CHAPTER 2004-5

Senate Bill No. 1534

An act relating to the Florida Statutes; amending ss. 11.40, 28.2401, 101.049, 110.205, 112.061, 117.05, 121.021, 121.051, 163.01, 163.3167, 163.524, 192.0105, 206.02, 206.9825, 220.187, 265.285, 287.057, 288.1045, 288.31, 315.031, 316.1937, 320.02, 322.051, 322.08, 322.09, 322.18, 332.004, 341.301, 369.255, 370.01, 372.001, 373.0421, 373.45922, 381.06014, 391.029, 393.0657, 394.741, 394.9082, 394.917, 400.0075, 402.3057, 403.7192, 404.20, 409.017, 409.1671, 409.1757, 409.904, 409.9065, 409.908, 409.91196, 409.912, 409.9122, 414.095, 440.02, 440.102, 440.14, 440.15, 440.25, 440.33, 440.385, 440.45, 440.491, 440.515, 440.60, 443.1215, 455.2125, 456.028, 456.048, 456.051, 458.320, 458.347, 459.0085, 475.01, 475.278, 475.611, 475.6221, 487.046, 493.6106, 499.01, 499.0121, 499.0122, 499.015, 499.03, 499.05, 504.011, 504.014, 517.021, 538.18, 552.40, 565.02, 601.48, 607.1331, 607.1407, 624.123, 624.307, 624.430, 624.461, 624.462, 624.509, 626.175, 626.371, 626.731, 626.7315, 626.7351, 626.7355, 626.7845, 626.785, 626.8305, 626.831, 626.8414, 626.865, 626.866, 626.867, 626.874, 626.9916, 627.351, 627.733, 627.736, 627.832, 628.6012, 628.6013, 631.57, 631.60, 636.0145, 636.029, 636.052, 641.21, 641.225, 641.31, 641.386, 648.34, 648.355, 648.45, 651.013, 657.001, 657.002, 657.021, 657.026, 657.031, 657.039, 657.066, 657.068, 679.338, 679.520, 732.2025, 741.04, 766.102, 766.203, 766.206, 766.209, 787.03, 790.061, 817.566, 817.567, 895.02, 921.0024, 943.171, 985.203, 1003.52, 1007.27, 1009.29, 1011.60, 1012.56, 1013.74, and 1013.79, F.S.; amending and reenacting s. 921.0022, F.S.; reenacting ss. 112.191, 220.191, 259.032, 296.10, and 499.007, F.S.; and repealing s. 414.70, F.S.; pursuant to s. 11.242, F.S.; deleting provisions that have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replacing incorrect cross-references and citations; correcting grammatical, typographical, and like errors; removing inconsistencies, redundancies, and unnecessary repetition in the statutes; improving the clarity of the statutes and facilitating their correct interpretation; and confirming the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process.

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

Section 1. Paragraph (c) of subsection (5) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(5) Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the

applicable provisions within s. 11.45(5)-(7), s. 218.32(1), or s. 218.38, the Legislative Auditing Committee may schedule a hearing. If a hearing is scheduled, the committee shall determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34 ~~228.056 and 228.505~~.

Reviser's note.—Amended to reincorporate the changes made to conform this section to the revised Florida K-20 Education Code by s. 879, ch. 2002-387, Laws of Florida. The amendment to this section by s. 5, ch. 2003-261, Laws of Florida, had failed to incorporate those changes.

Section 2. Effective July 1, 2004, paragraph (a) of subsection (1) and subsection (4) of section 28.2401, Florida Statutes, as amended by section 29 of chapter 2003-402, Laws of Florida, are amended to read:

28.2401 Service charges in probate matters.—

(1) Except when otherwise provided, the clerk may impose service charges for the following services, not to exceed the following amounts:

(a) For the opening of any estate of one document or more, including, but not limited to, petitions and orders to approve settlement of minor's claims; to open a safe-deposit box; to enter rooms and places; for the determination of heirs, if not formal administration; and for a foreign guardian to manage property of a nonresident; but not to include issuance of letters or order of summary administration $100

(4) Recording shall be required for all petitions opening and closing an estate; petitions regarding real estate; and orders, letters, bonds, oaths, wills, proofs of wills, returns, and such other papers as the judge shall deem advisable to record or that shall be required to be recorded under the Florida Probate Code ~~Law~~.

Reviser's note.—Paragraph (1)(a) is amended to improve clarity and facilitate correct interpretation. Subsection (4) is amended to conform to the repeal of the provisions encompassing the Florida Probate Law by s. 3, ch. 74-106, Laws of Florida, and creation of the Florida Probate Code by ch. 74-106.

Section 3. Subsection (1) of section 101.049, Florida Statutes, is amended to read:

101.049 Provisional ballots; special circumstances.—

(1) Any person who votes in an election after the regular poll-closing time pursuant to a court or other order extending the statutory polling hours must vote a provisional ballot. Once voted, the provisional ballot shall be placed in a secrecy envelope and thereafter sealed in a provisional ballot envelope. The election official witnessing the voter's subscription and affirmation on the Provisional Ballot Voter's Certificate shall indicate whether

or not the voter met all requirements to vote a regular ballot at the polls. All such provisional ballots shall remain sealed in their envelopes and be transmitted to the supervisor of elections.

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

Section 4. Paragraph (m) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to:

1. Positions in the Department of Health and the Department of Children and Family Services that are assigned primary duties of serving as the superintendent or assistant superintendent of an institution.

2. Positions in the Department of Corrections that are assigned primary duties of serving as the warden, assistant warden, colonel, or major of an institution or that are assigned primary duties of serving as the circuit administrator or deputy circuit administrator.

3. Positions in the Department of Transportation that are assigned primary duties of serving as regional toll managers and managers of offices as defined in s. 20.23(3)(c) and (4)(c) ~~20.23(3)(c) and (4)(d)~~, and captains and majors of the Office of Motor Carrier Compliance.

4. Positions in the Department of Environmental Protection that are assigned the duty of an Environmental Administrator or program administrator.

5. Positions in the Department of Health that are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator.

Unless otherwise fixed by law, the department shall set the salary and benefits of the positions listed in this paragraph in accordance with the rules established for the Selected Exempt Service.

Reviser's note.—Amended to conform to the redesignation of subunits within s. 20.23 by s. 5, ch. 2003-286, Laws of Florida.

Section 5. Paragraph (b) of subsection (14) of section 112.061, Florida Statutes, is amended to read:

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

(14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT SCHOOL BOARDS, AND SPECIAL DISTRICTS.—

(b) Rates established pursuant to paragraph (a) ~~(15)(a)~~ must apply uniformly to all travel by the county, county constitutional officer and entity governed by that officer, district school board, or special district.

Reviser's note.—Amended to conform to the context of the reference and the fact that there is no subsection (15).

Section 6. Paragraph (g) of subsection (2) of section 112.191, Florida Statutes, is reenacted to read:

112.191 Firefighters; death benefits.—

(2)

(g)1. Any employer who employs a full-time firefighter who, on or after January 1, 1995, suffers a catastrophic injury, as defined in s. 440.02, Florida Statutes 2002, in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support, or the child is a full-time or part-time student and is dependent for support. The term "health insurance plan" does not include supplemental benefits that are not part of the basic group health insurance plan. If the injured employee subsequently dies, the employer shall continue to pay the entire health insurance premium for the surviving spouse until remarried, and for the dependent children, under the conditions outlined in this paragraph. However:

a. Health insurance benefits payable from any other source shall reduce benefits payable under this section.

b. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided under this paragraph. A person who violates this sub-subparagraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

c. In addition to any applicable criminal penalty, upon conviction for a violation as described in sub-subparagraph b., a firefighter or other beneficiary who receives or seeks to receive health insurance benefits under this paragraph shall forfeit the right to receive such health insurance benefits, and shall reimburse the employer for all benefits paid due to the fraud or other prohibited activity. For purposes of this sub-subparagraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

2. In order for the firefighter, spouse, and dependent children to be eligible for such insurance coverage, the injury must have occurred as the result

of the firefighter's response to what is reasonably believed to be an emergency involving the protection of life or property, or an unlawful act perpetrated by another. Except as otherwise provided herein, nothing in this paragraph shall be construed to limit health insurance coverage for which the firefighter, spouse, or dependent children may otherwise be eligible, except that a person who qualifies for benefits under this section shall not be eligible for the health insurance subsidy provided under chapter 121, chapter 175, or chapter 185.

Notwithstanding any provision of this section to the contrary, the death benefits provided in paragraphs (b), (c), and (f) shall also be applicable and paid in cases where a firefighter received bodily injury prior to July 1, 1993, and subsequently died on or after July 1, 1993, as a result of such in-line-of-duty injury.

Reviser's note.—Section 47, ch. 2003-412, Laws of Florida, amended paragraph (2)(g) without publishing the flush left language at the end of the paragraph. Absent affirmative evidence of legislative intent to repeal it, paragraph (2)(g) is reenacted here to confirm that the omission was not intended.

Section 7. Paragraph (b) of subsection (5) of section 117.05, Florida Statutes, is amended to read:

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying.

(b) For the purposes of this subsection, "satisfactory evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be and any one of the following:

1. The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

a. That the person whose signature is to be notarized is the person named in the document;

b. That the person whose signature is to be notarized is personally known to the witnesses;

c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;

d. That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 2.; and

e. That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or

2. Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:

a. A Florida identification card or driver's license issued by the public agency authorized to issue driver's licenses;

b. A passport issued by the Department of State of the United States;

c. A passport issued by a foreign government if the document is stamped by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~;

d. A driver's license or an identification card issued by a public agency authorized to issue driver's licenses in a state other than Florida, a territory of the United States, or Canada or Mexico;

e. An identification card issued by any branch of the armed forces of the United States;

f. An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;

g. An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;

h. A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or

i. An identification card issued by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 8. Paragraph (a) of subsection (22) and subsection (38) of section 121.021, Florida Statutes, are amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(22) "Compensation" means the monthly salary paid a member by his or her employer for work performed arising from that employment.

(a) Compensation shall include:

1. Overtime payments paid from a salary fund.

2. Accumulated annual leave payments.

3. Payments in addition to the employee's base rate of pay if all the following apply:

a. The payments are paid according to a formal written policy that applies to all eligible employees equally;

b. The policy provides that payments shall commence no later than the 11th year of employment;

c. The payments are paid for as long as the employee continues his or her employment; and

d. The payments are paid at least annually.

4. Amounts withheld for tax sheltered annuities or deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code.

5. Payments made in lieu of a permanent increase in the base rate of pay, whether made annually or in 12 or 26 equal payments within a 12-month period, when the member's base pay is at the maximum of his or her pay range. When a portion of a member's annual increase raises his or her pay range and the excess is paid as a lump sum payment, such lump sum payment shall be compensation for retirement purposes.

6. Effective July 1, 2002, salary supplements made pursuant to s. 1012.72 ~~ss. 231.700 and 236.08106~~ requiring a valid National Board for Professional Standards certificate ~~or equivalent status as provided in s. 1012.73(3)(e)5.~~, notwithstanding the provisions of subparagraph 3.

(38) "Continuous service" means creditable service as a member, beginning with the first day of employment with an employer covered under a state-administered retirement system consolidated herein and continuing for as long as the member remains in an employer-employee relationship with an employer covered under this chapter. An absence of 1 calendar month or more from an employer's payroll shall be considered a break in continuous service, except for periods of absence during which an employer-employee relationship continues to exist and such period of absence is creditable under this chapter or under one of the existing systems consolidated herein. However, a law enforcement officer as defined in s. 121.0515(2)(a) who was a member of a state-administered retirement system under chapter

122 or chapter 321 and who resigned and was subsequently reemployed in a law enforcement position within 12 calendar months of such resignation by an employer under such state-administered retirement system shall be deemed to have not experienced a break in service. Further, with respect to a state-employed law enforcement officer who meets the criteria specified in s. 121.0515(2)(a), if the absence from the employer's payroll is the result of a "layoff" as defined in s. 110.107 ~~110.203(24)~~ or a resignation to run for an elected office that meets the criteria specified in s. 121.0515(2)(a), no break in continuous service shall be deemed to have occurred if the member is reemployed as a state law enforcement officer or is elected to an office which meets the criteria specified in s. 121.0515(2)(a) within 12 calendar months after the date of the layoff or resignation, notwithstanding the fact that such period of layoff or resignation is not creditable service under this chapter. A withdrawal of contributions will constitute a break in service. Continuous service also includes past service purchased under this chapter, provided such service is continuous within this definition and the rules established by the administrator. The administrator may establish administrative rules and procedures for applying this definition to creditable service authorized under this chapter. Any correctional officer, as defined in s. 943.10, whose participation in the state-administered retirement system is terminated due to the transfer of a county detention facility through a contractual agreement with a private entity pursuant to s. 951.062, shall be deemed an employee with continuous service in the Special Risk Class, provided return to employment with the former employer takes place within 3 years due to contract termination or the officer is employed by a covered employer in a special risk position within 1 year after his or her initial termination of employment by such transfer of its detention facilities to the private entity.

Reviser's note.—Paragraph (22)(a) is amended to conform to the replacement of ss. 231.700 and 236.08106 by ss. 1012.73 and 1012.72, respectively, in the revised Florida K-20 Education Code and the subsequent repeal of s. 1012.73 by s. 23, ch. 2003-391, Laws of Florida. Subsection (38) is amended to conform to the repeal of s. 110.203(24) by s. 19, ch. 2003-138, Laws of Florida, and the enactment of s. 110.107, which also defines the term "layoff," by s. 3, ch. 2003-138.

Section 9. Paragraph (c) of subsection (2) of section 121.051, Florida Statutes, is amended to read:

121.051 Participation in the system.—

(2) OPTIONAL PARTICIPATION.—

(c) Employees of public community colleges or charter technical career centers sponsored by public community colleges, as designated in s. 1000.21(3), who are members of the Regular Class of the Florida Retirement System and who comply with the criteria set forth in this paragraph and in s. 1012.875 may elect, in lieu of participating in the Florida Retirement System, to withdraw from the Florida Retirement System altogether and participate in an optional retirement program provided by the employing agency under s. 1012.875, to be known as the State Community College System Optional Retirement Program. Pursuant thereto:

1. Through June 30, 2001, the cost to the employer for such annuity shall equal the normal cost portion of the employer retirement contribution which would be required if the employee were a member of the Regular Class defined benefit program, plus the portion of the contribution rate required by s. 112.363(8) that would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund. Effective July 1, 2001, each employer shall contribute on behalf of each participant in the optional program an amount equal to 10.43 percent of the participant's gross monthly compensation. The employer shall deduct an amount to provide for the administration of the optional retirement program. The employer providing the optional program shall contribute an additional amount to the Florida Retirement System Trust Fund equal to the unfunded actuarial accrued liability portion of the Regular Class contribution rate.

2. The decision to participate in such an optional retirement program shall be irrevocable for as long as the employee holds a position eligible for participation, except as provided in subparagraph 3. Any service creditable under the Florida Retirement System shall be retained after the member withdraws from the Florida Retirement System; however, additional service credit in the Florida Retirement System shall not be earned while a member of the optional retirement program.

3. An employee who has elected to participate in the optional retirement program shall have one opportunity, at the employee's discretion, to choose to transfer from the optional retirement program to the defined benefit program of the Florida Retirement System or to the Public Employee Optional Retirement Program, subject to the terms of the applicable optional retirement program contracts.

a. If the employee chooses to move to the Public Employee Optional Retirement Program, any contributions, interest, and earnings creditable to the employee under the State Community College System Optional Retirement Program shall be retained by the employee in the State Community College System Optional Retirement Program, and the applicable provisions of s. 121.4501(4) shall govern the election.

b. If the employee chooses to move to the defined benefit program of the Florida Retirement System, the employee shall receive service credit equal to his or her years of service under the State Community College Optional Retirement Program.

(I) The cost for such credit shall be an amount representing the present value of that employee's accumulated benefit obligation for the affected period of service. The cost shall be calculated as if the benefit commencement occurs on the first date the employee would become eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System defined benefit plan liabilities in the most recent actuarial valuation. The calculation shall include any service already maintained under the defined benefit plan in addition to the years under the State Community College Optional Retirement Program. The present value of any service already maintained under the defined benefit plan shall be applied as a credit to total cost resulting

from the calculation. The division shall ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

(II) The employee must transfer from his or her State Community College System Optional Retirement Program account and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the defined benefit program and service in the State Community College System Optional Retirement Program.

4. Participation in the optional retirement program shall be limited to those employees who satisfy the following eligibility criteria:

a. The employee must be otherwise eligible for membership in the Regular Class of the Florida Retirement System, as provided in s. 121.021(11) and (12).

b. The employee must be employed in a full-time position classified in the Accounting Manual for Florida's Public Community Colleges as:

(I) Instructional; or

(II) Executive Management, Instructional Management, or Institutional Management, if a community college determines that recruiting to fill a vacancy in the position is to be conducted in the national or regional market, and:

(A) The duties and responsibilities of the position include either the formulation, interpretation, or implementation of policies; or

(B) The duties and responsibilities of the position include the performance of functions that are unique or specialized within higher education and that frequently involve the support of the mission of the community college.

c. The employee must be employed in a position not included in the Senior Management Service Class of the Florida Retirement System, as described in s. 121.055.

5. Participants in the program are subject to the same reemployment limitations, renewed membership provisions, and forfeiture provisions as are applicable to regular members of the Florida Retirement System under ss. 121.091(9), 121.122, and 121.091(5), respectively.

6. Eligible community college employees shall be compulsory members of the Florida Retirement System until, pursuant to the procedures set forth in s. 1012.875, a written election to withdraw from the Florida Retirement System and to participate in the State Community College Optional Retirement Program is filed with the program administrator and received by the division.

a. Any community college employee whose program eligibility results from initial employment shall be enrolled in the State Community College

Optional Retirement Program retroactive to the first day of eligible employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the community college for the employee's optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions based upon subparagraph 1.

b. Any community college employee whose program eligibility results from a change in status due to the subsequent designation of the employee's position as one of those specified in subparagraph 4. or due to the employee's appointment, promotion, transfer, or reclassification to a position specified in subparagraph 4. shall be enrolled in the program upon the first day of the first full calendar month that such change in status becomes effective. The employer retirement contributions paid from the effective date through the month of the employee plan change shall be transferred to the community college for the employee's optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions based upon subparagraph 1.

7. Effective July 1, 2003, any participant of the State Community College Optional Retirement Program who has service credit in the defined benefit plan of the Florida Retirement System for the period between his or her first eligibility to transfer from the defined benefit plan to the optional retirement program and the actual date of transfer may, during his or her ~~their~~ employment, elect to transfer to the optional retirement program a sum representing the present value of the accumulated benefit obligation under the defined benefit retirement program for such period of service credit. Upon such transfer, all such service credit previously earned under the defined benefit program of the Florida Retirement System during this period shall be nullified for purposes of entitlement to a future benefit under the defined benefit program of the Florida Retirement System.

Reviser's note.—Amended to improve clarity and correct sentence construction.

Section 10. Paragraph (h) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.021 or any self-insurance program created pursuant to s. 768.28(16) ~~768.28(15)~~, formed and controlled by counties or municipalities of this state to provide liability insurance coverage for counties, municipalities, or other public agencies of this state, which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

Reviser's note.—Amended to conform to the redesignation of s. 768.28(15) as s. 768.28(16) by s. 67, ch. 2003-416, Laws of Florida.

Section 11. Subsection (10) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(10) Nothing in this part shall supersede any provision of ss. 341.8201-341.842 ~~341.321-341.386~~.

Reviser's note.—Amended to conform to the repeal of ss. 341.321-341.386, the Florida High-Speed Rail Transportation Act, by s. 55, ch. 2002-20, Laws of Florida, and the creation of ss. 341.8201-341.842, the Florida High-Speed Rail Authority Act, by ch. 2002-20.

Section 12. Subsection (3) of section 163.524, Florida Statutes, is amended to read:

163.524 Neighborhood Preservation and Enhancement Program; participation; creation of Neighborhood Preservation and Enhancement Districts; creation of Neighborhood Councils and Neighborhood Enhancement Plans.—

(3) After the boundaries and size of the Neighborhood Preservation and Enhancement District have been defined, the local government shall pass an ordinance authorizing the creation of the Neighborhood Preservation and Enhancement District. The ordinance shall contain a finding that the boundaries of the Neighborhood Preservation and Enhancement District meet the provisions of s. 163.340(7) or (8)(a)-(n) ~~163.340(7) or (8)(a)~~ or do not contain properties that are protected by deed restrictions. Such ordinance may be amended or repealed in the same manner as other local ordinances.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 163.340 by s. 2, ch. 2002-294, Laws of Florida.

Section 13. Paragraph (a) of subsection (1) of section 192.0105, Florida Statutes, is amended to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are provided in s. 213.015. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the departmental rules include:

(1) THE RIGHT TO KNOW.—

(a) The right to be mailed notice of proposed property taxes and proposed or adopted non-ad valorem assessments (see ss. 194.011(1), 200.065(2)(b) and (d) and (13)(a), and 200.069). The notice must also inform the taxpayer that the final tax bill may contain additional non-ad valorem assessments (see s. 200.069(10) ~~200.069(11)~~).

Reviser's note.—Amended to conform to the redesignation of subsections of s. 200.069 by s. 7, ch. 2002-18, Laws of Florida.

Section 14. Paragraph (c) of subsection (2) of section 206.02, Florida Statutes, is amended to read:

206.02 Application for license; temporary license; terminal suppliers, importers, exporters, blenders, biodiesel manufacturers, and wholesalers.—

(2) To procure a terminal supplier license, a person shall file with the department an application under oath, and in such form as the department may prescribe, setting forth:

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or country ~~county~~ where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

The application shall require a $30 license tax. Each license shall be renewed annually through application, including an annual $30 license tax.

Reviser's note.—Amended to provide consistent terminology within the paragraph.

Section 15. Paragraph (b) of subsection (1) and subsection (3) of section 206.9825, Florida Statutes, are amended to read:

206.9825 Aviation fuel tax.—

(1)

(b) Any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier's Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions, may receive a credit or refund as the ultimate vendor of the aviation fuel for the 6.9 cents excise tax previously paid, provided that the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored. In calculating the new or additional Florida full-time equivalent employee positions, any full-time equivalent employee positions of parent or subsidiary corporations which existed before January 1, 1996, shall not be

counted toward reaching the Florida employment increase thresholds. The refund allowed under this paragraph is in furtherance of the goals and policies of the State Comprehensive Plan set forth in s. 187.201(16)(a), (b)1., 2., (17)(a), (b)1., 4., (19)(a), (b)5., (21)(a), (b)1., 2., 4., 7., 9., and 12. ~~187.201(17)(a), (b)1., 2., (18)(a), (b)1., 4., (20)(a), (b)5., (22)(a), (b)1., 2., 4., 7., 9., and 12.~~

(3) An excise tax of 6.9 cents per gallon is imposed on each gallon of aviation gasoline in the manner prescribed by paragraph (2)(a) ~~(3)(a)~~. However, the exemptions allowed by paragraph (2)(b) ~~(3)(b)~~ do not apply to aviation gasoline.

Reviser's note.—Paragraph (1)(b) is amended to conform to the repeal of former s. 187.201(1) by s. 1056, ch. 2002-387, Laws of Florida. Subsection (3) is amended to conform to the repeal of former subsection (2) by s. 3, ch. 2003-2, Laws of Florida.

Section 16. Paragraph (c) of subsection (2) of section 220.187, Florida Statutes, is amended to read:

220.187 Credits for contributions to nonprofit scholarship-funding organizations.—

(2) DEFINITIONS.—As used in this section, the term:

(c) "Eligible nonpublic school" means a nonpublic school located in Florida that offers an education to students in any grades K-12 and that meets the requirements in subsection (6)~~(5)~~.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 220.187 by s. 9, ch. 2003-391, Laws of Florida.

Section 17. Section 220.191, Florida Statutes, is reenacted to read:

220.191 Capital investment tax credit.—

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

(a) "Commencement of operations" means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) "Cumulative capital investment" means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

(c) "Eligible capital costs" means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations, including, but not limited to:

1. The costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and obligations to contractors, subcontractors, builders, and materialmen.

2. The costs of acquiring land or rights to land and any cost incidental thereto, including recording fees.

3. The costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as the performance of all duties required by or consequent to the acquisition, construction, installation, and equipping of a qualifying project.

4. The costs associated with the installation of fixtures and equipment; surveys, including archaeological and environmental surveys; site tests and inspections; subsurface site work and excavation; removal of structures, roadways, and other surface obstructions; filling, grading, paving, and provisions for drainage, storm water retention, and installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the property.

Eligible capital costs shall not include the cost of any property previously owned or leased by the qualifying business.

(d) "Income generated by or arising out of the qualifying project" means the qualifying project's annual taxable income as determined by generally accepted accounting principles and under s. 220.13.

(e) "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs involved in the construction of the project facility.

(f) "Office" means the Office of Tourism, Trade, and Economic Development.

(g) "Qualifying business" means a business which establishes a qualifying project in this state and which is certified by the office to receive tax credits pursuant to this section.

(h) "Qualifying project" means:

1. A new or expanding facility in this state which creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by Enterprise Florida, Inc., and certified by the office pursuant to s. 288.108(6), including, but not limited to, aviation, aerospace, automotive, and silicon technology industries; or

2. A new financial services facility in this state, which creates at least 2,000 new jobs in this state, pays an average annual wage of at least

$50,000, and makes a cumulative capital investment of at least $30 million. This subparagraph is repealed June 30, 2004.

(2) An annual credit against the tax imposed by this chapter shall be granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. The tax credit shall be granted against only the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section shall not exceed 100 percent of the eligible capital costs of the project. In no event may any credit granted under this section be carried forward or backward by any qualifying business with respect to a subsequent or prior year. The annual tax credit granted under this section shall not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

(a) One hundred percent for a qualifying project which results in a cumulative capital investment of at least $100 million.

(b) Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least $50 million but less than $100 million.

(c) Fifty percent for a qualifying project which results in a cumulative capital investment of at least $25 million but less than $50 million.

A qualifying project which results in a cumulative capital investment of less than $25 million is not eligible for the capital investment tax credit. An insurance company claiming a credit against premium tax liability under this program shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to an insurance company, s. 624.5091 does not limit such credit in any manner.

(3) Prior to receiving tax credits pursuant to this section, a qualifying business must achieve and maintain the minimum employment goals beginning with the commencement of operations at a qualifying project and continuing each year thereafter during which tax credits are available pursuant to this section.

(4) The office, upon a recommendation by Enterprise Florida, Inc., shall first certify a business as eligible to receive tax credits pursuant to this section prior to the commencement of operations of a qualifying project, and such certification shall be transmitted to the Department of Revenue. Upon receipt of the certification, the Department of Revenue shall enter into a written agreement with the qualifying business specifying, at a minimum, the method by which income generated by or arising out of the qualifying project will be determined.

(5) The office, in consultation with Enterprise Florida, Inc., is authorized to develop the necessary guidelines and application materials for the certification process described in subsection (4).

(6) It shall be the responsibility of the qualifying business to affirmatively demonstrate to the satisfaction of the Department of Revenue that such business meets the job creation and capital investment requirements of this section.

(7) The Department of Revenue may specify by rule the methods by which a project's pro forma annual taxable income is determined.

Reviser's note.—Section 1, ch. 2003-270, Laws of Florida, purported to amend s. 220.191, but did not publish paragraphs (1)(a)-(g) and subsections (2)-(7). Absent affirmative evidence that the Legislature intended to repeal the material, the section is reenacted to confirm that the omission was not intended.

Section 18. Subsection (10) of section 259.032, Florida Statutes, is reenacted to read:

259.032 Conservation and Recreation Lands Trust Fund; purpose.—

(10)(a) State, regional, or local governmental agencies or private entities designated to manage lands under this section shall develop and adopt, with the approval of the board of trustees, an individual management plan for each project designed to conserve and protect such lands and their associated natural resources. Private sector involvement in management plan development may be used to expedite the planning process.

(b) Individual management plans required by s. 253.034(5), for parcels over 160 acres, shall be developed with input from an advisory group. Members of this advisory group shall include, at a minimum, representatives of the lead land managing agency, comanaging entities, local private property owners, the appropriate soil and water conservation district, a local conservation organization, and a local elected official. The advisory group shall conduct at least one public hearing within the county in which the parcel or project is located. For those parcels or projects that are within more than one county, at least one areawide public hearing shall be acceptable and the lead managing agency shall invite a local elected official from each county. The areawide public hearing shall be held in the county in which the core parcels are located. Notice of such public hearing shall be posted on the parcel or project designated for management, advertised in a paper of general circulation, and announced at a scheduled meeting of the local governing body before the actual public hearing. The management prospectus required pursuant to paragraph (9)(d) shall be available to the public for a period of 30 days prior to the public hearing.

(c) Once a plan is adopted, the managing agency or entity shall update the plan at least every 10 years in a form and manner prescribed by rule of the board of trustees. Such updates, for parcels over 160 acres, shall be developed with input from an advisory group. Such plans may include transfers of leasehold interests to appropriate conservation organizations or governmental entities designated by the Land Acquisition and Management Advisory Council or its successor, for uses consistent with the purposes of the organizations and the protection, preservation, conservation, restoration, and proper management of the lands and their resources. Volunteer

management assistance is encouraged, including, but not limited to, assistance by youths participating in programs sponsored by state or local agencies, by volunteers sponsored by environmental or civic organizations, and by individuals participating in programs for committed delinquents and adults.

(d) For each project for which lands are acquired after July 1, 1995, an individual management plan shall be adopted and in place no later than 1 year after the essential parcel or parcels identified in the annual Conservation and Recreation Lands report prepared pursuant to s. 259.035(2)(a) have been acquired. Beginning in fiscal year 1998-1999, the Department of Environmental Protection shall distribute only 75 percent of the acquisition funds to which a budget entity or water management district would otherwise be entitled from the Preservation 2000 Trust Fund to any budget entity or any water management district that has more than one-third of its management plans overdue.

(e) Individual management plans shall conform to the appropriate policies and guidelines of the state land management plan and shall include, but not be limited to:

1. A statement of the purpose for which the lands were acquired, the projected use or uses as defined in s. 253.034, and the statutory authority for such use or uses.

2. Key management activities necessary to preserve and protect natural resources and restore habitat, and for controlling the spread of nonnative plants and animals, and for prescribed fire and other appropriate resource management activities.

3. A specific description of how the managing agency plans to identify, locate, protect, and preserve, or otherwise use fragile, nonrenewable natural and cultural resources.

4. A priority schedule for conducting management activities, based on the purposes for which the lands were acquired.

5. A cost estimate for conducting priority management activities, to include recommendations for cost-effective methods of accomplishing those activities.

6. A cost estimate for conducting other management activities which would enhance the natural resource value or public recreation value for which the lands were acquired. The cost estimate shall include recommendations for cost-effective methods of accomplishing those activities.

7. A determination of the public uses and public access that would be consistent with the purposes for which the lands were acquired.

(f) The Division of State Lands shall submit a copy of each individual management plan for parcels which exceed 160 acres in size to each member of the Land Acquisition and Management Advisory Council or its successor, which shall:

1. Within 60 days after receiving a plan from the division, review each plan for compliance with the requirements of this subsection and with the requirements of the rules established by the board pursuant to this subsection.

2. Consider the propriety of the recommendations of the managing agency with regard to the future use or protection of the property.

3. After its review, submit the plan, along with its recommendations and comments, to the board of trustees, with recommendations as to whether to approve the plan as submitted, approve the plan with modifications, or reject the plan.

(g) The board of trustees shall consider the individual management plan submitted by each state agency and the recommendations of the Land Acquisition and Management Advisory Council, or its successor, and the Division of State Lands and shall approve the plan with or without modification or reject such plan. The use or possession of any lands owned by the board of trustees which is not in accordance with an approved individual management plan is subject to termination by the board of trustees.

By July 1 of each year, each governmental agency and each private entity designated to manage lands shall report to the Secretary of Environmental Protection on the progress of funding, staffing, and resource management of every project for which the agency or entity is responsible.

Reviser's note.—Section 6, ch. 2003-394, Laws of Florida, amended paragraph (10)(c) without publishing the flush left paragraph at the end of the subsection. Absent affirmative evidence of legislative intent to repeal the flush left material at the end of subsection (10), subsection (10) is reenacted to confirm that the omission was not intended.

Section 19. Paragraph (a) of subsection (1) of section 265.285, Florida Statutes, is amended to read:

265.285 Florida Arts Council; membership, duties.—

(1)(a) The Florida Arts Council is created in the department as an advisory body, as defined in s. 20.03(7), to consist of 15 members. Seven members shall be appointed by the Governor, four members shall be appointed by the President of the Senate, and four members shall be appointed by the Speaker of the House of Representatives. The appointments, to be made in consultation with the Secretary of State, shall recognize the need for geographical representation. Council members appointed by the Governor shall be appointed for 4-year terms. Council members appointed by the President of the Senate and the Speaker of the House of Representatives shall be appointed for 2-year terms. Council members serving on July 1, 2002, may serve the remainder of their respective terms. New appointments to the council shall not be made until the retirement, resignation, removal, or expiration of the terms of the initial members results in fewer than 15 members remaining. As vacancies occur, the first appointment to the council shall be made by the Governor. The President of the Senate, the Speaker of

the House of Representatives, and the Governor, respectively, shall then alternate appointments until the council ~~commission~~ is composed as required herein. No member of the council who serves two 4-year terms or two 2-year terms will be eligible for reappointment during a 1-year period following the expiration of the member's second term. A member whose term has expired shall continue to serve on the council until such time as a replacement is appointed. Any vacancy on the council shall be filled for the remainder of the unexpired term in the same manner as for the original appointment. Members should have a substantial history of community service in the performing or visual arts, which includes, but is not limited to, theatre, dance, folk arts, music, architecture, photography, and literature. In addition, it is desirable that members have successfully served on boards of cultural institutions such as museums and performing arts centers or are recognized as patrons of the arts.

Reviser's note.—Amended to conform to the references to the arts council elsewhere in the section.

Section 20. Paragraph (f) of subsection (5) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

(5) When the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, no purchase of commodities or contractual services may be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

(f) The following contractual services and commodities are not subject to the competitive-solicitation requirements of this section:

1. Artistic services.

2. Academic program reviews.

3. Lectures by individuals.

4. Auditing services.

5. Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.

6. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration.

7. Services provided to persons with mental or physical disabilities by not-for-profit corporations which have obtained exemptions under the provisions of s. 501(c)(3) of the United States Internal Revenue Code or when such services are governed by the provisions of Office of Management and Budget Circular A-122. However, in acquiring such services, the agency shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.

8. Medicaid services delivered to an eligible Medicaid recipient by a health care provider who has not previously applied for and received a Medicaid provider number from the Agency for Health Care Administration. However, this exception shall be valid for a period not to exceed 90 days after the date of delivery to the Medicaid recipient and shall not be renewed by the agency.

9. Family placement services.

10. Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, operated by not-for-profit corporations. However, in acquiring such services, the agency shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.

11. Training and education services provided to injured employees pursuant to s. 440.491(6) ~~440.49(1)~~.

12. Contracts entered into pursuant to s. 337.11.

13. Services or commodities provided by governmental agencies.

Reviser's note.—Amended to conform to the repeal of s. 440.49(1), relating to rehabilitation, by s. 43, ch. 93-415, Laws of Florida, and the enactment of similar language in s. 440.491(6) by s. 44, ch. 93-415.

Section 21. Paragraph (f) of subsection (5) of section 288.1045, Florida Statutes, is amended to read:

288.1045 Qualified defense contractor tax refund program.—

(5) ANNUAL CLAIM FOR REFUND FROM A QUALIFIED DEFENSE CONTRACTOR.—

(f) Upon approval of the tax refund pursuant to paragraphs (c) and (d), the Chief Financial Officer shall issue a warrant for the amount included in the written order. In the event of any appeal of the written order, the Chief Financial Officer ~~Comptroller~~ may not issue a warrant for a refund to the qualified applicant until the conclusion of all appeals of the written order.

Reviser's note.—Amended to conform to the transfer of the duties of the Comptroller to the Chief Financial Officer by Revision No. 8, adopted in 1998, amending s. 4, Art. IV of the State Constitution.

Section 22. Subsection (1) of section 288.31, Florida Statutes, is amended to read:

288.31 Armories; financing construction authorized.—

(1) The Division of Bond Finance of the State Board of Administration shall have the power to borrow money and incur obligations by way of bonds, notes, or revenue certificates and issue such obligations for the purpose of financing, either in whole or in part, the construction of armories in such counties and municipalities as designated by the State Armory Board. The

authority hereby conferred shall empower the said division to issue such certificates or bonds for the financing of the share or portion of the cost to be borne by a county or municipality when required by the provisions of a grant of funds from the state or the Federal Government or any other source, or to authorize the borrowing and issuing of obligations for financing such an armory in its entirety. Bonds, notes, or certificates issued hereunder shall be issued in conformity to all the provisions of chapter 215, and the division shall be empowered to fix the rentals or charges to be collected for the purpose of the retirement or purchase of said obligations. The division and the county or municipality shall be empowered to enter into such lease, or leases, as may be necessary to ensure the providing of sufficient funds to retire such obligations and when the said obligations shall have been fully paid, the armory shall be conveyed to the state. Leases with the county or municipality under the terms of this section shall provide for the control of the building and its use to be vested in the military commander representing the Armory Board in accordance with the provisions of s. 250.40 ~~250.41~~.

Reviser's note.—Amended to conform to the repeal of s. 250.41 by s. 55, ch. 2003-68, Laws of Florida, and the addition of similar material to s. 250.40 by s. 38, ch. 2003-68.

Section 23. Section 296.10, Florida Statutes, is reenacted to read:

296.10 Residents; contribution to support.—

(1)(a) Each resident of the home who receives a pension, compensation, or gratuity from the United States Government, or income from any other source of more than $100 per month, with adjustments in accordance with paragraph (b), shall contribute to his or her maintenance and support while a resident of the home in accordance with a schedule of payment determined by the administrator and approved by the director. The total amount of such contributions must be to the fullest extent possible, but may not exceed the actual cost of operating and maintaining the home.

(b) Whenever there is an increase in benefit amounts payable under Title II of the Social Security Act, 42 U.S.C. ss. 401 et seq., as a result of a determination made under s. 215(i) of such act, 42 U.S.C. s. 415(i), the administrator shall increase the amount that each resident shall be allowed to retain. The increased amount will be determined by the percentage used to increase the benefits under the Social Security Act, 42 U.S.C. ss. 401 et seq. This first such increase to residents' personal use funds will take place on January 1, 2004, and shall be continued each ensuing year that there is an increase in benefits under the said act.

(2) Notwithstanding subsection (1), each resident who participates in a vocational rehabilitation or work incentive program shall contribute to his or her support in an amount that is determined by the administrator and approved by the director, is computed at 50 percent of the resident's net earnings after taxes and after the setoff of the first $100 per month, and does not exceed the cost of care. The resident is required to authorize the administrator of the home to secure from the employer sufficient information to verify the resident's earnings under the program.

(3) The administrator may, if there is room, admit to residency in the home veterans who have sufficient means for their own support, but are otherwise eligible to become residents of the home, on payment of the full cost of their support, which cost and method of collection shall be fixed by the administrator.

Reviser's note.—Section 4, ch. 2003-42, Laws of Florida, purported to amend s. 296.10 in its entirety, but did not publish subsections (2) and (3). Absent affirmative evidence of legislative intent to repeal subsections (2) and (3), the section is reenacted to confirm that the omission was not intended.

Section 24. Paragraph (e) of subsection (1) of section 315.031, Florida Statutes, is amended to read:

315.031 Promoting and advertising port facilities.—

(1) Each unit is authorized and empowered:

(e) To enter into agreements with the purchaser or purchasers of port facilities bonds issued under the provisions of this law to establish a special fund to be set aside from the proceeds of the revenues collected under the provisions of s. 315.03(14) ~~315.03(13)~~, during any fiscal year, for the promotional activities authorized herein.

Nothing herein shall be construed to authorize any unit to expend funds for meals, hospitality, amusement or any other purpose of an entertainment nature.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 315.03 by s. 66, ch. 2002-20, Laws of Florida.

Section 25. Paragraph (b) of subsection (5) of section 316.1937, Florida Statutes, is amended to read:

316.1937 Ignition interlock devices, requiring; unlawful acts.—

(5)

(b) Any person convicted of a violation of subsection (6) who does not have a driver's license shall, in addition to any other penalty provided by law, pay a fine of not less than $250 or more than $500 per each such violation. In the event that the person is unable to pay any such fine, the fine shall become a lien against the motor vehicle used in violation of subsection (6) and payment shall be made pursuant to s. 316.3025(5) ~~316.3025(4)~~.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 316.3025 by s. 12, ch. 2003-286, Laws of Florida.

Section 26. Subsection (9) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(9) Before a motor vehicle which has not been manufactured in accordance with the federal Clean Air Act and the federal Motor Vehicle Safety Act can be sold to a consumer and titled and registered in this state, the motor vehicle must be certified by the United States Bureau of Customs and Border Protection ~~Customs Service~~ or the United States Department of Transportation and the United States Environmental Protection Agency to be in compliance with these federal standards. A vehicle which is registered pursuant to this subsection shall not be titled as a new motor vehicle.

Reviser's note.—Amended to conform to the redesignation of the United States Customs Service pursuant to its transfer to the Department of Homeland Security by s. 403, Pub. L. No. 107-296.

Section 27. Paragraph (a) of subsection (1) and paragraphs (b) and (c) of subsection (2) of section 322.051, Florida Statutes, are amended to read:

322.051 Identification cards.—

(1) Any person who is 12 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit under s. 320.0848, may be issued an identification card by the department upon completion of an application and payment of an application fee.

(a) Each such application shall include the following information regarding the applicant:

1. Full name (first, middle or maiden, and last), gender, social security card number, county of residence and mailing address, country of birth, and a brief description.

2. Proof of birth date satisfactory to the department.

3. Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

a. A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under sub-subparagraph b., sub-subparagraph c., sub-subparagraph d., sub-subparagraph e., or sub-subparagraph f.;

b. A certified copy of a United States birth certificate;

c. A valid United States passport;

d. An alien registration receipt card (green card);

e. An employment authorization card issued by the United States Department of Homeland Security ~~Justice~~; or

f. Proof of nonimmigrant classification provided by the United States Department of Homeland Security ~~Justice~~, for an original identification card. In order to prove such nonimmigrant classification, applicants may produce but are not limited to the following documents:

(I) A notice of hearing from an immigration court scheduling a hearing on any proceeding.

(II) A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.

(III) Notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

(IV) Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

(V) Notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

(VI) Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States including, but not limited to asylum.

Presentation of any of the foregoing documents shall entitle the applicant to a driver's license or temporary permit for a period not to exceed the expiration date of the document presented or 2 years, whichever first occurs.

(2)

(b) Notwithstanding any other provision of this chapter, if an applicant establishes his or her identity for an identification card using a document authorized under sub-subparagraph (1)(a)3.d. ~~(a)3.d.~~, the identification card shall expire on the fourth birthday of the applicant following the date of original issue or upon first renewal or duplicate issued after implementation of this section. After an initial showing of such documentation, he or she is exempted from having to renew or obtain a duplicate in person.

(c) Notwithstanding any other provisions of this chapter, if an applicant establishes his or her identity for an identification card using an identification document authorized under sub-subparagraphs (1)(a)3.e.-f. ~~(a)3.e.-f.~~, the identification card shall expire 2 years after the date of issuance or upon the expiration date cited on the United States Department of Homeland Security ~~Justice~~ documents, whichever date first occurs, and may not be renewed or obtain a duplicate except in person.

Reviser's note.—Paragraphs (1)(a) and (2)(c) are amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer from the Department of Justice to the Department of Homeland Security by s. 451, Pub. L. No. 107-296. Paragraphs (2)(b) and (c) are amended to reference contextually consistent material; the referenced sub-subparagraphs do not exist.

Section 28. Paragraph (c) of subsection (2) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license.—

(2) Each such application shall include the following information regarding the applicant:

(c) Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

1. A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., or subparagraph 6.;

2. A certified copy of a United States birth certificate;

3. A valid United States passport;

4. An alien registration receipt card (green card);

5. An employment authorization card issued by the United States Department of Homeland Security ~~Justice~~; or

6. Proof of nonimmigrant classification provided by the United States Department of Homeland Security ~~Justice~~.

Reviser's note.—Amended to conform to the transfer of the Immigration and Naturalization Service of the Department of Justice to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 29. Paragraph (b) of subsection (1) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

(1)

(b) There shall be submitted with each application a certified copy of a United States birth certificate, a valid United States passport, an alien registration receipt card (green card), an employment authorization card issued by the United States Department of Homeland Security ~~Justice~~, or proof of nonimmigrant classification provided by the United States Department of Homeland Security ~~Justice~~, for an original license.

Reviser's note.—Amended to conform to the transfer of the Immigration and Naturalization Service of the Department of Justice to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 30. Paragraph (d) of subsection (2) and paragraph (c) of subsection (4) of section 322.18, Florida Statutes, are amended to read:

322.18 Original applications, licenses, and renewals; expiration of licenses; delinquent licenses.—

(2) Each applicant who is entitled to the issuance of a driver's license, as provided in this section, shall be issued a driver's license, as follows:

(d) Notwithstanding any other provision of this chapter, if applicant establishes his or her identity for a driver's license using a document authorized in s. 322.08(2)(c)5. or 6., the driver's license shall expire 4 years after the date of issuance or upon the expiration date cited on the United States Department of Homeland Security ~~Justice~~ documents, whichever date first occurs.

(4)

(c) Notwithstanding any other provision of this chapter, if a licensee establishes his or her identity for a driver's license using an identification document authorized under s. 322.08(2)(c)5. or 6., the licensee may not renew the driver's license except in person and upon submission of an identification document authorized under s. 322.08(2)(c)4.-6. A driver's license renewed under this paragraph expires 4 years after the date of issuance or upon the expiration date cited on the United States Department of Homeland Security ~~Justice~~ documents, whichever date first occurs.

Reviser's note.—Amended to conform to the transfer of the Immigration and Naturalization Service of the Department of Justice to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 31. Paragraph (a) of subsection (5) of section 332.004, Florida Statutes, is amended to read:

332.004 Definitions of terms used in ss. 332.003-332.007.—As used in ss. 332.003-332.007, the term:

(5) "Airport or aviation discretionary capacity improvement projects" or "discretionary capacity improvement projects" means capacity improvements which are consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government in which the airport is located, and which enhance intercontinental capacity at airports which:

(a) Are international airports with United States Bureau of Customs and Border Protection ~~Customs Service~~;

Reviser's note.—Amended to conform to the redesignation of the United States Customs Service pursuant to its transfer to the Department of Homeland Security by s. 403, Pub. L. No. 107-296.

Section 32. Subsection (5) of section 341.301, Florida Statutes, is amended to read:

341.301 Definitions; ss. 341.302 and 341.303.—As used in ss. 341.302 and 341.303, the term:

(5) "Railroad" or "rail system" means any common carrier fixed-guideway transportation system such as the conventional steel rail-supported, steel-wheeled system. The term does not include a high-speed rail line developed

by the Department of Transportation pursuant to ss. 341.8201-341.842 ~~341.321-341.386~~.

Reviser's note.—Amended to conform to the repeal of ss. 341.321-341.386, the Florida High-Speed Rail Transportation Act, by s. 55, ch. 2002-20, Laws of Florida, and the creation of ss. 341.8201-341.842, the Florida High-Speed Rail Authority Act, by ss. 28-50, ch. 2002-20.

Section 33. Subsection (1) of section 369.255, Florida Statutes, is amended to read:

369.255 Green utility ordinances for funding greenspace management and exotic plant control.—

(1) LEGISLATIVE FINDING.—The Legislature finds that the proper management of greenspace areas, including, without limitation, the urban forest, greenways, private and public forest preserves, wetlands, and aquatic zones, is essential to the state's environment and economy and to the health and safety of its residents and visitors. The Legislature also finds that the limitation and control of nonindigenous plants and tree replacement and maintenance are vital to achieving the natural systems and recreational lands goals and policies of the state pursuant to s. 187.201(9) ~~187.201(10)~~, the State Comprehensive Plan. It is the intent of this section to enable local governments to establish a mechanism to provide dedicated funding for the aforementioned activities, when deemed necessary by a county or municipality.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 187.201 necessitated by the repeal of s. 187.201(1) by s. 1056, ch. 2002-387, Laws of Florida.

Section 34. Subsections (17) and (21) of section 370.01, Florida Statutes, are amended to read:

370.01 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(17) "Nonresident alien" shall mean those individuals from other nations who can provide documentation from the Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ evidencing permanent residency status in the United States. For the purposes of this chapter, a "nonresident alien" shall be considered a "nonresident."

(21) "Resident alien" shall mean those persons who have continuously resided in this state for at least 1 year and 6 months in the county and can provide documentation from the Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ evidencing permanent residency status in the United States. For the purposes of this chapter, a "resident alien" shall be considered a "resident."

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 35. Subsection (16) of section 372.001, Florida Statutes, is amended to read:

372.001 Definitions.—In construing these statutes, when applied to saltwater and freshwater fish, shellfish, crustacea, sponges, wild birds, and wild animals, where the context permits, the word, phrase, or term:

(16) "Saltwater fish" means any saltwater species of finfish of the classes Agnatha, Chondrichthyes, or Osteichthyes and marine invertebrates ~~that~~ of the classes Gastropoda, Bivalvia, or Crustacea, or of the phylum Echinodermata, but does not include nonliving shells or echinoderms.

Reviser's note.—Amended to improve clarity.

Section 36. Paragraph (b) of subsection (1) of section 373.0421, Florida Statutes, is amended to read:

373.0421 Establishment and implementation of minimum flows and levels.—

(1) ESTABLISHMENT.—

(b) Exclusions.—

1. The Legislature recognizes that certain water bodies no longer serve their historical hydrologic functions. The Legislature also recognizes that recovery of these water bodies to historical hydrologic conditions may not be economically or technically feasible, and that such recovery effort could cause adverse environmental or hydrologic impacts. Accordingly, the department or governing board may determine that setting a minimum flow or level for such a water body based on its historical condition is not appropriate.

2. The department or the governing board is not required to establish minimum flows or levels pursuant to s. 373.042 for surface water bodies less than 25 acres in area, unless the water body or bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value.

3. The department or the governing board shall not set minimum flows or levels pursuant to s. 373.042 for surface water bodies constructed prior to the requirement for a permit, or pursuant to an exemption, a permit, or a reclamation plan which regulates the size, depth, or function of the surface water body under the provisions of this chapter, chapter 378, or chapter 403, unless the constructed surface water body is of significant hydrologic value or is an essential element of the water resources of the area.

The exclusions of this paragraph shall not apply to the Everglades Protection Area, as defined in s. 373.4592(2)(i) ~~373.4592(2)(h)~~.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 373.4592 by s. 1, ch. 2003-12, Laws of Florida.

Section 37. Section 373.45922, Florida Statutes, is amended to read:

373.45922 South Florida Water Management District; permit for completion of Everglades Construction Project; report.—Within 60 days after receipt of any permit issued pursuant to s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, for the completion of the Everglades Construction Project, as defined by s. 373.4592(2)(g) ~~373.4592(2)(f)~~, the South Florida Water Management District shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that details the differences between the permit and the Everglades Program as defined by s. 373.4592(2)(h) ~~373.4592(2)(g)~~ and identifies any changes to the schedule or funding for the Everglades Program that result from the permit. The South Florida Water Management District shall include in the report a complete chronological record of any negotiations related to conditions included in the permit. Such record shall be documented by inclusion of all relevant correspondence in the report. If any condition of the permit affects the schedule or costs of the Everglades Construction Project, the South Florida Water Management District shall include in the report a detailed explanation of why the condition was imposed and a detailed analysis of whether the condition would promote or hinder the progress of the project.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 373.4592 by s. 1, ch. 2003-12, Laws of Florida.

Section 38. Subsection (3) of section 381.06014, Florida Statutes, is amended to read:

381.06014 Blood establishments.—

(3) Any blood establishment determined to be operating in the state in a manner not consistent with the provisions of Title 21 parts 211 and 600-640, Code of Federal Regulations, and in a manner that constitutes a danger to the health or well-being of donors or recipients as evidenced by the federal Food and Drug Administration's inspection reports and the revocation of the blood establishment's license or registration shall be in violation of this chapter ~~part~~ and shall immediately cease all operations in the state.

Reviser's note.—Amended to conform to the arrangement of chapter 381, which is not divided into parts.

Section 39. Subsection (2) of section 391.029, Florida Statutes, is amended to read:

391.029 Program eligibility.—

(2) The following individuals are financially eligible for the program:

(a) A high-risk pregnant female who is eligible for Medicaid.

(b) A child with special health care needs from birth to age 21 years who is eligible for Medicaid.

(c) A child with special health care needs from birth to age 19 years who is eligible for a program under Title XXI of the Social Security Act.

(d) A child with special health care needs from birth to age 21 years whose projected annual cost of care adjusts the family income to Medicaid financial criteria. In cases where the family income is adjusted based on a projected annual cost of care, the family shall participate financially in the cost of care based on criteria established by the department.

(e) A child with special health care needs as defined in Title V of the Social Security Act relating to children with special health care needs.

(f) An infant who receives an award of compensation under s. 766.31(1). The Florida Birth-Related Neurological Injury Compensation Association shall reimburse the Children's Medical Services Network the state's share of funding, which must thereafter be used to obtain matching federal funds under Title XXI of the Social Security Act.

~~The department may continue to serve certain children with special health care needs who are 21 years of age or older and who were receiving services from the program prior to April 1, 1998. Such children may be served by the department until July 1, 2000.~~

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

Section 40. Section 393.0657, Florida Statutes, is amended to read:

393.0657 Persons not required to be refingerprinted or rescreened.—Any provision of law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, and teachers who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6) ~~409.175(5)~~, shall not be required to be refingerprinted or rescreened in order to comply with any direct service provider screening or fingerprinting requirements.

Reviser's note.—Amended to conform to the redesignation of s. 409.175(5) as s. 409.175(6) by s. 6, ch. 2002-219, Laws of Florida.

Section 41. Subsection (9) of section 394.741, Florida Statutes, is repealed, and subsection (6) of that section is amended to read:

394.741 Accreditation requirements for providers of behavioral health care services.—

(6) The department or agency, by accepting the survey or inspection of an accrediting organization, does not forfeit its rights to monitor for the purpose of ensuring that services for which the department has paid were provided. The department may investigate complaints or suspected problems and ~~to~~ monitor the provider's compliance with negotiated terms and conditions, including provisions relating to consent decrees, which are

unique to a specific contract and are not statements of general applicability. The department may monitor compliance with federal and state statutes, federal regulations, or state administrative rules, if such monitoring does not duplicate the review of accreditation standards or independent audits pursuant to subsections (3) and (8).

Reviser's note.—Subsection (6) is amended to improve clarity. Subsection (9) is repealed to delete obsolete material requiring two reports due January 1, 2003.

Section 42. Paragraphs (a), (b), and (e) of subsection (4) of section 394.9082, Florida Statutes, are amended to read:

394.9082 Behavioral health service delivery strategies.—

(4) CONTRACT FOR SERVICES.—

(a) The Department of Children and Family Services and the Agency for Health Care Administration may contract for the provision or management of behavioral health services with a managing entity in at least two geographic areas. Both the Department of Children and Family Services and the Agency for Health Care Administration must contract with the same managing entity in any distinct geographic area where the strategy operates. This managing entity shall be accountable at a minimum for the delivery of behavioral health services specified and funded by the department and the agency. The geographic area must be of sufficient size in population and have enough public funds for behavioral health services to allow for flexibility and maximum efficiency. Notwithstanding the provisions of s. 409.912(4)(b)1. ~~409.912(3)(b)1. and 2.~~, at least one service delivery strategy must be in one of the service districts in the catchment area of G. Pierce Wood Memorial Hospital.

(b) Under one of the service delivery strategies, the Department of Children and Family Services may contract with a prepaid mental health plan that operates under s. 409.912 to be the managing entity. Under this strategy, the Department of Children and Family Services is not required to competitively procure those services and, notwithstanding other provisions of law, may employ prospective payment methodologies that the department finds are necessary to improve client care or institute more efficient practices. The Department of Children and Family Services may employ in its contract any provision of the current prepaid behavioral health care plan authorized under s. 409.912(4)(a) and (b) ~~409.912(3)(a) and (b)~~, or any other provision necessary to improve quality, access, continuity, and price. Any contracts under this strategy in Area 6 of the Agency for Health Care Administration or in the prototype region under s. 20.19(7) of the Department of Children and Family Services may be entered with the existing substance abuse treatment provider network if an administrative services organization is part of its network. In Area 6 of the Agency for Health Care Administration or in the prototype region of the Department of Children and Family Services, the Department of Children and Family Services and the Agency for Health Care Administration may employ alternative service delivery and financing methodologies, which may include prospective payment for certain population groups. The population groups that are to be provided these

substance abuse services would include at a minimum: individuals and families receiving family safety services; Medicaid-eligible children, adolescents, and adults who are substance-abuse-impaired; or current recipients and persons at risk of needing cash assistance under Florida's welfare reform initiatives.

(e) The cost of the managing entity contract shall be funded through a combination of funds from the Department of Children and Family Services and the Agency for Health Care Administration. To operate the managing entity, the Department of Children and Family Services and the Agency for Health Care Administration may not expend more than 10 percent of the annual appropriations for mental health and substance abuse treatment services prorated to the geographic areas and must include all behavioral health Medicaid funds, including psychiatric inpatient funds. This restriction does not apply to a prepaid behavioral health plan that is authorized under s. 409.912(4)(a) and (b) ~~409.912(3)(a) and (b)~~.

Reviser's note.—Paragraph (4)(a) is amended to conform to the redesignation of s. 409.912(3)(b)1. as s. 409.912(4)(b)1. and the deletion of s. 409.912(3)(b)2. by s. 9, ch. 2003-279, Laws of Florida. Paragraphs (4)(b) and (e) are amended to conform to the redesignation of s. 409.912(3)(a) and (b) as s. 409.912(4)(a) and (b) by s. 9, ch. 2003-279.

Section 43. Subsection (2) of section 394.917, Florida Statutes, is amended to read:

394.917 Determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases.—

(2) If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~, the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, persons who are detained or committed under this part shall be kept in a secure facility segregated from patients of the department who are not detained or committed under this part.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 44. Subsection (3) of section 400.0075, Florida Statutes, is amended to read:

400.0075 Complaint resolution procedures.—

(3) The state ombudsman council shall provide, as part of its annual report required pursuant to s. 400.0067(2)(f) ~~400.0067(2)(g)~~, information relating to the disposition of all complaints to the Department of Elderly Affairs.

Reviser's note.—Amended to conform to the redesignation of s. 400.0067(2)(g) as s. 400.0067(2)(f) by s. 22, ch. 2002-223, Laws of Florida.

Section 45. Section 402.3057, Florida Statutes, is amended to read:

402.3057 Persons not required to be refingerprinted or rescreened.—Any provision of law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, and teachers and noninstructional personnel who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6) ~~409.175(5)~~, shall not be required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Reviser's note.—Amended to conform to the redesignation of s. 409.175(5) as s. 409.175(6) by s. 6, ch. 2002-219, Laws of Florida.

Section 46. Paragraph (a) of subsection (2) of section 403.7192, Florida Statutes, is amended to read:

403.7192 Batteries; requirements for consumer, manufacturers, and sellers; penalties.—

(2)(a) ~~A person may not distribute, sell, or offer for sale in this state an alkaline-manganese or zinc-carbon battery that contains more than 0.025 percent mercury by weight.~~ A person may not distribute, sell, or offer for sale in this state an alkaline-manganese or zinc-carbon battery that contains any intentionally introduced mercury and more than 0.0004 percent mercury by weight.

Reviser's note.—Amended to delete language that has served its purpose. The deleted language only applied between July 1, 1993, and January 1, 1996, as enacted by s. 29, ch. 93-207, Laws of Florida.

Section 47. Paragraph (b) of subsection (1) of section 404.20, Florida Statutes, is amended to read:

404.20 Transportation of radioactive materials.—

(1) The department shall adopt reasonable rules governing the transportation of radioactive materials which, in the judgment of the department, will promote the public health, safety, or welfare and protect the environment.

(b) Such rules shall be compatible with, but no less restrictive than, those established by the United States Nuclear Regulatory Commission, the United States Federal Aviation Administration ~~Agency~~, the United States Department of Transportation, the United States Coast Guard, or the United States Postal Service.

Reviser's note.—Amended to conform to the correct title of the United States Federal Aviation Administration.

Section 48. Paragraph (a) of subsection (3) of section 409.017, Florida Statutes, is amended to read:

409.017 Local Funding Revenue Maximization Act; legislative intent; revenue maximization program.—

(3) REVENUE MAXIMIZATION PROGRAM.—

(a) For purposes of this section, the term "agency" means any state agency or department that is involved in providing health, social, or human services, including, but not limited to, the Agency for Health Care Administration, the Agency for Workforce Innovation, the Department of Children and Family Services, the Department of Elderly Affairs, the Department of Juvenile Justice, and the State ~~Florida~~ Board of Education.

Reviser's note.—Amended to conform to the correct title of the State Board of Education as established by s. 1001.01.

Section 49. Paragraphs (g), (h), and (j) of subsection (1) of section 409.1671, Florida Statutes, are amended to read:

409.1671 Foster care and related services; privatization.—

(1)

(g) In any county in which a service contract has not been executed by December 31, 2004, the department shall ensure access to a model comprehensive residential services program as described in s. 409.1677 which, without imposing undue financial, geographic, or other barriers, ensures reasonable and appropriate participation by the family in the child's program.

1. In order to ensure that the program is operational by December 31, 2004, the department must, by December 31, 2003, begin the process of establishing access to a program in any county in which the department has not either entered into a transition contract or approved a community plan, as described in paragraph (d), which ensures full privatization by the statutory deadline.

2. The program must be procured through a competitive process.

3. The Legislature does not intend for the provisions of this paragraph to substitute for the requirement that full conversion to community-based care be accomplished.

(h) Other than an entity to which s. 768.28 applies, any eligible lead community-based provider, as defined in paragraph (e) ~~(c)~~, or its employees or officers, except as otherwise provided in paragraph (i) ~~(g)~~, must, as a part of its contract, obtain a minimum of $1 million per claim/$3 million per incident in general liability insurance coverage. The eligible lead community-based provider must also require that staff who transport client children

and families in their personal automobiles in order to carry out their job responsibilities obtain minimum bodily injury liability insurance in the amount of $100,000 per claim, $300,000 per incident, on their personal automobiles. In any tort action brought against such an eligible lead community-based provider or employee, net economic damages shall be limited to $1 million per liability claim and $100,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In any tort action brought against such an eligible lead community-based provider, noneconomic damages shall be limited to $200,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76. The lead community-based provider shall not be liable in tort for the acts or omissions of its subcontractors or the officers, agents, or employees of its subcontractors.

(j) Any subcontractor of an eligible lead community-based provider, as defined in paragraph (e) ~~(c)~~, which is a direct provider of foster care and related services to children and families, and its employees or officers, except as otherwise provided in paragraph (i) ~~(g)~~, must, as a part of its contract, obtain a minimum of $1 million per claim/$3 million per incident in general liability insurance coverage. The subcontractor of an eligible lead community-based provider must also require that staff who transport client children and families in their personal automobiles in order to carry out their job responsibilities obtain minimum bodily injury liability insurance in the amount of $100,000 per claim, $300,000 per incident, on their personal automobiles. In any tort action brought against such subcontractor or employee, net economic damages shall be limited to $1 million per liability claim and $100,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In any tort action brought against such subcontractor, noneconomic damages shall be limited to $200,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment shall be in accordance with s. 768.76.

Reviser's note.—Amended to conform to the redesignation of subunits of s. 409.1671 by s. 7, ch. 2003-146, Laws of Florida.

Section 50. Section 409.1757, Florida Statutes, is amended to read:

409.1757 Persons not required to be refingerprinted or rescreened.—Any provision of law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and this chapter, and teachers who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451, 402.305(2),

and 409.175(6) ~~409.175(5)~~, shall not be required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Reviser's note.—Amended to conform to the redesignation of s. 409.175(5) as s. 409.175(6) by s. 6, ch. 2002-219, Laws of Florida.

Section 51. Subsection (6) of section 409.904, Florida Statutes, is repealed.

Reviser's note.—Subsection (6), which relates to eligibility for certain Medicaid payments by specified children born before October 1, 1983, who have not yet attained the age of 19, is obsolete.

Section 52. Paragraph (a) of subsection (4) of section 409.9065, Florida Statutes, is amended to read:

409.9065 Pharmaceutical expense assistance.—

(4) ADMINISTRATION.—The pharmaceutical expense assistance program shall be administered by the agency, in collaboration with the Department of Elderly Affairs and the Department of Children and Family Services.

(a) The agency shall, by rule, establish for the pharmaceutical expense assistance program eligibility requirements; limits on participation; benefit limitations, including copayments; a requirement for generic drug substitution; and other program parameters comparable to those of the Medicaid program. Individuals eligible to participate in this program are not subject to the limit of four brand name drugs per month per recipient as specified in s. 409.912(40)(a) ~~409.912(38)(a)~~. There shall be no monetary limit on prescription drugs purchased with discounts of less than 51 percent unless the agency determines there is a risk of a funding shortfall in the program. If the agency determines there is a risk of a funding shortfall, the agency may establish monetary limits on prescription drugs which shall not be less than $160 worth of prescription drugs per month.

Reviser's note.—Amended to conform to the redesignation of s. 409.912(38)(a) as s. 409.912(40)(a) by s. 9, ch. 2003-279, Laws of Florida.

Section 53. Section 409.908, Florida Statutes, is amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be

retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected ~~affected~~ retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(1) Reimbursement to hospitals licensed under part I of chapter 395 must be made prospectively or on the basis of negotiation.

(a) Reimbursement for inpatient care is limited as provided for in s. 409.905(5), except for:

1. The raising of rate reimbursement caps, excluding rural hospitals.

2. Recognition of the costs of graduate medical education.

3. Other methodologies recognized in the General Appropriations Act.

4. Hospital inpatient rates shall be reduced by 6 percent effective July 1, 2001, and restored effective April 1, 2002.

During the years funds are transferred from the Department of Health, any reimbursement supported by such funds shall be subject to certification by the Department of Health that the hospital has complied with s. 381.0403. The agency is authorized to receive funds from state entities, including, but not limited to, the Department of Health, local governments, and other local political subdivisions, for the purpose of making special exception payments, including federal matching funds, through the Medicaid inpatient reimbursement methodologies. Funds received from state entities or local governments for this purpose shall be separately accounted for and shall not be commingled with other state or local funds in any manner. The agency may certify all local governmental funds used as state match under Title XIX of the Social Security Act, to the extent that the identified local health care provider that is otherwise entitled to and is contracted to receive such local funds is the benefactor under the state's Medicaid program as determined under the General Appropriations Act and pursuant to an agreement between the Agency for Health Care Administration and the local governmental entity. The local governmental entity shall use a certification form prescribed by the agency. At a minimum, the certification form shall identify the amount being certified and describe the relationship between the certifying local governmental entity and the local health care provider. The agency shall prepare an annual statement of impact which documents the specific activities undertaken during the previous fiscal year pursuant to this paragraph, to be submitted to the Legislature no later than January 1, annually.

(b) Reimbursement for hospital outpatient care is limited to $1,500 per state fiscal year per recipient, except for:

1. Such care provided to a Medicaid recipient under age 21, in which case the only limitation is medical necessity.

2. Renal dialysis services.

3. Other exceptions made by the agency.

The agency is authorized to receive funds from state entities, including, but not limited to, the Department of Health, the Board of Regents, local governments, and other local political subdivisions, for the purpose of making payments, including federal matching funds, through the Medicaid outpatient reimbursement methodologies. Funds received from state entities and local governments for this purpose shall be separately accounted for and shall not be commingled with other state or local funds in any manner.

(c) Hospitals that provide services to a disproportionate share of low-income Medicaid recipients, or that participate in the regional perinatal intensive care center program under chapter 383, or that participate in the statutory teaching hospital disproportionate share program may receive additional reimbursement. The total amount of payment for disproportionate share hospitals shall be fixed by the General Appropriations Act. The computation of these payments must be made in compliance with all federal regulations and the methodologies described in ss. 409.911, 409.9112, and 409.9113.

(d) The agency is authorized to limit inflationary increases for outpatient hospital services as directed by the General Appropriations Act.

(2)(a)1. Reimbursement to nursing homes licensed under part II of chapter 400 and state-owned-and-operated intermediate care facilities for the developmentally disabled licensed under chapter 393 must be made prospectively.

2. Unless otherwise limited or directed in the General Appropriations Act, reimbursement to hospitals licensed under part I of chapter 395 for the provision of swing-bed nursing home services must be made on the basis of the average statewide nursing home payment, and reimbursement to a hospital licensed under part I of chapter 395 for the provision of skilled nursing services must be made on the basis of the average nursing home payment for those services in the county in which the hospital is located. When a hospital is located in a county that does not have any community nursing homes, reimbursement must be determined by averaging the nursing home payments, in counties that surround the county in which the hospital is located. Reimbursement to hospitals, including Medicaid payment of Medicare copayments, for skilled nursing services shall be limited to 30 days, unless a prior authorization has been obtained from the agency. Medicaid reimbursement may be extended by the agency beyond 30 days, and approval must be based upon verification by the patient's physician that the patient requires short-term rehabilitative and recuperative services

only, in which case an extension of no more than 15 days may be approved. Reimbursement to a hospital licensed under part I of chapter 395 for the temporary provision of skilled nursing services to nursing home residents who have been displaced as the result of a natural disaster or other emergency may not exceed the average county nursing home payment for those services in the county in which the hospital is located and is limited to the period of time which the agency considers necessary for continued placement of the nursing home residents in the hospital.

(b) Subject to any limitations or directions provided for in the General Appropriations Act, the agency shall establish and implement a Florida Title XIX Long-Term Care Reimbursement Plan (Medicaid) for nursing home care in order to provide care and services in conformance with the applicable state and federal laws, rules, regulations, and quality and safety standards and to ensure that individuals eligible for medical assistance have reasonable geographic access to such care.

1. Changes of ownership or of licensed operator do not qualify for increases in reimbursement rates associated with the change of ownership or of licensed operator. The agency shall amend the Title XIX Long Term Care Reimbursement Plan to provide that the initial nursing home reimbursement rates, for the operating, patient care, and MAR components, associated with related and unrelated party changes of ownership or licensed operator filed on or after September 1, 2001, are equivalent to the previous owner's reimbursement rate.

2. The agency shall amend the long-term care reimbursement plan and cost reporting system to create direct care and indirect care subcomponents of the patient care component of the per diem rate. These two subcomponents together shall equal the patient care component of the per diem rate. Separate cost-based ceilings shall be calculated for each patient care subcomponent. The direct care subcomponent of the per diem rate shall be limited by the cost-based class ceiling, and the indirect care subcomponent shall be limited by the lower of the cost-based class ceiling, by the target rate class ceiling, or by the individual provider target. The agency shall adjust the patient care component effective January 1, 2002. The cost to adjust the direct care subcomponent shall be net of the total funds previously allocated for the case mix add-on. The agency shall make the required changes to the nursing home cost reporting forms to implement this requirement effective January 1, 2002.

3. The direct care subcomponent shall include salaries and benefits of direct care staff providing nursing services including registered nurses, licensed practical nurses, and certified nursing assistants who deliver care directly to residents in the nursing home facility. This excludes nursing administration, MDS, and care plan coordinators, staff development, and staffing coordinator.

4. All other patient care costs shall be included in the indirect care cost subcomponent of the patient care per diem rate. There shall be no costs directly or indirectly allocated to the direct care subcomponent from a home office or management company.

5. On July 1 of each year, the agency shall report to the Legislature direct and indirect care costs, including average direct and indirect care costs per resident per facility and direct care and indirect care salaries and benefits per category of staff member per facility.

6. In order to offset the cost of general and professional liability insurance, the agency shall amend the plan to allow for interim rate adjustments to reflect increases in the cost of general or professional liability insurance for nursing homes. This provision shall be implemented to the extent existing appropriations are available.

It is the intent of the Legislature that the reimbursement plan achieve the goal of providing access to health care for nursing home residents who require large amounts of care while encouraging diversion services as an alternative to nursing home care for residents who can be served within the community. The agency shall base the establishment of any maximum rate of payment, whether overall or component, on the available moneys as provided for in the General Appropriations Act. The agency may base the maximum rate of payment on the results of scientifically valid analysis and conclusions derived from objective statistical data pertinent to the particular maximum rate of payment.

(3) Subject to any limitations or directions provided for in the General Appropriations Act, the following Medicaid services and goods may be reimbursed on a fee-for-service basis. For each allowable service or goods furnished in accordance with Medicaid rules, policy manuals, handbooks, and state and federal law, the payment shall be the amount billed by the provider, the provider's usual and customary charge, or the maximum allowable fee established by the agency, whichever amount is less, with the exception of those services or goods for which the agency makes payment using a methodology based on capitation rates, average costs, or negotiated fees.

(a) Advanced registered nurse practitioner services.

(b) Birth center services.

(c) Chiropractic services.

(d) Community mental health services.

(e) Dental services, including oral and maxillofacial surgery.

(f) Durable medical equipment.

(g) Hearing services.

(h) Occupational therapy for Medicaid recipients under age 21.

(i) Optometric services.

(j) Orthodontic services.

(k) Personal care for Medicaid recipients under age 21.

(l) Physical therapy for Medicaid recipients under age 21.

(m) Physician assistant services.

(n) Podiatric services.

(o) Portable X-ray services.

(p) Private-duty nursing for Medicaid recipients under age 21.

(q) Registered nurse first assistant services.

(r) Respiratory therapy for Medicaid recipients under age 21.

(s) Speech therapy for Medicaid recipients under age 21.

(t) Visual services.

(4) Subject to any limitations or directions provided for in the General Appropriations Act, alternative health plans, health maintenance organizations, and prepaid health plans shall be reimbursed a fixed, prepaid amount negotiated, or competitively bid pursuant to s. 287.057, by the agency and prospectively paid to the provider monthly for each Medicaid recipient enrolled. The amount may not exceed the average amount the agency determines it would have paid, based on claims experience, for recipients in the same or similar category of eligibility. The agency shall calculate capitation rates on a regional basis and, beginning September 1, 1995, shall include age-band differentials in such calculations. Effective July 1, 2001, the cost of exempting statutory teaching hospitals, specialty hospitals, and community hospital education program hospitals from reimbursement ceilings and the cost of special Medicaid payments shall not be included in premiums paid to health maintenance organizations or prepaid health care plans. Each rate semester, the agency shall calculate and publish a Medicaid hospital rate schedule that does not reflect either special Medicaid payments or the elimination of rate reimbursement ceilings, to be used by hospitals and Medicaid health maintenance organizations, in order to determine the Medicaid rate referred to in ss. 409.912(19) ~~409.912(17)~~, 409.9128(5), and 641.513(6).

(5) An ambulatory surgical center shall be reimbursed the lesser of the amount billed by the provider or the Medicare-established allowable amount for the facility.

(6) A provider of early and periodic screening, diagnosis, and treatment services to Medicaid recipients who are children under age 21 shall be reimbursed using an all-inclusive rate stipulated in a fee schedule established by the agency. A provider of the visual, dental, and hearing components of such services shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the agency.

(7) A provider of family planning services shall be reimbursed the lesser of the amount billed by the provider or an all-inclusive amount per type of visit for physicians and advanced registered nurse practitioners, as established by the agency in a fee schedule.

(8) A provider of home-based or community-based services rendered pursuant to a federally approved waiver shall be reimbursed based on an established or negotiated rate for each service. These rates shall be established according to an analysis of the expenditure history and prospective budget developed by each contract provider participating in the waiver program, or under any other methodology adopted by the agency and approved by the Federal Government in accordance with the waiver. Effective July 1, 1996, privately owned and operated community-based residential facilities which meet agency requirements and which formerly received Medicaid reimbursement for the optional intermediate care facility for the mentally retarded service may participate in the developmental services waiver as part of a home-and-community-based continuum of care for Medicaid recipients who receive waiver services.

(9) A provider of home health care services or of medical supplies and appliances shall be reimbursed on the basis of competitive bidding or for the lesser of the amount billed by the provider or the agency's established maximum allowable amount, except that, in the case of the rental of durable medical equipment, the total rental payments may not exceed the purchase price of the equipment over its expected useful life or the agency's established maximum allowable amount, whichever amount is less.

(10) A hospice shall be reimbursed through a prospective system for each Medicaid hospice patient at Medicaid rates using the methodology established for hospice reimbursement pursuant to Title XVIII of the federal Social Security Act.

(11) A provider of independent laboratory services shall be reimbursed on the basis of competitive bidding or for the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the agency.

(12)(a) A physician shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the agency.

(b) The agency shall adopt a fee schedule, subject to any limitations or directions provided for in the General Appropriations Act, based on a resource-based relative value scale for pricing Medicaid physician services. Under this fee schedule, physicians shall be paid a dollar amount for each service based on the average resources required to provide the service, including, but not limited to, estimates of average physician time and effort, practice expense, and the costs of professional liability insurance. The fee schedule shall provide increased reimbursement for preventive and primary care services and lowered reimbursement for specialty services by using at least two conversion factors, one for cognitive services and another for procedural services. The fee schedule shall not increase total Medicaid physician

expenditures unless moneys are available, and shall be phased in over a 2-year period beginning on July 1, 1994. The Agency for Health Care Administration shall seek the advice of a 16-member advisory panel in formulating and adopting the fee schedule. The panel shall consist of Medicaid physicians licensed under chapters 458 and 459 and shall be composed of 50 percent primary care physicians and 50 percent specialty care physicians.

(c) Notwithstanding paragraph (b), reimbursement fees to physicians for providing total obstetrical services to Medicaid recipients, which include prenatal, delivery, and postpartum care, shall be at least $1,500 per delivery for a pregnant woman with low medical risk and at least $2,000 per delivery for a pregnant woman with high medical risk. However, reimbursement to physicians working in Regional Perinatal Intensive Care Centers designated pursuant to chapter 383, for services to certain pregnant Medicaid recipients with a high medical risk, may be made according to obstetrical care and neonatal care groupings and rates established by the agency. Nurse midwives licensed under part I of chapter 464 or midwives licensed under chapter 467 shall be reimbursed at no less than 80 percent of the low medical risk fee. The agency shall by rule determine, for the purpose of this paragraph, what constitutes a high or low medical risk pregnant woman and shall not pay more based solely on the fact that a caesarean section was performed, rather than a vaginal delivery. The agency shall by rule determine a prorated payment for obstetrical services in cases where only part of the total prenatal, delivery, or postpartum care was performed. The Department of Health shall adopt rules for appropriate insurance coverage for midwives licensed under chapter 467. Prior to the issuance and renewal of an active license, or reactivation of an inactive license for midwives licensed under chapter 467, such licensees shall submit proof of coverage with each application.

~~(d) For fiscal years 2001-2002 and 2002-2003 only and if necessary to meet the requirements for grants and donations for the special Medicaid payments authorized in the 2001-2002 and 2002-2003 General Appropriations Acts, the agency may make special Medicaid payments to qualified Medicaid providers designated by the agency, notwithstanding any provision of this subsection to the contrary, and may use intergovernmental transfers from state entities or other governmental entities to serve as the state share of such payments.~~

(13) Medicare premiums for persons eligible for both Medicare and Medicaid coverage shall be paid at the rates established by Title XVIII of the Social Security Act. For Medicare services rendered to Medicaid-eligible persons, Medicaid shall pay Medicare deductibles and coinsurance as follows:

(a) Medicaid shall make no payment toward deductibles and coinsurance for any service that is not covered by Medicaid.

(b) Medicaid's financial obligation for deductibles and coinsurance payments shall be based on Medicare allowable fees, not on a provider's billed charges.

(c) Medicaid will pay no portion of Medicare deductibles and coinsurance when payment that Medicare has made for the service equals or exceeds what Medicaid would have paid if it had been the sole payor. The combined payment of Medicare and Medicaid shall not exceed the amount Medicaid would have paid had it been the sole payor. The Legislature finds that there has been confusion regarding the reimbursement for services rendered to dually eligible Medicare beneficiaries. Accordingly, the Legislature clarifies that it has always been the intent of the Legislature before and after 1991 that, in reimbursing in accordance with fees established by Title XVIII for premiums, deductibles, and coinsurance for Medicare services rendered by physicians to Medicaid eligible persons, physicians be reimbursed at the lesser of the amount billed by the physician or the Medicaid maximum allowable fee established by the Agency for Health Care Administration, as is permitted by federal law. It has never been the intent of the Legislature with regard to such services rendered by physicians that Medicaid be required to provide any payment for deductibles, coinsurance, or copayments for Medicare cost sharing, or any expenses incurred relating thereto, in excess of the payment amount provided for under the State Medicaid plan for such service. This payment methodology is applicable even in those situations in which the payment for Medicare cost sharing for a qualified Medicare beneficiary with respect to an item or service is reduced or eliminated. This expression of the Legislature is in clarification of existing law and shall apply to payment for, and with respect to provider agreements with respect to, items or services furnished on or after the effective date of this act. This paragraph applies to payment by Medicaid for items and services furnished before the effective date of this act if such payment is the subject of a lawsuit that is based on the provisions of this section, and that is pending as of, or is initiated after, the effective date of this act.

(d) Notwithstanding paragraphs (a)-(c):

1. Medicaid payments for Nursing Home Medicare part A coinsurance shall be the lesser of the Medicare coinsurance amount or the Medicaid nursing home per diem rate.

2. Medicaid shall pay all deductibles and coinsurance for Medicare-eligible recipients receiving freestanding end stage renal dialysis center services.

3. Medicaid payments for general hospital inpatient services shall be limited to the Medicare deductible per spell of illness. Medicaid shall make no payment toward coinsurance for Medicare general hospital inpatient services.

4. Medicaid shall pay all deductibles and coinsurance for Medicare emergency transportation services provided by ambulances licensed pursuant to chapter 401.

(14) A provider of prescribed drugs shall be reimbursed the least of the amount billed by the provider, the provider's usual and customary charge, or the Medicaid maximum allowable fee established by the agency, plus a dispensing fee. The agency is directed to implement a variable dispensing fee for payments for prescribed medicines while ensuring continued access

for Medicaid recipients. The variable dispensing fee may be based upon, but not limited to, either or both the volume of prescriptions dispensed by a specific pharmacy provider, the volume of prescriptions dispensed to an individual recipient, and dispensing of preferred-drug-list products. The agency may increase the pharmacy dispensing fee authorized by statute and in the annual General Appropriations Act by $0.50 for the dispensing of a Medicaid preferred-drug-list product and reduce the pharmacy dispensing fee by $0.50 for the dispensing of a Medicaid product that is not included on the preferred-drug list. The agency may establish a supplemental pharmaceutical dispensing fee to be paid to providers returning unused unit-dose packaged medications to stock and crediting the Medicaid program for the ingredient cost of those medications if the ingredient costs to be credited exceed the value of the supplemental dispensing fee. The agency is authorized to limit reimbursement for prescribed medicine in order to comply with any limitations or directions provided for in the General Appropriations Act, which may include implementing a prospective or concurrent utilization review program.

(15) A provider of primary care case management services rendered pursuant to a federally approved waiver shall be reimbursed by payment of a fixed, prepaid monthly sum for each Medicaid recipient enrolled with the provider.

(16) A provider of rural health clinic services and federally qualified health center services shall be reimbursed a rate per visit based on total reasonable costs of the clinic, as determined by the agency in accordance with federal regulations.

(17) A provider of targeted case management services shall be reimbursed pursuant to an established fee, except where the Federal Government requires a public provider be reimbursed on the basis of average actual costs.

(18) Unless otherwise provided for in the General Appropriations Act, a provider of transportation services shall be reimbursed the lesser of the amount billed by the provider or the Medicaid maximum allowable fee established by the agency, except when the agency has entered into a direct contract with the provider, or with a community transportation coordinator, for the provision of an all-inclusive service, or when services are provided pursuant to an agreement negotiated between the agency and the provider. The agency, as provided for in s. 427.0135, shall purchase transportation services through the community coordinated transportation system, if available, unless the agency determines a more cost-effective method for Medicaid clients. Nothing in this subsection shall be construed to limit or preclude the agency from contracting for services using a prepaid capitation rate or from establishing maximum fee schedules, individualized reimbursement policies by provider type, negotiated fees, prior authorization, competitive bidding, increased use of mass transit, or any other mechanism that the agency considers efficient and effective for the purchase of services on behalf of Medicaid clients, including implementing a transportation eligibility process. The agency shall not be required to contract with any community transportation coordinator or transportation operator that has been determined by the agency, the Department of Legal Affairs Medicaid Fraud

Control Unit, or any other state or federal agency to have engaged in any abusive or fraudulent billing activities. The agency is authorized to competitively procure transportation services or make other changes necessary to secure approval of federal waivers needed to permit federal financing of Medicaid transportation services at the service matching rate rather than the administrative matching rate.

(19) County health department services may be reimbursed a rate per visit based on total reasonable costs of the clinic, as determined by the agency in accordance with federal regulations under the authority of 42 C.F.R. s. 431.615.

(20) A renal dialysis facility that provides dialysis services under s. 409.906(9) must be reimbursed the lesser of the amount billed by the provider, the provider's usual and customary charge, or the maximum allowable fee established by the agency, whichever amount is less.

(21) The agency shall reimburse school districts which certify the state match pursuant to ss. 409.9071 and 1011.70 for the federal portion of the school district's allowable costs to deliver the services, based on the reimbursement schedule. The school district shall determine the costs for delivering services as authorized in ss. 409.9071 and 1011.70 for which the state match will be certified. Reimbursement of school-based providers is contingent on such providers being enrolled as Medicaid providers and meeting the qualifications contained in 42 C.F.R. s. 440.110, unless otherwise waived by the federal Health Care Financing Administration. Speech therapy providers who are certified through the Department of Education pursuant to rule 6A-4.0176, Florida Administrative Code, are eligible for reimbursement for services that are provided on school premises. Any employee of the school district who has been fingerprinted and has received a criminal background check in accordance with Department of Education rules and guidelines shall be exempt from any agency requirements relating to criminal background checks.

(22) The agency shall request and implement Medicaid waivers from the federal Health Care Financing Administration to advance and treat a portion of the Medicaid nursing home per diem as capital for creating and operating a risk-retention group for self-insurance purposes, consistent with federal and state laws and rules.

Reviser's note.—The introductory paragraph to the section is amended to improve clarity and conform to context. Subsection (4) is amended to conform to the redesignation of s. 409.912(17) as s. 409.912(19) by s. 9, ch. 2003-279, Laws of Florida. Subsection (12), which relates to special Medicaid payments for fiscal years 2001-2002 and 2002-2003, is repealed to delete an obsolete provision.

Section 54. Subsections (1) and (2) of section 409.91196, Florida Statutes, are amended to read:

409.91196 Supplemental rebate agreements; confidentiality of records and meetings.—

(1) Trade secrets, rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebates which are contained in records of the Agency for Health Care Administration and its agents with respect to supplemental rebate negotiations and which are prepared pursuant to a supplemental rebate agreement under s. 409.912(40)(a)7. ~~409.912(38)(a)7.~~ are confidential and exempt from s. 119.07 and s. 24(a), Art. I of the State Constitution.

(2) Those portions of meetings of the Medicaid Pharmaceutical and Therapeutics Committee at which trade secrets, rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebates are disclosed for discussion or negotiation of a supplemental rebate agreement under s. 409.912(40)(a)7. ~~409.912(38)(a)7.~~ are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

Reviser's note.—Amended to conform to the redesignation of s. 409.912(38)(a)7. as s. 409.912(40)(a)7. by s. 9, ch. 2003-279, Laws of Florida.

Section 55. Subsection (38) of section 409.912, Florida Statutes, is repealed, and paragraph (c) of subsection (4), paragraph (c) of subsection (21), and subsection (29) of that section are amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency may establish prior authorization requirements for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization.

(4) The agency may contract with:

(c) A federally qualified health center or an entity owned by one or more federally qualified health centers or an entity owned by other migrant and community health centers receiving non-Medicaid financial support from the Federal Government to provide health care services on a prepaid or fixed-sum basis to recipients. Such prepaid health care services entity must be licensed under parts I and III of chapter 641, but shall be prohibited from serving Medicaid recipients on a prepaid basis, until such licensure has been obtained. However, such an entity is exempt from s. 641.225 if the entity meets the requirements specified in subsections (17) and (18) ~~(15) and (16)~~.

(21) Any entity contracting with the agency pursuant to this section to provide health care services to Medicaid recipients is prohibited from engaging in any of the following practices or activities:

(c) Granting or offering of any monetary or other valuable consideration for enrollment, except as authorized by subsection (24) ~~(22)~~.

(29) The agency shall perform enrollments and disenrollments for Medicaid recipients who are eligible for MediPass or managed care plans. Notwithstanding the prohibition contained in paragraph (21)(f) ~~(19)(f)~~, managed care plans may perform preenrollments of Medicaid recipients under the supervision of the agency or its agents. For the purposes of this section, "preenrollment" means the provision of marketing and educational materials to a Medicaid recipient and assistance in completing the application forms, but shall not include actual enrollment into a managed care plan. An application for enrollment shall not be deemed complete until the agency or its agent verifies that the recipient made an informed, voluntary choice. The agency, in cooperation with the Department of Children and Family Services, may test new marketing initiatives to inform Medicaid recipients about their managed care options at selected sites. The agency shall report to the Legislature on the effectiveness of such initiatives. The agency may contract with a third party to perform managed care plan and MediPass enrollment and disenrollment services for Medicaid recipients and is authorized to adopt rules to implement such services. The agency may adjust the capitation rate only to cover the costs of a third-party enrollment and disenrollment contract, and for agency supervision and management of the managed care plan enrollment and disenrollment contract.

Reviser's note.—Paragraph (4)(c), paragraph (21)(c), and subsection (29) are amended to conform to the redesignation of subunits of s. 409.912 by s. 9, ch. 2003-279, Laws of Florida. Subsection (38) is repealed to delete material relating to a 3-year managed care pilot program that has been completed.

Section 56. Paragraph (f) of subsection (2) of section 409.9122, Florida Statutes, is amended to read:

409.9122 Mandatory Medicaid managed care enrollment; programs and procedures.—

(2)

(f) When a Medicaid recipient does not choose a managed care plan or MediPass provider, the agency shall assign the Medicaid recipient to a managed care plan or MediPass provider. Medicaid recipients who are subject to mandatory assignment but who fail to make a choice shall be assigned to managed care plans until an enrollment of 40 percent in MediPass and 60 percent in managed care plans is achieved. Once this enrollment is achieved, the assignments shall be divided in order to maintain an enrollment in MediPass and managed care plans which is in a 40 percent and 60 percent proportion, respectively. Thereafter, assignment of Medicaid recipients who fail to make a choice shall be based proportionally on the preferences of recipients who have made a choice in the previous period. Such proportions shall be revised at least quarterly to reflect an update of the preferences of Medicaid recipients. The agency shall disproportionately assign Medicaid-eligible recipients who are required to but have failed to make a choice of managed care plan or MediPass, including children, and who are

to be assigned to the MediPass program to children's networks as described in s. 409.912(4)(g) ~~409.912(3)(g)~~, Children's Medical Services network as defined in s. 391.021, exclusive provider organizations, provider service networks, minority physician networks, and pediatric emergency department diversion programs authorized by this chapter or the General Appropriations Act, in such manner as the agency deems appropriate, until the agency has determined that the networks and programs have sufficient numbers to be economically operated. For purposes of this paragraph, when referring to assignment, the term "managed care plans" includes health maintenance organizations, exclusive provider organizations, provider service networks, minority physician networks, Children's Medical Services network, and pediatric emergency department diversion programs authorized by this chapter or the General Appropriations Act. When making assignments, the agency shall take into account the following criteria:

1. A managed care plan has sufficient network capacity to meet the need of members.

2. The managed care plan or MediPass has previously enrolled the recipient as a member, or one of the managed care plan's primary care providers or MediPass providers has previously provided health care to the recipient.

3. The agency has knowledge that the member has previously expressed a preference for a particular managed care plan or MediPass provider as indicated by Medicaid fee-for-service claims data, but has failed to make a choice.

4. The managed care plan's or MediPass primary care providers are geographically accessible to the recipient's residence.

Reviser's note.—Amended to conform to the redesignation of s. 409.912(3)(g) as s. 409.912(4)(g) by s. 9, ch. 2003-279, Laws of Florida.

Section 57. Paragraph (c) of subsection (3) of section 414.095, Florida Statutes, is amended to read:

414.095 Determining eligibility for temporary cash assistance.—

(3) ELIGIBILITY FOR NONCITIZENS.—A "qualified noncitizen" is an individual who is admitted to the United States as a refugee under s. 207 of the Immigration and Nationality Act or who is granted asylum under s. 208 of the Immigration and Nationality Act; a noncitizen whose deportation is withheld under s. 243(h) or s. 241(b)(3) of the Immigration and Nationality Act; a noncitizen who is paroled into the United States under s. 212(d)(5) of the Immigration and Nationality Act, for at least 1 year; a noncitizen who is granted conditional entry pursuant to s. 203(a)(7) of the Immigration and Nationality Act as in effect prior to April 1, 1980; a Cuban or Haitian entrant; or a noncitizen who has been admitted as a permanent resident. In addition, a "qualified noncitizen" includes an individual who, or an individual whose child or parent, has been battered or subject to extreme cruelty in the United States by a spouse, a parent, or other household member under certain circumstances, and has applied for or received protection under the federal Violence Against Women Act of 1994, Pub. L. No. 103-322, if the need

for benefits is related to the abuse and the batterer no longer lives in the household. A "nonqualified noncitizen" is a nonimmigrant noncitizen, including a tourist, business visitor, foreign student, exchange visitor, temporary worker, or diplomat. In addition, a "nonqualified noncitizen" includes an individual paroled into the United States for less than 1 year. A qualified noncitizen who is otherwise eligible may receive temporary cash assistance to the extent permitted by federal law. The income or resources of a sponsor and the sponsor's spouse shall be included in determining eligibility to the maximum extent permitted by federal law.

(c) The department shall participate in the Systematic Alien Verification for Entitlements Program (SAVE) established by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ in order to verify the validity of documents provided by noncitizens and to verify a noncitizen's eligibility.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 58. Section 414.70, Florida Statutes, is repealed.

Reviser's note.—This section created a drug-screening and drug-testing program that expired June 30, 2001.

Section 59. Paragraph (d) of subsection (15) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(15)

(d) "Employee" does not include:

1. An independent contractor who is not engaged in the construction industry.

a. In order to meet the definition of independent contractor, at least four of the following criteria must be met:

(I) The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;

(II) The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;

(III) The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;

(IV) The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;

(V) The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or

(VI) The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

b. If four of the criteria listed in sub-subparagraph a. do not exist, an individual may still be presumed to be an independent contractor and not an employee based on full consideration of the nature of the individual situation with regard to satisfying any of the following conditions:

(I) The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.

(II) The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.

(III) The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.

(IV) The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.

(V) The independent contractor may realize a profit or suffer a loss in connection with performing work or services.

(VI) The independent contractor has continuing or recurring business liabilities or obligations.

(VII) The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

c. Notwithstanding anything to the contrary in this subparagraph, an individual claiming to be an independent contractor has the burden of proving that he or she is an independent contractor for purposes of this chapter.

2. A real estate licensee, if that person agrees, in writing, to perform for remuneration solely by way of commission.

3. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, if a written contract evidencing an independent contractor relationship is entered into before the commencement of such entertainment.

4. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, if the owner-operator is required to furnish the necessary motor vehicle equipment and all costs incidental to the performance of the contract, including, but not limited to, fuel, taxes, licenses, repairs, and hired help; and the owner-operator is paid a commission for transportation service and is not paid by the hour or on some other time-measured basis.

5. A person whose employment is both casual and not in the course of the trade, business, profession, or occupation of the employer.

6. A volunteer, except a volunteer worker for the state or a county, municipality, or other governmental entity. A person who does not receive monetary remuneration for services is presumed to be a volunteer unless there is substantial evidence that a valuable consideration was intended by both employer and employee. For purposes of this chapter, the term "volunteer" includes, but is not limited to:

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees in the same agency or, if such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the department; and

b. Volunteers participating in federal programs established under Pub. L. No. 93-113.

7. Unless otherwise prohibited by this chapter, any officer of a corporation who elects to be exempt from this chapter. Such officer is not an employee for any reason under this chapter until the notice of revocation of election filed pursuant to s. 440.05 is effective.

8. An officer of a corporation that is engaged in the construction industry who elects to be exempt from the provisions of this chapter, as otherwise permitted by this chapter. Such officer is not an employee for any reason until the notice of revocation of election filed pursuant to s. 440.05 is effective.

9. An exercise rider who does not work for a single horse farm or breeder, and who is compensated for riding on a case-by-case basis, provided a written contract is entered into prior to the commencement of such activity which evidences that an employee/employer relationship does not exist.

10. A taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges paid by the

driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues.

11. A person who performs services as a sports official for an entity sponsoring an interscholastic sports event or for a public entity or private, nonprofit organization that sponsors an amateur sports event. For purposes of this subparagraph, such a person is an independent contractor. For purposes of this subparagraph, the term "sports official" means any person who is a neutral participant in a sports event, including, but not limited to, umpires, referees, judges, linespersons, scorekeepers, or timekeepers. This subparagraph does not apply to any person employed by a district school board who serves as a sports official as required by the employing school board or who serves as a sports official as part of his or her responsibilities during normal school hours.

12. Medicaid-enrolled clients under chapter 393 who are excluded from the definition of employment under s. 443.1216(4)(d) ~~443.036(21)(d)5.~~ and served by Adult Day Training Services under the Home and Community-Based Medicaid Waiver program in a sheltered workshop setting licensed by the United States Department of Labor for the purpose of training and earning less than the federal hourly minimum wage.

Reviser's note.—Amended to conform to the repeal of s. 443.036(21)(d)5. by s. 17, ch. 2003-36, Laws of Florida. Substantially similar material appears in s. 443.1216(4)(d) created by s. 30, ch. 2003-36.

Section 60. Paragraph (p) of subsection (5) of section 440.102, Florida Statutes, is amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(p) All authorized remedial treatment, care, and attendance provided by a health care provider to an injured employee before medical and indemnity benefits are denied under this section must be paid for by the carrier or self-insurer. However, the carrier or self-insurer must have given reasonable notice to all affected health care providers that payment for treatment, care, and attendance provided to the employee after a future date certain will be denied. A health care provider, as defined in s. 440.13(1)(h) ~~440.13(1)(i)~~, that refuses, without good cause, to continue treatment, care, and attendance before the provider receives notice of benefit denial commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Reviser's note.—Amended to conform to the redesignation of s. 440.13(1)(i) as s. 440.13(1)(h) by s. 15, ch. 2003-412, Laws of Florida.

Section 61. Subsection (4) of section 440.14, Florida Statutes, is amended to read:

440.14 Determination of pay.—

(4) Upon termination of the employee or upon termination of the payment of fringe benefits of any employee who is collecting indemnity benefits pursuant to s. 440.15(2) or (3), the employer shall within 7 days of such termination file a corrected 13-week wage statement reflecting the wages paid and the fringe benefits that had been paid to the injured employee, as provided in s. 440.02(28) ~~440.02(27)~~.

Reviser's note.—Amended to conform to the redesignation of s. 440.02(27) as s. 440.02(28) by s. 11, ch. 2002-194, Laws of Florida.

Section 62. Paragraph (b) of subsection (3) of section 440.15, Florida Statutes, is amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(3) PERMANENT IMPAIRMENT BENEFITS.—

(b) The three-member panel, in cooperation with the department, shall establish and use a uniform permanent impairment rating schedule. This schedule must be based on medically or scientifically demonstrable findings as well as the systems and criteria set forth in the American Medical Association's Guides to the Evaluation of Permanent Impairment; the Snellen Charts, published by the American Medical Association Committee for Eye Injuries; and the Minnesota Department of Labor and Industry Disability Schedules. The schedule must be based upon objective findings. The schedule shall be more comprehensive than the AMA Guides to the Evaluation of Permanent Impairment and shall expand the areas already addressed and address additional areas not currently contained in the guides. On August 1, 1979, and pending the adoption, by rule, of a permanent schedule, Guides to the Evaluation of Permanent Impairment, copyright 1977, 1971, 1988, by the American Medical Association, shall be the temporary schedule and shall be used for the purposes hereof. For injuries after July 1, 1990, pending the adoption by rule of a uniform disability rating agency schedule, the Minnesota Department of Labor and Industry Disability Schedule shall be used unless that schedule does not address an injury. In such case, the Guides to the Evaluation of Permanent Impairment by the American Medical Association shall be used. Determination of permanent impairment under this schedule must be made by a physician licensed under chapter 458, a doctor of osteopathic medicine licensed under chapters 458 and 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an optometrist licensed under chapter 463, or a dentist licensed under chapter 466, as appropriate considering the nature of the injury. No other persons are authorized to render opinions regarding the existence of or the extent of permanent impairment.

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

Section 63. Paragraph (b) of subsection (3) and paragraph (h) of subsection (4) of section 440.25, Florida Statutes, are amended to read:

440.25 Procedures for mediation and hearings.—

(3) Such mediation conference shall be conducted informally and does not require the use of formal rules of evidence or procedure. Any information from the files, reports, case summaries, mediator's notes, or other communications or materials, oral or written, relating to a mediation conference under this section obtained by any person performing mediation duties is privileged and confidential and may not be disclosed without the written consent of all parties to the conference. Any research or evaluation effort directed at assessing the mediation program activities or performance must protect the confidentiality of such information. Each party to a mediation conference has a privilege during and after the conference to refuse to disclose and to prevent another from disclosing communications made during the conference whether or not the contested issues are successfully resolved. This subsection and paragraphs (4)(a) and (b) shall not be construed to prevent or inhibit the discovery or admissibility of any information that is otherwise subject to discovery or that is admissible under applicable law or rule of procedure, except that any conduct or statements made during a mediation conference or in negotiations concerning the conference are inadmissible in any proceeding under this chapter.

(b) With respect to any private mediation, if the parties agree or if mediators are not available under paragraph (a), pursuant to notice from the judge of compensation claims, to conduct the required mediation within the period specified in this section, the parties shall hold a mediation conference at the carrier's expense within the 130-day period set for mediation. The mediation conference shall be conducted by a mediator certified under s. 44.106. If the parties do not agree upon a mediator within 10 days after the date of the order, the claimant shall notify the judge in writing and the judge shall appoint a mediator under this <u>paragraph</u> ~~subparagraph~~ within 7 days. In the event both parties agree, the results of the mediation conference shall be binding and neither party shall have a right to appeal the results. In the event either party refuses to agree to the results of the mediation conference, the results of the mediation conference as well as the testimony, witnesses, and evidence presented at the conference shall not be admissible at any subsequent proceeding on the claim. The mediator shall not be called in to testify or give deposition to resolve any claim for any hearing before the judge of compensation claims. The employer may be represented by an attorney at the mediation conference if the employee is also represented by an attorney at the mediation conference.

(4)

(h) To further expedite dispute resolution and to enhance the self-executing features of the system, those petitions filed in accordance with s. 440.192 that involve a claim for benefits of $5,000 or less shall, in the absence of compelling evidence to the contrary, be presumed to be appropriate for expedited resolution under this paragraph; and any other claim filed in accordance with s. 440.192, upon the written agreement of both parties

and application by either party, may similarly be resolved under this paragraph. A claim in a petition of ~~or~~ $5,000 or less for medical benefits only or a petition for reimbursement for mileage for medical purposes shall, in the absence of compelling evidence to the contrary, be resolved through the expedited dispute resolution process provided in this paragraph. For purposes of expedited resolution pursuant to this paragraph, the Deputy Chief Judge shall make provision by rule or order for expedited and limited discovery and expedited docketing in such cases. At least 15 days prior to hearing, the parties shall exchange and file with the judge of compensation claims a pretrial outline of all issues, defenses, and witnesses on a form adopted by the Deputy Chief Judge; provided, in no event shall such hearing be held without 15 days' written notice to all parties. No pretrial hearing shall be held and no mediation scheduled unless requested by a party. The judge of compensation claims shall limit all argument and presentation of evidence at the hearing to a maximum of 30 minutes, and such hearings shall not exceed 30 minutes in length. Neither party shall be required to be represented by counsel. The employer or carrier may be represented by an adjuster or other qualified representative. The employer or carrier and any witness may appear at such hearing by telephone. The rules of evidence shall be liberally construed in favor of allowing introduction of evidence.

Reviser's note.—Paragraph (3)(b) is amended to conform to the redesignation of subparagraph 2. as paragraph (b) by s. 25, ch. 2003-412, Laws of Florida. Paragraph (4)(h) is amended to facilitate correct interpretation.

Section 64. Subsection (3) of section 440.33, Florida Statutes, is amended to read:

440.33 Powers of judges of compensation claims.—

(3) Before adjudicating a claim for permanent total disability benefits, the judge of compensation claims may request an evaluation pursuant to s. 440.491(6) ~~440.49(1)(a)~~ for the purpose of assisting the judge of compensation claims in the determination of whether there is a reasonable probability that, with appropriate training or education, the employee may be rehabilitated to the extent that such employee can achieve suitable gainful employment and whether it is in the best interest of the employee to undertake such training or education.

Reviser's note.—Amended to conform to the repeal of s. 440.49(1), relating to rehabilitation, by s. 43, ch. 93-415, Laws of Florida, and the enactment of similar language in s. 440.491(6) by s. 44, ch. 93-415.

Section 65. Paragraph (a) of subsection (1) of section 440.385, Florida Statutes, is amended to read:

440.385 Florida Self-Insurers Guaranty Association, Incorporated.—

(1) CREATION OF ASSOCIATION.—

(a) There is created a nonprofit corporation to be known as the "Florida Self-Insurers Guaranty Association, Incorporated," hereinafter referred to as "the association." Upon incorporation of the association, all individual

self-insurers as defined in ss. 440.02(24)(a) ~~440.02(23)(a)~~ and 440.38(1)(b), other than individual self-insurers which are public utilities or governmental entities, shall be members of the association as a condition of their authority to individually self-insure in this state. The association shall perform its functions under a plan of operation as established and approved under subsection (5) and shall exercise its powers and duties through a board of directors as established under subsection (2). The association shall have those powers granted or permitted corporations not for profit, as provided in chapter 617. The activities of the association shall be subject to review by the department. The department shall have oversight responsibility as set forth in this section. The association is specifically authorized to enter into agreements with this state to perform specified services.

Reviser's note.—Amended to conform to the redesignation of s. 440.02(23)(a) as s. 440.02(24)(a) by s. 11, ch. 2002-194, Laws of Florida.

Section 66. Paragraph (b) of subsection (1) and paragraph (c) of subsection (2) of section 440.45, Florida Statutes, are amended to read:

440.45 Office of the Judges of Compensation Claims.—

(1)

(b) ~~The current term of the Chief Judge of Compensation Claims shall expire October 1, 2001.~~ Effective October 1, 2001, the position of Deputy Chief Judge of Compensation Claims is created.

(2)

(c) Each judge of compensation claims shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause. Prior to the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. Effective July 1, 2002, in determining whether a judge's performance is satisfactory, the commission shall consider the extent to which the judge has met the requirements of this chapter, including, but not limited to, the requirements of ss. 440.25(1) and (4)(a)-(e) ~~440.25(1) and (4)(a)-(f)~~, 440.34(2), and 440.442. If the judge's performance is deemed satisfactory, the commission shall report its finding to the Governor no later than 6 months prior to the expiration of the judge's term of office. The Governor shall review the commission's report and may reappoint the judge for an additional 4-year term. If the Governor does not reappoint the judge, the Governor shall inform the commission. The judge shall remain in office until the Governor has appointed a successor judge in accordance with paragraphs (a) and (b). If a vacancy occurs during a judge's unexpired term, the statewide nominating commission does not find the judge's performance is satisfactory, or the Governor does not reappoint the judge, the Governor shall appoint a successor judge for a term of 4 years in accordance with paragraph (b).

Reviser's note.—Paragraph (1)(b) is amended to delete an obsolete provision relating to the term of the Chief Judge of Compensation Claims. Para-

graph (2)(c) is amended to conform to the repeal of s. 440.25(4)(f) by s. 25, ch. 2003-412, Laws of Florida.

Section 67. Paragraph (a) of subsection (6) of section 440.491, Florida Statutes, is amended to read:

440.491 Reemployment of injured workers; rehabilitation.—

(6) TRAINING AND EDUCATION.—

(a) Upon referral of an injured employee by the carrier, or upon the request of an injured employee, the department shall conduct a training and education screening to determine whether it should refer the employee for a vocational evaluation and, if appropriate, approve training and education or other vocational services for the employee. The department may not approve formal training and education programs unless it determines, after consideration of the reemployment assessment, pertinent reemployment status reviews or reports, and such other relevant factors as it prescribes by rule, that the reemployment plan is likely to result in return to suitable gainful employment. The department is authorized to expend moneys from the Workers' Compensation Administration Trust Fund, established by s. 440.50, to secure appropriate training and education at a community college as designated in s. 1000.21(3) ~~established under part III of chapter 240~~ or at a vocational-technical school established under s. 1001.44 ~~230.63~~, or to secure other vocational services when necessary to satisfy the recommendation of a vocational evaluator. As used in this paragraph, "appropriate training and education" includes securing a general education diploma (GED), if necessary. The department shall establish training and education standards pertaining to employee eligibility, course curricula and duration, and associated costs.

Reviser's note.—Amended to conform to the repeal of part III of chapter 240 by s. 1058, ch. 2002-387, Laws of Florida, and the enactment of similar material at part III of chapter 1001, and the repeal of s. 230.63 by s. 1058, ch. 2002-387, and the creation of similar material at s. 1001.44.

Section 68. Section 440.515, Florida Statutes, is amended to read:

440.515 Reports from self-insurers; confidentiality.—The department shall maintain the reports filed in accordance with former s. 440.51(6)(b) as confidential and exempt from the provisions of s. 119.07(1), and such reports shall be released only for bona fide research or educational purposes or after receipt of consent from the employer.

Reviser's note.—Amended to conform to the repeal of s. 440.51(6)(b) by s. 5, ch. 2002-262, Laws of Florida.

Section 69. Subsection (3) of section 440.60, Florida Statutes, is amended to read:

440.60 Application of laws.—

(3) All acts or proceedings performed by or on behalf of the former Division of Workers' Compensation of the Department of Labor and Employment

Security or the employer, or in which the division or the employer was a party under s. 440.15(1) and (3) between October 1, 1974, and July 10, 1987, are ratified and validated in all respects if such acts or proceedings would have been valid if chapter 87-330, Laws of Florida, had been in effect at the time such acts or proceedings were performed.

Reviser's note.—Amended to conform to the fact that the Division of Workers' Compensation of the Department of Labor and Employment Security no longer exists.

Section 70. Subsection (2) of section 443.1215, Florida Statutes, is amended to read:

443.1215 Employers.—

(2)(a) In determining whether an employing unit for which service, other than domestic service, is also performed is an employer under paragraph (1)(a) ~~(a)~~, paragraph (1)(b) ~~(b)~~, paragraph (1)(c) ~~(c)~~, or subparagraph (1)(d)1. ~~(d)1.~~, the wages earned or the employment of an employee performing domestic service may not be taken into account.

(b) In determining whether an employing unit for which service, other than agricultural labor, is also performed is an employer under paragraph (1)(a) ~~(a)~~, paragraph (1)(b) ~~(b)~~, paragraph (1)(c) ~~(c)~~, or subparagraph (1)(d)2. ~~(d)1.~~, the wages earned or the employment of an employee performing service in agricultural labor may not be taken into account. If an employing unit is determined to be an employer of agricultural labor, the employing unit is considered an employer for purposes of subsection (1).

Reviser's note.—Amended to clarify that the cited paragraphs are within subsection (1), not subsection (2). Paragraph (2)(b) is also amended to correct an incorrect reference to "subparagraph (d)1." that was correct in the previous version of this material (in s. 443.036, 2002 Florida Statutes) and to conform to context.

Section 71. Section 455.2125, Florida Statutes, is amended to read:

455.2125 Consultation with postsecondary education boards prior to adoption of changes to training requirements.—Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the Commission for Independent Education ~~State Board of Independent Colleges and Universities, the State Board of Nonpublic Career Education~~, the Board of Regents, and the State Board of Community Colleges prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 246.031, which created the State Board of Independent

Colleges and Universities, was repealed by s. 1058, ch. 2002-387, Laws of Florida. The Commission for Independent Education, established in s. 1005.21, regulates independent postsecondary institutions under s. 1005.22. Section 246.205, which established the State Board of Nonpublic Career Education, was repealed by s. 1058, ch. 2002-387.

Section 72. Section 456.028, Florida Statutes, is amended to read:

456.028 Consultation with postsecondary education boards prior to adoption of changes to training requirements.—Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the Commission for Independent Education ~~State Board of Independent Colleges and Universities, the State Board of Nonpublic Career Education~~, the Board of Regents, and the State Board of Community Colleges prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 246.031, which created the State Board of Independent Colleges and Universities, was repealed by s. 1058, ch. 2002-387, Laws of Florida. The Commission for Independent Education, established in s. 1005.21, regulates independent postsecondary institutions under s. 1005.22. Section 246.205, which established the State Board of Nonpublic Career Education, was repealed by s. 1058, ch. 2002-387.

Section 73. Paragraph (a) of subsection (2) of section 456.048, Florida Statutes, is amended to read:

456.048 Financial responsibility requirements for certain health care practitioners.—

(2) The board or department may grant exemptions upon application by practitioners meeting any of the following criteria:

(a) Any person licensed under chapter 457, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who practices exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(16) ~~768.28(15)~~ or who is a volunteer under s. 110.501(1).

Reviser's note.—Amended to conform to the redesignation of s. 768.28(15) as s. 768.28(16) by s. 67, ch. 2003-416, Laws of Florida.

Section 74. Subsection (1) of section 456.051, Florida Statutes, is amended to read:

456.051 Reports of professional liability actions; bankruptcies; Department of Health's responsibility to provide.—

(1) The report of a claim or action for damages for personal injury which is required to be provided to the Department of Health under s. 456.049 or s. 627.912 is public information except for the name of the claimant or injured person, which remains confidential as provided in s. ~~ss. 456.049(2)(d) and~~ 627.912(2)(e). The Department of Health shall, upon request, make such report available to any person. The department shall make such report available as a part of the practitioner's profile within 30 calendar days after receipt.

Reviser's note.—Amended to conform to the repeal of s. 456.049(2)(d) by s. 16, ch. 2003-416, Laws of Florida.

Section 75. Paragraphs (a) and (f) of subsection (5) of section 458.320, Florida Statutes, are amended to read:

458.320 Financial responsibility.—

(5) The requirements of subsections (1), (2), and (3) do not apply to:

(a) Any person licensed under this chapter who practices medicine exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(16) ~~768.28(15)~~.

(f) Any person holding an active license under this chapter who meets all of the following criteria:

1. The licensee has held an active license to practice in this state or another state or some combination thereof for more than 15 years.

2. The licensee has either retired from the practice of medicine or maintains a part-time practice of no more than 1,000 patient contact hours per year.

3. The licensee has had no more than two claims for medical malpractice resulting in an indemnity exceeding $25,000 within the previous 5-year period.

4. The licensee has not been convicted of, or pled guilty or nolo contendere to, any criminal violation specified in this chapter or the medical practice act of any other state.

5. The licensee has not been subject within the last 10 years of practice to license revocation or suspension for any period of time; probation for a period of 3 years or longer; or a fine of $500 or more for a violation of this chapter or the medical practice act of another jurisdiction. The regulatory agency's acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation

of the filing of administrative charges against the physician's license, constitutes action against the physician's license for the purposes of this paragraph.

6. The licensee has submitted a form supplying necessary information as required by the department and an affidavit affirming compliance with this paragraph.

7. The licensee must submit biennially to the department certification stating compliance with the provisions of this paragraph. The licensee must, upon request, demonstrate to the department information verifying compliance with this paragraph.

A licensee who meets the requirements of this paragraph must post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or provide a written statement to any person to whom medical services are being provided. The sign or statement must read as follows ~~that~~: "Under Florida law, physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. However, certain part-time physicians who meet state requirements are exempt from the financial responsibility law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided pursuant to Florida law."

Reviser's note.—Paragraph (5)(a) is amended to conform to the redesignation of s. 768.28(15) as s. 768.28(16) by s. 67, ch. 2003-416, Laws of Florida. Paragraph (5)(f) is amended to improve clarity and facilitate correct interpretation.

Section 76. Paragraph (b) of subsection (7) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(7) PHYSICIAN ASSISTANT LICENSURE.—

(b)1. Notwithstanding subparagraph (a)2. and sub-subparagraph (a)3.a., the department shall examine each applicant who the Board of Medicine certifies:

a. Has completed the application form and remitted a nonrefundable application fee not to exceed $500 and an examination fee not to exceed $300, plus the actual cost to the department to provide the examination. The examination fee is refundable if the applicant is found to be ineligible to take the examination. The department shall not require the applicant to pass a separate practical component of the examination. For examinations given after July 1, 1998, competencies measured through practical examinations shall be incorporated into the written examination through a multiple-choice format. The department shall translate the examination into the native language of any applicant who requests and agrees to pay all costs of such translation, provided that the translation request is filed with the board office no later than 9 months before the scheduled examination and

the applicant remits translation fees as specified by the department no later than 6 months before the scheduled examination, and provided that the applicant demonstrates to the department the ability to communicate orally in basic English. If the applicant is unable to pay translation costs, the applicant may take the next available examination in English if the applicant submits a request in writing by the application deadline and if the applicant is otherwise eligible under this section. To demonstrate the ability to communicate orally in basic English, a passing score or grade is required, as determined by the department or organization that developed it, on the test for spoken English (TSE) by the Educational Testing Service (ETS), the test of English as a foreign language (TOEFL) by ETS, a high school or college level English course, or the English examination for citizenship, Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~. A notarized copy of an Educational Commission for Foreign Medical Graduates (ECFMG) certificate may also be used to demonstrate the ability to communicate in basic English; and

b.(I) Is an unlicensed physician who graduated from a foreign medical school listed with the World Health Organization who has not previously taken and failed the examination of the National Commission on Certification of Physician Assistants and who has been certified by the Board of Medicine as having met the requirements for licensure as a medical doctor by examination as set forth in s. 458.311(1), (3), (4), and (5), with the exception that the applicant is not required to have completed an approved residency of at least 1 year and the applicant is not required to have passed the licensing examination specified under s. 458.311 or hold a valid, active certificate issued by the Educational Commission for Foreign Medical Graduates; was eligible and made initial application for certification as a physician assistant in this state between July 1, 1990, and June 30, 1991; and was a resident of this state on July 1, 1990, or was licensed or certified in any state in the United States as a physician assistant on July 1, 1990; or

(II) Completed all coursework requirements of the Master of Medical Science Physician Assistant Program offered through the Florida College of Physician's Assistants prior to its closure in August of 1996. Prior to taking the examination, such applicant must successfully complete any clinical rotations that were not completed under such program prior to its termination and any additional clinical rotations with an appropriate physician assistant preceptor, not to exceed 6 months, that are determined necessary by the council. The boards shall determine, based on recommendations from the council, the facilities under which such incomplete or additional clinical rotations may be completed and shall also determine what constitutes successful completion thereof, provided such requirements are comparable to those established by accredited physician assistant programs. This sub-sub-subparagraph is repealed July 1, 2001.

2. The department may grant temporary licensure to an applicant who meets the requirements of subparagraph 1. Between meetings of the council, the department may grant temporary licensure to practice based on the completion of all temporary licensure requirements. All such administratively issued licenses shall be reviewed and acted on at the next regular meeting of the council. A temporary license expires 30 days after receipt and

notice of scores to the licenseholder from the first available examination specified in subparagraph 1. following licensure by the department. An applicant who fails the proficiency examination is no longer temporarily licensed, but may apply for a one-time extension of temporary licensure after reapplying for the next available examination. Extended licensure shall expire upon failure of the licenseholder to sit for the next available examination or upon receipt and notice of scores to the licenseholder from such examination.

3. Notwithstanding any other provision of law, the examination specified pursuant to subparagraph 1. shall be administered by the department only five times. Applicants certified by the board for examination shall receive at least 6 months' notice of eligibility prior to the administration of the initial examination. Subsequent examinations shall be administered at 1-year intervals following the reporting of the scores of the first and subsequent examinations. For the purposes of this paragraph, the department may develop, contract for the development of, purchase, or approve an examination that adequately measures an applicant's ability to practice with reasonable skill and safety. The minimum passing score on the examination shall be established by the department, with the advice of the board. Those applicants failing to pass that examination or any subsequent examination shall receive notice of the administration of the next examination with the notice of scores following such examination. Any applicant who passes the examination and meets the requirements of this section shall be licensed as a physician assistant with all rights defined thereby.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 77. Paragraph (a) of subsection (5) of section 459.0085, Florida Statutes, is amended to read:

459.0085 Financial responsibility.—

(5) The requirements of subsections (1), (2), and (3) do not apply to:

(a) Any person licensed under this chapter who practices medicine exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(16) ~~768.28(15)~~.

Reviser's note.—Amended to conform to the redesignation of s. 768.28(15) as s. 768.28(16) by s. 67, ch. 2003-416, Laws of Florida.

Section 78. Paragraph (j) of subsection (1) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(1) As used in this part:

(j) "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. A sales associate ~~salesperson~~ renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

Reviser's note.—Amended to conform to s. 22, ch. 2003-164, Laws of Florida, which redesignated salespersons as sales associates.

Section 79. Paragraph (c) of subsection (2), paragraph (c) of subsection (3), and paragraph (c) of subsection (4) of section 475.278, Florida Statutes, are amended to read:

475.278 Authorized brokerage relationships; presumption of transaction brokerage; required disclosures.—

(2) TRANSACTION BROKER RELATIONSHIP.—

(c) Contents of disclosure.—The required notice given under paragraph (b) must include the following information in the following form:

IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or sales associate ~~salesperson~~ represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.

TRANSACTION BROKER NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

As a transaction broker, ...(insert name of Real Estate Firm and its Associates)..., provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;

2. Accounting for all funds;

3. Using skill, care, and diligence in the transaction;

4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;

5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;

6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and

7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

....
Date Signature

. . . . . .
Signature

This paragraph expires July 1, 2008.

(3) SINGLE AGENT RELATIONSHIP.—

(c) Contents of disclosure.—

1. Single agent duties disclosure.—The notice required under subparagraph (b)1. must include the following information in the following form:

IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or sales associate ~~salesperson~~ represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.

SINGLE AGENT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

As a single agent, ...(insert name of Real Estate Entity and its Associates)... owe to you the following duties:

1. Dealing honestly and fairly;

2. Loyalty;

3. Confidentiality;

4. Obedience;

5. Full disclosure;

6. Accounting for all funds;

7. Skill, care, and diligence in the transaction;

8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and

9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

....
Date Signature

2. Transition disclosure.—To gain the principal's written consent to a change in relationship, a licensee must use the following disclosure:

CONSENT TO TRANSITION TO
TRANSACTION BROKER

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

As a transaction broker, ...(insert name of Real Estate Firm and its Associates)..., provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;

2. Accounting for all funds;

3. Using skill, care, and diligence in the transaction;

4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;

5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;

6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and

7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

.....I agree that my agent may assume the role and duties of a transaction broker. [must be initialed or signed]

(4) NO BROKERAGE RELATIONSHIP.—

(c) Contents of disclosure.—The notice required under paragraph (b) must include the following information in the following form:

IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or sales associate ~~salesperson~~ represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you decide on representation.

NO BROKERAGE RELATIONSHIP NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

As a real estate licensee who has no brokerage relationship with you, ...(insert name of Real Estate Entity and its Associates)... owe to you the following duties:

1. Dealing honestly and fairly;

2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer.

3. Accounting for all funds entrusted to the licensee.

...(Date)... ...(Signature)...

Reviser's note.—Amended to conform to s. 22, ch. 2003-164, Laws of Florida, which redesignated salespersons as sales associates.

Section 80. Paragraph (f) of subsection (1) and subsection (2) of section 475.611, Florida Statutes, are amended to read:

475.611 Definitions.—

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

(f) "Appraiser" means any person who is a registered trainee ~~assistant~~ real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

(2) Wherever the word "operate" or "operating" appears in this part with respect to a registered trainee ~~assistant~~ appraiser, licensed appraiser, or certified appraiser; in any order, rule, or regulation of the board; in any pleading, indictment, or information under this part; in any court action or proceeding; or in any order or judgment of a court, it shall be deemed to mean the commission of one or more acts described in this part as constituting or defining a registered trainee appraiser, licensed appraiser, or certified appraiser, not including, however, any of the exceptions stated therein. A single act is sufficient to bring a person within the meaning of this subsection, and each act, if prohibited herein, constitutes a separate offense.

Reviser's note.—Amended to conform to the redesignation of registered assistant appraisers as registered trainee appraisers by s. 3, ch. 2003-164, Laws of Florida.

Section 81. Subsection (1) of section 475.6221, Florida Statutes, is amended to read:

475.6221 Employment of registered trainee real estate appraisers.—

(1) A registered trainee real estate appraiser must perform appraisal services under the direct supervision of a licensed or certified appraiser who is designated as the primary supervisory appraiser. The primary supervisory appraiser may also designate additional licensed or certified appraisers as secondary supervisory appraisers. A secondary supervisory appraiser must be affiliated with the same firm or business as the primary supervisory appraiser and the primary or secondary supervisory appraiser must have the same business address as the registered trainee ~~assistant~~ real estate appraiser. The primary supervisory appraiser must notify the Division of

Real Estate of the name and address of any primary and secondary supervisory appraiser for whom the registered trainee will perform appraisal services, and must also notify the division within 10 days after terminating such relationship. Termination of the relationship with a primary supervisory appraiser automatically terminates the relationship with the secondary supervisory appraiser.

Reviser's note.—Amended to conform to the redesignation of registered assistant appraisers as registered trainee appraisers by s. 3, ch. 2003-164, Laws of Florida.

Section 82. Subsection (2) of section 487.046, Florida Statutes, is amended to read:

487.046 Application; licensure.—

(2) If the department finds the applicant qualified in the classification for which the applicant has applied, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Administration ~~Agency~~ and the Department of Transportation of this state to operate the equipment described in the application and has shown proof of liability insurance or posted a surety bond in an amount to be set forth by rule of the department, the department shall issue a certified applicator's license, limited to the classifications for which the applicant is qualified. The license shall expire as required by rules promulgated under this chapter, unless it has been revoked or suspended by the department prior to expiration, for cause as provided in this chapter. The license or authorization card issued by the department verifying licensure shall be kept on the person of the licensee while performing work as a licensed applicator.

Reviser's note.—Amended to conform to the correct title of the United State Federal Aviation Administration.

Section 83. Paragraph (f) of subsection (1) of section 493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.—

(1) Each individual licensed by the department must:

(f) Be a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 84. Section 499.007, Florida Statutes, is reenacted to read:

499.007 Misbranded drug or device.—A drug or device is misbranded:

(1) If its labeling is in any way false or misleading.

(2) Unless, if in package form, it bears a label containing:

(a) The name and place of business of the manufacturer, repackager, or distributor of the finished dosage form of the drug. For the purpose of this paragraph, the finished dosage form of a medicinal drug is that form of the drug which is, or is intended to be, dispensed or administered to the patient and requires no further manufacturing or processing other than packaging, reconstitution, and labeling; and

(b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under this section, reasonable variations are permitted, and the department shall establish by rule exemptions for small packages.

(3) If any word, statement, or other information required by or under ss. 499.001-499.081 to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or devices in the labeling, and in such terms, as to render the word, statement, or other information likely to be read and understood under customary conditions of purchase and use.

(4) If it is a drug and is not designated solely by a name recognized in an official compendium, unless its label bears:

(a) The common or usual name of the drug, if any; and

(b) In case it is fabricated from two or more ingredients, the common or usual name and quantity of each active ingredient.

(5) Unless its labeling bears:

(a) Adequate directions for use; and

(b) Adequate warnings against use in those pathological conditions in which its use may be dangerous to health or against use by children if its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users.

(6) If it purports to be a drug the name of which is recognized in the official compendium, unless it is packaged and labeled as prescribed therein; however, the method of packaging may be modified with the consent of the department.

(7) If it has been found by the department to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the department by rule requires as necessary to protect the public health. Such rule may not be established for any drug recognized in an official compendium until the department has informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and that body has failed within a reasonable time to prescribe such requirements.

(8) If it is:

(a) A drug and its container or finished dosage form is so made, formed, or filled as to be misleading;

(b) An imitation of another drug; or

(c) Offered for sale under the name of another drug.

(9) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling of the drug.

(10) If it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(a) It is from a batch with respect to which a certificate has been issued pursuant to s. 506 of the federal act; and

(b) The certificate is in effect with respect to the drug.

(11) If it is, purports to be, or is represented as a drug composed wholly or partly of any kind of antibiotic requiring certification under the federal act unless:

(a) It is from a batch with respect to which a certificate has been issued pursuant to s. 507 of the federal act; and

(b) The certificate is in effect with respect to the drug;

however, this subsection does not apply to any drug or class of drugs exempted by regulations adopted under s. 507(c) or (d) of the federal act.

(12) If it is a drug intended for use by humans which is a habit-forming drug or which, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drugs; or which is limited by an effective application under s. 505 of the federal act to use under the professional supervision of a practitioner licensed by law to prescribe such drug, unless it is dispensed only:

(a) Upon the written prescription of a practitioner licensed by law to prescribe such drug;

(b) Upon an oral prescription of such practitioner, which is reduced promptly to writing and filled by the pharmacist; or

(c) By refilling any such written or oral prescription, if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist.

This subsection does not relieve any person from any requirement prescribed by law with respect to controlled substances as defined in the applicable federal and state laws.

(13) If it is a drug that is subject to paragraph (12)(a), and if, at any time before it is dispensed, its label fails to bear the statement:

(a) "Caution: Federal Law Prohibits Dispensing Without Prescription";

(b) "Rx Only";

(c) The prescription symbol followed by the word "Only"; or

(d) "Caution: State Law Prohibits Dispensing Without Prescription."

(14) If it is a drug that is not subject to paragraph (12)(a), if at any time before it is dispensed its label bears the statement of caution required in subsection (13).

(15) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements that apply to such color additive and are prescribed under the federal act.

A drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to prescribe such drug is exempt from the requirements of this section, except subsections (1), (8), (10), and (11) and the packaging requirements of subsections (6) and (7), if the drug bears a label that contains the name and address of the dispenser or seller, the prescription number and the date the prescription was written or filled, the name of the prescriber and the name of the patient, and the directions for use and cautionary statements. This exemption does not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to any drug dispensed in violation of subsection (12). The department may, by rule, exempt drugs subject to ss. 499.062-499.064 from subsection (12) if compliance with that subsection is not necessary to protect the public health, safety, and welfare.

Reviser's note.—Section 10, ch. 2003-155, Laws of Florida, amended subsection (2) without publishing the flush left language at the end of the section. Absent affirmative evidence of legislative intent to repeal the flush left language at the end of the section, the section is reenacted to confirm that the omission was not intended.

Section 85. Subsection (3) of section 499.01, Florida Statutes, is amended to read:

499.01 Permits; applications; renewal; general requirements.—

(3) Notwithstanding subsection (7), a permitted person in good standing may change the type of permit issued to that person by completing a new application for the requested permit, paying the amount of the difference in the permit fees if the fee for the new permit is more than the fee for the original permit, and meeting the applicable permitting conditions for the new permit type. The new permit expires on the expiration date of the original permit being changed; however, a new permit for a prescription drug wholesaler, an out-of-state prescription drug wholesaler, or a retail

pharmacy drug wholesaler shall expire on the expiration date of the original permit or 1 year after the date of issuance of the new permit, whichever is earlier. A refund may not be issued if the fee for the new permit is less than the fee that was paid for the original permit.

Reviser's note.—Amended to facilitate correct interpretation.

Section 86. Paragraph (d) of subsection (6) of section 499.0121, Florida Statutes, is amended to read:

499.0121 Storage and handling of prescription drugs; recordkeeping.—The department shall adopt rules to implement this section as necessary to protect the public health, safety, and welfare. Such rules shall include, but not be limited to, requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

(6) RECORDKEEPING.—The department shall adopt rules that require keeping such records of prescription drugs as are necessary for the protection of the public health.

(d)1. Each person who is engaged in the wholesale distribution of a prescription drug, and who is not an authorized distributor of record for the drug manufacturer's products, must provide to each wholesale distributor of such drug, before the sale is made to such wholesale distributor, a written statement under oath identifying each previous sale of the drug back to the last authorized distributor of record, the lot number of the drug, and the sales invoice number of the invoice evidencing the sale of the drug. The written statement must accompany the drug to the next wholesale distributor. The department shall adopt rules relating to the requirements of this written statement. This paragraph does not apply to a manufacturer unless the manufacturer is performing the manufacturing operation of repackaging prescription drugs.

2. Each wholesale distributor of prescription drugs must maintain separate and distinct from other required records all statements that are required under subparagraph 1. and paragraph (e).

3. Each manufacturer of a prescription drug sold in this state must maintain at its corporate offices a current list of authorized distributors and must make such list available to the department upon request.

4. Each manufacturer shall file a written list of all of the manufacturer's authorized distributors of record with the department. A manufacturer shall notify the department not later than 10 days after any change to the list. The department shall publish a list of all authorized distributors of record on its website.

5. For the purposes of this subsection, the term "authorized distributors of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products. Effective March 1, 2004, an ongoing relationship is deemed to exist when a wholesale distributor, including any affiliated group, as defined in

s. 1504 of the Internal Revenue Code, of which the wholesale distributor is a member:

a. Is listed on the manufacturer's current list of authorized distributors of record.

b. Annually purchases not less than 90 percent of all of its purchases of a manufacturer's prescription drug products, based on dollar volume, directly from that manufacturer and has total annual prescription drug sales of $100 million or more.

c. Has reported to the department pursuant to s. 499.012(3)(g)2. ~~499.012(2)(g)2.~~ that the wholesale distributor has total annual prescription drug sales of $100 million or more, and has a verifiable account number issued by the manufacturer authorizing the wholesale distributor to purchase the manufacturer's drug products directly from that manufacturer and that wholesale distributor makes not fewer than 12 purchases of that manufacturer's drug products directly from the manufacturer using said verifiable account number in 12 months. The provisions of this sub-subparagraph apply with respect to a manufacturer that fails to file a copy of the manufacturer's list of authorized distributors of record with the department by July 1, 2003; that files a list of authorized distributors of record which contains fewer than 10 wholesale distributors permitted in this state, excluding the wholesale distributors described in sub-subparagraph b.; or that, as a result of changes to the list of authorized distributors of record filed with the department, has fewer than 10 wholesale distributors permitted in this state as authorized distributors of record, excluding the wholesale distributors described in sub-subparagraph b.

A wholesale distributor that satisfies the requirements of sub-subparagraph b. or sub-subparagraph c. shall submit to the department documentation substantiating its qualification pursuant to sub-subparagraph b. or sub-subparagraph c. The department shall add those wholesale distributors that the department has determined have met the requirements of sub-subparagraph b. or sub-subparagraph c. to the list of authorized distributors of record on the department's website.

6. This paragraph expires July 1, 2006.

Reviser's note.—Amended to correct an apparent error. Section 499.012(2)(g)2. does not exist, and s. 499.012(3)(g)2. contains contextually consistent material.

Section 87. Paragraph (b) of subsection (2) of section 499.0122, Florida Statutes, is amended to read:

499.0122 Medical oxygen and veterinary legend drug retail establishments; definitions, permits, general requirements.—

(2)

(b) The department shall adopt rules relating to information required from each retail establishment pursuant to s. 499.01(4) ~~499.01(2)~~, including requirements for prescriptions or orders.

Reviser's note.—Amended to conform to the redesignation of s. 499.01(2) as s. 499.01(4) by s. 12, ch. 2003-155, Laws of Florida.

Section 88. Paragraph (a) of subsection (1) and subsection (3) of section 499.015, Florida Statutes, are amended to read:

499.015 Registration of drugs, devices, and cosmetics; issuance of certificates of free sale.—

(1)(a) Except for those persons exempted from the definition in s. 499.003(28) ~~499.003(21)~~, any person who manufactures, packages, repackages, labels, or relabels a drug, device, or cosmetic in this state must register such drug, device, or cosmetic biennially with the department; pay a fee in accordance with the fee schedule provided by s. 499.041; and comply with this section. The registrant must list each separate and distinct drug, device, or cosmetic at the time of registration.

(3) Except for those persons exempted from the definition in s. 499.003(28) ~~499.003(21)~~, a person may not sell any product that he or she has failed to register in conformity with this section. Such failure to register subjects such drug, device, or cosmetic product to seizure and condemnation as provided in ss. 499.062-499.064, and subjects such person to the penalties and remedies provided in ss. 499.001-499.081.

Reviser's note.—Amended to conform to the redesignation of s. 499.003(21) as s. 499.003(28) by s. 3, ch. 2003-155, Laws of Florida.

Section 89. Subsection (1) of section 499.03, Florida Statutes, is amended to read:

499.03 Possession of new drugs or legend drugs without prescriptions unlawful; exemptions and exceptions.—

(1) A person may not possess, or possess with intent to sell, dispense, or deliver, any habit-forming, toxic, harmful, or new drug subject to s. 499.003(29) ~~499.003(22)~~, or legend drug as defined in s. 499.003(25) ~~499.003(19)~~, unless the possession of the drug has been obtained by a valid prescription of a practitioner licensed by law to prescribe the drug. However, this section does not apply to the delivery of such drugs to persons included in any of the classes named in this subsection, or to the agents or employees of such persons, for use in the usual course of their businesses or practices or in the performance of their official duties, as the case may be; nor does this section apply to the possession of such drugs by those persons or their agents or employees for such use:

(a) A licensed pharmacist or any person under the licensed pharmacist's supervision while acting within the scope of the licensed pharmacist's practice;

(b) A licensed practitioner authorized by law to prescribe legend drugs or any person under the licensed practitioner's supervision while acting within the scope of the licensed practitioner's practice;

(c) A qualified person who uses legend drugs for lawful research, teaching, or testing, and not for resale;

(d) A licensed hospital or other institution that procures such drugs for lawful administration or dispensing by practitioners;

(e) An officer or employee of a federal, state, or local government; or

(f) A person that holds a valid permit issued by the department pursuant to ss. 499.001-499.081 which authorizes that person to possess prescription drugs.

Reviser's note.—Amended to conform to the redesignation of s. 499.003(19) as s. 499.003(25) and s. 499.003(22) as s. 499.003(29) by s. 3, ch. 2003-155, Laws of Florida.

Section 90. Paragraph (g) of subsection (1) of section 499.05, Florida Statutes, is amended to read:

499.05 Rules.—

(1) The department shall adopt rules to implement and enforce ss. 499.001-499.081 with respect to:

(g) Inspections and investigations conducted under s. 499.051, and the identification of information claimed to be a trade secret and exempt from the public records law as provided in s. 499.051(7) ~~499.051(5)~~.

Reviser's note.—Amended to conform to the redesignation of s. 499.051(5) as s. 499.051(7) by s. 21, ch. 2003-155, Laws of Florida.

Section 91. Section 504.011, Florida Statutes, is amended to read:

504.011 Short title.—This chapter ~~part~~ shall be known and may be cited as the "Produce Labeling Act of 1979."

Reviser's note.—Amended to conform to the arrangement of chapter 504, which is not divided into parts.

Section 92. Section 504.014, Florida Statutes, is amended to read:

504.014 Enforcement.—The Department of Agriculture and Consumer Services shall be responsible for enforcing the provisions of this chapter ~~part~~.

Reviser's note.—Amended to conform to the arrangement of chapter 504, which is not divided into parts.

Section 93. Subsection (9) of section 517.021, Florida Statutes, is amended to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(9) "Federal covered adviser" means a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940. The term "federal covered adviser" does not include any person who is excluded from the definition of investment adviser under subparagraphs (13)(b)1.-8 ~~(12)(b)1.-8~~.

Reviser's note.—Amended to conform to the redesignation of subsection (12) as subsection (13) by s. 583, ch. 2003-261, Laws of Florida.

Section 94. Subsection (5) of section 538.18, Florida Statutes, is amended to read:

538.18 Definitions.—As used in this part, the term:

(5) "Personal identification card" means a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles under s. 322.03 or s. 322.051, or a similar card issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 95. Subsections (1) and (3) of section 552.40, Florida Statutes, are amended to read:

552.40 Administrative remedy for alleged damage due to the use of explosives in connection with construction materials mining activities.—

(1) A person may initiate an administrative proceeding to recover damages resulting from the use of explosives in connection with construction materials mining activities by filing a petition with the Division of Administrative Hearings on a form provided by it ~~the division~~ and accompanied by a filing fee of $100 within 180 days after the occurrence of the alleged damage. If the petitioner submits an affidavit stating that the petitioner's annual income is less than 150 percent of the applicable federal poverty guideline published in the Federal Register by the United States Department of Health and Human Services, the $100 filing fee must be waived.

(3) Within 5 business days after the Division of Administrative Hearings receives a petition, it ~~the division~~ shall issue and serve on the petitioner and the respondent an initial order that assigns the case to a specific administrative law judge and provides general information regarding the practice and procedure before the Division of Administrative Hearings. The initial order must advise that a summary hearing is available upon the agreement of the parties under subsection (6) and must briefly describe the expedited time sequences, limited discovery, and final order provisions of the summary procedure. The initial order must also contain a statement advising the petitioner and the respondent that a mandatory, nonbinding mediation is required before a summary administrative hearing or a formal administrative hearing may be held.

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

Section 96. Subsection (9) of section 565.02, Florida Statutes, is amended to read:

565.02 License fees; vendors; clubs; caterers; and others.—

(9) It is the finding of the Legislature that passenger vessels engaged exclusively in foreign commerce are susceptible to a distinct and separate classification for purposes of the sale of alcoholic beverages under the Beverage Law. Upon the filing of an application and payment of an annual fee of $1,100, the director is authorized to issue a permit authorizing the operator, or, if applicable, his or her concessionaire, of a passenger vessel which has cabin-berth capacity for at least 75 passengers, and which is engaged exclusively in foreign commerce, to sell alcoholic beverages on the vessel for consumption on board only:

(a) During a period not in excess of 24 hours prior to departure while the vessel is moored at a dock or wharf in a port of this state; or

(b) At any time while the vessel is located in Florida territorial waters and is in transit to or from international waters.

One such permit shall be required for each such vessel and shall name the vessel for which it is issued. No license shall be required or tax levied by any municipality or county for the privilege of selling beverages for consumption on board such vessels. The beverages so sold may be purchased outside the state by the permittee, and the same shall not be considered as imported for the purposes of s. 561.14(3) solely because of such sale. The permittee is not required to obtain its beverages from licensees under the Beverage Law, but it shall keep a strict account of all such beverages sold within this state and shall make monthly reports to the division on forms prepared and furnished by the division. A permittee who sells on board the vessel beverages withdrawn from United States Bureau of Customs and Border Protection ~~Customs Service~~ bonded storage on board the vessel may satisfy such accounting requirement by supplying the division with copies of the appropriate United States Bureau of Customs and Border Protection ~~Customs Service~~ forms evidencing such withdrawals as importations under United States customs laws. Such permittee shall pay to the state an excise tax for beverages sold pursuant to this section, if such excise tax has not previously been paid, in an amount equal to the tax which would be required to be paid on such sales by a licensed manufacturer or distributor. A vendor holding such permit shall pay the tax monthly to the division at the same time he or she furnishes the required report. Such report shall be filed on or before the 15th day of each month for the sales occurring during the previous calendar month.

Reviser's note.—Amended to conform to the redesignation of the United States Customs Service pursuant to its transfer to the Department of Homeland Security by s. 403, Pub. L. No. 107-296.

Section 97. Subsection (1) of section 601.48, Florida Statutes, is amended to read:

601.48 Grading processed citrus products.—

(1) If ~~such~~ processed citrus products meet the requirements of the two highest grades as established by the Department of Citrus or, at the option of the processor, the two highest grades established by the United States Department of Agriculture, the processor shall have the privilege~~, in lieu of the grade declaration requirements of subsection (1),~~ of using labels, brands, or trademarks properly registered with the Department of Citrus, as provided in subsection (2) ~~(3)~~, to represent state or U.S. grades.

Reviser's note.—Amended to conform to the repeal of former subsection (1), relating to inspection and grading of processed citrus products, by s. 52, ch. 2001-279, Laws of Florida, and to the redesignation of former subsection (3) as subsection (2) to conform to that repeal.

Section 98. Subsection (1) of section 607.1331, Florida Statutes, is amended to read:

607.1331 Court costs and counsel fees.—

(1) The court in an appraisal proceeding ~~commenced under s. 607.1330~~ shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

Reviser's note.—Amended to facilitate correct interpretation. Section 607.1330 was deleted from House Bill 1623 before it was passed. House Bill 1623 became ch. 2003-283, Laws of Florida.

Section 99. Paragraph (a) of subsection (3) of section 607.1407, Florida Statutes, is amended to read:

607.1407 Unknown claims against dissolved corporation.—A dissolved corporation or successor entity, as defined in s. 607.1406(15), may choose to execute one of the following procedures to resolve payment of unknown claims.

(3) If the dissolved corporation or successor entity complies with subsection (1) or subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 4 years after the filing date:

(a) A claimant who did not receive written notice under s. 607.1406(9), or whose claim was not provided for under s. 607.1406(10) ~~607.1456(10)~~, whether such claim is based on an event occurring before or after the effective date of dissolution.

Reviser's note.—Amended to correct an apparent error and facilitate correct interpretation. Section 607.1456(10) does not exist; s. 607.1406(10) relates to claims against dissolved corporations.

Section 100. Paragraph (a) of subsection (1) of section 624.123, Florida Statutes, is amended to read:

624.123 Certain international health insurance policies; exemption from code.—

(1) International health insurance policies and applications may be solicited and sold in this state at any international airport to a resident of a foreign country. Such international health insurance policies shall be solicited and sold only by a licensed health insurance agent and underwritten only by an admitted insurer. For purposes of this subsection:

(a) "International airport" means any airport in Florida with United States Bureau of Customs and Border Protection ~~Customs~~ service, which enplanes more than 1 million passengers per year.

Reviser's note.—Amended to conform to the redesignation of the United States Customs Service pursuant to its transfer to the Department of Homeland Security by s. 403, Pub. L. No. 107-296.

Section 101. Subsection (1) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(1) The department and office shall enforce the provisions of this code and shall execute the duties imposed upon them ~~it~~ by this code, within the respective jurisdiction of each, as provided by law.

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

Section 102. Subsection (8) of section 624.430, Florida Statutes, is amended to read:

624.430 Withdrawal of insurer or discontinuance of writing certain kinds or lines of insurance.—

(8) Notwithstanding subsection (7), any insurer desiring to surrender its certificate of authority, withdraw from this state, or discontinue the writing of any one or multiple kinds or lines of insurance in this state is expected to have availed itself of all reasonably available reinsurance. Reasonably available reinsurance shall include unrealized reinsurance, which is defined as reinsurance recoverable on known losses incurred and due under valid reinsurance contracts that have not been identified in the normal course of business and have not been reported in financial statements filed with the Office of Insurance ~~Insurer~~ Regulation. Within 90 days after surrendering its certificate of authority, withdrawing from this state, or discontinuing the writing of any one or multiple kinds or lines of insurance in this state, the

insurer shall certify to the Director of the Office of Insurance ~~Insurer~~ Regulation that the insurer has engaged an independent third party to search for unrealized reinsurance, and that the insurer has made all relevant books and records available to such third party. The compensation to such third party may be a percentage of unrealized reinsurance identified and collected.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation and to conform to the correct title of the Office of Insurance Regulation established in s. 20.121.

Section 103. Section 624.461, Florida Statutes, is amended to read:

624.461 Definition.—For the purposes of the Florida Insurance Code, "self-insurance fund" means both commercial self-insurance funds organized under s. 624.462 and group self-insurance funds organized under s. 624.4621. The term "self-insurance fund" does not include a governmental self-insurance pool created under s. 768.28(16) ~~768.28(15)~~.

Reviser's note.—Amended to conform to the redesignation of s. 768.28(15) as s. 768.28(16) by s. 67, ch. 2003-416, Laws of Florida.

Section 104. Subsection (6) of section 624.462, Florida Statutes, is amended to read:

624.462 Commercial self-insurance funds.—

(6) A governmental self-insurance pool created pursuant to s. 768.28(16) ~~768.28(15)~~ shall not be considered a commercial self-insurance fund.

Reviser's note.—Amended to conform to the redesignation of s. 768.28(15) as s. 768.28(16) by s. 67, ch. 2003-416, Laws of Florida.

Section 105. Paragraph (b) of subsection (5) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.—

(5) There shall be allowed a credit against the net tax imposed by this section equal to 15 percent of the amount paid by the insurer in salaries to employees located or based within this state and who are covered by the provisions of chapter 443. For purposes of this subsection:

(b) The term "employees" does not include independent contractors or any person whose duties require that the person hold a valid license under the Florida Insurance Code, except persons defined in s. 626.015(1), (14), and (16) ~~626.015(1), (15), and (17)~~.

Reviser's note.—Amended to conform to the redesignation of subunits within s. 626.015 by the reviser incident to compiling the 2003 Florida Statutes.

Section 106. Paragraph (a) of subsection (1) of section 626.175, Florida Statutes, is amended to read:

626.175 Temporary licensing.—

(1) The department may issue a nonrenewable temporary license for a period not to exceed 6 months authorizing appointment of a general lines insurance agent or a life agent, or an industrial fire or burglary agent, subject to the conditions described in this section. The fees paid for a temporary license and appointment shall be as specified in s. 624.501. Fees paid shall not be refunded after a temporary license has been issued.

(a) An applicant for a temporary license must be:

1. A natural person at least 18 years of age.

2. A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 107. Paragraph (b) of subsection (3) of section 626.371, Florida Statutes, is amended to read:

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

(3)

(b) Failure to timely renew an appointment by an appointing entity prior to the expiration date of the appointment shall result in the appointing entity being assessed late filing ~~filling~~, continuation, and reinstatement fees as prescribed in s. 624.501. Such fees must be paid by the appointing entity and cannot be charged back to the appointee.

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

Section 108. Paragraph (b) of subsection (1) of section 626.731, Florida Statutes, is amended to read:

626.731 Qualifications for general lines agent's license.—

(1) The department shall not grant or issue a license as general lines agent to any individual found by it to be untrustworthy or incompetent or who does not meet each of the following qualifications:

(b) The applicant is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and is a bona fide resident of this state. An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence at the time of application for license of a license in his or her name on the records of another state as a resident licensee of

such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 109. Section 626.7315, Florida Statutes, is amended to read:

626.7315 Prohibition against the unlicensed transaction of general lines insurance.—With respect to any line of authority as defined in s. 626.015(5) ~~626.015(6)~~, no individual shall, unless licensed as a general lines agent:

(1) Solicit insurance or procure applications therefor;

(2) In this state, receive or issue a receipt for any money on account of or for any insurer, or receive or issue a receipt for money from other persons to be transmitted to any insurer for a policy, contract, or certificate of insurance or any renewal thereof, even though the policy, certificate, or contract is not signed by him or her as agent or representative of the insurer, except as provided in s. 626.0428(1);

(3) Directly or indirectly represent himself or herself to be an agent of any insurer or as an agent, to collect or forward any insurance premium, or to solicit, negotiate, effect, procure, receive, deliver, or forward, directly or indirectly, any insurance contract or renewal thereof or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state;

(4) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to insurance or insurance contracts, for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his or her employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer;

(5) In any way, directly or indirectly, make or cause to be made, or attempt to make or cause to be made, any contract of insurance for or on account of any insurer;

(6) Solicit, negotiate, or in any way, directly or indirectly, effect insurance contracts, if a member of a partnership or association, or a stockholder, officer, or agent of a corporation which holds an agency appointment from any insurer; or

(7) Receive or transmit applications for suretyship, or receive for delivery bonds founded on applications forwarded from this state, or otherwise procure suretyship to be effected by a surety insurer upon the bonds of persons in this state or upon bonds given to persons in this state.

Reviser's note.—Amended to conform to the redesignation of subunits within s. 626.015 by the reviser incident to compiling the 2003 Florida Statutes.

Section 110. Paragraph (a) of subsection (2) of section 626.7351, Florida Statutes, is amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(2)(a) The applicant is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and is a bona fide resident of this state and will actually reside in the state at least 6 months out of the year. An individual who is a bona fide resident of this state shall be deemed to meet the residence requirements of this subsection, notwithstanding the existence at the time of application for license of a license in his or her name on the records of another state as a resident licensee of the other state, if the applicant furnishes a letter of clearance satisfactory to the department that the resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 111. Paragraph (c) of subsection (1) of section 626.7355, Florida Statutes, is amended to read:

626.7355 Temporary license as customer representative pending examination.—

(1) The department shall issue a temporary customer representative's license with respect to a person who has applied for such license upon finding that the person:

(c) Is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and is a bona fide resident of this state or is a resident of another state sharing a common boundary with this state. An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence at the time of application for license, of a license in his or her name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that his or her resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 112. Subsection (2) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(2) Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(10) ~~626.015(11)~~, no individual shall, unless licensed as a life agent:

(a) Solicit insurance or annuities or procure applications; or

(b) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts other than:

1. As a consulting actuary advising an insurer; or

2. As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

Reviser's note.—Amended to conform to the redesignation of subunits within s. 626.015 by the reviser incident to compiling the 2003 Florida Statutes.

Section 113. Paragraph (b) of subsection (1) of section 626.785, Florida Statutes, is amended to read:

626.785 Qualifications for license.—

(1) The department shall not grant or issue a license as life agent to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications:

(b) Must be a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and a bona fide resident of this state.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 114. Section 626.8305, Florida Statutes, is amended to read:

626.8305 Prohibition against the unlicensed transaction of health insurance.—Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(6) ~~626.015(7)~~, no individual shall, unless licensed as a health agent:

(1) Solicit insurance or procure applications; or

(2) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance contracts other than:

(a) As a consulting actuary advising insurers; or

(b) As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

Reviser's note.—Amended to conform to the redesignation of subunits within s. 626.015 by the reviser incident to compiling the 2003 Florida Statutes.

Section 115. Paragraph (b) of subsection (1) of section 626.831, Florida Statutes, is amended to read:

626.831 Qualifications for license.—

(1) The department shall not grant or issue a license as health agent as to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications:

(b) Must be a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and a bona fide resident of this state.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 116. Subsection (2) of section 626.8414, Florida Statutes, is amended to read:

626.8414 Qualifications for examination.—The department must authorize any natural person to take the examination for the issuance of a license as a title insurance agent if the person meets all of the following qualifications:

(2) The applicant must be a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and a bona fide resident of this state. A person meets the residency requirement of this subsection, notwithstanding the existence at the time of application for license of a license in the applicant's name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the resident licenses have been canceled or changed to a nonresident basis and that the applicant is in good standing.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 117. Paragraph (b) of subsection (1) of section 626.865, Florida Statutes, is amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The 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:

(b) Is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and a bona fide resident of this state.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 118. Subsection (2) of section 626.866, Florida Statutes, is amended to read:

626.866 Independent adjuster's qualifications.—The 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:

(2) Is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and a bona fide resident of this state.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 119. Subsection (2) of section 626.867, Florida Statutes, is amended to read:

626.867 Company employee adjuster's qualifications.—The 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:

(2) Is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and a bona fide resident of this state.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 120. Subsection (1) of section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the office 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 Bureau of Citizenship and Immigration Services ~~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).

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 121. Paragraph (f) of subsection (7) of section 626.9916, Florida Statutes, is amended to read:

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

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

(f) If a natural person, is at least 18 years of age and a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 122. Subparagraph 15. of paragraph (c) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The plan of operation of the corporation:

15. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) ~~626.104~~ with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

Reviser's note.—Amended to conform to the repeal of s. 626.104 by s. 72, ch. 2002-206, Laws of Florida, and the creation of s. 626.015, relating to similar subject matter, by s. 4, ch. 2002-206.

Section 123. Paragraph (b) of subsection (3) of section 627.733, Florida Statutes, is amended to read:

627.733 Required security.—

(3) Such security shall be provided:

(b) By any other method authorized by s. 324.031(2), (3), or (4) and approved by the Department of Highway Safety and Motor Vehicles as affording security equivalent to that afforded by a policy of insurance or by self-insuring as authorized by s. 768.28(16) ~~768.28(15)~~. The person filing such security shall have all of the obligations and rights of an insurer under ss. 627.730-627.7405.

Reviser's note.—Amended to conform to the redesignation of s. 768.28(15) as s. 768.28(16) by s. 67, ch. 2003-416, Laws of Florida.

Section 124. Paragraph (b) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(b)1. An insurer or insured is not required to pay a claim or charges:

a. Made by a broker or by a person making a claim on behalf of a broker;

b. For any service or treatment that was not lawful at the time rendered;

c. To any person who knowingly submits a false or misleading statement relating to the claim or charges;

d. With respect to a bill or statement that does not substantially meet the applicable requirements of paragraph (d);

e. For any treatment or service that is upcoded, or that is unbundled when such treatment or services should be bundled, in accordance with paragraph (d). To facilitate prompt payment of lawful services, an insurer may change codes that it determines to have been improperly or incorrectly upcoded or unbundled, and may make payment based on the changed codes, without affecting the right of the provider to dispute the change by the insurer, provided that before doing so, the insurer must contact the health care provider and discuss the reasons for the insurer's change and the health care provider's reason for the coding, or make a reasonable good faith effort to do so, as documented in the insurer's file; and

f. For medical services or treatment billed by a physician and not provided in a hospital unless such services are rendered by the physician or are

incident to his or her professional services and are included on the physician's bill, including documentation verifying that the physician is responsible for the medical services that were rendered and billed.

2. Charges for medically necessary cephalic thermograms, peripheral thermograms, spinal ultrasounds, extremity ultrasounds, video fluoroscopy, and surface electromyography shall not exceed the maximum reimbursement allowance for such procedures as set forth in the applicable fee schedule or other payment methodology established pursuant to s. 440.13.

3. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing when done in conjunction with a needle electromyography procedure and both are performed and billed solely by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 who is also certified by the American Board of Electrodiagnostic Medicine or by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or who holds diplomate status with the American Chiropractic Neurology Board or its predecessors shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor.

4. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing that does not meet the requirements of subparagraph 3. shall not exceed the applicable fee schedule or other payment methodology established pursuant to s. 440.13.

5. Effective upon this act becoming a law and before November 1, 2001, allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 200 percent of the allowable amount under Medicare Part B for year 2001, for the area in which the treatment was rendered. Beginning November 1, 2001, allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 175 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year, except that allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services provided in facilities accredited by the Accreditation Association for Ambulatory Health Care, the American College of Radiology, or the Joint Commission on Accreditation of Healthcare Organizations shall not exceed 200 percent of the allowable amount under the participating

physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year. This paragraph does not apply to charges for magnetic resonance imaging services and nerve conduction testing for inpatients and emergency services and care as defined in chapter 395 rendered by facilities licensed under chapter 395.

6. The Department of Health, in consultation with the appropriate professional licensing boards, shall adopt, by rule, a list of diagnostic tests deemed not to be medically necessary for use in the treatment of persons sustaining bodily injury covered by personal injury protection benefits under this section. The initial list shall be adopted by January 1, 2004, and shall be revised from time to time as determined by the Department of Health, in consultation with the respective professional licensing boards. Inclusion of a test on the list of invalid diagnostic tests shall be based on lack of demonstrated medical value and a level of general acceptance by the relevant provider community and shall not be dependent for results entirely upon subjective patient response. Notwithstanding its inclusion on a fee schedule in this subsection, an insurer or insured is not required to pay any charges or reimburse claims for any invalid diagnostic test as determined by the Department of Health.

Reviser's note.—Amended to improve clarity.

Section 125. Subsection (4) of section 627.832, Florida Statutes, is amended to read:

627.832 Grounds for refusal, suspension, or revocation of license.—

(4) Every license issued hereunder shall remain in force and effect until it has been surrendered, revoked, or suspended or expires in accordance with the provisions of this part; but the office may reinstate a suspended license or ~~to~~ issue a new license to a licensee whose license has been revoked, if no fact or condition then exists which clearly would have warranted office refusal originally to issue such license under this part.

Reviser's note.—Amended to improve clarity and correct sentence construction.

Section 126. Section 628.6012, Florida Statutes, is amended to read:

628.6012 Premiums written; restrictions.—Assessable mutual insurers shall be subject to a cap on net annual premiums on the same basis and in the same manner as provided in former s. 624.469 as to commercial self-insurance funds. For an assessable mutual that has converted from a commercial self-insurance fund, the first 6 full calendar years of its operation as set forth in former s. 624.469 shall be computed from the date of its certificate of authority as a commercial self-insurance fund.

Reviser's note.—Amended to conform to the repeal of s. 624.469 by s. 17, ch. 2003-2, Laws of Florida.

Section 127. Subsection (2) of section 628.6013, Florida Statutes, is amended to read:

628.6013 Converted self-insurance fund; trade association; board of directors.—

(2) An assessable mutual insurer formed by the conversion of a commercial self-insurance fund pursuant to former s. 624.463 or by the conversion of a group self-insurer's fund organized under s. 624.4621 shall be endorsed at the time of conversion by a statewide not-for-profit trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws, which is incorporated under the laws of this state, and which has been organized for purposes other than that of obtaining or providing insurance and operated in good faith for a continuous period of 1 year. The association shall not be liable for any actions of the insurer, nor shall it require the establishment or enforcement of any policy of the insurer. Fees, services, and other aspects of the relationship between the association and the insurer must be reasonable and are subject to contractual agreement.

Reviser's note.—Amended to conform to the repeal of s. 624.463 by s. 17, ch. 2003-2, Laws of Florida, and s. 1978, ch. 2003-261, Laws of Florida.

Section 128. Paragraph (d) of subsection (2) of section 631.57, Florida Statutes, is amended to read:

631.57 Powers and duties of the association.—

(2) The association may:

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part. ~~Without limiting the generality of the foregoing, the association may enter into such contracts with a municipality as are necessary in order for the municipality to issue bonds under s. 166.111(2). In connection with the issuance of such bonds and the entering into of the necessary contracts, the association may agree to such terms and conditions as it deems necessary and proper.~~

Reviser's note.—Amended to conform to the repeal of s. 166.111(2) by s. 159, ch. 2003-261, Laws of Florida.

Section 129. Subsection (1) of section 631.60, Florida Statutes, is amended to read:

631.60 Effect of paid claims.—

(1) Any person recovering under this part shall be deemed to have assigned her or his rights under the policy to the association to the extent of the person's recovery from the association, regardless of whether such recovery is received directly from the association or through payments made from the proceeds of bonds issued under former s. 166.111(2). Every insured or

claimant seeking the protection of this part shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

Reviser's note.—Amended to conform to the repeal of s. 166.111(2) by s. 159, ch. 2003-261, Laws of Florida.

Section 130. Section 636.0145, Florida Statutes, is amended to read:

636.0145 Certain entities contracting with Medicaid.—Notwithstanding the requirements of s. 409.912(4)(b) ~~409.912(3)(b)~~, an entity that is providing comprehensive inpatient and outpatient mental health care services to certain Medicaid recipients in Hillsborough, Highlands, Hardee, Manatee, and Polk Counties through a capitated, prepaid arrangement pursuant to the federal waiver provided for in s. 409.905(5) must become licensed under chapter 636 by December 31, 1998. Any entity licensed under this chapter which provides services solely to Medicaid recipients under a contract with Medicaid shall be exempt from ss. 636.017, 636.018, 636.022, 636.028, and 636.034.

Reviser's note.—Amended to conform to the redesignation of s. 409.912(3) as s. 409.912(4) by s. 9, ch. 2003-279, Laws of Florida.

Section 131. Subsection (3) of section 636.029, Florida Statutes, is amended to read:

636.029 Construction and relationship with other laws.—

(3) The department and office are vested with all powers granted to them ~~it~~ under the insurance code with respect to the investigation of any violation of this act within their respective regulatory jurisdictions.

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

Section 132. Section 636.052, Florida Statutes, is amended to read:

636.052 Civil remedy.—In any civil action brought to enforce the terms and conditions of a prepaid limited health service organization contract, the prevailing party is entitled to recover reasonable attorney's fees and court costs. This section does not authorize a civil action against the office or its employees or against the Agency for Health Care Administration, its employees, or the secretary ~~director~~ of that agency.

Reviser's note.—Amended to conform to the redesignation of the Director of Health Care Administration as the Secretary of Health Care Administration by s. 2, ch. 2000-305, Laws of Florida.

Section 133. Paragraph (j) of subsection (1) of section 641.21, Florida Statutes, is amended to read:

641.21 Application for certificate.—

(1) Before any entity may operate a health maintenance organization, it shall obtain a certificate of authority from the office. The office shall accept and shall begin its review of an application for a certificate of authority anytime after an organization has filed an application for a health care provider certificate pursuant to part III of this chapter. However, the office may not issue a certificate of authority to any applicant which does not possess a valid health care provider certificate issued by the agency. Each application for a certificate shall be on such form as the commission shall prescribe, shall be verified by the oath of two officers of the corporation and properly notarized, and shall be accompanied by the following:

(j) Such additional reasonable data, financial statements, and other pertinent information as the commission ~~commissioner~~ or office requires with respect to the determination that the applicant can provide the services to be offered.

Reviser's note.—Amended to facilitate correct interpretation and to conform to context.

Section 134. Subsection (3) of section 641.225, Florida Statutes, is amended to read:

641.225 Surplus requirements.—

(3)(a) An entity providing prepaid capitated services which is authorized under s. 409.912(4)(a) ~~409.912(3)(a)~~ and which applies for a certificate of authority is subject to the minimum surplus requirements set forth in subsection (1), unless the entity is backed by the full faith and credit of the county in which it is located.

(b) An entity providing prepaid capitated services which is authorized under s. 409.912(4)(b) or (c) ~~409.912(3)(b) or (c)~~, and which applies for a certificate of authority is subject to the minimum surplus requirements set forth in s. 409.912.

Reviser's note.—Amended to conform to the redesignation of s. 409.912(3) as s. 409.912(4) by s. 9, ch. 2003-279, Laws of Florida.

Section 135. Paragraph (d) of subsection (3) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(3)

(d) Any change in rates charged for the contract must be filed with the office not less than 30 days in advance of the effective date. At the expiration of such 30 days, the rate filing shall be deemed approved unless prior to such time the filing has been affirmatively approved or disapproved by order of

the office. The approval of the filing by the office constitutes a waiver of any unexpired portion of such waiting period. The office may extend by not more than an additional 15 days the period within which it may so affirmatively approve or disapprove any such filing, by giving notice of such extension before expiration of the initial 30-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such filing shall be deemed approved. This paragraph does not apply to group health contracts effectuated and delivered in this state, insuring groups of 51 or more persons, except for Medicare supplement insurance, long-term care insurance, and any coverage under which the increase in claims costs over the lifetime of the contract due to advancing age or duration is prefunded ~~refunded~~ in the premium.

Reviser's note.—Amended to facilitate correct interpretation and to conform to context.

Section 136. Subsection (4) of section 641.386, Florida Statutes, is amended to read:

641.386 Agent licensing and appointment required; exceptions.—

(4) All agents and health maintenance organizations shall comply with and be subject to the applicable provisions of ss. 641.309 and 409.912(21) ~~409.912(19)~~, and all companies and entities appointing agents shall comply with s. 626.451, when marketing for any health maintenance organization licensed pursuant to this part, including those organizations under contract with the Agency for Health Care Administration to provide health care services to Medicaid recipients or any private entity providing health care services to Medicaid recipients pursuant to a prepaid health plan contract with the Agency for Health Care Administration.

Reviser's note.—Amended to conform to the redesignation of s. 409.912(19) as s. 409.912(21) by s. 9, ch. 2003-279, Laws of Florida.

Section 137. Paragraph (b) of subsection (2) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(2) To qualify as a bail bond agent, it must affirmatively appear at the time of application and throughout the period of licensure that the applicant has complied with the provisions of s. 648.355 and has obtained a temporary license pursuant to such section and:

(b) The applicant is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and is a resident of this state. An individual who is a resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence, at the time of application for license, of a license in the applicant's name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that his or her resident licenses have been canceled or changed to a nonresident basis and that he or she is in good standing.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 138. Paragraph (b) of subsection (1) of section 648.355, Florida Statutes, is amended to read:

648.355 Temporary limited license as limited surety agent or professional bail bond agent; pending examination.—

(1) The department may, in its discretion, issue a temporary license as a limited surety agent or professional bail bond agent, subject to the following conditions:

(b) The applicant is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~ and is a resident of this state. An individual who is a resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence, at the time of application for temporary license, of a license in the individual's name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the individual's resident licenses have been canceled or changed to a nonresident basis and that the individual is in good standing.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 139. Subsection (4) of section 648.45, Florida Statutes, is amended to read:

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

(4) Any licensee found to have violated s. 648.44(1)(b), (d), or (i) ~~648.44(1)(b), (c), or (h)~~ shall, at a minimum, be suspended for a period of 3 months. A greater penalty, including revocation, shall be imposed if there is a willful or repeated violation of s. 648.44(1)(b), (d), or (i) ~~648.44(1)(b), (c), or (h)~~, or the licensee has committed other violations of this chapter.

Reviser's note.—Amended to conform to the redesignation of s. 648.44(1)(c) and (h) as s. 648.44(1)(d) and (i) by s. 21, ch. 2002-260, Laws of Florida.

Section 140. Subsection (2) of section 651.013, Florida Statutes, is amended to read:

651.013 Chapter exclusive; applicability of other laws.—

(2) In addition to other applicable provisions cited in this chapter, the office has the authority granted under ss. 624.302 and 624.303 ~~624.302-624.305~~, 624.308-624.312, 624.319(1)-(3), 624.320-624.321, 624.324, and

624.34 of the Florida Insurance Code to regulate providers of continuing care.

Reviser's note.—Amended to conform to the repeal of s. 624.305 by s. 1978, ch. 2003-261, Laws of Florida.

Section 141. Section 657.001, Florida Statutes, is amended to read:

657.001 Short title.—This chapter ~~part~~ may be cited as the "Florida Credit Union Act."

Reviser's note.—Amended to conform to the arrangement of chapter 657, which is not divided into parts.

Section 142. Section 657.002, Florida Statutes, is amended to read:

657.002 Definitions.—As used in this chapter ~~part~~:

(1) "Capital" means shares, deposits, and equity.

(2) "Central credit union" means a credit union the membership of which includes, but is not limited to, other credit unions, members of credit unions, credit union employees, employees of organizations serving credit unions, and the families of such members.

(3) "Corporate credit union" means any central credit union organized pursuant to any state or federal act for the purpose of serving other credit unions.

(4) "The corporation" means the Florida Credit Union Guaranty Corporation, Inc.

(5) "Correspondent" means that person designated on an application to organize a credit union as the person to whom all correspondence regarding the application should be sent.

(6) "Credit union" means any cooperative society organized pursuant to this chapter ~~part~~.

(7) "Deposits" means that portion of the capital paid into the credit union by members on which a contractual rate of interest will be paid.

(8) "Equity" means undivided earnings, reserves, and allowance for loan losses.

(9) "Foreign credit union" means a credit union organized and operating under the laws of another state.

(10) "Immediate family" means parents, children, spouse, or surviving spouse of the member, or any other relative by blood, marriage, or adoption.

(11) "Limited field of membership" means the defined group of persons designated as eligible for membership in the credit union who:

(a) Have a similar profession, occupation, or formal association with an identifiable purpose; or

(b) Reside within an identifiable neighborhood, community, rural district, or county; or

(c) Are employed by a common employer; or

(d) Are employed by the credit union; and

members of the immediate family of persons within such group.

(12) "Shares" means that portion of the capital paid into the credit union by members on which dividends may be paid.

(13) "Unimpaired capital" means capital which is not impaired by losses that exceed applicable reserves.

Reviser's note.—Amended to conform to the arrangement of chapter 657, which is not divided into parts.

Section 143. Paragraph (e) of subsection (7) of section 657.021, Florida Statutes, is amended to read:

657.021 Board of directors; executive committee.—

(7) The board of directors must exercise the following duties which are nondelegable:

(e) Adequately provide for reserves as required by this chapter ~~part~~ or by rules or order of the commission or office or as otherwise determined necessary by the board.

Reviser's note.—Amended to conform to the arrangement of chapter 657, which is not divided into parts.

Section 144. Subsection (4) of section 657.026, Florida Statutes, is amended to read:

657.026 Supervisory or audit committee.—

(4) The supervisory or audit committee shall notify the board of directors, the office, and, as applicable, either the corporation or the National Credit Union Administration of any violation of this chapter ~~part~~, any violation of the certificate of authorization or bylaws of the credit union, or any practice of the credit union deemed by the supervisory or audit committee to be unsafe, unsound, or unauthorized.

For the purposes of this subsection, two-thirds of the members of the supervisory or audit committee constitutes a quorum.

Reviser's note.—Amended to conform to the arrangement of chapter 657, which is not divided into parts.

Section 145. Subsections (13) and (16) of section 657.031, Florida Statutes, are amended to read:

657.031 Powers.—A credit union shall have the power to:

(13) Invest funds, as provided in this chapter ~~part~~.

(16) Hold membership in central credit unions or corporate credit unions organized under this chapter ~~part~~ or under any other state or federal acts and membership in associations and organizations of credit unions.

Reviser's note.—Amended to conform to the arrangement of chapter 657, which is not divided into parts.

Section 146. Paragraph (a) of subsection (1) of section 657.039, Florida Statutes, is amended to read:

657.039 Loan powers; extension of credit to directors, officers, committee members, and certain employees.—

(1) A credit union may extend credit to its officers, directors, credit manager, members of its supervisory, audit, and credit committees, and any other person authorized to approve extensions of credit, provided:

(a) The extension of credit complies with all requirements under this chapter ~~part~~ with respect to credit extended to other borrowers and is not on terms more favorable than those extended to other borrowers.

Reviser's note.—Amended to conform to the arrangement of chapter 657, which is not divided into parts.

Section 147. Section 657.066, Florida Statutes, is amended to read:

657.066 Conversion from state credit union to federal credit union and conversely.—Any credit union organized under this chapter ~~part~~ may convert into a federal credit union and any federal credit union may convert into a credit union organized pursuant to this chapter ~~part~~ upon approval of the authority under the supervision of which the converted credit union will operate and upon compliance with applicable laws.

(1) Any action by the board of directors proposing conversion shall be by resolution and shall require the affirmative vote of an absolute majority of the board of directors. Upon adoption of a resolution relating to conversion, a copy of the resolution shall be mailed to each member, together with a notice setting forth the time, location, and purpose of a meeting of the membership which shall be held not less than 10 nor more than 30 days following the mailing of the notice.

(2) A ballot allowing an affirmative or negative vote on the proposed conversion shall also be mailed to each member. Any ballot received by the credit union prior to the meeting called to consider the conversion shall be counted along with the votes cast at the meeting. Each member shall have but one vote. A majority of the votes cast by the members shall be required to approve the conversion.

(3) Within 10 days after the approval of the membership, the board of directors shall cause to be transmitted to the authority under the supervision of which the converted credit union will operate a copy of the resolution adopted by the board of directors and approved by the membership.

(4) Upon the written approval of the authority under the supervision of which the converting credit union is to operate, the converting credit union shall become a credit union under this chapter or under the laws of the United States, as the case may be, and thereupon all assets shall become the property of the converted credit union, subject to all existing liabilities against the credit union. All shares and deposits shall remain intact. Any federal credit union seeking to convert to a state-chartered credit union shall pay a nonrefundable filing fee of $500. The office may conduct an examination of any converting federal credit union before approving the conversion and the converting credit union shall pay a nonrefundable examination fee as provided in s. 655.411(1)(b).

(5) Every conversion must be completed within 90 days after the approval of the authority under the supervision of which the converted credit union will operate. Upon receiving its certificate of authorization or charter from the authority under the supervision of which the converted credit union will operate, the old certificate of authorization or charter shall be returned to the proper authority and shall be canceled.

(6) In consummation of the conversion, the old credit union may execute, acknowledge, and deliver to the newly chartered credit union the instruments of transfer necessary to accomplish the transfer of any property and all right, title, and interest therein.

Reviser's note.—Amended to conform to the arrangement of chapter 657, which is not divided into parts.

Section 148. Paragraph (a) of subsection (2) and subsection (4) of section 657.068, Florida Statutes, are amended to read:

657.068 Central credit unions.—

(2) Membership in a central credit union shall be limited to:

(a) Credit unions organized and operating under this chapter ~~part~~ or any other credit union act;

(4) A central credit union shall have all the powers of any credit union organized under this chapter ~~part~~ and shall have the following powers, notwithstanding any limitations or restrictions herein:

(a) A central credit union may make loans to other credit unions, purchase shares of and make deposits in other credit unions, and obtain or acquire the assets and liabilities of any credit union operating in this state which liquidates, provided such assets are otherwise eligible for investment by the acquiring credit union.

(b) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide services to credit unions.

Reviser's note.—Amended to conform to the arrangement of chapter 657, which is not divided into parts.

Section 149. Section 679.338, Florida Statutes, is amended to read:

679.338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.—If a security interest or agricultural lien is perfected by a filed financing statement providing information described in s. 679.516(2)(d) ~~679.516(2)(e)~~ which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Reviser's note.—Amended to conform to the redesignation of s. 679.516(2)(e) as s. 679.516(2)(d) by s. 11, ch. 2002-242, Laws of Florida.

Section 150. Subsection (3) of section 679.520, Florida Statutes, is amended to read:

679.520 Acceptance and refusal to accept record.—

(3) A filed financing statement satisfying s. 679.5021(1) and (2) is effective, even if the filing office is required to refuse to accept it for filing under subsection (1). However, s. 679.338 applies to a filed financing statement providing information described in s. 679.516(2)(d) ~~679.516(2)(e)~~ which is incorrect at the time the financing statement is filed.

Reviser's note.—Amended to conform to the redesignation of s. 679.516(2)(e) as s. 679.516(2)(d) by s. 11, ch. 2002-242, Laws of Florida.

Section 151. Paragraph (b) of subsection (2) of section 732.2025, Florida Statutes, is amended to read:

732.2025 Definitions.—As used in ss. 732.2025-732.2155, the term:

(2) "Elective share trust" means a trust where:

(b) The trust is subject to the provisions of former s. 738.12 or the surviving spouse has the right under the terms of the trust or state law to require the trustee either to make the property productive or to convert it within a reasonable time; and

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 738.12 was repealed by s. 2, ch. 2002-42, Laws of Florida.

Section 152. Subsection (1) of section 741.04, Florida Statutes, is amended to read:

741.04 Marriage license issued.—

(1) No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, providing the social security numbers or any other available identification numbers of each party, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; and unless one party is a male and the other party is a female. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. The state has a compelling interest in promoting not only marriage but also responsible parenting, which may include the payment of child support. Any person who has been issued a social security number shall provide that number. Disclosure of social security numbers or other identification numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement. Any person who is not a citizen of the United States may provide either a social security number or an alien registration number if one has been issued by the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~. Any person who is not a citizen of the United States and who has not been issued a social security number or an alien registration number is encouraged to provide another form of identification. Nothing in this subsection shall be construed to mean that a county court judge or clerk of the circuit court in this state shall not issue a marriage license to individuals who are not citizens of the United States if one or both of the parties are unable to provide a social security number, alien registration number, or other identification number.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 153. Paragraph (a) of subsection (5) of section 766.102, Florida Statutes, is amended to read:

766.102 Medical negligence; standards of recovery; expert witness.—

(5) A person may not give expert testimony concerning the prevailing professional standard of care unless that person is a licensed health care provider and meets the following criteria:

(a) If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

1. Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; or specialize in a similar specialty that includes the evaluation, diagnosis, or treatment of the medical

condition that is the subject of the claim and have prior experience treating similar patients; and

2. Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:

a. The active clinical practice of, or consulting with respect to, the same or similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients;

b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same or similar specialty; or

c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty ~~speciality~~.

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

Section 154. Subsections (2) and (3) of section 766.203, Florida Statutes, are amended to read:

766.203 Presuit investigation of medical negligence claims and defenses by prospective parties.—

(2) PRESUIT INVESTIGATION BY CLAIMANT.—Prior to issuing notification of intent to initiate medical negligence litigation pursuant to s. 766.106, the claimant shall conduct an investigation to ascertain that there are reasonable grounds to believe that:

(a) Any named defendant in the litigation was negligent in the care or treatment of the claimant; and

(b) Such negligence resulted in injury to the claimant.

Corroboration of reasonable grounds to initiate medical negligence litigation shall be provided by the claimant's submission of a verified written medical expert opinion from a medical expert as defined in s. 766.202(6) ~~766.202(5)~~, at the time the notice of intent to initiate litigation is mailed, which statement shall corroborate reasonable grounds to support the claim of medical negligence.

(3) PRESUIT INVESTIGATION BY PROSPECTIVE DEFENDANT.—Prior to issuing its response to the claimant's notice of intent to initiate litigation, during the time period for response authorized pursuant to s. 766.106, the prospective defendant or the defendant's insurer or self-insurer shall conduct an investigation as provided in s. 766.106(3) to ascertain whether there are reasonable grounds to believe that:

(a) The defendant was negligent in the care or treatment of the claimant; and

(b) Such negligence resulted in injury to the claimant.

Corroboration of lack of reasonable grounds for medical negligence litigation shall be provided with any response rejecting the claim by the defendant's submission of a verified written medical expert opinion from a medical expert as defined in s. 766.202(6) ~~766.202(5)~~, at the time the response rejecting the claim is mailed, which statement shall corroborate reasonable grounds for lack of negligent injury sufficient to support the response denying negligent injury.

Reviser's note.—Amended to conform to the redesignation of s. 766.202(5) as s. 766.202(6) by s. 58, ch. 2003-416, Laws of Florida.

Section 155. Paragraph (a) of subsection (5) of section 766.206, Florida Statutes, is amended to read:

766.206 Presuit investigation of medical negligence claims and defenses by court.—

(5)(a) If the court finds that the corroborating written medical expert opinion attached to any notice of claim or intent or to any response rejecting a claim lacked reasonable investigation or that the medical expert submitting the opinion did not meet the expert witness qualifications as set forth in s. 766.102(5) ~~766.202(5)~~, the court shall report the medical expert issuing such corroborating opinion to the Division of Medical Quality Assurance or its designee. If such medical expert is not a resident of the state, the division shall forward such report to the disciplining authority of that medical expert.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 766.202(5) defines the term "investigation." Section 766.102(5) provides criteria for persons giving expert testimony concerning the prevailing professional standard of care.

Section 156. Paragraph (c) of subsection (4) of section 766.209, Florida Statutes, is amended to read:

766.209 Effects of failure to offer or accept voluntary binding arbitration.—

(4) If the claimant rejects a defendant's offer to enter voluntary binding arbitration:

(c) Damages for future economic losses shall be awarded to be paid by periodic payments pursuant to s. 766.202(9) ~~766.202(8)~~, and shall be offset by future collateral source payments.

Reviser's note.—Amended to conform to the redesignation of s. 766.202(8) as s. 766.202(9) by s. 58, ch. 2003-416, Laws of Florida.

Section 157. Paragraph (b) of subsection (6) of section 787.03, Florida Statutes, is amended to read:

787.03 Interference with custody.—

(6)

(b) In order to gain the exemption conferred by paragraph (a), a person who takes a child pursuant to this subsection must:

1. Within 10 days after taking the child, make a report to the sheriff's office or state attorney's office for the county in which the child resided at the time he or she was taken, which report must include the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.

2. Within a reasonable time after taking the child, commence a custody proceeding that is consistent with the federal Parental Kidnapping Prevention Act, 28 U.S.C. s. 1738A, or the Uniform Child Custody Jurisdiction and Enforcement Act, ss. 61.501-61.542 ~~Act, ss. 61.1302-61.1348~~.

3. Inform the sheriff's office or state attorney's office for the county in which the child resided at the time he or she was taken of any change of address or telephone number of the person and child.

Reviser's note.—Amended to conform to the repeal of the Uniform Child Custody Jurisdiction Act, ss. 61.1302-61.1348, by s. 7, ch. 2002-65, Laws of Florida, and the creation of the Uniform Child Custody Jurisdiction and Enforcement Act, ss. 61.501-61.542, by s. 5, ch. 2002-65.

Section 158. Section 790.061, Florida Statutes, is amended to read:

790.061 Judges and justices; exceptions from licensure provisions.—A county court judge, circuit court judge, district court of appeal judge, justice of the supreme court, federal district court judge, or federal court of appeals judge serving in this state is not required to comply with the provisions of s. 790.06 in order to receive a license to carry a concealed weapon or firearm, except that any such justice or judge must comply with the provisions of s. 790.06(2)(h). The Department of Agriculture and Consumer Services ~~State~~ shall issue a license to carry a concealed weapon or firearm to any such justice or judge upon demonstration of competence of the justice or judge pursuant to s. 790.06(2)(h).

Reviser's note.—Amended to conform to the transfer of functions relating to licensure of weapons from the Department of State to the Department of Agriculture and Consumer Services by s. 1, ch. 2002-295, Laws of Florida.

Section 159. Section 817.566, Florida Statutes, is amended to read:

817.566 Misrepresentation of association with, or academic standing at, postsecondary educational institution.—Any person who, with intent to defraud, misrepresents his or her association with, or academic standing or other progress at, any postsecondary educational institution by falsely making, altering, simulating, or forging a document, degree, certificate, diploma, award, record, letter, transcript, form, or other paper; or any person who causes or procures such a misrepresentation; or any person who utters and

publishes or otherwise represents such a document, degree, certificate, diploma, award, record, letter, transcript, form, or other paper as true, knowing it to be false, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Individuals who present a religious academic degree from any college, university, seminary, or institution which is not licensed by the Commission for Independent Education ~~State Board of Independent Colleges and Universities~~ or which is not exempt pursuant to the provisions of s. 246.085 shall disclose the religious nature of the degree upon presentation.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 246.031, which created the State Board of Independent Colleges and Universities, was repealed by s. 1058, ch. 2002-387, Laws of Florida. The Commission for Independent Education, established in s. 1005.21, regulates independent postsecondary institutions under s. 1005.22.

Section 160. Paragraph (d) of subsection (1) of section 817.567, Florida Statutes, is amended to read:

817.567 Making false claims of academic degree or title.—

(1) No person in the state may claim, either orally or in writing, to possess an academic degree, as defined in s. 1005.02, or the title associated with said degree, unless the person has, in fact, been awarded said degree from an institution that is:

(d) Licensed by the Commission for Independent Education ~~State Board of Independent Colleges and Universities~~ pursuant to ss. 1005.01-1005.38 or exempt from licensure pursuant to s. 246.085; or

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 246.031, which created the State Board of Independent Colleges and Universities, was repealed by s. 1058, ch. 2002-387, Laws of Florida. The Commission for Independent Education, established in s. 1005.21, regulates independent postsecondary institutions under s. 1005.22.

Section 161. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 403.727(3)(b), relating to environmental control.

3. Section 414.39, relating to public assistance fraud.

4. Section 409.920, relating to Medicaid provider fraud.

5. Section 440.105 or s. 440.106, relating to workers' compensation.

6. Sections 499.0051, 499.0052, 499.0053, 499.00545 ~~499.0054~~, and 499.0691, relating to crimes involving contraband and adulterated drugs.

7. Part IV of chapter 501, relating to telemarketing.

8. Chapter 517, relating to sale of securities and investor protection.

9. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.

10. Chapter 550, relating to jai alai frontons.

11. Chapter 552, relating to the manufacture, distribution, and use of explosives.

12. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

13. Chapter 562, relating to beverage law enforcement.

14. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

15. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

16. Chapter 687, relating to interest and usurious practices.

17. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

18. Chapter 782, relating to homicide.

19. Chapter 784, relating to assault and battery.

20. Chapter 787, relating to kidnapping.

21. Chapter 790, relating to weapons and firearms.

22. Section 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

23. Chapter 806, relating to arson.

24. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

25. Chapter 812, relating to theft, robbery, and related crimes.

26. Chapter 815, relating to computer-related crimes.

27. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

28. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

29. Section 827.071, relating to commercial sexual exploitation of children.

30. Chapter 831, relating to forgery and counterfeiting.

31. Chapter 832, relating to issuance of worthless checks and drafts.

32. Section 836.05, relating to extortion.

33. Chapter 837, relating to perjury.

34. Chapter 838, relating to bribery and misuse of public office.

35. Chapter 843, relating to obstruction of justice.

36. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

37. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

38. Chapter 874, relating to criminal street gangs.

39. Chapter 893, relating to drug abuse prevention and control.

40. Chapter 896, relating to offenses related to financial transactions.

41. Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.

42. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Reviser's note.—Amended to conform to the redesignation of s. 499.0054 as s. 499.00545 by the reviser incident to compiling the 2003 Florida Statutes.

Section 162. Paragraph (c) of subsection (3) of section 921.0022, Florida Statutes, is reenacted, and paragraph (j) of that subsection is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(c) LEVEL 3
119.10(3)	3rd	Unlawful use of confidential information from police reports.
316.066(3)(d)-(f)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
370.12(1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
370.12(1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
400.903(3)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.105(3)(b)	3rd	Receipt of fee or consideration without approval by judge of compensation claims.

Florida Statute	Felony Degree	Description
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/ misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234(8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.

Florida Statute	Felony Degree	Description
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.

Florida Statute	Felony Degree	Description
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47(1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
		(j) LEVEL 10
499.00545 ~~499.0054~~	1st	Sale or purchase of contraband legend drugs resulting in death.
782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.
787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
782.07(3)	1st	Aggravated manslaughter of a child.
794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.

Florida Statute	Felony Degree	Description
876.32	1st	Treason against the state.

Reviser's note.—Paragraph (3)(c) is as published in s. 3, ch. 2003-59; s. 2, ch. 2003-95; s. 8, ch. 2003-148; and s. 13, ch. 2003-411, Laws of Florida. The amendment by s. 36, ch. 2003-412, Laws of Florida, inserted an unintended uncoded change of the felony degree for violations of s. 893.13(1)(f)2. from "2nd" to "3rd." The actual felony degree for violations of s. 893.13(1)(f)2. specified in that subparagraph is "2nd." Paragraph (3)(j) is amended to conform to the redesignation of s. 499.0054 as s. 499.00545 by the reviser incident to compiling the 2003 Florida Statutes.

Section 163. Paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation, and each successive community sanction violation; however, if the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for such violation, and for each successive community sanction violation involving a new felony conviction. Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of 30 points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subto-

tal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional 18 sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(9) or (10), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal street gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang as prohibited under s. 874.04, the subtotal sentence points are multiplied by 1.5.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s.

741.28(3) ~~741.28(2)~~ with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Reviser's note.—Amended to conform to the redesignation of s. 741.28(2) as s. 741.28(3) by s. 9, ch. 2002-55, Laws of Florida, and to conform to the term as defined there.

Section 164. Paragraph (b) of subsection (2) of section 943.171, Florida Statutes, is amended to read:

943.171 Basic skills training in handling domestic violence cases.—

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

(b) "Household member" has the meaning set forth in s. 741.28(3) ~~741.28(4)~~.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. The term "household member" is defined in s. 741.28(3).

Section 165. Effective July 1, 2004, subsection (3) of section 985.203, Florida Statutes, as amended by s. 139, ch. 2003-402, Laws of Florida, is amended to read:

985.203 Right to counsel.—

(3) An indigent child with nonindigent parents or legal guardian may have counsel appointed pursuant to s. 27.52(3)(d) ~~27.52(2)(d)~~ if the parents or legal guardian have willfully refused to obey the court order to obtain counsel for the child and have been punished by civil contempt and then still have willfully refused to obey the court order. Costs of representation are hereby imposed as provided by ss. 27.52(3)(d) ~~27.52(2)(d)~~ and 938.29.

Reviser's note.—Amended to conform to the redesignation of s. 27.52(2)(d) as s. 27.52(3)(d) by s. 16, ch. 2003-402, Laws of Florida.

Section 166. Subsection (4) of section 1003.52, Florida Statutes, is amended to read:

1003.52 Educational services in Department of Juvenile Justice programs.—

(4) Educational services shall be provided at times of the day most appropriate for the juvenile justice program. School programming in juvenile justice detention, commitment, and rehabilitation programs shall be made available by the local school district during the juvenile justice school year, as defined in s. 1003.01(11) ~~1003.01(12)~~.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Reference to the juvenile justice school year may be found in s. 1003.01(11).

Section 167. Subsection (4) of section 1007.27, Florida Statutes, is amended to read:

1007.27 Articulated acceleration mechanisms.—

(4) It is the intent of the Legislature to provide articulated acceleration mechanisms for students who are in home education programs, as defined in s. 1002.01 ~~1003.01(11)~~, consistent with the educational opportunities available to public and private secondary school students. Home education students may participate in dual enrollment, career and technical dual enrollment, early admission, and credit by examination. Credit earned by home education students through dual enrollment shall apply toward the completion of a home education program that meets the requirements of s. 1002.41.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. The term "home education program" is defined in s. 1002.01.

Section 168. Subsection (1) of section 1009.29, Florida Statutes, is amended to read:

1009.29 Increased fees for funding financial aid program.—

(1) Student tuition and registration fees at each state university and community college shall include up to $4.68 per quarter, or $7.02 per semester, per full-time student, or the per-student credit hour equivalents of such amounts. The fees provided for by this section shall be adjusted from time to time, as necessary, to comply with the debt service coverage requirements of the student loan revenue bonds issued pursuant to s. 1009.79. If the Division of Bond Finance of the State Board of Education and the Commissioner of Education determine that such fees are no longer required as security for revenue bonds issued pursuant to ss. 1009.78-1009.88, moneys previously collected pursuant to this section which are held in escrow, after administrative expenses have been met and up to $150,000 has been used to establish a financial aid data processing system for the state universities incorporating the necessary features to meet the needs of all eleven ~~nine~~ universities for application through disbursement processing, shall be reallocated to the generating institutions to be used for student financial aid programs, including, but not limited to, scholarships and grants for educational purposes. Upon such determination, such fees shall no longer be assessed and collected.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 1000.21(6) lists 11 institutions as state universities.

Section 169. Subsection (2) of section 1011.60, Florida Statutes, is amended to read:

1011.60 Minimum requirements of the Florida Education Finance Program.—Each district which participates in the state appropriations for the Florida Education Finance Program shall provide evidence of its effort to maintain an adequate school program throughout the district and shall meet at least the following requirements:

(2) MINIMUM TERM.—Operate all schools for a term of at least 180 actual teaching days ~~as prescribed in s. 1003.01(14)~~ or the equivalent on an

hourly basis as specified by rules of the State Board of Education each school year. The State Board of Education may prescribe procedures for altering, and, upon written application, may alter, this requirement during a national, state, or local emergency as it may apply to an individual school or schools in any district or districts if, in the opinion of the board, it is not feasible to make up lost days, and the apportionment may, at the discretion of the Commissioner of Education and if the board determines that the reduction of school days is caused by the existence of a bona fide emergency, be reduced for such district or districts in proportion to the decrease in the length of term in any such school or schools. A strike, as defined in s. 447.203(6), by employees of the school district may not be considered an emergency.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 1003.01(14) does not pertain to a term of 180 actual teaching days.

Section 170. Subsection (9) of section 1012.56, Florida Statutes, is amended to read:

1012.56 Educator certification requirements.—

(9) NONCITIZENS.—

(a) The State Board of Education may adopt rules for issuing certificates to noncitizens who are needed to teach and who are legally admitted to the United States through the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~. The filing of a written oath to uphold the principles of the Constitution of the United States and the Constitution of the State of Florida, required under paragraph (2)(b), does not apply to individuals assigned to teach on an exchange basis.

(b) A certificate may not be issued to a citizen of a nation controlled by forces that are antagonistic to democratic forms of government, except to an individual who has been legally admitted to the United States through the United States Bureau of Citizenship and Immigration Services ~~Immigration and Naturalization Service~~.

Reviser's note.—Amended to conform to the redesignation of the Immigration and Naturalization Service pursuant to its transfer to the Department of Homeland Security by s. 451, Pub. L. No. 107-296.

Section 171. Subsection (1) of section 1013.74, Florida Statutes, is amended to read:

1013.74 University authorization for fixed capital outlay projects.—

(1) Notwithstanding the provisions of chapter 216, including s. 216.351, a university may accomplish fixed capital outlay projects consistent with the provisions of this section. Projects authorized by this section shall not require educational plant survey approval as prescribed in this chapter ~~235~~.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Chapter 235 was repealed by s. 1058, ch. 2002-387, Laws of Florida. Chapter 1013 covers educational facilities.

Section 172. Subsection (3) of section 1013.79, Florida Statutes, is amended to read:

1013.79 University Facility Enhancement Challenge Grant Program.—

(3) There is established the Alec P. Courtelis Capital Facilities Matching Trust Fund for the purpose of providing matching funds from private contributions for the development of high priority instructional and research-related capital facilities, including common areas connecting such facilities, within a university. The Legislature shall appropriate funds to be transferred to the trust fund. The Public Education Capital Outlay and Debt Service Trust Fund, Capital Improvement Trust Fund, Division of Sponsored Research Trust Fund, and Contracts and Grants Trust Fund shall not be used as the source of the state match for private contributions. All appropriated funds deposited into the trust fund shall be invested pursuant to the provisions of s. 17.61 ~~17.161~~. Interest income accruing to that portion of the trust fund shall increase the total funds available for the challenge grant program. Interest income accruing from the private donations shall be returned to the participating foundation upon completion of the project. The State Board of Education shall administer the trust fund and all related construction activities.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation. Section 17.161 does not exist. Section 17.61 relates to investment of funds.

Approved by the Governor March 29, 2004.

Filed in Office Secretary of State March 29, 2004.