

Committee Substitute for
Committee Substitute for Senate Bill No. 2994

An act relating to the Department of Financial Services; creating s. 17.0416, F.S.; authorizing the Chief Financial Officer to provide certain services on a fee basis under certain circumstances; requiring the Department of Financial Services to deposit fees collected into the General Revenue Fund; authorizing the department to recover expenses by a budget amendment; authorizing the department to adopt rules; amending s. 17.16, F.S.; providing that the office of the Chief Financial Officer may have an official seal; amending s. 17.57, F.S.; authorizing the Chief Financial Officer to use reverse repurchase agreements in investment transactions; amending s. 17.59, F.S.; revising collateral safekeeping requirements; amending s. 17.61, F.S.; authorizing entities created under the State Constitution to invest funds; amending s. 20.121, F.S.; providing that the Chief Financial Officer may be referred to as the "Treasurer"; providing that the Department of Financial Services, rather than the Office of Insurance Regulation, is responsible for regulation of insurance adjusters; providing that the Director of the Office of Insurance Regulation may be known as the Commissioner of Insurance Regulation; providing that the Director of the Office of Financial Regulation may be known as the Commissioner of Financial Regulation; amending s. 110.1227, F.S.; providing that the Director of the Office of Insurance Regulation, rather than the Chief Financial Officer, shall appoint an actuary to the Florida Employee Long-Term-Care Plan Board of Directors; amending s. 112.215, F.S.; redefining the term "employee" to include any state university board of trustees; providing for the Government Employees' Deferred Compensation Plan to be funded indirectly from fees charged by investment providers to plan participants; replacing the term "plan provider" with the term "investment option provider"; amending s. 215.95, F.S.; revising the membership of the Florida Financial Management Information Board; amending s. 215.96, F.S.; revising the membership of the coordinating council to the Florida Financial Management Information Board; extending the date of future repeal of the law requiring the board to facilitate the integration of certain administrative and financial management systems and establishing the Enterprise Resource Planning Integration Task Force; amending s. 287.064, F.S.; authorizing the financing of a guaranteed energy performance savings contract pursuant to a master equipment financing agreement; providing certain terms and restrictions; amending s. 408.05, F.S.; providing that the Director of the Office of Insurance Regulation, rather than the Chief Financial Officer, shall appoint an employee to the State Comprehensive Health Information System Advisory Council; amending s. 501.212, F.S.; specifying persons, causes of action, or activities that are exempt from part II of chapter 501, F.S., the Deceptive and Unfair Trade Practice Act; amending s. 516.35, F.S.; correcting a reference to the agency that licenses the sale of

credit insurance; amending s. 624.4622, F.S.; providing that a local government self-insurance fund must initially be organized as a commercial self-insurance fund or a group self-insurance fund and, for a specified period, must comply with the requirements for such a fund; providing that a local government self-insurance fund comply with specified provisions relating to financial statements; amending ss. 624.313, 624.317, 624.501, 626.016, 626.112, 626.161, 626.171, 626.181, 626.191, 626.211, 626.221, 626.231, 626.241, 626.251, 626.261, 626.266, 626.271, 626.281, 626.2817, 626.291, 626.301, 626.371, 626.381, 626.431, 626.461, 626.471, 626.521, 626.541, 626.551, 626.611, 626.621, 626.631, 626.641, 626.661, 626.681, 626.691, 626.692, 626.8582, 626.8584, 626.859, 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, F.S.; transferring and renumbering s. 627.7012, F.S., as s. 626.879, F.S., and amending such section; making conforming changes to authorize the Department of Financial Services, rather than the Office of Insurance Regulation, to regulate insurance adjusters; amending s. 626.9543, F.S.; specifying that the Department of Financial Services, rather than the former Department of Insurance, administers the Holocaust Victims Insurance Act; amending s. 626.989, F.S.; correcting references to the Bureau of Workers' Compensation Insurance Fraud with regard to the required annual report of the Department of Financial Services related to workers' compensation fraud; amending s. 627.0628, F.S.; providing that the Director of the Office of Insurance, rather than the Chief Financial Officer, shall appoint an employee of the office who is an actuary to the Florida Commission on Hurricane Loss Projection Methodology; amending s. 627.6699, F.S.; providing that the Director of the Office of Insurance Regulation, rather than the Chief Financial Officer, shall be a member of the board of the Small Employer Health Reinsurance Program; providing that the transfer of the regulation of adjusters from the Office of Insurance Regulation to the Department of Financial Services does not affect any administrative or judicial action prior to or pending on the effective date of the act; providing that any action approved or authorized by the Financial Services Commission or the Office of Insurance Regulation continues to be effective until the Department of Financial Services otherwise prescribes; providing that the rules of the Financial Services Commission related to adjusters shall become rules of the Department of Financial Services; amending s. 626.99245, F.S.; providing that the regulation of certain viatical settlement agreements and providers is within the exclusive jurisdiction of the Office of Insurance Regulation under part X of ch. 626; amending s. 494.0025, F.S.; prohibiting the use of the name or logo of a financial institution or its affiliates or subsidiaries under certain circumstances without written consent; amending s. 516.07, F.S.; providing that the use of the name or logo of a financial institution or its affiliates or subsidiaries under certain circumstances without written consent is grounds for denial of license or for disciplinary action; amending s. 520.995, F.S.; providing that the use of the name

or logo of a financial institution or its affiliates or subsidiaries under certain circumstances without written consent is grounds for disciplinary action; amending s. 626.9541, F.S.; providing that the deceptive use of a name is an unfair method of competition and an unfair or deceptive act or practice; amending s. 655.005, F.S.; revising certain definitions relating to financial institutions to include the term "international branch"; amending s. 655.0322, F.S.; revising the definition of the term "financial institution" to include an international branch; amending s. 655.0385, F.S.; clarifying requirements for notification of the appointment of an executive director or equivalent by state financial institutions; requiring a nonrefundable fee to accompany notification; amending s. 655.045, F.S.; providing an exemption from audit requirements; amending s. 655.059, F.S.; providing for the inspection and examination of financial institution records and books pursuant to subpoena; providing for reimbursement of reasonable costs and fees for compliance; providing for setting the reimbursement amount when charges are contested; amending s. 655.921, F.S.; prohibiting certain out-of-state financial institutions from locating branch offices in the state in order to qualify for certain exempt transactions; deleting provisions relating to authorization of offices in the state; amending s. 655.922, F.S.; clarifying provisions authorizing financial institutions under another state's financial codes to transact business in this state; expanding the names or titles under which only a financial institution may transact business; prohibiting the use of the name or logo of a financial institution or its affiliates or subsidiaries under certain circumstances without written consent; requiring the Financial Services Commission to adopt rules; amending s. 655.94, F.S.; deleting a prohibition against certain notary publics being involved in opening safety deposit boxes for nonpayment of rent; requiring use of certified mail instead of registered mail; amending s. 658.16, F.S.; providing criteria for a bank or trust company chartered as a limited liability company to be considered "incorporated" under the financial institutions codes; providing definitions; amending s. 658.23, F.S.; correcting terminology; deleting a requirement for a current copy of the bylaws of a bank or trust company to be on file with the Office of Financial Regulation; amending s. 658.26, F.S.; providing for state banks to relocate offices upon approval; providing that certain financial institutions may establish or relocate an office upon written notification; providing requirements for notification and a fee; requiring an application for relocation of a main office outside the state; exempting applications from publication in the Florida Administrative Weekly; modifying requirements for applications for branch offices by a bank ineligible for branch notification; deleting a requirement that such applications be published in the Florida Administrative Weekly and be subject to ch. 120, F.S.; requiring a relocation application to be filed with the Office of Financial Regulation; providing for a filing fee, investigations, and restrictions relating to such applications; amending s. 658.33, F.S.; adding to the list of persons who must meet certain qualification levels; providing for a waiver of qualification requirements; amending s. 658.37, F.S.;

prohibiting an imminently insolvent bank from paying dividends; amending s. 658.48, F.S.; specifying limitations on making loans and extending credit by a bank declared to be imminently insolvent; amending s. 658.67, F.S.; providing multiple dates for the assessment of the value of property acquisition as security; amending s. 658.73, F.S.; delineating which entities or individuals must pay a fee for a certificate of good standing; amending s. 663.16, F.S.; revising definitions to include the term “branch” and to reduce the percentage of voting stock necessary for consideration as control; amending s. 663.304, F.S.; deleting a requirement for reservation of a proposed corporate name with the Department of State; amending s. 665.034, F.S.; revising a percentage designating control of an association; amending s. 674.406, F.S.; reducing the time that banks must retain receipts of items; reducing the time within which one must report unauthorized signatures; providing a time limitation within which to assert claims against a bank for an unauthorized endorsement; repealing s. 658.68, F.S., relating to liquidity requirements for a state bank; amending s. 627.4133, F.S.; providing for an effective date of certain policy cancellations by insureds; amending s. 717.101, F.S.; providing definitions; amending ss. 717.106, 717.107, 717.109, and 717.116, F.S.; revising criteria for presuming as unclaimed certain bank deposits and funds in financial organizations, funds owing under life insurance policies, funds held by business associations, and property held in a safe-deposit box or other safe-keeping repository, respectively; amending s. 717.117, F.S.; revising reporting requirements for unclaimed property; presuming certain accounts as unclaimed under certain circumstances; providing that certain intangible property is exempt from being reported as unclaimed property under certain conditions; amending s. 717.118, F.S.; providing requirements for notification of apparent owners of unclaimed property; amending s. 717.119, F.S.; revising requirements for delivery of certain unclaimed property; providing penalties for late deliveries; amending s. 717.1201, F.S.; revising certain holder payment and repayment requirements; amending s. 717.122, F.S.; revising certain public sale requirements; authorizing the Department of Financial Services to deduct certain auction fees, costs, and expenses; prohibiting actions or proceedings against the department for certain decisions relating to auctions of unclaimed property; specifying that certain sales of unclaimed property are not subject to the sales tax; amending s. 717.123, F.S.; increasing a maximum amount of funds the department may retain from certain funds received; amending s. 717.124, F.S.; providing additional requirements for filing unclaimed property claims; providing for the return or withdrawal of certain claims under certain circumstances; specifying a time period for department determination of claims; authorizing the department to deny claims under certain circumstances; specifying an exclusive remedy for subsequent claimants; revising requirements for a power of attorney; requiring direct delivery of safe-deposit boxes under certain circumstances; revising payment of fees and costs requirements; creating s. 717.12403, F.S.; providing presumptions for certain unclaimed demand, savings, or

checking accounts in financial institutions with more than one beneficiary; creating s. 717.12404, F.S.; providing requirements for claims for property reported in the name of an active or dissolved corporation for which the last annual report is unavailable; creating s. 717.12405, F.S.; providing requirements; for claims by estates; amending s. 717.1241, F.S.; revising requirements for remittance of property subject to conflicting claims; amending s. 717.1242, F.S.; clarifying legislative intent relating to filing certain claims; creating s. 717.1244, F.S.; providing criteria for department determinations of claims; amending s. 717.126, F.S.; providing a criterion for proof of entitlement; specifying venue in certain unclaimed property actions; creating s. 717.1261, F.S.; requiring a death certificate in claiming entitlement to certain unclaimed property; creating s. 717.1262, F.S.; requiring certain court documents in claiming entitlement to certain unclaimed property; amending s. 717.1301, F.S.; revising certain fee and expense requirements for investigations or examinations; providing for interest on such amounts under certain circumstances; amending s. 717.1315, F.S.; clarifying a record retention requirement for owner representatives; amending s. 717.132, F.S.; specifying criteria for certain corrective actions; creating s. 717.1322, F.S.; specifying grounds for certain disciplinary actions; providing for certain disciplinary actions; providing penalties; authorizing the department to adopt rules with regard to disciplinary guidelines; creating s. 717.1331, F.S.; providing for department actions against certain lienholders under certain circumstances; creating s. 717.1333, F.S.; providing for admitting certain documents into evidence in certain actions; amending s. 717.134, F.S.; authorizing the department to impose and collect penalties for failing to report certain information; authorizing the department waive such penalties under certain circumstances; creating s. 717.1341, F.S.; prohibiting receipt of unentitled unclaimed property; providing for liability for such property under certain circumstances; authorizing the department to maintain certain civil or administrative actions; providing for fines, costs, and attorney fees; prohibiting filing claims for unentitled unclaimed property; providing criminal penalties; amending s. 717.135, F.S.; revising requirements for agreements to recover certain property; providing an agreement form; creating s. 717.1351, F.S.; providing requirements for acquisition of unclaimed property by certain persons; providing certain contract requirements; providing a contract form; creating s. 717.1400, F.S.; requiring certain licensed persons to register with the department for certain purposes; providing registration requirements; providing for denial of registration under certain circumstances; providing registration limitations; amending s. 212.02, F.S.; revising a definition to conform; amending ss. 322.142 and 395.3025, F.S.; providing for disclosure of certain confidential information to the department under certain circumstances; amending s. 723.103, F.S.; authorizing the court, under specified conditions, to extend the right of succession to surviving heirs when the decedent's lineage cannot be fully documented because it includes a Holocaust victim; limiting the application of statutes of limitation under certain circumstances;

defining the term “Holocaust victim”; creating s. 627.4554, F.S.; providing a purpose; providing application; providing definitions; specifying duties of insurers and insurance agents relating to making annuity investment recommendations to senior consumers; providing requirements; limiting responsibility of insurers or insurance agents under certain circumstances; requiring a system of compliance and supervision; providing for enforcement by the Office of Insurance Regulation and the Department of Financial Services; authorizing the office and the department to issue orders to mitigate certain responsibilities of insurers or insurance agents; providing for reduction or elimination of certain penalties under certain circumstances; providing recordkeeping requirements; providing an exemption from application for variable annuities; amending s. 20.121, F.S.; requiring the Division of Consumer Services of the Department of Financial Services to designate an employee as primary contact for consumers on issues involving sinkholes; authorizing the department to issue an order of conditional release from a stop-work order if an employer complies with coverage requirements and a penalty payment agreement; amending s. 501.137, F.S.; requiring an insurer to reinstate, under certain circumstances, an insurance policy that is cancelled due to failure of the lender to pay a premium for which sufficient escrow funds are on deposit; requiring that the lender reimburse the property owner for any penalties or fees paid for purposes of reinstating the policy; requiring the lender to pay the increased cost of insurance premiums for a specified period of time under certain conditions; amending s. 624.610, F.S.; revising the requirements of a trust fund for a single assuming insurer; amending s. 625.081, F.S.; providing an exception for credit disability insurance from a health insurance active life reserve requirement; amending s. 625.121, F.S.; providing for valuation of life insurance policies; amending s. 626.321, F.S.; limiting the types of business that may be transacted by personal lines agents; creating s. 626.9743, F.S., relating to claim settlement practices for motor vehicle insurance; prescribing standards to be followed by insurers; creating s. 626.9744, F.S., relating to claim settlement practices for homeowners’ insurance; prescribing standards to be followed by insurers; amending s. 627.311, F.S.; allowing the automobile insurance joint underwriting plan to require additional proof from insureds regarding cancellation of coverage; allowing additional time for the investigation of claims against the plan; providing for expiration of the provision; amending s. 627.4091, F.S.; providing additional disclosure requirements with respect to a refusal to insure; amending s. 627.4133, F.S.; requiring property insurers to reinstate a canceled policy as required by s. 501.137, F.S.; restricting the use of certain claims as a cause for cancellation or nonrenewal; amending s. 627.476, F.S.; authorizing the use of certain mortality tables for purposes of the Standard Nonforfeiture Law for Life Insurance; creating s. 627.7077, F.S.; providing for a feasibility study for a proposed Florida Sinkhole Insurance Facility; amending s. 627.838, F.S.; deleting a filing fee; amending s. 627.848, F.S.; specifying provisions for cancellation of insurance contracts; amending s. 627.849,

F.S., to conform to the elimination of a filing fee; providing for a study and report by the Florida State University College of Business on personal lines property and casualty insurance; repealing s. 625.131, F.S., relating to credit life and disability policies; providing for construction of the act; providing effective dates.

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

Section 1. Section 17.0416, Florida Statutes, is created to read:

17.0416 Authority to provide services on a fee basis.—

(1) The Chief Financial Officer, through the Department of Financial Services, may provide accounting and payroll services on a fee basis under contractual agreement with eligible entities, including, but not limited to, state universities, community colleges, units of local government, constitutional officers, and any other person or entity having received any property, funds, or moneys from the state. All funds collected by the department under these contracts shall be deposited into the General Revenue Fund.

(2) The Department of Financial Services may adopt rules necessary to administer this section.

Section 2. Section 17.16, Florida Statutes, is amended to read:

17.16 Seal.—~~The seal of office of the Chief Financial Officer shall have an official seal by which its proceedings are authenticated be the same as the seal heretofore used for that purpose.~~

Section 3. Subsection (2) of section 17.57, Florida Statutes, is amended to read:

17.57 Deposits and investments of state money.—

(2) The Chief Financial Officer 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 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 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 repurchase agreement or reverse repurchase agreement. The Chief Financial Officer may 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.

Section 4. Section 17.59, Florida Statutes, is amended to read:

17.59 Safekeeping services.—

(1) The Chief Financial Officer shall administer a collateral management service for all ~~may accept for safekeeping purposes, deposits of cash, securities, and other documents or articles of value from any state agencies agency~~ as defined in s. 216.011, or any county, city, or political subdivision thereof, or other public authority that requires by statute, rule, or contract the deposit or pledge of collateral.

(2) Eligible collateral listed in s. 17.57 may be deposited or pledged using the following collateral arrangements as approved by the Chief Financial Officer:

(a) Collateral deposited and held by a custodian of the Chief Financial Officer.

(b) Collateral pledged to the Chief Financial Officer.

(c) Securities and articles of value deposited and held by the Chief Financial Officer.

(d) Cash deposited in the Treasury Cash Deposit Trust Fund and the Public Deposit Security Trust Fund.

(e) Cash deposited with the Chief Financial Officer as escrow agent.

(3) The Chief Financial Officer may adopt rules for the proper management and maintenance of the collateral management service.

~~(4)(2)~~ The Chief Financial Officer may, in his or her discretion, establish a fee for processing, servicing, and safekeeping deposits and other documents or articles of value maintained by held in the Chief Financial Officer's vaults as requested by the various entities according to a service-level agreement 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.

~~(5)(3)~~ The Chief Financial Officer shall collect in advance, and persons so served shall pay to the Chief Financial Officer in advance, the miscellaneous charges as described in a service-level agreement. follows:

~~(a) For copies of documents or records on file with the Chief Financial Officer, per page~~ \$5.00.

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

~~(6)(4)~~ All fees collected for the services described in this section shall be deposited in the Treasury Administrative and Investment Trust Fund.

Section 5. Subsection (1) of section 17.61, Florida Statutes, is amended to read:

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

(1) The Chief Financial Officer 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 created by the State Constitution or by law, 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; for this purpose, the Chief Financial Officer may

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 may be loaned to securities dealers and banks and may be registered by the Chief Financial Officer 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 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.

Section 6. Subsection (1) and paragraph (a) of subsection (3) of section 20.121, Florida Statutes, are 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 who may also be known as the Treasurer.

(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, who may also be known as the Commissioner of Insurance Regulation.

2. The Office of Financial 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 Regulation, who may also be known as the Commissioner of Financial Regulation. The Office of Financial 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.

Section 7. Subsection (6) of section 110.1227, Florida Statutes, is amended to read:

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

(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:

(a) The secretary of the Department of Elderly Affairs shall appoint a member who is a plan participant.

(b) The Director of the Office of Insurance Regulation ~~Chief Financial Officer~~ shall appoint an actuary.

(c) The Attorney General shall appoint an attorney licensed to practice law in this state.

(d) The Governor shall appoint three members from a broad cross-section of the residents of this state.

(e) The Department of Management Services shall appoint a member.

(f) The President of the Senate shall appoint a member of the Senate.

(g) The Speaker of the House of Representatives shall appoint a member of the House of Representatives.

Section 8. Subsection (2) of section 112.215, Florida Statutes, as amended by section 8 of chapter 2003-399, Laws of Florida, is amended, paragraph (e) is added to subsection (4) of that section and subsection (11) of that section is amended, to read:

112.215 Government employees; deferred compensation program.—

(2) For the purposes of this section, the term “employee” means any person, whether appointed, elected, or under contract, providing services for the state; any state agency or county or other political subdivision of the

state; any municipality; any state university board of trustees; or any constitutional county officer under s. 1(d), Art. VIII of the State Constitution for which compensation or statutory fees are paid.

(4)

(e) The administrative costs of the deferred compensation plan must be wholly or partially self-funded. Fees for such self-funding of the plan shall be paid by investment providers and may be recouped from their respective plan participants. Such fees shall be deposited in the Deferred Compensation Trust Fund.

(11) With respect to any funds held pursuant to a deferred compensation plan, any investment option plan provider that ~~which~~ is a bank or savings association and that ~~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, deposit or issue collateral with the Chief Financial Officer 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 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.

Section 9. Subsection (1) of section 215.95, Florida Statutes, is amended to read:

215.95 Financial Management Information Board.—

(1) There is created, as part of the Administration Commission, the Financial Management Information Board. The board shall be composed of the Governor, the Chief Financial Officer, the Commissioner of Agriculture, and the Attorney General. The Governor shall be chair of the board. The Governor or the Chief Financial Officer may call a meeting of the board at any time the need arises.

Section 10. Subsections (2) and (4) of section 215.96, Florida Statutes, are amended to read:

215.96 Coordinating council and design and coordination staff.—

(2) The coordinating council shall consist of the Chief Financial Officer; the Commissioner of Agriculture; the secretary of the Department of Management Services; the Attorney General; and the Director of Planning and Budgeting, Executive Office of the Governor, or their designees. The Chief Financial Officer, or his or her designee, shall be chair of the coordinating council, and the design and coordination staff shall provide administrative and clerical support to the council and the board. The design and coordination staff shall maintain the minutes of each meeting and shall make such minutes available to any interested person. The Auditor General, the State Courts Administrator, an executive officer of the Florida Association of State Agency Administrative Services Directors, and an executive officer of the Florida Association of State Budget Officers, or their designees, shall serve without voting rights as ex officio members on the coordinating council. The chair may call meetings of the coordinating council as often as necessary to transact business; however, the coordinating council shall meet at least once a year. Action of the coordinating council shall be by motion, duly made, seconded and passed by a majority of the coordinating council voting in the affirmative for approval of items that are to be recommended for approval to the Financial Management Information Board.

(4) The Financial Management Information Board, through the coordinating council, shall provide the necessary planning, implementation, and integration policies, coordination procedures, and reporting processes to facilitate the successful and efficient integration of the central administrative and financial management information systems, including the Florida Accounting Information Resource system (FLAIR), Cash Management System (CMS), and FLAIR/CMS replacement project, the payroll system in the Department of Financial Services, the Legislative Appropriations System/ Planning and Budgeting Subsystem (LAS/PBS), the State Purchasing System (SPURS) and MyFlorida Marketplace project, the Cooperative Personnel Employment Subsystem (COPEs) and the PeopleFirst Outsourcing project, and the State Unified Tax system (SUNTAX).

(a) To fulfill this role, the coordinating council shall establish an Enterprise Resource Planning Integration Task Force, which shall consist of the coordinating council members plus the Chief Information Officer in the State Technology Office and the Executive Director or designee in the Department of Revenue, who shall serve with voting rights on the task force. The nonvoting ex officio members of the coordinating council shall be nonvoting members of the task force.

(b) The task force shall be established by August 1, 2003, and shall remain in existence until the integration goals have been achieved among the FLAIR/CMS Replacement project, SPURS and MyFlorida Marketplace project, COPEs and PeopleFirst project, payroll system, LAS/PBS, and SUNTAX system, or until June 30, 2005, whichever is later. The task force shall hold its initial meeting no later than September 1, 2003, and shall meet at the call of the chair or at least once every 60 days. In its initial meeting, task force members shall:

1. Adopt a task force charter that identifies major objectives, activities, milestones and deliverables, significant assumptions, and constraints on the task force functions and major stakeholder groups interested in the outcome of the task force.

2. Consider and adopt processes by which information will be collected and business process and technical integration issues will be raised for analysis and recommendation by the task force.

3. Elect a member to serve as vice chair. Any vacancy in the vice chair position shall be filled by similar election within 30 days after the date the vacancy is effective.

(c) The coordinating council shall provide administrative and technical support to the task force as is reasonably necessary for the task force to effectively and timely carry out its duties and responsibilities. The cost of providing such support may be paid from funds appropriated for the operation of the council or the FLAIR/CMS Replacement project. The task force also may contract for services to obtain specific expertise to analyze, facilitate, and formulate recommendations to address process and technical integration problems that need to be resolved.

(d) Using information and input from project teams and stakeholders responsible for the FLAIR/CMS Replacement project, SPURS and My-Florida Marketplace project, COPES and PeopleFirst project, payroll system, LAS/PBS, and SUNTAX system, the responsibilities of the task force shall include, but not be limited to:

1. Identifying and documenting central administrative and financial management policies, procedures, and processes that need to be integrated and recommending steps for implementation.

2. Collecting information from the subsystem owners and project teams and developing and publishing a consolidated list of enterprise resource planning functional and technical integration requirements.

3. Publishing integration plans and timelines based on information collected from task force members.

4. Forming committees, workgroups, and teams as provided in subsection (3).

5. Developing recommendations for the Financial Management Information Board which clearly describe any business or technical problems that need to be addressed, the options for resolving the problem, and the recommended actions.

6. Developing and implementing plans for reporting status of integration efforts.

(e) The task force shall provide recommendations to the Financial Management Information Board for review and approval regarding the technical, procedural, policy, and process requirements and changes that are

needed to successfully integrate, implement, and realize the benefits of the enterprise resource planning initiatives associated with the FLAIR/CMS Replacement project, SPURS and MyFlorida Marketplace project, COPES and PeopleFirst project, payroll system, LAS/PBS, and SUNTAX system. The first of these reports should be provided no later than October 3, 2003.

(f) The task force shall monitor, review, and evaluate the progress of the FLAIR/CMS Replacement project, SPURS and MyFlorida Marketplace project, COPES and PeopleFirst project, payroll system, LAS/PBS, and SUNTAX system, in implementing the process and technical integration requirements and changes approved by the Financial Management Information Board and in achieving the necessary integration among the central administrative and financial management information systems represented on the task force. The task force shall prepare and submit quarterly reports to the Executive Office of the Governor, the chairs of the Senate Appropriations Committee and the House Appropriations Committee, and the Financial Management Information Board. Each quarterly report shall identify and describe the technical, procedural, policy, and process requirements and changes proposed and adopted by the board and shall describe the status of the implementation of these integration efforts, identify any problems, issues, or risks that require executive-level action, and report actual costs related to the Enterprise Resource Planning Integration Task Force.

(g) By January 15, 2004, and annually thereafter, until it is disbanded, the Enterprise Resource Planning Integration Task Force shall report to the Financial Management Information Board, the Speaker of the House of Representatives, and the President of the Senate the results of the task force's monitoring, review, and evaluation of enterprise resource planning integration activities and requirements, and any recommendations for statutory changes to be considered by the Legislature.

(h) This subsection expires July 1, 2008 ~~July 1, 2004~~.

Section 11. Subsection (10) is added to section 287.064, Florida Statutes, to read:

287.064 Consolidated financing of deferred-payment purchases.—

(10) Costs incurred pursuant to a guaranteed energy performance savings contract, including the cost of energy conservation measures, each as defined in s. 489.145, may be financed pursuant to a master equipment financing agreement; however, the costs of training, operation, and maintenance may not be financed. The period of time for repayment of the funds drawn pursuant to the master equipment financing agreement under this subsection may exceed 5 years but may not exceed 10 years.

Section 12. 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 Office of Insurance Regulation ~~Department of Financial Services~~, to be appointed by the director of the office ~~Chief Financial Officer~~.

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 13. Subsection (4) of section 501.212, Florida Statutes, is amended and subsection (7) is added to that section, to read:

501.212 Application.—This part does not apply to:

(4) Any person or activity regulated under laws administered by:

(a) The Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission; or

(b) Banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission; or

(c) Banks or savings and loan associations regulated by federal agencies; or

(d) Any person or activity regulated under the laws administered by the former Department of Insurance which are now administered by the Department of Financial Services.

(7)(a) Causes of action pertaining to commercial real property located in this state if the parties to the action executed a written lease or contract that expressly provides for the process of resolution of any dispute and the award of damages, attorney's fees, and costs, if any; or

(b) Causes of action concerning failure to maintain real property if the Florida Statutes:

1. Require the owner to comply with applicable building, housing, and health codes;

2. Require the owner to maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness; and

3. Provide a cause of action for failure to maintain the real property and provide legal or equitable remedies, including the award of attorney's fees.

However, this subsection does not affect any action or remedy concerning residential tenancies covered under part II of chapter 83, nor does it prohibit the enforcing authority from maintaining exclusive jurisdiction to bring any cause of action authorized under part II of chapter 501.

Section 14. 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 Department of Financial Services Office of Insurance Regulation ~~of the Financial Services Commission~~ 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 15. Subsection (2) of section 624.313, Florida Statutes, is amended to read:

624.313 Publications.—

(2)(a) The department may prepare and have printed and published in pamphlet or book form the following:

~~(a)1.~~ (a)1. As needed, questions and answers for the use of persons applying for an examination for licensing as agents for property, casualty, surety, health, and miscellaneous insurers.

~~(b)2.~~ (b)2. As needed, questions and answers for the use of persons applying for an examination for licensing as agents for life and health insurers.

~~(c)(b) The office may prepare and have printed and published in pamphlet or book form,~~ (c)(b) As needed, questions and answers for the use of persons applying for an examination for licensing as adjusters.

Section 16. Subsection (1) and paragraph (a) of subsection (2) of section 624.317, Florida Statutes, are 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 general agent, surplus line agent,

adjuster, managing general agent, insurance agent, customer representative, service representative, or other person subject to its jurisdiction, 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.

Section 17. Subsections (3) and (4) are added to section 624.4622, Florida Statutes, to read:

624.4622 Local government self-insurance funds.—

(3) Notwithstanding subsection (2), a local government self-insurance fund created under this section after October 1, 2004, shall initially be subject to the requirements of a commercial fund under s. 624.4621 and, for the first 5 years of its existence, shall be subject to all the requirements applied to commercial self-insurance funds or to group self-insurance funds, respectively.

(4)(a) A local government self-insurance fund formed after January 1, 2005, shall, for its first 5 fiscal years, file with the office full and true statements of its financial condition, transactions, and affairs. An annual statement covering the preceding fiscal year shall be filed within 60 days after the end of the fund's fiscal year and quarterly statements shall be filed within 45 days after each such date. The office may, for good cause, grant an extension of time for filing 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 used by insurers for financial statements, sworn to by at least two executive officers of the self-insurance fund. The form for financial statements shall be the form currently approved by the National Association of Insurance Commissioners for use by property and casualty insurers.

(b) Each annual statement shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries. Workpapers in support of the statement of opinion must be provided to the office upon request.

Section 18. Paragraph (d) of subsection (12) of 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:

(12) Adjusters:

(d) Fee to cover actual cost of credit report, when such report must be secured by department office.

Section 19. Subsections (1) and (2) of section 626.016, Florida Statutes, are amended 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 this part apply only with respect to insurance agents, managing general agents, insurance adjusters, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, and agencies.

(2) The powers and duties of the commission and office specified in this part apply only with respect to ~~insurance adjusters~~, service companies, administrators, and viatical settlement providers and contracts.

Section 20. 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, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person ~~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.~~

Section 21. 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 22. Subsection (1), paragraph (f) of subsection (2), and subsection (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:

(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. Fingerprints shall be used to investigate the applicant's qualifications pursuant to s. 626.201. The fingerprints shall be taken by a law enforcement agency or other department-approved entity.

Section 23. 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 24. 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 25. 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 26. Subsection (1) and paragraphs (a), (c), (d), (f), (g), and (l) of subsection (2) of section 626.221, Florida Statutes, are 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.

(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.

(f) A person who has been licensed and appointed 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 department office within 48 months following the date of cancellation or expiration of the prior appointment.

(g) A person who has been licensed as an adjuster for motor vehicle, property and casualty, workers' compensation, and health insurance may be licensed as such an adjuster without additional written examination if his or her application for appointment is filed with the department office within 48 months after cancellation or expiration of the prior license.

(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 department office and whose curriculum includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department office testing for the all-lines adjuster license. The ~~department commission~~ shall adopt rules establishing standards for the approval of curriculum.

Section 27. 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 28. 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 29. Subsections (1) and (3) of section 626.251, Florida Statutes, are 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.

(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 30. Subsections (1), (2), and (3) of section 626.261, Florida Statutes, are 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.

Section 31. 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~~ pursuant to the various agent, customer representative, 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 32. 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 33. 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 34. 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. The department ~~or commission~~ shall adopt rules prescribing the forms necessary to administer the prelicensure requirements.

Section 35. 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 36. 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 37. Subsection (2) of section 626.371, Florida Statutes, is amended to read:

626.371 Payment of fees, taxes for appointment period without appointment.—

(2) If, upon application and qualification for an initial or renewal appointment and such investigation as the department ~~or office~~ may make, it appears to the department ~~or office~~ that an individual who was formerly licensed or is currently licensed but not properly appointed to represent an insurer or employer and who 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 or authorize the issuance of 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, with applicable fees pursuant to s. 624.501 for such current and prior periods of appointment, shall be paid to the department ~~or office~~.

Section 38. 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 by the department ~~or office~~ or person designated by the department to administer the appointment process prior to the expiration of an appointment in the licensee's birth month or license issue date, whichever applies, may be renewed by the department ~~or office~~ without penalty and shall be effective as of the first day of the month succeeding the month in which the appointment would have expired.

(4) Renewal of an appointment which is received by the department ~~or office~~ or person designated by the department to administer the appointment process after the renewal date may be accepted and effectuated by the department ~~or office~~ in its discretion if the appointment, late filing, continuation, and reinstatement fee accompanies the renewal request pursuant to s. 624.501. Late filing fees shall be paid by the appointing entity and may not be charged to the appointee.

Section 39. 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 40. 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, 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~~ or person designated by the department to administer the appointment process by either the appointing entity or the appointee.

Section 41. 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 or electronic notice thereof to the appointing entity, department ~~or office~~, or person designated by the department to administer the appointment process. The department shall immediately terminate the appointment and notify the appointing entity of such termination. Such termination shall be subject to the appointee's contract rights, if any.

(5) Upon receiving notice of termination, the department ~~or office~~ or person designated by the department to administer the appointment process shall terminate the appointment.

Section 42. 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 and furnished by the department ~~or commission and furnished by the department or office~~, such information as it ~~may reasonably requires 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 43. 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 and furnished by the department ~~or commission and furnished by the department or office~~, 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 44. 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 45. 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 46. 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 of~~ ~~fee~~ 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 program 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 47. 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 48. 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 49. 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 50. Subsections (1) and (3) of section 626.681, Florida Statutes, are 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.

(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 51. 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 52. 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 53. 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 department's office'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 54. 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 department's office'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 55. 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 department office by insurers as qualified to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer, and whom the department office may license, in the event of a catastrophe or emergency, for the purposes and under the conditions which the department office shall fix and for the period of the emergency as the department office shall determine, to adjust claims, losses, or damages under the policies of insurance issued by the insurers.

Section 56. Subsection (2) of section 626.863, Florida Statutes, is amended to read:

626.863 Licensed independent adjusters required; insurers' responsibility.—

(2) Before referring any claim or loss, the insurer shall ascertain from the department office whether the proposed independent adjuster is currently licensed and appointed as such. Having once ascertained that a particular person is so licensed and appointed, the insurer may assume that he or she will continue to be so licensed and appointed until the insurer has knowledge, or receives information from the department office, to the contrary.

Section 57. Section 626.865, Florida Statutes, is amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department office 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 United States citizen or legal alien who possesses work authorization from the United States Immigration and Naturalization Service and 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 department office 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 department office and shall specifically authorize recovery by the department office of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as public adjuster. The aggregate liability of the surety for all such damages shall in no event exceed the amount of the bond. Such bond shall not be terminated unless at least 30 days' written notice is given to the licensee and filed with the department office.

Section 58. Section 626.866, Florida Statutes, is amended to read:

626.866 Independent adjuster's qualifications.—The department office 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 United States citizen or legal alien who possesses work authorization from the United States Immigration and Naturalization Service and 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 59. Section 626.867, Florida Statutes, is amended to read:

626.867 Company employee adjuster's qualifications.—The department office 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 United States citizen or legal alien who possesses work authorization from the United States Immigration and Naturalization Service and 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 60. Paragraph (c) of subsection (4) of section 626.869, Florida Statutes, is amended to read:

626.869 License, adjusters.—

(4)

(c) The department Financial Services Commission shall adopt rules necessary to implement and administer the continuing education requirements of this subsection.

Section 61. Subsections (1), (3), (5), (6), and (7) of section 626.8695, Florida Statutes, are 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 department office the name of such primary adjuster and the address of the firm or location where he or she is the primary adjuster, on a form approved by the department commission. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department office. Notice of change must be sent to the department office within 30 days after such change.

(3) The department office 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.

(5) The department office 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 department commission 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 department commission, verification from the department office of any person's current licensure status. If a request is mailed to the office within 5 working days after the date an adjuster is hired, and the department office 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 62. Paragraph (e) of subsection (1) and subsection (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:

(e) Any additional information that which the department requires ~~commission 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 department office 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 63. Subsections (1), (2), and (3) of section 626.8697, Florida Statutes, are amended to read:

626.8697 Grounds for refusal, suspension, or revocation of adjusting firm license.—

(1) The department office 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 department office 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 department office.

(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.

(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 department office 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 department, office, or commission.

(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 department office.

(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 department office 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.

Section 64. Section 626.8698, Florida Statutes, is amended to read:

626.8698 Disciplinary guidelines for public adjusters.—The department office 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;

(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 department ~~commission~~.

Section 65. Subsections (2) and (3) of section 626.870, Florida Statutes, are amended to read:

626.870 Application for license.—

(2) The department ~~commission~~ shall so prepare the form of the application as to elicit and require from the applicant the information necessary to enable the department ~~office~~ to determine whether the applicant possesses the qualifications prerequisite to issuance of the license to the applicant.

(3) The department ~~commission~~ 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 department ~~commission~~ shall prescribe and ~~the~~ office may furnish the forms for such certificates and affidavits.

Section 66. Section 626.871, Florida Statutes, is amended to read:

626.871 Reappointment after military service.—The department ~~office~~ 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 department ~~office~~ 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 67. Subsections (1) and (5) of section 626.872, Florida Statutes, are amended to read:

626.872 Temporary license.—

(1) The department ~~office~~ 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 department ~~office~~, 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 department ~~commission~~ 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 department ~~office~~.

(5) The department ~~office~~ 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 68. Subsection (1) of section 626.873, Florida Statutes, is amended to read:

626.873 Nonresident company employee adjusters.—

(1) The department ~~office~~ 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 69. Section 626.8732, Florida Statutes, is amended to read:

626.8732 Nonresident public adjuster's qualifications, bond.—

(1) The department office 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 department office 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 department office; 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 department office.

(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 department office 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 department

~~office~~ may not authorize an applicant to take the required examination or issue a nonresident public adjuster's license to the applicant until the department office 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 department office 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 department office and must specifically authorize recovery by the department office 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 department office.

(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 department office upon request. The failure of a nonresident public adjuster to properly maintain records and make them available to the department office 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 ~~department~~ commission, 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 70. Subsections (1), (3), and (4) of section 626.8734, Florida Statutes, are amended to read:

626.8734 Nonresident independent adjuster's qualifications.—

(1) The ~~department~~ office 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 ~~department~~ office 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 ~~department~~ office; 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 ~~department~~ office.

(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 ~~department~~ office 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 department office upon request. The failure of a nonresident independent adjuster to properly maintain records and make them available to the department office 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 department commission, 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 71. Subsection (4) of section 626.8736, Florida Statutes, is amended to read:

626.8736 Nonresident independent or public adjusters; service of process.—

(4) Upon receiving the service, the Chief Financial Officer 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 department office.

Section 72. Section 626.8738, 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 department office 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 73. 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 department office 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, who are at least 18 years of age, who are United States citizens or legal aliens who possess work authorization from the United States Immigration and Naturalization Service, 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 department office, 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 74. 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 department commission. The rules shall implement the provisions of this part and specify the terms and conditions of contracts, including a right to cancel, and require practices necessary to ensure fair dealing, prohibit conflicts of interest, and ensure preservation of the rights of the claimant to participate in the adjustment of claims.

Section 75. Section 627.7012, Florida Statutes, is transferred, renumbered as section 626.879, Florida Statutes, and amended to read:

626.879 627.7012 Pools of insurance adjusters.—The department commission 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 department office 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 department office.

Section 76. Subsection (3) of section 626.9543, Florida Statutes, is amended to read:

626.9543 Holocaust victims.—

(3) DEFINITIONS.—For the purpose of this section:

(a) —“Department” means ~~the Department of Insurance~~.

(a)(b) “Holocaust victim” means any person who lost his or her life or property as a result of discriminatory laws, policies, or actions targeted against discrete groups of persons between 1920 and 1945, inclusive, in Nazi Germany, areas occupied by Nazi Germany, or countries allied with Nazi Germany.

(b)(e) “Insurance policy” means, but is not limited to, life insurance, property insurance, or education policies.

(c)(d) “Legal relationship” means any parent, subsidiary, or affiliated company with an insurer doing business in this state.

(d)(e) “Proceeds” means the face or other payout value of policies and annuities plus reasonable interest to date of payments without diminution for wartime or immediate postwar currency devaluation.

Section 77. Paragraphs (c), (e), and (f) of subsection (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.—

(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 Financial Services shall 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 January 1 of each year. The annual report must include, but need not be limited to:

(c) The number of investigations undertaken by the Bureau of Workers’ Compensation Insurance Fraud office which were not the result of a referral from an insurer or the Division of Workers’ Compensation.

(e) The number and reasons provided by local prosecutors or the state-wide prosecutor for declining prosecution of a case presented by the Bureau of Workers’ Compensation Insurance Fraud office by circuit.

(f) The total number of employees assigned to the Bureau of Workers’ Compensation Insurance Fraud office and the Division of Workers’ Compensation Bureau of Compliance unit delineated by location of staff assigned; and the number and location of employees assigned to the Bureau of Workers’ Compensation Insurance Fraud office who were assigned to work other types of fraud cases.

Section 78. Subsection (4) is added to section 626.99245, Florida Statutes, to read:

626.99245 Conflict of regulation of viaticals.—

(4) The offer, sale, and purchase of viatical settlement contracts, and the regulation of viatical settlement providers shall be within the exclusive jurisdiction of the Office of Insurance Regulation under the provisions of part X of chapter 626.

Section 79. Subsection (2) of section 627.0628, Florida Statutes, is 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 of the Florida Hurricane Catastrophe Fund.
3. The Executive Director of the Citizens Property Insurance Corporation.
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. An employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office.

~~7.6.~~ Five Six members appointed by the Chief Financial Officer, as follows:

~~a.—An employee of the office who is an actuary responsible for property insurance rate filings.~~

a.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 state-wide direct written premium for homeowner’s insurance in the calendar year preceding the member’s appointment to the commission.

b.e. 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.

c.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.

d.e. An expert in computer system design who is a full time member of the faculty of the State University System.

e.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. The member appointed by the director of the office under subparagraph (b)6. shall serve on the commission until the end of the term of office of the director who appointed him or her, unless removed earlier by the director for cause. Members appointed by the Chief Financial Officer under subparagraph (b)7. ~~subparagraph (b)6.~~ shall serve on the commission until the end of the term of office of the Chief Financial Officer who appointed them, unless earlier removed by the Chief Financial Officer for cause. Vacancies on the commission shall be filled in the same manner as the original appointment.

(d) The State Board of Administration shall annually appoint one of the members of the commission to serve as chair.

(e) Members of the commission shall serve without compensation, but shall be reimbursed for per diem and travel expenses pursuant to s. 112.061.

(f) The State Board of Administration shall, as a cost of administration of the Florida Hurricane Catastrophe Fund, provide for travel, expenses, and staff support for the commission.

(g) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the commission, any member of the State Board of Administration, or any employee of the State Board of Administration for any action taken in the performance of their duties under this section. In addition, the commission may, in writing, waive any potential cause of action for negligence of a consultant, contractor, or contract employee engaged to assist the commission.

Section 80. Paragraph (b) of subsection (11) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(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 director of the office ~~Chief Financial Officer~~ 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 director of the office ~~Chief Financial Officer~~ and serve as follows:

a. The director of the office ~~Chief Financial Officer~~ 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. 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 director of the office ~~Chief Financial Officer~~ 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 director of the office ~~Chief Financial Officer~~ 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 director of the office ~~Chief Financial Officer~~ may require an entity that recommends persons for appointment to submit additional lists of recommended appointees.

Section 81. The transfer of the regulation of adjusters from the Office of Insurance Regulation to the Department of Financial Services by this act shall not affect the regulation of adjusters in any administrative or judicial action of the Office of Insurance Regulation arising out of or involving the Office of Insurance Regulation before or pending on the effective date of this act, and the Department of Financial Services shall be substituted as a party in interest on any such pending action.

Section 82. Any license, form, or action that was approved or authorized by the Financial Services Commission or the Office of Insurance Regulation which was otherwise lawfully in use before the effective date of this act may continue to be used or be effective as originally authorized or permitted, until the Department of Financial Services otherwise prescribes.

Section 83. Upon the effective date of this act, the rules or portions thereof of the Financial Services Commission which govern the regulation of insurance adjusters shall become rules or portions thereof of the Department of Financial Services as is appropriate to the corresponding regulatory or constitutional function and shall remain in effect until specifically amended or repealed in the manner provided by law.

Section 84. Subsection (10) is added to section 494.0025, Florida Statutes, to read:

494.0025 Prohibited practices.—It is unlawful for any person:

(10) To use the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting

existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

Section 85. Paragraph (o) is added to subsection (1) of section 516.07, Florida Statutes, 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):

(o) Using the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

Section 86. Paragraph (j) is added to subsection (1) of section 520.995, Florida Statutes, 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):

(j) Using the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

Section 87. Paragraph (bb) is added to subsection (1) of section 626.9541, Florida Statutes, 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:

(bb) Deceptive use of name.—Using the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution

and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

Section 88. Paragraphs (h) and (p) of subsection (1) of section 655.005, Florida Statutes, are amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(h) “Financial institution” means a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union.

(p) “State financial institution” means a state-chartered or state-organized association, bank, investment company, trust company, international bank agency, international branch, international representative office, international administrative office, or credit union.

Section 89. Subsection (1) of section 655.0322, Florida Statutes, is 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, international branch, representative office or administrative office or other business entity as defined by the commission 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.

Section 90. 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 of the proposed appointment of any individual to the board of directors or the appointment or 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 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, 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 issues a notice of disapproval with respect to that person.

(3) The office 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) Beginning 1 year after opening, each notification of a proposed appointment of an individual to the board of directors must be accompanied by a nonrefundable fee of \$35.

(5)(4) The commission may adopt rules to implement this section.

Section 91. Subsection (3) of section 655.045, Florida Statutes, is amended to read:

655.045 Examinations, reports, and internal audits; penalty.—

(3)(a) The board of directors of each state financial institution or, in the case of a credit union, the supervisory committee or audit committee shall 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 on a timely basis. Such internal audit must include such information as the commission by rule requires for that type of institution.

(b) With the approval of the office, 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, the state financial institution shall promptly make such changes as may be required by the office to cause the same to accomplish the purpose of this section.

(c) Any de novo state financial institution open less than 4 months is exempt from the audit requirements of this section.

Section 92. 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 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 that the supervisor intends to examine the Florida office of the corporation.

2. The supervisor confirms to the office 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 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, pursuant to a subpoena issued pursuant to the Florida Rules of Civil or Criminal Procedure or the Federal Rules of Civil Procedure, or pursuant to a subpoena issued in accordance with state or federal law. Prior to the production of the books and records of a financial institution, the party seeking production must reimburse the financial institution for the reasonable costs and fees incurred in compliance with the production. If the parties disagree regarding the amount of reimbursement, the party seeking the records may request the court or agency having jurisdiction to set the amount of reimbursement;

(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 93. Section 655.921, Florida Statutes, is amended to read:

655.921 Transaction of business by out-of-state financial institutions; exempt transactions in the financial institutions codes.—

(1) Nothing in the financial institutions codes shall be construed to prohibit a financial institution having its principal place of business outside this state and not operating branches in this state from:

(a) Contracting in this state with any person to acquire from such person a part, or the entire, interest in a loan that such person proposes to make, has heretofore made, or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan.

(b) Entering into mortgage servicing contracts with persons authorized to transact business in this state and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside this state or in the transaction of any business authorized by this section.

(c) Acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged, or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized by this section.

(d) Making loans or committing to make loans to any person located in this state and soliciting compensating deposit balances in connection therewith.

(2) No such financial institution shall be deemed to be transacting business in this state, or be required to qualify so to do, solely by reason of the performance of any of the acts or business authorized in this section. ~~This section does not authorize or permit any such financial institution to maintain an office within the state.~~

Section 94. Section 655.922, Florida Statutes, is amended to read:

655.922 Banking business by unauthorized persons; use of name.—

(1) No person other than a financial institution authorized to do business in this state pursuant to the financial institutions codes of any state or federal law shall, in this state, engage in the business of soliciting or receiving funds for deposit or of issuing certificates of deposit or of paying checks; and no person shall establish or maintain a place of business in this state for any of the functions, transactions, or purposes mentioned in this subsection. Any 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. This subsection does not prohibit the issuance or sale by a financial institution of traveler's checks, money orders, or other instruments for the transmission or payment of money, by or through employees or agents of the financial institution off the financial institution's premises.

(2) No person other than a financial institution shall, in this state:

(a) Transact business under any name or title that contains the words “bank,” “banco,” “banque,” “banker,” “banking,” “trust company,” “savings and loan association,” “savings bank,” or “credit union,” or words of similar import, in any context or in any manner;

(b) Use any name, word, sign, symbol, or device in any context or in any manner; or

(c) Circulate or use any letterhead, billhead, circular, paper, or writing of any kind or otherwise advertise or represent in any manner,

which indicates or reasonably implies that the business being conducted or advertised is the kind or character of business transacted or conducted by a financial institution or which is likely to lead any person to believe that such business is that of a financial institution; however, the words “bank,” “banker,” “banking,” “trust company,” “savings and loan association,” “savings bank,” or “credit union,” or the plural of any thereof, may be used by, and in the corporate or other name or title of, any company which is or becomes a financial institution holding company pursuant to federal law; any subsidiary of any such financial institution holding company which includes as a part of its name or title all or any part, or abbreviations, of the name or title of the financial institution holding company of which it is a subsidiary; any trade organization or association, whether or not incorporated, functioning for the purpose of promoting the interests of financial institutions or financial institution holding companies, the active members of which are financial institutions or financial institution holding companies; and any international development bank chartered pursuant to part II of chapter 663.

(3) No person may use the name or logo of any financial institution or an affiliate or subsidiary thereof, or use a name similar to that of a financial institution or an affiliate or subsidiary thereof, to market or solicit business from a customer or prospective customer of such institution if:

(a) The solicitation is done without the written consent of the financial institution or its affiliate or subsidiary; and

(b) A reasonable person would believe that the materials originated from, are endorsed by, or are connected with the financial institution or its affiliates or subsidiaries.

~~(4)~~(3) Any court, in a proceeding brought by the office, 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 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.

(5)(4) Nothing in this section shall be construed to prohibit the lawful establishment or the lawful operations of a financial institution and nothing in this code shall be construed to prohibit any advertisement or other activity in this state by any person if such prohibition would contravene any applicable federal law which preempts the law of this state.

(6) The commission shall adopt rules to administer this section.

Section 95. Subsection (1) of section 655.94, Florida Statutes, is amended to read:

655.94 Special remedies for nonpayment of rent.—

(1) If the rental due on a safe-deposit box has not been paid for 3 months, the lessor may send a notice by certified ~~registered~~ mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public ~~who is not a director, officer, employee, or stockholder of the lessor~~. The contents shall be sealed in a package by a notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box, and a list of its contents. The certificate shall be included in the package, and a copy of the certificate shall be sent by certified ~~registered~~ mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box. The lessor has a lien on the package and its contents to the extent of any rental due and owing plus the actual, reasonable costs of removing the contents from the safe-deposit box.

Section 96. Section 658.16, Florida Statutes, is amended to read:

658.16 Creation of banking or trust corporation.—

(1) When authorized by the office, 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.

(2) A bank or trust company that is chartered as a limited liability company under the law of any state is deemed to be incorporated under the financial institutions codes if:

(a) The institution is not subject to automatic termination, dissolution, or suspension upon the occurrence of an event including the death, disability, bankruptcy, expulsion, or withdrawal of an owner of the institution, other than the passage of time;

(b) The exclusive authority to manage the institution is vested in a board of managers or directors that is elected or appointed by the owners which operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities, as a board of directors of a bank or trust company chartered as a corporation; and

(c) Neither the laws of the state of the institution's organization nor the institution's operating agreement, bylaws, or other organizational documents:

1. Provide that an owner of the institution is liable for the debts, liabilities, or obligations of the institution in excess of the amount of the owner's investment; or

2. Require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights.

(3) As used in the financial institutions codes, the term:

(a) "Stockholder" or "shareholder" includes an owner of any interest in a bank or trust company chartered as a limited liability company, including a member or participant;

(b) "Director" includes a manager or director of a bank or trust company chartered as a limited liability company, or other person who has, with respect to such a bank or trust company, authority substantially similar to that of a director of a corporation;

(c) "Officer" includes an officer of a bank or trust company chartered as a limited liability company, or other person who has, with respect to such a bank or trust company, authority substantially similar to that of an officer of a corporation;

(d) "Stock," "voting stock," "voting shares," and "voting securities" includes similar ownership interests in a bank or trust company chartered as a limited liability company, including certificates or other evidence of ownership interests;

(e) "Articles of incorporation" or "bylaws" of a bank or trust company chartered as a limited liability company means the institution's articles of organization and operating agreement or other organizational documentation that is substantially similar to that of a corporation;

(f) "Par value" of any ownership interest in a bank or trust company chartered as a limited liability company means the amount of capital which must be invested for each unit of ownership; and

(g) "Dividend" includes distributions of earnings to the owners of a bank or trust company chartered as a limited liability company.

Section 97. Subsection (5) of 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.—

(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 governance 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 at all times.~~

Section 98. Section 658.26, Florida Statutes, is amended to read:

658.26 Places of transacting business; branches; facilities.—

(1) Any bank or trust company heretofore or hereafter incorporated pursuant to this chapter shall have one main office, which shall be located within the state.

(2)(a) In addition, with the approval of the office and upon such conditions as the commission or office prescribes, any state bank or trust company may establish branches or relocate offices within or outside the state. With the approval of the office 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) As provided by commission rules, a financial institution operating in a safe and sound manner may establish or relocate an office by filing a written notice with the office at least 30 days before opening or relocating that office, without filing an application or paying an application fee. The notification must specify the name and location of the office and effective date of the change. The relocation of a main office to a location outside this state must be by application only.

(c) Applications filed pursuant to this subsection need not be published in the Florida Administrative Weekly, but shall otherwise be subject to chapter 120.

~~(d)(b) An application to establish for a branch by a bank that is ineligible does not meet the requirements for the branch notification process shall be in writing in such form as the commission prescribes and be supported by such information, data, and records as the commission or office 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 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.

(e)(e) A state bank that is not eligible for notification of a branch relocation must file an application in the form required by the commission. Upon the filing of a relocation application and a nonrefundable filing fee, the office shall investigate to determine whether the financial institution has substantially complied with applicable law governing its operations. Additional investments in land, buildings, leases, and leasehold improvements resulting from such relocation must comply with the limitations imposed by s. 658.67(7)(a). A main office may not be moved outside this state unless the move is expressly authorized by the financial institutions codes or by federal law. A financial institution that has been in operation for less than 24 months must provide evidence that the criteria of s. 658.21(1) will be met. As provided by commission rule, a financial institution operating in a safe and sound manner may establish a branch by filing a written notice with the office 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. An application for relocation shall be in writing in such form as the commission prescribes and shall be supported by such information, data, and records as the commission or office 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 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 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.~~

~~(f)(e)~~ A branch office may be closed with 30 days' prior written notice to the office. The notice shall include any information the commission prescribes by rule.

~~(3)(4)~~ With prior written notification to the office, 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.

~~(4)(5)~~ A bank may provide, directly or through a contract with another company, off-premises armored car service to its customers. Armored car services shall not be considered a branch for the purposes of subsection (2).

~~(5)(6)(a)~~ Any state bank that is a subsidiary of a bank holding company may agree to receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations, as an agent for an affiliated depository institution.

(b) The term "close loan" does not include the making of a decision to extend credit or the extension of credit.

(c) As used in this section, "receive deposits" means the taking of deposits to be credited to an existing account and does not include the opening or origination of new deposit accounts at an affiliated institution by the agent institution.

(d) Under this section, affiliated banks may act as agents for one another regardless of whether the institutions are located in the same or different states. This section applies solely to affiliated depository institutions acting as agents, and has no application to agency relationships concerning non-depositories as agent, whether or not affiliated with the depository institution.

(e) In addition, under this section, agent banks may perform ministerial functions for the principal bank making a loan. Ministerial functions include, but are not limited to, such activities as providing loan applications, assembling documents, providing a location for returning documents necessary for making the loan, providing loan account information, and receiving payments. It does not include such loan functions as evaluating applications or disbursing loan funds.

Section 99. Subsection (5) of section 658.33, Florida Statutes, is amended to read:

658.33 Directors, number, qualifications; officers.—

(5) The president, ~~or chief executive officer, or any other person, regardless of title, who has equivalent rank or leads the overall operations 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 after considering the overall experience and expertise of the proposed officer ~~and the condition of the bank or trust company, as reflected in the most recent regulatory examination report and other available data.~~

Section 100. Section 658.37, Florida Statutes, is amended to read:

658.37 Dividends and surplus.—

(1) 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, 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 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.

(2) A bank that has been determined to be imminently insolvent may not pay a dividend.

Section 101. Present subsection (10) of section 658.48, Florida Statutes, is redesignated as subsection (11), and a new subsection (10) is added to that section, 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:

(10) IMMINENTLY INSOLVENT BANK.—When the office has determined that a state bank is imminently insolvent, the bank may not make

any new loans or discounts other than by discounting or purchasing bills of exchange payable at sight.

Section 102. Paragraph (a) of subsection (9) of section 658.67, Florida Statutes, is 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:

(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:

(a) The book entry shall be the lesser of the balance of the loan or investment plus acquisition costs and accrued interest or the appraisal value or market value of the property acquired which shall be determined and dated within 1 year prior to or 90 days after the date of acquisition and in compliance with s. 655.60.

Section 103. Subsection (4) of section 658.73, Florida Statutes, is amended to read:

658.73 Fees and assessments.—

(4) Any individual or entity other than a financial institution chartered in this state must ~~Each state bank and state trust company shall~~ pay to the office \$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 shall waive this fee when the request is by a state or federal regulatory agency or law enforcement agency.

Section 104. Subsections (4) and (7) 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:

(4) Except where the context otherwise requires, “international banking corporation” or “corporation” means any international bank agency or branch operating in this state.

(7) “Control” means any person or group of persons acting in concert, directly or indirectly, owning, controlling, or holding the power to vote 25 more than 50 percent or more 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.

Section 105. Subsection (1) of 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 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.~~

~~(b)(e)~~ The total initial capital and the number of shares of capital stock to be authorized.

~~(c)(d)~~ The location, by street and post-office address and county, of the principal office of the proposed international development bank.

~~(d)(e)~~ If known, the name and residence of the proposed president and the proposed chief executive officer, if other than the proposed president.

~~(e)(f)~~ Such detailed financial, business, and biographical information as the commission or office may reasonably require for each proposed director and for the proposed president and the proposed chief executive officer, if other than the president.

Section 106. Paragraph (a) of subsection (4) of section 665.034, Florida Statutes, is amended to read:

665.034 Acquisition of assets of or control over an association.—

(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:

(a) Directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with powers to vote, or holds proxies representing ~~more than~~ 25 percent or more of the voting common stock of such association.

Section 107. Subsections (2) and (6) of section 674.406, Florida Statutes, are amended to read:

674.406 Customer's duty to discover and report unauthorized signature or alteration.—

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 5 ~~7~~ years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within 180 days ~~1-year~~ after the statement or items are made available to the customer (subsection (1)) discover and report the customer's unauthorized signature on or any alteration on the item or who does not, within 1 year after that time, discover, and report any unauthorized endorsement is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under s. 674.2081 with respect to the unauthorized signature or alteration to which the preclusion applies.

Section 108. Section 658.68, Florida Statutes, is repealed.

Section 109. Subsection (4) is added to section 627.4133, Florida Statutes, to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(4) Notwithstanding the provisions of s. 440.42(3), if cancellation of a policy providing coverage for workers' compensation and employer's liability insurance is requested by the insured, such cancellation shall be effective on the date the carrier sends the notice of cancellation to the insured.

Section 110. Subsection (15) of section 717.101, Florida Statutes, is renumbered as subsection (16) and amended, subsections (5) through (18) are renumbered as subsections (6) through (19), respectively, present subsection (19) is renumbered as subsection (21), and new subsections (5) and (20) are added to that section, to read:

717.101 Definitions.—As used in this chapter, unless the context otherwise requires:

(5) "Claimant" means the person on whose behalf a claim is filed.

~~(16)(15)~~ "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust or other than a deposit in trust, ~~a claimant~~, or a payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his or her legal representative.

(20) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

Section 111. Subsection (1) of section 717.106, Florida Statutes, are amended to read:

717.106 Bank deposits and funds in financial organizations.—

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including deposits that are automatically renewable, and any funds paid toward the purchase of shares, a mutual investment certificate, or any other interest in a banking or financial organization is presumed unclaimed unless the owner has, within 5 years:

(a) Increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing or by telephone with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the banking or financial organization;

(d) Owned other property to which paragraph (a), paragraph (b), or paragraph (c) is applicable and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed unclaimed under this subsection at the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

1. Communicated in writing with the banking or financial organization; or

2. Otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be unclaimed under this subsection at the address to which communications regarding the other relationship regularly are sent; ~~or~~

~~(f) Received first-class mail from the banking or financial organization or a subsidiary of such banking or financial organization, which was not returned as undeliverable, in the ordinary course of business at the address reflected in the banking or financial organization's records.~~

Section 112. Subsection (1) of section 717.107, Florida Statutes, is amended to read:

717.107 Funds owing under life insurance policies.—

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in paragraph (3)(b) is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

Section 113. Section 717.109, Florida Statutes, is amended to read:

717.109 Refunds held by business associations.—~~Except as to the extent otherwise provided ordered by law the court or administrative agency,~~ any sum that a business association has been ordered to refund by a court or administrative agency which has been unclaimed by the owner for more than 1 year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim for it, is presumed unclaimed.

Section 114. Section 717.116, Florida Statutes, is amended to read:

717.116 Contents of safe-deposit box or other safekeeping repository.—All tangible and intangible property held by a banking or financial organization in a safe-deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business, and proceeds resulting from the sale of the property permitted by law, that has not been claimed by the owner for more than 3 years after the lease or rental period on the box or other repository has expired are presumed unclaimed.

Section 115. Subsections (1), (3), (4), and (7) of section 717.117, Florida Statutes, are amended to read:

717.117 Report of unclaimed property.—

(1) Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property under this chapter shall report to the department on such forms as the department may prescribe by rule. In lieu of forms, a report identifying 25 or more different apparent owners must be submitted by the holder may submit the required information via electronic medium as the department may prescribe by rule. The report must include:

(a) Except for traveler's checks and money orders, the name, social security number or taxpayer identification number, and date of birth, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property which is presumed unclaimed and which has a value of \$50 or more.

(b) For unclaimed funds which have a value of \$50 or more held or owing under any life or endowment insurance policy or annuity contract, the full name, taxpayer identification number or social security number, date of birth, if known, and last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds.

(c) For all tangible property held in a safe-deposit box or other safekeeping repository, a description of the property and the place where the property is held and may be inspected by the department, and any amounts owing to the holder. Contents of a safe-deposit box or other safekeeping repository which consist of documents or writings of a private nature and which have little or no apparent value shall not be presumed unclaimed.

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items of value under \$50 each may be reported in the aggregate.

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.

(f) Any person or business ~~association or public corporation~~ entity holding funds presumed unclaimed and having a total value of \$10 or less may file a zero balance report for that reporting period. The balance brought forward to the new reporting period is zero.

(g) Such other information as the department may prescribe by rule as necessary for the administration of this chapter.

(h) Credit balances, customer overpayments, security deposits, and re-funds having a value of less than \$10 shall not be presumed unclaimed.

(3) The report must be filed before May 1 of each year. Such report shall apply to the preceding calendar year. ~~If such report is not filed on or before the applicable filing date, the holder shall pay to~~ The department may impose and collect a penalty of \$10 per day up to a maximum of for each day the report is delinquent, but such penalty shall not exceed \$500 for the failure to timely report or the failure to include in a report information required by this chapter. The penalty shall be remitted to the department within 30 days after the date of the notification to the holder that the penalty is due and owing. As necessary for proper administration of this chapter, the department may waive any penalty due with appropriate justification. On written request by any person required to file a report and upon a showing of good cause, the department may postpone the reporting date. The department must provide information contained in a report filed with the department to any person requesting a copy of the report or information contained in a report, to the extent the information requested is not confidential, within 90 days after the report has been processed and added to the unclaimed property data base subsequent to a determination that the report is accurate and that the reported property is the same as the remitted property.

(4) Holders of inactive accounts having a value of \$50 or more shall use due diligence to locate apparent owners.

(a) When an owner's account becomes inactive, the holder shall conduct at least one search for the apparent owner using due diligence. For purposes of this section, ~~except for banks, credit unions, and state or federal savings associations,~~ an account is inactive if 2 years have transpired after the last owner-initiated account activity, if 2 years have transpired after the expiration date on the instrument or contract, or if 2 years have transpired since first-class mail has been returned as undeliverable. ~~With respect to banks, credit unions, and state or federal savings associations, an account is inactive if 2 years have transpired after the last owner-initiated account activity and first-class mail has been returned as undeliverable or 2 years after the~~

~~expiration date on the instrument or contract and first-class mail has been returned as undeliverable.~~

~~(b)1.~~ Within 180 days after an account becomes inactive, the holder shall conduct a search to locate the apparent owner of the property. The holder may satisfy such requirement by conducting one annual search for the owners of all accounts which have become inactive during the prior year.

~~(c)2.~~ Within 30 days after receiving updated address information, the holder shall provide notice by telephone or first-class mail to the current address notifying the apparent owner that the holder is in possession of property which is presumed unclaimed and may be remitted to the department. The notice shall also provide the apparent owner with the address or the telephone number of an office where the apparent owner may claim the property or reestablish the inactive account.

~~(d)~~ The account shall be presumed unclaimed if the holder is not able to contact the apparent owner by telephone, the first-class mail notice is returned to the holder as undeliverable, or the apparent owner does not contact the holder in response to the first-class mail notice.

~~(b)~~ The claim of the apparent owner is not barred by the statute of limitations.

~~(7)(a)~~ This section does shall not apply to the unclaimed patronage refunds as provided for by contract or through bylaw provisions of entities organized under chapter 425.

~~(b)~~ This section does not apply to intangible property held, issued, or owing by a business association subject to the jurisdiction of the United States Surface Transportation Board or its successor federal agency if the apparent owner of such intangible property is a business association. The holder of such property does not have any obligation to report, to pay, or to deliver such property to the department.

Section 116. Section 717.118, Florida Statutes, is amended to read:

717.118 Notification of apparent owners ~~Notice and publication of lists of unclaimed property.—~~

(1) It is specifically recognized that the state has an obligation to make an effort to notify owners of unclaimed property in a cost-effective manner. In order to provide all the citizens of this state an effective and efficient program for the recovery of unclaimed property, the department shall use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than \$100 with a reported address or taxpayer identification number ~~the existence of unclaimed property held by the department.~~ Such active attempt to notify ~~locate~~ apparent owners shall include any attempt by the department to directly contact the owner. Other means of notification, such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts and items in which the department does not directly attempt to contact the owner are expressly declared to be passive attempts.

Nothing in this subsection precludes other agencies or entities of state government from notifying owners of the existence of unclaimed property or attempting to notify locate apparent owners of unclaimed property.

(2) ~~The following notification requirements shall apply:~~

~~(a) Notifications that are published or televised may consist of the names of apparent owners of unclaimed property, and information regarding recovery of unclaimed property from the department. Such notification may be televised or published in the county in which the last known address of the apparent owner is located or, if the address is unknown, in the county in which the holder has its principal place of business. Published notifications may be in accordance with s. 50.011.~~

~~(b) Notification provided directly to individual apparent owners shall consist of a description of the property and information regarding recovery of unclaimed property from the department.~~

~~(3) The department may publish in the notice any items of more than \$100.~~

~~(3)(4) This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed unclaimed under s. 717.104.~~

Section 117. Subsection (5) of section 717.119, Florida Statutes, is amended to read:

717.119 Payment or delivery of unclaimed property.—

(5) All intangible and tangible property held in a safe-deposit box or any other safekeeping repository reported under s. 717.117 shall not be delivered to the department until 120 days after the report due date. The delivery of the property, through the United States mail or any other carrier, shall be insured by the holder at an amount equal to the estimated value of the property. Each package shall be clearly marked on the outside "Deliver Unopened." A holder's safe-deposit box contents shall be delivered to the department in a single shipment. In lieu of a single shipment, holders may provide the department with a single detailed shipping schedule that includes package tracking information for all packages being sent pursuant to this section.

(a) Holders may remit the value of cash and coins found in unclaimed safe-deposit boxes to the department by cashier's check or by electronic funds transfer, unless the cash or coins have a value above face value. The department shall identify by rule those cash and coin items having a numismatic value. Cash and coin items identified as having a numismatic value shall be remitted to the department in their original form.

(b) Any firearm or ammunition found in an unclaimed safe-deposit box or any other safekeeping repository shall be delivered by the holder to a law enforcement agency for disposal. However, the department is authorized to make a reasonable attempt to ascertain the historical value to collectors of

any firearm that has been delivered to the department. Any firearm appearing to have historical value to collectors may be sold by the department pursuant to s. 717.122 to a person having a federal firearms license. Any firearm which is not sold pursuant to s. 717.122 shall be delivered by the department to a law enforcement agency in this state for disposal. The department shall not be administratively, civilly, or criminally liable for any firearm delivered by the department to a law enforcement agency in this state for disposal.

(c) If such property is not paid or delivered to the department on or before the applicable payment or delivery date, the holder shall pay to the department a penalty of \$10 for each safe-deposit box shipment received late, ~~but such penalty shall not exceed \$1,000. The penalty shall be \$100 for a safe-deposit box shipment container that is late 30 days or less. Thereafter, the penalty shall be \$500 for a safe-deposit box shipment container that is late for each additional successive 30-day period. The penalty assessed against a holder for a late safe-deposit box shipment container shall not exceed \$4,000 annually. The penalty shall be remitted to the department within 30 days after the date of the notification to the holder that the penalty is due and owing.~~

(d) The department may waive any penalty due with appropriate justification, as provided by rule.

~~(e) Upon written request by any person required to deliver safe-deposit box contents, the department may postpone the delivery.~~

Section 118. Subsection (2) of section 717.1201, Florida Statutes, is amended to read:

717.1201 Custody by state; holder relieved from liability; reimbursement of holder paying claim; reclaiming for owner; defense of holder; payment of safe-deposit box or repository charges.—

(2) Any holder who has paid money to the department pursuant to this chapter may make payment to any person appearing to ~~the holder to be~~ entitled to payment and, upon filing ~~proof of payment and~~ proof that the payee is ~~was~~ entitled thereto, the department shall forthwith repay ~~reimburse~~ the holder ~~for the payment~~ without deduction of any fee or other charges. If repayment ~~reimbursement~~ is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be repaid ~~reimbursed~~ under this subsection upon filing proof that the instrument was duly presented and that the payee is ~~payment was made to a person who appeared to the holder to be~~ entitled to payment. The holder shall be repaid ~~reimbursed~~ for payment made under this subsection even if the payment was made to a person whose claim was barred under s. 717.129(1).

Section 119. Subsections (1) and (3) of section 717.122, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

717.122 Public sale of unclaimed property.—

(1) Except as provided in subsection (2), the department after the receipt of unclaimed property shall sell it to the highest bidder at public sale on the Internet or at a specified physical location wherever in the judgment of the department the most favorable market for the property involved exists. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department shall have the discretion to withhold from sale any unclaimed property that the department deems to be of benefit to the people of the state. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale and may be disposed of as the department determines appropriate. Any sale at a specified physical location held under this section must be preceded by a single publication of notice, at least 3 weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold. The department shall proportionately deduct auction fees, preparation costs, and expenses from the amount posted to the owner's account when safe-deposit box contents are sold. No action or proceeding may be maintained against the department for or on account of any decision to decline the highest bid or withhold any unclaimed property from sale.

(3) Unless the department deems it to be in the public interest to do otherwise, all securities presumed unclaimed and delivered to the department may be sold upon receipt. Any person making a claim pursuant to this chapter is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, ~~less any amounts deducted pursuant to subsection (2),~~ but no person has any claim under this chapter against the state, the holder, any transfer agent, any registrar, or any other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the state.

(5) The sale of unclaimed tangible personal property is not subject to tax under chapter 212 when such property is sold by or on behalf of the department pursuant to this section.

Section 120. Subsection (1) of section 717.123, Florida Statutes, is amended to read:

717.123 Deposit of funds.—

(1) All funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding ~~\$15~~ \$8 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund.

Section 121. Section 717.124, Florida Statutes, is amended to read:

717.124 Unclaimed property claims ~~Filing of claim with department.~~—

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant's representative. The claimant's representative must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant's representative must be registered with the department under this chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver's license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver's license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States or a foreign nation, a state or territory of the United States or foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. Any claim filed without the required identification or the sworn statement with the original claim form and the original power of attorney, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A claimant or the claimant's representative shall be deemed to have withdrawn a claim if no response to the department's request for additional information is received by the department within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each claim within 90 days after it is filed. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;
2. Was reported with an address outside of the United States;
3. Is being claimed by a person outside of the United States; or
4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

(d) The department shall deny any claim under which the claimant's representative has refused to authorize the department to reduce the fees and costs to the maximum permitted under this chapter.

(2) A claim for a cashier's check or a stock certificate without the original instrument may require an indemnity bond equal to the value of the claim to be provided prior to issue of the stock or payment of the claim by the department.

(3) The department may require an affidavit swearing to the authenticity of the claim, lack of documentation, and an agreement to allow the department to provide the name and address of the claimant to subsequent claimants coming forward with substantiated proof to claim the account. This shall apply to claims equal to or less than \$250. The exclusive remedy of a subsequent claimant to the property shall be against the person who received the property from the department.

(4)(a) Except as otherwise provided in this chapter, if a claim is determined in favor of the claimant, the department shall deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department, together with any additional amount required by s. 717.121.

(b)(5)(a) If an owner authorizes an attorney licensed to practice law in this state, Florida-certified public accountant, or private investigator licensed under chapter 493, and registered with the department under this chapter, investigative agency which is duly licensed to do business in this state to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with such power of attorney. The original power of attorney must be executed by the owner and must be filed with the department.

(c)(b)1. Payments of approved claims for unclaimed cash accounts shall be made to the owner after deducting any fees and costs authorized pursuant to a written power of attorney. The contents of a safe-deposit box shall be delivered directly to the claimant notwithstanding any agreement to the contrary.

2. Payments of fees and costs authorized pursuant to a written power of attorney for approved cash claims shall be made or issued forwarded to the law firm employer of the designated attorney licensed to practice law in this state, the public accountancy firm employer of the licensed Florida-certified public accountant, or the designated employing private investigative agency licensed by this state. Such payments shall may be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days. Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, shall be to the attorney, certified public accountant, or private investigator.

~~3. Payments of approved claims for unclaimed securities and other intangible ownership interests made to an attorney, Florida-certified public~~

~~accountant, or private investigative agency shall be promptly deposited into a trust or escrow account which is regularly maintained by the attorney, Florida-certified public accountant, or the private investigative agency in a financial institution authorized to accept such deposits and located in this state.~~

~~(c) Distribution of unclaimed property by the attorney, Florida-certified public accountant, or private investigative agency to the claimant shall be made within 10 days following final credit of the deposit into the trust or escrow account at the financial institution, unless a party to the agreement protests in writing such distribution before it is made.~~

~~(5)(6) The department shall not be administratively, civilly, or criminally liable for any property or funds distributed pursuant to this section, provided such distribution is made in good faith.~~

~~(6) This section does not supersede the licensing requirements of chapter 493.~~

Section 122. Section 717.12403, Florida Statutes, is created to read:

717.12403 Unclaimed demand, savings, or checking account in a financial institution held in the name of more than one person.—

(1)(a) If an unclaimed demand, savings, or checking account in a financial institution is reported as an “and” account in the name of two or more persons who are not beneficiaries, it is presumed that each person must claim the account in order for the claim to be approved by the department. This presumption may be rebutted by showing that entitlement to the account has been transferred to another person or by clear and convincing evidence demonstrating that the account should have been reported by the financial institution as an “or” account.

(b) If an unclaimed demand, savings, or checking account in a financial institution is reported as an “and” account and one of the persons on the account is deceased, it is presumed that the account is a survivorship account. This presumption may be rebutted by showing that entitlement to the account has been transferred to another person or by clear and convincing evidence demonstrating that the account is not a survivorship account.

(2) If an unclaimed demand, savings, or checking account in a financial institution is reported as an “or” account in the name of two or more persons who are not beneficiaries, it is presumed that either person listed on the account may claim the entire amount held in the account. This presumption may be rebutted by showing that entitlement to the account has been transferred to another person or by clear and convincing evidence demonstrating that the account should have been reported by the financial institution as an “and” account.

(3) If an unclaimed demand, savings, or checking account in a financial institution is reported in the name of two or more persons who are not beneficiaries without identifying whether the account is an “and” account or an “or” account, it is presumed that the account is an “or” account. This

presumption may be rebutted by showing that entitlement to the account has been transferred to another person or by clear and convincing evidence demonstrating that the account should have been reported by the financial institution as an “and” account.

(4) The department shall be deemed to have made a distribution in good faith if the department remits funds consistent with this section.

Section 123. Section 717.12404, Florida Statutes, is created to read:

717.12404 Claims on behalf of a business entity or trust.—

(1) Claims on behalf of an active or dissolved corporation, for which the last annual report is not available from the Department of State through the Internet, must be accompanied by a microfiche copy of the records on file with the Department of State or, if the corporation has not made a corporate filing with the Department of State, an authenticated copy of the last corporate filing identifying the officers and directors from the appropriate authorized official of the state of incorporation. A claim on behalf of a corporation must be made by an officer or director identified on the last corporate filing.

(2) Claims on behalf of a dissolved corporation, a business entity other than an active corporation, or a trust must include a legible copy of a valid driver’s license of the person acting on behalf of the dissolved corporation, business entity other than an active corporation, or trust. If the person has not been issued a valid driver’s license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States or a foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person’s identity and states the person’s full name and address. Any claim filed without the required identification or the sworn statement with the original claim form and the original power of attorney, if applicable, is void.

Section 124. Section 717.12405, Florida Statutes, is created to read:

717.12405 Claims by estates.—An estate or any person representing an estate or acting on behalf of an estate may claim unclaimed property only after the heir or legatee of the decedent entitled to the property has been located. Any estate, or any person representing an estate or acting on behalf of an estate, that receives unclaimed property before the heir or legatee of the decedent entitled to the property has been located, is personally liable for the unclaimed property and must immediately return the full amount of the unclaimed property or the value thereof to the department in accordance with s. 717.1341.

Section 125. Subsection (1) of section 717.1241, Florida Statutes, is amended, and subsection (3) is added to said section, to read:

717.1241 Conflicting claims.—

(1) When ownership has been established but conflicting claims have been received by the department, the property shall be remitted as follows, notwithstanding the withdrawal of a claim to the:

(a) As between an owner and an owner's representative:

1. To the person submitting the first claim that is complete or made complete received by the department; or

2. If an owner's claim and an owner's representative's claim are received by the department on the same day and both claims are complete, to the owner;

(b) As between two or more owner's representatives, to the owner's representative who has submitted the first claim that is complete or made complete ~~Owner if an owner's claim and an owner's representative's claim are received by the department on the same day; or~~

(c) As between two or more owner's representatives whose claims were complete on the same day, to the owner's representative who has agreed to receive the lowest fee. If two or more owner's representatives whose claims were complete on the same day are charging the same lowest fee, the fees shall be divided equally between the owner's representatives ~~Owner's representative who has the earliest dated contract with the owner if claims by two or more owner's representatives are received by the department on the same day.~~

(3) A claim is complete when entitlement to the unclaimed property has been established.

Section 126. Subsection (1) of section 717.1242, Florida Statutes, is amended to read:

717.1242 Restatement of jurisdiction of the circuit court sitting in probate and the department.—

(1) It is and has been the intent of the Legislature that, pursuant to s. 26.012(2)(b), circuit courts have jurisdiction of proceedings relating to the settlement of the estates of decedents and other jurisdiction usually pertaining to courts of probate. It is and has been the intent of the Legislature that, pursuant to s. 717.124, the department determines the merits of claims for property paid or delivered to the department under this chapter. Consistent with this legislative intent, any estate or beneficiary, as defined in s. 731.201, ~~heir~~ of an estate seeking to obtain property paid or delivered to the department under this chapter must file a claim with the department as provided in s. 717.124.

Section 127. Section 717.1244, Florida Statutes, is created to read:

717.1244 Determinations of unclaimed property claims.—In rendering a determination regarding the merits of an unclaimed property claim, the department shall rely on the applicable statutory, regulatory, common, and case law. Agency statements applying the statutory, regulatory, common, and case law to unclaimed property claims are not agency statements subject to s. 120.56(4).

Section 128. Section 717.126, Florida Statutes, is amended to read:

717.126 Administrative hearing; burden of proof; proof of entitlement; venue.—

(1) Any person aggrieved by a decision of the department may petition for a hearing as provided in ss. 120.569 and 120.57. In any proceeding for determination of a claim to property paid or delivered to the department under this chapter, the burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence. Having the same name as that reported to the department is not sufficient, in the absence of other evidence, to prove entitlement to unclaimed property.

(2) Unless otherwise agreed by the parties, venue shall be in Tallahassee, Leon County, Florida. However, upon the request of a party, the presiding officer may, in the presiding officer's discretion, conduct the hearing at an alternative remote video location.

Section 129. Section 717.1261, Florida Statutes, is created to read:

717.1261 Death certificates.—Any person who claims entitlement to unclaimed property by means of the death of one or more persons shall file a copy of the death certificate of the decedent or decedents that has been certified as being authentic by the issuing governmental agency.

Section 130. Section 717.1262, Florida Statutes, is created to read:

717.1262 Court documents.—Any person who claims entitlement to unclaimed property by reason of a court document shall file a certified copy of the court document with the department.

Section 131. Subsections (1) and (6) of section 717.1301, Florida Statutes, are amended to read:

717.1301 Investigations; examinations; subpoenas.—

(1) The department may make investigations and examinations within or outside this state of claims, reports, and other records within or outside this state as it deems necessary to administer and enforce the provisions of this chapter. In such investigations and examinations the department may administer oaths, examine witnesses, issue subpoenas, and otherwise gather evidence. The department may request any person who has not filed a report under s. 717.117 to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

(6) If an investigation or an examination of the records of any person results in the disclosure of property reportable and deliverable under this chapter, the department may assess the cost of investigation or the examination against the holder at the rate of \$100 per 8-hour day for each per investigator or examiner. Such fee shall be calculated on an hourly basis and shall be rounded to the nearest hour. The person shall also pay the travel expense and per diem subsistence allowance provided for state employees in s. 112.061. The person shall not be required to pay a per diem fee and expenses of an examination or investigation which shall consume more than

30 worker-days in any one year unless such examination or investigation is due to fraudulent practices of the person, in which case such person shall be required to pay the entire cost regardless of time consumed. The fee shall be remitted to the department within 30 days after the date of the notification that the fee is due and owing. Any person who fails to pay the fee within 30 days after the date of the notification that the fee is due and owing shall pay to the department interest at the rate of 12 percent per annum on such fee from the date of the notification.

Section 132. Subsection (2) of section 717.1315, Florida Statutes, is amended to read:

717.1315 Retention of records by owner's representative.—

(2) An owner's representative, operating at two or more 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 owner's representative, upon the filing of a written notice with the department designating in the written notice the office at which such records are maintained.

~~(3) An~~ However, the owner's representative shall make all books, accounts, and records available at a convenient location in this state upon request of the department.

Section 133. Subsection (2) of section 717.132, Florida Statutes, is amended to read:

717.132 Enforcement; cease and desist orders; administrative fines.—

(2) In addition to any other powers conferred upon it to enforce and administer the provisions of this chapter, the department may issue and serve upon a person an order to cease and desist and to take corrective action whenever the department finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department. For purposes of this subsection, the term "corrective action" includes refunding excessive charges, requiring a person to return unclaimed property, requiring a holder to remit unclaimed property, and requiring a holder to correct a report that contains errors or omissions. Any such order shall contain a notice of rights provided by ss. 120.569 and 120.57.

Section 134. Section 717.1322, Florida Statutes, is created to read:

717.1322 Administrative enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120:

(a) Failure to comply with any provision of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the department.

(b) Fraud, misrepresentation, deceit, or gross negligence in any matter within the scope of this chapter.

(c) Fraudulent misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to an owner or apparent owner under this chapter, regardless of reliance by or damage to the owner or apparent owner.

(d) Willful imposition of illegal or excessive charges in any unclaimed property transaction.

(e) False, deceptive, or misleading solicitation or advertising within the scope of this chapter.

(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 under this chapter, or by any agreement entered into with the department under this chapter.

(g) Refusal to permit inspection of books and records in an investigation or examination by the department or refusal to comply with a subpoena issued by the department under this chapter.

(h) Criminal conduct in the course of a person's business.

(i) Failure to timely pay any fine imposed or assessed under this chapter or any rule adopted under this chapter.

(j) For compensation or gain or in the expectation of compensation or gain, the filing of a claim for unclaimed property owned by another unless such person is a registered attorney licensed to practice law in this state, registered public accountant certified in this state, or a registered private investigator licensed under chapter 493. This subsection does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

(k) Failure to authorize the release of records in the possession of a third party after being requested to do so by the department regarding a pending examination or investigation.

(1) Receipt or solicitation of consideration to be paid in advance of the approval of a claim under this chapter.

(2) Upon a finding by the department that any person has committed any of the acts set forth in subsection (1), the department may enter an order:

(a) Revoking or suspending a registration previously granted under this chapter;

(b) Placing a registrant or an applicant for a registration on probation for a period of time and subject to such conditions as the department may specify;

(c) Placing permanent restrictions or conditions upon issuance or maintenance of a registration under this chapter;

(d) Issuing a reprimand;

(e) Imposing an administrative fine not to exceed \$2,000 for each such act; or

(f) Prohibiting any person from being a director, officer, agent, employee, or ultimate equitable owner of a 10-percent or greater interest in an employer of a registrant.

(3) A registrant is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by an agent or employee of the registrant's employer if the registrant knew or should have known that such agent or employee was violating any provision of this chapter.

(4)(a) The department shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the department under this chapter.

(b) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity or repetition of specific offenses, or both. It is the legislative intent that minor violations be distinguished from more serious violations; that such guidelines consider the amount of the claim involved, the complexity of locating the owner, the steps taken to ensure the accuracy of the claim by the person filing the claim, the acts of commission and omission of the ultimate owners in establishing themselves as rightful owners of the funds, the acts of commission or omission of the agent or employee of an employer in the filing of the claim, the actual knowledge of the agent, employee, employer, or owner in the filing of the claim, the departure, if any, by the agent or employee from the internal controls and procedures established by the employer with regard to the filing of a claim, the number of defective claims previously filed by the agent, employee, employer, or owner; that such guidelines provide reasonable and meaningful notice of likely penalties that may be imposed for proscribed conduct; and that such penalties be consistently applied by the department.

(c) A specific finding of mitigating or aggravating circumstances shall allow the department to impose a penalty other than that provided for in such guidelines. The department shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances. Such mitigating and aggravating circumstances shall also provide for consideration of, and be consistent with, the legislative intent expressed in paragraph (b).

(d) In any proceeding brought under this chapter, the administrative law judge, in recommending penalties in any recommended order, shall follow

the penalty guidelines established by the department and shall state in writing any mitigating or aggravating circumstances upon which the recommended penalty is based.

(5) The department may seek any appropriate civil legal remedy available to it by filing a civil action in a court of competent jurisdiction against any person who has, directly or through an owner's representative, wrongfully submitted a claim as the ultimate owner of property and improperly received funds from the department in violation of this chapter.

Section 135. Section 717.1331, Florida Statutes, is created to read:

717.1331 Actions against holders.—The department may initiate, or cause to be initiated, an action against a holder to recover unclaimed property. If the department prevails in a civil or administrative action to recover unclaimed property initiated by or on behalf of the department, the holder shall be ordered to pay the department reasonable costs and attorney's fees.

Section 136. Section 717.1333, Florida Statutes, is created to read:

717.1333 Evidence; audit reports; examiner's worksheets, investigative reports, other related documents.—In any proceeding involving a holder under ss. 120.569 and 120.57 in which an auditor, examiner, or investigator acting under authority of this chapter is available for cross-examination, any official written report, worksheet, or other related paper, or copy thereof, compiled, prepared, drafted, or otherwise made or received by the auditor, examiner, or investigator, after being duly authenticated by the auditor, examiner, or investigator, may be admitted as competent evidence upon the oath of the auditor, examiner, or investigator that the report, worksheet, or related paper was prepared or received as a result of an audit, examination, or investigation of the books and records of the person audited, examined, or investigated, or the agent thereof.

Section 137. Subsection (5) is added to section 717.134, Florida Statutes, to read:

717.134 Penalties and interest.—

(5) The department may impose and collect a penalty of \$500 per day up to a maximum of \$5,000 and 25 percent of the value of property willfully not reported with all of the information required by this chapter. Upon a holder's showing of good cause, the department may waive the penalty or any portion thereof. If the holder acted in good faith and without negligence, the department shall waive the penalty provided herein.

Section 138. Section 717.1341, Florida Statutes, is created to read:

717.1341 Invalid claims, recovery of property, interest and penalties.—

(1)(a) No person shall receive unclaimed property that the person is not entitled to receive. Any person who receives, or assists another person to receive, unclaimed property that the person is not entitled to receive is strictly, jointly, personally, and severally liable for the unclaimed property

and shall immediately return the property, or the reasonable value of the property if the property has been damaged or disposed of, to the department plus interest at the rate set annually in accordance with s. 55.03(1). Assisting another person to receive unclaimed property includes executing a claim form on the person's behalf.

(b)1. In the case of stocks or bonds which have been sold, the proceeds from the sale shall be returned to the department plus any dividends or interest received thereon plus an amount equal to the brokerage fee plus interest at a rate set annually in accordance with s. 55.03(1) on the proceeds from the sale of the stocks or bonds, the dividends or interest received, and the brokerage fee.

2. In the case of stocks or bonds which have not been sold, the stocks or bonds and any dividends or interest received thereon shall be returned to the department, together with interest on the dividends or interest received, at a rate set annually in accordance with s. 55.03(1) of the value of the property.

(2) The department may maintain a civil or administrative action:

(a) To recover unclaimed property that was paid or remitted to a person who was not entitled to the unclaimed property or to offset amounts owed to the department against amounts owed to an owner representative;

(b) Against a person who assists another person in receiving, or attempting to receive, unclaimed property that the person is not entitled to receive;
or

(c) Against a person who attempts to receive unclaimed property that the person is not entitled to receive.

(3) If the department prevails in any proceeding under subsection (2), a fine not to exceed three times the value of the property received or sought to be received may be imposed on any person who knowingly, or with reckless disregard or deliberate ignorance of the truth, violated this section. If the department prevails in a civil or administrative proceeding under subsection (2), the person who violated subsection (1) shall be ordered to pay the department reasonable costs and attorney's fees.

(4) No person shall knowingly file, knowingly conspire to file, or knowingly assist in filing, a claim for unclaimed property the person is not entitled to receive. Any person who violates this subsection regarding unclaimed property of an aggregate value:

(a) Greater than \$50,000, is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(b) Greater than \$10,000 up to \$50,000, is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(c) Greater than \$250 up to \$10,000, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(d) Greater than \$50 up to \$250, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; or

(e) Up to \$50, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 139. Section 717.135, Florida Statutes, is amended to read:

717.135 Agreement to recover locate reported property in the custody of the department.—

(1) All agreements between a claimant's an owner's representative and a claimant an owner for compensation to recover or assist in the recovery of property reported to the department under s. 717.117 shall be in 11-point type or greater and either:

(a) Limit the fees and costs 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 20 15 percent per unclaimed on property account held by the department for 24 months or less and 25 percent on property held by the department for more than 24 months. Fees and costs for cash accounts shall be based on the value of the property at the time the agreement for recovery is signed by the claimant apparent owner. Fees and costs 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 property ownership interest is regularly traded at the time the securities or other ownership interest is remitted to the claimant owner or the claimant's owner's representative. Fees and costs 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 claimant owner or the owner's representative; or

(b) Disclose, on such form as the department shall prescribe by rule, that the property is held by the Bureau of Unclaimed Property of the Department of Financial Services 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, as reported by the holder:

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.

Such disclosure shall be on a page signed and dated by the person asserting entitlement to the unclaimed property. However, paragraph (1)(a) or (b) this section shall not apply if probate proceedings must be initiated on behalf of the claimant for an estate that has never been probated to contracts made in connection with guardianship proceedings or the probate of an estate.

(2)(a) Agreements for recovery of cash accounts shall state the value of the unclaimed property, the unclaimed property account number, and the percentage dollar value of the unclaimed property account to be paid to the claimant owner and shall also state the percentage dollar value of compensation to be paid to the claimant's owner's representative.

(b) Agreements for recovery of accounts containing securities, safe-deposit box accounts, other intangible or tangible ownership interests, or other types of accounts, except cash accounts, shall state the unclaimed property account number, the number of shares of stock, if applicable, the approximate value of the unclaimed property, and the percentage value of compensation to be paid to the claimant's owner's representative.

(c) All disclosures and agreements shall include the name, address, and professional license number of the claimant's owner's representative, and, if available, the taxpayer identification number or social security number, address, and telephone number of the claimant owner. The original of all such disclosures and agreements to pay compensation shall be signed and dated by the claimant owner of the property and shall be filed by the owner's representative with the claim form.

(d) All agreements between a claimant's representative and a claimant, who is a natural person, trust, or a dissolved corporation, for compensation to recover or assist in the recovery of property reported to the department under s. 717.117 must use the following form on 8 and ½ inch by 11 inch paper or on 8 and ½ inch by 14 inch paper with all of the text on one side of the paper and with the other side of the paper left blank; except that, at the option of the owner representative, the department disclosure form may be placed on the reverse side of the agreement. The agreement must be accurately completed and executed. No other writing or information shall be printed on the agreement. The title of the agreement shall be in bold 14-point type and underlined. The rest of the agreement shall be in 10-point type or greater. All unclaimed property accounts claimed must be identified on the agreement. The agreement must state:

RECOVERY AGREEMENT

\$..... = APPROXIMATE DOLLAR VALUE OF UNCLAIMED PROPERTY
NUMBER OF SHARES OF STOCK TO BE RECOVERED (IF APPLICABLE):.....

PROPERTY ACCOUNT NUMBERS:

..... PERCENT TO BE PAID AS COMPENSATION TO THE CLAIMANT'S REPRESENTATIVE

\$..... = NET AMOUNT TO BE PAID TO CLAIMANT

\$..... = AMOUNT TO BE PAID TO CLAIMANT'S REPRESENTATIVE

THIS AGREEMENT is between:

.....

(hereinafter, CLAIMANT)

and

(hereinafter, CLAIMANT'S REPRESENTATIVE)

who agree to the following:

(1) As consideration for the research efforts in locating and identifying assets due to the CLAIMANT and for assistance in procuring payment of the assets to the CLAIMANT, the CLAIMANT authorizes the government to pay to the CLAIMANT'S REPRESENTATIVE a fee of either:

(a) percent of all assets recovered, or

(b) A flat fee of \$ to recover the unclaimed property account identified above.

NO FEES ARE TO BE PAID IN ADVANCE.

(2) I have read this agreement and in consideration thereof, do hereby grant the CLAIMANT'S REPRESENTATIVE a limited power of attorney to demand, collect, recover and receive the above compensation from the government in accordance with this agreement.

(3) IT IS HEREBY ACKNOWLEDGED BY ALL PARTIES TO THIS AGREEMENT THAT UNLESS THESE ASSETS ARE RECOVERED, NO FEES, NO COSTS OR CHARGES ARE DUE TO THE CLAIMANT'S REPRESENTATIVE, ITS AGENTS OR ATTORNEYS, AND THIS AGREEMENT WILL BECOME NULL AND VOID.

Original Signature of CLAIMANT:

DATE:

CLAIMANT'S Social Security Number or FEID number:

Make the CLAIMANT'S check payable to:

Mail check to this address:

.....

The CLAIMANT'S telephone number is:

Original Signature of CLAIMANT'S REPRESENTATIVE:

FEID Number of CLAIMANT'S REPRESENTATIVE:

DATE:

Address of CLAIMANT'S REPRESENTATIVE:

Telephone number of CLAIMANT'S REPRESENTATIVE:

Professional license number of CLAIMANT'S REPRESENTATIVE:

(e) All fees, whether expressed as a percentage or as a flat fee, are subject to the limitations and requirements of subsection (1).

(3) As used in this section, "claimant" means the person on whose behalf a claim is filed.

(4) This section does not supersede the licensing requirements of chapter 493.

Section 140. Section 717.1351, Florida Statutes, is created to read:

717.1351 Acquisition of unclaimed property.—

(1) A person desiring to acquire ownership or entitlement of property reported to the department under s. 717.117 must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, a private investigator licensed under chapter 493, or an employer of a licensed private investigator which employer possesses a Class "A" license under chapter 493 and must be registered with the department under this chapter.

(2) All contracts to acquire ownership or entitlement of unclaimed property from the person or persons entitled to the unclaimed property must be in 10-point type or greater and must:

(a) Have a purchase price that discounts the value of the unclaimed property at the time the agreement is executed by the seller at no greater than 20 percent per account held by the department; or

(b) Disclose, on such form as the department shall prescribe by rule, that the property is held by the Bureau of Unclaimed Property of the Department of Financial Services 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 buyer is seeking to purchase as reported by the holder:

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.

Such disclosure shall be on a page signed and dated by the seller of the unclaimed property.

(3) The originals of all such disclosures and agreements to transfer ownership or entitlement to unclaimed property shall be signed and dated by the seller and shall be filed with the claim form. The claimant shall provide the department with a legible copy of a valid driver's license of the seller at the time the original claim form is filed. If a seller has not been issued a valid driver's license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the seller issued by the United States or a foreign nation, a state or territory of the United States or foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the seller may be provided which affirms the seller's identity and states the seller's full name and address. If a claim is filed without the required identification or the sworn statement with the original claim form and the original agreement to acquire ownership or entitlement to the unclaimed property, the claim is void.

(4) Any contract to acquire ownership or entitlement of unclaimed property from the person or persons entitled to the unclaimed property must provide for the purchase price to be remitted to the seller or sellers within 10 days after the execution of the contract by the seller or sellers. The contract must specify the unclaimed property account number, the value of the unclaimed property account, and the number of shares of stock, if applicable. Proof of payment by check must be filed with the department with the claim.

(5) All agreements to purchase unclaimed property from an owner, who is a natural person, a trust, or a dissolved corporation must use the following form on 8 and ½ inch by 11 inch paper or on 8 and ½ inch by 14 inch paper with all of the text on one side of the paper and with the other side of the paper left blank; except that, at the option of the owner representative, the department disclosure form may be placed on the reverse side of the agreement. The agreement must be accurately completed and executed. No other writing or information shall be printed on the agreement. The title of the agreement shall be in bold 14-point type and underlined. The rest of the

agreement shall be in 10-point type or greater. All unclaimed property accounts to be purchased must be identified on the agreement. The agreement must state:

PURCHASE AGREEMENT

\$..... = APPROXIMATE DOLLAR VALUE OF THE UNCLAIMED PROPERTY

PROPERTY ACCOUNT NUMBER(S):

NUMBER OF SHARES OF STOCK TO BE RECOVERED (IF APPLICABLE):.....

..... PERCENT OF UNCLAIMED PROPERTY TO BE PAID TO THE BUYER

\$..... = NET AMOUNT TO BE PAID TO OWNER

\$..... = AMOUNT TO BE PAID TO BUYER

THIS AGREEMENT is between:

.....

(hereinafter, OWNER)

and

(hereinafter, BUYER)

who agree that the OWNER transfers to the BUYER for a purchase price of \$..... all rights to the above identified unclaimed property accounts.

Original Signature of OWNER:.....

DATE:.....

OWNER'S Social Security Number or FEID number:

Within 10 days after the execution of this Purchase Agreement by the Owner, Buyer shall remit the OWNER'S check payable to:

.....

Mail check to this address:

.....

.....

The OWNER'S telephone number is:

Original Signature of BUYER:

FEID Number of BUYER:.....

DATE:.....

Address of BUYER:

.....
Telephone number of BUYER:

Professional license number of BUYER:

(6) This section does not supersede the licensing requirements of chapter 493.

Section 141. Section 717.1400, Florida Statutes, is created to read:

717.1400 Registration.—

(1) In order to file claims as a claimant’s representative, acquire ownership or entitlement to unclaimed property, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts, the number of reported shares of stock, and the last four digits of social security numbers held by the department, a private investigator holding a Class “C” individual license under chapter 493 must register with the department on such form as the department shall prescribe by rule, and verified by the applicant. To register with the department, a private investigator must provide:

(a) A legible copy of the applicant’s Class “A” business license under chapter 493 or that of the applicant’s employer which holds a Class “A” business license under chapter 493.

(b) A legible copy of the applicant’s Class “C” individual license issued under chapter 493.

(c) The applicant’s business address and telephone number.

(d) The names of agents or employees, if any, who are designated to act on behalf of the private investigator together with a legible copy of their photo-identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the private investigator’s employer which holds a Class “A” business license under chapter 493.

(2) In order to file claims as a claimant’s representative, acquire ownership or entitlement to unclaimed property, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts, the number of reported shares of stock, and the last four digits of social security numbers held by the department, a Florida-certified public accountant must register with the department on such form as the department shall prescribe by rule, and must be verified by the applicant. To register with the department a Florida-certified public accountant must provide:

(a) The applicant’s Florida Board of Accountancy number.

(b) A legible copy of the applicant's current driver's license showing the full name and current address of such person. If a current driver's license is not available, another form of identification showing full name and current address of such person or persons shall be filed with the department.

(c) The applicant's business address and telephone number.

(d) The names of agents or employees, if any, who are designated to act on behalf of the Florida-certified public accountant together with a legible copy of their photo-identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the accountant's public accounting firm employer.

(3) In order to file claims as a claimant's representative, acquire ownership or entitlement to unclaimed property, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts, the number of reported shares of stock, and the last four digits of social security numbers held by the department, an attorney licensed to practice in this state must register with the department on such form as the department shall prescribe by rule, and must be verified by the applicant. To register with the department, such attorney must provide:

(a) The applicant's Florida Bar number.

(b) A legible copy of the applicant's current driver's license showing the full name and current address of such person. If a current driver's license is not available, another form of identification showing full name and current address of such person or persons shall be filed with the department.

(c) The applicant's business address and telephone number.

(d) The names of agents or employees, if any, who are designated to act on behalf of the attorney, together with a legible copy of their photo-identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the lawyer's employer law firm.

(4) Information and documents already on file with the department prior to the effective date of this provision need not be resubmitted in order to complete the registration.

(5) If a material change in the status of a registration occurs, a registrant must, within 30 days, provide the department with the updated documentation and information in writing. Material changes include, but are not limited to; a designated agent or employee ceasing to act on behalf of the

designating person, a surrender, suspension, or revocation of a license, or a license renewal.

(a) If a designated agent or employee ceases to act on behalf of the person who has designated the agent or employee to act on such person's behalf, the designating person must, within 30 days, inform the Bureau of Unclaimed Property in writing of the termination of agency or employment.

(b) If a registrant surrenders the registrant's license or the license is suspended or revoked, the registrant must, within 30 days, inform the bureau in writing of the surrender, suspension, or revocation.

(c) If a private investigator's Class "C" individual license under chapter 493 or a private investigator's employer's Class "A" business license under chapter 493 is renewed, the private investigator must provide a copy of the renewed license to the department within 30 days after the receipt of the renewed license by the private investigator or the private investigator's employer.

(6) A registrant or applicant for registration may not have a name that might lead another person to conclude that the registrant is affiliated or associated with the United States, or an agency thereof, or a state or an agency or political subdivision of a state. The department shall deny an application for registration or revoke a registration if the applicant or registrant has a name that might lead another person to conclude that the applicant or registrant is affiliated or associated with the United States, or an agency thereof, or a state or an agency or political subdivision of a state. Names that might lead another person to conclude that the applicant or registrant is affiliated or associated with the United States, or an agency thereof, or a state or an agency or political subdivision of a state, include, but are not limited to, the words United States, Florida, state, bureau, division, department, or government.

Section 142. Subsection (2) of section 212.02, Florida Statutes, is amended to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(2) "Business" means any activity engaged in by any person, or caused to be engaged in by him or her, with the object of private or public gain, benefit, or advantage, either direct or indirect. Except for the sales of any aircraft, boat, mobile home, or motor vehicle, the term "business" shall not be construed in this chapter to include occasional or isolated sales or transactions involving tangible personal property or services by a person who does not hold himself or herself out as engaged in business or sales of unclaimed tangible personal property under s. 717.122, but includes other charges for the sale or rental of tangible personal property, sales of services taxable under this chapter, sales of or charges of admission, communication services, all rentals and leases of living quarters, other than low-rent housing operated under chapter 421, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, and

all rentals of or licenses in real property, other than low-rent housing operated under chapter 421, all leases or rentals of or licenses in parking lots or garages for motor vehicles, docking or storage spaces for boats in boat docks or marinas as defined in this chapter and made subject to a tax imposed by this chapter. The term “business” shall not be construed in this chapter to include the leasing, subleasing, or licensing of real property by one corporation to another if all of the stock of both such corporations is owned, directly or through one or more wholly owned subsidiaries, by a common parent corporation; the property was in use prior to July 1, 1989, title to the property was transferred after July 1, 1988, and before July 1, 1989, between members of an affiliated group, as defined in s. 1504(a) of the Internal Revenue Code of 1986, which group included both such corporations and there is no substantial change in the use of the property following the transfer of title; the leasing, subleasing, or licensing of the property was required by an unrelated lender as a condition of providing financing to one or more members of the affiliated group; and the corporation to which the property is leased, subleased, or licensed had sales subject to the tax imposed by this chapter of not less than \$667 million during the most recent 12-month period ended June 30. Any tax on such sales, charges, rentals, admissions, or other transactions made subject to the tax imposed by this chapter shall be collected by the state, county, municipality, any political subdivision, agency, bureau, or department, or other state or local governmental instrumentality in the same manner as other dealers, unless specifically exempted by this chapter.

Section 143. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record shall be made and issued only for departmental administrative purposes, for the issuance of duplicate licenses, in response to law enforcement agency requests, ~~or to the Department of Revenue pursuant to an interagency agreement to facilitate service of process in Title IV-D cases, or to the Department of Financial Services pursuant to an interagency agreement to facilitate the~~ location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims, and are exempt from the provisions of s. 119.07(1).

Section 144. Paragraph (1) is added to subsection (4) of section 395.3025, Florida Statutes, and subsection (10) of that section is amended, to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent to:

(1) The Department of Financial Services, or an agent, employee, or independent contractor of the department who is auditing for unclaimed property pursuant to chapter 717.

(10) The home addresses, telephone numbers, social security numbers, and photographs of employees of any licensed facility who provide direct patient care or security services; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, any state or federal agency that is authorized to have access to such information by any provision of law shall be granted such access in the furtherance of its statutory duties, notwithstanding the provisions of this subsection. The Department of Financial Services, or an agent, employee, or independent contractor of the department who is auditing for unclaimed property pursuant to chapter 717, shall be granted access to the name, address, and social security number of any employee owed unclaimed property. 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, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 145. Section 732.103, Florida Statutes, is amended to read:

732.103 Share of other heirs.—The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

- (1) To the lineal descendants of the decedent.
- (2) If there is no lineal descendant, to the decedent's father and mother equally, or to the survivor of them.
- (3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.
- (4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:
 - (a) To the grandfather and grandmother equally, or to the survivor of them.
 - (b) If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.
 - (c) If there is either no paternal kindred or no maternal kindred, the estate shall go to the other kindred who survive, in the order stated above.
- (5) If there is no kindred of either part, the whole of the property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

(6) If none of the foregoing, and if any of the descendants of the decedent's great-grandparents were holocaust victims as defined in s. 626.9543(3)(b), including such victims in countries cooperating with the discriminatory policies of Nazi Germany then to the lineal descendants of the great grandparents. The court shall allow any such descendent to meet a reasonable, not unduly restrictive, standard of proof to substantiate his or her lineage. This subsection only applies to escheated property and shall cease to be effective for proceedings filed after December 31, 2004.

Section 146. Section 627.4554, Florida Statutes, is created to read:

627.4554 Annuity investments by seniors.—

(1) PURPOSE; CONSTRUCTION.—

(a) The purpose of this section is to set forth standards and procedures for recommendations to senior consumers which result in a transaction involving annuity products to appropriately address the insurance needs and financial objectives of senior consumers at the time of the transaction.

(b) Nothing in this section shall be construed to create or imply a private cause of action for a violation of this section.

(2) APPLICATION.—This section applies to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance agent, or an insurer where no agent is involved, that results in the purchase or exchange recommended.

(3) DEFINITIONS.—For purposes of this section:

(a) “Annuity” means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual annuity or a group annuity.

(b) “Recommendation” means advice provided by an insurance agent, or an insurer if no insurance agent is involved, to an individual senior consumer which results in a purchase or exchange of an annuity in accordance with that advice.

(c) “Senior consumer” means a person 65 years of age or older. In the event of a joint purchase by more than one party, a purchaser is considered to be a senior consumer if any of the parties is age 65 or older.

(4) DUTIES OF INSURERS AND INSURANCE AGENTS.—

(a) In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, an insurance agent, or an insurer if no insurance agent is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(b) Before executing a purchase or exchange of an annuity resulting from a recommendation to a senior consumer, an insurance agent, or an insurer if no insurance agent is involved, shall make reasonable efforts to obtain information concerning the senior consumer's financial status, tax status, and investment objectives and such other information used or considered to be reasonable by the insurance agent, or the insurer if no agent is involved, in making the recommendation.

(c)1. Except as provided under subparagraph 2., an insurance agent, or an insurer if no insurance agent is involved, shall not have any obligation to a senior consumer under paragraph (a) related to any recommendation if the senior consumer:

a. Refuses to provide relevant information requested by the insurer or insurance agent;

b. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance agent; or

c. Fails to provide complete or accurate information.

2. An insurer or insurance agent's recommendation subject to subparagraph 1. shall be reasonable under all the circumstances actually known to the insurer or insurance agent at the time of the recommendation.

(d)1. An insurer or insurance agent shall ensure that a system to supervise recommendations which is reasonably designed to achieve compliance with this section is established and maintained by complying with subparagraphs 3., 4., and 5., or shall establish and maintain such a system, including, but not limited to:

a. Maintaining written procedures.

b. Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this section.

2. A managing general agent and an insurance agency shall adopt a system established by an insurer to supervise recommendations of its insurance agents which is reasonably designed to achieve compliance with this section or shall establish and maintain such a system, including, but not limited to:

a. Maintaining written procedures.

b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this section.

3. An insurer may contract with a third party, including a managing general agent or an insurance agency, to establish and maintain a system of supervision as required by subparagraph 1. with respect to insurance agents under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to ensure that such third party contracting under subparagraph 3. is performing the functions re-

quired under subparagraph 1. and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by:

a. Annually obtaining a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions.

b. Based on reasonable selection criteria, periodically selecting third parties contracting under subparagraph 3. for a review to determine whether the third parties are performing the required functions. The insurer shall perform any procedures necessary to conduct the review which are reasonable under the circumstances.

5. An insurer that contracts with a third party pursuant to subparagraph 3. and complies with the requirements specified in subparagraph 4. is deemed to have fulfilled its responsibilities under subparagraph 1.

6. An insurer, managing general agent, or insurance agency is not required by subparagraph 1. or subparagraph 2. to:

a. Review or provide for review of all transactions solicited by an insurance agent; or

b. Include in its system of supervision an insurance agent's recommendations to senior consumers of products other than the annuities offered by the insurer, managing general agent, or insurance agency.

7. A managing general agent or insurance agency contracting with an insurer pursuant to subparagraph 3. shall promptly, when requested by the insurer pursuant to subparagraph 4., provide a certification as described in subparagraph 4. or provide a clear statement that the managing general agent or insurance agency is unable to meet the certification criteria.

8. A person may not provide a certification under sub-subparagraph 4.a. unless the person is a senior manager with responsibility for the delegated functions and has a reasonable basis for making the certification.

(5) MITIGATION OF RESPONSIBILITY.—

(a) The office may order an insurer to take reasonably appropriate corrective action for any senior consumer harmed by a violation of this section by the insurer or the insurer's insurance agent.

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective action for any senior consumer harmed by a violation of this section by the insurance agent.

2. A managing general agency or insurance agency that employs or contracts with an insurance agent to sell or solicit the sale of annuities to senior

consumers to take reasonably appropriate corrective action for any senior consumer harmed by a violation of this section by the insurance agent.

(c) Any applicable penalty under the Florida Insurance Code for a violation of paragraph (4)(a), paragraph (4)(b), or subparagraph (4)(c)2. may be reduced or eliminated, according to a schedule adopted by the office or the department, as appropriate, if corrective action for the senior consumer was taken promptly after a violation was discovered.

(6) RECORDKEEPING.—

(a) Insurers, managing general agents, insurance agencies, and insurance agents shall maintain or be able to make available to the department or office, as appropriate, records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance agent.

(b) Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

(7) EXEMPTIONS.—Unless otherwise specifically included, this section does not apply to recommendations involving:

(a) Direct-response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this section.

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act;

2. A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code of 1986, as amended, if established or maintained by an employer;

3. A government or church plan defined in Section 414 of the Internal Revenue Code of 1986, as amended, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the Internal Revenue Code of 1986, as amended;

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

5. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

6. Prepaid funeral contracts.

(8) APPLICATION TO VARIABLE ANNUITIES.—Compliance with the National Association of Securities Dealers Conduct Rules in effect on January 1, 2004, shall satisfy the requirements under this section for the recommendation of variable annuities. This section does not limit the department's ability to enforce the provisions of this section with respect to insurance agents, insurance agencies, and managing general agents, or the office's ability to enforce the provisions of this section with respect to insurers.

Section 147. Paragraph (h) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

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

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

(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.
- e. Designate an employee of the division as primary contact for consumers on issues relating to sinkholes.

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 subparagraph 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.

Section 148. Paragraph (a) of subsection (7) of section 440.107, Florida Statutes, is amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) 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 secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 5 business days after receipt of the written request of the department, 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. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer work site, when served at that work site. In addition to serving a stop-work order at a particular work site which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer work sites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's work site by posting a copy of the stop-work order in a conspicuous location at the work site. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with coverage requirements of this chapter and has agreed to remit periodic payments of the penalty pursuant to a payment agreement schedule with the department. If an order of conditional release is issued, failure by the employer to meet any term or condition of such penalty payment agreement shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. The department may require an employer who is found to have failed to comply with the coverage requirements of s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.

Section 149. Section 501.137, Florida Statutes, is amended to read:

501.137 Mortgage lenders; tax and insurance payments from escrow accounts; duties.—

(1) Every lender of money, whether a natural person or an artificial entity, whose loans are secured by a mortgage on real estate located within the state and who receives funds incidental thereto or in connection therewith for the payment of property taxes or hazard insurance premiums when the such funds are held in escrow by or on behalf of the lender, shall promptly pay the such taxes or insurance premiums when the such taxes or premiums become due and adequate escrow funds are deposited, so that the maximum tax discount available may be obtained with regard to the taxable property and so that insurance coverage on the property does not lapse.

(2) If an escrow account for the such taxes or insurance premiums is deficient, the lender shall notify the property owner within 15 days after the lender receives the notification of taxes due from the county tax collector or receives the notification from the insurer that a premium is due.

(3)(a) If the lender, as a result of neglect, fails to pay any tax or insurance premium when the tax or premium is due and there are sufficient escrow funds on deposit to pay the tax or premium, and if the property owner suffers a loss as a result of this such failure, then the lender ~~is~~ will be liable for the such loss; except, however, that with respect to any loss which would otherwise have been insured, the extent of the such liability shall not exceed the coverage limits of any insurance policy which has lapsed.

(b) If the lender violates paragraph (a) and the premium payment is not more than 90 days overdue, the insurer shall reinstate the insurance policy, retroactive to the date of cancellation, and the lender shall reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner for purposes of reinstating the policy.

(c) If the lender violates paragraph (a) and the premium payment is more than 90 days overdue or if the insurer refuses to reinstate the insurance policy, the lender shall pay the difference between the cost of the previous insurance policy and a new, comparable insurance policy for a period of 2 years.

(4) At the expiration of the annual accounting period, the lender shall issue to the property owner an annual statement of the escrow account.

Section 150. Paragraph (c) of subsection (3) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(3)

(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 to determine the sufficiency of the trust fund,

the assuming insurer shall report annually to the office 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 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 of the state in which the trust is domiciled; or

(II) The insurance regulator 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 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.

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 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 trustee surplus of not less than \$20 million. Not less than 50 percent of the funds in the trust covering the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and trustee surplus shall consist of assets of a quality substantially similar to that required in part II of chapter 625. Clean, irrevocable, unconditional, and evergreen 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 the trust on or before the filing date of its annual statement, may be used to fund the remainder of the trust and trustee surplus.

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 trustee 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 trustee 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 trustee 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 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.

Section 151. 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; and, with the exception of credit disability insurance, in no event, is less in the aggregate than the pro rata gross unearned premiums for such policies.

Section 152. Paragraphs (a), (e), and (f) of subsection (5) and subsection (13) of section 625.121, Florida Statutes, are amended, and paragraphs (k) and (l) are added to subsection (5) of that section, to read:

625.121 Standard Valuation Law; life insurance.—

(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:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies:

1. For policies issued prior to the operative date of s. 627.476(9), the commissioners' 1958 Standard Ordinary Mortality Table; except that, for any category of such policies issued on female risks, modified net premiums and present values, referred to in subsection (7), may be calculated according to an age not more than 6 years younger than the actual age of the insured; ~~and~~

2. For policies issued on or after the operative date of s. 627.476(9), 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.

3. For policies issued on or after July 1, 2004, ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for such policies.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts:

1. For policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit;

2. For policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the insurer, the class three disability table (1926); ~~and~~

3. For policies issued prior to January 1, 1961, the class three disability table (1926); ~~and~~.

4. For policies or contracts issued on or after July 1, 2004, tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies or contracts.

Any such table for active lives shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies:

1. For policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table;

2. For policies issued on or after January 1, 1961, and prior to January 1, 1966, either that table or, at the option of the insurer, the Intercompany Double Indemnity Mortality Table; and

3. For policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table; and-

4. For policies issued on or after July 1, 2004, tables of accidental death benefits adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies.

Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(k) For individual annuity and pure endowment contracts issued on or after July 1, 2004, excluding any disability and accidental death benefits purchased under those contracts, individual annuity mortality tables adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

(l) For all annuities and pure endowments purchased on or after July 1, 2004, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts, group annuity mortality tables adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

(13) APPLICABILITY TO CREDIT LIFE AND DISABILITY INSURANCE POLICIES.—

(a) For policies issued prior to January 1, 2004:

1. The minimum reserve for single-premium credit disability insurance, monthly premium credit life insurance and monthly premium credit disability insurance shall be the unearned gross premium.

2. As to single-premium credit life insurance policies, the insurer shall establish and maintain reserves that 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, 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.

(b) For policies issued on or after January 1, 2004:

1. The minimum reserve for single-premium credit disability insurance shall be either:

a. The unearned gross premium, or

b. Based upon a morbidity table that is adopted by the National Association of Insurance Commissioners and is specified in a rule the commission adopts pursuant to subsection (14).

2. The minimum reserve for monthly premium credit disability insurance shall be the unearned gross premium.

3. The minimum reserve for monthly premium credit life insurance shall be the unearned gross premium.

4. As to single-premium credit life insurance policies, the insurer shall establish and maintain reserves that 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 or any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule adopted by the commission for use in determining the minimum standard of valuation for such policies; and an interest rate determined in accordance with subsection (6). At the discretion of the office, 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. This section does not apply as to those credit life insurance policies for which reserves are computed and maintained as required under s. 625.131.

Section 153. Paragraphs (c) and (d) of subsection (1) of section 626.321, Florida Statutes, are amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified individual, or a qualified individual or entity under paragraphs (c), (d), (e), and (i), a license as agent authorized to transact a limited class of business in any of the following categories:

(c) Personal accident insurance.—License covering only policies of personal accident insurance covering the risks of travel, except as provided in subparagraph 2. The license may be issued only:

1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. No

such policy shall be for a duration of more than 48 hours or for the duration of a specified one-way trip or round trip.

2. To a full-time salaried employee of a business which offers motor vehicles for rent or lease, or to a business ~~entity office of a business~~ which offers motor vehicles for rent or lease ~~if insurance sales activities authorized by the license are limited to full-time salaried employees~~. A business office licensed or a person licensed pursuant to this subparagraph may, as an agent of an insurer, transact insurance that provides coverage for accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the rental motor vehicle if the lease or rental agreement is for not more than 30 days, or if the lessee is not provided coverage for more than 30 consecutive days per lease period; however, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days.

(d) Baggage and motor vehicle excess liability insurance.—

1. License covering only insurance of personal effects except as provided in subparagraph 2. The license may be issued only:

a. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in the sale or handling of transportation of baggage and personal effects of travelers, and may authorize the sale of such insurance only in connection with such transportation; or

b. ~~To the full-time salaried employee of a licensed general lines agent, a full-time salaried employee of a business which offers motor vehicles for rent or lease, or to a business office of a business~~ entity that which offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental of a motor vehicle limited to full-time salaried employees. An entity applying for a license under this sub-subparagraph:

(I) Is required to submit only one application for a license under s. 626.171. The requirements of s. 626.171(5) shall apply only to the officers and directors of the entity submitting the application.

(II) Is required to obtain a license for each office, branch office, or place of business making use of the entity's business name by applying to the department for the license on a simplified application form developed by rule of the department for this purpose.

(III) Is required to pay the applicable fees for a license as prescribed in s. 624.501, be appointed under s. 626.112, and pay the prescribed appointment fee under s. 624.501. A licensed and appointed entity shall be directly responsible and accountable for all acts of the licensee's employees.

The purchaser of baggage insurance shall be provided written information disclosing that the insured's homeowner's policy may provide coverage for loss of personal effects and that the purchase of such insurance is not re-

quired in connection with the purchase of tickets or in connection with the lease or rental of a motor vehicle.

2. ~~A business entity that office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may include lessees under a master contract providing coverage to the lessor or may transact excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in its lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle, provided that the lease or rental agreement is for not more than 30 days; that the lessee is not provided coverage for more than 30 consecutive days per lease period, and, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days; that the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide additional excess coverage; and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. The excess liability insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.~~

3. ~~A business entity that office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may, as an agent of an insurer, transact insurance that provides coverage for the liability of the lessee to the lessor for damage to the leased or rented motor vehicle if:~~

a. The lease or rental agreement is for not more than 30 days; or the lessee is not provided coverage for more than 30 consecutive days per lease period, but, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days;

b. The lessee is given written notice that his or her personal insurance policy that provides coverage on an owned motor vehicle may provide such coverage with or without a deductible; and

c. The purchase of the insurance is not required in connection with the lease or rental of a motor vehicle.

Section 154. Section 626.9743, Florida Statutes, is created to read:

626.9743 Claim settlement practices relating to motor vehicle insurance.—

(1) This section shall apply to the adjustment and settlement of personal and commercial motor vehicle insurance claims.

(2) An insurer may not, when liability and damages owed under the policy are reasonably clear, recommend that a third-party claimant make a claim under his or her own policy solely to avoid paying the claim under the policy issued by that insurer. However, the insurer may identify options to a third-party claimant relative to the repair of his or her vehicle.

(3) An insurer that elects to repair a motor vehicle and specifically requires a particular repair shop for vehicle repairs shall cause the damaged vehicle to be restored to its physical condition as to performance and appearance immediately prior to the loss at no additional cost to the insured or third-party claimant other than as stated in the policy.

(4) An insurer may not require the use of replacement parts in the repair of a motor vehicle which are not at least equivalent in kind and quality to the damaged parts prior to the loss in terms of fit, appearance, and performance.

(5) When the insurance policy provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, the insurer shall use one of the following methods:

(a) The insurer may elect a cash settlement based upon the actual cost to purchase a comparable motor vehicle, including sales tax, if applicable pursuant to subsection (9). Such cost may be derived from:

1. When comparable motor vehicles are available in the local market area, the cost of two or more such comparable motor vehicles available within the preceding 90 days;

2. The retail cost as determined from a generally recognized used motor vehicle industry source such as:

a. An electronic database if the pertinent portions of the valuation documents generated by the database are provided by the insurer to the first-party insured upon request; or

b. A guidebook that is generally available to the general public if the insurer identifies the guidebook used as the basis for the retail cost to the first-party insured upon request; or

3. The retail cost using two or more quotations obtained by the insurer from two or more licensed dealers in the local market area.

(b) The insurer may elect to offer a replacement motor vehicle that is a specified comparable motor vehicle available to the insured, including sales tax if applicable pursuant to subsection (9), paid for by the insurer at no cost other than any deductible provided in the policy and betterment as provided in subsection (6). The offer must be documented in the insurer's claim file. For purposes of this subsection, a comparable motor vehicle is one that is made by the same manufacturer, of the same or newer model year, and of similar body type and that has similar options and mileage as the insured vehicle. Additionally, a comparable motor vehicle must be in as good or better overall condition than the insured vehicle and available for inspection within a reasonable distance of the insured's residence.

(c) When a motor vehicle total loss is adjusted or settled on a basis that varies from the methods described in paragraph (a) or paragraph (b), the determination of value must be supported by documentation, and any deductions from value must be itemized and specified in appropriate dollar

amounts. The basis for such settlement shall be explained to the claimant in writing, if requested, and a copy of the explanation shall be retained in the insurer's claim file.

(d) Any other method agreed to by the claimant.

(6) When the amount offered in settlement reflects a reduction by the insurer because of betterment or depreciation, information pertaining to the reduction shall be maintained with the insurer's claim file. Deductions shall be itemized and specific as to dollar amount and shall accurately reflect the value assigned to the betterment or depreciation. The basis for any deduction shall be explained to the claimant in writing, if requested, and a copy of the explanation shall be maintained with the insurer's claim file.

(7) Every insurer shall, if partial losses are settled on the basis of a written estimate prepared by or for the insurer, supply the insured a copy of the estimate upon which the settlement is based.

(8) Every insurer shall provide notice to an insured before termination of payment for previously authorized storage charges, and the notice shall provide 72 hours for the insured to remove the vehicle from storage before terminating payment of the storage charges.

(9) If sales tax will necessarily be incurred by a claimant upon replacement of a total loss or upon repair of a partial loss, the insurer may defer payment of the sales tax unless and until the obligation has actually been incurred.

(10) Nothing in this section shall be construed to authorize or preclude enforcement of policy provisions relating to settlement disputes.

Section 155. Section 626.9744, Florida Statutes, is created to read:

626.9744 Claim settlement practices relating to property insurance.— Unless otherwise provided by the policy, when a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or replacement cost, the following requirements apply:

(1) When a loss requires repair or replacement of an item or part, any physical damage incurred in making such repair or replacement which is covered and not otherwise excluded by the policy shall be included in the loss to the extent of any applicable limits. The insured may not be required to pay for betterment required by ordinance or code except for the applicable deductible, unless specifically excluded or limited by the policy.

(2) When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall make reasonable repairs or replacement of items in adjoining areas. In determining the extent of the repairs or replacement of items in adjoining areas, the insurer may consider the cost of repairing or replacing the undamaged portions of the property, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors.

(3) This section shall not be construed to make the insurer a warrantor of the repairs made pursuant to this section.

(4) Nothing in this section shall be construed to authorize or preclude enforcement of policy provisions relating to settlement disputes.

Section 156. Effective July 1, 2004, and applicable to cancellation requests and notices received on or after that date, subsection (3) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(3) The office 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 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 shall be subject to the provisions of chapter 120. The Florida Automobile Joint Underwriting Association is created under the plan. The plan and the association:

(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. Two of the Chief Financial Officer's appointees must be chosen from the insurance industry. Any board member appointed by the Chief Financial Officer 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 may, however, determine that an agent may be appointed to a servicing carrier if, after public hearing, the office 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)1. 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 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.

2. Notwithstanding the requirements of s. 624.155(3)(a), as a condition precedent to bringing an action against the plan under s. 624.155, the department and the plan must have been given 90 days' written notice of the violation. If the department returns a notice for lack of specificity, the 90-day time period shall not begin until a proper notice is filed. This notice must comply with the information requirements of s. 624.155(3)(b). Effective October 1, 2007, this subparagraph shall expire unless reenacted by the Legislature prior to that date.

(l) May require from the insured proof that he or she has obtained the mandatory types and amounts of insurance from another admitted carrier prior to the cancellation of a policy the insured obtained from the plan and

prior to the return of any unearned premium the insured paid for such coverage from the plan. This paragraph does not apply to any person who provides proof of sale or inoperability of the vehicle covered under the policy purchased from the plan or relocation outside the state.

Section 157. Subsection (5) is added to section 627.4091, Florida Statutes, to read:

627.4091 Specific reasons for denial, cancellation, or nonrenewal.—

(5) When an insurer refuses to provide private passenger automobile insurance or personal lines residential property insurance, including, but not limited to, homeowner's, mobile home owner's, condominium unit owner's, or other insurance covering a personal residential structure, to an applicant due to adverse underwriting information, the insurer shall:

(a) Provide to the applicant specific information regarding the reasons for the refusal to insure.

(b) If the reason for the refusal to insure is based on a loss underwriting history or report from a consumer reporting agency, to the extent applicable identify the loss underwriting history and notify the applicant of his or her right under the federal Fair and Accurate Credit Transactions Act to obtain a copy of the report from the consumer reporting agency.

Section 158. Effective upon this act becoming a law, subsections (5) and (6) are added to section 627.4133, Florida Statutes, to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(5) An insurer that cancels a property insurance policy on property secured by a mortgage due to the failure of the lender to timely pay the premium when due shall reinstate the policy as required by s. 501.137.

(6) A single claim on a property insurance policy which is the result of water damage may not be used as the sole cause for cancellation or nonrenewal unless the insurer can demonstrate that the insured has failed to take action reasonably requested by the insurer to prevent a future similar occurrence of damage to the insured property.

Section 159. Paragraph (h) of subsection (9) of section 627.476, Florida Statutes, is amended to read:

627.476 Standard Nonforfeiture Law for Life Insurance.—

(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, 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. Ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum nonforfeiture standard may be substituted for

the Commissioners' 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners' 1980 Extended Term Insurance Table.

7.6. 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.

Section 160. Section 627.7077, Florida Statutes, is created to read:

627.7077 Florida Sinkhole Insurance Facility and other matters related to affordability and availability of sinkhole insurance; feasibility study.—

(1) The Florida State University College of Business Department of Risk Management and Insurance shall, under the direction of the office, conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and of other matters related to affordability and availability of sinkhole insurance. The study shall be conducted in consultation with the State Board of Administration and the Florida Geological Survey. The university shall provide a preliminary report of its analysis, findings, and recommendations to the Financial Services Commission and the presiding officers of the Legislature no later than February 1, 2005, and shall provide a final report no later than April 1, 2005.

(2) The potential functions of the facility to be analyzed include:

(a) Serving as the direct insurer or the reinsurer for all or some sinkhole losses.

(b) Providing training, communication, and other educational services to the public, engineers, the construction industry, insurance professionals, or others.

(c) Providing uniform standards for use by insurers in evaluating sinkhole loss claims.

(d) Providing consulting services for insurers.

(e) Maintaining a public database of all confirmed sinkholes and paid sinkhole loss claims, for use by consumers and by the insurance, building construction, banking, and real estate industries.

(3) The feasibility study shall, at a minimum, address the following issues:

(a) Where the facility should be housed, including, but not limited to, the options of creating a separate facility or using the Citizens Property Insurance Corporation or the Florida Hurricane Catastrophe Fund.

(b) Federal income taxation implications.

(c) Funding options and costs associated with operating the facility, including means of funding sinkhole insurance through premiums that are adequate to fund covered losses.

(d) Applicability of the experience of similar facilities of other states.

(e) Other economic impact considerations pertinent to a facility.

(f) Alternative dispute resolution mechanisms.

(g) The impact of all present requirements in the Florida Insurance Code on affordability and availability of sinkhole insurance and recommendations to address such impacts.

(4) The study shall be funded from a budget of no more than \$300,000, which will be funded by assessments on insurers issuing property insurance in this state. Such assessments shall be collected by the office and shall be prorated among such insurers according to a formula whereby each insurer shall pay a fraction of such budget, the numerator of which shall be such insurer's direct earned premiums for property insurance in this state and the denominator of which shall be the total direct earned premiums for property insurance in this state for calendar year 2003.

Section 161. 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. Every filing shall be made within 30 days of issuance or use.

(2) Each premium finance company shall file with the office 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 162. Paragraph (e) of subsection (1) of section 627.848, Florida Statutes, is 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 a financed an insurance contract is canceled in accordance with this section, the insurer shall, within 30 days of the cancellation date, 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, within 30 days of the cancellation date, 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 shall, within 15 days after the account has been overpaid, either refund to the insured for the insured's benefit any refund due on his or her account or, if the refund is sent or credited to the agent, return or credit to the agent the amount of the overpayment and notify the insured of the refunded amount. ~~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. The commission may adopt rules necessary to implement the provisions of this subsection.

Section 163. Subsection (1) of section 627.849, Florida Statutes, is amended to read:

627.849 Fees.—

(1) The office 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~~

Section 164. Analysis of factors affecting premium levels and availability of personal lines property and casualty insurance to consumers in Florida.—

(1) The Legislative Auditing Committee shall enter into a contract with the Florida State University College of Business Department of Risk Management and Insurance to provide, no later than February 1, 2005, a detailed analysis of factors affecting costs and potential assessments on consumers, and availability, of personal lines property and casualty insurance in Florida generally and in those areas in which coverage is underwritten by the Citizens Property and Casualty Insurance Company. The analysis shall include an evaluation of such factors and recommendations appropriate to moderate or enhance their impact on premiums potential assessments and availability of such insurance. Such factors shall include, but are not limited to:

(a) The factors affecting the level of competition and premium levels specifically, including the impact of rate regulation and possible rating law reforms, and including reforms that have succeeded or failed in other states.

(b) The cost and benefits of required coverages and of restrictions on optional coverages that could otherwise be made available to consumers.

(c) Such other information as may be useful to the Legislature in determining how to increase availability and, over the short and long term, to moderate costs and potential consumer assessments.

(2) The study shall be funded from a budget of no more than \$250,000, which shall be funded by assessments on insurers issuing personal lines property and casualty insurance in the state. Such assessments shall be collected by the Office of Insurance Regulation and shall be prorated among such insurers according to a formula whereby each insurer shall pay a fraction of such budget, the numerator of which shall be such insurer's direct earned premiums for personal lines property and casualty insurance in the state and the denominator of which shall be the total direct earned premiums for personal lines property and casualty insurance in the state for calendar year 2003.

(3) The Department of Financial Services, the Office of Insurance Regulation, and insurers shall cooperate with the Florida State University College of Business Department of Risk Management and Insurance conducting the analysis and shall provide such information as the Florida State University College of Business Department of Risk Management and Insurance may request in the format requested by the university.

Section 165. Section 625.131, Florida Statutes, is repealed.

Section 166. Nothing in this act shall be construed to create or be the basis of a civil action. Nothing in this act shall be construed as limiting settlement or adjustment of claims by methods that are otherwise permissible under Florida law.

Section 167. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2004.

Approved by the Governor July 1, 2004.

Filed in Office Secretary of State July 1, 2004.