of the credit union which threaten the continued existence and operation of the credit union, the office ~~department~~ may restrict withdrawals for a period not to exceed 60 days.

Section 1750. Subsections (6) and (12) of section 657.038, Florida Statutes, are amended to read:

657.038 Loan powers.—

(6) Loans secured by mortgages on real property must be made in accordance with written policies of the board of directors and rules of the commission ~~department~~.

(12) The commission ~~department~~ may adopt rules to provide for minimum documentation and safe lending procedures necessary to protect the members' funds.

Section 1751. Paragraph (i) of subsection (1), paragraph (a) of subsection (2), paragraph (b) of subsection (5), and subsections (6) and (7) of section 657.042, Florida Statutes, are amended to read:

657.042 Investment powers and limitations.—A credit union may invest its funds subject to the following definitions, restrictions, and limitations:

(1) INVESTMENTS NOT SUBJECT TO LIMITATIONS.—There is no limitation with respect to the capital of the investing credit union on the following investments:

(i) Stock of the Federal National Mortgage Association, or any other similar entity designated by the office ~~department~~, designed to promote investment in residential mortgages, which may be purchased and retained as required in connection with mortgage transactions with the association or entity.

(2) INVESTMENTS SUBJECT TO LIMITATION OF 25 PERCENT OF CAPITAL OF THE CREDIT UNION.—Up to 25 percent of the capital of the credit union may be invested in:

(a) The shares or deposit accounts in any one corporate credit union or other insured financial depository institution. The credit union may exceed the 25-percent investment limitation in the corporate credit union, subject to the prior written approval of the office ~~department~~.

(5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE CREDIT UNION.—

(b) The limitations provided by this subsection may be exceeded with the prior written approval of the office ~~department~~. The office ~~department~~ shall grant such approval if it is satisfied that:

1. The proposed investment is necessary.

2. The amount thereof is commensurate with the size and needs of the credit union.

3. The investment will be beneficial to the members.

(6) INVESTMENTS SUBJECT TO ~~DEPARTMENT~~ APPROVAL.—A credit union may invest its funds in such other investments, including the capital stock of other financial institutions, as the commission or office ~~department~~ approves by rule or order.

(7) SPECIAL PROVISIONS.—

(a) None of the bonds or other obligations described in this section shall be eligible for investment by credit unions in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized investment rating service, or any comparable rating as determined by the office ~~department~~.

(b) With prior approval of the office ~~department~~, any investment permitted in this section may also be made indirectly by investment in a trust or mutual, the investments of which are limited as set forth in this section, provided that the credit union must maintain a current file on each investment which contains sufficient information to determine whether the investment complies with the requirements of this section. If the investment fails to comply with the requirements of this section, the credit union must divest itself of its investment, unless otherwise approved by the office ~~department~~.

Section 1752. Subsections (1), (2), (3), (5), (6), (7), and (8) of section 657.043, Florida Statutes, are amended to read:

657.043 Reserves.—

(1) TRANSFERS TO REGULAR RESERVE.—Immediately before paying each dividend, the total of all income for the period shall be determined. From this amount, there shall be set aside sums as a regular reserve in accordance with the following schedule:

(a) A credit union shall set aside:

1. Five percent of the total of all income for the period, until the regular reserve equals 6 percent of the risk assets, then,

2. Two percent of the total of all income for the period, until the regular reserve equals 8 percent of the risk assets.

(b) Whenever the ratio of regular reserves to risk assets falls below the stated percent, it shall be replenished by regular contributions as provided in paragraph (a).

(c) The office ~~department~~ may decrease the reserve requirements set forth in this subsection when in its opinion such a decrease is necessary to preserve the fiscal soundness of the credit union.

(2) ALLOWANCE FOR LOAN LOSSES ACCOUNT.—The credit union shall maintain an account for loan losses. The amount in the account must equal the board's estimate of losses in the loan portfolio and be consistent with the rules of the commission ~~department~~. The account must be provided for, before paying a dividend, in the manner provided by rule. This account constitutes part of the regular reserve for the purpose of determining the ratio of regular reserves to risk assets.

(3) USE OF REGULAR RESERVE.—The regular reserve shall belong to the credit union and shall be used to meet losses. In the event of a decrease, the office ~~department~~ may require additional transfers to the regular reserve above the amount required by subsection (1) until the decrease has been restored. The regular reserve may not be decreased without the prior written approval of the office ~~department~~ or as provided by rule of the commission.

(5) ALLOWANCE FOR INVESTMENT LOSSES.—The credit union may maintain a contra asset account to provide an allowance for investment

losses, which will not be included in the determination of equity. The account must be maintained consistent with the rules of the commission ~~department~~.

(6) SPECIAL RESERVES.—In addition to such regular reserve, special reserves shall be established:

(a) To protect members against losses resulting from credit extended or from risk assets when required by rule, or when found by the office ~~department~~, in any special case, to be necessary for that purpose; or

(b) As authorized by the board of directors.

(7) RESERVE FOR CONTINGENCIES.—The board of directors may, after the regular reserve required by this section and rules of the commission ~~department~~ has been set aside, transfer a portion of undivided earnings to an auxiliary reserve account to provide for additional possible losses and expenses.

(8) RESERVES.—The ratio of equity to total assets for each credit union must be maintained at not less than 5 percent. At the end of the calendar quarter when this ratio is determined to be less than 5 percent, the credit union shall, within 60 days thereafter, prepare and file with the office ~~department~~ for approval a plan to achieve the minimum ratio within 4 years, or such longer period of time approved by the office ~~department~~. Once achieved, each credit union must maintain a ratio of equity to total assets of not less than 5 percent, unless otherwise authorized by the office ~~department~~. The commission ~~department~~, by rule, shall prescribe the information, types of restrictions and limitations on operations, reporting requirements, and other criteria that are required to be included in an acceptable plan. An acceptable plan must recognize the unique characteristics and risk differences for the individual credit union.

Section 1753. Section 657.053, Florida Statutes, is amended to read:

657.053 Assessments; state credit unions.—Each state credit union shall pay to the office ~~department~~ a semiannual assessment equal to $500 plus 15 cents for each $1,000 of total assets. The amounts of all assessments provided for in this section shall be deemed to be maximum amounts. The commission ~~department~~ has the authority to establish, by rule, and from time to time to change, assessments in amounts less than the maximum amounts stated in this section.

Section 1754. Section 657.062, Florida Statutes, is amended to read:

657.062 Assumption of control by guarantor or insurer.—

(1) The office ~~department~~ may direct the corporation or the National Credit Union Administration, whichever is applicable, to assume control of the property, assets, and business of its member credit union and to operate it subject to the directions of the office ~~department~~:

(a) Whenever the office ~~department~~ finds that the credit union:

1. Is engaging or has engaged in an unsafe or unsound practice;

2. Is violating or has violated any provision of this chapter; or

3. Is violating or has violated any commission ~~department~~ rule, office ~~department~~ order, or written agreement entered into with the office ~~department~~,

in such a manner that the credit union is threatened with imminent insolvency.

(b) Whenever a majority of the members of the board of directors of the credit union have been removed by the office ~~department~~ or shall have resigned.

(2) Except when prohibited by federal or state law, in the event of assumption of control, the guarantor or insurer may elect the board of directors and the operating committees and may, without penalty or liability, prepay any deposit accounts; terminate any contracts or agreements with employees, independent contractors, or consultants; terminate any contract or agreement with any person to provide goods, products, or services if the performance of such contract would adversely affect the safety or soundness of the credit unions or if such contract was entered into in violation of s. 657.0315(1); and terminate or assign any lease for property. The authority of the guarantor or insurer to continue operation of a credit union shall continue for a period not to exceed 180 days, unless extended by the office ~~department~~ for an additional period not to exceed 180 days at the request of the guarantor or insurer, or unless involuntary liquidation proceedings have been initiated by the office ~~department~~. In the event that the guarantor or insurer does assume control pursuant to the direction of the office ~~department~~, a meeting of the credit union shall be called within 180 days, or within the period of extension as approved by the office ~~department~~, for the specific purpose of electing a new board of directors, who shall take office when the guarantor or insurer surrenders control, or considering such other recommendations as the guarantor or insurer and the office ~~department~~ may make.

Section 1755. Section 657.063, Florida Statutes, is amended to read:

657.063 Involuntary liquidation.—

(1) If the office ~~department~~ finds that any credit union is bankrupt or insolvent, or is transacting its business in an unsound, unsafe, or unauthorized manner such that it is threatened with imminent insolvency, and liquidation is in the best interest of the members, the office ~~department~~ may, in its discretion, order the credit union placed in involuntary liquidation and designate and appoint a liquidator to take charge of the assets and affairs of the credit union. The order shall set forth the specific findings and reasons for the action taken.

(2) The liquidator must be appointed by the office ~~department~~. The corporation or the National Credit Union Administration, whichever is applica-

ble, must be given the right of first refusal. The office ~~department~~ may appoint another entity if refused by the primary guarantor or insurer.

(3) Upon appointment and in accordance with the directions of the office ~~department~~, the liquidator shall take possession and charge of all of the assets, books, and records of the credit union and shall take charge of the affairs, business, and operations of the credit union and shall have all of the powers of the board of directors, credit committee, credit manager, and supervisory committee of the credit union. The liquidator shall continue the business operation of the credit union for a period not to exceed 180 days, subject to the direction of the office ~~department~~. The liquidator shall have full authority to make loans and investments and to permit deposits to or withdrawals from accounts by members, except that during the period of such operation by the liquidator, no withdrawal from any account or accounts which are not fully insured or guaranteed shall be permitted. Except when prohibited by federal or state law, the liquidator may, without penalty or liability, prepay any deposit accounts; terminate any contracts or agreements with employees, independent contractors, or consultants; terminate any contract or agreement that was entered into in violation of s. 657.0315(1) or s. 657.062(2); and terminate or assign any lease for property. The liquidator shall proceed with a liquidation of assets by sale or transfer of assets and conversion of assets into cash or liquid investments in preparation for distribution to members on account of shares and deposits. The liquidator shall have specific authority to sell loan assets. The liquidator may enter into agreements for the sale or transfer of loans and other assets with the assumption of outstanding share and deposit accounts, which assumption constitutes full and complete distribution to members on account of shares and deposits.

(4) On the completion of the liquidation and certification by the liquidator that the distribution of the assets of the credit union has been completed, the office ~~department~~ shall cancel the certificate of authorization of the credit union. The office ~~department~~ may designate a custodian to maintain the books and records of the liquidated credit union.

(5) When the liquidating agent of the credit union has been appointed, the office ~~department~~ may waive or deem inapplicable the fees required by this chapter and the examination required by s. 655.045(1)(a), provided the liquidating agent submits periodic reports to the office ~~department~~ on the status of the liquidation.

Section 1756. Subsections (1), (5), (8), and (9) of section 657.064, Florida Statutes, are amended to read:

657.064 Voluntary liquidation.—A credit union may elect to dissolve voluntarily and liquidate its affairs in the following manner:

(1) Before considering any resolution pertaining to voluntary liquidation by the board of directors, the credit union must inform the office ~~department~~ and the corporation or the National Credit Union Administration, whichever is applicable, of the time and place of the meeting of the board of directors. The notification must be transmitted at least 5 days before the board of directors meets.

(5) The notice required by subsection (3) shall also be mailed to the office ~~department~~ within 5 days after the action of the board of directors. Within 10 days after the meeting of the membership, the board of directors shall notify the office ~~department~~ and the corporation or the National Credit Union Administration, whichever is applicable, in writing of the action taken by the members.

(8) When the liquidating agent of the credit union has been appointed, the office ~~department~~ may waive or hold inapplicable the fees required by this chapter and the examination required by s. 655.045(1)(a), provided the liquidating agent submits periodic reports to the office ~~department~~ on the status of the liquidation.

(9) Whenever the board of directors or liquidator determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed to the members, a certificate of dissolution on forms prescribed by the commission ~~department~~ shall be prepared and filed with the office ~~department~~ together with all pertinent books and records of the credit union, and thereupon the credit union shall be dissolved and its certificate of authorization canceled. The office ~~department~~ may designate a custodian to maintain the books and records of the liquidated credit union.

Section 1757. Subsections (2), (4), (5), (6), and (7) of section 657.065, Florida Statutes, are amended to read:

657.065 Merger.—

(2) The office ~~department~~ shall approve a merger as provided in this section if it finds upon the written and verified application filed by each board of directors that:

(a) Notice of intent to merge was given to the members of the surviving credit union;

(b) Notice of the meeting called to consider the merger was given to the members entitled to vote upon the question;

(c) Such notice disclosed the purpose of the meeting and properly informed the membership of the merging credit union that approval of a merger was under consideration;

(d) A majority of the votes cast upon the question by the members of the merging credit union were in favor of the merger; and

(e) The merger will not seriously impair the ongoing viability of the surviving credit union.

(4) The plan of merger shall be transmitted to the office ~~department~~ for its approval.

(5) A merger application shall be accompanied by a nonrefundable fee of $500. The fee may be waived by the office ~~department~~ for a merger pursuant to subsection (6).

(6) Notwithstanding any other provisions of this chapter or of chapter 120, a credit union may merge without a vote of the membership when the office ~~department~~ determines that the credit union is in danger of insolvency and that the merger will enable the credit union to avoid liquidation.

(7) A merger with a resulting state credit union may not take place or be effective unless the office ~~department~~ issues a certificate of merger. Upon consummation of the merger, the certificate of authorization of the merged credit union shall be returned to the proper authority to be canceled. Also at consummation, all property and property rights of, and members' interests in, the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union must be assumed by the surviving credit union under the certificate of authorization under which the merger was effected. All members of the surviving credit union have the same rights, privileges, and responsibilities after the merger is completed. The certificate of merger must be recorded in the public records of all counties in which the merging credit union owned any real property at the effective date of the merger.

Section 1758. Subsection (4) of section 657.066, Florida Statutes, is amended to read:

657.066 Conversion from state credit union to federal credit union and conversely.—Any credit union organized under this part may convert into a federal credit union and any federal credit union may convert into a credit union organized pursuant to this part upon approval of the authority under the supervision of which the converted credit union will operate and upon compliance with applicable laws.

(4) Upon the written approval of the authority under the supervision of which the converting credit union is to operate, the converting credit union shall become a credit union under this chapter or under the laws of the United States, as the case may be, and thereupon all assets shall become the property of the converted credit union, subject to all existing liabilities against the credit union. All shares and deposits shall remain intact. Any federal credit union seeking to convert to a state-chartered credit union shall pay a nonrefundable filing fee of $500. The office ~~department~~ may conduct an examination of any converting federal credit union before approving the conversion and the converting credit union shall pay a nonrefundable examination fee as provided in s. 655.411(1)(b).

Section 1759. Subsection (2) of section 657.068, Florida Statutes, is amended to read:

657.068 Central credit unions.—

(2) Membership in a central credit union shall be limited to:

(a) Credit unions organized and operating under this part or any other credit union act;

(b) Officers, directors, committee members, and employees of such credit unions, and officials and employees of any association of credit unions;

(c) Organizations and associations of those persons or organizations set forth in paragraph (a) or paragraph (b);

(d) Residents of this state having a limited field of membership who have applied to the office ~~department~~ to organize a credit union and have been denied on grounds other than those set forth in s. 657.005(6);

(e) Residents of this state having a limited field of membership, if their application for membership is approved by the board of directors of the central credit union and by the office ~~department~~;

(f) Persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; and

(g) Members of the immediate families of all members qualified above.

Section 1760. Subsection (6) of section 658.12, Florida Statutes, is amended to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(6) "Community" means an incorporated city, town, or village or, where not within any of the foregoing or if the office ~~department~~ determines that the area within the corporate limits of any of the foregoing is inappropriate under specific circumstances, such trade area or other area, determined by the office ~~department~~ to be appropriate under the circumstances, in which are located persons having generally similar interests, including residential, social, or business interests or combinations thereof.

Section 1761. Section 658.16, Florida Statutes, is amended to read:

658.16 Creation of banking or trust corporation.—When authorized by the office ~~department~~, as provided herein, a corporation may be formed under the laws of this state for the purpose of becoming a state bank or a state trust company and conducting a general banking or trust business.

Section 1762. Section 658.165, Florida Statutes, is amended to read:

658.165 Banker's banks; formation; applicability of financial institutions codes; exceptions.—

(1) When authorized by the office ~~department~~, a corporation may be formed under the laws of this state for the purpose of becoming a banker's bank. An application for authority to organize a banker's bank is subject to the provisions of ss. 658.19, 658.20, and 658.21, except that the provisions of ss. 658.20(1)(b) and (c) and 658.21(2) do not apply.

(2) A banker's bank chartered pursuant to subsection (1) shall be subject to the provisions of the financial institutions codes and rules adopted thereunder; and, except as otherwise specifically provided herein or by rule or order of the commission or office ~~department~~, a banker's bank shall be vested with or subject to the same rights, privileges, duties, restrictions,

penalties, liabilities, conditions, and limitations that would apply to a state bank.

(3) Notwithstanding any other provision of this chapter, a banker's bank may repurchase, for its own account, shares of its own capital stock; however, the outstanding capital stock may not be reduced below the minimum required by this chapter without the prior approval of the office ~~department~~.

(4) A banker's bank may provide services at the request of financial institutions in organizations that have:

(a) Received conditional regulatory approval from the office ~~department~~ in the case of a state bank or preliminary approval from the Office of the Comptroller of the Currency in the case of a national bank.

(b) Filed articles of incorporation pursuant to s. 658.23 in the case of a state bank, or filed acceptable articles of incorporation and an organization certificate in the case of a national bank.

(c) Received capital funds in an amount not less than the minimum capitalization required in any notice of or order granting conditional regulatory approval.

(5) A banker's bank may provide services to the organizers of a proposed financial institution that has not received conditional regulatory approval provided that such services are limited to the financing of the expenses of organizing such financial institution and expenses relating to the acquisition or construction of the institution's proposed operating facilities and associated fixtures and equipment.

(6) If the commission or office ~~department~~ finds that any provision of this chapter is inconsistent with the purpose for which a banker's bank is organized and that the welfare of the public or any financial institution would not be jeopardized thereby, the commission, ~~it may~~ by rule, or the office, by order, may exempt a banker's bank from such provision or limit the application thereof.

Section 1763. Section 658.19, Florida Statutes, is amended to read:

658.19 Application for authority to organize a bank or trust company.—

(1) A written application for authority to organize a banking corporation or a trust company shall be filed with the office ~~department~~ by the proposed directors and shall include:

(a) The name, residence, and occupation of each proposed director.

(b) The proposed corporate name.

(c) The total initial capital, the number of shares of each class of the capital stock to be authorized, and the par value of the shares of each class.

(d) The community, including the street and number, if available, or, if not available, the area within the community, where the principal office of the proposed bank or proposed trust company is to be located.

(e) If known, the name and residence of the proposed president, the proposed chief executive officer if other than the proposed president and, if the application is for organization of a trust company or a bank with trust powers, the name and address of the proposed trust officer.

(f) Such detailed financial, business, and biographical information as the commission or office ~~department~~ may reasonably require for each proposed director, president, chief executive officer (if other than the president), and trust officer (if applicable).

(g) A request for trust powers if desired in connection with an application to organize a bank.

(2) The application shall be in such form as the commission prescribes and contain such additional information as the commission or office ~~department may~~ reasonably requires ~~require~~ and shall be accompanied by the required fee, which shall not be refundable.

(3) Notwithstanding chapter 120, an application may be returned to the applicant, on a one-time basis, for correction of substantial deficiencies and may be resubmitted without payment of an additional fee if such resubmission takes place within 60 days after the date the office ~~department~~ returns the application.

Section 1764. Section 658.20, Florida Statutes, is amended to read:

658.20 Investigation by office ~~department~~.—

(1) Upon the filing of an application, the office ~~department~~ shall make an investigation of:

(a) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located.

(c) The ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

(2) The office ~~department~~ is authorized to obtain criminal record information from the National Crime Information Center or from the Department of Law Enforcement as a part of its investigation pursuant to this section.

(3) The office ~~department~~ may accept an application for prior approval of individuals who may become directors and executive officers of a failing bank, association, or trust company. Such applications are governed by the application criteria set forth in paragraph (1)(a) and ss. 658.21(4) and 658.28. The application must be in the form prescribed by the commission and must contain additional information prescribed by the commission or

office ~~department~~, and must be accompanied by a nonrefundable, nontransferable filing fee of $7,500.

Section 1765. Section 658.21, Florida Statutes, is amended to read:

658.21 Approval of application; findings required.—The office ~~department~~ shall approve the application if it finds that:

(1) Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company. In determining whether an applicant meets the requirements of this subsection, the office ~~department~~ shall consider all materially relevant factors, including:

(a) The purpose, objectives, and business philosophy of the proposed state bank or trust company.

(b) The projected financial performance of the proposed bank or trust company.

(c) The feasibility of the proposed bank or trust company, as stated in the business plan, particularly with respect to asset and liability growth and management.

(2) The proposed capitalization is in such amount as the office ~~department~~ deems adequate, but in no case may the total capital accounts at opening for a bank be less than $6 million if the proposed bank is to be located in any county which is included in a metropolitan statistical area, or $4 million if the proposed bank is to be located in any other county. The total capital accounts at opening for a trust company may not be less than $2 million. Of total capital accounts at opening, as noted in the application or amendments or changes to the application, at least 25 percent of the capital shall be directly owned or controlled by the organizing directors of the bank. Directors of banks owned by single-bank holding companies shall have direct ownership or control of at least 25 percent of the bank holding company's capital accounts. The office ~~department~~ may disallow illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section.

(3) The proposed capital structure is in such form as the office ~~department~~ may require, but, at a minimum, every state bank or trust company hereafter organized shall establish paid-in capital equal in amount to not less than 50 percent of its total capital accounts and a paid-in surplus equal in amount to not less than 20 percent of its paid-in capital.

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial institutions; or any similar state or federal law. At least two of the proposed directors who are not also proposed officers shall have had at least 1 year

direct experience as an executive officer, regulator, or director of a financial institution within 3 years of the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 3 years before the date of the application, the office ~~department~~ may modify the requirement and allow only one director to have direct financial institution experience within the last 3 years. The proposed president or chief executive officer shall have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.

(5) The corporate name of the proposed state bank or trust company is approved by the office ~~department~~.

(6) Provision has been made for suitable quarters at the location in the application.

Section 1766. Section 658.22, Florida Statutes, is amended to read:

658.22 Coordination with federal agencies.—Upon approval by the office ~~department~~ of the application for authority to organize a state bank, the office ~~department~~ shall forward a copy of its final order to the appropriate federal regulatory agencies. The failure of an applicant to apply for membership in the Federal Reserve System or apply for the insurance of accounts by the Federal Deposit Insurance Corporation within 3 months after approval by the office ~~department~~ or a final order by the Federal Deposit Insurance Corporation denying an applicant's application for insurance of accounts, terminates and revokes the final order issued by the office ~~department~~ approving the application.

Section 1767. Section 658.23, Florida Statutes, is amended to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(1) Within 3 months after approval by the office ~~department~~ and the appropriate federal regulatory agency, the applicant shall submit its duly executed articles of incorporation to the office ~~department~~, together with the filing fee due the Department of State under s. 607.0122.

(2) The articles of incorporation shall contain:

(a) The name of the proposed bank or trust company.

(b) The general nature of the business to be transacted or a statement that the corporation may engage in any activity or business permitted by law. Such statement shall authorize all such activities and business by the corporation.

(c) The amount of capital stock authorized, showing the maximum number of shares of par value common stock and of preferred stock, and of every kind, class, or series of each, together with the distinguishing characteristics and the par value of all shares.

(d) The amount of capital with which the corporation will begin business, which shall not be less than the amount required by the office ~~department~~ pursuant to s. 658.21.

(e) A provision that the corporation is to have perpetual existence unless existence is terminated pursuant to the financial institutions codes.

(f) The initial street address of the main office of the corporation, which shall be in this state.

(g) The number of directors, which shall be five or more, and the names and street addresses of the members of the initial board of directors.

(h) A provision for preemptive rights, if applicable.

(i) A provision authorizing the board of directors to appoint additional directors, pursuant to s. 658.33, if applicable.

The office ~~department~~ shall provide to the proposed directors form articles of incorporation which shall include only those provisions required by this section or by chapter 607. The form articles shall be acknowledged by the proposed directors and returned to the office ~~department~~ for filing with the Department of State.

(3) Within 30 days of receipt of the executed articles of incorporation in the form previously approved, and the required filing fees, the office ~~department~~ shall place the following legend upon the articles of incorporation and affix the seal of the office ~~of the Comptroller of Florida~~ thereto. The legend shall in substance read: "Approved by the Office of Financial Regulation ~~Department of Banking and Finance~~ this .... day of ....(herein the name and signature of the director ~~head~~ of the office ~~department~~)...." Thereafter, the articles of incorporation shall be filed with the Department of State.

(4) The corporate existence of a banking corporation or a trust company corporation shall commence on the date the approved articles of incorporation are filed with the Department of State, unless otherwise provided in the articles of incorporation pursuant to s. 607.0203. Thereafter, a banking corporation or trust company corporation may perform all acts necessary to perfect its organization, obtain and equip a place of business, and otherwise prepare to conduct a general banking business or trust business. However, no banking corporation or trust company corporation shall become a state bank or a state trust company or transact any banking business or trust business until it has received a certificate of authority to transact business as provided in s. 658.25.

(5) Unless the articles of incorporation provide otherwise, the board of directors shall have authority to adopt or amend bylaws that do not conflict with bylaws that may have been adopted by the stockholders. The bylaws shall be for the government of the bank or trust company, subordinate only to the articles of incorporation and the laws of the United States and of this state. A current copy of the bylaws shall be filed with the office ~~department~~ at all times.

(6) A bank or trust company may not amend its articles of incorporation without the prior written approval of the office ~~department~~.

Section 1768. Section 658.235, Florida Statutes, is amended to read:

658.235 Subscriptions for stock; approval of major shareholders.—

(1) Within 6 months after commencement of corporate existence, and at least 30 days prior to opening, the directors shall have completed the stock offering and shall file with the office ~~department~~ a final list of subscribers to all of the capital stock of the proposed bank or trust company showing the name and residence of each subscriber and the amount of stock of every class subscribed for by each.

(2) The directors shall also provide such detailed financial, business, and biographical information as the commission or office ~~department~~ may reasonably require for each person who, together with related interests, subscribes to 10 percent or more of the voting stock or nonvoting stock which is convertible into voting stock of the proposed bank or trust company. The office ~~department~~ shall make an investigation of the character, financial responsibility, and financial standing of each such person in order to determine whether he or she is likely to control the bank or trust company in a manner which would jeopardize the interests of the depositors and creditors of the bank or trust company, the other stockholders, or the general public. This investigation shall include a determination of whether any such person has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(3) At the time the shares are issued, the corporation shall furnish to the office ~~department~~ a final list of shareholders and an affidavit from the corporation that the entire capital accounts have been fully and unconditionally paid in cash and that valid assets representing such total capital accounts are held by the bank, trust company, or escrow agent.

Section 1769. Section 658.24, Florida Statutes, is amended to read:

658.24 Organizational procedures.—After the corporate existence of a bank or trust company corporation has commenced and the stock has been issued, but no less than 30 days prior to the intended opening date, a shareholders' meeting shall be held to elect directors already approved by the office ~~department~~, to approve organizational expenses, and to conduct such other business relating to the corporation as may be appropriate. Immediately after the board of directors has been elected by the shareholders, the board shall meet to adopt bylaws, elect officers, and conduct such other business relating to the corporation as may be appropriate. Within 10 days after the shareholders' and directors' meetings, the corporation shall file with the office ~~department~~ a copy of the minutes of the meetings together with a copy of the bylaws that were adopted, a list showing the names and residence addresses of the officers elected and the title of each, and a detailed accounting of the organization expenses approved by the shareholders.

Section 1770. Subsections (2) and (3) of section 658.25, Florida Statutes, are amended to read:

658.25 Opening for business.—

(2) At least 30 days prior to its intended opening date, the corporation shall notify the office ~~department~~ of its proposed opening date and confirm its compliance with all conditions imposed in the order or orders issued by the office ~~department~~ relating to its organization.

(3) The office ~~department~~ shall perform a preopening examination to verify good faith compliance with all the requirements of law and that the bank or trust company corporation is ready to engage in a general commercial bank or trust business. If the office ~~department~~ finds that such requirements have been met, it shall issue a certificate of authorization to transact a general commercial bank or trust business. Upon the issuance of the certificate of authorization, the bank or trust company corporation shall become a state bank or a state trust company and the certificate shall constitute its charter.

Section 1771. Subsections (2), (3), and (4) of section 658.26, Florida Statutes, are amended to read:

658.26 Places of transacting business; branches; facilities.—

(2)(a) In addition, with the approval of the office ~~department~~ and upon such conditions as the commission or office ~~department~~ prescribes, any bank or trust company may establish branches within or outside the state. With the approval of the office ~~department~~ upon a determination that the resulting bank or trust company will be of sound financial condition, any bank or trust company incorporated pursuant to this chapter may establish branches by merger with any other bank or trust company.

(b) An application for a branch by a bank that does not meet the requirements for the branch notification process shall be in writing in such form as the commission ~~department~~ prescribes and be supported by such information, data, and records as the commission or office ~~department~~ may require to make findings necessary for approval. Applications filed pursuant to this subsection shall not be published in the Florida Administrative Weekly but shall otherwise be subject to the provisions of chapter 120. Upon the filing of an application and a nonrefundable filing fee for the establishment of any branch permitted by paragraph (a), the office ~~department~~ shall make an investigation with respect to compliance with the requirements of paragraph (a) and shall investigate and consider all factors relevant to such requirements, including the following:

1. The sufficiency of capital accounts in relation to the deposit liabilities of the bank, or in relation to the number and valuation of fiduciary accounts of the trust company, including the proposed branch, and the additional fixed assets, if any, which are proposed for the branch and its operations, without undue risk to the bank or its depositors, or undue risk to the trust company or its fiduciary accounts;

2. The sufficiency of earnings and earning prospects of the bank or trust company to support the anticipated expenses and any anticipated operating losses of the branch during its formative or initial years;

3. The sufficiency and quality of management available to operate the branch;

4. The name of the proposed branch to determine if it reasonably identifies the branch as a branch of the main office and is not likely to unduly confuse the public; and

5. Substantial compliance by the applicants with applicable law governing their operations.

(c) As provided by commission ~~departmental~~ rule, a financial institution operating in a safe and sound manner may establish a branch by filing a written notice with the office ~~department~~ at least 30 days before opening that branch. In such case, the financial institution need not file a branch application or pay a branch application fee.

(3)(a) An office in this state may be relocated with prior written approval of the office ~~department~~. An application for relocation shall be in writing in such form as the commission ~~department~~ prescribes and shall be supported by such information, data, and records as the commission or office ~~department~~ may require to make findings necessary for approval.

(b) Applications filed pursuant to this subsection shall not be published in the Florida Administrative Weekly but shall otherwise be subject to the provisions of chapter 120. Upon the filing of a relocation application and a nonrefundable filing fee, the office ~~department~~ shall investigate to determine substantial compliance by the financial institution with applicable law governing its operations. Additional investments in land, buildings, leases, and leasehold improvements resulting from such relocation shall comply with the limitations imposed by s. 658.67(7)(a). A main office may not be moved outside this state unless expressly authorized by the financial institutions codes or by federal law.

(c) A relocation application filed by a state bank or trust company that is operating in a safe and sound manner which is not denied within 10 working days after receipt shall be deemed approved unless the office ~~department~~ notifies the financial institution in writing that the application was not complete.

(d) In addition to the application required by paragraph (a), a financial institution whose main office in this state has been in operation less than 24 months must provide evidence that the criteria of s. 658.21(1) will be met.

(e) A branch office may be closed with 30 days' prior written notice to the office ~~department~~. The notice shall include any information the commission prescribes ~~department may prescribe~~ by rule.

(4) With prior written notification to the office ~~department~~, any bank may operate facilities which are not physically connected to the main or

branch office of the bank, provided that the facilities are situated on the property of the main or branch office or property contiguous thereto. Property which is separated from the main or branch office of a bank by only a street, and one or more walkways and alleyways are determined to be, for purposes of this subsection, contiguous to the property of the main or branch office.

Section 1772. Subsections (1), (2), (4), and (5) of section 658.27, Florida Statutes, are amended to read:

658.27 Control of bank or trust company; definitions and related provisions.—

(1) In ss. 658.27-658.29, unless the context clearly requires otherwise:

(a) "Bank holding company" means any business organization which has or acquires control over any bank or trust company or over any business organization that is or becomes a bank holding company by virtue of ss. 658.27-658.29.

(b) "Business organization" means a corporation, association, partnership, or business trust and includes any similar organization (including a trust company and including a bank, whether or not authorized to engage in trust business, but only if such bank is, or by virtue of ss. 658.27-658.29 becomes, a bank holding company), whether created, organized, or existing under the laws of the United States; this state or any other state of the United States; or any other country, government, or jurisdiction. "Business organization" does not include any corporation the majority of the shares of which are owned by the United States or by this state. "Business organization" also includes any other trust, unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, unless the office ~~department~~ determines, after notice and opportunity for hearing, that a purpose for the creation of such trust was the evasion of the provisions of ss. 658.27-658.29.

(c) "Edge Act corporation" means a corporation organized and existing under the provisions of s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611-632.

(d) "Subsidiary," with respect to a specified bank, trust company, or bank holding company, means:

1. Any business organization 25 percent or more of the voting shares of which, excluding shares owned by the United States or by any business organization wholly owned by the United States, are directly or indirectly owned or controlled by such bank, trust company, or bank holding company or are held by such bank, trust company, or bank holding company with power to vote;

2. Any business organization the election of a majority of the directors of which is controlled in any manner by such bank, trust company, or bank holding company; or

3. Any business organization with respect to the management or policies of which such bank, trust company, or bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the office ~~department~~ after notice and opportunity for hearing.

(e) "Successor," with respect to a specified bank holding company, means any business organization which acquires directly or indirectly from the bank holding company shares of any bank or trust company, when and if the relationship between such business organization and the bank holding company is such that the transaction effects no substantial change in the control of the bank or trust company or beneficial ownership of such shares of such bank or trust company. The commission ~~department~~ may, by rule, further define the term "successor" to the extent necessary to prevent evasion of the purposes of ss. 658.27-658.29. For the purposes of ss. 658.27-658.29, any successor to a bank holding company shall be deemed to have been a bank holding company from the date on which the predecessor business organization became a bank holding company.

(2) A business organization has control over a bank or over any other business organization if:

(a) The business organization directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or other business organization;

(b) The business organization controls in any manner the election of a majority of the directors, trustees, or other governing body of the bank or other business organization;

(c) The business organization owns, controls, or has power to vote 10 percent or more of any class of voting securities of the bank or other business organization and exercises a controlling influence over the management or policies of the bank or other business organization; or

(d) The office ~~department~~ determines, after notice and opportunity for hearing, that the business organization directly or indirectly exercises a controlling influence over the management or policies of the bank or other business organization.

(4) Shares of any kind or class of voting securities, and assets, of a bank or business organization which, after March 28, 1972, the effective date of former s. 659.141(2)(g), are transferred by any bank holding company, or by any bank or any business organization which, but for such transfer, would be a bank holding company, directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the office ~~department~~, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

(5) Notwithstanding any other provision of this section, no bank and no business organization shall be deemed to own or control voting shares or assets of another bank or another business organization if:

(a) The ownership or control of such shares or assets is in a fiduciary capacity, except as provided in paragraph (3)(b) and subsection (4). For the purposes of the preceding sentence, shares of a bank or a business organization shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or business organization has sole discretionary authority to exercise voting rights with respect thereto, except that this limitation is applicable in the case of a bank or business organization acquiring such shares prior to March 28, 1972, the effective date of former s. 659.141(3)(a), only if the bank or business organization has the right, consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship, to divest itself of such voting rights and fails to exercise that right to divest within 1 year after that date;

(b) The shares are acquired in connection with the underwriting of securities by a business organization, in good faith and without any intent or purpose to evade the purposes of ss. 658.27-658.29, and if such shares are held only for such period of time, not exceeding 3 months from date of acquisition, as will permit the sale thereof on a reasonable basis; however, upon application by the underwriting business organization, and after notice and opportunity for hearing, if the office ~~department~~ finds that the sale of such shares within that period of time would create an unreasonable hardship on the underwriting business organization, that there is no intent or purpose to evade the purposes of ss. 658.27-658.29 by the continued ownership or control of such shares by such underwriting business organization, and that an extension of such period of time would not be detrimental to the public interest, the office ~~department~~ is authorized to extend, from time to time, for not more than 1 month at a time, the 3-month period, but the aggregate of such extensions shall not exceed 3 months;

(c) Control of voting rights of such shares is acquired in good faith, and without any purpose or intent to evade the purposes of ss. 658.27-658.29, in the course of participating in a proxy solicitation by a business organization formed in good faith, and without any purpose or intent to evade the purposes of ss. 658.27-658.29, for the sole purpose of participating in such proxy solicitation, and such control of voting rights terminates immediately upon the conclusion of the sole purpose for which such business organization was formed; or

(d) The ownership or control of such shares or assets is acquired in securing or collecting a debt previously contracted in good faith, unless the office ~~department~~, after notice and opportunity for hearing, finds that a purpose of any part of any transaction was an evasion of the purposes of ss. 658.27-658.29 and if the ownership or control of such shares or assets is held only for such reasonable period of time, not exceeding 2 years after the date of acquisition, as will permit the divestiture thereof on a reasonable basis. Upon application by the bank or business organization which acquired such ownership or control in accordance with the preceding provisions of this paragraph, and after notice and opportunity for hearing, if the office ~~department~~ finds that the bank or business organization has made reasonable and good faith efforts to divest itself of such ownership or control on a reasonable basis within the 2-year period but has been unable to do so, that immediate

divestiture of such ownership or control would create an unreasonable hardship on such bank or business organization, that continuation of such ownership or control involves no purpose or intent to evade the purposes of ss. 658.27-658.29, and that an extension of the 2-year period would not be detrimental to the public interest, the office ~~department~~ is authorized to extend, from time to time and for not more than 1 year at a time, the 2-year period, but the aggregate of all such extensions shall not exceed 3 years.

Section 1773. Subsections (1), (2), and (3) of section 658.28, Florida Statutes, are amended to read:

658.28 Acquisition of control of a bank or trust company.—

(1) In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in any state bank or state trust company, and thereby to change the control of that bank or trust company, each person or group of persons shall first make application to the office ~~department~~ for a certificate of approval of such proposed change of control of the bank or trust company. The application shall contain the name and address, and such other relevant information as the commission or office requires ~~department may require~~, including information relating to other and former addresses and the reputation, character, responsibility, and business affiliations, of the proposed new owner or each of the proposed new owners of the controlling interest. The office ~~department~~ shall issue a certificate of approval only after it has made an investigation and determined that the proposed new owner or owners of the interest are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company in a legal and proper manner and that the interests of the other stockholders, if any, and the depositors and creditors of the bank or trust company and the interests of the public generally will not be jeopardized by the proposed change in ownership, controlling interest, or management. No person who has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law shall be given a certificate of approval by the office ~~department~~.

(2) For the purposes of this section, the standards, criteria, and exceptions contained in s. 658.27(2), (3), (4), and (5) relating to control by a business organization of a bank or another business organization apply to the persons mentioned in this section and constitute the standards, criteria, and exceptions which determine whether any person or group of persons shall be deemed to be purchasing or acquiring, or to have purchased or acquired, directly or indirectly a "controlling interest" in a state bank or a state trust company; but the office ~~department~~ is not limited to those standards or criteria in determining whether any such person shall be deemed to be acting by or through one or more other persons.

(3) In any case in which a proposed purchase or acquisition of voting securities of a state bank or trust company would give rise to the presumption created under s. 658.27(2)(c), the person or group of persons who propose to purchase or acquire the voting securities shall first give written

notice of the proposal to the office ~~department~~. Such notice may present information that the proposed purchase or acquisition will not result in control. The office ~~department~~ shall afford the person seeking to rebut the presumption an opportunity to present views in writing or orally before its designated representatives at an informal conference. If the office ~~department~~ determines, pursuant to the informal conference, that the person or group of persons seeking to rebut the presumption exercises a controlling influence over the bank, an application for change of control must be filed pursuant to this section.

Section 1774. Section 658.285, Florida Statutes, is amended to read:

658.285 Acquisition or ownership of state banks by international banking corporations.—An international banking corporation may, with the approval of the office ~~department~~ pursuant to s. 658.28, acquire control over or organize a state bank organized under the laws of this state. For the purposes of this section, the word "bank" shall have the meaning given in s. 2(c) of the Bank Holding Company Act of 1956, 12 U.S.C. s. 1841(c).

Section 1775. Subsections (2), (4), (5), (6), (7), (9), and (10) of section 658.295, Florida Statutes, are amended to read:

658.295 Interstate banking.—

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Acquire," with respect to a company, means to:

1. Merge or consolidate with a bank holding company;

2. Assume direct or indirect ownership or control of:

a. More than 25 percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was not a bank holding company prior to such acquisition;

b. More than 5 percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was a bank holding company prior to such acquisition; or

c. All or substantially all of the assets of a bank holding company or bank, if the acquiring company was a bank holding company prior to such acquisition; or

3. Take any other action that results in the direct or indirect acquisition of control by a company of a bank holding company, if the acquiring company was a bank holding company prior to such acquisition.

(b) "Affiliate" has the meaning set forth in s. 2(k) of the Bank Holding Company Act.

(c) "Bank" means an institution as defined in s. 2(c) of the Bank Holding Company Act.

(d) "Bank holding company" has the meaning set forth in s. 2(a) of the Bank Holding Company Act, and unless the context requires otherwise, includes any Florida bank holding company, any out-of-state bank holding company, or any international banking company.

(e) "Banking office" means any bank, branch of a bank, or other office at which a bank accepts deposits, provided the term does not include any:

1. Unmanned automatic teller machine, point-of-sale terminal, or other similar unmanned electronic banking facility at which deposits may be accepted;

2. Office located outside the United States; or

3. Loan production office, representative office, or other office at which deposits are not accepted.

(f) "Bank Holding Company Act" means the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. ss. 1841 et seq.

(g) "Bank regulatory agency" means:

1. Any agency of another state with primary responsibility for chartering and regulating banks;

2. The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies; or

3. An agency of a country other than the United States with primary responsibility for chartering and regulating banks and bank holding companies in such country.

(h) "Branch" has the meaning set forth in s. 658.12.

(i) "Company" has the meaning set forth in s. 2(b) of the Bank Holding Company Act, and includes a bank holding company.

(j) "Control" has the meaning set forth in s. 2(a)(2) of the Bank Holding Company Act.

~~(k) "Department" means the Department of Banking and Finance.~~

(k)~~(l)~~ "Deposits" means all demand, time, and savings deposits of individuals, partnerships, corporations, the United States, and states and political subdivisions in the United States, as set forth in 12 U.S.C. s. 1813. However, the term "deposits" does not include deposits of banks or foreign governments or institutions or deposits held by foreign banking offices or corporations organized pursuant to s. 25 or s. 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. ss. 601-604a or 12 U.S.C. ss. 611-631. Pursuant to rules established by the commission ~~department~~, determinations of deposits shall be made by reference to the most recently available consolidated report of condition or similar reports filed by banks with state or federal regulatory agencies.

(l)~~(m)~~ "Depository institution" means any institution included for any purpose within the definitions of "insured depository institution" as set forth in 12 U.S.C. s. 1813(c)(2) and (3).

(m)~~(n)~~ "Florida bank" means a bank whose home state is this state.

(n)~~(o)~~ "Florida bank holding company" means a bank holding company that:

1. Had its principal place of business in this state on July 1, 1966, or the date on which it became a bank holding company, whichever is later.

2. Is not controlled by an out-of-state bank holding company.

(o)~~(p)~~ "Home state" means:

1. With respect to a state bank, the state by which the bank is chartered.

2. With respect to a national bank, the state in which the main office of the bank is located.

3. With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. s. 3103(c).

(p)~~(q)~~ "Home state regulator" means, with respect to an out-of-state bank holding company, the bank regulatory agency of the state in which such company maintains its principal place of business.

(q)~~(r)~~ "International banking corporation" means an entity as defined in s. 663.01(6).

(r)~~(s)~~ "State bank" means a bank chartered under the laws of this state.

(s)~~(t)~~ "Principal place of business," of a bank holding company, means the state in which the total deposits of its subsidiaries were the greatest on July 1, 1966, or on the date on which the company became a bank holding company, whichever is later.

(t)~~(u)~~ "Out-of-state bank holding company" means a bank holding company that has its principal place of business in a state other than this state or the District of Columbia and, unless the context requires otherwise, includes an international banking corporation.

(u)~~(v)~~ "State" means any state, territory, or other possession of the United States, including the District of Columbia.

(v)~~(w)~~ "Subsidiary" has the meaning set forth in s. 2(d) of the Bank Holding Company Act.

(4) APPLICABLE LAW.—Any out-of-state bank holding company that controls a Florida bank or a Florida bank holding company is subject to the laws of this state, and the rules of the commission ~~department~~, relating to the acquisition, ownership, and operation of banks and bank holding companies located in this state which are applicable to Florida bank holding companies.

(5) AUTHORITY TO ENTER INTO COOPERATIVE AGREEMENTS; FEES.—In order to carry out the purposes of this section, the office ~~department~~ may:

(a) Enter into cooperative, coordinating, or information-sharing agreements with other bank regulatory agencies or any organization affiliated with or representing one or more bank regulatory agencies to facilitate the regulation of banks and bank holding companies doing business in this state.

(b) Accept reports of examinations or investigations or other records from other bank regulatory agencies having concurrent jurisdiction over a state bank or a bank holding company that controls a state bank in lieu of conducting its own examinations or investigations.

(c) Take any action jointly with other bank regulatory agencies having concurrent jurisdiction over banks and bank holding companies doing business in this state, or take such action independently, to carry out its responsibilities.

(d) Assess supervisory fees that shall be payable by Florida banks and Florida bank holding companies in connection with the office's ~~department's~~ performance of its duties. Such fees may be shared with other bank regulatory agencies or any organizations affiliated with or representing one or more bank regulatory agencies in accordance with agreements between them and the office ~~department~~.

(6) PERMITTED ACQUISITIONS.—

(a) Except as otherwise expressly permitted by s. 1841 of the Bank Holding Company Act, no bank holding company may acquire a Florida bank holding company or a Florida bank without the prior approval of the office ~~department~~.

(b) Notwithstanding paragraph (a), prior office ~~department~~ approval is not required and the standards for approval in subsection (8) shall be waived by the office ~~department~~ if the acquisition is made:

1. In a transaction arranged by the office ~~department~~ or another bank regulatory agency to prevent insolvency or the appointment of a liquidator or receiver of the acquired bank; or

2. In a transaction in which a bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company.

(c) The prohibition in paragraph (a) does not apply if the acquisition is made solely for the purpose of facilitating an acquisition of a successor institution as defined in s. 658.40(4).

(d) Notwithstanding paragraph (a), to the extent prohibited or preempted by federal law, or to the extent the determination of compliance with the conditions imposed in subsection (8) duplicates a determination made

or to be made by the responsible federal regulatory agency as part of the federal approval process, prior office ~~department~~ approval of any application filed by an out-of-state bank or out-of-state bank holding company to acquire a Florida bank or a Florida bank holding company is not required when such Florida bank or all bank subsidiaries of such Florida bank holding company are national banks.

(7) REQUIRED APPLICATION.—

(a) A company that proposes to make an acquisition under this section shall:

1. File with the office ~~department~~ a copy of the application that such company has filed with the responsible federal bank regulatory agency, together with such additional information as the commission or office requires ~~department may prescribe~~.

2. Pay to the office ~~department~~ the required application fee, pursuant to s. 658.73.

(b) To the extent consistent with the effective discharge of the office's ~~department's~~ responsibilities, the forms established under this section for application and reporting shall conform to those established by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act.

(c) In connection with an application received under this section, the office ~~department~~ shall:

1. Require that prior notice of the application be published once in a daily newspaper of general circulation in the county in which the bank to be acquired has its principal place of business or that a notice of intent have been mailed via certified mail to each person owning stock in the bank to be acquired and provide an opportunity for public comment.

2. Make the application available for public inspection to the extent required or permitted under applicable state or federal law.

(d) If the applicant is an out-of-state bank holding company that is not incorporated under the laws of this state, it shall submit with the application proof that the applicant has complied with applicable requirements of chapter 607, together with the filing fee due the Department of State under s. 607.0122.

(9) REPORTS; EXAMINATIONS.—To the extent required ~~prescribed~~ by the commission or office ~~department~~, each bank holding company that directly or indirectly controls a state bank shall submit to the office ~~department~~ financial reports filed by such company with any bank regulatory agency concerning state banks located in this state within 15 days after the filing thereof with such agency. However, any report prohibited by applicable federal or state law is not required to be submitted to the office ~~department~~.

(10) PENALTIES.—The office ~~department~~ may enforce the provisions of this section pursuant to the financial institutions' codes. The office ~~department~~ shall promptly give notice to the home state regulator of any enforcement action initiated against an out-of-state bank holding company and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action. In the case of an out-of-state holding company, the office ~~department~~ shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

Section 1776. Paragraph (g) of subsection (3), and subsections (4), (6), (8), (9), (11), (12), and (13) of section 658.2953, Florida Statutes, are amended to read:

658.2953 Interstate branching.—

(3) LEGISLATIVE INTENT.—The Legislature finds it is in the interest of the citizens of this state, and declares it to be the intent of this section, to:

(g) Provide the commission and office ~~department~~ sufficient powers and responsibilities to carry out such purposes.

(4) DEFINITIONS.—As used in this section, unless a different meaning is required by the context:

(a) "Bank" has the meaning set forth in 12 U.S.C. s. 1813(h), provided the term "bank" does not include any "foreign bank" as defined in 12 U.S.C. s. 3101(7), except such term includes any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(b) "Bank holding company" has the meaning set forth in 12 U.S.C. s. 1841(a)(1).

(c) "Bank regulatory agency" means:

1. Any agency of another state with primary responsibility for chartering and regulating banks.

2. The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to such agencies.

(d) "Branch" has the meaning set forth in s. 658.12.

~~(e) "Department" means the Department of Banking and Finance.~~

(e)~~(f)~~ "De novo branch" means a branch of a bank located in a host state which:

1. Is originally established by the bank as a branch.

2. Does not become a branch of the bank as a result of:

a. The acquisition of another bank or a branch of another bank; or

b. The merger, consolidation, or conversion involving any such bank or branch.

(f)~~(g)~~ "Control" shall be construed consistently with the provisions of 12 U.S.C. s. 1841(a)(2).

(g)~~(h)~~ "Failing financial entity" means an out-of-state state bank that has been determined by its home state regulator or the appropriate federal regulatory agency to be imminently insolvent or to require immediate action to prevent its probable failure.

(h)~~(i)~~ "Home state" means:

1. With respect to a state bank, the state by which the bank is chartered.

2. With respect to a national bank, the state in which the main office of the bank is located.

3. With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. s. 3103(c).

(i)~~(j)~~ "Home state regulator" means, with respect to an out-of-state state bank, the bank's regulatory agency of the state in which such bank is chartered.

(j)~~(k)~~ "Host state" means a state, other than the home state of a bank, in which the bank maintains or seeks to establish and maintain a branch.

(k)~~(l)~~ "Insured depository institution" has the meaning set forth in 12 U.S.C. s. 1813(c)(2) and (3).

(l)~~(m)~~ "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank.

(m)~~(n)~~ "Out-of-state bank" means a bank whose home state is a state other than this state.

(n)~~(o)~~ "Out-of-state state bank" means a bank chartered under the laws of any state other than this state.

(o)~~(p)~~ "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(p)~~(q)~~ "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana ~~Marian~~ Islands.

(q)~~(r)~~ "Florida bank" means a bank whose home state is this state.

(r)~~(s)~~ "State bank" means a bank chartered under the laws of this state.

(6) AUTHORITY OF STATE BANKS TO ESTABLISH INTERSTATE BRANCHES BY MERGER.~~—Beginning May 31, 1997,~~ With the prior written approval of the office ~~department~~, a state bank may establish, maintain, and operate one or more branches in a state other than this state pursuant to an interstate merger transaction in which the state bank is the resulting bank. No later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank regulatory agency, the applicant state bank shall file an application on a form prescribed by the commission ~~department~~ accompanied by the required fee pursuant to s. 658.73. The applicant shall also comply with the provisions of ss. 658.40-658.45.

(8) NOTICE AND FILING REQUIREMENTS.—Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Florida bank shall notify the office ~~department~~ of the proposed merger within 15 days after the date on which it files an application for an interstate merger transaction with the appropriate federal regulatory agency.

(9) EXAMINATIONS; PERIODIC REPORTS; COOPERATIVE AGREEMENTS; ASSESSMENT OF FEES.—

(a) The office ~~department~~ may examine any Florida branch of an out-of-state state bank which the office ~~department~~ deems necessary for the purpose of determining whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices.

(b) The office ~~department~~ may enter into cooperative, coordinating or information-sharing agreements with other bank regulatory agencies or any organization affiliated with or representing one or more bank regulatory agencies to facilitate the regulation of out-of-state state branches doing business in this state.

(c) The office ~~department~~ may accept reports of examinations or investigations, or other records from other regulatory agencies having concurrent jurisdiction over a state bank or a bank holding company that controls out-of-state state banks that operate branches in this state in lieu of conducting its own examinations or investigations.

(d) The office ~~department~~ may assess supervisory and examination fees that shall be payable by state banks and out-of-state state bank holding companies doing business in this state in connection with the office's ~~department's~~ performance of its duties under this section and as prescribed by the commission ~~department~~. Such fees may be shared with other bank regulatory agencies or any organizations affiliated with or representing one or more bank regulatory agencies in accordance with agreements between them and the office ~~department~~.

(11) ENFORCEMENT.—

(a) If the office ~~department~~ determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of law of this state, or that such branch is being operated in an unsafe and unsound manner, the office ~~department~~ may take all such enforcement actions as it would be empowered to take if the branch were a state bank, provided that the office ~~department~~ shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

(b) The office ~~department~~ may take any action jointly with other regulatory agencies having concurrent jurisdiction over out-of-state banks and bank holding companies that operate branches in this state, or take such action independently, to carry out its responsibilities.

(12) NOTICE OF SUBSEQUENT MERGER.—

(a) Each out-of-state state bank that has established and maintains a branch in this state pursuant to this section shall give at least 30 days' prior written notice to the office ~~department~~ of any merger, consolidation, or other transaction that would cause a change of control pursuant to home state or federal law with respect to such bank or any bank holding company that controls such bank.

(b) Notwithstanding any other provisions of the financial institutions' codes or of chapter 120, in the case of a failing financial entity, the office ~~department~~ shall have the power, with the concurrence of the appropriate regulatory agency, to issue an emergency order authorizing:

1. The merger or interstate merger transaction of any such failing financial entity with a state bank or bank holding company that controls a state bank;

2. Any bank to acquire assets and assume liabilities of the Florida branches of any such failing financial entity;

3. The conversion of any such failing financial entity into a state bank or trust company;

4. The chartering of a new state bank to acquire the Florida branches of any such failing financial entity; or

5. The chartering of a new state trust company to acquire assets and assume liabilities and rights, powers, and responsibilities as fiduciary of such failing financial entity.

(13) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(a) With the prior approval of the office ~~department~~, any state bank may establish and maintain a de novo branch or acquire a branch in a state other than this state.

(b) A state bank desiring to establish and maintain a branch in another state pursuant to s. 658.26 shall pay the branch application fee set forth in s. 658.73. In acting on the application, the office ~~department~~ shall consider the views of the appropriate bank regulatory agencies.

Section 1777. Paragraph (d) of subsection (1) and subsection (4) of section 658.296, Florida Statutes, are amended to read:

658.296 Control of deposit-taking institutions.—

(1) As used in this section, unless the context clearly requires otherwise:

(d) "Control" has the meaning set forth in s. 2(a)(2) and (3) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. s. 1841(a)(2) and (3), except that the reference therein to "the Board" shall be deemed to refer to the office ~~department~~.

(4) The office ~~department~~ shall have the power to enforce the prohibitions of this section by seeking to enjoin any violation, by issuing cease and desist orders, by imposing administrative fines, or by any other remedies that are provided by law.

Section 1778. Section 658.32, Florida Statutes, is amended to read:

658.32 Annual meetings.—Unless otherwise approved by the office ~~department~~, the annual meeting of stockholders of a state bank or trust company shall be held on such day in the first 4 months of each year as is specified therefor in the articles of incorporation or in the bylaws of the corporation; however, when the day fixed in the articles of incorporation or in the bylaws for the regular annual meeting of the stockholders falls on a legal holiday, the annual meeting of stockholders shall be held on the next following day which is not a legal holiday.

Section 1779. Subsections (3), (4), and (5) of section 658.33, Florida Statutes, are amended to read:

658.33 Directors, number, qualifications; officers.—

(3) Within 30 days following the annual meeting or any other meeting at which directors or officers are elected, the bank or trust company must submit to the office ~~department~~ the names and residence addresses of those persons on a form adopted by the commission and provided by the office ~~department~~.

(4) Each director, upon assuming office, must acknowledge that he or she is familiar with his or her responsibilities as a director and that he or she will diligently and honestly administer the affairs of the bank or trust company and will not knowingly violate, or willfully permit to be violated, any of the provisions of the financial institutions codes or pertinent rules of the commission ~~department~~. The signed copy of such oath must be filed with the office ~~department~~ within 30 days after election.

(5) The president or chief executive officer of a bank or trust company must have had at least 1 year of direct experience as an executive officer,

director, or regulator of a financial institution within the last 3 years. This requirement may be waived by the office ~~department~~ after considering the overall experience and expertise of the proposed officer.

Section 1780. Subsections (3) and (4) of section 658.34, Florida Statutes, are amended to read:

658.34 Shares of capital stock.—

(3) With the approval of the office ~~department~~, a bank or trust company may issue preferred stock of one or more classes in an amount and with a par value as approved by the office ~~department~~.

(4) With the approval of the office ~~department~~, a bank or trust company may issue less than all the number of shares of any of its capital stock authorized by its articles of incorporation. Such authorized but unissued shares may be issued only for the following purposes:

(a) To provide for stock options as provided in s. 658.35.

(b) To declare or pay a stock dividend; however, any such stock dividend must comply with the provisions of this section and s. 658.37.

(c) To increase the capital of the bank or trust company, with the approval of the office ~~department~~.

Section 1781. Subsection (1) of section 658.35, Florida Statutes, is amended to read:

658.35 Share options; warrants.—

(1) After obtaining the approval of the majority of the board of directors, the majority of the holders of common stock of the bank, and the office ~~department~~ and after complying with the provisions of s. 607.0624, any bank or trust company may, for the purpose of providing share options for or issuing warrants to one or more of its directors, officers, or employees, hold authorized but unissued, or purchase or otherwise acquire and hold, shares of its own capital stock in an amount not to exceed 20 percent of the total number of shares outstanding.

Section 1782. Section 658.36, Florida Statutes, is amended to read:

658.36 Changes in capital.—

(1) No state bank or trust company shall reduce its outstanding capital stock without first obtaining the approval of the office ~~department~~, and such approval shall be withheld if the reduction will cause the outstanding capital stock to be less than the minimum required pursuant to the financial institutions codes.

(2) Any state bank or trust company may, with the approval of the office ~~department~~, provide for an increase in its capital stock.

Section 1783. Section 658.37, Florida Statutes, is amended to read:

658.37 Dividends and surplus.—The directors of any bank or trust company, after charging off bad debts, depreciation, and other worthless assets if any, and making provision for reasonably anticipated future losses on loans and other assets, may quarterly, semiannually, or annually declare a dividend of so much of the aggregate of the net profits of that period combined with its retained net profits of the preceding 2 years as they shall judge expedient, and, with the approval of the office ~~department~~, any bank or trust company may declare a dividend from retained net profits which accrued prior to the preceding 2 years, but each bank or trust company shall, before the declaration of a dividend on its common stock, carry 20 percent of its net profits for such preceding period as is covered by the dividend to its surplus fund, until the same shall at least equal the amount of its common and preferred stock then issued and outstanding. No bank or trust company shall declare any dividend at any time at which its net income from the current year combined with the retained net income from the preceding 2 years is a loss or which would cause the capital accounts of the bank or trust company to fall below the minimum amount required by law, regulation, order, or any written agreement with the office ~~department~~ or a state or federal regulatory agency. A bank or trust company may, however, split up or divide the issued shares of capital stock into a greater number of shares without increasing or decreasing the capital accounts of the bank or trust company, and such shall not be construed to be a dividend within the meaning of this section.

Section 1784. Section 658.39, Florida Statutes, is amended to read:

658.39 Stockholders; examination of records.—No bank, trust company, or financial institution-affiliated party shall permit any stockholder, other than a qualified director, officer, or employee thereof, to have access to, or to examine or inspect, any of the books or records of such bank or trust company other than its general statement of condition of its general assets and liabilities, the quarterly reports of condition and quarterly reports of income required to be submitted to the office ~~department~~ pursuant to s. 655.045, and a list of shareholders as provided in s. 655.057.

Section 1785. Subsection (4) of section 658.40, Florida Statutes, is amended to read:

658.40 Definitions for merger and consolidation.—As used in the provisions of this code relating to the merger and consolidation of banks and trust companies, unless the context requires otherwise:

(4) "Successor institution" means a banking corporation or a trust company organized under the laws of this state to which the office ~~department~~ has not issued a certificate of authorization, as provided in s. 658.25, to conduct a banking business or trust business, the sole purpose of the organization of which is to facilitate a plan of merger, reorganization, or consolidation.

Section 1786. Subsection (1) of section 658.41, Florida Statutes, is amended to read:

658.41 Merger; resulting state or national bank.—

(1) Upon filing of an application with the office ~~department~~ by the constituent banks or trust companies, and upon approval by the office ~~department~~, banks and state trust companies may be merged with a resulting state bank or state trust company, as prescribed in this code, except that the action by a constituent national bank shall be taken in the manner prescribed by, and shall be subject to, any limitations or requirements imposed by any law of the United States applicable thereto, which shall also govern the rights of its dissenting shareholders; and the terms and provisions of the plan of merger and merger agreement required by s. 658.42, as they relate to a constituent national bank, shall conform with such federal laws. The application shall be accompanied by a plan of merger and merger agreement as provided in s. 658.42.

Section 1787. Paragraphs (d) and (f) of subsection (1) and subsection (2) of section 658.42, Florida Statutes, are amended to read:

658.42 Plan of merger and merger agreement.—

(1) If the resulting bank or trust company will be a state bank or a state trust company, the constituent banks or trust companies shall adopt a plan of merger and merger agreement stating the method, terms, and conditions of the merger, including the rights of the stockholders of each constituent bank or trust company and all agreements concerning the merger. The board of directors of each constituent bank or trust company shall, by a majority of the entire board, approve the plan of merger and merger agreement which shall contain:

(d) A statement that the plan and agreement are subject to approval by the office ~~department~~ and by the stockholders of each constituent bank or trust company.

(f) Such additional provisions not contrary to law as may be agreed upon by the constituent banks and trust companies and such other provisions as the office ~~department~~ requires to enable it to discharge its duties with respect to the merger.

(2) In connection with the organization of a successor institution, a showing and finding of public convenience and advantage for the organization of a new state bank or state trust company is not required; and the commission ~~department~~ shall adopt special rules relating to the formation, organization, approval, and chartering of successor institutions which omit or waive such of the provisions of ss. 658.16-658.26 as are not essential to safeguard the public interest and the safety and soundness of state banks and state trust companies, but no certificate of authorization to conduct a banking business or trust business shall be issued to a successor institution unless a certificate of merger, as provided in s. 658.45, is issued pursuant to the plan of merger and merger agreement. However, nothing in this subsection shall be construed as waiving or otherwise impairing the public-interest requirement in s. 658.43(3)(d).

Section 1788. Section 658.43, Florida Statutes, is amended to read:

658.43 Approval by office ~~department~~; valuation of assets; emergency action.—

(1) After approval by the board of directors of each constituent bank or trust company, the plan of merger and merger agreement shall be submitted to the office ~~department~~ for approval, together with a certified copy of the authorizing resolutions of the board of directors of each constituent state bank or state trust company showing approval by a majority of the entire board of directors of each such state bank or state trust company, and evidence of proper action by the board of directors of any constituent national bank.

(2) Without approval by the office ~~department~~, no asset shall be carried on the books of the resulting state bank or state trust company at a valuation higher than that on the books of the constituent bank or trust company at the time of the last examination by a state or national bank or trust company examiner before the effective date of the merger.

(3) The office ~~department~~ shall approve the plan of merger and merger agreement if it appears that:

(a) The resulting state bank or state trust company meets all the requirements of state law as to the formation of a new state bank or state trust company, except that this provision shall not apply to the establishment of branches by merger as provided in s. 658.26.

(b) The agreement provides an adequate capital structure, including surplus, of the resulting state bank or state trust company in relation to its activities which are to continue or are to be undertaken, and also in relation to its deposit liabilities in the case of a resulting state bank.

(c) The valuation is fair.

(d) The merger is not contrary to the public interest.

If the office ~~department~~ disapproves a plan of merger or merger agreement, it shall state its objections and, the provisions of chapter 120 notwithstanding, give an opportunity to the constituent banks, trust companies, or banks and trust companies to amend the plan of merger and merger agreement to obviate such objections.

(4) If the resulting state bank is not to have trust powers, the office ~~department~~ shall not approve a merger until adequate provision has been made for successors to fiduciary positions held by any constituent trust company or any constituent bank.

(5) Approval by the office ~~department~~, by final order or otherwise, of a plan of merger or merger agreement shall be deemed subject to approval of the plan of merger and merger agreement by the stockholders of each constituent bank or trust company as provided in s. 658.44(1) and shall also be deemed subject to approval of the merger and the plan of merger and merger

agreement by each appropriate federal regulatory agency. Unless all such approvals have been obtained and proper evidence thereof submitted to the office ~~department~~ within 6 months after the approval by the office ~~department~~, the approval by the office ~~department~~ of the plan of merger and merger agreement shall be deemed to be revoked and terminated; however, the office ~~department~~ on its own motion, or at the request of the constituent banks or trust companies for good cause shown, may extend the time for a period not exceeding 6 months.

(6) No merger with a resulting state bank or trust company shall take place or be effective without the issuance by the office ~~department~~ of a certificate of merger.

(7) Notwithstanding any other provisions of the financial institutions codes or of chapter 120, if the office ~~department~~ or the appropriate federal regulatory agency finds that immediate action is necessary in order to prevent the probable failure of one or more banks, associations, or trust companies, which in this subsection may be referred to as a "failing financial entity," the office ~~department~~ shall have the power, with the concurrence of the appropriate federal regulatory agency in the case of any bank or association the deposits of which are insured by the Federal Deposit Insurance Corporation, to issue an emergency order authorizing:

(a) The merger of any such failing financial entity with a state bank;

(b) The merger of any such failing financial entity with a state trust company;

(c) Any state bank to acquire assets and assume liabilities of any such failing financial entity, including all rights, powers, and responsibilities as fiduciary in instances where the failing financial institution is actively engaged in the exercise of trust powers;

(d) Any state trust company to acquire assets and assume liabilities of any such failing trust company and rights, powers, and responsibilities as fiduciary of such failing trust company;

(e) The conversion of any such failing financial entity into a state bank or trust company;

(f) The chartering of a new state bank or state association to acquire assets and assume liabilities of any such failing financial entity and to assume rights, powers, and responsibilities as fiduciary in cases where such failing financial entity is engaged in the exercise of trust powers; or

(g) The chartering of a new state trust company to acquire assets and assume liabilities and rights, powers, and responsibilities as fiduciary of such failing trust company.

Any such finding by the office ~~department~~ shall be based upon reports furnished to it by a state bank, association, or trust company examiner or by a federal bank or association examiner or upon other evidence from which

it is reasonable to conclude that any such bank, association, or trust company is insolvent or is threatened with imminent insolvency. The office ~~department~~ may disallow illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section. The stockholders of a failing bank, association, or trust company that is acquired by another bank or trust company pursuant to this subsection shall be entitled to the same procedural rights and to compensation for the remaining value of their shares as is provided for dissenters in s. 658.44, except that they shall have no right to vote against the transaction. Any transaction authorized by this subsection may be accomplished through the organization of a successor institution.

Section 1789. Subsections (1), (5), and (9) of section 658.44, Florida Statutes, are amended to read:

658.44 Approval by stockholders; rights of dissenters; preemptive rights.—

(1) The office ~~department~~ shall not issue a certificate of merger to a resulting state bank or trust company unless the plan of merger and merger agreement, as adopted by a majority of the entire board of directors of each constituent bank or trust company, and as approved by each appropriate federal regulatory agency and by the office ~~department~~, has been approved:

(a) By the stockholders of each constituent national bank as provided by, and in accordance with the procedures required by, the laws of the United States applicable thereto, and

(b) After notice as hereinafter provided, by the affirmative vote or written consent of the holders of at least a majority of the shares entitled to vote thereon of each constituent state bank or state trust company, unless any class of shares of any constituent state bank or state trust company is entitled to vote thereon as a class, in which event as to such constituent state bank or state trust company the plan of merger and merger agreement shall be approved by the stockholders upon receiving the affirmative vote or written consent of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Such vote of stockholders of a constituent state bank or state trust company shall be at an annual or special meeting of stockholders or by written consent of the stockholders without a meeting as provided in s. 607.0704.

Approval by the stockholders of a constituent bank or trust company of a plan of merger and merger agreement shall constitute the adoption by the stockholders of the articles of incorporation of the resulting state bank or state trust company as set forth in the plan of merger and merger agreement.

(5) The value of dissenting shares of each constituent state bank or state trust company, the owners of which have not accepted an offer for such shares made pursuant to subsection (3), shall be determined as of the effective date of the merger by three appraisers, one to be selected by the owners

of at least two-thirds of such dissenting shares, one to be selected by the board of directors of the resulting state bank, and the third to be selected by the two so chosen. The value agreed upon by any two of the appraisers shall control and be final and binding on all parties. If, within 90 days from the effective date of the merger, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such dissenting shares, the office ~~department~~ shall cause an appraisal of such dissenting shares to be made which will be final and binding on all parties. The expenses of appraisal shall be paid by the resulting state bank or trust company.

(9) After approval of the plan of merger and merger agreement by the stockholders as provided in subsection (1), there shall be filed with the office ~~department~~, within 30 days after the time limit in s. 658.43(5), a fully executed counterpart of the plan of merger and merger agreement as so approved if it differs in any respect from any fully executed counterpart thereof theretofore filed with the office ~~department~~, and copies of the resolutions approving the same by the stockholders of each constituent bank or trust company, certified by the president, or chief executive officer if other than the president, and the cashier or corporate secretary of each constituent bank or trust company, respectively, with the corporate seal impressed thereon.

Section 1790. Subsections (1) and (4) of section 658.45, Florida Statutes, are amended to read:

658.45 Certificate of merger and effective date; effect on charters and powers.—

(1) Promptly upon compliance with the provisions of s. 658.44(9), the office ~~department~~ shall issue to the resulting bank a certificate of merger setting forth the name of each constituent bank and trust company, the name of the resulting bank or trust company, and the effective date of the merger which, unless the office ~~department~~ for good cause determines otherwise, shall be the date requested by the resulting bank if such request was made at the time of compliance with the requirements of s. 658.44(9), but not later than 3 months after the date of such compliance. On the effective date of the merger, the charters and franchises of the constituent banks and trust companies, other than the resulting bank or trust company, shall be deemed terminated and surrendered. The certificate of merger shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places and may be recorded in any office for the recording of deeds.

(4)(a) If the resulting state bank is to have trust powers and if one or more of the parties to the merger is a state trust company or a bank having an existing trust department operating pursuant to trust powers theretofore granted by the office ~~department~~, in the case of a constituent state bank, or by the appropriate federal regulatory authority, in the case of a constituent national bank, such trust powers shall pass to the resulting state bank; and it shall have and may exercise trust powers in the same manner and to the same extent as the constituent banks or trust companies to which such trust

powers were originally issued, and no application to have or to continue to have or exercise trust powers shall be required. However, if the name of the resulting state bank differs from that of a constituent state trust company or a constituent bank having trust powers, the office ~~department~~ shall issue a certificate to the resulting state bank showing its right to exercise the trust powers theretofore granted to the constituent banks or trust companies. All fiduciary relationships and capacities of all the constituent banks and trust companies shall, by operation of law, pass to and be assumed by the resulting bank having trust powers, in the same manner and to the same extent as such fiduciary capacities and relationships were held by any constituent bank or trust company.

(b) Upon the merger of two or more state trust companies, the resulting state trust company shall continue to have and exercise the trust powers of the constituent trust companies, and no application to have or to continue to exercise trust powers shall be required. However, if the name of the resulting state trust company differs from that of any of the constituent trust companies, the office ~~department~~ shall issue a certificate to the resulting state trust company showing its right to exercise the trust powers theretofore granted to the constituent trust companies. All fiduciary relationships and capacities of the constituent state trust companies shall pass to and be assumed by the resulting state trust company by operation of law.

Section 1791. Paragraph (b) of subsection (1), paragraph (e) of subsection (5), and subsection (9) of section 658.48, Florida Statutes, are amended to read:

658.48 Loans.—A state bank may make loans and extensions of credit, with or without security, subject to the following limitations and provisions:

(1) LOANS; GENERAL LIMITATIONS.—

(b) The commission ~~department~~ may provide by rule for securities margin requirements.

(5) SPECIAL PROVISIONS.—

(e) Loans based upon the security of real estate mortgages shall be documented as first liens, except that liens other than first liens may be taken:

1. To protect a loan previously made in good faith;

2. To further secure a loan otherwise amply and entirely secured;

3. As additional security for Federal Housing Administration Title 1 loans or loans made with participation or guaranty by the Small Business Administration;

4. To secure a loan not in excess of 15 percent of the capital accounts of the bank; or

5. As provided by rules of the commission ~~department~~.

(9) When a bank's capital has been diminished by losses so that its ability to honor legally binding written loan commitments is impaired, the office ~~department~~ may approve limited expansion of the lending limitations set forth in this section.

Section 1792. Subsection (2) and paragraph (i) of subsection (3) of section 658.53, Florida Statutes, are amended to read:

658.53 Borrowing; limits of indebtedness.—

(2) A state bank may at any time, pursuant to action taken by its board of directors, and after obtaining the written approval of the office ~~department~~ and the approval of stockholders holding not less than two-thirds of the outstanding stock of the bank entitled to vote, evidenced either in a writing signed by the stockholders or by vote at a legally called and held meeting of the stockholders, issue and sell convertible and nonconvertible capital notes and convertible and nonconvertible capital debentures having a final maturity of not more than 25 years from the date of issue, in such amounts and under such terms and conditions as shall be approved by the office ~~department~~. If deemed necessary by the office ~~department~~, reasonable provisions for the amortization of the principal amount thereof may be required. The principal amount of the capital notes and capital debentures is subject to the limitations imposed by this chapter on indebtedness of state banks and trust companies. Capital notes and capital debentures issued pursuant to the provisions of this subsection, and the claims of holders thereof, shall be subordinate to the claims of depositors and all other creditors of the issuing state bank, regardless of whether the claims of, or the liability of the issuing bank to, the depositors arose before or after the issuance of such capital notes or debentures, but shall be superior to the claims of shareholders for dividends, reserve profits, or other claims on account of shares of capital stock held by them. The holders of the capital notes and the holders of the capital debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the issuing state bank and shall not be liable for assessments.

(3) No state bank or trust company shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its unimpaired capital stock plus 50 percent of the amount of its unimpaired surplus fund and unimpaired undivided profits fund, except on account of demands of the nature following:

(i) Liabilities incurred for moneys borrowed from a bank when such borrowing is made with the express written approval of the office ~~department~~.

Section 1793. Subsections (6), (7), and (8), paragraph (c) of subsection (9), paragraph (a) of subsection (10), and subsection (11) of section 658.67, Florida Statutes, are amended to read:

658.67 Investment powers and limitations.—A bank may invest its funds, and a trust company may invest its corporate funds, subject to the following definitions, restrictions, and limitations:

(6) INVESTMENTS IN CORPORATIONS.—Up to an aggregate of 10 percent of the total assets of a bank may be invested in the stock, obligations, or other securities of subsidiary corporations or other corporations or entities, except that during the first 3 years of existence of a bank, such investments are limited to 5 percent of the total assets. Any bank whose aggregate investment on June 30, 1992, exceeds the limitation in this subsection has 5 years within which to achieve compliance; additional time may be approved by the office ~~department~~ if the office ~~department~~ finds that compliance with this subsection will result in more than a minimal loss to the bank. The commission ~~department~~ may, by rule, further limit any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice.

(7) INVESTMENTS IN REAL ESTATE AND EQUIPMENT.—A bank or trust company may invest in real estate and equipment to the extent hereinafter defined:

(a)1. Up to 60 percent of the capital accounts of the bank or trust company may be invested in the direct ownership of, or in leasehold interests in, land and buildings utilized or to be utilized by the bank or trust company in the transaction of its business. This limitation applies to assets subject to a lease agreement which is required to be capitalized under criteria issued by the Financial Accounting Standards Board. In lieu of such investment in real estate, with the prior written approval of the office ~~department~~, up to 60 percent of the capital accounts of the bank or trust company may be invested in the stock of a corporation which owns the land and buildings within which the business of the bank or trust company is or will be transacted.

2. The real estate investment limitations provided by this subsection may not be exceeded except with the prior written approval of the office ~~department~~.

(b) A bank or trust company may own or lease furniture, fixtures, machinery, and equipment such as may be necessary to the transaction of its business.

(8) INVESTMENTS IN PERSONAL PROPERTY.—A bank or trust company may own or lease personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. In addition, a bank or trust company may purchase leases as provided by rules of the commission ~~department~~.

(9) ACQUISITIONS OF PROPERTY AS SECURITY.—A bank or trust company may acquire property of any kind to secure, protect, or satisfy a loan or investment previously made in good faith, and such property shall be entered on the books of the bank or trust company and held and disposed of subject to the following conditions and limitations:

(c) Unless an extension of time is approved in writing by the office ~~department~~, real estate shall be sold or charged off within 5 years of the date

of acquisition, and personal property shall be sold or charged off within 6 months of the date of acquisition.

(10) SPECIAL PROVISIONS.—

(a) None of the bonds or other obligations described in this section shall be eligible for investment in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized rating service or any comparable rating as determined by the office ~~department~~. Bonds or other obligations which are unrated shall not be eligible for investment unless otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing bank or trust company.

(11) OTHER INVESTMENTS; SUBJECT TO ~~DEPARTMENTAL~~ APPROVAL.—A bank or trust company may make such other investments as the commission ~~department~~ approves by rule.

Section 1794. Section 658.68, Florida Statutes, is amended to read:

658.68 Liquidity.—

(1) A state bank must maintain a daily liquidity position equal to at least 15 percent of its total transaction accounts and 8 percent of its total nontransaction accounts, less those deposits of public funds for which security has been pledged as provided by law. Bank assets eligible to meet the liquidity requirement are cash on hand, demand deposits due from correspondent banks, and other investments and short-term marketable securities as determined by rule of the commission ~~department~~.

(2) Whenever a state bank fails to demonstrate compliance with subsection (1), the bank shall not further diminish its liquidity by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor by paying any dividends of its profits until compliance with the liquidity requirement of either has been met. The office ~~department~~ may notify any bank whose liquidity is below the amount required to be maintained to make good such liquidity, and if the bank fails within 30 days thereafter to achieve its liquidity requirement, the office ~~department~~ may determine the bank insolvent and may appoint a liquidator to wind up the business as provided in ss. 658.79-658.96.

Section 1795. Section 658.73, Florida Statutes, is amended to read:

658.73 Fees and assessments.—

(1) Each state bank and state trust company shall pay to the office ~~department~~ examination fees and assessments as follows:

(a) A semiannual fee of $2,500; and

(b) A semiannual assessment, each in such amount as may be determined by the commission ~~department~~, by rule, but not exceeding 15 cents

for each $1,000 of total assets as shown on the statement of condition of the bank or trust company as of the last business day in June and the last business day in December in each year. In its determination, the commission ~~department~~ may consider examination fees and application fees received from banks and trust companies in setting the semiannual assessment for purposes of meeting the cost of regulation of banks and trust companies subject to this chapter.

(2) Applications filed with the office ~~department~~ shall be accompanied by payment of the following nonrefundable fees:

(a) Fifteen thousand dollars for each application for authority to organize a new state bank or state trust company.

(b) Two thousand five hundred dollars for each application by an existing bank or association for trust powers.

(c) Seven thousand five hundred dollars for each application for authority to acquire a controlling interest in a state bank or state trust company; however, if more than one bank or trust company is being acquired in any such application, the fee shall be increased by $3,500 for each additional bank or trust company. However, in no event shall the fee exceed $15,000.

(d) Seven thousand five hundred dollars for each application for conversion of a national bank to a state bank.

(e) One thousand five hundred dollars for each application to establish a branch by any other state bank or state trust company that does not qualify for the branch notification process.

(f) One thousand five hundred dollars for each application for authority to establish a trust service office of a state trust company or of a trust department of a state bank or association, and a like amount for each application by a bank or association with trust powers which is not a state bank or state association for authority to establish a trust service office at a state bank, state association, or state credit union.

(g) Seven thousand five hundred dollars for each application for a merger or consolidation; however, if three or more banks or trust companies are involved in any such application, the fee shall be $3,500 for each involved institution. However, in no event shall the fee exceed $15,000.

(h) Two thousand five hundred dollars to establish a successor institution.

(i) Seven hundred fifty dollars for each application by a state bank or trust company not operating in a safe and sound manner for relocation of its main office.

(j) Two thousand five hundred dollars for each application for the purchase of assets and the assumption of liabilities.

(3) If, as a result of any application filed with the office ~~department~~, the office ~~department~~ determines that an examination is necessary to assess the

financial condition of any financial institution, the applying financial institution shall pay to the office ~~department~~ a nonrefundable examination fee, pursuant to s. 655.045(1).

(4) Each state bank and state trust company shall pay to the office ~~department~~ $25 for each "certificate of good standing" certifying that a state-chartered financial institution is licensed to conduct business in this state under the financial institutions codes. All such requests shall be in writing. The office ~~department~~ shall waive this fee when the request is by a state or federal regulatory agency or law enforcement agency.

(5) The amounts of all fees and assessments provided for in this section shall be deemed to be maximum amounts; and the commission ~~department~~ has the authority to establish, by rule, and from time to time to change, fees and assessments in amounts less than the maximum amounts stated in this section.

Section 1796. Section 658.79, Florida Statutes, is amended to read:

658.79 Taking possession of insolvent state banks or trust companies.—Whenever the office ~~department~~ has reason to conclude, based upon the reports furnished to it by a state bank or trust company examiner or upon other satisfactory evidence, that any state bank or trust company:

(1) Is insolvent or imminently insolvent; or

(2) Is transacting its business in an unsound, unsafe, or unauthorized manner such that it is threatened with imminent insolvency,

the office ~~department~~ may, in its discretion, forthwith designate and appoint a liquidator or receiver to take charge of the assets and affairs of such bank or trust company and require of him or her such bond and security as the office ~~department~~ deems proper, not exceeding double the amount that may come into his or her hands. The office ~~department~~ may enlist the services of any state or local law enforcement agency in taking possession and securing the assets of the bank or trust company.

Section 1797. Section 658.80, Florida Statutes, is amended to read:

658.80 Appointment of receiver or liquidator.—

(1) Upon taking possession of a state bank or trust company pursuant to s. 658.79, the office ~~department~~ shall appoint either a receiver to conserve the assets of the institution or a liquidator to liquidate the assets of the institution and wind up its affairs.

(2) The Federal Deposit Insurance Corporation or any appropriate federal agency shall be appointed by the office ~~department~~ as receiver or liquidator of any state bank, the deposits of which are to any extent insured by the corporation, and which shall have been closed by the office ~~department~~. Upon appointment, the corporation may act without bond as receiver or liquidator and shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator, respectively,

of such institution, its depositors and other creditors. If the corporation declines to accept the tendered appointment, the office ~~department~~ may appoint and thereafter dismiss or replace such other receiver or liquidator as deemed necessary or advisable.

Section 1798. Section 658.81, Florida Statutes, is amended to read:

658.81 Office ~~Department~~ action; notice and court confirmation.—The office ~~department~~, immediately upon appointing such liquidator or receiver, shall serve notice upon any other person having the charge or management of any such bank or trust company, informing him or her of its action in appointing such liquidator or receiver and notifying him or her that the office ~~department~~ will apply on a date named therein, not to exceed 10 days from the date of service of such notice, to a circuit judge in the court circuit in which the principal office of such bank or trust company is located for an order confirming its action. A copy of such application together with a notice of hearing thereon shall be served on the person receiving the above notice prior to the time set for such hearing. Such proceedings shall be given precedence over other cases pending in such court and shall in every way be expedited. Upon the office's ~~department's~~ showing at the hearing on such application that such bank or trust company is insolvent or threatened with imminent insolvency, the court shall enter an order confirming the action of the office ~~department~~ and the appointment of such liquidator or receiver; otherwise, the court shall enter an order dismissing the liquidator or receiver, and such liquidator or receiver shall relinquish his or her control over the assets and affairs of such bank or trust company.

Section 1799. Subsections (2) and (3) of section 658.82, Florida Statutes, are amended to read:

658.82 Receiver; powers and duties.—

(2) Any other receiver appointed pursuant to s. 658.80 shall be subject to the supervision of the office ~~department~~ and shall have the power to:

(a) Take possession of the books, records, and assets of every description of the bank or trust company and sue for and collect all debts, dues, and claims belonging to the bank or trust company;

(b) Operate the business of the bank or trust company pursuant to the authority granted by its articles of incorporation and the laws of this state in an effort to manage and conserve the assets of the bank or trust company and place such bank or trust company in a sound, safe, and solvent condition;

(c) Sue for and defend, compromise, and settle all claims involving the bank or trust company;

(d) Subject to approval by the circuit court, sell any or all real and personal property of the bank or trust company and sell or compound all bad or doubtful debts;

(e) Pay all expenses of the receivership, which expenses shall be a first charge against the assets of the bank or trust company;

(f) Borrow such sum of money as may be necessary or expedient to protect and conserve the assets and business of the bank or trust company and, in connection therewith, to secure such borrowings by the pledge, hypothecation, or mortgage of the assets of the bank or trust company; and

(g) If necessary to pay the debts of such bank or trust company, sue for and enforce the individual liability of the stockholders.

(3) Within 30 days of her or his appointment, the receiver shall file a statement of condition of the bank or trust company with the office ~~department~~, in addition to such other interim reports as the office ~~department~~ may require. Upon receipt of the report of condition, the office ~~department~~ may:

(a) Upon a finding that the bank or trust company is in a safe, sound, and solvent condition, surrender possession of such bank or trust company bank to its directors for the purpose of permitting the bank or trust company to resume business on such terms and conditions as the office ~~department~~ shall prescribe;

(b) Appoint a liquidator to immediately liquidate the assets of the bank or trust company and wind up its affairs;

(c) Grant a further period of time to the receiver to rehabilitate the affairs of the bank or trust company; or

(d) Appoint a new receiver.

Section 1800. Subsections (2) and (3) of section 658.83, Florida Statutes, are amended to read:

658.83 Liquidator; powers and duties.—

(2) Any other liquidator appointed pursuant to s. 658.80 shall, subject to the supervision of the office ~~department~~, have the power to:

(a) Take possession of the books, records, and assets of every description of the bank or trust company and sue for and collect all debts, dues, and claims belonging to the bank or trust company;

(b) Sue for and defend, compromise, and settle all claims involving the bank or trust company;

(c) Subject to approval by the circuit court, sell any or all of the real and personal property of the bank or trust company and sell or compound all bad or doubtful debts;

(d) Pay all expenses incurred in the liquidation process, which expenses shall be a first charge against the assets of the bank or trust company and shall be fully paid before any final distribution or payment of dividends to creditors, shareholders, or stockholders;

(e) Borrow such sum of money as may be necessary or expedient in aiding in the liquidation of the bank or trust company and, in connection therewith, to secure such borrowings by the pledge, hypothecation, or mortgage of the assets of the bank or trust company; and

(f) If necessary to pay the debts of such bank or trust company, sue for and enforce the individual liability of the stockholders.

(3) Such liquidator shall pay all moneys received to the Chief Financial Officer ~~Treasurer~~ to be held as a special deposit for the use and benefit of the creditors subject to the order of the office ~~department~~ and also shall make reports quarterly, or when called upon, to the office ~~department~~ of all her or his acts and proceedings.

Section 1801. Subsection (3) of section 658.84, Florida Statutes, is amended to read:

658.84 Transfers by banks and other acts in contemplation of insolvency.—

(3) Except in any action brought by the office ~~department~~, no attachment, injunction, or execution shall be enforced against such financial institution or any of its property before final judgment in any suit, action, or proceeding in any state or federal court.

Section 1802. Section 658.90, Florida Statutes, is amended to read:

658.90 Receivers or liquidators under supervision of office ~~department~~.—The provisions of ss. 658.79-658.96 shall apply to all receivers or liquidators of any bank or trust company heretofore appointed by the order of any circuit court, and all such receivers or liquidators, both those hereunder and those hereafter appointed by the circuit court, shall at all times be under the supervision and control of the office ~~department~~ and subject at all times to summary discharge and dismissal by it. Any vacancy in such receivership may be filled by the office ~~department~~ at any time.

Section 1803. Section 658.94, Florida Statutes, is amended to read:

658.94 Prima facie evidence.—The general ledger, list of claimants, examiner's final report made at the time of the failure of the bank or trust company, and such other records of the office's ~~department's~~ office relating to any closed bank or trust company, or any duly authenticated copy thereof, shall be prima facie evidence of the subject matter therein set forth.

Section 1804. Section 658.95, Florida Statutes, is amended to read:

658.95 Voluntary liquidation.—Any bank or trust company may go into liquidation and be closed by a vote of its stockholders owning two-thirds of its stock. Whenever a vote is taken to go into liquidation, the board of directors shall cause this fact to be certified to the office ~~department~~ and publication thereof to be made for a period of 2 months in a newspaper of general circulation located in the county in which the bank or trust company is closing up its affairs and notifying its creditors to present their claims against the bank or trust company for payment.

Section 1805. Section 658.96, Florida Statutes, is amended to read:

658.96 Procedure in voluntary liquidation.—When a bank or trust company decides to go into voluntary liquidation, the president and cashier, or

other appropriate officers, shall, before beginning publication of the notice required by law, furnish the office ~~department~~ with a full and complete detailed statement of the affairs of the bank or trust company and shall thereafter forward to the office ~~department~~ on the first Monday in each month a like detailed statement until all of the liabilities of the bank or trust company shall have been settled in full, provided that, if the office ~~department~~ is not satisfied with the report of any bank or trust company intending to go into voluntary liquidation, or if at any time it is not satisfied with the progress of such liquidation, it shall have full authority to proceed under s. 658.80, or otherwise, as the law directs.

Section 1806. Subsections (3), (5), and (6) of section 658.995, Florida Statutes, are amended to read:

658.995 Credit Card Bank Act.—

(3) Subject to the provisions of this section and to the approval of the office ~~department~~, any domestic lender, foreign lender, or business organization may organize, own, and control a credit card bank on the terms and conditions provided in this section:

(a) If the credit card bank is to be organized under the laws of this state, such bank shall be organized as provided in this section;

(b) In connection with the application to organize or to control a credit card bank, the applicant shall pay to the office ~~department~~ a filing fee as provided in s. 658.73 for the formation of a bank or trust company;

(c) The shares of a credit card bank shall be owned solely by a domestic lender, a foreign lender, or a business organization;

(d) The credit card bank shall accept deposits only at a single location in this state;

(e) The credit card bank shall at all times maintain capital stock and paid-in surplus as required by regulatory policies of the commission and office ~~department~~ but in no event less than $4 million;

(f) The credit card bank may engage only in the business of soliciting, processing, and making loans pursuant to credit card accounts and conducting such other activities as may be necessarily incident thereto;

(g) The credit card bank may not accept demand deposits or deposits that the depositor has the ability to withdraw by check or similar means for payment to third parties or others;

(h) The credit card bank may accept savings or time deposits of only $100,000 or more;

(i) The credit card bank must, prior to opening, obtain and thereafter maintain insurance of its deposits by the Federal Deposit Insurance Corporation; and

(j) The credit card bank may not engage in the business of making commercial loans.

(5) All credit card banks organized under the laws of this state shall be subject to the supervision, regulation, and examination of the office ~~department~~, and the office ~~department~~ shall have all enforcement powers with respect thereto as are provided in the financial institutions codes.

(6) The commission may adopt ~~department shall have the power to promulgate~~ rules ~~and regulations~~ implementing the provisions of this section.

Section 1807. Section 660.26, Florida Statutes, is amended to read:

660.26 Trust department licensing.—

(1) When authorized by the office ~~department~~ as provided in this section, a state bank or association may establish a trust department for the purpose of conducting trust business.

(2) A written application for trust powers shall be filed with the office ~~department~~ in such form as the commission prescribes and containing such information as the commission and office ~~department may~~ reasonably require. The application shall be accompanied by the required nonrefundable fee.

(3) Upon the filing of an application, the office ~~department~~ shall investigate and consider:

(a) The general character and management ability of the principal executive officers of the applicant bank or association.

(b) The quality of the supervision to be given to the fiduciary activities, including the qualifications, experience, and character of the proposed principal officers of the trust department.

(c) The general condition of the applicant bank or association, and the sufficiency of earnings and earning prospects of the applicant bank or association, including the proposed trust department, to support the anticipated expenses and any anticipated operating losses of the trust department during its formative or initial years.

(d) Any other matters relevant to the application and the establishment and operation of the proposed trust department.

(4) Expenses necessarily incurred by the office ~~department~~ in the conduct of investigations required by this section shall, in the case of applications which require investigations by the office ~~department~~ outside the state, be assessed against the applicant bank or association on an actual-cost-incurred basis and shall be in addition to other fees required by law. Failure to promptly reimburse the office ~~department~~ upon its demand shall be grounds for denial of such application or revocation of any approval thereof.

(5) The office ~~department~~ shall approve the application if it finds that:

(a) The general condition of the applicant bank or association is sufficient to support the proposed trust department.

(b) The earnings and earning prospects of the applicant bank or association, including the earning prospects of the proposed trust department, are sufficient to support the anticipated expenses and any anticipated operating losses of the trust department during its formative or initial years.

(c) The capital structure of the bank or association is adequate to support the trust department.

(d) The proposed trust officers have or will be supplied with sufficient trust and related investment, financial, and managerial experience, ability, and standing to operate the trust department.

(e) Provision has been made for the trust department to occupy suitable quarters at the location specified in the application.

(6) If applicable federal law requires the approval of a federal regulatory agency for the establishment of a trust department by the applicant bank or association, approval by the office ~~department~~, by final order or otherwise, shall be deemed subject to approval by such federal regulatory agency, and a final order of denial by such federal regulatory agency will terminate and revoke the final or other order issued by the office ~~department~~ approving the application.

(7) Upon approval of an application by the office ~~department~~ and such federal regulatory agency, if required, the office ~~department~~ shall issue and deliver to the applicant a certificate or other document granting trust powers to the applicant and authorizing it to establish a trust department and engage in trust business.

Section 1808. Section 660.265, Florida Statutes, is amended to read:

660.265 Examination fees.—Each state trust company and each state bank or association exercising trust powers shall pay to the office ~~department~~, within 30 days after an ~~a departmental~~ examination pursuant to s. 655.045, a fee for the costs of the examination by the office ~~department~~ pursuant to s. 655.045. For the purposes of this section, the term "costs" means the salary and travel expenses of field staff which are directly attributable to its examination of the financial institution and the travel expenses of any supervisory or support staff required as a result of examination findings.

Section 1809. Section 660.27, Florida Statutes, is amended to read:

660.27 Deposit of securities with Chief Financial Officer ~~Treasurer~~.—

(1) Before transacting any trust business in this state, every trust company and every state or national bank or state or federal association having trust powers shall give satisfactory security by the deposit or pledge of security of the kind or type provided in this section having at all times a market value in an amount equal to 25 percent of the issued and outstanding

capital stock of such trust company, bank, or state or federal stock association or, in the case of a federal mutual association, an equivalent amount determined by the office ~~department~~, or the sum of $25,000, whichever is greater. However, the value of the security deposited or pledged pursuant to the provisions of this section shall not be required to exceed $500,000. Any notes, mortgages, bonds, or other securities, other than shares of stock, eligible for investment by a state bank, state association, or state trust company, or eligible for investment by fiduciaries, shall be accepted as satisfactory security for the purposes of this section.

(2) The trust company, bank, or association shall provide to the Chief Financial Officer ~~Treasurer~~ the following:

(a) Written information which includes full legal name; federal employer identification number; principal place of business; amount of capital stock; and amount of required collateral.

(b) The required information listed in paragraph (a) shall be provided annually as of September 30 and shall be due November 15.

(3) The Chief Financial Officer ~~Treasurer~~ shall determine whether the security deposited or pledged pursuant to this section, or tendered for such deposit or pledge, is of the kind or type permitted, and has a market value in the amount required, by subsection (1). The security required by this section shall be deposited with or to the credit of, or pledged to, the Chief Financial Officer ~~Treasurer~~ for the account of each state or national bank, state or federal association, or trust company depositing or pledging the same and shall be used, if at all, by the liquidator of such bank, association, or trust company with first priority being given to claims on account of the trust business or fiduciary functions of such bank, association, or trust company or, prior to liquidation, for the payment of any judgment or decree which may be rendered against such bank, association, or trust company in connection with its trust business or its fiduciary functions if such judgment or decree is not otherwise paid by, or out of other assets of, such bank, association, or trust company.

(4) Any security of any kind which has been deposited or pledged as provided in this section may at any time, by or upon the direction of such bank, association, or trust company which deposited or pledged such security, be withdrawn and released from such pledge provided that simultaneously therewith satisfactory security as provided in this section, in such amount, if any, as may be necessary in order to comply with the requirements of this section, is substituted for the security so withdrawn and released.

(5) With the approval of the Chief Financial Officer ~~Treasurer~~, each trust company, bank, or association as pledgor may deposit eligible collateral with a custodian. This custodian shall not be affiliated or related to the trust company, bank, or association. Collateral must be deposited using the collateral agreements and provisions as set forth in s. 280.041(2) and (3).

Section 1810. Section 660.28, Florida Statutes, is amended to read:

660.28 Exemption from bond and other security as fiduciary.—A trust company or trust department maintaining security with the Chief Financial Officer ~~Treasurer~~ as required by s. 660.27 shall not be required by the state or any of its political subdivisions or by a court of this state to furnish any bond or other security as a condition of, or in connection with, acting in any fiduciary capacity which such trust company or trust department is lawfully permitted to accept or assume.

Section 1811. Section 660.33, Florida Statutes, is amended to read:

660.33 Trust service offices.—

(1) In addition to its principal office and any branch trust company authorized under s. 660.32, a trust company or a trust department with its principal place of doing business in this state may maintain one or more trust service offices at the location of any bank, association, or credit union which is organized under the laws of this state or under the laws of the United States with its principal place of doing business in this state. However, a trust service office may be established only after the trust company or the trust department has secured the consent of a majority of the stockholders or members entitled to vote on such proposal at a meeting of stockholders or members, and of a majority of the board of directors, of the bank, association, or credit union at which a trust service office is proposed to be maintained, and after a certificate of authorization has been issued to the trust company or the trust department by the office ~~department~~.

(2)(a) An application for approval to establish a trust service office shall be in such form as the commission prescribes and contain such information as the commission or office ~~department may~~ reasonably requires ~~require~~ and be accompanied by the required nonrefundable fee.

(b) The office ~~department~~ shall issue a certificate approving the establishment of a trust service office by a trust company or a trust department if the office ~~department~~ determines that:

1. The trust company or trust department has complied with the applicable capital requirements;

2. Provision has been made for suitable quarters and staffing for the trust service office; and

3. If the trust service office is to be established at a bank or association without existing trust powers or at a credit union, the establishment of the proposed trust service office will not unduly injure any existing trust companies or trust departments in the community where the trust service office is to be located.

(3) The trust company or trust department shall have the power to conduct any trust business at a trust service office which it is permitted to conduct at its principal office unless limited by the provisions of any agreement between the bank, association, or credit union and the trust company or trust department.

(4)(a) Unless an election has been made pursuant to paragraph (b), when a trust service office is established by a trust company or a trust department at the location of a bank or association which has trust powers, the bank or association may retain and continue to exercise its trust powers following the establishment of the trust service office.

(b) If the bank or association and the trust company or trust department so elect in the application for approval to establish a trust service office at the location of a bank or association that has trust powers, and if the office ~~department~~ is satisfied that the interests of beneficiaries of the estates, trusts, and other fiduciary relationships being serviced will be adequately protected, the office ~~department~~ shall issue an order authorizing the following:

1. The trust company or trust department, upon complying with all applicable requirements of law, shall be substituted for, succeed to, and replace the bank or association as fiduciary. The trust company or trust department, as the successor fiduciary, shall thereupon succeed to all the powers, rights, duties, and privileges of the bank or association as fiduciary of all such estates, trusts, guardianships, and other fiduciary relationships in which the bank or association is serving to which the trust company or trust department shall have been lawfully substituted.

2. During the time the trust company or trust department maintains a trust service office at the location of the bank or association, the trust company or trust department shall be deemed to be named the fiduciary in all instruments in which the bank or association is named the fiduciary, even if the bank or association is not serving as fiduciary at the time the trust service office is established, in the manner, to the extent, and with the same effect as though there had been a merger of the bank and the trust company or trust department.

3. Upon complying with all requirements of law with respect thereto, the bank or association shall be relieved from all of its fiduciary duties in connection with all fiduciary accounts and relationships with respect to which the trust company or trust department has been substituted as fiduciary or with respect to which it has resigned and been relieved as provided by law, and, upon being so relieved of all its fiduciary duties, the bank or association, although retaining its trust powers in an inactive status unless it surrenders them as provided by law, shall not thereafter exercise its trust powers so long as there is a trust service office transacting business at the bank or association. The substitution of the trust company or trust department for the bank or association as fiduciary shall occur and be effective on the day the trust company or trust department opens the trust service office for business, or on such later date as may be specified by court order, or by any written consent or agreement, which lawfully effectuates the designation, by substitution or otherwise, of the trust company or trust department as the fiduciary with respect to any particular fiduciary account.

(c)1. Anything in this section or any other law to the contrary notwithstanding and subject to compliance with this subsection, an affiliated trust company or an affiliated bank's trust department, if authorized to exercise

trust powers in this state, shall be deemed substituted as fiduciary without further authorization where the successor has an established trust service office in the predecessor's principal place of business or any branch of the predecessor located in this state. The successor may conduct therein any trust business incidental thereto that it is otherwise permitted to conduct in this state, but it may not accept deposits at the offices of the predecessor bank except as incidental to the trust business.

2. To effect the substitution referred to in subparagraph 1., a predecessor shall enter into an agreement with the successor that sets forth the fiduciary powers, rights, privileges, duties, and liabilities of the parties and, more specifically, those to which the successor will succeed, including, but not limited to, those described in subparagraph 7. The agreement will be approved by the boards of directors of the predecessor, successor, and parent corporations. The agreement shall then be filed with the office ~~department~~. The effective date of the agreement shall be the date on which the office ~~department~~ approves the agreement under subparagraph 6. unless another, later date is specified in the agreement, which other date shall be no later than 75 days after the date on which the agreement is filed with the office ~~department~~ under this subparagraph; however, no such agreement may take effect without approval by the office ~~department~~.

3.a. Not sooner than 30 days before or later than 30 days after the date on which the agreement is filed with the office ~~department~~ under subparagraph 2., the predecessor and successor shall cause notice of the filing of such agreement with the office ~~department~~, along with the procedure for objection thereto as hereinafter provided, to be published in a newspaper of general circulation in the county in which the predecessor's principal place of business is located and file a copy of such written notice in any applicable court-administered fiduciary proceeding, including, but not limited to, probate and guardianship proceedings, and additionally, they shall serve written notice upon the following:

(I) Each cofiduciary that serves with the predecessor;

(II) Each surviving grantor of a revocable trust;

(III) Each person who alone or in conjunction with others has the power to remove the predecessor;

(IV) Each principal for whom the predecessor serves as agent or custodian;

(V) Each guardian of the person for whom the predecessor serves as guardian of the property for their ward;

(VI) Each beneficiary or the beneficiary's legal or natural guardian, when applicable, currently receiving or entitled as a matter of right to receive a current mandatory or discretionary distribution, as opposed to a remainder distribution, of principal or income from a trust, estate, or other fund with respect to which a substitution of fiduciary under this subsection is to be effected. However, when applicable and in lieu thereof, such service will be made upon the sole holder or a majority of the coholders of a general or

limited power of appointment, including one in the form of a power of amendment, or revocation, in which case they shall be deemed to act for any beneficiary who may take by virtue of the exercise or failure to exercise the power;

(VII) Upon any other person or entity required by the court in any referenced court-administered fiduciary proceeding; and

(VIII) In the case of a trust described in the Internal Revenue Code of 1986 s. 401(a) as it may from time to time hereafter be amended, upon the employer or employee organization or both responsible for the maintenance of such trust.

b. Service of such written notice will not be required upon the persons or entities listed in sub-subparagraph a. when the documents or other writings that created the fiduciary relationship permit a substitution of fiduciaries.

c. Service of written notice shall be made upon the persons or entities listed in sub-subparagraph a. in the manner provided for the service of formal notice under the applicable Florida Probate Rules. Service of written notice by mail shall be completed upon receipt or refusal of the notice by the persons or entities listed in sub-subparagraph a. If such written notice is made by mail or delivery, proof of mailing or delivery shall be by verified statement of the person mailing or delivering the written notice, and there shall be attached to the verified statement the signed receipt, appropriate affidavit of delivery by the person effecting such delivery, or other evidence satisfactory to the office ~~department~~ or to a court of competent jurisdiction that notice was given properly to or refused by the addressee or agent of the addressee. The original of such proof shall be filed with the office ~~department~~ with copies to the file or the account maintained by the predecessor or successor and to the court in any court-administered fiduciary administration.

4. Within 60 days after the date on which newspaper notice is published under subparagraph 3., after any date of a signed or refused receipt pertaining to the written notice by mail under subparagraph 3., after any date of delivery as set forth in the affidavit referenced in subparagraph 3., or after the date on which service is otherwise accomplished, the latest date being operative, but not thereafter, the persons or entities listed in subparagraph 3. or the court in a court-administered fiduciary proceeding on its own motion may object to such substitution of fiduciaries by serving written notice, executed by the persons, entities, or court, upon the predecessor, successor, and office ~~department~~. Such notice shall be served in the same manner as provided for service of the original notice upon interested persons or entities in subparagraph 3. Execution of such notice shall be in the same manner as is required for the execution and recordation of deeds to real property in this state except that notice by a court may be signed by the judge. If such notice of objection is executed by all of the cofiduciaries that serve with the predecessor, by each surviving grantor of a revocable trust, by all of the persons that have the power to remove the predecessor as fiduciary, by all of the principals for whom the predecessor serves as agent or custodian, by the guardian of the person for whom the predecessor serves

as guardian of the property for their ward, by all of the beneficiaries currently receiving or entitled as a matter of right to receive a current mandatory or discretionary distribution, as opposed to a remainder distribution, of principal or income, or by the sole holder or a majority of the coholders of a general or limited power of appointment including one in the form of a power of amendment or revocation, the successor will not be substituted for the predecessor and the predecessor will remain or be reinstated as fiduciary but only as to the fiduciary relationship that is the subject of such objection. Reinstatement shall take effect immediately upon receipt of such notice by the predecessor, successor, and office ~~department~~. If the notice of objection is executed by less than all of the persons or entities of any category specified in this subparagraph, or if entered by the court of a court-administered fiduciary proceeding on its own motion, then, with regard to the fiduciary relationship that is the subject of such notice of objection, the predecessor and successor may elect to do either of the following:

a. File a subsequent agreement with the office ~~department~~, with copies of such agreement to be mailed to all of the specified persons or entities, which states that the successor will not be substituted for the predecessor as to that fiduciary relationship, and such agreement shall cause the predecessor to remain or be reinstated, instanter, as fiduciary in that fiduciary relationship. The filing of such subsequent agreement with the office ~~department~~ does not prejudice the predecessor or the successor from filing another agreement that affects such fiduciary relationship under subparagraph 2.; or

b. File a petition with the court having jurisdiction of any court-administered fiduciary proceeding or commence a civil action in a court of competent jurisdiction as to any other applicable fiduciary relationship. The court shall then determine whether such substitution is appropriate and whether it is in the best interest of those specifically interested in the premises. The court shall then enter judgment accordingly and specify the party to serve thereafter as the fiduciary. The predecessor, the successor, the office ~~department~~, and those for whom the fiduciary relationship is the subject of the civil action and upon whom service of written notice was required under subparagraph 3. shall be necessary parties in any civil action that concerns an objection to the substitution. Any such petition or separate civil action must be filed within 60 days after service of the notice of objection. Failure to do so will be deemed to be an agreement pursuant to sub-subparagraph a., and the alternative provided in sub-subparagraph a. will be deemed to have been selected automatically.

5. At any time while a civil action is pending pursuant to sub-subparagraph 4.b., the predecessor and successor may file a subsequent agreement with the office ~~department~~ in the same manner set forth under alternative sub-subparagraph 4.a. and file a copy of the same along with a withdrawal of the petition or a voluntary dismissal with the court in which the petition was filed or the civil action is pending. Such filing will have the same force and effect as set forth under sub-subparagraph 4.a.; however, it shall be without prejudice to the right of the predecessor or successor to file another agreement that affects such fiduciary relationship under subparagraph 2.

6. Within 30 days after the date on which a fiduciary agreement is filed with the office ~~department~~ under subparagraph 2., the office ~~department~~ shall approve the agreement if it finds both that the successor is:

a. Legally authorized to exercise trust powers in this state; and

b. Has otherwise met the requirements for the establishment of a trust service office at the predecessor's principal place of business or branch.

7. Upon the effective date of an agreement filed under subparagraph 2. and regardless of any petition filed or any civil action pending pursuant to subparagraph 4., the successor will be deemed substituted for the predecessor as fiduciary without further authorization of any kind such that the successor shall succeed to and be substituted for the predecessor as to all fiduciary powers, rights, privileges, duties, and liabilities of the predecessor in its capacity as fiduciary for all estate, trust, guardianship, agency, and custodial accounts and any other fiduciary relationship for which the predecessor is then, or but for such agreement would be, serving as fiduciary, except as may be otherwise specified in such agreement and in any subsequent agreement filed with the office ~~department~~ under subparagraph 4. or subparagraph 5. The successor shall also be deemed the fiduciary in all writings, including, but not limited to, wills, trusts, deeds, policies of insurance, stock certificates, court orders, and similar documents and instruments which name or have named the predecessor as fiduciary and which were signed before or after the effective date of such agreement except as may be otherwise specified in such agreement and any subsequent agreement filed with the office ~~department~~ under subparagraph 4. or subparagraph 5. This section does not absolve or discharge any predecessor exercising trust powers from liability arising out of any breach of its fiduciary duties or obligations which occurred before the effective date of such agreement.

8. As used herein:

a. Trust companies, banks, or associations are "affiliated" if they are connected through stock ownership with a common parent corporation that is a registered multibank or multiassociation holding company and such parent owns directly stock that possesses at least 80 percent of the total voting power of the stock of such trust company, bank, or association and has a value equal to at least 80 percent of the total value of the stock of such trust company, bank, or association.

b. The term "predecessor" refers to an affiliated trust company or affiliated bank's or affiliated association's trust department for the position of which in its trust relations the successor is substituted.

c. The term "successor" refers to an affiliated trust company or affiliated bank's or affiliated association's trust department which is substituted for a predecessor in the predecessor's trust relationships including all powers, duties, and responsibilities associated therewith.

(d) When a trust service office is established at a bank or association that has retained its trust powers in an active status, the trust company or trust

department may at any time be substituted as fiduciary as provided in paragraph (b) by filing an election with the office ~~department~~. The election to substitute the trust company or trust department for the bank or association as fiduciary must contain the consent of a majority of the stockholders or members entitled to vote on such proposal at a meeting of stockholders or members and of a majority of the board of directors, of the bank or association at which the trust service office has been established.

(e) This subsection shall not affect any substitution of fiduciaries made under former s. 659.061(6) prior to May 31, 1976.

(5) Nothing in the financial institutions codes shall be construed to prohibit a person from serving in a dual capacity as an officer or director of a bank, association, or credit union at which a trust service office is located and an officer or director of the trust company or trust department which has a trust service office at that bank, association, or credit union.

(6) A trust company or trust department may terminate a trust service office only with the prior approval of the office ~~department~~, which shall only grant its approval after being satisfied that the interests of all beneficiaries of the estates, trusts, and other fiduciary relationships being serviced by the trust company or trust department as fiduciary at that trust service office will be adequately protected. Upon termination of the trust service office, the trust company or trust department shall continue to exercise its fiduciary powers, rights, duties, and privileges as fiduciary of the estates, trusts, and other fiduciary relationships which, at the time of such termination, were being serviced at that trust service office and shall continue to be deemed the named fiduciary of all instruments naming the bank or association as fiduciary which became effective and operative prior to the termination of the trust service office. However, any beneficiary of an estate or trust being serviced at the trust service office at the time of the termination of the trust service office may petition the court of competent jurisdiction in the county where, at the time of such termination, the trust service office was located for removal of the trust company or the trust department as fiduciary and for appointment of a successor fiduciary. The court shall grant the petition upon being satisfied that such action is in the best interests of the beneficiaries of the trust or estate.

(7) A trust service office as provided for in this section is a special service facility and is not a branch or a branch office of a trust company or a trust department.

Section 1812. Subsection (2) of section 660.40, Florida Statutes, is amended to read:

660.40 Self dealing.—

(2) Assets of a fiduciary account held by a trust company or a trust department shall not be sold or transferred, by loan or otherwise, to the trust company or the bank or association of which the trust department is a part or to its directors, officers, or employees except:

(a) When lawfully authorized by the governing instrument or by court order;

(b) As provided in ss. 660.42-660.45;

(c) With the approval of, or when required by, the office ~~department~~ in order to prevent loss to a fiduciary account in any case where the trust company or the trust department has incurred a liability in the handling of the assets of the fiduciary account.

Section 1813. Section 660.47, Florida Statutes, is amended to read:

660.47 Surrender of fiduciary powers.—Any state bank or association which has been granted trust powers and which desires to surrender such rights shall file with the office ~~department~~ a certified copy of the resolution of its board of directors signifying such desire. Upon receipt of such resolution, the office ~~department~~ shall make an investigation, and when it is satisfied that the trust department has been discharged from all fiduciary duties which it has undertaken, it shall issue a certificate to such bank or association certifying that it is no longer authorized to exercise trust powers.

Section 1814. Subsection (1) of section 660.48, Florida Statutes, is amended to read:

660.48 Receivership or voluntary liquidation.—

(1) If a liquidator or receiver is appointed for a trust company or a state bank or association having a trust department, the liquidator or receiver shall, pursuant to the instructions of the office ~~department~~ and the orders of any court and the federal regulatory agency having jurisdiction, proceed to close such fiduciary accounts as can be closed promptly and transfer all other fiduciary accounts to substitute fiduciaries.

Section 1815. 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, relating to administrative enforcement guidelines; s. 655.032, relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, 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 office ~~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. 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.

Section 1816. Subsections (2), (3), and (4) of section 663.04, Florida Statutes, are amended to read:

663.04 Requirements for carrying on banking business.—No international banking corporation shall transact a banking business, or maintain in this state any office for carrying on such business, or any part thereof, unless such corporation has:

(2) Furnished to the office ~~department~~ such proof as to the nature and character of its business and as to its financial condition as the commission or office requires ~~department may require~~.

(3) Filed with the office ~~department~~ a certified copy of that information required to be supplied to the Department of State by those provisions of chapter 607 which are applicable to foreign corporations.

(4) Received a license duly issued to it by the office ~~department~~.

Section 1817. Subsections (1), (2), (3), (4), (5), (6), and (9) of section 663.05, Florida Statutes, are amended to read:

663.05 Application for license; approval or disapproval.—

(1) Every international banking corporation, before being licensed by the office ~~department~~ to maintain any office in this state, shall subscribe and acknowledge, and submit to the office ~~department~~, an application which shall contain:

(a) The name of the international banking corporation.

(b) The proposed location by street and post office address and county where its business is to be transacted in this state and the name of the person who shall be in charge of the business and affairs of the office.

(c) The location where its initial registered office will be located in this state.

(d) The total amount of the capital accounts of the international banking corporation.

(e) A complete and detailed statement of its financial condition as of a date within 180 days prior to the date of such application, except that the office ~~department~~ in its discretion may, when necessary or expedient, accept such statement of financial condition as of a date within 240 days prior to the date of such application. The office ~~department~~ in its discretion may, when necessary or expedient, require an independent opinion audit or the equivalent satisfactory to the office ~~department~~.

(f) A listing of any occasion within the preceding 10-year period in which either the international banking corporation or any of its directors, executive officers, or principal shareholders has been convicted of, or pled guilty or nolo contendere to, any offense with respect to which the penalties include the possibility of imprisonment for 1 year or more, or to any offense involving money laundering or otherwise related to the operation of a financial institution.

(2) The office ~~department~~ shall disallow any illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section, and the existence of such illegally obtained resources shall be grounds for denial of the application for license.

(3) At the time an application is submitted to the office ~~department~~, the international banking corporation shall also submit a duly authenticated copy of its articles of incorporation and a copy of its bylaws, or an equivalent thereof satisfactory to the office ~~department~~. Such corporation shall also submit a certificate issued by the banking or supervisory authority of the country in which the international banking corporation is chartered stating that the international banking corporation is duly organized and licensed and lawfully existing in good standing and listing any instance in which the international banking corporation has been convicted of, or pled guilty or nolo contendere to, a violation of any currency transaction reporting or money laundering law which may exist in that country.

(4) Application shall be made on a form prescribed by the commission ~~department~~ and shall contain such information as the commission or office requires ~~department may require~~.

(5) The office ~~department~~ may, in its discretion, approve or disapprove the application, but it shall not approve the application unless, in its opinion, the applicant meets each and every requirement of this part and any other applicable provision of the financial institutions codes. The office ~~department~~ shall approve the application only if it has determined that the directors, executive officers, and principal shareholders of the international banking corporation are qualified by reason of their financial ability, reputation, and integrity and have sufficient banking and other business experience to indicate that they will manage and direct the affairs of the international banking corporation in a safe, sound, and lawful manner. In the processing of applications, the time limitations under the Administrative Procedure Act shall not apply as to approval or disapproval of the application.

(6) The office ~~department~~ shall not issue a license to an international banking corporation unless:

(a) It is chartered in a jurisdiction in which any bank having its principal place of business in this state may establish similar facilities or exercise similar powers; or

(b) Federal law permits the appropriate federal regulatory authority to issue a comparable license to the international banking corporation.

(9) The commission ~~department~~ shall establish, by rule, the general principles which shall determine the adequacy of supervision of an international banking corporation's foreign establishments. These principles shall be based upon the need for cooperative supervisory efforts and consistent regulatory guidelines and shall address, at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the international banking corporation. This subsection shall not require examination by the home-country regulatory authorities of any office of an international banking corporation in this state. The commission ~~department~~ may also establish, by rule, other standards for approval of an application for a license as considered necessary to ensure the safe and sound operations of the international bank office in this state.

Section 1818. Subsections (2), (3), and (4) of section 663.055, Florida Statutes, are amended to read:

663.055 Capital requirements.—

(2) Notwithstanding the provisions of paragraph (1)(a), the office ~~department~~ may approve an application for a license to establish an international bank agency, an international branch, or an international administrative office if:

(a) The international banking corporation is licensed to receive deposits from the general public in the country where it is organized and licensed and to engage in such other activities as are usual in connection with the business of banking in such country;

(b) The office ~~department~~ receives a certificate that is issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed and states that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a banking business; and

(c) The international banking corporation has been in the business of banking for at least 10 years and is ranked by the banking or supervisory authority of the country in which it is organized and licensed as one of the five largest banks in that country in terms of domestic deposits, as of the date of its most recent statement of financial condition. However, in no event shall the office ~~department~~ approve an application under this subsection for any international banking corporation with capital accounts of less than $10 million.

(3) The office ~~department~~ may specify such other conditions as it determines appropriate, considering the public interest, the need to maintain a sound and competitive banking system, and the preservation of an environment conducive to the conduct of an international banking business in this state. In translating the capital accounts of an international banking corporation, the office ~~department~~ may consider monetary corrections accounts that reflect results consistent with the requirements of generally accepted accounting principles in the United States.

(4) For the purpose of this part, the capital accounts of an international banking corporation shall be determined in accordance with rules adopted by the commission ~~department~~. In adopting such rules, the commission ~~department~~ shall consider similar rules adopted by bank regulatory agencies in the United States and the need to provide reasonably consistent regulatory requirements for international banking corporations which will maintain the safe and sound condition of international banking corporations doing business in this state.

Section 1819. Subsections (1), (2), (3), and (4) of section 663.06, Florida Statutes, are amended to read:

663.06 Licenses; permissible activities.—

(1) An international banking corporation licensed to operate an office in this state may engage in the business authorized by this part at the office specified in such license for an indefinite period. An international banking corporation may operate more than one international bank agency, international branch, or international representative office, each at a different place of business, provided that each office shall be separately licensed. No license to operate an international bank office is transferable or assignable. However, the location of an international bank office may be changed after notification of the office ~~department~~. Every such license shall be, at all times, conspicuously displayed in the place of business specified therein.

(2) An international banking corporation which proposes to terminate the operations of its international bank agency, international branch, international representative office, or international administrative office shall surrender its license to the office ~~department~~ and comply with such procedures as the commission ~~department~~ may prescribe by rule.

(3) An international bank agency, international branch, international representative office, or international administrative office license may be suspended or revoked by the office ~~department~~, with or without examination, upon its determination that the international banking corporation does not meet all requirements for original licensing. The commission ~~department~~ may by rule prescribe additional conditions or standards under which the license of an international bank agency, international branch, international representative office, or international administrative office may be suspended or revoked.

(4) In the event any such license is surrendered by the international banking corporation or is suspended or revoked by the office ~~department~~, all rights and privileges of the international banking corporation to transact the business thus licensed shall cease. The commission ~~department~~ shall, by rule, prescribe procedures for the surrender of a license and for the orderly cessation of business by an international banking corporation in a manner which is not harmful to the interests of its customers or of the public.

Section 1820. Section 663.061, Florida Statutes, is amended to read:

663.061 International bank agencies; permissible activities.—

(1) An international bank agency licensed under this part may make any loan, extension of credit, or investment which it could make if incorporated and operating as a bank organized under the laws of this state. An international bank agency may act as custodian and may furnish investment management, and investment advisory services authorized under rules adopted by the commission ~~department~~, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international or foreign investments. An international banking corporation which has an international bank agency licensed under the terms of this part shall be exempt from the registration requirements of s. 517.12.

(2) An international bank agency may not receive deposits in this state except:

(a) Deposits from nonresident entities or persons whose principal places of business or domicile are outside the United States.

(b) Interbank deposits; interbank borrowing, or similar interbank obligations.

(c) International banking facility deposits as defined pursuant to s. 655.071. An international bank agency may maintain in this state, for the account of others, credit balances necessarily incidental to, or arising out of, the exercise of its lawful powers. Such credit balances may be disbursed by check or other draft; however, the commission ~~department~~ shall, by rule, provide appropriate limitations upon third-party disbursements to ensure that credit balances are not functionally equivalent to demand deposits. In establishing the limitations, the commission ~~department~~ may provide that such disbursement may not exceed an average of 20 checks or drafts per day.

(3) Notwithstanding any provision of this chapter or chapter 658 to the contrary, an international banking corporation licensed under this part to operate an international bank agency may, if authorized by rule of the commission ~~department~~, make any loan or investment or exercise any power which it could make or exercise if it were operating in this state as a federal agency under federal law. The commission ~~department~~ shall, when adopting ~~promulgating~~ such rules, consider the public interest and convenience and the need to maintain a sound and competitive state banking system. Unless otherwise provided by statute, an international bank agency may not exercise any powers that a federal agency is not authorized to exercise.

(4) Notwithstanding the provisions of subsection (1), any international banking corporation organized and existing under the laws of any other state and licensed to operate an international bank agency may engage only in those activities permissible for an Edge Act corporation organized under s. 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. ss. 611-632.

(5) With the prior authorization of the office ~~department~~ pursuant to s. 660.26, an international bank agency may accept appointments as trustee by nonresident persons or entities and may exercise trust powers with respect to such fiduciary accounts. Except for the foregoing limitation, the trust activities of an international bank agency shall be subject to the same

requirements and may be conducted in the same manner as the trust business of a state trust company or state bank with trust powers.

Section 1821. Section 663.064, Florida Statutes, is amended to read:

663.064 International branches; permissible activities; requirements.—An international banking corporation that meets the requirements of ss. 663.04 and 663.05 may, with the approval of the office ~~department~~, establish one or more branches in this state to the extent permitted to banks from other states. An international branch shall have the same rights and privileges as a federally licensed international branch. The operations of an international branch shall be conducted pursuant to requirements ~~rules~~ determined by the office ~~department~~ as necessary to ensure compliance with the provisions of the financial institutions codes, including. ~~These rules shall include~~ requirements for the maintenance of accounts and records separate from those of the international banking corporation of which it is a branch. An application to establish an international branch shall be made pursuant to s. 658.26.

Section 1822. Section 663.065, Florida Statutes, is amended to read:

663.065 State-chartered investment companies; formation; permissible activities; restrictions.—

(1) With the approval of the office ~~department~~, a Florida corporation may be formed for the purpose of engaging in international banking, lending, and other financial activities. A state-chartered investment company established pursuant to this section shall engage directly in only those activities permissible for an Edge Act corporation organized under s. 25(a) of the Federal Reserve Act, as amended.

(2) Subject to the prior approval of the office ~~department~~ and to such limitations as the commission prescribes ~~department shall prescribe~~ by rule, a state-chartered investment company may invest in the shares of and may own or control an Edge Act corporation or an international banking corporation and may establish and operate branches, representative offices, and similar banking facilities in foreign countries.

(3) An application for approval to organize a state-chartered investment company shall be subject to the provisions of chapter 655 relating to the organization of de novo financial institutions and to rules adopted by the commission ~~department~~ as necessary to ensure that the proposed state-chartered investment company will be operated in a safe and lawful manner, except that the applicant is not required to become a member of the Federal Reserve System or the Federal Deposit Insurance Corporation. State-chartered investment companies shall be subject to the examination and supervision of the office ~~department~~ and are subject to the financial institutions codes to the same extent as international banking corporations pursuant to s. 663.02.

Section 1823. Section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international branch shall:

(a) Maintain with one or more banks in this state, in such amounts as the office ~~department~~ specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The commission ~~department~~ shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

(2) If on the last business day of any month, the monthly average capital equivalency ratio is less than 7 percent, the international bank agency or international branch shall increase its deposits or investment securities with a depository bank within 7 days of the end of the month in which the deficiency occurred.

(3) In lieu of the requirements of subsection (1), the commission ~~department~~ may, by rule, permit an international bank agency or international branch to hold, in this state, assets which bear such relationships as the commission ~~department shall~~ by rule prescribes ~~prescribe~~ to the aggregate liabilities of the international bank agency or international branch payable in this state or resulting from its operations. The amount of such assets shall be equal to at least $4 million or 107 percent of the amount of such liabilities, whichever is greater; however, the office ~~department~~ by order may reduce the required amount of assets to not less than 100 percent of the amount of such liabilities. When issuing any such order, the office ~~department~~ shall take into account the objective of maintaining a sound banking system in this state. The assets shall be maintained as cash on hand; as deposits or placements with other banks, including the total amount of any reserves deposited at a federal reserve bank; as cash items in process of collection; as earning assets such as federal funds sold, bonds, notes, debentures, drafts, bills of exchange, acceptances, loan participation certificates, or other evidences of indebtedness payable in the United States or in United States funds or in funds freely convertible into United States funds; in such other form as the commission specifies ~~department may specify~~ by rule; or in any combination of the foregoing.

(4) If on the last business day of any month, the monthly average asset maintenance ratio is less than 107 percent, the international bank agency or international branch shall correct the deficiency by accumulating within the first 7 business days of the end of the month sufficient eligible assets to increase the average eligible assets to 107 percent of the average liabilities requiring cover.

(5) The term "assets" as used in this section excludes accrued income and amounts due from other offices or branches of, and wholly owned, except for a nominal number of directors' shares, subsidiaries of the international banking corporation in question. The term "liabilities" as used in this section excludes accrued expenses and amounts due and other liabilities to branches, offices, agencies, and wholly owned, except for a nominal number of directors' shares, subsidiaries of the international banking corporation in question, and such other liabilities as the commission specifies ~~department may specify~~ by rule. International banking facility deposits, borrowings, and extensions of credit are excluded from the total liabilities and total assets of an international bank agency or international branch unless the office ~~department~~ determines that inclusion of international banking facility deposits, borrowings, and extensions of credit is necessary to ensure the maintenance of a sound financial condition, protect depositors, creditors, and the public interest, and maintain public confidence in the business of the international bank agency or international branch.

(6) For the purposes of this section, the office ~~department~~ shall value marketable securities at book value; shall have the right to determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, or other evidence of indebtedness or of any other obligation held by or owed to the international banking corporation in this state; and, in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities, shall have the power to exclude any particular assets.

(7) Notwithstanding the limitations of s. 658.67, the commission ~~department~~ may by rule authorize, and may specify conditions and limits on, the use of securities issued by foreign governments or government-sponsored entities, or by an international banking corporation for the purpose of satisfying the capital equivalency or asset maintenance requirements of this section. However, any such securities shall be payable in funds freely convertible into United States funds, and the amount of such securities deposited or held for the purposes of this section shall not exceed 25 percent of the required amount.

(8) Regardless of whether an international bank agency or international branch complies with the requirements of this section pursuant to subsection (1) or subsection (3), if, by reason of the existence, or the potential occurrence, of unusual or extraordinary circumstances, the office ~~department~~ finds it necessary or desirable for maintaining a sound financial condition, protecting creditors and the public interest, and maintaining public confidence in the business of the international bank agency or international branch it may by order require such international bank agency or international branch to deposit cash or eligible securities with a bank or trust company located in this state, or to hold in this state assets acceptable to the

office ~~department~~ in an aggregate amount that bears such relationship as the office ~~department~~ prescribes to the aggregate liabilities of the international bank agency or international branch.

(9) Each international bank agency shall file such reports with the office ~~department~~ as the commission ~~department~~, by rule, requires to determine compliance with the provisions of this section.

Section 1824. Section 663.08, Florida Statutes, is amended to read:

663.08 Certification of capital accounts.—Before opening an office in this state, and annually thereafter so long as a bank office is maintained in this state, an international banking corporation licensed pursuant to ss. 663.01-663.14 shall certify to the office ~~department~~ the amount of its capital accounts, expressed in the currency of the jurisdiction of its incorporation. The dollar equivalent of these amounts, as determined by the office ~~department~~, shall be deemed to be the amount of its capital accounts.

Section 1825. Subsections (1) and (3) of section 663.083, Florida Statutes, are amended to read:

663.083 Lending limits.—

(1) The commission ~~department~~ shall by rule prescribe the limits of drafts or bills of exchange which an international bank agency or branch may accept relative to the capital accounts of the international banking corporation. These limits shall take into account all transactions which are included and excluded in computing the lending limit for acceptances of a federal agency in the case of an international bank agency, or a federal branch in the case of an international branch, licensed under federal banking law.

(3) Any limitation in this section based on the capital accounts of an international banking corporation shall refer, with respect to an international bank agency or international branch in this state, to the dollar equivalent of the capital accounts of the international banking corporation, as determined by the office ~~department~~. If the international banking corporation has more than one international bank agency or international branch in this state, the business transacted by all such agencies or branches shall be aggregated in determining compliance with a limitation or restriction in this section.

Section 1826. Section 663.09, Florida Statutes, is amended to read:

663.09 Reports; records.—

(1) Every international banking corporation doing business in this state shall, at such times and in such form as the commission prescribes ~~department shall prescribe~~, make written reports in the English language to the office ~~department~~, under the oath of one of its officers, managers, or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the commission or office requires ~~department shall prescribe~~. An international banking corporation

that maintains two or more offices may consolidate such information in one report unless the office ~~department~~ otherwise requires for purposes of its supervision of the condition and operations of each such office. The late filing of such reports shall be subject to the imposition of the administrative fine prescribed by s. 655.045(2)(b). If any such international banking corporation shall fail to make any such report, as directed by the office ~~department~~, or if any such report shall contain any false statement knowingly made, the same shall be grounds for revocation of the license of the international banking corporation.

(2) The international banking corporation of each state-licensed international bank agency or international branch shall perform or cause to be performed an audit of such international bank agency or international branch. The commission ~~department~~ shall, by rule, prescribe the minimum audit procedures including the audit reporting requirements which would satisfy the provisions of this subsection.

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

(a) Correct and complete books and records of account of the business operations transacted by such office. All policies and procedures governing the operations of such office, as well as any existing general ledger or subsidiary accounts, shall be maintained in the English language. The office ~~department~~ may require that any other document not written in the English language which the office ~~department~~ deems necessary for the purposes of its regulatory and supervisory functions be translated into English at the expense of the international banking corporation.

(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 and shall be made available to the office ~~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 office ~~department~~ shall be grounds for suspension or revocation of any license issued under this part.

(4) In addition to any other reports it may be required to make, an international banking corporation which maintains an international bank agency or international branch in this state shall make reports to the office ~~department~~ in such form and at such times as the commission ~~department~~ prescribes by rule concerning the management, asset quality, capital adequacy, and liquidity of the international banking corporation.

Section 1827. Subsections (1), (2), and (3) of section 663.10, Florida Statutes, are amended to read:

663.10 Conversion of license.—

(1) An international banking corporation desiring to convert its existing federal agency or federal branch or Edge Act corporation into an international bank agency or international branch, or an Edge Act corporation which desires to convert to a state-chartered investment company shall submit to the office ~~department~~ an application, on a form adopted by the commission and provided by the office ~~the department shall provide~~, accompanied by a filing fee as prescribed by s. 663.12. An examination and investigation may be conducted to the extent determined necessary by the office ~~department~~. The cost of any such examination shall be paid by the applicant.

(2) Nothing in the laws of this state shall restrict the right of a state-licensed international branch agency, international branch, or international representative office or a state-chartered investment company to convert to a federal license or charter upon compliance with the laws of the United States. Upon completion of any such conversion, the state license shall be surrendered to the office ~~department~~.

(3) An international banking corporation desiring to convert any existing international banking office to an international banking office of a different type shall submit to the office ~~department~~ an application on a form adopted by the commission and provided by the office ~~the department shall provide~~ which shall be accompanied by all of the information and documents that are required of applicants for a license of the type being sought together with the filing fee required by s. 663.12.

Section 1828. Section 663.11, Florida Statutes, is amended to read:

663.11 Dissolution.—In the event an international banking corporation which is licensed to maintain an office in this state is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, a certificate of the official who is responsible for records of banking corporations of the jurisdiction of incorporation of such international banking corporation, attesting to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction, directing the dissolution of such international banking corporation, the termination of its existence, or the cancellation of its authority, shall be delivered by the corporation or its surviving officers and directors to the office ~~department~~. The filing of the certificate, order, or decree shall have the same effect as the revocation of the license of such international banking corporation as provided in s. 663.06.

Section 1829. Section 663.12, Florida Statutes, is amended to read:

663.12 Fees; assessments; fines.—

(1) Each application for a license under the provisions of this part shall be accompanied by a nonrefundable filing fee payable to the office ~~department~~ in the following amount:

(a) Ten thousand dollars for establishing a state-chartered investment company.

(b) Ten thousand dollars for establishing an international bank agency or branch.

(c) Five thousand dollars for establishing an international administrative office.

(d) Five thousand dollars for establishing an international representative office.

(e) Two thousand dollars annually for operating an international representative office or international administrative office.

(f) An amount equal to the initial filing fee for an application to convert from one type of license to another. The commission ~~department~~ may increase the filing fee for any type of license to an amount established by rule and calculated in a manner so as to cover the direct and indirect cost of processing such applications.

(2) Each international bank agency, international branch, and state-chartered investment company shall pay to the office ~~department~~ a semiannual assessment, payable on or before January 31 and July 31 of each year, in an amount determined by rule by the commission ~~department~~ and calculated in a manner so as to recover the costs of the office ~~department~~ incurred in connection with the supervision of international banking activities licensed under this part. These rules shall provide for uniform rates of assessment for all licenses of the same type, shall provide for declining rates of assessment in relation to the total assets of the licensee held in the state, but shall not, in any event, provide for rates of assessment which exceed the rate applicable to state banks pursuant to s. 658.73, unless the rate of assessment would result in a semiannual assessment of less than $1,000. For the purposes of this subsection, the total assets of an international bank agency, international branch, or state-chartered investment company shall include amounts due the agency or branch or state investment company from other offices, branches, or subsidiaries of the international banking corporations or other corporations of which the agency, branch, or state-chartered investment company is a part or from entities related to that international banking corporation.

(3) Each international banking corporation which maintains an office licensed under the provisions of this part and each state-chartered investment company shall pay to the office ~~department~~ examination fees which shall be determined by the commission ~~department~~ by rule and calculated in a manner so as to be equal to the actual cost of each examiner's participation in the examination, as measured by the examiner's pay scale, plus any other expenses directly incurred in the examination, but in no event shall such fee be less than $200 per day for each examiner participating in the examination.

(4) An international bank agency or international branch shall pay to the office ~~department~~ a fine if the agency or branch fails to correct any asset maintenance or capital equivalency deficiency within 7 days following the end of the month in which the deficiency occurs. The fine shall be equal to the amount of the asset maintenance or capital equivalency deficiency at the end of the month in which the deficiency occurs, multiplied by 500 basis points above the Federal Reserve Board's daily discount rate at the end of

the month in which the deficiency occurred, for each day of the deficiency. The minimum fine shall be $1,000.

Section 1830. Section 663.13, Florida Statutes, is amended to read:

663.13 Rules; exemption from statement of estimated regulatory costs requirements.—In addition to any other rulemaking authority it has under the financial institutions codes, the commission may adopt ~~department is authorized to promulgate~~ reasonable rules that ~~which~~ it deems advisable for the administration of international banking corporations under this part, in the interest of protecting depositors, creditors, borrowers, or the public interest and in the interest of maintaining a sound banking system in this state. Because of the difficulty in obtaining economic data with regard to such banks, no statement of estimated regulatory costs shall be required in connection with these rules.

Section 1831. Section 663.14, Florida Statutes, is amended to read:

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

Section 1832. Subsections (2), (7), and (8) of section 663.16, Florida Statutes, are amended to read:

663.16 Definitions; ss. 663.17-663.181.—As used in ss. 663.17-663.181, the term:

(2) "Claims" means debts, obligations, deposits, and other similar items that the office ~~department~~ takes possession of pursuant to s. 663.17(1).

(7) "Control" means any person or group of persons acting in concert, directly or indirectly, owning, controlling, or holding the power to vote more than 50 percent of the voting stock of a company, or having the ability in any manner to elect a majority of directors of a corporation, or otherwise exercising a controlling influence over the management and policies of a corporation as determined by the office ~~department~~.

(8) "Qualified financial contract" means any securities contract, commodity contract, forward contract, including spot and forward foreign exchange, repurchase agreement, swap agreement, or any similar agreement, any option to enter into any such agreement, including any combination of the foregoing, and any master agreement for such agreements. Such master agreement, together with all supplements thereto, shall be treated as one qualified financial contract, provided that such contract, option, or agreement, or combination of contracts, options, or agreements is reflected in the books, accounts, or records of the international banking corporation or a party provides evidence of such agreement. The commission ~~department~~ may define, by rule, securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement, and the commission, by rule, or the office, by order, may~~, by rule or order,~~ determine any other

agreement to be a qualified financial contract for the purpose of this subsection. The commission ~~department~~ may prescribe such rules relating to qualified financial contracts and netting thereof as the commission ~~department~~ deems appropriate.

Section 1833. Section 663.17, Florida Statutes, is amended to read:

663.17 Liquidation; possession of business and property; inventory of assets; wages; depositing collected assets; appointing agents; appointment of judges.—

(1) The office ~~department~~ may, at its discretion, take possession of the business and property in this state of any international banking corporation that has been licensed to operate in this state upon finding that the corporation's international bank agency operating in this state has violated any law, has neglected or refused to comply with the terms of a duly issued order of the office ~~department~~, is insolvent or imminently insolvent, or is transacting business in an unsound, unsafe, or unauthorized manner such that the corporation is threatened with imminent insolvency, or that the corporation is in liquidation at its domicile or elsewhere. Title to such business and property shall vest by operation of law in the office ~~department~~ upon taking possession. Thereafter, the office ~~department~~ shall liquidate or otherwise deal with such business and property in accordance with the provisions of this part, chapter 658, and any other provision relating to the liquidation of banking corporations. The office ~~department~~ may deal with such business and property and prosecute and defend any and all actions relating to the liquidation. Only the claims of creditors of the international banking corporation arising out of transactions those creditors had with the international banking corporation's international bank agency or agencies located in this state shall be accepted by the office ~~department~~ for payment out of the business and property which it has taken possession of in this state. Acceptance or rejection of such claims by the office ~~department~~ shall not prejudice any creditor's rights to otherwise share in other assets of the international banking corporation. The following claims shall not be accepted by the office ~~department~~ for payment out of the business and property in the office's ~~department's~~ possession in this state:

(a) Claims which would not represent an enforceable legal obligation against an international bank agency if such agency were a separate and independent legal entity.

(b) Amounts due and other liabilities to other offices, agencies, and branches of and affiliates of such international banking corporation.

(2) Whenever all accepted claims, together with interest on such claims, and the expenses of the liquidation have been paid in full or properly provided for, the office ~~department~~, upon the order of a court of competent jurisdiction, shall transfer the remaining assets to the principal office of such international banking corporation, or to the duly appointed domiciliary liquidator or receiver of such corporation. Dividends and other amounts that remain unclaimed or unpaid and are in the possession of the office ~~department~~ for 6 months after such transfer shall be deposited by the office ~~department~~ as provided by law.

(3) When the office ~~department~~ takes possession of the property and business of any international banking corporation, the office ~~department~~ shall:

(a) Give notice of such fact to all corporations, unincorporated associations, partnerships, governmental entities, and other entities and individuals known by the office ~~department~~ to hold any assets of such corporation. No corporation, unincorporated association, partnership, governmental entity, or other entity or individual having notice or knowledge that the office ~~department~~ has taken possession of such corporation shall have a lien or charge for any payment, advance, or clearance thereafter made against any of the assets of such corporation for liability thereafter incurred.

(b) Upon written demand of the office ~~department~~, any corporation, unincorporated association, partnership, governmental entity, or other entity or individual holding assets of such corporation shall deliver such assets to the office ~~department~~ and shall be discharged from liability with respect to any claim upon such assets; provided, such demand shall not affect the right of a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, to retain collateral, including any right of such secured creditor under any security agreement related to a qualified financial contract to retain collateral and apply such collateral in accordance with the provisions of the financial institutions codes.

(c) Nothing in paragraphs (a) and (b) shall affect any right of setoff permitted under applicable law; provided, in connection with the liquidation of an international bank agency of any other international banking corporation pursuant to this part, no entity or individual may set off the business and property in this state of an international banking corporation being liquidated under this subsection, against the liabilities of such corporation other than those that arise out of transactions engaged in by such entity or individual with such international bank agency. For purposes of this paragraph, liabilities shall be deemed to include, in the case of qualified financial contracts, the lesser of the two amounts calculated with respect to any such qualified financial contract pursuant to s. 663.172(3), and this paragraph shall not be deemed to authorize setoff except as otherwise permissible under applicable law.

(4) Any international banking corporation of which the office ~~department~~ has taken possession or which is operating under restrictions imposed by duly constituted authority may be permitted to resume business subject to the office's ~~department's~~ discretion and any conditions that ~~which~~ the office ~~department~~ may impose.

(5) After the office ~~department~~ takes possession of and determines to liquidate the property and business of any international banking corporation, the office ~~department~~ shall make an inventory, in duplicate, of the assets of such corporation. One copy of such inventory shall be filed with the ~~in an~~ office ~~of the department~~ and one copy shall be filed with a court of competent jurisdiction in the county in which the principal office of such corporation is located.

(6) Notwithstanding s. 658.84, all wages actually owing to the employees of an international banking corporation for services rendered within 3 months prior to the date possession was taken by the office ~~department~~, and not exceeding $2,000 to each employee, shall be paid prior to the payment of any other debt or claim, and, in the discretion of the office ~~department~~, may be paid as soon as practicable after taking possession, except that at all times the office ~~department~~ shall reserve such funds as will, in the office's ~~department's~~ opinion, be sufficient for the expenses of administration.

(7) The office ~~department~~ is authorized, upon taking possession of any international banking corporation, to liquidate the affairs of such corporation and to do all acts and to make such expenditures as in the office's ~~department's~~ judgment are necessary to conserve the assets and business of the corporation. The office ~~department~~ shall proceed to collect the debts due to the corporation. The office ~~department~~ may, upon an order of a court of competent jurisdiction, sell, assign, compromise, or otherwise dispose of all bad or doubtful debts held by, and compromise claims against, such corporation, other than deposit claims, provided, whenever the principal amount of any such debt or claim owed by or owing to such corporation does not exceed $50,000, the office ~~department~~ may sell, assign, compromise, or otherwise dispose of such debt or claim upon such terms as the office ~~department~~ may deem to be in the best interests of such corporation wherever situated. When the real property of an international banking corporation, to be disposed of pursuant to this subsection, is located in a county in this state other than a county in which an application to the court for leave to dispose is made, the office ~~department~~ shall file a certified copy of the order of such court authorizing such disposal in the office of the clerk of the county in which such real property is located.

(8) Moneys collected by the office ~~department~~ in liquidating an international banking corporation shall be:

(a) Deposited on demand, time or otherwise, in one or more banks, associations, or trust companies organized under the laws of this state and, in the case of insolvency or voluntary or involuntary liquidation of the depositary, such deposits shall be entitled to priority of payment equally with any other priority given under the financial institutions codes;

(b) Deposited on demand, time or otherwise, in one or more national banks with a principal office located in this state and with total assets exceeding $1 billion; or

(c) Invested in obligations of the United States, or obligation for which the full faith and credit of the United States is pledged to provide for the payment of interest and principal.

(9) The office ~~department~~ may appoint one or more persons as agent or agents to assist in the liquidation of the business and affairs of any international banking corporation in the office's ~~department's~~ possession. The office ~~department~~ shall file a certificate of such appointment in the headquarters of the office ~~one of the department's offices~~ and shall file a certified copy of such certificate with a court of competent jurisdiction in the county in which the principal office of such corporation is located in this state. The office

~~department~~ may employ such counsel and expert assistants under such titles that the office ~~department~~ shall assign to them, and may retain such officers or employees of such corporation as the office ~~department~~ deems necessary in the liquidation and distribution of the corporation's assets. The office ~~department~~ may require such security as it may deem proper from the agents and assistants appointed pursuant to the provisions of this subsection.

(10) When the office ~~department~~ has taken possession of and is liquidating the business and property in this state of any international banking corporation under the provisions of this part, the office ~~department~~ shall be entitled to the appointment of a single judge to supervise the liquidation in the judicial circuit in which the principal office of such corporation is located. Such judge shall have the power to order expedited or simplified procedures or order a reference whenever necessary to resolve a matter in such liquidation.

(11) The compensation of agents and any other employees appointed by the office ~~department~~ to assist in the liquidation of an international bank agency, the distribution of its assets, or the expenses of supervision, shall be paid out of the assets of the agency in the hands of the office ~~department~~. Expenses of liquidation and approved claims for fees and assessments due the office ~~department~~ shall be given first priority among unsecured creditors.

Section 1834. Section 663.171, Florida Statutes, is amended to read:

663.171 Liquidation; repudiation of contracts.—

(1) Except as otherwise provided in this section, when the office ~~department~~ has taken possession of the business and property in this state of an international banking corporation, the office ~~department~~ may assume or repudiate any contract, including an unexpired lease, of the corporation:

(a) To which such corporation is a party.

(b) The performance of which the office ~~department~~, in its discretion, determines to be burdensome.

(c) The repudiation of which the office ~~department~~, in its discretion, determines will promote the orderly administration of the corporation's affairs.

(2) After the expiration of 90 days after the date the office ~~department~~ takes possession of an international banking corporation, any party to a contract with such corporation may demand in writing that the office ~~department~~ assume or repudiate such contract. If the office ~~department~~ has not assumed or repudiated the contract within 15 calendar days after the date of receipt of such demand, the affected party may bring an action in a court of competent jurisdiction in the county in which the principal office of the corporation is located to obtain an order requiring the office ~~department~~ to assume or repudiate the contract. If the office ~~department~~ has not assumed or repudiated the contract by at least 1 month before the last date

for filing claims against the corporation, such contract shall be deemed repudiated.

(3) Notwithstanding subsection (2), with respect to an unexpired lease of the corporation for rental of real property under which the corporation was a lessee, if the office ~~department~~ remains in possession of the leasehold, the office ~~department~~ shall not be required to assume or repudiate such lease and may continue in possession of such leasehold for the remainder of the term of the lease in accordance with the terms of the lease; provided, if the office ~~department~~ later repudiates the lease before the end of the lease term, any amounts that may be due the lessor with respect to such lease shall be calculated as provided by law.

(4) Notwithstanding any other provision of this section relating to liquidating an international banking corporation, the office ~~department~~ shall not assume or repudiate any qualified financial contract that the international bank agency entered into which is subject to a multibranch or multiagency netting agreement or arrangement that provides for netting present or future payment obligations or payment entitlements, including termination or closeout values relating to the obligations or entitlements, among the parties to the contract and agreement or arrangement and the office ~~department~~ may, but shall not be required to, assume or repudiate any other qualified financial contract an international bank agency entered into; provided, upon the repudiation of any qualified financial contract or the termination or liquidation of any qualified financial contract in accordance with its terms, the liability of the office ~~department~~ under such qualified financial contract shall be determined in accordance with s. 663.172.

Section 1835. Section 663.172, Florida Statutes, is amended to read:

663.172 Liability on repudiation or termination of contracts.—

(1) Except as otherwise provided in this section, upon the repudiation or termination of any contract pursuant to s. 663.171, the liability of the office ~~department~~ shall be limited to the actual direct compensatory damages of the parties to the contract, determined as of the date the office ~~department~~ took possession of the international banking corporation. The office ~~department~~ shall not be liable for any future wages other than severance payments, to the extent such payments are reasonable standards, or for payments for future service, costs of cover, or any consequential, punitive, or exemplary damages, damages for lost profits or lost opportunity, or damages for pain and suffering.

(2) Except as otherwise provided in this section, the liability of the office ~~department~~, upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms of such contract, shall be limited as provided in subsection (1), except compensatory damages shall be deemed to include normal and reasonable costs of cover or other reasonable measures of damages used among participants in the market for qualified financial contract claims, calculated as of the date of repudiation or the date of the termination of such qualified financial contract in accordance with the

terms of the contract. Upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms of such contract, the office ~~department~~ shall be entitled to damages and such damages shall be paid to the office ~~department~~ upon written demand from the office ~~department~~ to the other party or parties to the contract.

(3) In the case of the liquidation of an international bank agency of an international banking corporation by the office ~~department~~, with respect to qualified financial contracts subject to netting agreements or arrangements that provide for netting present or future payment obligations or payment entitlements, including termination or closeout values relating to the obligations or entitlements, among the parties to the contracts and agreements or arrangements, the liability of the office ~~department~~ to any party to any such qualified financial contract upon the repudiation or in any connection with the termination or liquidation of such qualified financial contract in accordance with the terms of such contract shall be limited to the lesser of:

(a) The global net payment obligation; or

(b) The branch-to-agency or agency-to-agency net payment obligation.

(4) The liability of the office ~~department~~ to a party under this section shall be reduced by any amount otherwise paid or received by the party with respect to the global net payment obligation pursuant to such qualified financial contract which, if added to the liability of the office ~~department~~ under subsection (1), would exceed the global net payment obligation. The liability of the office ~~department~~ under this section to a party to a qualified financial contract also shall be reduced by the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the international banking corporation to the party pursuant to such qualified financial contract. If netting under the applicable netting agreement or arrangement results in a branch-to-agency net payment entitlement, notwithstanding any provision in any such contract that purports to effect a forfeiture of such entitlement, the office ~~department~~ may make written demand for and shall be entitled to receive from the party to such contract an amount not to exceed the lesser of the global net payment entitlement or the branch-to-agency net payment entitlement.

(5) The liability of a party under this section shall be reduced by any amount otherwise paid to or received by the office ~~department~~ or any other liquidator or receiver of the international banking corporation with respect to the global net payment entitlement pursuant to such qualified financial contract which, if added to the liability of the party under this section, would exceed the global net payments entitlement. The liability of a party under this section to the office ~~department~~ pursuant to such qualified financial contract also shall be reduced by the fair market value of the amount of any proceeds of the collateral that secures and has been applied to satisfy the obligations of the party to the international banking corporation pursuant to such qualified financial contract.

Section 1836. Section 663.173, Florida Statutes, is amended to read:

663.173 Qualified financial contract; net obligation and net entitlement.—A party to a qualified financial contract with an international banking corporation, possession of which has been taken by the office ~~department~~ pursuant to s. 663.17, which party has a perfected security interest in collateral or other valid lien or security interest in collateral enforceable against third parties pursuant to a security arrangement related to such qualified financial contract, may retain all such collateral and, upon repudiation or termination of such qualified financial contract in accordance with the terms of the contract, may apply such collateral in satisfaction of any claims secured by the collateral provided the total amount so applied to such claims shall in no event exceed the global net payment obligation, if any.

Section 1837. Section 663.174, Florida Statutes, is amended to read:

663.174 Repudiation; lease, lessee, or lessor; real or personal property.—

(1) If the office ~~department~~ repudiates a lease of an international banking corporation, the real or personal property under which the corporation was a lessee, the lessor under such lease shall be entitled to file a claim with the office ~~department~~ for the lesser of:

(a) The amount designated as liquidated damages contained in the lease between the corporation and the lessor;

(b) The amount equal to 1 year's rent under the terms of the repudiated lease; or

(c) An amount equal to the rent for the remaining term of the lease.

(2) If the office ~~department~~ repudiates the lease of an international banking corporation for the rental of real property under which the corporation was the lessor and the lease was not in default at the time of the repudiation, the lessee under such lease may:

(a) Treat the lease as terminated by such repudiation and vacate the premises; or

(b) Remain in possession of the leasehold interest for the balance of the term of the lease, and for any renewal or extension of such term that is enforceable by such lessee under applicable noninsolvency law, unless the lessee defaults under the terms of the lease after the date of such repudiation. If the lessee remains in possession of the leasehold interest, the lessee shall continue to pay to the office ~~department~~ the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease and may offset against such rent payment any damages which may accrue due to nonperformance of any obligation of the corporation under the lease after the date of repudiation.

The office ~~department~~ shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under this paragraph. Nothing in this subsection prohibits the office ~~department~~ from entering into a new contract with the

lessee for the rental of the leasehold which was the subject of the repudiated lease.

(3) Except as otherwise provided, notwithstanding any provision in an unexpired lease or other contract or in applicable law, a contract or unexpired lease of an international banking corporation may not be terminated or modified by any party other than the office ~~department~~ without the concurrence of the office ~~department~~, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the office ~~department~~ has taken possession, solely pursuant to a provision in such contract or lease purporting to allow termination or modification upon the office's ~~department's~~ taking possession or upon the insolvency or liquidation or deterioration of the financial condition of the corporation.

(4) Nothing in this section affects the right of a party to contract with an international banking corporation to seek performance of such contract or damages under such contract in any other jurisdiction; provided, the office ~~department~~ shall not be liable for the performance of such contract or damages under such contract in any other jurisdiction.

(5) The rights granted in this section are in addition to any other rights available to the office ~~department~~ under common law or any other law.

Section 1838. Section 663.175, Florida Statutes, is amended to read:

663.175 Liquidation; continuation, stay, and injunction.—

(1) Except as provided in this section, the office's ~~department's~~ taking of possession of any international banking corporation and the liquidation of the corporation shall operate as a stay of and as an injunction against, as of the date the office ~~department~~ takes possession of the corporation and applicable to all persons or entities:

(a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the corporation that was or could have been commenced before the taking of possession, or to cover a claim against the corporation that arose before the taking of possession.

(b) The enforcement against the corporation, or the business and property of the corporation in this state, of a judgment obtained before the taking of possession.

(c) Any act to obtain possession of property of the corporation or of property from the corporation or to exercise control over property of the corporation.

(d) Any act to create, perfect, or enforce any lien against property of the corporation.

(e) Any act to create, perfect, or enforce against property of the corporation any lien to the extent that such lien secures a claim that arose before the taking of possession.

(f) Any act to collect, assess, or recover a claim against the corporation and the liquidation of the corporation does not operate as a stay of or as an injunction against the claim.

(2) The office's ~~department's~~ taking of possession of an international banking corporation and the liquidation of the corporation does not operate as a stay of or as an injunction against:

(a)1. The filing of a claim in the liquidation of the corporation;

2. The making of a demand upon the office ~~department~~ to assume or repudiate a contract of the corporation;

3. The exercise of any setoff otherwise permissible under applicable law except limited by s. 663.17;

4. The right of any secured creditor with a perfected security interest or other valid lien or security interest enforceable against third parties to retain collateral, including any right of such secured creditor under any security agreement related to a qualified financial contract as defined in s. 663.17 to retain collateral and to apply such collateral in accordance with s. 663.173;

5. Any automatic termination in accordance with the terms of any qualified financial contract or any right to cause the termination or liquidation of any qualified financial contract, as defined in this part in accordance with the terms of such contract;

6. Any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more such qualified financial contracts; or

7. The commencement of an action under s. 663.181 or any other action relating to the liquidation of the corporation before the court of competent jurisdiction overseeing the liquidation of the corporation.

(b) The commencement or continuation of a criminal action or proceeding against the corporation.

(c) The commencement or continuation of an action or proceeding pursuant to a governmental unit's police or regulatory power.

(d) The enforcement of a judgment, other than money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

(e) The issuance to the corporation by a governmental unit of a notice of tax deficiency.

(f) The commencement or continuation of a judicial action or proceeding by a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, including any right of such secured creditor under any security arrangement related to a qualified financial contract to enforce such interest or lien.

(3) Except as otherwise provided in this section:

(a) The staying or enjoining of an act against property of an international banking corporation under this section shall continue until such property is no longer the property of the office ~~department~~ in possession of the corporation.

(b) The staying or enjoining of any other act under this section shall continue until the office ~~department~~ has concluded liquidating the corporation.

(4) For good cause shown, on request of a party in interest and after notice and hearing, a court of competent jurisdiction overseeing the liquidation of an international banking corporation may grant relief from a stay or injunction provided under this section, including, but not limited to, terminating, annulling, modifying, or conditioning such stay or injunction.

(5) In the case of any willful violation of a stay or injunction provided in this section by any person who has knowledge of the office's ~~department's~~ taking of possession of an international banking corporation that is the subject of the stay or injunction, the office ~~department~~ shall recover actual damages, including costs and fees and, in appropriate circumstances, may recover punitive damages.

Section 1839. Section 663.176, Florida Statutes, is amended to read:

663.176 Liquidation; notice of possession.—When the office ~~department~~ has taken possession of an international banking corporation and has determined to liquidate the corporation's affairs, the office ~~department~~ shall notify all persons who may have claims against the corporation to present such claims to the office ~~department~~ and make proper proof of such claims within 4 months after the date of such notice and at a place specified in the notice; provided, if the office ~~department~~ finds that a shorter period than 4 months will afford a reasonable time for presenting claims and making proof of such claims, the office ~~department~~ may specify such shorter period which shall in no event be less than 30 days. In any event, the office ~~department~~ shall specify in such notice the last day for processing claims and for making proof of such claims. The office ~~department~~ shall cause such notice to be mailed to all persons whose names appear as creditors upon the books of the corporation. Such notice to persons appearing as depositors shall be mailed to the address appearing upon the deposit records or ledger of the corporation. The office ~~department~~ shall also cause such notice to be published biweekly in such newspaper or newspapers as the office ~~department~~ may direct in the county where the principal office of the corporation in the state is located and, in the office's ~~department's~~ discretion, elsewhere for publication 3 consecutive months, the first to be published more than 90 days before the last day fixed in such notice for presenting proof of claims. However, if the notice requires claims to be presented within less than 4 months, the office ~~department~~ shall cause such notice to be published weekly in such newspaper or newspapers as the office ~~department~~ may direct for 3 consecutive weeks, the first publication to be published more than 21 days before the last day fixed in such notice for presenting claims. Such notice shall specify that all persons having claims for priority of payment shall make

demand in writing for priority in the proof of their claims. The office ~~department~~ shall have no power to accept any claim presented after the date specified in such notice as the last date for presenting claims.

Section 1840. Section 663.177, Florida Statutes, is amended to read:

663.177 Disposition of property held as bailee or depositary; opening of safe-deposit boxes; disposal of contents.—

(1) The office ~~department~~ may, after it has taken possession of the business and property of an international banking corporation, send a written notice by registered mail to each person claiming, or appearing upon the books of the corporation, to be:

(a) The owner of any personal property in the custody or possession of the corporation, as bailee or depositary for hire or otherwise, including the contents of any safe, vault, or box opened after taking possession of such property for nonpayment of any rent; or

(b) The lessee of any safe, vault, or box, to such person's last address appearing on the books of the international banking corporation or the last known address if no address appears on such books, notifying such person to remove all such property or the contents of any such safe, vault, or box, within a period stated in such notice which period shall be not less than 60 days after the date of such notice. The contract of bailment or of deposit for hire, or lease of safe, vault, or box, if any, between the person to whom such notice is mailed and the corporation shall cease upon the date for removal fixed in such notice. Such persons shall have a claim against the corporation for the amount of unearned rent or charges, if any, paid by such person from the date fixed in such notice, if the property or contents are removed on or before such date, or from the date of actual removal, if the property or contents are removed after such date.

(2) If such property or contents are not removed, and all rent or storage and other charges accrued up to that time, if any, are not paid, within the time fixed by such notice, the office ~~department~~ may cause such property to be inventoried, or such safe, vault, or box, or any package, parcel, or receptacle in the custody or possession of the corporation as bailee or depositary for hire or otherwise, to be opened and the contents, if any, to be removed and inventoried. Such property or contents shall be sealed by a notary public in a package distinctly marked by the office ~~department~~ with the name of the person in whose name such property or such safe, vault, box, package, parcel, or receptacle is recorded upon the books of the corporation, and a copy of such inventory shall be certified and attached to such package by such notary public. The package shall be kept in a place that the office ~~department~~ determines at the expense and risk of the person in whose name it is recorded until delivered to such person or until sold, destroyed, or otherwise disposed of. Such package may, pending final disposition of its contents, be opened by the office ~~department~~ for inspection or appraisal or to enable the office ~~department~~ to exercise any powers conferred or duties imposed by this part. Whenever such package is opened, the office ~~department~~ shall endorse on the outside of the package the date of opening and resealing and shall prepare an affidavit which shall be attached to the

package showing the reason for opening and the articles, if any, removed from the package or placed or replaced in the package.

(3) At any time prior to the sale, destruction, or other disposition of the contents of the package, the person in whose name the package is recorded may require the delivery of the package upon the payment of all rental or storage charges accrued, and all other charges or expenses paid or incurred to the date of delivery with respect to such package or contents of the package including the cost of inventorying or of opening and inventorying, the fees of the notary public, the cost of preparing and mailing the notice, and advertising, if any.

(4) After the expiration of 1 year after the mailing of the notice required in subsection (1), the office ~~department~~ may apply to a court of competent jurisdiction for an order authorizing the office ~~department~~ to sell, destroy, or otherwise dispose of the contents of such package. Whenever, pursuant to the provisions of this subsection, the office ~~department~~ is given the power to sell the contents of any package, such power to sell shall be deemed a power to sell in satisfaction of a lien for nonpayment of rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale with respect to such package and the contents of the package, including charges and expenses described in subsection (3).

(5) The provisions of this section do not affect or preclude any other remedy, by action or otherwise, for the enforcement of claims or rights of the office ~~department~~, or of an international banking corporation of which the office ~~department~~ is in possession, against the person in whose name any property or any safe, vault, box, package, parcel, or receptacle is recorded, or affect or bar the right of the office ~~department~~ or the corporation to recover, before sale, any debt or claim due to the office ~~department~~ or the corporation, or, after sale, so much of the debt or claim as is not paid by the proceeds of the sale.

Section 1841. Section 663.178, Florida Statutes, is amended to read:

663.178 Claims; valuation; priority; listing; filing; objection; endorsement; adverse interest.—

(1) Proof of claim shall consist of a written statement under oath signed by the claimant or his or her attorney in fact and shall be in such form as the office ~~department~~ requires.

(2) The office ~~department~~ shall not accept a claim based on an agreement with an international banking corporation unless the agreement is reflected on the accounts, books, or records of the corporation or a creditor provides documentary evidence of such agreement. The commission ~~department~~ may adopt any rules determined necessary to implement this section.

(3) No claim or account of any secured claimant or creditor shall be accepted at a sum greater than the difference between the face value of the claim or account and the value of the security itself as of the commencement of the liquidation unless the claimant or creditor, prior to the expiration of

the time fixed by the office ~~department~~ for the presentation of claims, surrenders his or her security to the office ~~department~~, in which event the claim or account may be accepted in its full face amount.

(4) The office ~~department~~ shall not determine priorities in accepting or rejecting claims and the acceptance by the office ~~department~~ of a claim in which priority of payment is demanded shall not entitle the claimant to priority. Accepted claims in which priority of payment is demanded shall be presented to a court of competent jurisdiction on notice to the claimant for determination as to the priority of payment of such claims. Except as otherwise provided in ss. 663.17-663.181, all claims entitled to priority of payment shall be paid ratably and proportionately.

(5) The office ~~department~~ shall prepare in duplicate a complete list of all claims presented, specifying the name of the claimant, the nature of the claim, and the amount of such claim. Such list shall also contain a statement of accounts payable as shown by the books and records of the corporation and as to which no claims have been presented, specifying the name of each person to whom such account appears to be payable, the nature of the debt, and the amount of such claim. Within 60 days after the last date fixed in the notice to creditors to present and make proof of claims, the office ~~department~~ shall file one copy of such list in one of its offices for public inspection and shall file one copy with a court of competent jurisdiction in the county in which the principal office of the corporation is located.

(6) Within 40 days after the office ~~department~~ has filed in its headquarters ~~office~~ a copy of the list of claims required by subsection (5), objections to any claim presented or to any account appearing on such list may be made by any party interested by filing such objections with the office ~~department~~, in writing, signed by the objector, and verified. Unless the office ~~department~~ rejects any claim or accounts to which objections have been filed with it, the office ~~department~~ shall, within 60 days after the time to file such objections has expired, apply to a court of competent jurisdiction, upon notice to the objector, for an order directing the office ~~department~~ as to the disposition of such claim or account. The court may then dispose of such objections or may order a reference for that purpose.

(7) The office ~~department~~ shall, not later than 60 days after the time has expired to file objections to claims presented, accept or reject, in whole or in part, every filed claim, except claims as to which objections are still pending before a court, and shall accept or reject, in whole or in part, every account payable as shown by the books and records and as to which no claim has been presented, except accounts as to which objections are still pending before a court. Whenever the office ~~department~~ accepts a portion of a claim or account and rejects the remainder, the portion accepted and the portion rejected shall, for the purpose of this section, each be deemed separate claims or accounts.

(8) Every claim or account payable accepted by the office ~~department~~ shall be endorsed as "accepted" and be filed so endorsed. If the office ~~department~~ is unable, from the books, accounts, or records of an international banking corporation, to determine the ownership of a claim or account payable or if for any other reason the office ~~department~~ doubts the validity of

any claim or account payable, the office ~~department~~ shall reject such claim or account payable and shall endorse the claim or account payable as "rejected" and file it as so endorsed. The office ~~department~~ shall mail notice of such acceptance or rejection within 14 calendar days after the office ~~department~~ has accepted or rejected all claims filed. If a proof of claim has been filed, such notice need be mailed only to the address appearing on such claim and, if no proof of claim has been filed, the notice need be mailed only to the address appearing upon the books of the corporation. If the office ~~department~~ is unable from the proof of claim or the books and records of the corporation to identify a name or address, such notice of rejection need not be given.

(9) Within 30 days after the office ~~department~~ has accepted or rejected all claims filed, and all accounts payable as shown by the books and records as to which no claims have been presented, the office ~~department~~ shall make a list of all such claims and accounts accepted or rejected by the office ~~department~~ for public inspection and file one copy of such list with the ~~in an~~ office ~~of the department~~ and one copy with a court of competent jurisdiction in the county in which the principal Florida office of such corporation is located.

(10) When the office ~~department~~ has accepted a filed claim and has filed such claim, endorsed as "accepted," the claimant, unless priority of payment has been demanded and such claim is entitled by law to priority of payment, shall be entitled to share ratably with other general creditors in the distribution of the proceeds of the liquidation of the assets of the international banking corporation; provided, any accepted claim or claims for taxes owed to any taxing authority shall be paid in full, to the extent that assets of the corporation are available, prior to the payment of any other accepted claim pursuant to this section. If the claimant has demanded priority of payment, the receipt and acceptance of ratable dividends shall be without prejudice to the right of such priority of payment.

(11) Any person who fails to demand in writing priority of payment as specified in the notice to file claims shall be deemed to have waived and abandoned any right to such priority of payment. Any person who fails to demand in writing priority of payment as provided in this section is not entitled to maintain any action or proceeding for any priority of payment. In any action or proceeding for priority of payment, the claimant shall allege and prove that the claim upon which the action is instituted was filed and demand for priority of payment was made in writing.

(12) Within 6 months after the date the office ~~department~~ files the list of claims and accounts payable which are accepted or rejected by the office ~~department~~, a claimant whose claim has been filed and has not been accepted by the office ~~department~~, or any person whose account payable as shown by the books and records as to which no claim has been presented, has not been accepted by the office ~~department~~, may institute and maintain an action against the international banking corporation. Such action may be maintained only in a court of competent jurisdiction in the county in which the principal Florida office of such international banking corporation is located.

(13) A lien shall not attach to any property or assets of an international banking corporation as a result of any judicial process after the office ~~department~~ has taken possession of the assets of the corporation.

(14) No action shall be maintained against an international banking corporation while the office ~~department~~ is in possession of the affairs and business of the corporation unless brought within the period of limitation specified in s. 663.17. In any action instituted against such corporation while the office ~~department~~ is in possession of the corporation's property and business, the plaintiff shall be required to allege and prove that the claim upon which the action is instituted was filed and that such claim has not been accepted or, in the case of an action upon an account as to which no claim has been presented, the plaintiff shall be required to allege and prove that such account appeared upon the books and records and that such account has not been accepted.

(15) Notice to the office ~~department~~ of an adverse interest in a claim or account payable accepted by the office ~~department~~ to the credit of any person shall not require the office ~~department~~ to recognize such adverse claimant unless the adverse claimant also:

(a) Procures a restraining order, injunction, or other appropriate process against the office ~~department~~ from a court of competent jurisdiction in a cause instituted by the office ~~department~~ in which the person to whose credit such claim or account payable was accepted or his or her executor or administrator is made a party and served with summons; or

(b) Executes to the office ~~department~~, in a form and with sureties acceptable to the office ~~department~~, a bond indemnifying the office ~~department~~ from any and all liability, loss, damage, cost, and expenses for and on account of the payment of dividends.

(16) In any action or proceeding against the office ~~department~~ to recover dividends accepted, if there is any person who is not a party to the action who makes such a claim, the court in which the action or proceeding is pending may, on the motion of the office ~~department~~, make an order amending the proceedings making such person a party to such action or proceeding and the court shall thereafter proceed to determine the rights and interests of the parties to such funds. The remedy provided in this section is in addition to and not exclusive of that provided in any other interpleader.

Section 1842. Section 663.18, Florida Statutes, is amended to read:

663.18 Fees.—The office ~~department~~ is not required to pay any fee to any clerk, sheriff, register, or other public officer for entering, filing, docketing, registering, recording, executing, or issuing a copy, transcript, extract, or certificate of, or authenticating or exemplifying, any paper, record, or instrument pertaining to the exercise by the office ~~department~~ of any powers conferred or duties imposed upon the office ~~department~~ by the provisions of this part, whether or not such paper, record, or instrument is executed by the office ~~department~~ and whether or not it is connected with an action. The term "action" is construed as including a special proceeding in any action.

Section 1843. Section 663.181, Florida Statutes, is amended to read:

663.181 Manner and time within which taking possession may be tested.—At any time within 10 days after the office ~~department~~ has taken possession of the property and business of an international banking corporation, such corporation may apply to a court of competent jurisdiction in the county in which its principal office is located in this state for an order requiring the office ~~department~~ to show cause why the office ~~department~~ should not be enjoined from continuing such possession. The court may, upon good cause shown, direct the office ~~department~~ to refrain from such proceedings and to surrender such possession.

Section 1844. Paragraph (c) of subsection (1) of section 663.301, Florida Statutes, is amended to read:

663.301 Definitions.—

(1) As used in this part:

(c) "Regional development bank" means a for-profit banking institution:

1. Which is listed in the International Monetary Fund's Directory of Regional Economic Organizations and Intergovernmental Commodity and Development Organizations;

2. Which is otherwise afforded special privileges, including favorable tax treatment, under the laws of the jurisdiction in which it is organized;

3. Which has as its principal objective the extending of credit for international development purposes including short-term financial transactions; and

4. Which has at least 50 percent of its shares of voting stock owned by central banks or other government-owned financial institutions from at least five foreign countries and one or more financing affiliates of the International Bank for Reconstruction and Development, or which satisfies such other ownership requirements as the commission ~~department~~ may specify by rule. When adopting any such rule, the commission ~~department~~ shall take into account the objective of ensuring the multinational control of international development banks.

Section 1845. Paragraph (a) of subsection (1) of section 663.302, Florida Statutes, is amended to read:

663.302 Applicability of state banking laws.—

(1)(a) International development banks shall be subject to the following provisions of chapter 655 as though such international development banks were state banks:

1. Section 655.005, relating to definitions.

2. Section 655.012, relating to general supervisory powers of the office ~~department~~.

3. Section 655.016, relating to liability.

4. Section 655.031, relating to administrative enforcement guidelines.

5. Section 655.032, relating to investigations; etc.

6. Section 655.0321, relating to hearings and proceedings.

7. Section 655.033, relating to cease and desist orders.

8. Section 655.034, relating to injunctions.

9. Section 655.037, relating to removal of financial institution-affiliated party.

10. Section 655.041, relating to administrative fines.

11. Section 655.043, relating to articles of incorporation.

12. Section 655.044, relating to accounting practices.

13. Section 655.045, relating to examinations, reports, and internal audits.

14. Section 655.049, relating to deposit of fees and assessments.

15. Section 655.057, relating to records.

16. Section 655.071, relating to international banking facilities.

17. Section 655.50, relating to reports of transactions involving currency.

Section 1846. Section 663.303, Florida Statutes, is amended to read:

663.303 Creation of an international development bank.—When authorized by the office ~~department~~ as provided herein, a corporation may be formed under the laws of this state for the purpose of becoming an international development bank and engaging in activities authorized by this part.

Section 1847. Section 663.304, Florida Statutes, is amended to read:

663.304 Application for authority to organize an international development bank.—

(1) A written application for authority to organize an international development bank shall be filed with the office ~~department~~ by the proposed incorporator and shall include:

(a) The name, residence, and occupation of each incorporator and proposed director.

(b) The proposed corporate name and evidence of reservation of the proposed corporate name with the Department of State.

(c) The total initial capital and the number of shares of capital stock to be authorized.

(d) The location, by street and post-office address and county, of the principal office of the proposed international development bank.

(e) If known, the name and residence of the proposed president and the proposed chief executive officer, if other than the proposed president.

(f) Such detailed financial, business, and biographical information as the commission or office ~~department~~ may reasonably require for each proposed director and for the proposed president and the proposed chief executive officer, if other than the president.

(2) The application shall be in such form as adopted by the commission and shall contain such additional information as the commission or office ~~department~~ may require and shall be accompanied by a nonrefundable filing fee of $2,500.

Section 1848. Section 663.305, Florida Statutes, is amended to read:

663.305 Investigation by the office ~~department~~.—Upon the filing of an application, the office ~~department~~ shall make an investigation of such matters as it may deem appropriate, including the character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.

Section 1849. Section 663.306, Florida Statutes, is amended to read:

663.306 Decision by office ~~department~~.—The office ~~department~~ may, in its discretion, approve or disapprove the application, but it shall not approve the application unless it finds that:

(1) International business in this state will be promoted by the establishment of the proposed international development bank.

(2) The proposed capital structure is adequate, but in no case may the paid-in capital stock be:

(a) Less than $400,000 in the case of an international development bank organized under chapter 617 as a corporation not for profit; or

(b) The amount required for a state bank in the case of an international development bank organized under chapter 607 as a corporation for profit.

The office ~~department~~ may disallow any illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section.

(3) The proposed officers and directors have sufficient experience, ability, standing, and reputation to indicate reasonable promise of successful operation and none of the proposed officers or directors have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(4) Provision has been made for suitable quarters at the location designated in the application.

Section 1850. Subsection (2) of section 663.308, Florida Statutes, is amended to read:

663.308 Place of transacting business; branches.—

(2) An international development bank may establish branches in foreign countries with the approval of the appropriate governmental authorities in such foreign countries. An international development bank shall give the office ~~department~~ written notice of its intention to establish a branch in a foreign country at least 30 days prior to the establishment of such branch.

Section 1851. Subsection (1) of section 663.309, Florida Statutes, is amended to read:

663.309 Permissible activities; prohibited activities.—

(1) An international development bank shall have the authority:

(a) To make loans or otherwise extend credit to foreign business enterprises and foreign governments and to issue and confirm letters of credit, create bankers acceptances, and provide guarantees for the purpose of providing financing to foreign business enterprises and foreign governments;

(b) To provide financing in connection with import-export transactions to the extent permissible for an Edge Act corporation organized under s. 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. ss. 611-632;

(c) To invest funds as provided in s. 663.315;

(d) To borrow funds as provided in s. 663.316;

(e) To take deposits from financial institutions, foreign not-for-profit foundations, foreign business enterprises, and organizations which qualify under s. 501(c) of the Internal Revenue Code and which had at the end of their last fiscal year no less than $10 million in assets;

(f) To maintain for the account of others credit balances necessarily incidental to, or arising out of, the exercise of its lawful powers. Such credit balances may be disbursed by check or draft; however, the commission ~~department~~ shall by rule provide appropriate limitations upon such disbursements to ensure that credit balances are not functionally equivalent to demand deposits;

(g) To exercise such other incidental powers as shall be reasonably necessary to carry out the authority granted in this part.

Section 1852. Subsection (3) of section 663.311, Florida Statutes, is amended to read:

663.311 Shares of stock.—

(3) With the approval of the office ~~department~~, an international development bank may issue less than all of the number of shares of capital stock authorized by its articles of incorporation; provided that such authorized but unissued shares may be issued only to increase the capital of the international development bank with the approval of the office ~~department~~.

Section 1853. Section 663.312, Florida Statutes, is amended to read:

663.312 Changes in capital.—

(1) No international development bank shall reduce its outstanding capital stock without first obtaining the approval of the office ~~department~~, and such approval shall be withheld if the reduction would cause the outstanding capital stock to be less than the minimum required pursuant to s. 663.306(2) or if the reduction would cause the international development bank's capital accounts to be less than the minimum required by s. 663.316(2).

(2) An international development bank may, with the approval of the office ~~department~~, provide for an increase in its capital.

Section 1854. Subsection (2) of section 663.316, Florida Statutes, is amended to read:

663.316 Borrowing; capital accounts.—

(2) An international development bank shall have capital accounts in an amount equal to not less than 8 percent of its aggregate deposits. However, the commission ~~department~~ by rule may increase the required amount of capital accounts to not more than 10 percent of such aggregate deposits. When adopting ~~promulgating~~ any such rule, the commission ~~department~~ shall take into account the objective of protecting the interests of depositors and of maintaining a sound banking system in this state.

Section 1855. Section 663.319, Florida Statutes. is amended to read:

663.319 Rules; exemption from statement of estimated regulatory costs requirements.—In addition to any other rulemaking authority it has under the financial institutions codes, the commission may adopt ~~department is authorized to promulgate~~ rules for the administration of regional development banks. Because of the difficulty in obtaining economic data with regard to such banks, no statement of estimated regulatory costs shall be required in connection with these rules.

Section 1856. Subsection (6) of section 665.012, Florida Statutes, is amended to read:

665.012 Definitions.—When used in this chapter, the following words and phrases have the following meanings, except to the extent that any such word or phrase specifically is qualified by its context:

(6) "Liquid assets" means:

(a) Cash on hand;

(b) Cash on deposit in federal home loan banks, federal reserve banks, state banks performing similar reserve functions, or financial depository institutions, which is withdrawable upon not more than 30 days' notice and which is not pledged as security for indebtedness, except that any deposits in a financial depository institution under the control or in the possession of any supervisory authority shall not be considered as liquid assets;

(c) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state; and

(d) Such other assets as may be approved by the office ~~department~~ which are accepted as liquid assets for federally insured associations by the appropriate federal regulatory agency.

Section 1857. Subsections (4), (24), (35), (38), and (42) of section 665.013, Florida Statutes, are amended to read:

665.013 Applicability of chapter 658.—The following sections of chapter 658, relating to banks and trust companies, are applicable to an association to the same extent as if the association were a "bank" operating thereunder:

(4) Section 658.20, relating to investigation by office ~~department~~.

(24) Section 658.43, relating to approval by office ~~department~~, valuation of assets; emergency action.

(35) Section 658.73, relating to fees and assessments. The commission ~~department~~ shall, by rule, adopt a separate semiannual fee and semiannual assessment for associations. In its determination, the commission ~~department~~ shall consider the housing finance role of such associations in addition to the cost of regulation of associations and the collection of fees from such associations.

(38) Section 658.81, relating to office ~~department~~ action; notice and court confirmation.

(42) Section 658.90, relating to receivers or liquidators under supervision of office ~~department~~.

Section 1858. Subsections (1) and (2) of section 665.0315, Florida Statutes, are amended to read:

665.0315 Reorganization, merger, or consolidation with a foreign association.—

(1) An association shall have power to reorganize or merge or consolidate with a foreign association, as defined in s. 665.1001, subject to the approval of the office ~~department~~.

(2) If the resulting or surviving association is to be a foreign association, the office ~~department~~ shall not approve the proposed transaction unless:

(a) The laws of the state in which the foreign association has its principal place of business permit associations in that state to reorganize, merge, or consolidate with Florida associations in transactions in which the resulting or surviving association is a Florida association; and

(b) The constituent Florida association has been in existence and continuously operating for more than 2 years.

Section 1859. Subsections (1), (2), (3), and (5), of section 665.033, Florida Statutes, are amended to read:

665.033 Conversion of state or federal mutual association to capital stock association.—

(1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.—Any state or federal mutual association may apply to the office ~~department~~ for permission to convert itself into an association operated under the provisions of this chapter in accordance with the following procedures:

(a) The board of directors shall approve a plan of conversion by resolution adopted by a majority vote of all the directors. The plan shall include, among other terms:

1. Financial statements of the association as of the last day of the month preceding adoption of the plan.

2. Such financial data as may be required to determine compliance with applicable regulatory requirements respecting financial condition.

3. A provision that each savings account holder of the mutual association will receive a withdrawable account in the capital stock association equal in amount to his or her withdrawable account in the mutual association.

4. A provision that each member of record will be entitled to receive rights to purchase voting common stock.

5. Pro forma financial statements of the association as a capital stock association, which shall include data required to determine compliance with applicable regulatory requirements respecting financial condition.

6. With particularity, the business purpose to be accomplished by the conversion.

7. Such other information as the commission requires ~~department may,~~ by rule~~, require~~.

(b) The plan of conversion shall be executed by a majority of the board of directors and submitted to the office ~~department~~ for approval prior to any vote on conversion by the members.

(c) The office ~~department~~ may approve or disapprove the plan in its discretion, but it shall not approve the plan unless it finds that the association will comply sufficiently with the requirements of the financial institutions codes after conversion to entitle it to become an association operating

under the financial institutions codes and the rules of the commission ~~department~~. The office ~~department~~ may deny any application from any federal association that is subject to any cease and desist order or other supervisory restriction or order imposed by any state or the federal supervisory authority, or insurer, or guarantor or that has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(d) If the office ~~department~~ approves the plan of conversion, the question of such conversion may be submitted to the members at a meeting of voting members called to consider such action. A vote of 51 percent or more of the total number of votes eligible to be cast, unless federal law permits a lesser percentage of votes for a federal mutual association to convert, in which case that percentage shall control, shall be required for approval. Notice of the meeting, giving the time, place, and purpose thereof, together with a proxy statement and proxy form covering all matters to be brought before the meeting, shall be mailed at least 30 days prior thereto to the office ~~department~~ for review and to each voting member at his or her last address as shown on the books of the association.

(2) MINUTES OF MEETING.—Copies of the minutes of the meeting of members, verified by the affidavit of the secretary or assistant secretary of the association, shall be filed with the office ~~department~~ and with the appropriate federal regulatory agency, within a reasonable time after the meeting. When so filed, the verified copies of the minutes are presumptive evidence of the holding of the meeting and of the action taken.

(3) FILING OF ARTICLES OF INCORPORATION AND COMMITMENT FOR INSURANCE OF ACCOUNTS.—The directors of the association shall have executed and filed with the office ~~department~~ proposed articles of incorporation as provided for in s. 658.23, together with the application for conversion and a firm commitment for, or evidence of, insurance of deposits and other accounts of a withdrawable type. The articles shall contain a statement that the association resulted from the conversion of a state or federal mutual association to a capital stock association. Approval by the office ~~department~~ shall be affixed to the articles of incorporation. An authenticated copy of the articles of incorporation shall be filed with the Department of State and one copy of the articles of incorporation and the certificate of incorporation shall be returned to the association. The association shall cease to be a mutual association at the time and on the date specified in the approved articles of incorporation.

(5) FEE.—The application for conversion from a state or federal mutual to a state capital stock association shall be accompanied by a nonrefundable filing fee of $7,500. Additionally, the office ~~department~~ is authorized to assess any association, applying to convert pursuant to this section, a nonrefundable examination fee to cover the actual costs of any examination required as part of the application process.

Section 1860. Section 665.0335, Florida Statutes, is amended to read:

665.0335 Supervisory case; emergency conversion, reorganization, merger; consolidation; acquisition of assets.—

(1) The office ~~department~~ may determine that a state or federal association is a supervisory case if it finds that:

(a) The association is in an impaired condition; or

(b) The association is in imminent danger of being in an impaired condition.

Any such finding by the office ~~department~~ shall be based upon reports furnished to it by a state or federal savings and loan association examiner or upon other evidence from which it is reasonable to conclude that the association is a supervisory case.

(2) Notwithstanding any other provision of this chapter or chapter 120, if the office ~~department~~ finds that immediate action is necessary to protect the interests of depositors and reduce the potential for claims against the insurance fund, or in order to prevent the probable failure of a state or federal association which is a supervisory case, the office may ~~department shall have the power~~, with the concurrence of the appropriate federal regulatory agency in the case of any association the deposits of which are federally insured, ~~to~~ issue an emergency order authorizing:

(a) The conversion of such association from a state to a federal charter, or vice versa, without change of business form;

(b) The reorganization, merger, or consolidation of such state or federal association with another state or federal association;

(c) The conversion of such state or federal association into a state or federal capital stock association; or

(d) Any state or federal association to acquire the assets of, and assume the liabilities of, such failing association.

Section 1861. Paragraphs (a) and (b) of subsection (1), subsection (2), paragraph (e) of subsection (4), and paragraphs (a) and (c) of subsection (5) of section 665.034, Florida Statutes, are amended to read:

665.034 Acquisition of assets of or control over an association.—

(1)(a) In any case in which a person or group of persons propose to purchase or acquire voting common stock of any capital stock association, which purchase or acquisition would cause such person or group of persons to have control, as defined herein, of that association, such person or group of persons must first make application to the office ~~department~~ for a certificate of approval of such purchase or acquisition.

(b) An application for control shall be in such form and request such information as the commission requires ~~department may,~~ by rule~~, require~~.

(2) The office ~~department~~ shall issue the certificate of approval only after it has made an investigation and determined that:

(a) The proposed new owner or owners of voting capital stock are qualified by character, experience, and financial responsibility to control the association in a legal and proper manner and none of the proposed new owners have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(b) The interests of the public generally will not be jeopardized by the proposed purchase or acquisition of voting capital stock.

(4) For purposes of this section, a person or group of persons shall be deemed to have control of an association if such person or group of persons:

(e) In any case in which a proposed purchase or acquisition of voting securities of an association would give rise to the presumption created under paragraph (d), the person or group of persons who propose to purchase or acquire the voting securities shall first give written notice of the proposal to the office ~~department~~. Such notice may present information that the proposed purchase or acquisition will not result in control. The office ~~department~~ shall afford the person seeking to rebut the presumption an opportunity to present views in writing or orally before its designated representatives at an informal conference.

(5)(a) A foreign association, as defined in s. 665.1001, whether controlled directly or indirectly by another business organization, may acquire a Florida association, subject to approval by the office ~~department~~. The office ~~department~~ shall not approve the proposed acquisition unless:

1. The laws of the state in which the foreign association has its principal place of business permit associations in that state to be acquired by Florida associations; and

2. The Florida association which is to be acquired has been in existence and continuously operating for more than 2 years.

(c) A foreign association which has a subsidiary association in Florida is authorized to acquire a Florida association upon approval by the office ~~department~~ pursuant to the laws and rules which are applicable to the acquisition of a Florida association by an association having its principal place of business in this state, but such acquired association shall not be considered a Florida association for purposes of this subsection or s. 665.0315.

Section 1862. Section 665.0345, Florida Statutes, is amended to read:

665.0345 Regulatory supervision of foreign associations.—The office may ~~department is authorized to~~ enter into cooperative agreements with other regulatory agencies to facilitate the regulation of foreign associations doing business in this state. The office ~~department~~ may accept reports of examinations and other records from such other agencies in lieu of conducting its own

examinations of foreign associations. The office ~~department~~ may take any action jointly with other regulatory agencies having concurrent jurisdiction over associations doing business in this state or may take such actions independently in order to carry out its responsibilities.

Section 1863. Section 665.0711, Florida Statutes, is amended to read:

665.0711 Loans.—As an annual average, based on monthly computations, at least 50 percent of assets other than liquid assets of an association shall be invested in either real estate loans or interests therein on home property or primarily residential property for terms not in excess of 40 years or for such additional terms as may be provided by rule. Recognizing that associations are chartered to serve the convenience and needs of the communities in which they are chartered to do business, that the convenience and needs of communities include the need for credit services as well as deposit services, and that associations have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered, at least 40 percent of the assets required to be invested by this section shall be secured by property within this state, unless a lower percentage is established by the commission or office ~~department~~ pursuant to s. 655.061, except that loans insured or guaranteed in whole or in part by the United States are not subject to this restriction.

Section 1864. Subsection (3) and paragraph (a) of subsection (4) of section 665.1001, Florida Statutes, are amended to read:

665.1001 Foreign associations.—

(3) ACTION BY OFFICE ~~DEPARTMENT~~.—The office ~~department~~ is authorized, empowered, and directed to obtain an injunction or to take any other action necessary to prevent any foreign association from doing any business of an association in this state.

(4) ACTIVITIES NOT CONSIDERED "DOING BUSINESS."—For the purposes of this section and any other law of this state prohibiting, limiting, or regulating the doing of business in this state by foreign associations or foreign corporations of any type, any federal association, the principal office of which is located outside this state, and any foreign association which is subject to state or federal supervision, or both, which by law are subject to periodic examination by such supervisory authority and to a requirement of periodic audit, shall not be considered to be doing business in this state by reason of engaging in any of the following activities:

(a) The purchase, acquisition, holding, sale, assignment, transfer, collecting, and enforcement of obligations or any interest therein secured by real estate mortgages or other instruments in the nature of a mortgage, covering real property located in this state, or the foreclosure of such instruments, or the acquisition of title to such property by foreclosure, or otherwise, as a result of default under such instruments, or the holding, protection, rental, maintenance, and operation of the property so acquired, or the disposition thereof; provided such associations shall not hold, own, or operate such property for a period exceeding 5 years without securing the approval of the office ~~department~~.

Section 1865. Paragraph (d) of subsection (5) of section 667.002, Florida Statutes, is amended to read:

667.002 Definitions.—Except to the extent specifically qualified by context, when used in this chapter:

(5) "Liquid assets" means:

(d) Such other assets as ~~may be~~ approved by the office ~~department~~ which are accepted as liquid assets for federally insured savings banks by the appropriate federal regulatory agency.

Section 1866. Subsections (4), (26), (40), and (44) of section 667.003, Florida Statutes, are amended to read:

667.003 Applicability of chapter 658.—Any state savings bank is subject to all the provisions, and entitled to all the privileges, of the financial institutions codes except where it appears, from the context or otherwise, that such provisions clearly apply 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 apply to a savings bank to the same extent as if the savings bank were a "bank" operating under such provisions:

(4) Section 658.20, relating to investigation by office ~~department~~.

(26) Section 658.43, relating to approval by office ~~department~~; valuation of assets; emergency action.

(40) Section 658.81, relating to office ~~department~~ action; notice and court confirmation.

(44) Section 658.90, relating to receivers or liquidators under supervision of office ~~department~~.

Section 1867. Subsections (1) and (2) of section 667.005, Florida Statutes, are amended to read:

667.005 Reorganization, merger, or consolidation with a foreign savings bank.—

(1) A savings bank shall have the power to reorganize, merge, or consolidate with a foreign savings bank, as defined in s. 667.013, subject to the approval of the office ~~department~~.

(2) If the resulting or surviving savings bank is to be a foreign savings bank, the office ~~department~~ shall not approve the proposed transaction unless:

(a) The laws of the state in which the foreign savings bank has its principal place of business permit savings banks in that state to reorganize, merge, or consolidate with Florida savings banks in transactions in which the resulting or surviving savings bank is a Florida savings bank.

(b) The constituent Florida savings bank has been in existence and continuously operating for more than 2 years.

Section 1868. Subsections (1), (2), (3), and (5) of section 667.006, Florida Statutes, are amended to read:

667.006 Conversion of state or federal mutual savings bank or state or federal mutual association to capital stock savings bank.—

(1) CONVERSION INTO CAPITAL STOCK SAVINGS BANK.—Any state or federal mutual savings bank or state or federal mutual association may apply to the office ~~department~~ for permission to convert itself into a capital stock savings bank operated under the provisions of this chapter in accordance with the following procedures:

(a) The board of directors shall approve a plan of conversion by resolution adopted by a majority vote of all the directors. The plan shall include, but not be limited to:

1. Financial statements of the savings bank as of the last day of the month preceding adoption of the plan.

2. Such financial data as may be required to determine compliance with applicable regulatory requirements respecting financial condition.

3. A provision that each savings account holder of the mutual savings bank will receive a withdrawable account in the capital stock savings bank equal in amount to his or her withdrawable account in the mutual savings bank.

4. A provision that each member of record will be entitled to receive rights to purchase voting common stock.

5. Pro forma financial statements of the savings bank as a capital stock savings bank, which shall include data required to determine compliance with applicable regulatory requirements respecting financial condition.

6. With particularity, the business purpose to be accomplished by the conversion.

7. Such other information as the commission requires ~~department may require~~ by rule.

(b) The plan of conversion shall be executed by a majority of the board of directors and submitted to the office ~~department~~ for approval prior to any vote on conversion by the members.

(c) The office ~~department~~ may approve or disapprove the plan in its discretion, but it shall not approve the plan unless it finds that the savings bank will comply sufficiently with the requirements of the financial institutions codes after conversion to entitle it to become a savings bank operating under the financial institutions codes and the rules of the commission ~~department~~. The office ~~department~~ may deny any application from any federal

savings bank that is subject to any cease and desist order or other supervisory restriction or order imposed by any state or the federal supervisory authority, or insurer, or guarantor or that has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(d) If the office ~~department~~ approves the plan of conversion, the question of such conversion may be submitted to the members at a meeting of voting members called to consider such action. A vote of 51 percent or more of the total number of votes eligible to be cast shall be required for approval, unless federal law permits a lesser percentage of votes for a federal mutual savings bank to convert, in which case that percentage shall control. Notice of the meeting, giving the time, place, and purpose thereof, together with a proxy statement and proxy form covering all matters to be brought before the meeting, shall be mailed at least 30 days prior to the meeting to the office ~~department~~ for review and to each voting member at his or her last address as shown on the books of the savings bank.

(2) MINUTES OF MEETING.—Copies of the minutes of the meeting of members, verified by the affidavit of the secretary or assistant secretary of the savings bank, shall be filed with the office ~~department~~ and with the appropriate federal regulatory agency, within a reasonable time after the meeting. When so filed, the verified copies of the minutes are presumptive evidence of the holding of the meeting and of the action taken.

(3) FILING OF ARTICLES OF INCORPORATION AND COMMITMENT FOR INSURANCE OF ACCOUNTS.—The directors of the savings bank shall have executed and filed with the office ~~department~~ proposed articles of incorporation as provided in s. 658.23, together with the application for conversion and a firm commitment for, or evidence of, insurance of deposits and other accounts of a withdrawable type. The articles shall contain a statement that the savings bank resulted from the conversion of a state or federal mutual savings bank to a capital stock savings bank. Approval by the office ~~department~~ shall be affixed to the articles of incorporation. A copy of the articles of incorporation shall be filed with the Department of State, and one copy of the articles of incorporation and the certificate of incorporation shall be returned to the savings bank. The savings bank shall cease to be a mutual savings bank at the time and on the date specified in the approved articles of incorporation.

(5) FEE.—The application for conversion from a state or federal mutual to a state capital stock savings bank shall be accompanied by a nonrefundable filing fee of $7,500. Additionally, the office may ~~department is authorized to~~ assess any savings bank applying to convert pursuant to this section a nonrefundable examination fee to cover the actual costs of any examination required as part of the application process.

Section 1869. Section 667.007, Florida Statutes, is amended to read:

667.007 Supervisory case; emergency conversion, reorganization, merger; consolidation; acquisition of assets.—

(1) The office ~~department~~ may determine that a state or federal savings bank is a supervisory case if it finds that:

(a) The savings bank is insolvent; or

(b) The savings bank is imminently insolvent.

Any such finding by the office ~~department~~ shall be based upon reports furnished to it by a state or federal regulatory agency or upon other evidence from which it is reasonable to conclude that the savings bank is a supervisory case.

(2) Notwithstanding any other provision of this chapter or chapter 120, if the office ~~department~~ finds that immediate action is necessary to protect the interests of depositors and reduce the potential for claims against the insurance fund, or in order to prevent the probable failure of a state or federal savings bank which is a supervisory case, the office may ~~department shall have the power~~, with the concurrence of the appropriate federal regulatory agency in the case of any savings bank the deposits of which are federally insured, ~~to~~ issue an emergency order authorizing:

(a) The conversion of such savings bank from a state to a federal charter, or vice versa, without change of business form;

(b) The reorganization, merger, or consolidation of such state or federal savings bank with another state or federal savings bank;

(c) The conversion of such state or federal savings bank into a state or federal capital stock savings bank; or

(d) Any state or federal savings bank to acquire the assets of, and assume the liabilities of, such failing savings bank.

Section 1870. Subsections (1) and (2), paragraph (d) of subsection (4), and paragraph (a) of subsection (5) of section 667.008, Florida Statutes, are amended to read:

667.008 Acquisition of assets of or control over a savings bank.—

(1)(a) In any case in which a person or group of persons proposes to purchase or acquire voting common stock of any capital stock savings bank, which purchase or acquisition would cause such person or group of persons to have control, as defined herein, of that savings bank, such person or group of persons must first make application to the office ~~department~~ for a certificate of approval of such purchase or acquisition.

(b) An application for control shall be in such form and request such information as the commission requires ~~department may require~~ by rule.

(c) The application for control shall be accompanied by a nonrefundable filing fee of $7,500; however, if more than one savings bank is being acquired in any such application, the fee shall be increased by $3,000 for each additional savings bank.

(2) The office ~~department~~ shall issue the certificate of approval only after it has made an investigation and determined that:

(a) The proposed new owner or owners of voting capital stock are qualified by character, experience, and financial responsibility to control the savings bank in a legal and proper manner and none of the proposed new owners have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

(b) The interests of the public generally will not be jeopardized by the proposed purchase or acquisition of voting capital stock.

(4) For purposes of this section, a person or group of persons shall be deemed to have control of a savings bank if such person or group of persons:

(d) Owns, controls, or has power to vote 10 percent or more of any class of voting securities of the savings bank, if no other person or group of persons owns, controls, or has power to vote a greater proportion of that class of voting securities. In any case in which a proposed purchase or acquisition of voting securities of a savings bank would give rise to the presumption created under this paragraph, the person or group of persons who proposes to purchase or acquire the voting securities shall first give written notice of the proposal to the office ~~department~~. Such notice may present information that the proposed purchase or acquisition will not result in control. The office ~~department~~ shall afford the person seeking to rebut the presumption an opportunity to present views in writing or orally before its designated representatives at an informal conference.

(5)(a) A foreign savings bank, as defined in s. 667.013, whether controlled directly or indirectly by another business organization, may acquire a Florida savings bank, subject to approval by the office ~~department~~. The office ~~department~~ shall not approve the proposed acquisition unless:

1. The laws of the state in which the foreign savings bank has its principal place of business permit savings banks in that state to be acquired by Florida savings banks.

2. The Florida savings bank which is to be acquired has been in existence and continuously operating for more than 2 years.

Section 1871. Subsection (2) and paragraph (a) of subsection (3) of section 667.013, Florida Statutes, are amended to read:

667.013 Foreign savings banks.—

(2) ACTION BY OFFICE ~~DEPARTMENT~~.—The office ~~department~~ is authorized, empowered, and directed to obtain an injunction or to take any other action necessary to prevent any foreign savings bank from unlawfully doing any business of a savings bank in this state.

(3) ACTIVITIES NOT CONSIDERED "DOING BUSINESS."—For the purposes of this section and any other law of this state prohibiting, limiting,

or regulating the doing of business in this state by foreign savings banks or foreign corporations of any type, any federal savings bank, the principal office of which is located outside this state, and any foreign savings bank which is subject to state or federal supervision, or both, which by law are subject to periodic examination by such supervisory authority and to a requirement of periodic audit, shall not be considered to be doing business in this state by reason of engaging in any of the following activities:

(a) The purchase, acquisition, holding, sale, assignment, transfer, collecting, and enforcement of obligations or any interest therein secured by real estate mortgages or other instruments in the nature of a mortgage, covering real property located in this state, or the foreclosure of such instruments, or the acquisition of title to such property by foreclosure, or otherwise, as a result of default under such instruments, or the holding, protection, rental, maintenance, and operation of the property so acquired, or the disposition thereof, provided such savings banks shall not hold, own, or operate such property for a period exceeding 5 years without securing the approval of the office ~~department~~.

Section 1872. Subsection (2) of section 687.13, Florida Statutes, is amended to read:

687.13 International transactions.—

(2) The provisions of this chapter shall not apply to any international banking facility "deposit," "borrowing," or "extension of credit," as those terms are defined by the commission ~~Department of Banking and Finance~~ pursuant to s. 655.071.

Section 1873. Subsection (3) of section 687.14, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

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

(3) "Commission" means the Financial Services Commission ~~"Department" means the Department of Banking and Finance~~.

(6) "Office" means the Office of Financial Regulation of the commission.

Section 1874. Subsection (3) of section 687.141, Florida Statutes, is amended to read:

687.141 Loan brokers; prohibited acts.—No loan broker shall:

(3) Make or use any false or deceptive representation in its business dealings or to the office ~~department~~ or conceal a material fact from the office ~~department~~.

Section 1875. Section 687.143, Florida Statutes, is amended to read:

687.143 Loan brokers; investigations; cease and desist orders; administrative fines.—

(1) The office ~~department~~ may investigate the actions of any person for compliance with this act.

(2) The office ~~department~~ may order a loan broker to cease and desist whenever the office ~~department~~ determines that the loan broker has violated or is violating or will violate any provision of this act, any rule of the commission, ~~or~~ order of ~~promulgated by~~ the office ~~department~~, or ~~any~~ written agreement entered into with the office ~~department~~.

(3) The office ~~department~~ may impose and collect an administrative fine against any person found to have violated any provision of this act, any rule of the commission, ~~or~~ order of ~~promulgated by~~ the office ~~department~~, or ~~any~~ written agreement entered into with the office ~~department~~ in any amount not to exceed $5,000 for each such violation. All fines collected hereunder shall be deposited in the Bureau ~~Division~~ of Financial Investigations Administrative Trust Fund.

Section 1876. Section 687.144, Florida Statutes, is amended to read:

687.144 Investigations; examinations; subpoenas; hearings; witnesses.—

(1) The office ~~department~~ may make investigations and examinations upon reasonable suspicion within or outside of this state as it deems necessary to determine whether a person has violated or is about to violate any provision of this act or any rule or order promulgated thereunder.

(2) The office ~~department~~ may gather evidence in the matter. The office ~~department~~ may administer oaths, examine witnesses, and issue subpoenas.

(3) Subpoenas for witnesses whose evidence is deemed material to any investigation or examination may be issued by the office ~~department~~ under the seal of the office ~~department~~ commanding such witnesses to be or appear before the office ~~department~~ at a time and place to be therein named and to bring such books, records, and documents as may be specified or to submit such books, records, and documents to inspection. Such subpoenas may be served by an authorized representative of the office ~~department~~.

(4)(a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued by the office ~~department~~, the office ~~department~~ may petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the person to appear and fully comply with the subpoena. The court may grant injunctive relief restraining the violation of this act and may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena or subpoena duces tecum and the office ~~department~~ has completed its investigation or examination. The office ~~department~~ is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the office ~~department~~ to obtain an

order granting, in whole or in part, such petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

(b) When it shall appear to the office ~~department~~ that the compliance with a subpoena or subpoena duces tecum issued by the office ~~department~~ is essential to an investigation or examination, the office ~~department~~, in addition to the other remedies provided for in this act, may, by verified petition setting forth the facts, apply to the circuit court of the county in which the subpoenaed person resides or has its principal place of business for a writ of ne exeat. The court may thereupon direct the issuance of the writ against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the writ a suitable amount of bond on payment of which the person named in the writ shall be freed, having a due regard to the nature of the case.

(5) Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination or investigation is held at the place of business or residence of the witness.

(6) The material compiled by the office ~~department~~ in an investigation or examination under this act is confidential until the investigation or examination is complete. The investigation or examination is not deemed complete if the office ~~department~~ has submitted the material or any part of it to any law enforcement agency or other regulatory agency for further investigation or for the filing of a criminal or civil prosecution and such investigation and prosecution has not been completed or becomes inactive.

Section 1877. Section 687.145, Florida Statutes, is amended to read:

687.145 Injunction to restrain violations.—

(1) Whenever the office ~~department~~ determines, from evidence satisfactory to it, that any person has engaged, is engaged, or is about to engage in an act or practice constituting a violation of this act or a rule or order promulgated thereunder, the office ~~department~~ may bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practice or engaging therein or doing any act or acts in furtherance thereof or in violation of this act to enjoin the person or persons from continuing the violation or acts in furtherance thereof. In such court proceedings, the office ~~department~~ may apply for and on due showing be entitled to have issued, the court's subpoena requiring the appearance of any defendant and his or her employees or agents, and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in such court proceedings, the court shall have the power and

jurisdiction, upon application of the office ~~department~~, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him or her by the court. In such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may, with the consent of the presiding judge of the circuit, require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

(3) In addition to any other remedies provided by this act, the office ~~department~~ may apply to the court hearing this matter for an order of restitution whereby the defendants in such action shall be ordered to make restitution of those sums shown by the office ~~department~~ to have been obtained by them in violation of any of the provisions of this act. Such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this act.

Section 1878. Section 687.148, Florida Statutes, is amended to read:

687.148 Duties and powers of the commission and office ~~department~~.—

(1) The office is ~~department shall be~~ responsible for the administration and enforcement of this act.

(2) The commission ~~department~~ may adopt such rules as it may deem necessary in the administration of this act and not inconsistent therewith.

Section 1879. Subsection (4) of section 697.05, Florida Statutes, is amended to read:

697.05 Balloon mortgages; scope of law; definition; requirements as to contents; penalties for violations; exemptions.—

(4) This section does not apply to the following:

(a) Any mortgage in effect prior to January 1, 1960;

(b) Any first mortgage, excluding a mortgage in favor of a home improvement contractor defined in s. 520.61(13) ~~s. 520.61(12)~~ the execution of which is required solely by the terms of a home improvement contract which is governed by the provisions of ss. 520.60-520.98;

(c) Any mortgage created for a term of 5 years or more, excluding a mortgage in favor of a home improvement contractor defined in s. 520.61(13) ~~s. 520.61(12)~~ the execution of which is required solely by the terms of a home improvement contract which is governed by the provisions of ss. 520.60-520.98;

(d) Any mortgage, the periodic payments on which are to consist of interest payments only, with the entire original principal sum to be payable upon maturity;

(e) Any mortgage securing an extension of credit in excess of $500,000;

(f) Any mortgage granted in a transaction covered by the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., in which each mortgagor thereunder is furnished a Truth in Lending Disclosure Statement that satisfies the requirements of the federal Truth in Lending Act; or

(g) Any mortgage granted by a purchaser to a seller pursuant to a written agreement to buy and sell real property which provides that the final payment of said mortgage debt will exceed the periodic payments thereon.

Section 1880. Paragraph (c) of subsection (3) of section 713.596, Florida Statutes, is amended to read:

713.596 Molder's liens.—

(3) SALE.—

(c)1. The proceeds of the sale must be paid first to any holder of a security interest perfected in this state. Any excess must be paid to the molder holding the lien created by this section. Any remaining amount is to be paid to the customer, if the customer's address is known, or to the Chief Financial Officer ~~State Treasurer~~ for deposit in the General Revenue Fund if the customer's address is unknown to the molder at the time of the sale.

2. A sale may not be made under this section if it would be in violation of any right of a customer under federal patent or copyright law.

Section 1881. Subsection (4) of section 716.02, Florida Statutes, is amended to read:

716.02 Escheat of funds in the possession of federal agencies.—All property within the provisions of subsections (1), (2), (3), (4) and (5), are declared to have escheated, or to escheat, including all principal and interest accruing thereon, and to have become the property of the state.

(4) In the event any money is due to any resident of this state as a refund, rebate or tax rebate from the United States Commissioner of Internal Revenue, the United States Treasurer, or other governmental agency or department, which said resident will, or is likely to have her or his rights to apply for and secure such refund or rebate barred by any statute of limitations or, in any event, has failed for a period of 1 year after said resident could have filed a claim for said refund or rebate, the Department of Financial Services ~~Banking and Finance~~ is ~~hereby~~ appointed agent of such resident to demand, file and apply for said refund or rebate, and is ~~hereby~~ appointed to do any act which a natural person could do to recover such ~~said~~ money, and it is hereby declared that when the department files such ~~said~~ application or any other proceeding to secure such ~~said~~ refund or rebate, its agency is coupled with an interest in the money sought and money recovered.

Section 1882. Section 716.03, Florida Statutes, is amended to read:

716.03 Department to institute proceedings to recover escheated property.—When there exists, or may exist, escheated funds or property under this chapter, the Department of Financial Services ~~Banking and Finance~~ shall demand or institute proceedings in the name of the state for an adjudication that an escheat to the state of such funds or property has occurred; and shall take appropriate action to recover such funds or property.

Section 1883. Section 716.04, Florida Statutes, is amended to read:

716.04 Jurisdiction.—Whenever the Department of Financial Services ~~Banking and Finance~~ is of the opinion an escheat has occurred, or shall occur, of any money or other property deposited in the custody of, or under the control of, any court of the United States, in and for any district within the state, or in the custody of any depository, registry or clerk or other officer of such court, or the treasury of the United States, it shall cause to be filed a complaint in the Circuit Court of Leon County, or in any other court of competent jurisdiction, to ascertain if any escheat has occurred, and to cause said court to enter a judgment or decree of escheat in favor of the state, with costs, disbursements, and attorney fee.

Section 1884. Section 716.05, Florida Statutes, is amended to read:

716.05 Money recovered to be paid into State Treasury.—When any funds or property which has escheated within the meaning of this chapter has been recovered by the Department of Financial Services ~~Banking and Finance~~, the department shall first pay all costs incident to the collection and recovery of such funds or property and shall promptly deposit the remaining balance of such funds or property with the Chief Financial Officer ~~Treasurer of the state~~, to be distributed in accordance with law.

Section 1885. Section 716.06, Florida Statutes, is amended to read:

716.06 Public records.—All records in the office of the Chief Financial Officer ~~State Treasurer~~ or the Department of Financial Services ~~Banking and Finance~~ relating to federal funds, pursuant to this chapter, shall be public records.

Section 1886. Section 716.07, Florida Statutes, is amended to read:

716.07 Recovery of escheated property by claimant.—

(1) Any person who claims any property, funds, or money delivered to the ~~State~~ Treasurer or Chief Financial Officer under this chapter, shall, within 5 years from the date of receipt of such ~~said~~ property, funds, or money, file a verified claim with the Chief Financial Officer ~~State Treasurer~~, setting forth the facts upon which such ~~said~~ party claims to be entitled to recover such ~~said~~ money or property. ~~The State Treasurer, within 5 days after receipt of such claim, shall submit said verified claim or a verified copy thereof, to the Department of Banking and Finance.~~ All claims made for recovery of property, funds, or money, not filed within 5 years from the date that such ~~said~~ property, funds, or money is received by the Chief Financial

Officer ~~State Treasurer~~, shall be forever barred, and the Chief Financial Officer ~~Treasurer of the state~~ shall be without power to consider or determine any claims so made by any claimant after 5 years from the date that the property, funds, or money was received by the Chief Financial Officer ~~State Treasurer~~.

(2) The Chief Financial Officer ~~Comptroller~~ shall approve or disapprove the claim. If the claim is approved, the funds, money, or property of the claimant, less any expenses and costs which shall have been incurred by the state in securing the possession of said property, as provided by this chapter, shall be delivered to the claimant by the Chief Financial Officer ~~State Treasurer~~ upon warrant issued according to law and her or his receipt taken therefor. If the court finds, upon any judicial review, that the claimant is entitled to the property, money, or funds claimed, and shall render judgment in her or his or its favor, declaring that the claimant is entitled to such ~~said~~ property, funds, or money, then upon presentation of said judgment or a certified copy thereof to the Chief Financial Officer ~~State Comptroller~~, the Chief Financial Officer ~~said Comptroller~~ shall draw her or his warrant for the amount of money stated in such ~~said~~ judgment, without interest or cost to the state, less any sum paid by the state as costs or expenses in securing possession of such ~~said~~ property, funds, or money. When payment has been made to any claimant, no action thereafter shall be maintained by any other claimant against the state or any officer thereof, for or on account of such ~~said~~ money, property, or funds.

Section 1887. Subsection (6) of section 717.101, Florida Statutes, is amended to read:

717.101 Definitions.—As used in this chapter, unless the context otherwise requires:

(6) "Department" means the Department of Financial Services ~~Banking and Finance~~.

Section 1888. Subsection (8) of section 717.117, Florida Statutes, is amended to read:

717.117 Report of unclaimed property.—

(8) Social security numbers and financial account numbers contained in reports required under this section, held by the department ~~of Banking and Finance~~, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Notwithstanding this exemption, social security numbers shall be released, for the limited purpose of locating owners of abandoned or unclaimed property, to an attorney, Florida-certified public accountant, private investigator who is duly licensed in this state, or a private investigative agency licensed under chapter 493 and registered with the department ~~of Banking and Finance~~ under this chapter. This exemption applies to social security numbers and financial account numbers held by the department ~~of Banking and Finance~~ before, on, or after the effective date of this exemption. This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed

October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 1889. Subsection (1) of section 717.135, Florida Statutes, is amended to read:

717.135 Agreement to locate reported property.—

(1) All agreements between an owner's representative and an owner for compensation to recover or assist in the recovery of property reported to the department under s. 717.117 shall either:

(a) Limit the fees for services for each owner contract to $25 for all contracts relating to unclaimed property with a dollar value below $250. For all contracts relating to unclaimed property with a dollar value of $250 and above, fees shall be limited to 15 percent on property held by the department for 24 months or less and 25 percent on property held by the department for more than 24 months. Fees for cash accounts shall be based on the value of the property at the time the agreement for recovery is signed by the apparent owner. Fees for accounts containing securities or other intangible ownership interests, which securities or interests are not converted to cash, shall be based on the purchase price of the security as quoted on a national exchange or other market on which the ownership interest is regularly traded at the time the securities or other ownership interest is remitted to the owner or the owner's representative. Fees for tangible property or safe-deposit box accounts shall be based on the value of the tangible property or contents of the safe-deposit box at the time the ownership interest is transferred or remitted to the owner or the owner's representative; or

(b) Disclose that the property is held by the Department of Financial Services ~~Banking and Finance~~ pursuant to this chapter, the person or name of the entity that held the property prior to the property becoming unclaimed, the date of the holder's last contact with the owner, if known, and the approximate value of the property, and identify which of the following categories of unclaimed property the owner's representative is seeking to recover:

1. Cash accounts.
2. Stale dated checks.
3. Life insurance or annuity contract assets.
4. Utility deposits.
5. Securities or other interests in business associations.
6. Wages.
7. Accounts receivable.
8. Contents of safe-deposit boxes.

However, this section shall not apply to contracts made in connection with guardianship proceedings or the probate of an estate.

Section 1890. Section 717.138, Florida Statutes, is amended to read:

717.138 Rulemaking authority.—The department ~~of Banking and Finance~~ shall administer and provide for the enforcement of this chapter. The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter.

Section 1891. Paragraph (d) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.—

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has the following powers and duties:

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, officer, or member of the board of administration, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignee or agent, for any violation of this chapter or a rule

promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant hereto, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

Section 1892. Paragraph (d) of subsection (1) of section 719.501, Florida Statutes, is amended to read:

719.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.—

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units. In performing its duties, the division shall have the following powers and duties:

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against a developer, association, officer, or member of the board, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, officer, or member of the board, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignees or agents, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant to this chapter, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division, and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of

civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the cooperative residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

Section 1893. Subsection (3) of section 721.24, Florida Statutes, is amended to read:

721.24 Firesafety.—

(3) The Division of State Fire Marshal of the Department of Financial Services ~~Insurance~~ may prescribe uniform standards for firesafety equipment for timeshare units of timeshare plans for which the construction contracts were let before October 1, 1983. An entire building shall be equipped as outlined, except that the approved sprinkler system may be delayed by the Division of State Fire Marshal until October 1, 1991, on a schedule for complete compliance in accordance with rules adopted by the Division of State Fire Marshal, which schedule shall include a provision for a 1-year extension which may be granted not more than three times for any individual requesting an extension. The entire system must be installed and operational by October 1, 1994. The Division of State Fire Marshal shall not grant an extension for the approved sprinkler system unless a written request for the extension and a construction work schedule is submitted. The Division of State Fire Marshal may grant an extension upon demonstration that compliance with this section by the date required would impose an extreme hardship and a disproportionate financial impact. Any establishment that has been granted an extension by the Division of State Fire Marshal shall post, in a conspicuous place on the premises, a public notice stating that the establishment has not yet installed the approved sprinkler system required by law.

Section 1894. Paragraph (e) of subsection (5) of section 721.26, Florida Statutes, is amended to read:

721.26 Regulation by division.—The division has the power to enforce and ensure compliance with the provisions of this chapter, except for parts III and IV, using the powers provided in this chapter, as well as the powers prescribed in chapters 498, 718, and 719. In performing its duties, the division shall have the following powers and duties:

(5) Notwithstanding any remedies available to purchasers, if the division has reasonable cause to believe that a violation of this chapter, or of any division rule or order promulgated or issued pursuant to this chapter, has occurred, the division may institute enforcement proceedings in its own name against any regulated party, as such term is defined in this subsection:

(e)1. The division may impose a penalty against any regulated party for a violation of this chapter or any rule adopted thereunder. A penalty may be imposed on the basis of each day of continuing violation, but in no event may the penalty for any offense exceed $10,000. All accounts collected shall be deposited with the Chief Financial Officer ~~Treasurer~~ to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.

2.a. If a regulated party fails to pay a penalty, the division shall thereupon issue an order directing that such regulated party cease and desist from further operation until such time as the penalty is paid; or the division may pursue enforcement of the penalty in a court of competent jurisdiction.

b. If an association or managing entity fails to pay a civil penalty, the division may pursue enforcement in a court of competent jurisdiction.

Section 1895. Paragraph (e) of subsection (5) of section 723.006, Florida Statutes, is amended to read:

723.006 Powers and duties of division.—In performing its duties, the division has the following powers and duties:

(5) Notwithstanding any remedies available to mobile home owners, mobile home park owners, and homeowners' associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or any rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against a developer, mobile home park owner, or homeowners' association, or its assignee or agent, as follows:

(e)1. The division may impose a civil penalty against a mobile home park owner or homeowners' association, or its assignee or agent, for any violation of this chapter, a properly promulgated park rule or regulation, or a rule or regulation promulgated pursuant hereto. A penalty may be imposed on the basis of each separate violation and, if the violation is a continuing one, for each day of continuing violation, but in no event may the penalty for each separate violation or for each day of continuing violation exceed $5,000. All amounts collected shall be deposited with the Chief Financial Officer ~~Treas-~~

~~urer~~ to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.

2. If a violator fails to pay the civil penalty, the division shall thereupon issue an order directing that such violator cease and desist from further violation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If a homeowners' association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in which the violation occurred.

Section 1896. Subsections (2) and (3) and paragraph (a) of subsection (5) of section 732.107, Florida Statutes, are amended to read:

732.107 Escheat.—

(2) Property that escheats shall be sold as provided in the Florida Probate Rules and the proceeds paid to the Chief Financial Officer ~~Treasurer~~ of the state and deposited in the State School Fund.

(3) At any time within 10 years after the payment to the Chief Financial Officer ~~Treasurer~~, a person claiming to be entitled to the proceeds may reopen the administration to assert entitlement to the proceeds. If no claim is timely asserted, the state's rights to the proceeds shall become absolute.

(5)(a) If a person entitled to the proceeds assigns the rights to receive payment to an attorney, Florida-certified public accountant, or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with that person, the Department of Financial Services ~~Banking and Finance~~ is authorized to make distribution in accordance with the assignment.

Section 1897. Subsections (1), (2), and (3) and paragraph (a) of subsection (5) of section 733.816, Florida Statutes, are amended to read:

733.816 Disposition of unclaimed property held by personal representatives.—

(1) In all cases in which there is unclaimed property in the hands of a personal representative that cannot be distributed or paid because of the inability to find the lawful owner or because no lawful owner is known or because the lawful owner refuses to accept the property after a reasonable attempt to distribute it and after notice to that lawful owner, the court shall order the personal representative to sell the property and deposit the proceeds and cash already in hand, after retaining those amounts provided for in subsection (4), with the clerk and receive a receipt, and the clerk shall deposit the funds in the registry of the court to be disposed of as follows:

(a) If the value of the funds is $500 or less, the clerk shall post a notice for 30 days at the courthouse door giving the amount involved, the name of

the personal representative, and the other pertinent information that will put interested persons on notice.

(b) If the value of the funds is over $500, the clerk shall publish the notice once a month for 2 consecutive months in a newspaper of general circulation in the county.

After the expiration of 6 months from the posting or first publication, the clerk shall deposit the funds with the Chief Financial Officer ~~State Treasurer~~ after deducting the clerk's fees and the costs of publication.

(2) Upon receipt of the funds, the Chief Financial Officer ~~State Treasurer~~ shall deposit them to the credit of the State School Fund, to become a part of the school fund. All interest and all income that may accrue from the money while so deposited shall belong to the fund. The funds so deposited shall constitute and be a permanent appropriation for payments by the Chief Financial Officer ~~State Treasurer~~ in obedience to court orders entered as provided by subsection (3).

(3) Within 10 years from the date of deposit with the Chief Financial Officer ~~State Treasurer~~, on written petition to the court that directed the deposit of the funds and informal notice to the Department of Legal Affairs, and after proof of entitlement, any person entitled to the funds before or after payment to the Chief Financial Officer ~~State Treasurer~~ and deposit as provided by subsection (1) may obtain a court order directing the payment of the funds to that person. All funds deposited with the Chief Financial Officer ~~State Treasurer~~ and not claimed within 10 years from the date of deposit shall escheat to the state for the benefit of the State School Fund.

(5)(a) If a person entitled to the funds assigns the right to receive payment or part payment to an attorney or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with that person, the Department of Financial Services ~~Banking and Finance~~ is authorized to make distribution in accordance with the assignment.

Section 1898. Paragraphs (a), (b), and (c) of subsection (2) of section 744.534, Florida Statutes, are amended to read:

744.534 Disposition of unclaimed funds held by guardian.—

(2)(a) In those cases in which it is appropriate for the guardianship to terminate pursuant to s. 744.521 and in which property in the hands of a guardian cannot be distributed to the ward or the ward's estate solely because the guardian is unable to locate the ward through diligent search, the court shall order the guardian of the property to sell the property of the ward and deposit the proceeds and cash already on hand after retaining those amounts provided for in paragraph (e) with the clerk of the court exercising jurisdiction over the guardianship and receive a receipt. The clerk shall deposit the funds in the registry of the court, to be disposed of as follows:

1. If the value of the funds is $50 or less, the clerk shall post a notice for 30 days at the courthouse door giving the amount involved, the name of the

ward, and other pertinent information that will put interested persons on notice.

2. If the value of the funds is over $50, the clerk shall publish the notice once a month for 2 consecutive months in a newspaper of general circulation in the county.

3. After the expiration of 6 months from the posting or first publication, the clerk shall deposit the funds with the Chief Financial Officer ~~State Treasurer~~ after deducting his or her fees and the costs of publication.

(b) Upon receipt of the funds, the Chief Financial Officer ~~State Treasurer~~ shall deposit them to the credit of public guardianship. All interest and all income that may accrue from the money while so deposited shall belong to the fund. The funds so deposited shall constitute and be a permanent appropriation for payments by the Chief Financial Officer ~~State Treasurer~~ in obedience to court orders entered as provided by paragraph (c).

(c) Within 5 years from the date of deposit with the Chief Financial Officer ~~State Treasurer~~, on written petition to the court that directed the deposit of the funds and informal notice to the Department of Legal Affairs, and after proof of his or her right to them, any person entitled to the funds, before or after payment to the Chief Financial Officer ~~State Treasurer~~ and deposit as provided for in paragraph (a), may obtain a court order directing the payment of the funds to him or her. All funds deposited with the Chief Financial Officer ~~State Treasurer~~ and not claimed within 5 years from the date of deposit shall escheat to the state to be deposited in the Department of Elderly Affairs Administrative Trust Fund to be used solely for the benefit of public guardianship as determined by the Statewide Public Guardianship Office established in part IX of this chapter.

Section 1899. Paragraphs (b), (c), (d), (e), and (g) of subsection (3) of section 766.105, Florida Statutes, are amended to read:

766.105 Florida Patient's Compensation Fund.—

(3) THE FUND.—

(b) Fund administration and operation.—

1. The fund shall operate subject to the supervision and approval of a board of governors consisting of a representative of the insurance industry appointed by the Chief Financial Officer ~~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 Chief Financial Officer ~~Insurance Commissioner~~, a representative of physicians' self-insurance appointed by the Chief Financial Officer ~~Insurance Commissioner~~, two representatives of hospitals appointed by the Florida Hospital Association, a representative of hospital insurance appointed by the Chief Financial Officer ~~Insurance Commissioner~~, a representative of hospital self-insurance appointed by the Chief Financial Officer ~~Insurance Commissioner~~, a representative of the osteopathic physicians' or podiatric physicians' insurance or self-insurance appointed by the Chief

Financial Officer ~~Insurance Commissioner~~, and a representative of the general public appointed by the Chief Financial Officer ~~Insurance Commissioner~~. The board of governors shall, during the first meeting after June 30 of each year, choose one of its members to serve as chair of the board and another member to serve as vice chair 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 Chief Financial Officer ~~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 podiatric physicians' insurance or self-insurance appointed by the Chief Financial Officer ~~Insurance Commissioner~~ and the representative of hospital self-insurance appointed by the Chief Financial Officer ~~Insurance Commissioner~~ shall be appointed for 2-year terms; thereafter, such representatives shall be appointed for terms of 4 years. Each appointed member may designate in writing to the chair an alternate to act in the member's absence or incapacity. A member of the board, or the member's alternate, may be reimbursed from the assets of the fund for expenses incurred by him or her as a member, or alternate member, of the board and for committee work, but he or she may not otherwise be compensated by the fund for his or her service as a board member or alternate.

2. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the fund or its agents or employees, professional advisers or consultants, members of the board of governors or their alternates, or the Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission ~~Insurance~~ or their ~~its~~ representatives for any action taken by them in the performance of their powers and duties pursuant to this section.

(c) Powers of the fund.—The fund has the power to:

1. Sue and be sued, and appear and defend, in all actions and proceedings in its name to the same extent as a natural person.

2. Adopt, change, amend, and repeal a plan of operation, not inconsistent with law, for the regulation and administration of the affairs of the fund. The plan and any changes thereto shall be filed with the Office of Insurance Regulation of the Financial Services Commission ~~Insurance Commissioner~~ and are all subject to its ~~his or her~~ approval before implementation by the fund. All fund members, board members, and employees shall comply with the plan of operation.

3. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the fund is created.

4. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section.

5. Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the fund and to perform other necessary or proper functions unless prohibited by law.

6. Take such legal action as may be necessary to avoid payment of improper claims.

7. Indemnify any employee, agent, member of the board of governors or his or her alternate, or person acting on behalf of the fund in an official capacity, for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with any action, suit, or proceeding, including any appeal thereof, arising out of his or her capacity in acting on behalf of the fund, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the fund and, with respect to any criminal action or proceeding, he or she had reasonable cause to believe his or her conduct was lawful.

(d) Fees and assessments.—Each health care provider, as set forth in subsection (2), electing to comply with paragraph (2)(b) for a given fiscal year shall pay the fees and any assessments established under this section relative to such fiscal year, for deposit into the fund. Those entering the fund after the fiscal year has begun shall pay a prorated share of the yearly fees for a prorated membership. Actuarially sound membership fees payable annually, semiannually, or quarterly with appropriate service charges shall be established by the fund before January 1 of each fiscal year, based on the following considerations:

1. Past and prospective loss and expense experience in different types of practice and in different geographical areas within the state;

2. The prior claims experience of the members covered under the fund; and

3. Risk factors for persons who are retired, semiretired, or part-time professionals.

Such fees shall be based on not more than three geographical areas, not necessarily contiguous, with five categories of practice and with categories which contemplate separate risk ratings for hospitals, for health maintenance organizations, for ambulatory surgical facilities, and for other medical facilities. The fund is authorized to adjust the fees of an individual member to reflect the claims experience of such member. Each fiscal year of the fund shall operate independently of preceding fiscal years. Participants shall only be liable for assessments for claims from years during which they were members of the fund; in cases in which a participant is a member of the fund for less than the total fiscal year, a member shall be subject to assessments for that year on a pro rata basis determined by the percentage of participation for the year. The fund shall submit to the Office of Insurance Regulation ~~Insurance Commissioner~~ the classifications and membership fees to be charged, and the Office of Insurance Regulation ~~Insurance Commissioner~~ shall review such fees and shall approve them if they comply with all the

requirements of this section and fairly reflect the considerations provided for in this section. If the classifications or membership fees do not comply with this section, the Office of Insurance Regulation ~~Insurance Commissioner~~ shall set classifications or membership fees which do comply and which give due recognition to all considerations provided for in this section. Nothing contained herein shall be construed as imposing liability for payment of any part of a fund deficit on the Joint Underwriting Association authorized by s. 627.351(4) or its member insurers. If the fund determines that the amount of money in an account for a given fiscal year is in excess of or not sufficient to satisfy the claims made against the account, the fund shall certify the amount of the projected excess or insufficiency to the Office of Insurance Regulation ~~Insurance Commissioner~~ and request the office ~~Insurance Commissioner~~ to levy an assessment against or refund to all participants in the fund for that fiscal year, prorated, based on the number of days of participation during the year in question. The Office of Insurance Regulation ~~Insurance Commissioner~~ shall approve the request of the fund to refund to, or levy any assessment against, the participants, provided the refund or assessment fairly reflects the same considerations and classifications upon which the membership fees were based. The assessment shall be in an amount sufficient to satisfy reserve requirements for known claims, including expenses to satisfy the claims, made against the account for a given fiscal year. In any proceeding to challenge the amount of the refund or assessment, it is to be presumed that the amount of refund or assessment requested by the fund is correct, if the fund demonstrates that it has used reasonable claims handling and reserving procedures. Additional assessments may be certified and levied in accordance with this paragraph as necessary for any fiscal year. If a fund member objects to his or her assessment, he or she shall, as a condition precedent to bringing legal action contesting the assessment, pay the assessment, under protest, to the fund. The fund may borrow money needed for current operations, if necessary to pay claims and related expenses, fees, and costs timely for a given fiscal year, from an account for another fiscal year until such time as sufficient funds have been obtained through the assessment process. Any such money, together with interest at the mean interest rate earned on the investment portfolio of the fund, shall be repaid from the next assessment for the given fiscal year. If any assessments are levied in accordance with this subsection as a result of claims in excess of $500,000 per occurrence, and such assessments are a result of the liability of certain individuals and entities specified in paragraph (2)(e), only hospitals shall be subject to such assessments. Before approving the request of the fund to charge membership fees, issue refunds, or levy assessments, the Office of Insurance Regulation ~~Insurance Commissioner~~ shall publish notice of the request in the Florida Administrative Weekly. Pursuant to chapter 120, any party substantially affected may request an appropriate proceeding. Any petition for such a proceeding shall be filed with the Office of Insurance Regulation ~~Department of Insurance~~ within 21 days after the date of publication of the notice in the Florida Administrative Weekly.

(e) Fund accounting and audit.—

1. Money shall be withdrawn from the fund only upon a voucher as authorized by the board of governors.

2. All books, records, and audits of the fund shall be open for reasonable inspection to the general public, except that a claim file in possession of the fund, fund members, and their insurers is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the fund is subject to the authority of the board of governors, which shall be responsible therefor.

3. Persons authorized to receive deposits, issue vouchers, or withdraw or otherwise disburse any fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect fund assets. The cost of such bond shall be paid from the fund.

4. Annually, the fund shall furnish, upon request, audited financial reports to any fund participant and to the Office of Insurance Regulation ~~Department of Insurance~~ and the Joint Legislative Auditing Committee. The reports shall be prepared in accordance with accepted accounting procedures and shall include income and such other information as may be required by the Office of Insurance Regulation ~~Department of Insurance~~ or the Joint Legislative Auditing Committee.

5. Any money held in the fund shall be invested in interest-bearing investments by the board of governors of the fund as administrator. However, in no case may any such money be invested in the stock of any insurer participating in the Joint Underwriting Association authorized by s. 627.351(4) or in the parent company of, or company owning a controlling interest in, such insurer. All income derived from such investments shall be credited to the fund.

6. Any health care provider participating in the fund may withdraw from such participation only at the end of a fiscal year; however, such health care provider shall remain subject to any assessment or any refund pertaining to any year in which such member participated in the fund.

(g) Risk management program.—The fund shall establish a risk management program as part of its administrative functions. All health care providers, as defined in subparagraphs (1)(b)1., 5., 6., and 7., participating in the fund shall comply with the provisions of the risk management program established by the fund. The risk management program shall include the following components:

1. The investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents causing injury to patients;

2. The development of appropriate measures to minimize the risk of injuries and adverse incidents to patients;

3. The analysis of patient grievances which relate to patient care and the quality of medical services;

4. The development and implementation of an incident reporting system based upon the affirmative duty of all health care providers and all agents

and employees of health care providers and health care facilities to report injuries and incidents; and

5. Auditing of participating health care providers to assure compliance with the provisions of the risk management program.

The fund shall establish a schedule of fee surcharges which it shall levy upon participating health care providers found to be in violation of the provisions of the risk management program. Such schedule shall be subject to approval by the Office of Insurance Regulation ~~department~~ and shall provide an escalating scale of surcharges based upon the frequency and severity of the incidents in violation of the risk management program. No health care provider shall be required to pay a surcharge if it has corrected all violations of the provisions of the risk management program and established an affirmative program to remain in compliance by the time its next fee or assessment is due.

Section 1900. Subsection (7) of section 766.1115, Florida Statutes, is amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(7) RISK MANAGEMENT REPORT.—The Division of Risk Management of the Department of Financial Services ~~Insurance~~ shall annually compile a report of all claims statistics for all entities participating in the risk management program administered by the division, which shall include the number and total of all claims pending and paid, and defense and handling costs associated with all claims brought against contract providers under this section. This report shall be forwarded to the department and included in the annual report submitted to the Legislature pursuant to this section.

Section 1901. Subsections (2) and (5), paragraph (a) of subsection (6), subsection (7), and paragraph (c) of subsection (9) of section 766.314, Florida Statutes, are amended to read:

766.314 Assessments; plan of operation.—

(2) The assessments and appropriations dedicated to the plan shall be administered by the Florida Birth-Related Neurological Injury Compensation Association established in s. 766.315, in accordance with the following requirements:

(a) On or before July 1, 1988, the directors of the association shall submit to the Department of Insurance for review a plan of operation which shall provide for the efficient administration of the plan and for prompt processing of claims against and awards made on behalf of the plan. The plan of operation shall include provision for:

1. Establishment of necessary facilities;

2. Management of the funds collected on behalf of the plan;

3. Processing of claims against the plan;

4. Assessment of the persons and entities listed in subsections (4) and (5) to pay awards and expenses, which assessments shall be on an actuarially sound basis subject to the limits set forth in subsections (4) and (5); and

5. Any other matters necessary for the efficient operation of the birth-related neurological injury compensation plan.

~~(b) The plan of operation shall be subject to approval by the Department of Insurance after consultation with representatives of state agencies which collect revenue pursuant to this section and interested individuals and organizations. If the Department of Insurance disapproves all or any part of the plan of operation, the directors shall within 30 days submit for review an appropriate revised plan of operation. If the directors fail to do so, the Department of Insurance shall promulgate a plan of operation. The plan of operation approved or promulgated by the Department of Insurance shall become effective and operational upon order of the Department of Insurance.~~

(b)~~(c)~~ Amendments to the plan of operation may be made by the directors of the plan, subject to the approval of the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~.

(5)(a) Beginning January 1, 1990, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, as of the date determined in accordance with the plan of operation, taking into account persons licensed subsequent to the payment of the initial assessment, shall pay an annual assessment in the amount equal to the initial assessments provided in paragraphs (4)(b) and (c). On January 1, 1991, and on each January 1 thereafter, the association shall determine the amount of additional assessments necessary pursuant to subsection (7), in the manner required by the plan of operation, subject to any increase determined to be necessary by the Office of Insurance Regulation ~~Department of Insurance~~ pursuant to paragraph (7)(b). On July 1, 1991, and on each July 1 thereafter, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, shall pay the additional assessments which were determined on January 1. Beginning January 1, 1990, the entities listed in paragraph (4)(a), including those licensed on or after October 1, 1988, shall pay an annual assessment of $50 per infant delivered during the prior calendar year. The additional assessments which were determined on January 1, 1991, pursuant to the provisions of subsection (7) shall not be due and payable by the entities listed in paragraph (4)(a) until July 1.

(b) If the assessments collected pursuant to subsection (4) and the appropriation of funds provided by s. 76, chapter 88-1, Laws of Florida, as amended by s. 41, chapter 88-277, Laws of Florida, to the plan from the Insurance ~~Commissioner's~~ Regulatory Trust Fund are insufficient to maintain the plan on an actuarially sound basis, there is hereby appropriated for transfer to the association from the Insurance ~~Commissioner's~~ Regulatory Trust Fund an additional amount of up to $20 million.

(c)1. Taking into account the assessments collected pursuant to subsection (4) and appropriations from the Insurance ~~Commissioner's~~ Regulatory Trust Fund, if required to maintain the plan on an actuarially sound basis, the Office of Insurance Regulation ~~Department of Insurance~~ shall require each entity licensed to issue casualty insurance as defined in s. 624.605(1)(b), (k), and (q) to pay into the association an annual assessment in an amount determined by the office ~~department~~ pursuant to paragraph (7)(a), in the manner required by the plan of operation.

2. All annual assessments shall be made on the basis of net direct premiums written for the business activity which forms the basis for each such entity's inclusion as a funding source for the plan in the state during the prior year ending December 31, as reported to the Office of Insurance Regulation ~~Department of Insurance~~, and shall be in the proportion that the net direct premiums written by each carrier on account of the business activity forming the basis for its inclusion in the plan bears to the aggregate net direct premiums for all such business activity written in this state by all such entities.

3. No entity listed in this paragraph shall be individually liable for an annual assessment in excess of 0.25 percent of that entity's net direct premiums written.

4. Casualty insurance carriers shall be entitled to recover their initial and annual assessments through a surcharge on future policies, a rate increase applicable prospectively, or a combination of the two.

(6)(a) The association shall make all assessments required by this section, except initial assessments of physicians licensed on or after October 1, 1988, which assessments will be made by the Department of Business and Professional Regulation, and except assessments of casualty insurers pursuant to subparagraph (5)(c)1., which assessments will be made by the Office of Insurance Regulation ~~Department of Insurance~~. Beginning October 1, 1989, for any physician licensed between October 1 and December 31 of any year, the Department of Business and Professional Regulation shall make the initial assessment plus the assessment for the following calendar year. The Department of Business and Professional Regulation shall provide the association, with such frequency as determined to be necessary, a listing, in a computer-readable form, of the names and addresses of all physicians licensed under chapter 458 or chapter 459.

(7)(a) The Office of Insurance Regulation ~~Department of Insurance~~ shall undertake an actuarial investigation of the requirements of the plan based on the plan's experience in the first year of operation and any additional relevant information, including without limitation the assets and liabilities of the plan. Pursuant to such investigation, the Office of Insurance Regulation ~~Department of Insurance~~ shall establish the rate of contribution of the entities listed in paragraph (5)(c) for the tax year beginning January 1, 1990. Following the initial valuation, the Office of Insurance Regulation ~~Department of Insurance~~ shall cause an actuarial valuation to be made of the assets and liabilities of the plan no less frequently than biennially. Pursuant to the results of such valuations, the Office of Insurance Regulation ~~Department~~

~~of Insurance~~ shall prepare a statement as to the contribution rate applicable to the entities listed in paragraph (5)(c). However, at no time shall the rate be greater than 0.25 percent of net direct premiums written.

(b) If the Office of Insurance Regulation ~~Department of Insurance~~ finds that the plan cannot be maintained on an actuarially sound basis based on the assessments and appropriations listed in subsections (4) and (5), the office ~~department~~ shall increase the assessments specified in subsection (4) on a proportional basis as needed.

(9)

(c) In the event the total of all current estimates equals 80 percent of the funds on hand and the funds that will become available to the association within the next 12 months from all sources described in subsections (4) and (5) and paragraph (7)(a), the association shall not accept any new claims without express authority from the Legislature. Nothing herein shall preclude the association from accepting any claim if the injury occurred 18 months or more prior to the effective date of this suspension. Within 30 days of the effective date of this suspension, the association shall notify the Governor, the Speaker of the House of Representatives, the President of the Senate, the Office of Insurance Regulation ~~Department of Insurance~~, the Agency for Health Care Administration, the Department of Health, and the Department of Business and Professional Regulation of this suspension.

Section 1902. Paragraph (c) of subsection (1), subsection (2), and paragraph (d) of subsection (5) of section 766.315, Florida Statutes, are amended to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(1)

(c) The directors shall be appointed by the Chief Financial Officer ~~Insurance Commissioner~~ as follows:

1. One citizen representative.

2. One representative of participating physicians.

3. One representative of hospitals.

4. One representative of casualty insurers.

5. One representative of physicians other than participating physicians.

(2)(a) The Chief Financial Officer ~~Insurance Commissioner~~ may select the representative of the participating physicians from a list of at least three names to be recommended by the Florida Obstetric and Gynecologic Society; the representative of hospitals from a list of at least three names to be recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one by the Alliance of

American Insurers, and one by the National Association of Independent Insurers; and the representative of physicians other than participating physicians from a list of three names to be recommended by the Florida Medical Association and a list of three names to be recommended by the Florida Osteopathic Medical Association. In no case shall the Chief Financial Officer ~~Insurance Commissioner~~ be bound to make any appointment from among the nominees of such respective associations.

(b) The Chief Financial Officer ~~Insurance Commissioner~~ shall promptly notify the appropriate medical association upon the occurrence of any vacancy, and like nominations may be made for the filling of the vacancy.

(5)

(d) Annually, the association shall furnish audited financial reports to any plan participant upon request, to the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~, and to the Joint Legislative Auditing Committee. The reports must be prepared in accordance with accepted accounting procedures and must include such information as may be required by the Office of Insurance Regulation ~~Department of Insurance~~ or the Joint Legislative Auditing Committee. At any time determined to be necessary, the Office of Insurance Regulation ~~Department of Insurance~~ or the Joint Legislative Auditing Committee may conduct an audit of the plan.

Section 1903. Subsection (3), paragraphs (a) and (d) of subsection (6), and subsection (7) of section 768.28, Florida Statutes, are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(3) Except for a municipality and the Florida Space Authority, the affected agency or subdivision may, at its discretion, request the assistance of the Department of Financial Services ~~Insurance~~ in the consideration, adjustment, and settlement of any claim under this act.

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality or the Florida Space Authority, presents such claim in writing to the Department of Financial Services ~~Insurance~~, within 3 years after such claim accrues and the Department of Financial Services ~~Insurance~~ or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to s. 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability.

(d) For purposes of this section, complete, accurate, and timely compliance with the requirements of paragraph (c) shall occur prior to settlement

payment, close of discovery or commencement of trial, whichever is sooner; provided the ability to plead setoff is not precluded by the delay. This setoff shall apply only against that part of the settlement or judgment payable to the claimant, minus claimant's reasonable attorney's fees and costs. Incomplete or inaccurate disclosure of unpaid adjudicated claims due the state, its agency, officer, or subdivision, may be excused by the court upon a showing by the preponderance of the evidence of the claimant's lack of knowledge of an adjudicated claim and reasonable inquiry by, or on behalf of, the claimant to obtain the information from public records. Unless the appropriate agency had actual notice of the information required to be disclosed by paragraph (c) in time to assert a setoff, an unexcused failure to disclose shall, upon hearing and order of court, cause the claimant to be liable for double the original undisclosed judgment and, upon further motion, the court shall enter judgment for the agency in that amount. The failure of the Department of Financial Services ~~Insurance~~ or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of this section. For purposes of this subsection, in medical malpractice actions, the failure of the Department of Financial Services ~~Insurance~~ or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to s. 768.14.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality or the Florida Space Authority, upon the Department of Financial Services ~~Insurance~~; and the department or the agency concerned shall have 30 days within which to plead thereto.

Section 1904. Subsection (5) of section 790.001, Florida Statutes, is amended to read:

790.001 Definitions.—As used in this chapter, except where the context otherwise requires:

(5) "Explosive" means any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene, or ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps, and detonators; but not including:

(a) Shotgun shells, cartridges, or ammunition for firearms;

(b) Fireworks as defined in s. 791.01;

(c) Smokeless propellant powder or small arms ammunition primers, if possessed, purchased, sold, transported, or used in compliance with s. 552.241;

(d) Black powder in quantities not to exceed that authorized by chapter 552, or by any rules adopted ~~or regulations promulgated~~ thereunder by the Department of Financial Services ~~Insurance~~, when used for, or intended to

be used for, the manufacture of target and sporting ammunition or for use in muzzle-loading flint or percussion weapons.

The exclusions contained in paragraphs (a)-(d) do not apply to the term "explosive" as used in the definition of "firearm" in subsection (6).

Section 1905. Section 790.1612, Florida Statutes, is amended to read:

790.1612 Authorization for governmental manufacture, possession, and use of destructive devices.—The governing body of any municipality or county and the Division of State Fire Marshal of the Department of Financial Services ~~Insurance~~ have the power to authorize the manufacture, possession, and use of destructive devices as defined in s. 790.001(4).

Section 1906. Subsection (2) of section 791.01, Florida Statutes, is amended to read:

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

(2) "Division" means the Division of the State Fire Marshal of the Department of Financial Services ~~Insurance~~.

Section 1907. Paragraph (b) of subsection (3) of section 791.015, Florida Statutes, is amended to read:

791.015 Registration of manufacturers, distributors, wholesalers, and retailers of sparklers.—

(3) FEES.—

(b) Revenue from registration fee payments shall be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust Fund for the purposes of implementing the registration and testing provisions of this chapter.

Section 1908. Section 817.16, Florida Statutes, is amended to read:

817.16 False reports, etc., by officers of banks, trust companies, etc., ~~under supervision of Department of Banking and Finance~~ with intent to defraud.—Any officer, director, agent or clerk of any bank, trust company, building and loan association, small loan licensee, credit union, or other corporation under the supervision of the Office of Financial Regulation of the Financial Services Commission or formerly the Department of Banking and Finance, who willfully and knowingly subscribes or exhibits any false paper with intent to deceive any person authorized to examine as to the records of such bank, trust company, building and loan association, small loan licensee, credit union, or other corporation under the supervision of the Office of Financial Regulation or formerly the Department of Banking and Finance, or willfully and knowingly subscribes to or makes any false reports to the Office of Financial Regulation or subscribed to or made any such false report to the Department of Banking and Finance or causes to be published any false report, shall be guilty of a felony of the third degree, punishable as provided s. 775.082 or s. 775.083.

Section 1909. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and subsection (10) of section 817.234, Florida Statutes, are amended to read:

817.234 False and fraudulent insurance claims.—

(1)

(b) All claims and application forms shall contain a statement that is approved by the Office of Insurance Regulation of the Financial Services Commission which ~~Department of Insurance that~~ clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree." This paragraph shall not apply to reinsurance contracts, reinsurance agreements, or reinsurance claims transactions.

(2)

(b) In addition to any other provision of law, systematic upcoding by a provider, as defined in s. 641.19(14) ~~s. 641.19(15)~~, with the intent to obtain reimbursement otherwise not due from an insurer is punishable as provided in s. 641.52(5).

(10) As used in this section, the term "insurer" means any insurer, health maintenance organization, self-insurer, self-insurance fund, or other similar entity or person regulated under chapter 440 or chapter 641 or by the Office of Insurance Regulation ~~Department of Insurance~~ under the Florida Insurance Code.

Section 1910. Section 817.2341, Florida Statutes, is amended to read:

817.2341 False or misleading statements or supporting documents; penalty.—

(1) Any person who willfully files with the department or office, or who willfully signs for filing with the department or office, a materially false or materially misleading financial statement or document in support of such statement required by law or rule, with intent to deceive and with knowledge that the statement or document is materially false or materially misleading, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) Any person who makes a false entry of a material fact in any book, report, or statement relating to a transaction of an insurer or entity organized pursuant to chapter 624 or chapter 641, intending to deceive any person about the financial condition or solvency of the insurer or entity, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the false entry of a material fact is made with the intent to deceive any person as to the impairment of capital, as defined in s. 631.011(12), of the insurer or entity or is the significant cause of the insurer or entity being

placed in conservation, rehabilitation, or liquidation by a court, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) Any person who knowingly makes a material false statement or report to the department or office or any agent of the department or office, or knowingly and materially overvalues any property in any document or report prepared to be presented to the department or office or any agent of the department or office, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the material false statement or report or the material overvaluation is made with the intent to deceive any person as to the impairment of capital, as defined in s. 631.011(12), of an insurer or entity organized pursuant to chapter 624 or chapter 641, or is the significant cause of the insurer or entity being placed in receivership by a court, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) As used in this section, the term:

(a) "Department" means the Department of Financial Services.

(b) "Office" means the Office of Insurance Regulation of the Financial Services Commission.

Section 1911. Subsection (1) of section 817.50, Florida Statutes, is amended to read:

817.50 Fraudulently obtaining goods, services, etc., from a health care provider.—

(1) Whoever shall, willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from any health care provider in this state, as defined in s. 641.19(14) ~~s. 641.19(15)~~, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 1912. Section 839.06, Florida Statutes, is amended to read:

839.06 Collectors not to deal in warrants, etc.; removal.—No tax collector of any county shall, either directly or indirectly, purchase or receive in exchange any Chief Financial Officer's or the former Comptroller's warrants, county orders, jurors' certificates or school district orders for a less amount than expressed on the face of such orders or demand, and any such person so offending shall, for each offense, be deemed guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, and be removed from office.

Section 1913. Paragraph (d) of subsection (5) and paragraph (c) of subsection (13) of section 849.086, Florida Statutes, are amended to read:

849.086 Cardrooms authorized.—

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(d) The annual cardroom license fee shall be $1,000 for the first table and $500 for each additional table to be operated at the cardroom. This license fee shall be deposited by the division with the Chief Financial Officer ~~Treasurer~~ to the credit of the Pari-mutuel Wagering Trust Fund.

(13) TAXES AND OTHER PAYMENTS.—

(c) Payment of the admission tax and gross receipts tax imposed by this section shall be paid to the division. The division shall deposit these sums with the Chief Financial Officer ~~Treasurer~~, one-half being credited to the Pari-mutuel Wagering Trust Fund and one-half being credited to the General Revenue Fund. The cardroom licensee shall remit to the division payment for the admission tax, the gross receipts tax, and the licensee fees. Such payments shall be remitted to the division on the fifth day of each calendar month for taxes and fees imposed for the preceding month's cardroom activities. Licensees shall file a report under oath by the fifth day of each calendar month for all taxes remitted during the preceding calendar month. Such report shall, under oath, indicate the total of all admissions, the cardroom activities for the preceding calendar month, and such other information as may be prescribed by the division.

Section 1914. Section 849.33, Florida Statutes, is amended to read:

849.33 Judgment and collection of money; execution.—Any judgment recovered in such a suit shall adjudge separately the amounts recovered for the use of the state, and the plaintiff shall not have execution therefor, and such amounts shall not be paid to the plaintiff, but shall be payable to the state attorney, who shall promptly transmit the sums collected by him or her to the Chief Financial Officer ~~State Treasurer~~. The state attorney shall diligently seek the collection of such amounts and may cause a separate execution to issue for the collection thereof.

Section 1915. Subsection (1) of section 860.154, Florida Statutes, is amended to read:

860.154 Florida Motor Vehicle Theft Prevention Authority.—

(1) There is ~~hereby~~ established within the Department of Legal Affairs the Florida Motor Vehicle Theft Prevention Authority, which shall exercise its powers, duties, and responsibilities independently of the department. The purposes, powers, and duties of the authority shall be vested in and exercised by a board of directors. There shall be nine members of the board, consisting of the Chief Financial Officer ~~commissioner of the Department of Insurance~~ or his or her ~~the commissioner's~~ designee; the executive director of the Department of Highway Safety and Motor Vehicles; the executive director of the Department of Law Enforcement; six additional members, each of whom shall be appointed by the Attorney General: a state attorney or city or county executive, a chief executive law enforcement official, a sheriff, one representative of companies authorized to sell motor vehicle

insurance, one representative of insurers authorized to write motor vehicle insurance in this state, and one representative of purchasers of motor vehicle insurance in this state who is not employed by or connected with the business of insurance.

Section 1916. Subsection (7) of section 860.157, Florida Statutes, is amended to read:

860.157 Powers and duties of the authority.—The authority shall have the following powers, duties, and responsibilities:

(7) To report annually, on or before January 1, to the Governor, Attorney General, Chief Financial Officer ~~Insurance Commissioner~~, President of the Senate, Speaker of the House of Representatives, Minority Leader of the House of Representatives, Minority Leader of the Senate, and appropriate committee chairs in the House of Representatives and the Senate, and, upon request, to members of the general public on the authority's activities in the preceding year.

Section 1917. Subsections (1) and (2) of section 896.102, Florida Statutes, are amended to read:

896.102 Currency more than $10,000 received in trade or business; report required; noncompliance penalties.—

(1) All persons engaged in a trade or business, except for those financial institutions that report to the Office of Financial Regulation ~~Comptroller~~ pursuant to s. 655.50, who receive more than $10,000 in currency, including foreign currency, in one transaction, or who receive this amount through two or more related transactions, must complete and file with the Department of Revenue the information required pursuant to 26 U.S.C. s. 6050I., concerning returns relating to currency received in trade or business. Any person who willfully fails to comply with the reporting requirements of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, or by a fine not exceeding $250,000 or twice the value of the amount of the currency transaction involved, whichever is greater, or by both such imprisonment and fine. For a second or subsequent conviction of a violation of the provisions of this subsection, the maximum fine that may be imposed is $500,000 or quintuple the value of the amount of the currency transaction involved, whichever is greater.

(2) The Department of Revenue shall enforce compliance with the provisions of subsection (1) and is to be the custodian of all information and documents filed pursuant to subsection (1). Such information and documents are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; however, the department must provide any report filed under this section, or information contained therein, to federal, state, and local law enforcement and prosecutorial agencies, ~~and~~ to the Department of Financial Services, and to the Office of Financial Regulation ~~Banking and Finance~~, and the information is subject to disclosure pursuant to subpoena as provided in s. 213.053(8).

Section 1918. Subsection (5) of section 896.104, Florida Statutes, is amended to read:

896.104 Structuring transactions to evade reporting or registration requirements prohibited.—

(5) INFERENCE.—Proof that a person engaged for monetary consideration in the business of a funds transmitter as defined in s. 560.103(10) ~~s. 560.103(9)~~ and who is transporting more than $10,000 in currency, or foreign equivalent, without being registered as a money transmitter or designated as an authorized vendor under the provisions of chapter 560, gives rise to an inference that the transportation was done with knowledge of the registration requirements of chapter 560 and the reporting requirements of this chapter.

Section 1919. Subsection (2) of section 903.09, Florida Statutes, is amended to read:

903.09 Justification of sureties.—

(2) A bond agent, as defined in s. 648.25(2) ~~s. 648.25(1)~~, shall justify her or his suretyship by attaching a copy of the power of attorney issued by the company to the bond or by attaching to the bond United States currency, a United States postal money order, or a cashier's check in the amount of the bond; but the United States currency, United States postal money order, or cashier's check cannot be used to secure more than one bond. Nothing herein shall prohibit two or more qualified sureties from each posting any portion of a bond amount, and being liable for only that amount, so long as the total posted by all cosureties is equal to the amount of bond required.

Section 1920. Section 903.101, Florida Statutes, is amended to read:

903.101 Sureties; licensed persons; to have equal access.—Subject to rules adopted ~~regulations promulgated~~ by the Department of Financial Services and by the Financial Services Commission ~~Insurance~~, every surety who meets the requirements of ss. 903.05, 903.06, 903.08, and 903.09, and every person who is currently licensed by the Department of Financial Services ~~Insurance~~ and registered as required by s. 648.42 shall have equal access to the jails of this state for the purpose of making bonds.

Section 1921. Subsection (1) of section 903.27, Florida Statutes, is amended to read:

903.27 Forfeiture to judgment.—

(1) If the forfeiture is not paid or discharged by order of a court of competent jurisdiction within 60 days and the bond is secured other than by money and bonds authorized in s. 903.16, the clerk of the circuit court for the county where the order was made shall enter a judgment against the surety for the amount of the penalty and issue execution. Within 10 days, the clerk shall furnish the Department of Financial Services and the Office of Insurance Regulation of the Financial Services Commission ~~Insurance~~ with a certified copy of the judgment docket and shall furnish the surety company at its

home office a copy of the judgment, which shall include the power of attorney number of the bond and the name of the executing agent. If the judgment is not paid within 35 days, the clerk shall furnish the Department of Financial Services, the Office of Insurance Regulation, ~~Insurance~~ and the sheriff of the county in which the bond was executed, or the official responsible for operation of the county jail, if other than the sheriff, two copies of the judgment and a certificate stating that the judgment remains unsatisfied. When and if the judgment is properly paid or an order to vacate the judgment has been entered by a court of competent jurisdiction, the clerk shall immediately notify the sheriff, or the official responsible for the operation of the county jail, if other than the sheriff, and the Department of Financial Services and the Office of Insurance Regulation ~~Insurance~~, if the department and office had been previously notified of nonpayment, of such payment or order to vacate the judgment. The clerk shall also immediately prepare and record in the public records a satisfaction of the judgment or record the order to vacate judgment. If the defendant is returned to the county of jurisdiction of the court, whenever a motion to set aside the judgment is filed, the operation of this section is tolled until the court makes a disposition of the motion.

Section 1922. Paragraph (a) and (b) of subsection (5) of section 925.037, Florida Statutes, are amended to read:

925.037 Reimbursement of counties for fees paid to appointed counsel; circuit conflict committees.—

(5)(a) The clerk of the circuit court in each county shall submit to the Justice Administrative Commission a statement of conflict counsel fees at least annually. Such statement shall identify total expenditures incurred by the county on fees of counsel appointed by the court pursuant to this section where such fees are taxed against the county by judgment of the court. On the basis of such statement of expenditures, the Justice Administrative Commission shall pay state conflict case appropriations to the county. The statement of conflict counsel fees shall be on a form prescribed by the Justice Administrative Commission in consultation with the Legislative Committee on Intergovernmental Relations and the Chief Financial Officer ~~Comptroller~~. Such form also shall provide for the separate reporting of total expenditures made by the county on attorney fees in cases in which other counsel were appointed by the court where the public defender was unable to accept the case as a result of a stated lack of resources. To facilitate such expenditure identification and reporting, the public defender, within 7 days of the appointment of such counsel by the court, shall report to the clerk of circuit court case-related information sufficient to permit the clerk to identify separately county expenditures on fees of such counsel. No county shall be required to submit any additional information to the commission on an annual or other basis in order to document or otherwise verify the expenditure information provided on the statement of conflict counsel fees form, except as provided in paragraph (c).

(b) Before September 30 of each year, the clerk of the circuit court in each county shall submit to the Justice Administrative Commission a report of conflict counsel expenses and costs for the previous local government fiscal

year. Such report shall identify expenditures incurred by the county on expenses and costs of counsel appointed by the court pursuant to this section where such expenses and costs are taxed against the county by judgment of the court. Such report of expenditures shall be on a form prescribed by the commission in consultation with the Legislative Committee on Intergovernmental Relations and the Chief Financial Officer ~~Comptroller~~, provided that such form shall at a minimum separately identify total county expenditures for witness fees and expenses, court reporter fees and costs, and defense counsel travel and per diem. Such form also shall provide for the separate reporting of total county expenditures on attorney expenses and costs in cases in which other counsel were appointed by the court where the public defender was unable to accept the case as a result of a stated lack of resources. To facilitate such expenditure identification and reporting, the public defender, within 7 days of the appointment of such counsel by the court, shall report to the clerk of the circuit court case-related information sufficient to permit the clerk to identify separately county expenditures on expenses and costs of such counsel. No county shall be required to submit any additional information to the Justice Administrative Commission on an annual or other basis in order to document or otherwise verify the expenditure information provided on the report of conflict counsel expenses and costs form, except as provided in paragraph (c).

Section 1923. Paragraph (b) of subsection (8) of section 932.7055, Florida Statutes, is amended to read:

932.7055 Disposition of liens and forfeited property.—

(8)

(b) The Department of Law Enforcement shall submit an annual report to the criminal justice committees of the House of Representatives and of the Senate compiling the information and data related in the semiannual reports submitted by the law enforcement agencies. The annual report shall also contain a list of law enforcement agencies which have failed to meet the reporting requirements and a summary of any action which has been taken against the noncomplying agency by the Office of the Chief Financial Officer ~~Comptroller~~.

Section 1924. Section 932.707, Florida Statutes, is amended to read:

932.707 Penalty for noncompliance with reporting requirements.—Any seizing agency which fails to comply with the reporting requirements as described in s. 932.7055(8)(a), is subject to a civil fine of $5,000 payable to the General Revenue Fund. However, such agency will not be subject to the fine if, within 60 days of receipt of written notification from the Department of Law Enforcement of the noncompliance with the reporting requirements of the Florida Contraband Forfeiture Act, the agency substantially complies with said requirements. The Department of Law Enforcement shall submit any substantial noncompliance to the Office of the Chief Financial Officer ~~Comptroller~~, which shall be responsible for the enforcement of this section.

Section 1925. Subsection (1) of section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs on conviction.—

(1) In all criminal cases the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the ~~Division of Financial Investigations of the~~ Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission ~~Banking and Finance~~, if requested and documented by such agencies, shall be included and entered in the judgment rendered against the convicted person.

Section 1926. Section 939.13, Florida Statutes, is amended to read:

939.13 Power of Chief Financial Officer ~~Comptroller~~.—The Chief Financial Officer ~~Comptroller~~ may audit and approve or disapprove any claim or any item thereof against the state for costs, fees or expenses of criminal cases prosecuted in the name of the state, and for which the state is liable, if the Chief Financial Officer ~~Comptroller~~ is satisfied that the same is legal, just, necessary and correct or otherwise, and may prescribe forms and methods for the same. The Chief Financial Officer ~~Comptroller~~ shall not dispense with any of the requirements of law relative to the auditing and payment of such accounts, but may prescribe additional requirements.

Section 1927. Paragraph (h) of subsection (1) of section 943.031, Florida Statutes, is amended to read:

943.031 Florida Violent Crime and Drug Control Council.—The Legislature finds that there is a need to develop and implement a statewide strategy to address violent criminal activity and drug control efforts by state and local law enforcement agencies, including investigations of illicit money laundering. In recognition of this need, the Florida Violent Crime and Drug Control Council is created within the department. The council shall serve in an advisory capacity to the department.

(1) MEMBERSHIP.—The council shall consist of 14 members, as follows:

(h) The Chief Financial Officer ~~Comptroller~~, or a designate.

The Governor, when making appointments under this subsection, must take into consideration representation by geography, population, ethnicity, and other relevant factors to ensure that the membership of the council is representative of the state at large. Designates appearing on behalf of a council member who is unable to attend a meeting of the council are empowered to vote on issues before the council to the same extent the designating council member is so empowered.

Section 1928. Subsection (2) of section 943.032, Florida Statutes, is amended to read:

943.032 Financial Crime Analysis Center and Financial Transaction Database.—

(2) The department shall compile information and data available from financial transaction reports required to be submitted by state or federal law

that are provided to the Department of Financial Services, to the Office of Financial Regulation of the Financial Services Commission ~~Banking and Finance~~, to the Department of Revenue, or to which the department otherwise has access. Information and data so received shall be utilized by the department in the Financial Transaction Database. The department shall implement a system utilizing the database that allows data review and processing to reveal patterns, trends, and correlations that are indicative of money laundering or other financial transactions indicative of criminal activity. The department shall, in consultation with the Department of Financial Services, the Office of Financial Regulation of the Financial Services Commission, ~~Banking and Finance~~ and the Department of Revenue, establish the methods and parameters by which information and data received by such agencies ~~the Department of Banking and Finance or the Department of Revenue~~ are transferred to the department for inclusion in the database. Information developed in or through the use of the database shall be made available to law enforcement agencies and prosecutors in this state in a manner defined by the department and as allowed by state or federal law or regulation. All information contained in the database shall be considered "active criminal intelligence" or "active criminal investigative information" as defined in s. 119.011.

Section 1929. Subsections (3) and (4) of section 944.516, Florida Statutes, are amended to read:

944.516 Money or other property received for personal use or benefit of inmate; deposit; disposition of unclaimed trust funds.—The Department of Corrections shall protect the financial interest of the state with respect to claims which the state may have against inmates in state institutions under its supervision and control and shall administer money and other property received for the personal benefit of such inmates. In carrying out the provisions of this section, the department may delegate any of its enumerated powers and duties affecting inmates of an institution to the warden or regional director who shall personally, or through designated employees of his or her personal staff under his or her direct supervision, exercise such powers or perform such duties.

(3) Moneys received by the department in payment of claims of the state against inmates shall be transmitted to the Chief Financial Officer ~~Treasurer~~ for deposit into the General Revenue Fund.

(4) Upon the death of any inmate in an institution affected by the provisions of this section, any unclaimed money held for the inmate in trust by the department or by the Chief Financial Officer ~~Treasurer~~ shall be applied first to the payment of any unpaid state claim against the inmate, and any balance remaining unclaimed for a period of 1 year shall escheat to the state as unclaimed funds held by fiduciaries.

Section 1930. Section 946.33, Florida Statutes, is amended to read:

946.33 Disbursements from fund.—The funds in the Correctional Work Program Trust Fund shall be deposited in the State Treasury and paid out only on warrants drawn by the Chief Financial Officer ~~Comptroller~~, duly

approved by the Department of Corrections. The department shall maintain all necessary records and accounts relative to such funds.

Section 1931. Subsection (2) of section 946.509, Florida Statutes, is amended to read:

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

(2) Coverage under the State Risk Management 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 Financial Services ~~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 Risk Management 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 Risk Management 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 Risk Management Trust Fund.

Section 1932. Section 946.5095, Florida Statutes, is amended to read:

946.5095 Elimination of hazardous conditions.—Pursuant to the applicable provisions of part I of chapter 284, whenever state-insured property leased to or otherwise held by the corporation is inspected by the Division of Risk Management of the Department of Financial Services and any condition is found to exist which, in the opinion of the division, is hazardous from the standpoint of destruction by fire or other insurable causes, the corporation shall either promptly repair the property to eliminate any observed hazard or otherwise promptly remove the hazardous condition at its own expense.

Section 1933. Section 946.510, Florida Statutes, is amended to read:

946.510 Insurance by Division of Risk Management.—Pursuant to the applicable provisions of chapter 284, the Division of Risk Management of the Department of Financial Services ~~Insurance~~ is authorized to insure the corporation under the same general terms and conditions as the Department of Corrections was insured by the division prior to the corporation leasing the correctional work programs as authorized by this chapter.

Section 1934. Section 946.517, Florida Statutes, is amended to read:

946.517 Corporation records.—Corporation records are public records; however, proprietary confidential business information shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, the Legislature, the Chief Financial Officer ~~Comptroller~~, and the Governor, pursuant to their oversight and auditing functions, shall have access to all proprietary confidential business information

upon request and without subpoena and shall retain the confidentiality of information so received. "Proprietary confidential business information" means information regardless of form or characteristics, that is owned or controlled by the corporation; is intended to be and is treated by the corporation as private and the disclosure of the information would cause harm to the corporation's business operations; has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, a legislative proceeding pursuant to s. 5, Art. III of the State Constitution, or a private agreement that provides that the information may be released to the public; and, which is information regarding:

(1) Internal auditing controls and reports of internal auditors.

(2) Matters reasonably encompassed in privileged attorney-client communications.

(3) Security measures, systems, or procedures.

(4) Information concerning bids or other contractual data, banking records, and credit agreements, the disclosure of which would impair the efforts of the corporation to contract for goods or services on favorable terms.

(5) Information relating to private contractual data, the disclosure of which would impair the competitive interest of the provider of the information.

(6) Corporate officer, employee personnel, or inmate worker information unrelated to compensation, duties, qualifications, or responsibilities.

Section 1935. Subsections (1) and (2) of section 946.522, Florida Statutes, are amended to read:

946.522 Prison Industries Trust Fund.—

(1) The Prison Industries Trust Fund is created, to be administered by the Department of Financial Services ~~Banking and Finance~~. The trust fund shall consist of moneys authorized to be deducted pursuant to 18 U.S.C. s. 1761(c) and the applicable federal guidelines, to be appropriated by the Legislature, and moneys deposited by the corporation authorized under this part to manage and operate correctional work programs. The appropriated funds shall be used by the corporation for purposes of construction or renovation of its facilities or for the expansion or establishment of correctional work programs as described in this part or for prison industries enhancement (PIE) programs as authorized under s. 946.523.

(2) The funds must be deposited in the State Treasury and may be paid out only on warrants drawn by the Chief Financial Officer ~~Comptroller~~ upon receipt of a corporate resolution that has been duly authorized by the board of directors of the corporation authorized under this part to manage and operate correctional work programs. The corporation shall maintain all necessary records and accounts relative to such funds.

Section 1936. Paragraph (f) of subsection (3) of section 946.525, Florida Statutes, is amended to read:

946.525 Participation by the corporation in the state group health insurance and prescription drug programs.—

(3) If the Department of Management Services determines that the corporation is eligible to enroll, the corporation must agree to the following terms and conditions:

(f) If the corporation fails to make the payments required by this section to fully reimburse the state, the Department of Revenue or the Department of Financial Services ~~Banking and Finance~~ shall, upon the request of the Department of Management Services, deduct the amount owed by the employer from any funds to be distributed by it to the corporation. The amounts so deducted shall be transferred to the Department of Management Services for further distribution to the trust funds in accordance with this chapter.

Section 1937. Subsection (1) of section 947.12, Florida Statutes, is amended to read:

947.12 Members, employees, expenses.—

(1) The members of the commission and its employees shall be reimbursed for travel expenses as provided in s. 112.061. All bills for expenses shall be properly receipted, audited, and approved and forwarded to the Chief Financial Officer ~~Comptroller~~ and shall be paid in a manner and form as the bills for the expenses of the several departments of the state government are paid. All expenses, including salaries and other compensation, shall be paid from the General Revenue Fund and within the appropriation as fixed therefor by the Legislature. Such expenses shall be paid by the Chief Financial Officer ~~Treasurer~~ upon proper warrants ~~issued by the Comptroller of the state,~~ drawn upon vouchers and requisitions approved by the commission~~, and signed by the Comptroller~~.

Section 1938. Subsection (8) of section 950.002, Florida Statutes, is amended to read:

950.002 County work camps.—

(8) Pursuant to the applicable provisions of chapter 284, the Division of Risk Management of the Department of Financial Services ~~Insurance~~ is authorized to insure any county work camp facility established pursuant to this act under the same general terms and conditions as the Department of Corrections is insured by the division for any of its comparable work camps.

Section 1939. Paragraph (b) of subsection (1) of section 957.04, Florida Statutes, is amended to read:

957.04 Contract requirements.—

(1) A contract entered into under this chapter for the operation of private correctional facilities shall maximize the cost savings of such facilities and shall:

(b) Indemnify the state and the department, including their officials and agents, against any and all liability, including, but not limited to, civil rights

liability. Proof of satisfactory insurance is required in an amount to be determined by the commission, following consultation with the Division of Risk Management of the Department of Financial Services ~~Insurance~~. Not less than 30 days prior to the release of each request for proposals by the commission, the commission shall request the written recommendation of the division regarding indemnification of the state and the department under this paragraph. Within 15 days after such request, the division shall provide a written recommendation to the commission regarding the amount and manner of such indemnification. The commission shall adopt the division's recommendation unless, based on substantial competent evidence, the commission determines a different amount and manner of indemnification is sufficient.

Section 1940. Paragraph (a) of subsection (6) and subsection (8) of section 985.406, Florida Statutes, are amended to read:

985.406 Juvenile justice training academies established; Juvenile Justice Standards and Training Commission created; Juvenile Justice Training Trust Fund created.—

(6) SCHOLARSHIPS AND STIPENDS.—

(a) By rule, the commission shall establish criteria to award scholarships or stipends to qualified juvenile justice personnel who are residents of the state who want to pursue a bachelor's or associate in arts degree in juvenile justice or a related field. The department shall handle the administration of the scholarship or stipend. The Department of Education shall handle the notes issued for the payment of the scholarships or stipends. All scholarship and stipend awards shall be paid from the Juvenile Justice Training Trust Fund upon vouchers approved by the Department of Education and properly certified by the Chief Financial Officer ~~Comptroller~~. Prior to the award of a scholarship or stipend, the juvenile justice employee must agree in writing to practice her or his profession in juvenile justice or a related field for 1 month for each month of grant or to repay the full amount of the scholarship or stipend together with interest at the rate of 5 percent per annum over a period not to exceed 10 years. Repayment shall be made payable to the state for deposit into the Juvenile Justice Training Trust Fund.

(8) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of Risk Management of the Department of Financial Services ~~Insurance~~ is authorized to insure a private agency, individual, or corporation operating a state-owned training school under a contract to carry out the purposes and responsibilities of any program of the department. The coverage authorized herein shall be under the same general terms and conditions as the department is insured for its responsibilities under chapter 284.

Section 1941. Section 985.409, Florida Statutes, is amended to read:

985.409 Participation of certain programs in the State Risk Management Trust Fund.—Pursuant to s. 284.30, the Division of Risk Management of the Department of Financial Services ~~Insurance~~ is authorized to insure a private agency, individual, or corporation operating a state-owned training

school under a contract to carry out the purposes and responsibilities of any program of the department. The coverage authorized herein shall be under the same general terms and conditions as the department is insured for its responsibilities under chapter 284.

Section 1942. Paragraph (g) of subsection (6) of section 1000.05, Florida Statutes, is amended to read:

1000.05 Discrimination against students and employees in the Florida K-20 public education system prohibited; equality of access required.—

(6) The functions of the Office of Equal Educational Opportunity of the Department of Education shall include, but are not limited to:

(g) Reporting to the Commissioner of Education any district school board, community college board of trustees, or state university board of trustees found to be out of compliance with rules of the State Board of Education adopted as required by paragraph (f) or paragraph (3)(d). To penalize the board, the State Board of Education shall:

1. Declare the educational agency ineligible for competitive state grants.

2. Notwithstanding the provisions of s. 216.192, direct the Chief Financial Officer ~~Comptroller~~ to withhold general revenue funds sufficient to obtain compliance from the educational agency.

The educational agency shall remain ineligible and the funds shall not be paid until the agency comes into compliance or the State Board of Education approves a plan for compliance.

Section 1943. Paragraph (b) of subsection (4) of section 1001.23, Florida Statutes, is amended to read:

1001.23 Specific powers and duties of the Department of Education.—In addition to all other duties assigned to it by law or by rule of the State Board of Education, the department shall:

(4) After complying with the provisions of s. 257.37, the Department of Education may:

(b) Destroy general correspondence that is over 3 years old; records of bills, accounts, vouchers, and requisitions that are over 5 years old and copies of which have been filed with the Chief Financial Officer ~~Comptroller~~; and other records, papers, and documents over 3 years old that do not serve as part of an agreement or understanding and do not have value as permanent records.

Section 1944. Paragraph (b) of subsection (4) of section 1002.36, Florida Statutes, is amended to read:

1002.36 Florida School for the Deaf and the Blind.—

(4) BOARD OF TRUSTEES.—

(b) The board of trustees shall elect a chair annually. The trustees shall be reimbursed for travel expenses as provided in s. 112.061, the accounts of which shall be paid by the Chief Financial Officer ~~Treasurer~~ upon itemized vouchers duly approved by the chair.

Section 1945. Paragraph (g) of subsection (6) of section 1002.38, Florida Statutes, is amended to read:

1002.38 Opportunity Scholarship Program.—

(6) OPPORTUNITY SCHOLARSHIP FUNDING AND PAYMENT.—

(g) Upon proper documentation reviewed and approved by the Department of Education, the Chief Financial Officer ~~Comptroller~~ shall make opportunity scholarship payments in four equal amounts no later than September 1, November 1, February 1, and April 1 of each academic year in which the opportunity scholarship is in force. The initial payment shall be made after Department of Education verification of admission acceptance, and subsequent payments shall be made upon verification of continued enrollment and attendance at the private school. Payment must be by individual warrant made payable to the student's parent and mailed by the Department of Education to the private school of the parent's choice, and the parent shall restrictively endorse the warrant to the private school.

Section 1946. Paragraph (f) of subsection (6) of section 1002.39, Florida Statutes, is amended to read:

1002.39 The John M. McKay Scholarships for Students with Disabilities Program.—There is established a program that is separate and distinct from the Opportunity Scholarship Program and is named the John M. McKay Scholarships for Students with Disabilities Program, pursuant to this section.

(6) SCHOLARSHIP FUNDING AND PAYMENT.—

(f) Upon proper documentation reviewed and approved by the Department of Education, the Chief Financial Officer ~~Comptroller~~ shall make scholarship payments in four equal amounts no later than September 1, November 1, February 1, and April 15 of each academic year in which the scholarship is in force. The initial payment shall be made after Department of Education verification of admission acceptance, and subsequent payments shall be made upon verification of continued enrollment and attendance at the private school. Payment must be by individual warrant made payable to the student's parent and mailed by the Department of Education to the private school of the parent's choice, and the parent shall restrictively endorse the warrant to the private school for deposit into the account of the private school.

Section 1947. Paragraph (b) of subsection (3) of section 1003.48, Florida Statutes, is amended to read:

1003.48 Instruction in operation of motor vehicles.—

(3)

(b) For the purpose of financing the Driver Education Program in the secondary schools, there shall be levied an additional 50 cents per year to the driver's license fee required by s. 322.21. The additional fee shall be promptly remitted to the Department of Highway Safety and Motor Vehicles, which shall transmit the fee to the Chief Financial Officer ~~Treasurer~~ to be deposited in the General Revenue Fund.

Section 1948. Subsection (1) of section 1004.30, Florida Statutes, is amended to read:

1004.30 University health services support organization; confidentiality of information.—

(1) All meetings of a governing board of a university health services support organization and all university health services support organization records shall be open and available to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution and chapter 119 and s. 24(a), Art. I of the State Constitution, respectively, unless made confidential or exempt by law. Records required by the Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission ~~Insurance~~ to discharge their ~~its~~ duties shall be made available to the department upon request.

Section 1949. Subsection (1) of section 1004.725, Florida Statutes, is amended to read:

1004.725 Expenditures for self-insurance services; special account.—

(1) The community college boards of trustees, singly or collectively, are authorized to contract with an administrator or service company approved ~~by the Department of Insurance~~ pursuant to chapter 626 to provide self-insurance services, including, but not limited to, the evaluation, settlement, and payment of self-insurance claims on behalf of the board of trustees or a consortium of boards of trustees.

Section 1950. Paragraph (c) of subsection (2) of section 1006.29, Florida Statutes, is amended to read:

1006.29 State instructional materials committees.—

(2)

(c) The district school board shall be reimbursed for the actual cost of substitute teachers for each workday that a member of its instructional staff is absent from his or her assigned duties for the purpose of rendering service to the state instructional materials committee. In addition, committee members shall be reimbursed for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings of committees called by the commissioner. Payment of such travel expenses shall be made ~~by the Treasurer~~ from the appropriation for the administration of the instructional materials program, on warrants to be drawn by the Chief Financial Officer ~~Comptroller~~ upon requisition approved by the commissioner.

Section 1951. Subsection (3) of section 1006.33, Florida Statutes, is amended to read:

1006.33 Bids or proposals; advertisement and its contents.—

(3) The department shall require each publisher or manufacturer of instructional materials who submits a bid under this part to deposit with the department such sum of money or certified check as may be determined by the department, the amount to be not less than $500 and not more than $2,500, according to the number of instructional materials covered by the bid, which deposit shall be forfeited to the state and placed in the General Revenue Fund if the bidder making the deposit fails or refuses to execute the contract and bond within 30 days after receipt of the contract in case his or her bid or proposal is accepted. The commissioner shall, upon determining that the deposit is correct and proper, transmit the deposit to the Chief Financial Officer ~~Treasurer~~, who shall deposit the funds for credit to the Textbook Bid Trust Fund and issue his or her official receipt.

Section 1952. Subsections (5) and (6) of section 1006.34, Florida Statutes, are amended to read:

1006.34 Powers and duties of the commissioner and the department in selecting and adopting instructional materials.—

(5) RETURN OF DEPOSITS.—

(a) The successful bidder shall be notified by registered mail of the award of contract and shall, within 30 days after receipt of the contract, execute the proper contract and post the required bond. When the bond and contract have been executed, the department shall notify the Chief Financial Officer ~~Comptroller~~ and request that a warrant be issued against the Textbook Bid Trust Fund payable to the successful bidder in the amount deposited pursuant to this part. The Chief Financial Officer ~~Comptroller~~ shall issue and forward the warrant to the department for distribution to the bidder.

(b) At the same time or prior thereto, the department shall inform the Chief Financial Officer ~~Comptroller~~ of the names of the unsuccessful bidders. Upon receipt of such notice, the Chief Financial Officer ~~Comptroller~~ shall issue warrants against the Textbook Bid Trust Fund payable to the unsuccessful bidders in the amounts deposited pursuant to this part and shall forward the warrants to the department for distribution to the unsuccessful bidders.

(c) One copy of each contract and an original of each bid, whether accepted or rejected, shall be preserved with the department for at least 3 years after the termination of the contract.

(6) DEPOSITS FORFEITED.—If any successful bidder fails or refuses to execute contract and bond within 30 days after receipt of the contract, the cash deposit shall be forfeited to the state and placed by the Chief Financial Officer ~~Treasurer~~ in the General Revenue Fund.

Section 1953. Subsection (3) of section 1006.39, Florida Statutes, is amended to read:

1006.39 Production and dissemination of educational materials and products by department.—

(3) All proceeds from the sale of educational materials and products shall be remitted to the Chief Financial Officer ~~Treasurer~~ and shall be kept in a separate fund to be known as the "Educational Media and Technology Trust Fund" and, when properly budgeted as approved by the Legislature and the Executive Office of the Governor, used to pay the cost of producing and disseminating educational materials and products.

Section 1954. Subsection (4) of section 1008.33, Florida Statutes, is amended to read:

1008.33 Authority to enforce public school improvement.—It is the intent of the Legislature that all public schools be held accountable for students performing at acceptable levels. A system of school improvement and accountability that assesses student performance by school, identifies schools in which students are not making adequate progress toward state standards, institutes appropriate measures for enforcing improvement, and provides rewards and sanctions based on performance shall be the responsibility of the State Board of Education.

(4) The State Board of Education may require the Department of Education or Chief Financial Officer ~~Comptroller~~ to withhold any transfer of state funds to the school district if, within the timeframe specified in state board action, the school district has failed to comply with the action ordered to improve the district's low-performing schools. Withholding the transfer of funds shall occur only after all other recommended actions for school improvement have failed to improve performance. The State Board of Education may impose the same penalty on any district school board that fails to develop and implement a plan for assistance and intervention for low-performing schools as specified in s. 1001.42(16)(c).

Section 1955. Subsection (2) of section 1009.265, Florida Statutes, is amended to read:

1009.265 State employee fee waivers.—

(2) The Chief Financial Officer ~~Comptroller~~, in cooperation with the community colleges and state universities, shall identify and implement ways to ease the administrative burden to community colleges and state universities, including, but not limited to, providing easier access to verify state employment.

Section 1956. Section 1009.54, Florida Statutes, is amended to read:

1009.54 Critical Teacher Shortage Program.—There is created the Critical Teacher Shortage Program. Funds appropriated by the Legislature for the program shall be deposited in the State Student Financial Assistance Trust Fund. The Chief Financial Officer ~~Comptroller~~ shall authorize expenditures from the trust fund upon receipt of vouchers approved by the Department of Education for the critical teacher shortage programs established in s. 1009.57, s. 1009.58, or s. 1009.59. The Chief Financial Officer

~~Comptroller~~ shall also authorize expenditures from the trust fund for the "Chappie" James Most Promising Teacher Scholarship Loan Program and the Critical Teacher Shortage Scholarship Loan Program recipients who participated in these programs prior to July 1, 1993, provided that such students continue to meet the renewal eligibility requirements that were in effect at the time that their original awards were made. Students who participated in the "Chappie" James Most Promising Teacher Scholarship Loan Program prior to July 1, 1993, shall not have their awards reduced as a result of the addition of new students to the program. All scholarship loan repayments pursuant to s. 1009.57 shall be deposited into the State Student Financial Assistance Trust Fund. Any remaining balance at the end of any fiscal year that has been allocated to the program shall remain in the trust fund and be available for the individual programs in future years.

Section 1957. Subsection (4) of section 1009.56, Florida Statutes, is amended to read:

1009.56 Seminole and Miccosukee Indian Scholarships.—

(4) The amount of the scholarship shall be determined by the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida, for its respective applicants, within the amount of funds appropriated for this purpose. The amount shall be prorated accordingly for part-time students. At the beginning of each semester or quarter, the department shall certify the name of each scholarship holder eligible to receive funds for that registration period to the Chief Financial Officer ~~Comptroller~~, who shall draw a warrant in favor of each scholarship recipient. Each recipient shall be eligible to have the scholarship renewed from year to year, provided all academic and other requirements of the college or university and rules established by the State Board of Education are met.

Section 1958. Subsection (5) of section 1009.66, Florida Statutes, is amended to read:

1009.66 Nursing Student Loan Forgiveness Program.—

(5) There is created the Nursing Student Loan Forgiveness Trust Fund to be administered by the Department of Health pursuant to this section and s. 1009.67 and department rules. The Chief Financial Officer ~~Comptroller~~ shall authorize expenditures from the trust fund upon receipt of vouchers approved by the Department of Health. All moneys collected from the private health care industry and other private sources for the purposes of this section shall be deposited into the Nursing Student Loan Forgiveness Trust Fund. Any balance in the trust fund at the end of any fiscal year shall remain therein and shall be available for carrying out the purposes of this section and s. 1009.67.

Section 1959. Effective July 1, 2003, subsection (7) of section 1009.66, Florida Statutes, as amended by chapters 2002-400 and 2002-402, Laws of Florida, is amended to read:

1009.66 Nursing Student Loan Forgiveness Program.—

(7)(a) Funds contained in the Nursing Student Loan Forgiveness Trust Fund which are to be used for loan forgiveness for those nurses employed by hospitals, birth centers, and nursing homes must be matched on a dollar-for-dollar basis by contributions from the employing institutions, except that this provision shall not apply to state-operated medical and health care facilities, public schools, county health departments, federally sponsored community health centers, teaching hospitals as defined in s. 408.07, family practice teaching hospitals as defined in s. 395.805, or specialty hospitals for children as used in s. 409.9119. An estimate of the annual trust fund dollars shall be made at the beginning of the fiscal year based on historic expenditures from the trust fund. Applicant requests shall be reviewed on a quarterly basis, and applicant awards shall be based on the following priority of employer until all such estimated trust funds are awarded: state-operated medical and health care facilities; public schools; county health departments; federally sponsored community health centers; teaching hospitals as defined in s. 408.07; family practice teaching hospitals as defined in s. 395.805; specialty hospitals for children as used in s. 409.9119; and other hospitals, birth centers, and nursing homes.

(b) All Nursing Student Loan Forgiveness Trust Fund moneys shall be invested pursuant to s. 17.61 ~~s. 18.125~~. Interest income accruing to that portion of the trust fund not matched shall increase the total funds available for loan forgiveness and scholarships. Pledged contributions shall not be eligible for matching prior to the actual collection of the total private contribution for the year.

Section 1960. Subsections (2) and (3) of section 1009.72, Florida Statutes, are amended to read:

1009.72 Jose Marti Scholarship Challenge Grant Program.—

(2) Funds appropriated by the Legislature for the program shall be deposited in the State Student Financial Assistance Trust Fund. The Chief Financial Officer ~~Comptroller~~ shall authorize expenditures from the trust fund upon receipt of vouchers approved by the Department of Education. All moneys collected from private sources for the purposes of this section shall be deposited into the trust fund. Any balance in the trust fund at the end of any fiscal year that has been allocated to the program shall remain therein and shall be available for carrying out the purposes of the program.

(3) The Legislature shall designate funds to be transferred to the trust fund for the program from the General Revenue Fund. Such funds shall be divided into challenge grants to be administered by the Department of Education. All appropriated funds deposited into the trust fund for the program shall be invested pursuant to the provisions of s. 17.61 ~~s. 18.125~~. Interest income accruing to that portion of the funds that are allocated to the program in the trust fund and not matched shall increase the total funds available for the program.

Section 1961. Subsections (2) and (3) of section 1009.73, Florida Statutes, are amended to read:

1009.73 Mary McLeod Bethune Scholarship Program.—

(2) Funds appropriated by the Legislature for the program shall be deposited in the State Student Financial Assistance Trust Fund. The Chief Financial Officer ~~Comptroller~~ shall authorize expenditures from the trust fund upon receipt of vouchers approved by the Department of Education. The Department of Education shall receive all moneys collected from private sources for the purposes of this section and shall deposit such moneys into the trust fund. Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year that has been allocated to the program shall remain in the trust fund and shall be available for carrying out the purposes of the program.

(3) The Legislature shall appropriate moneys to the trust fund for the program from the General Revenue Fund. Such moneys shall be applied to scholarships to be administered by the Department of Education. All moneys deposited into the trust fund for the program shall be invested pursuant to the provisions of s. 17.61 ~~s. 18.125~~. Interest income accruing to the program shall be expended to increase the total moneys available for scholarships.

Section 1962. Section 1009.765, Florida Statutes, is amended to read:

1009.765 Ethics in Business scholarships for community colleges and independent postsecondary educational institutions.—When the Department of Insurance or the Office of Insurance Regulation of the Financial Services Commission receives a $6 million settlement as specified in the Consent Order of the Treasurer and Insurance Commissioner, case number 18900-96-c, that portion of the $6 million not used to satisfy the requirements of section 18 of the Consent Order must be transferred from the Insurance ~~Commissioner's~~ Regulatory Trust Fund to the State Student Financial Assistance Trust Fund is appropriated from the State Student Financial Assistance Trust Fund to provide Ethics in Business scholarships to students enrolled in public community colleges and independent postsecondary educational institutions eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program under s. 1009.89. The funds shall be allocated to institutions for scholarships in the following ratio: Two-thirds for community colleges and one-third for eligible independent institutions. The Department of Education shall administer the scholarship program for students attending community colleges and independent institutions. These funds must be allocated to institutions that provide an equal amount of matching funds generated by private donors for the purpose of providing Ethics in Business scholarships. Public funds may not be used to provide the match, nor may funds collected for other purposes. Notwithstanding any other provision of law, the State Board of Administration shall have the authority to invest the funds appropriated under this section. The Department of Education may adopt rules for administration of the program.

Section 1963. Subsection (8) of section 1009.77, Florida Statutes, is amended to read:

1009.77 Florida Work Experience Program.—

(8) Funds appropriated by the Legislature for the Florida Work Experience Program shall be deposited in the State Student Financial Assistance Trust Fund. The Chief Financial Officer ~~Comptroller~~ shall authorize expenditures from the trust fund upon receipt of vouchers approved by the Department of Education. Any balance therein at the end of any fiscal year that has been allocated to the program shall remain therein and shall be available for carrying out the purposes of the program.

Section 1964. Paragraph (d) of subsection (5) of section 1009.971, Florida Statutes, is amended to read:

1009.971 Florida Prepaid College Board.—

(5) FLORIDA PREPAID COLLEGE BOARD; CONTRACTUAL SERVICES.—The board shall solicit proposals and contract, pursuant to s. 287.057, for:

(d) Investment managers to provide investment portfolios for the prepaid program or the savings program. Investment managers shall be limited to authorized insurers as defined in s. 624.09, banks as defined in s. 658.12, associations as defined in s. 665.012, authorized Securities and Exchange Commission investment advisers, and investment companies as defined in the Investment Company Act of 1940. All investment managers shall have their principal place of business and corporate charter located and registered in the United States. In addition, each investment manager shall agree to meet the obligations of the board to qualified beneficiaries if moneys in the fund fail to offset the obligations of the board as a result of imprudent investing by such provider. Each authorized insurer shall evidence superior performance overall on an acceptable level of surety in meeting its obligations to its policyholders and other contractual obligations. Only qualified public depositories approved by the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ shall be eligible for board consideration. Each investment company shall provide investment plans as specified within the request for proposals.

The goals of the board in procuring such services shall be to provide all purchasers and benefactors with the most secure, well-diversified, and beneficially administered prepaid program or savings program possible, to allow all qualified firms interested in providing such services equal consideration, and to provide such services to the state at no cost and to the purchasers and benefactors at the lowest cost possible. Evaluations of proposals submitted pursuant to this subsection shall include, but not be limited to, fees and other costs that are charged to purchasers or benefactors that affect account values, or that impact the operational costs of the prepaid program or the savings program; past experience and past performance in providing the required services; financial history and current financial strength and capital adequacy to provide the required services; and capabilities and experience of the proposed personnel that will provide the required services.

Section 1965. Subsection (4) of section 1009.972, Florida Statutes, is amended to read:

1009.972 Florida Prepaid College Trust Fund.—

(4) Any balance contained within the trust fund, and within each fund in the trust fund, at the end of a fiscal year shall remain therein and shall be available for carrying out the purposes of each respective program and the direct-support organization established pursuant to s. 1009.983. Moneys contained within the trust fund shall be exempt from the investment requirements of s. 17.57 ~~s. 18.10~~. All funds deposited in the prepaid fund may be invested pursuant to s. 215.47. Any funds of a direct-support organization created pursuant to s. 1009.983 shall be exempt from the provisions of this section.

Section 1966. Subsection (4) of section 1010.56, Florida Statutes, is amended to read:

1010.56 Board of Administration to act as fiscal agent in issuance and sale of motor vehicle anticipation certificates.—

(4) The proceeds of any sale of original bonds or original certificates shall be deposited in the State Treasury to the credit of the particular construction account for which the original bonds or original certificates were issued and shall be under the direct control and supervision of the State Board of Education, and withdrawals from such construction accounts shall be made only upon warrants signed by the Chief Financial Officer ~~Comptroller and drawn upon the Treasurer~~. Such warrants shall be issued by the Chief Financial Officer ~~Comptroller~~ only when the vouchers requesting such warrants are accompanied by the certificates of the State Board of Education to the effect that such withdrawals are proper expenditures for the cost of the particular construction account against which the requested warrants are to be drawn.

Section 1967. Section 1010.74, Florida Statutes, is amended to read:

1010.74 Educational Certification and Services Trust Fund.—The proceeds from the collection of certification fees, fines, penalties, and costs levied pursuant to s. 1012.59 shall be remitted by the Department of Education to the Chief Financial Officer ~~Treasurer~~ for deposit into and disbursed from the "Educational Certification and Services Trust Fund" as re-created by chapter 99-31, Laws of Florida.

Section 1968. Section 1010.75, Florida Statutes, is amended to read:

1010.75 Teacher Certification Examination Trust Fund.—The proceeds for the certification examination fee levied pursuant to s. 1012.59 shall be remitted by the Department of Education to the Chief Financial Officer ~~Treasurer~~ for deposit into and disbursed for the "Teacher Certification Examination Trust Fund" as re-created by chapter 99-28, Laws of Florida.

Section 1969. Subsection (2) of section 1011.10, Florida Statutes, is amended to read:

1011.10 Penalty.—

(2) Each member of any district school board voting to incur an indebtedness against the district school funds in excess of the expenditure allowed by law, or in excess of any appropriation as adopted in the original official budget or amendments thereto, or to approve or pay any illegal charge against the funds, and any chair of a district school board or district school superintendent who signs a warrant for payment of any such claim or bill of indebtedness against any of the funds shall be personally liable for the amount, and shall be guilty of malfeasance in office and subject to removal by the Governor. It shall be the duty of the Auditor General, other state officials, or independent certified public accountants charged by law with the responsibility for auditing school accounts, upon discovering any such illegal expenditure or expenditures in excess of the appropriations in the budget as officially amended, to certify such fact to the Department of Financial Services ~~Banking and Finance~~, which thereupon shall verify such fact and it shall be the duty of the Department of Financial Services ~~Banking and Finance~~ to advise the Department of Legal Affairs thereof, and it shall be the duty of the Department of Legal Affairs to cause to be instituted and prosecuted, either through its office or through any state attorney, proceedings at law or in equity against such member or members of a district school board or district school superintendent. If either of the officers does not institute proceedings within 90 days after the audit has been certified to them by the Department of Financial Services ~~Banking and Finance~~, any taxpayer may institute suit in his or her own name on behalf of the district.

Section 1970. Section 1011.17, Florida Statutes, is amended to read:

1011.17 School funds to be paid to Chief Financial Officer ~~Treasurer~~ or into depository.—

(1) Every tax collector or other person having moneys which by law go to any district school fund shall at least once each month pay the same over to the depository or depositories designated by the district school board for such purpose, and shall provide said board with confirmation of the deposit. Every officer having moneys which by law go to any state school fund shall pay the same to the Chief Financial Officer ~~Treasurer~~ of the state, and the Chief Financial Officer ~~Treasurer~~ shall see that these moneys are deposited to the credit of the proper state school fund.

(2) The district school board shall have the authority to designate that funds due it be placed for investment for its account with the State Board of Administration rather than be deposited, and said board may direct those persons having moneys due it or due any state school fund to pay out such funds to the State Board of Administration to make authorized investments for its account.

Section 1971. Paragraph (b) of subsection (6) of section 1011.18, Florida Statutes, is amended to read:

1011.18 School depositories; payments into and withdrawals from depositories.—

(6) EXEMPTION FOR SELF-INSURANCE PROGRAMS AND THIRD-PARTY ADMINISTERED EMPLOYEES' FRINGE BENEFIT PROGRAMS.—

(b) The district school board may contract with an insurance company or professional administrator who holds a valid certificate of authority issued by the Office of Insurance Regulation of the Financial Services Commission ~~Department of Insurance~~ to provide any or all services that a third-party administrator is authorized by law to perform. Pursuant to such contract, the district school board may advance or remit money to the administrator to be deposited in a designated special checking account for paying claims against the district school board under its self-insurance programs, and remitting premiums to the providers of insured benefits on behalf of the district school board and the participants in such programs, and otherwise fulfilling the obligations imposed upon the administrator by law and the contractual agreements between the district school board and the administrator. The special checking account shall be maintained in a designated district school depository. The district school board may replenish such account as often as necessary upon the presentation by the service organization of documentation for claims or premiums due paid equal to the amount of the requested reimbursement. Such replenishment shall be made by a warrant signed by the chair of the district school board and countersigned by the district school superintendent. Such replenishment may be made by electronic, telephonic, or other medium, and each transfer shall be confirmed in writing and signed by the district school superintendent or his or her designee. The provisions of strict accountability of all funds and an annual audit by an independent certified public accountant as provided in s. 1001.42(10)(k) shall apply to this subsection.

Section 1972. Section 1011.4105, Florida Statutes, is amended to read:

1011.4105 Transition from state accounting system (FLAIR) to university accounting system.—

(1) Universities and colleges under the supervision of the State Board of Education shall use the state accounting system (FLAIR) for fiscal year 2002-2003. The universities shall not be required to provide funds to the Department of Financial Services ~~Banking and Finance~~ for the utilization of FLAIR.

(2) Beginning with the 2003-2004 fiscal year, any university may transition from FLAIR to the university's accounting system.

(3) To accomplish the transition from FLAIR to a university's accounting system, the university board of trustees must submit to the State Board of Education a plan developed in cooperation with the ~~State Comptroller (~~Chief Financial Officer~~)~~. The plan must contain the actions the university will take, or has taken, to implement this transition. The plan must provide time lines for completion of actions and the target date the university will have implemented and tested parallel systems with appropriate audit and internal controls in place that will enable the university to satisfactorily and timely perform all accounting and reporting functions required by state and federal law and rules of the State Board of Education.

(4) When a university is ready to transition from FLAIR to its own system, the State Board of Education shall verify that the system the university has implemented and tested is adequate for the university, the university

has appropriate audit and internal controls in place, the university has the resources required to operate and maintain the system, and that the university and the ~~State Comptroller (~~Chief Financial Officer~~)~~ are prepared to implement the transition. The State Board of Education shall submit to the Executive Office of the Governor and the chairs of the appropriations committees of the Senate and House of Representatives confirmation of this verification and the date the transition will be effective. Transition for any university shall not take place until after the State Board of Education has submitted this confirmation.

(5) The State Board of Education in cooperation with each university and the Department of Financial Services ~~Banking and Finance~~ shall develop a plan and establish the deadline for all universities to have completed the transition from FLAIR. The board shall submit a copy of this plan to the Executive Office of the Governor and the chairs of the appropriations committees of the Senate and House of Representatives.

Section 1973. Subsection (2) of section 1011.57, Florida Statutes, is amended to read:

1011.57 Florida School for the Deaf and the Blind; board of trustees; management flexibility.—

(2) Notwithstanding the provisions of s. 216.181 and pursuant to the provisions of s. 216.351, but subject to any requirements imposed in the General Appropriations Act, no lump-sum plan is required to implement the special categories, program categories, or lump-sum appropriations. Upon release of the special categories, program categories, or lump-sum appropriations to the board of trustees, the Chief Financial Officer ~~Comptroller~~, upon the request of the board of trustees, shall transfer or reallocate funds to or among accounts established for disbursement purposes. The board of trustees shall maintain records to account for the original appropriation.

Section 1974. Subsection (1) of section 1011.94, Florida Statutes, is amended to read:

1011.94 Trust Fund for University Major Gifts.—

(1) There is established a Trust Fund for University Major Gifts. The purpose of the trust fund is to enable each university and New College to provide donors with an incentive in the form of matching grants for donations for the establishment of permanent endowments and sales tax exemption matching funds received pursuant to s. 212.08(5)(j), which must be invested, with the proceeds of the investment used to support libraries and instruction and research programs, as defined by the State Board of Education. All funds appropriated for the challenge grants, new donors, major gifts, sales tax exemption matching funds pursuant to s. 212.08(5)(j), or eminent scholars program must be deposited into the trust fund and invested pursuant to s. 17.61 ~~s. 18.125~~ until the State Board of Education allocates the funds to universities to match private donations. Notwithstanding s. 216.301 and pursuant to s. 216.351, any undisbursed balance remaining in the trust fund and interest income accruing to the portion of the trust fund which is not matched and distributed to universities must

remain in the trust fund and be used to increase the total funds available for challenge grants. Funds deposited in the trust fund for the sales tax exemption matching program authorized in s. 212.08(5)(j), and interest earnings thereon, shall be maintained in a separate account within the Trust Fund for University Major Gifts, and may be used only to match qualified sales tax exemptions that a certified business designates for use by state universities and community colleges to support research and development projects requested by the certified business. The State Board of Education may authorize any university to encumber the state matching portion of a challenge grant from funds available under s. 1011.45.

Section 1975. Subsection (2) of section 1012.59, Florida Statutes, is amended to read:

1012.59 Certification fees.—

(2) The proceeds from the collection of certification fees, fines, penalties, and costs levied pursuant to this chapter shall be remitted by the Department of Education to the Chief Financial Officer ~~Treasurer~~ for deposit into a separate fund to be known as the "Educational Certification and Service Trust Fund" and disbursed for the payment of expenses incurred by the Educational Practices Commission and in the printing of forms and bulletins and the issuing of certificates, upon vouchers approved by the department.

Section 1976. Subsection (9) of section 1012.79, Florida Statutes, is amended to read:

1012.79 Education Practices Commission; organization.—

(9) The commission shall make such expenditures as may be necessary in exercising its authority and powers and carrying out its duties and responsibilities, including expenditures for personal services, general counsel or access to counsel, and rent at the seat of government and elsewhere; for books of reference, periodicals, furniture, equipment, and supplies; and for printing and binding. The expenditures of the commission shall be subject to the powers and duties of the Department of Financial Services ~~Banking and Finance~~ as provided in s. 17.03.

Section 1977. Subsection (3) of section 1013.79, Florida Statutes, is amended to read:

1013.79 University Facility Enhancement Challenge Grant Program.—

(3) There is established the Alec P. Courtelis Capital Facilities Matching Trust Fund for the purpose of providing matching funds from private contributions for the development of high priority instructional and research-related capital facilities, including common areas connecting such facilities, within a university. The Legislature shall appropriate funds to be transferred to the trust fund. The Public Education Capital Outlay and Debt Service Trust Fund, Capital Improvement Trust Fund, Division of Sponsored Research Trust Fund, and Contracts and Grants Trust Fund shall not be used as the source of the state match for private contributions. All appropriated funds deposited into the trust fund shall be invested pursuant to the

provisions of s. 17.161 ~~s. 18.125~~. Interest income accruing to that portion of the trust fund shall increase the total funds available for the challenge grant program. Interest income accruing from the private donations shall be returned to the participating foundation upon completion of the project. The State Board of Education shall administer the trust fund and all related construction activities.

Section 1978. Sections 17.06, 18.03, 18.09, 18.22, 20.12, 20.13, 440.135, 624.305, 624.4071, 624.463, 627.0623, 627.3516, 627.7825, 655.019, 657.067, 657.25, 657.251, 657.252, 657.253, 657.254. 657.256, 657.257, 657.258, 657.259, 657.260, 657.261, 657.262, 657.263, 657.264, 657.265, 657.266, 657.267, 657.268, and 657.269, Florida Statutes, are repealed.

Section 1979. In the event of a conflict between this act and any other legislation enacted during the 2003 Regular Session, the provisions of this act shall prevail.

Section 1980. This act and chapter 2002-404, Laws of Florida, shall not affect the validity of any administrative or judicial action involving the Department of Banking and Finance or the Department of Insurance occurring prior to, or pending on, January 7, 2003, and the Department of Financial Services or the Financial Services Commission, or the respective office, as appropriate, shall be substituted as a party in interest on any such pending action.

Section 1981. Any certificate of authority, license, form, rate, or other filing or action that was approved or authorized by the Department of Insurance or the Department of Banking and Finance, or that was otherwise lawfully in use prior to January 7, 2003, may continue to be used or be effective as originally authorized or permitted, until the Chief Financial Officer, the Department of Financial Services, the Financial Service Commission, or either of the respective offices, otherwise prescribes.

Section 1982. This act shall take effect upon becoming a law.

Approved by the Governor June 26, 2003.

Filed in Office Secretary of State June 26, 2003.