

By Senator Richter

37-00264B-11

2011408

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 amending s. 624.407, F.S.; revising the amount of
4 surplus funds required for domestic insurers applying
5 for a certificate of authority after a certain date;
6 amending s. 624.408, F.S.; revising the minimum
7 surplus that must be maintained by certain insurers;
8 authorizing the Office of Insurance Regulation to
9 reduce the surplus requirement under specified
10 circumstances; amending s. 624.4095, F.S.; excluding
11 certain premiums for federal multiple-peril crop
12 insurance from calculations for an insurer's gross
13 writing ratio; requiring insurers to disclose the
14 gross written premiums for federal multiple-peril crop
15 insurance in a financial statement; amending s.
16 624.424; revising the frequency that an insurer may
17 use the same accountant or partner to prepare an
18 annual audited financial report; amending s. 626.854,
19 F.S.; providing limitations on the amount of
20 compensation that may be received by a public adjuster
21 for a reopened or supplemental claim; providing
22 statements that may be considered deceptive or
23 misleading if made in any public adjuster's
24 advertisement or solicitation; providing a definition
25 for the term "written advertisement"; requiring that a
26 disclaimer be included in any public adjuster's
27 written advertisement; providing requirements for such
28 disclaimer; requiring certain persons who act on
29 behalf of an insurer to provide notice to the insurer,

37-00264B-11

2011408

30 claimant, public adjuster, or legal representative for
31 an onsite inspection of the insured property;
32 authorizing the insured or claimant to deny access to
33 the property if notice is not provided; requiring the
34 public adjuster to ensure prompt notice of certain
35 property loss claims; providing that an insurer be
36 allowed to interview the insured directly about the
37 loss claim; prohibiting the insurer from obstructing
38 or preventing the public adjuster from communicating
39 with the insured; requiring that the insurer
40 communicate with the public adjuster in an effort to
41 reach an agreement as to the scope of the covered loss
42 under the insurance policy; prohibiting a public
43 adjuster from restricting or preventing persons acting
44 on behalf of the insured from having reasonable access
45 to the insured or the insured's property; prohibiting
46 a public adjuster from restricting or preventing the
47 insured's adjuster from having reasonable access to or
48 inspecting the insured's property; authorizing the
49 insured's adjuster to be present for the inspection;
50 prohibiting a licensed contractor or subcontractor
51 from adjusting a claim on behalf of an insured if such
52 contractor or subcontractor is not a licensed public
53 adjuster; providing an exception; amending s.
54 626.8651, F.S.; requiring that a public adjuster
55 apprentice complete a minimum number of hours of
56 continuing education to qualify for licensure;
57 amending s. 626.8796, F.S.; providing requirements for
58 a public adjuster contract; creating s. 626.70132,

37-00264B-11

2011408

59 F.S.; requiring that notice of a claim, supplemental
60 claim, or reopened claim be given to the insurer
61 within a specified period after a windstorm or
62 hurricane occurs; providing a definition for the terms
63 "supplemental claim" or "reopened claim"; providing
64 applicability; amending s. 627.062, F.S.; requiring
65 that the office issue an approval rather than a notice
66 of intent to approve following its approval of a file
67 and use filing; deleting an obsolete provision;
68 prohibiting the Office of Insurance Regulation from,
69 directly or indirectly, impeding the right of an
70 insurer to acquire policyholders, advertise or appoint
71 agents, or regulate agent commissions; revising the
72 information that must be included in a rate filing
73 relating to certain reinsurance or financing products;
74 deleting a provision that prohibited an insurer from
75 making certain rate filings within a certain period of
76 time after a rate increase; deleting a provision
77 prohibiting an insurer from filing for a rate increase
78 within 6 months after it makes certain rate filings;
79 deleting obsolete provisions relating to legislation
80 enacted during the 2003 Special Session D of the
81 Legislature; amending s. 627.0629, F.S.; providing
82 legislative intent that insurers provide consumers
83 with accurate pricing signals for alterations in order
84 to minimize losses, but that mitigation discounts not
85 result in a loss of income for the insurer; requiring
86 rate filings for residential property insurance to
87 include actuarially reasonable debits that provide

37-00264B-11

2011408

88 proper pricing; providing for an increase in base
89 rates if mitigation discounts exceed the aggregate
90 reduction in expected losses; deleting obsolete
91 provisions; deleting a requirement that the Office of
92 Insurance Regulation propose a method for establishing
93 discounts, debits, credits, and other rate
94 differentials for hurricane mitigation by a certain
95 date; requiring the Financial Services Commission to
96 adopt rules relating to such debits by a certain date;
97 deleting a provision that prohibits an insurer from
98 including an expense or profit load in the cost of
99 reinsurance to replace the Temporary Increase in
100 Coverage Limits; conforming provisions to changes made
101 by the act; amending s. 627.351, F.S.; renaming the
102 "high-risk account" as the "coastal account"; revising
103 the conditions under which the Citizens policyholder
104 surcharge may be imposed; providing that members of
105 the Citizens Property Insurance Corporation Board of
106 Governors are not prohibited from practicing in a
107 certain profession if not prohibited by law or
108 ordinance; prohibiting board members from voting on
109 certain measures; changing the date on which the
110 boundaries of high-risk areas eligible for certain
111 wind-only coverages will be reduced if certain
112 circumstances exist; amending s. 627.3511, F.S.;
113 conforming provisions to changes made by the act;
114 amending s. 627.4133, F.S.; authorizing an insurer to
115 cancel policies after 45 days' notice if the Office of
116 Insurance Regulation determines that the cancellation

37-00264B-11

2011408

117 of policies is necessary to protect the interests of
118 the public or policyholders; authorizing the Office of
119 Insurance Regulation to place an insurer under
120 administrative supervision or appoint a receiver upon
121 the consent of the insurer under certain
122 circumstances; creating s. 627.43141, F.S.; providing
123 definitions; requiring the delivery of a "Notice of
124 Change in Policy Terms" under certain circumstances;
125 specifying requirements for such notice; specifying
126 actions constituting proof of notice; authorizing
127 policy renewals to contain a change in policy terms;
128 providing that receipt of payment by an insurer is
129 deemed acceptance of new policy terms by an insured;
130 providing that the original policy remains in effect
131 until the occurrence of specified events if an insurer
132 fails to provide notice; providing intent; amending s.
133 627.7011, F.S.; requiring that an insurer pay the
134 actual cash value of an insured loss for a dwelling,
135 less any applicable deductible, under certain
136 circumstances; requiring that a policyholder enter
137 into a contract for the performance of building and
138 structural repairs; requiring that an insurer pay
139 certain remaining amounts; restricting insurers and
140 contractors from requiring advance payments for
141 certain repairs and expenses; authorizing an insured
142 to make a claim for replacement costs within a certain
143 period after the insurer pays actual cash value to
144 make a claim for replacement costs; requiring an
145 insurer to pay the replacement costs if a total loss

37-00264B-11

2011408

146 occurs; allowing an insurer to limit its initial
147 payment for losses to personal property; amending s.
148 627.70131, F.S.; specifying application of certain
149 time periods to initial or supplemental property
150 insurance claim notices and payments; providing
151 legislative findings with respect to 2005 statutory
152 changes relating to sinkhole insurance coverage and
153 statutory changes in this act; amending s. 627.706,
154 F.S.; authorizing an insurer to limit coverage for
155 catastrophic ground cover collapse to the principal
156 building and to have discretion to provide additional
157 coverage; allowing the deductible to include costs
158 relating to an investigation of whether sinkhole
159 activity is present; revising definitions; defining
160 the term "structural damage"; placing a 2-year statute
161 of repose on claims for sinkhole coverage; amending s.
162 627.7061, F.S.; conforming provisions to changes made
163 by the act; repealing s. 627.7065, F.S., relating to
164 the establishment of a sinkhole database; amending s.
165 627.707, F.S.; revising provisions relating to the
166 investigation of sinkholes by insurers; deleting a
167 requirement that the insurer provide a policyholder
168 with a statement regarding testing for sinkhole
169 activity; providing a time limitation for demanding
170 sinkhole testing by a policyholder and entering into a
171 contract for repairs; requiring all repairs to be
172 completed within a certain time; providing exceptions;
173 providing a criminal penalty on a policyholder for
174 accepting rebates from persons performing repairs;

37-00264B-11

2011408

175 amending s. 627.7073, F.S.; revising provisions
176 relating to inspection reports; providing that the
177 presumption that the report is correct shifts the
178 burden of proof; requiring the policyholder to file
179 certain reports as a precondition to accepting
180 payment; requiring a seller of real property to
181 provide a buyer with a copy of any inspection reports
182 and certifications; amending s. 627.7074, F.S.;
183 revising provisions relating to neutral evaluation;
184 requiring evaluation in order to make certain
185 determinations; requiring that the neutral evaluator
186 be allowed access to structures being evaluated;
187 providing grounds for disqualifying an evaluator;
188 allowing the Department of Financial Services to
189 appoint an evaluator if the parties cannot come to
190 agreement; revising the timeframes for scheduling a
191 neutral evaluation conference; authorizing an
192 evaluator to enlist another evaluator or other
193 professionals; providing a time certain for issuing a
194 report; providing that certain information is
195 confidential; revising provisions relating to
196 compliance with the evaluator's recommendations;
197 providing that the evaluator is an agent of the
198 department for the purposes of immunity from suit;
199 requiring the department to adopt rules; amending s.
200 627.712, F.S.; conforming provisions to changes made
201 by the act; providing effective dates.

202

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

37-00264B-11

2011408__

204

205 Section 1. Section 624.407, Florida Statutes, is amended to
206 read:

207 624.407 Surplus Capital funds required; new insurers.-

208 (1) To receive authority to transact any one kind or
209 combinations of kinds of insurance, as defined in part V of this
210 chapter, an insurer applying for its original certificate of
211 authority in this state after November 10, 1993, ~~the effective~~
212 ~~date of this section~~ shall possess surplus funds as to
213 policyholders at least ~~not less than~~ the greater of:

214 (a) ~~Five million dollars~~ For a property and casualty
215 insurer, \$5 million, or \$2.5 million for any other insurer;

216 (b) For life insurers, 4 percent of the insurer's total
217 liabilities;

218 (c) For life and health insurers, 4 percent of the
219 insurer's total liabilities, plus 6 percent of the insurer's
220 liabilities relative to health insurance; ~~or~~

221 (d) For all insurers other than life insurers and life and
222 health insurers, 10 percent of the insurer's total liabilities;
223 or

224 (e) Notwithstanding paragraph (a) or paragraph (d), for a
225 domestic insurer that transacts residential property insurance
226 and is:

227 1. Not a wholly owned subsidiary of an insurer domiciled in
228 any other state on or before July 1, 2011, and until June 30,
229 2016, \$5 million; on or after July 1, 2016, and until June 30,
230 2021, \$10 million; and on or after July 1, 2021, \$15 million.

231 2. however, a domestic insurer that transacts residential
232 property insurance and is A wholly owned subsidiary of an

37-00264B-11

2011408

233 insurer domiciled in any other state, ~~shall possess surplus as~~
234 ~~to policyholders of at least~~ \$50 million.

235 (3) Notwithstanding subsections (1) and (2), a new insurer
236 may not be required, ~~but no insurer shall be required under this~~
237 ~~subsection~~ to have surplus as to policyholders greater than \$100
238 million.

239 (4)~~(2)~~ The requirements of this section shall be based upon
240 all the kinds of insurance actually transacted or to be
241 transacted by the insurer in any and all areas in which it
242 operates, whether or not only a portion of such kinds of
243 insurance are ~~to be~~ transacted in this state.

244 (5)~~(3)~~ As to surplus funds as to policyholders required for
245 qualification to transact one or more kinds of insurance,
246 domestic mutual insurers are governed by chapter 628, and
247 domestic reciprocal insurers are governed by chapter 629.

248 (6)~~(4)~~ For the purposes of this section, liabilities do
249 ~~shall~~ not include liabilities required under s. 625.041(4). For
250 purposes of computing minimum surplus funds as to policyholders
251 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities
252 required under s. 625.041(4).

253 (7)~~(5)~~ The provisions of this section, as amended by
254 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to
255 insurers applying for a certificate of authority on or after
256 October 1, 1989 ~~the effective date of this act~~.

257 Section 2. Section 624.408, Florida Statutes, is amended to
258 read:

259 624.408 Surplus funds ~~as to policyholders~~ required; current
260 ~~new and existing~~ insurers.-

261 (1)~~(a)~~ To maintain a certificate of authority to transact

37-00264B-11

2011408

262 any one kind or combinations of kinds of insurance, as defined
263 in part V of this chapter, an insurer in this state must ~~shall~~
264 at all times maintain surplus funds as to policyholders at least
265 ~~not less than~~ the greater of:

266 (a)1. Except as provided in paragraphs (e), (f), and (g)
267 subparagraph 5. and paragraph (b), \$1.5 million.~~†~~

268 (b)2. For life insurers, 4 percent of the insurer's total
269 liabilities.~~†~~

270 (c)3. For life and health insurers, 4 percent of the
271 insurer's total liabilities plus 6 percent of the insurer's
272 liabilities relative to health insurance.~~† or~~

273 (d)4. For all insurers other than mortgage guaranty
274 insurers, life insurers, and life and health insurers, 10
275 percent of the insurer's total liabilities.

276 (e)5. For property and casualty insurers, \$4 million,
277 except for property and casualty insurers authorized to
278 underwrite any line of residential property insurance.

279 (f)(b) For residential any property insurers not and
280 easualty insurer holding a certificate of authority before July
281 1, 2011 ~~on December 1, 1993,~~ \$15 million. ~~the~~

282 (g) For residential property insurers holding a certificate
283 of authority before July 1, 2011, and until June 30, 2016, \$5
284 million; on or after July 1, 2016, and until June 30, 2021, \$10
285 million; on or after July 1, 2021, \$15 million. The office may
286 reduce this surplus requirement if the insurer is not writing
287 new business, has premiums in force of less than \$1 million per
288 year in residential property insurance, or is a mutual insurance
289 company. following amounts apply instead of the \$4 million
290 required by subparagraph (a)5.:

37-00264B-11

2011408

291 ~~1. On December 31, 2001, and until December 30, 2002, \$3~~
292 ~~million.~~

293 ~~2. On December 31, 2002, and until December 30, 2003, \$3.25~~
294 ~~million.~~

295 ~~3. On December 31, 2003, and until December 30, 2004, \$3.6~~
296 ~~million.~~

297 ~~4. On December 31, 2004, and thereafter, \$4 million.~~

298 (2) For purposes of this section, liabilities do ~~shall~~ not
299 include liabilities required under s. 625.041(4). For purposes
300 of computing minimum surplus as to policyholders pursuant to s.
301 625.305(1), liabilities ~~shall~~ include liabilities required under
302 s. 625.041(4).

303 (3) This section does not require an ~~No~~ insurer ~~shall be~~
304 ~~required under this section~~ to have surplus as to policyholders
305 greater than \$100 million.

306 (4) A mortgage guaranty insurer shall maintain a minimum
307 surplus as required by s. 635.042.

308 Section 3. Subsection (7) is added to section 624.4095,
309 Florida Statutes, to read:

310 624.4095 Premiums written; restrictions.—

311 (7) For the purposes of this section and ss. 624.407 and
312 624.408, with respect to capital and surplus requirements, gross
313 written premiums for federal multiple-peril crop insurance which
314 are ceded to the Federal Crop Insurance Corporation or
315 authorized reinsurers may not be included in the calculation of
316 an insurer's gross writing ratio. The liabilities for ceded
317 reinsurance premiums payable for federal multiple-peril crop
318 insurance ceded to the Federal Crop Insurance Corporation and
319 authorized reinsurers shall be netted against the asset for

37-00264B-11

2011408

320 amounts recoverable from reinsurers. Each insurer that writes
321 other insurance products together with federal multiple-peril
322 crop insurance must disclose in the notes to its annual and
323 quarterly financial statements, or in a supplement to those
324 statements, the gross written premiums for federal multiple-
325 peril crop insurance.

326 Section 4. Paragraph (d) of subsection (8) of section
327 624.424, Florida Statutes, is amended to read:

328 624.424 Annual statement and other information.—

329 (8)

330 (d) An insurer may not use the same accountant or partner
331 of an accounting firm responsible for preparing the report
332 required by this subsection for more than 5 ~~7~~ consecutive years.
333 Following this period, the insurer may not use such accountant
334 or partner for a period of 5 ~~2~~ years, but may use another
335 accountant or partner of the same firm. An insurer may request
336 the office to waive this prohibition based upon an unusual
337 hardship to the insurer and a determination that the accountant
338 is exercising independent judgment that is not unduly influenced
339 by the insurer considering such factors as the number of
340 partners, expertise of the partners or the number of insurance
341 clients of the accounting firm; the premium volume of the
342 insurer; and the number of jurisdictions in which the insurer
343 transacts business.

344 Section 5. Effective June 1, 2011, subsection (11) of
345 section 626.854, Florida Statutes, is amended to read:

346 626.854 "Public adjuster" defined; prohibitions.—The
347 Legislature finds that it is necessary for the protection of the
348 public to regulate public insurance adjusters and to prevent the

37-00264B-11

2011408

349 unauthorized practice of law.

350 (11) (a) If a public adjuster enters into a contract with an
351 insured or claimant to reopen a claim or ~~to~~ file a supplemental
352 claim that seeks additional payments for a claim that has been
353 previously paid in part or in full or settled by the insurer,
354 the public adjuster may not charge, agree to, or accept any
355 compensation, payment, commission, fee, or other thing of value
356 based on a previous settlement or previous claim payments by the
357 insurer for the same cause of loss. The charge, compensation,
358 payment, commission, fee, or other thing of value must ~~may~~ be
359 based only on the claim payments or settlement obtained through
360 the work of the public adjuster after entering into the contract
361 with the insured or claimant. Compensation for the reopened or
362 supplemental claim may not exceed 20 percent of the reopened or
363 supplemental claim payment. The contracts described in this
364 paragraph are not subject to the limitations in paragraph (b).

365 (b) A public adjuster may not charge, agree to, or accept
366 any compensation, payment, commission, fee, or other thing of
367 value in excess of:

368 1. Ten percent of the amount of insurance claim payments
369 made by the insurer for claims based on events that are the
370 subject of a declaration of a state of emergency by the
371 Governor. This provision applies to claims made during the
372 ~~period of 1 year~~ after the declaration of emergency. After that
373 year, the limitations in subparagraph 2. apply.

374 2. Twenty percent of the amount of ~~all other~~ insurance
375 claim payments made by the insurer for claims that are not based
376 on events that are the subject of a declaration of a state of
377 emergency by the Governor.

37-00264B-11

2011408

378
379 The provisions of subsections (5)-(13) apply only to residential
380 property insurance policies and condominium association policies
381 as defined in s. 718.111(11).

382 Section 6. Effective January 1, 2012, section 626.854,
383 Florida Statutes, as amended by this act, is amended to read:

384 626.854 "Public adjuster" defined; prohibitions.—The
385 Legislature finds that it is necessary for the protection of the
386 public to regulate public insurance adjusters and to prevent the
387 unauthorized practice of law.

388 (1) A "public adjuster" is any person, except a duly
389 licensed attorney at law as exempted under ~~hereinafter in~~ s.
390 626.860 ~~provided~~, who, for money, commission, or any other thing
391 of value, prepares, completes, or files an insurance claim form
392 for an insured or third-party claimant or who, for money,
393 commission, or any other thing of value, acts ~~or aids in any~~
394 ~~manner~~ on behalf of, or aids an insured or third-party claimant
395 in negotiating for or effecting the settlement of a claim or
396 claims for loss or damage covered by an insurance contract or
397 who advertises for employment as an adjuster of such claims. The
398 term, ~~and~~ also includes any person who, for money, commission,
399 or any other thing of value, solicits, investigates, or adjusts
400 such claims on behalf of a ~~any such~~ public adjuster.

401 (2) This definition does not apply to:

402 (a) A licensed health care provider or employee thereof who
403 prepares or files a health insurance claim form on behalf of a
404 patient.

405 (b) A person who files a health claim on behalf of another
406 and does so without compensation.

37-00264B-11

2011408

407 (3) A public adjuster may not give legal advice or.~~A~~
408 ~~public adjuster may not~~ act on behalf of or aid any person in
409 negotiating or settling a claim relating to bodily injury,
410 death, or noneconomic damages.

411 (4) For purposes of this section, the term "insured"
412 includes only the policyholder and any beneficiaries named or
413 similarly identified in the policy.

414 (5) A public adjuster may not directly or indirectly
415 through any other person or entity solicit an insured or
416 claimant by any means except on Monday through Saturday of each
417 week and only between the hours of 8 a.m. and 8 p.m. on those
418 days.

419 (6) A public adjuster may not directly or indirectly
420 through any other person or entity initiate contact or engage in
421 face-to-face or telephonic solicitation or enter into a contract
422 with any insured or claimant under an insurance policy until at
423 least 48 hours after the occurrence of an event that may be the
424 subject of a claim under the insurance policy unless contact is
425 initiated by the insured or claimant.

426 (7) An insured or claimant may cancel a public adjuster's
427 contract to adjust a claim without penalty or obligation within
428 3 business days after the date on which the contract is executed
429 or within 3 business days after the date on which the insured or
430 claimant has notified the insurer of the claim, by phone or in
431 writing, whichever is later. The public adjuster's contract must
432 ~~shall~~ disclose to the insured or claimant his or her right to
433 cancel the contract and advise the insured or claimant that
434 notice of cancellation must be submitted in writing and sent by
435 certified mail, return receipt requested, or other form of

37-00264B-11

2011408

436 mailing that ~~which~~ provides proof thereof, to the public
437 adjuster at the address specified in the contract; provided,
438 during any state of emergency as declared by the Governor and
439 for ~~a period of~~ 1 year after the date of loss, the insured or
440 claimant has ~~shall have~~ 5 business days after the date on which
441 the contract is executed to cancel a public adjuster's contract.

442 (8) It is an unfair and deceptive insurance trade practice
443 pursuant to s. 626.9541 for a public adjuster or any other
444 person to circulate or disseminate any advertisement,
445 announcement, or statement containing any assertion,
446 representation, or statement with respect to the business of
447 insurance which is untrue, deceptive, or misleading.

448 (a) The following statements, made in any public adjuster's
449 advertisement or solicitation, are considered deceptive or
450 misleading:

451 1. A statement or representation that invites an insured
452 policyholder to submit a claim when the policyholder does not
453 have covered damage to insured property.

454 2. A statement or representation that invites an insured
455 policyholder to submit a claim by offering monetary or other
456 valuable inducement.

457 3. A statement or representation that invites an insured
458 policyholder to submit a claim by stating that there is "no
459 risk" to the policyholder by submitting such claim.

460 4. A statement or representation, or use of a logo or
461 shield, that implies or could mistakenly be construed to imply
462 that the solicitation was issued or distributed by a
463 governmental agency or is sanctioned or endorsed by a
464 governmental agency.

37-00264B-11

2011408

465 (b) For purposes of this paragraph, the term "written
466 advertisement" includes only newspapers, magazines, flyers, and
467 bulk mailers. The following disclaimer, which is not required to
468 be printed on standard size business cards, must be added in
469 bold print and capital letters in typeface no smaller than the
470 typeface of the body of the text to all written advertisements
471 by a public adjuster:

472 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
473 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
474 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
475 MAY DISREGARD THIS ADVERTISEMENT."

476
477 (9) A public adjuster, a public adjuster apprentice, or any
478 person or entity acting on behalf of a public adjuster or public
479 adjuster apprentice may not give or offer to give a monetary
480 loan or advance to a client or prospective client.

481 (10) A public adjuster, public adjuster apprentice, or any
482 individual or entity acting on behalf of a public adjuster or
483 public adjuster apprentice may not give or offer to give,
484 directly or indirectly, any article of merchandise having a
485 value in excess of \$25 to any individual for the purpose of
486 advertising or as an inducement to entering into a contract with
487 a public adjuster.

488 (11) (a) If a public adjuster enters into a contract with an
489 insured or claimant to reopen a claim or file a supplemental
490 claim that seeks additional payments for a claim that has been
491 previously paid in part or in full or settled by the insurer,
492 the public adjuster may not charge, agree to, or accept any
493 compensation, payment, commission, fee, or other thing of value

37-00264B-11

2011408__

494 based on a previous settlement or previous claim payments by the
495 insurer for the same cause of loss. The charge, compensation,
496 payment, commission, fee, or other thing of value must be based
497 only on the claim payments or settlement obtained through the
498 work of the public adjuster after entering into the contract
499 with the insured or claimant. Compensation for the reopened or
500 supplemental claim may not exceed 20 percent of the reopened or
501 supplemental claim payment. The contracts described in this
502 paragraph are not subject to the limitations in paragraph (b).

503 (b) A public adjuster may not charge, agree to, or accept
504 any compensation, payment, commission, fee, or other thing of
505 value in excess of:

506 1. Ten percent of the amount of insurance claim payments
507 made by the insurer for claims based on events that are the
508 subject of a declaration of a state of emergency by the
509 Governor. This provision applies to claims made during the year
510 after the declaration of emergency. After that year, the
511 limitations in subparagraph 2. apply.

512 2. Twenty percent of the amount of insurance claim payments
513 made by the insurer for claims that are not based on events that
514 are the subject of a declaration of a state of emergency by the
515 Governor.

516 (12) Each public adjuster must ~~shall~~ provide to the
517 claimant or insured a written estimate of the loss to assist in
518 the submission of a proof of loss or any other claim for payment
519 of insurance proceeds. The public adjuster shall retain such
520 written estimate for at least 5 years and shall make the ~~such~~
521 estimate available to the claimant or insured and the department
522 upon request.

37-00264B-11

2011408

523 (13) A public adjuster, public adjuster apprentice, or any
524 person acting on behalf of a public adjuster or apprentice may
525 not accept referrals of business from any person with whom the
526 public adjuster conducts business if there is any form or manner
527 of agreement to compensate the person, ~~whether~~ directly or
528 indirectly, for referring business to the public adjuster. A
529 public adjuster may not compensate any person, except for
530 another public adjuster, ~~whether~~ directly or indirectly, for the
531 principal purpose of referring business to the public adjuster.

532 (14) A company employee adjuster, independent adjuster,
533 attorney, investigator, or other persons acting on behalf of an
534 insurer that needs access to an insured or claimant or to the
535 insured property that is the subject of a claim must provide at
536 least 48 hours' notice to the insured or claimant, public
537 adjuster, or legal representative before scheduling a meeting
538 with the claimant or an onsite inspection of the insured
539 property. The insured or claimant may deny access to the
540 property if the notice has not been provided. The insured or
541 claimant may waive the 48-hour notice.

542 (15) A public adjuster must ensure prompt notice of
543 property loss claims submitted to an insurer by or through a
544 public adjuster or on which a public adjuster represents the
545 insured at the time the claim or notice of loss is submitted to
546 the insurer. The public adjuster must ensure that notice is
547 given to the insurer, the public adjuster's contract is provided
548 to the insurer, the property is available for inspection of the
549 loss or damage by the insurer, and the insurer is given an
550 opportunity to interview the insured directly about the loss and
551 claim. The insurer must be allowed to obtain necessary

37-00264B-11

2011408

552 information to investigate and respond to the claim.

553 (a) The insurer may not exclude the public adjuster from
554 its in-person meetings with the insured. The insurer shall meet
555 or communicate with the public adjuster in an effort to reach
556 agreement as to the scope of the covered loss under the
557 insurance policy. This section does not impair the terms and
558 conditions of the insurance policy in effect at the time the
559 claim is filed.

560 (b) A public adjuster may not restrict or prevent an
561 insurer, company employee adjuster, independent adjuster,
562 attorney, investigator, or other person acting on behalf of the
563 insurer from having reasonable access at reasonable times to an
564 insured or claimant or to the insured property that is the
565 subject of a claim.

566 (c) A public adjuster may not act or fail to reasonably act
567 in any manner that obstructs or prevents an insurer or insurer's
568 adjuster from timely conducting an inspection of any part of the
569 insured property for which there is a claim for loss or damage.
570 The public adjuster representing the insured may be present for
571 the insurer's inspection, but if the unavailability of the
572 public adjuster otherwise delays the insurer's timely inspection
573 of the property, the public adjuster or the insured must allow
574 the insurer to have access to the property without the
575 participation or presence of the public adjuster or insured in
576 order to facilitate the insurer's prompt inspection of the loss
577 or damage.

578 (16) A licensed contractor under part I of chapter 489, or
579 a subcontractor, may not adjust a claim on behalf of an insured
580 unless licensed and compliant as a public adjuster under this

37-00264B-11

2011408

581 chapter. However, the contractor may discuss or explain a bid
582 for construction or repair of covered property with the
583 residential property owner who has suffered loss or damage
584 covered by a property insurance policy, or the insurer of such
585 property, if the contractor is doing so for the usual and
586 customary fees applicable to the work to be performed as stated
587 in the contract between the contractor and the insured.

588 (17) The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply
589 only to residential property insurance policies and condominium
590 unit owner ~~association~~ policies as defined in s. 718.111(11).

591 Section 7. Effective January 1, 2012, subsection (6) of
592 section 626.8651, Florida Statutes, is amended to read:

593 626.8651 Public adjuster apprentice license;
594 qualifications.-

595 (6) To qualify for licensure as a public adjuster, a public
596 adjuster apprentice ~~must shall~~ complete: at

597 (a) A minimum of 100 hours of employment per month for 12
598 months of employment under the supervision of a licensed and
599 appointed all-lines public adjuster ~~in order to qualify for~~
600 licensure as a public adjuster. The department may adopt rules
601 that establish standards for such employment requirements.

602 (b) A minimum of 8 hours of continuing education specific
603 to the practice of a public adjuster, 2 hours of which must
604 relate to ethics. The continuing education must be designed to
605 inform the licensee about the current insurance laws of this
606 state for the purpose of enabling him or her to engage in
607 business as an insurance adjuster fairly and without injury to
608 the public and to adjust all claims in accordance with the
609 insurance contract and the laws of this state.

37-00264B-11

2011408

610 Section 8. Effective January 1, 2012, section 626.8796,
611 Florida Statutes, is amended to read:

612 626.8796 Public adjuster contracts; fraud statement.-

613 (1) All contracts for public adjuster services must be in
614 writing and ~~must~~ prominently display the following statement on
615 the contract: "Pursuant to s. 817.234, Florida Statutes, any
616 person who, with the intent to injure, defraud, or deceive ~~an~~
617 ~~any~~ insurer or insured, prepares, presents, or causes to be
618 presented a proof of loss or estimate of cost or repair of
619 damaged property in support of a claim under an insurance policy
620 knowing that the proof of loss or estimate of claim or repairs
621 contains ~~any~~ false, incomplete, or misleading information
622 concerning any fact or thing material to the claim commits a
623 felony of the third degree, punishable as provided in s.
624 775.082, s. 775.083, or s. 775.084, Florida Statutes."

625 (2) A public adjuster contract must contain the full name,
626 permanent business address, and license number of the public
627 adjuster; the full name of the public adjusting firm; and the
628 insured's full name and street address, together with a brief
629 description of the loss. The contract must state the percentage
630 of compensation for the public adjuster's services; the type of
631 claim, including an emergency claim, nonemergency claim, or
632 supplemental claim; the signatures of the public adjuster and
633 all named insureds; and the signature date. If all of the named
634 insureds signatures are not available, the public adjuster must
635 submit an affidavit signed by the available named insureds
636 attesting that they have authority to enter into the contract
637 and settle all claim issues on behalf of the named insureds. An
638 unaltered copy of the executed contract must be remitted to the

37-00264B-11

2011408

639 insurer within 30 days after execution.

640 Section 9. Effective June 1, 2011, section 626.70132,
641 Florida Statutes, is created to read:

642 626.70132 Notice of windstorm or hurricane claim.—A claim,
643 supplemental claim, or reopened claim under an insurance policy
644 that provides personal lines residential coverage, as defined in
645 s. 627.4025, for loss or damage caused by the peril of windstorm
646 or hurricane is barred unless notice of the claim, supplemental
647 claim, or reopened claim was given to the insurer in accordance
648 with the terms of the policy within 3 years after the hurricane
649 first made landfall or the windstorm caused the covered damage.
650 For purposes of this section, the term "supplemental claim" or
651 "reopened claim" means any additional claim for recovery from
652 the insurer for losses from the same hurricane or windstorm
653 which the insurer has previously adjusted pursuant to the
654 initial claim. This section does not affect any applicable
655 limitation on civil actions provided in s. 95.11 for claims,
656 supplemental claims, or reopened claims timely filed under this
657 section.

658 Section 10. Section 627.062, Florida Statutes, is amended
659 to read:

660 627.062 Rate standards.—

661 (1) The rates for all classes of insurance to which the
662 provisions of this part are applicable may ~~shall~~ not be
663 excessive, inadequate, or unfairly discriminatory.

664 (2) As to all such classes of insurance:

665 (a) Insurers or rating organizations shall establish and
666 use rates, rating schedules, or rating manuals that ~~to~~ allow the
667 insurer a reasonable rate of return on the ~~such~~ classes of

37-00264B-11

2011408

668 insurance written in this state. A copy of rates, rating
669 schedules, rating manuals, premium credits or discount
670 schedules, and surcharge schedules, and changes thereto, must
671 ~~shall~~ be filed with the office under one of the following
672 procedures ~~except as provided in subparagraph 3.:~~

673 1. If the filing is made at least 90 days before the
674 proposed effective date and ~~the filing~~ is not implemented during
675 the office's review of the filing and any proceeding and
676 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file
677 and use" filing. In such case, the office shall finalize its
678 review by issuance of an approval ~~a notice of intent to approve~~
679 or a notice of intent to disapprove within 90 days after receipt
680 of the filing. The approval ~~notice of intent to approve~~ and the
681 notice of intent to disapprove constitute agency action for
682 purposes of the Administrative Procedure Act. Requests for
683 supporting information, requests for mathematical or mechanical
684 corrections, or notification to the insurer by the office of its
685 preliminary findings does ~~shall~~ not toll the 90-day period
686 during any such proceedings and subsequent judicial review. The
687 rate shall be deemed approved if the office does not issue an
688 approval ~~a notice of intent to approve~~ or a notice of intent to
689 disapprove within 90 days after receipt of the filing.

690 2. If the filing is not made in accordance with ~~the~~
691 ~~provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as
692 soon as practicable, but within ~~no later than~~ 30 days after the
693 effective date, and is ~~shall be~~ considered a "use and file"
694 filing. An insurer making a "use and file" filing is potentially
695 subject to an order by the office to return to policyholders
696 those portions of rates found to be excessive, as provided in

37-00264B-11

2011408__

697 paragraph (h).

698 ~~3. For all property insurance filings made or submitted~~
699 ~~after January 25, 2007, but before December 31, 2010, an insurer~~
700 ~~seeking a rate that is greater than the rate most recently~~
701 ~~approved by the office shall make a "file and use" filing. For~~
702 ~~purposes of this subparagraph, motor vehicle collision and~~
703 ~~comprehensive coverages are not considered to be property~~
704 ~~coverages.~~

705 (b) Upon receiving a rate filing, the office shall review
706 the rate filing to determine if a rate is excessive, inadequate,
707 or unfairly discriminatory. In making that determination, the
708 office shall, in accordance with generally accepted and
709 reasonable actuarial techniques, consider the following factors:

710 1. Past and prospective loss experience within and without
711 this state.

712 2. Past and prospective expenses.

713 3. The degree of competition among insurers for the risk
714 insured.

715 4. Investment income reasonably expected by the insurer,
716 consistent with the insurer's investment practices, from
717 investable premiums anticipated in the filing, plus any other
718 expected income from currently invested assets representing the
719 amount expected on unearned premium reserves and loss reserves.
720 The commission may adopt rules using reasonable techniques of
721 actuarial science and economics to specify the manner in which
722 insurers ~~shall~~ calculate investment income attributable to ~~such~~
723 classes of insurance written in this state and the manner in
724 which ~~such~~ investment income is ~~shall be~~ used to calculate
725 insurance rates. Such manner must ~~shall~~ contemplate allowances

37-00264B-11

2011408

726 for an underwriting profit factor and full consideration of
727 investment income which produce a reasonable rate of return;
728 however, investment income from invested surplus may not be
729 considered.

730 5. The reasonableness of the judgment reflected in the
731 filing.

732 6. Dividends, savings, or unabsorbed premium deposits
733 allowed or returned to Florida policyholders, members, or
734 subscribers.

735 7. The adequacy of loss reserves.

736 8. The cost of reinsurance. The office may ~~shall~~ not
737 disapprove a rate as excessive solely due to the insurer having
738 obtained catastrophic reinsurance to cover the insurer's
739 estimated 250-year probable maximum loss or any lower level of
740 loss.

741 9. Trend factors, including trends in actual losses per
742 insured unit for the insurer making the filing.

743 10. Conflagration and catastrophe hazards, if applicable.

744 11. Projected hurricane losses, if applicable, which must
745 be estimated using a model or method found to be acceptable or
746 reliable by the Florida Commission on Hurricane Loss Projection
747 Methodology, and as further provided in s. 627.0628.

748 12. A reasonable margin for underwriting profit and
749 contingencies.

750 13. The cost of medical services, if applicable.

751 14. Other relevant factors that affect ~~which impact upon~~
752 the frequency or severity of claims or ~~upon~~ expenses.

753 (c) In the case of fire insurance rates, consideration must
754 ~~shall~~ be given to the availability of water supplies and the

37-00264B-11

2011408__

755 experience of the fire insurance business during a period of not
756 less than the most recent 5-year period for which such
757 experience is available.

758 (d) If conflagration or catastrophe hazards are considered
759 ~~given consideration~~ by an insurer in its rates or rating plan,
760 including surcharges and discounts, the insurer shall establish
761 a reserve for that portion of the premium allocated to such
762 hazard and ~~shall~~ maintain the premium in a catastrophe reserve.
763 ~~Any~~ Removal of such premiums from the reserve for purposes other
764 than paying claims associated with a catastrophe or purchasing
765 reinsurance for catastrophes must be approved by ~~shall be~~
766 ~~subject to approval of~~ the office. Any ceding commission
767 received by an insurer purchasing reinsurance for catastrophes
768 must ~~shall~~ be placed in the catastrophe reserve.

769 (e) After consideration of the rate factors provided in
770 paragraphs (b), (c), and (d), the office may find a rate ~~may be~~
771 ~~found by the office~~ to be excessive, inadequate, or unfairly
772 discriminatory based upon the following standards:

773 1. Rates shall be deemed excessive if they are likely to
774 produce a profit from Florida business which ~~that~~ is
775 unreasonably high in relation to the risk involved in the class
776 of business or if expenses are unreasonably high in relation to
777 services rendered.

778 2. Rates shall be deemed excessive if, among other things,
779 the rate structure established by a stock insurance company
780 provides for replenishment of surpluses from premiums, if ~~when~~
781 the replenishment is attributable to investment losses.

782 3. Rates shall be deemed inadequate if they are clearly
783 insufficient, together with the investment income attributable

37-00264B-11

2011408

784 to them, to sustain projected losses and expenses in the class
785 of business to which they apply.

786 4. A rating plan, including discounts, credits, or
787 surcharges, shall be deemed unfairly discriminatory if it fails
788 to clearly and equitably reflect consideration of the
789 policyholder's participation in a risk management program
790 adopted pursuant to s. 627.0625.

791 5. A rate shall be deemed inadequate as to the premium
792 charged to a risk or group of risks if discounts or credits are
793 allowed which exceed a reasonable reflection of expense savings
794 and reasonably expected loss experience from the risk or group
795 of risks.

796 6. A rate shall be deemed unfairly discriminatory as to a
797 risk or group of risks if the application of premium discounts,
798 credits, or surcharges among such risks does not bear a
799 reasonable relationship to the expected loss and expense
800 experience among the various risks.

801 (f) In reviewing a rate filing, the office may require the
802 insurer to provide, at the insurer's expense, all information
803 necessary to evaluate the condition of the company and the
804 reasonableness of the filing according to the criteria
805 enumerated in this section.

806 (g) The office may at any time review a rate, rating
807 schedule, rating manual, or rate change; the pertinent records
808 of the insurer; and market conditions. If the office finds on a
809 preliminary basis that a rate may be excessive, inadequate, or
810 unfairly discriminatory, the office shall initiate proceedings
811 to disapprove the rate and shall so notify the insurer. However,
812 the office may not disapprove as excessive any rate for which it

37-00264B-11

2011408

813 has given final approval or which has been deemed approved for a
814 ~~period of~~ 1 year after the effective date of the filing unless
815 the office finds that a material misrepresentation or material
816 error was made by the insurer or was contained in the filing.
817 Upon being ~~se~~ notified, the insurer or rating organization
818 shall, within 60 days, file with the office all information that
819 ~~which~~, in the belief of the insurer or organization, proves the
820 reasonableness, adequacy, and fairness of the rate or rate
821 change. The office shall issue an approval ~~a notice of intent to~~
822 ~~approve~~ or a notice of intent to disapprove pursuant to ~~the~~
823 ~~procedures of~~ paragraph (a) within 90 days after receipt of the
824 insurer's initial response. In such instances and in any
825 administrative proceeding relating to the legality of the rate,
826 the insurer or rating organization shall carry the burden of
827 proof by a preponderance of the evidence to show that the rate
828 is not excessive, inadequate, or unfairly discriminatory. After
829 the office notifies an insurer that a rate may be excessive,
830 inadequate, or unfairly discriminatory, unless the office
831 withdraws the notification, the insurer may ~~shall~~ not alter the
832 rate except to conform to ~~with~~ the office's notice until the
833 earlier of 120 days after the date the notification was provided
834 or 180 days after the date of implementing ~~the implementation of~~
835 the rate. The office ~~may~~, subject to chapter 120, may disapprove
836 without the 60-day notification any rate increase filed by an
837 insurer within the prohibited time period or during the time
838 that the legality of the increased rate is being contested.

839 (h) ~~If In the event~~ the office finds that a rate or rate
840 change is excessive, inadequate, or unfairly discriminatory, the
841 office shall issue an order of disapproval specifying that a new

37-00264B-11

2011408

842 rate or rate schedule, which responds to the findings of the
843 office, be filed by the insurer. The office shall further order,
844 for any "use and file" filing made in accordance with
845 subparagraph (a)2., that premiums charged each policyholder
846 constituting the portion of the rate above that which was
847 actuarially justified be returned to the ~~such~~ policyholder in
848 the form of a credit or refund. If the office finds that an
849 insurer's rate or rate change is inadequate, the new rate or
850 rate schedule filed with the office in response to such a
851 finding is ~~shall be~~ applicable only to new or renewal business
852 of the insurer written on or after the effective date of the
853 responsive filing.

854 (i) Except as otherwise specifically provided in this
855 chapter, the office may ~~shall~~ not, directly or indirectly:

856 1. Prohibit any insurer, including any residual market plan
857 or joint underwriting association, from paying acquisition costs
858 based on the full amount of premium, as defined in s. 627.403,
859 applicable to any policy, or prohibit any such insurer from
860 including the full amount of acquisition costs in a rate filing;
861 or-

862 2. Impede, abridge, or otherwise compromise an insurer's
863 right to acquire policyholders, advertise, or appoint agents,
864 including the calculation, manner, or amount of such agent
865 commissions, if any.

866 (j) With respect to residential property insurance rate
867 filings, the rate filing must account for mitigation measures
868 undertaken by policyholders to reduce hurricane losses.

869 (k)1. An insurer may make a separate filing limited solely
870 to an adjustment of its rates for reinsurance or financing costs

37-00264B-11

2011408__

871 incurred in the purchase of reinsurance or financing products to
872 replace or finance the payment of the amount covered by the
873 Temporary Increase in Coverage Limits (TICL) portion of the
874 Florida Hurricane Catastrophe Fund including replacement
875 reinsurance for the TICL reductions made pursuant to s.
876 215.555(17) (e); the actual cost paid due to the application of
877 the TICL premium factor pursuant to s. 215.555(17) (f); and the
878 actual cost paid due to the application of the cash build-up
879 factor pursuant to s. 215.555(5) (b) if the insurer:

880 a. Elects to purchase financing products such as a
881 liquidity instrument or line of credit, in which case the cost
882 included in ~~the~~ filing for the liquidity instrument or line of
883 credit may not result in a premium increase exceeding 3 percent
884 for any individual policyholder. All costs contained in the
885 filing may not result in an overall premium increase of more
886 than 10 percent for any individual policyholder.

887 b. An insurer that makes a separate filing relating to
888 reinsurance or financing products must include ~~Includes in the~~
889 ~~filing~~ a copy of all of its reinsurance, liquidity instrument,
890 or line of credit contracts; proof of the billing or payment for
891 the contracts; and the calculation upon which the proposed rate
892 change is based demonstrating ~~demonstrates~~ that the costs meet
893 the criteria of this section and ~~are not loaded for expenses or~~
894 ~~profit for the insurer making the filing.~~

895 ~~e. Includes no other changes to its rates in the filing.~~

896 ~~d. Has not implemented a rate increase within the 6 months~~
897 ~~immediately preceding the filing.~~

898 ~~e. Does not file for a rate increase under any other~~
899 ~~paragraph within 6 months after making a filing under this~~

37-00264B-11

2011408

900 ~~paragraph.~~

901 ~~c.f.~~ An insurer that purchases reinsurance or financing
902 products from an affiliated company may make a separate filing
903 ~~in compliance with this paragraph does so~~ only if the costs for
904 such reinsurance or financing products are charged at or below
905 charges made for comparable coverage by nonaffiliated reinsurers
906 or financial entities making such coverage or financing products
907 available in this state.

908 2. An insurer may ~~only~~ make only one filing per ~~in any~~ 12-
909 month period under this paragraph.

910 3. An insurer that elects to implement a rate change under
911 this paragraph must file its rate filing with the office at
912 least 45 days before the effective date of the rate change.
913 After an insurer submits a complete filing that meets all of the
914 requirements of this paragraph, the office has 45 days after the
915 date of the filing to review the rate filing and determine if
916 the rate is excessive, inadequate, or unfairly discriminatory.

917
918 The provisions of this subsection do ~~shall~~ not apply to workers'
919 compensation, and employer's liability insurance, and ~~to~~ motor
920 vehicle insurance.

921 (3) (a) For individual risks that are not rated in
922 accordance with the insurer's rates, rating schedules, rating
923 manuals, and underwriting rules filed with the office and that
924 ~~which~~ have been submitted to the insurer for individual rating,
925 the insurer must maintain documentation on each risk subject to
926 individual risk rating. The documentation must identify the
927 named insured and specify the characteristics and classification
928 of the risk supporting the reason for the risk being

37-00264B-11

2011408__

929 individually risk rated, including any modifications to existing
930 approved forms to be used on the risk. The insurer must maintain
931 these records for ~~a period of~~ at least 5 years after the
932 effective date of the policy.

933 (b) Individual risk rates and modifications to existing
934 approved forms are not subject to this part or part II, except
935 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
936 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
937 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
938 627.4265, 627.427, and 627.428, but are subject to all other
939 applicable provisions of this code and rules adopted thereunder.

940 (c) This subsection does not apply to private passenger
941 motor vehicle insurance.

942 (d)1. The following categories or kinds of insurance and
943 types of commercial lines risks are not subject to paragraph
944 (2) (a) or paragraph (2) (f):

945 a. Excess or umbrella.

946 b. Surety and fidelity.

947 c. Boiler and machinery and leakage and fire extinguishing
948 equipment.

949 d. Errors and omissions.

950 e. Directors and officers, employment practices, and
951 management liability.

952 f. Intellectual property and patent infringement liability.

953 g. Advertising injury and Internet liability insurance.

954 h. Property risks rated under a highly protected risks
955 rating plan.

956 i. Any other commercial lines categories or kinds of
957 insurance or types of commercial lines risks that the office

37-00264B-11

2011408

958 determines should not be subject to paragraph (2) (a) or
959 paragraph (2) (f) because of the existence of a competitive
960 market for such insurance, similarity of such insurance to other
961 categories or kinds of insurance not subject to paragraph (2) (a)
962 or paragraph (2) (f), or to improve the general operational
963 efficiency of the office.

964 2. Insurers or rating organizations shall establish and use
965 rates, rating schedules, or rating manuals to allow the insurer
966 a reasonable rate of return on insurance and risks described in
967 subparagraph 1. which are written in this state.

968 3. An insurer must notify the office of any changes to
969 rates for insurance and risks described in subparagraph 1.
970 within no later than 30 days after the effective date of the
971 change. The notice must include the name of the insurer, the
972 type or kind of insurance subject to rate change, total premium
973 written during the immediately preceding year by the insurer for
974 the type or kind of insurance subject to the rate change, and
975 the average statewide percentage change in rates. Underwriting
976 files, premiums, losses, and expense statistics with regard to
977 such insurance and risks ~~described in subparagraph 1.~~ written by
978 an insurer must ~~shall~~ be maintained by the insurer and subject
979 to examination by the office. Upon examination, the office
980 ~~shall~~, in accordance with generally accepted and reasonable
981 actuarial techniques, shall consider the rate factors in
982 paragraphs (2) (b), (c), and (d) and the standards in paragraph
983 (2) (e) to determine if the rate is excessive, inadequate, or
984 unfairly discriminatory.

985 4. A rating organization must notify the office of any
986 changes to loss cost for insurance and risks described in

37-00264B-11

2011408__

987 subparagraph 1. within ~~no later than~~ 30 days after the effective
988 date of the change. The notice must include the name of the
989 rating organization, the type or kind of insurance subject to a
990 loss cost change, loss costs during the immediately preceding
991 year for the type or kind of insurance subject to the loss cost
992 change, and the average statewide percentage change in loss
993 cost. Loss and exposure statistics with regard to risks
994 applicable to loss costs for a rating organization not subject
995 to paragraph (2) (a) or paragraph (2) (f) must ~~shall~~ be maintained
996 by the rating organization and are subject to examination by the
997 office. Upon examination, the office ~~shall~~, in accordance with
998 generally accepted and reasonable actuarial techniques, shall
999 consider the rate factors in paragraphs (2) (b)-(d) and the
1000 standards in paragraph (2) (e) to determine if the rate is
1001 excessive, inadequate, or unfairly discriminatory.

1002 5. In reviewing a rate, the office may require the insurer
1003 to provide, at the insurer's expense, all information necessary
1004 to evaluate the condition of the company and the reasonableness
1005 of the rate according to the applicable criteria described in
1006 this section.

1007 (4) The establishment of any rate, rating classification,
1008 rating plan or schedule, or variation thereof in violation of
1009 part IX of chapter 626 is also in violation of this section. ~~In~~
1010 ~~order to enhance the ability of consumers to compare premiums~~
1011 ~~and to increase the accuracy and usefulness of rate-comparison~~
1012 ~~information provided by the office to the public, the office~~
1013 ~~shall develop a proposed standard rating territory plan to be~~
1014 ~~used by all authorized property and casualty insurers for~~
1015 ~~residential property insurance. In adopting the proposed plan,~~

37-00264B-11

2011408__

1016 ~~the office may consider geographical characteristics relevant to~~
1017 ~~risk, county lines, major roadways, existing rating territories~~
1018 ~~used by a significant segment of the market, and other relevant~~
1019 ~~factors. Such plan shall be submitted to the President of the~~
1020 ~~Senate and the Speaker of the House of Representatives by~~
1021 ~~January 15, 2006. The plan may not be implemented unless~~
1022 ~~authorized by further act of the Legislature.~~

1023 (5) With respect to a rate filing involving coverage of the
1024 type for which the insurer is required to pay a reimbursement
1025 premium to the Florida Hurricane Catastrophe Fund, the insurer
1026 may fully recoup in its property insurance premiums any
1027 reimbursement premiums paid to the ~~Florida Hurricane Catastrophe~~
1028 ~~fund~~, together with reasonable costs of other reinsurance;
1029 however, ~~but~~ except as otherwise provided in this section, the
1030 insurer may not recoup reinsurance costs that duplicate coverage
1031 provided by the ~~Florida Hurricane Catastrophe~~ fund. An insurer
1032 may not recoup more than 1 year of reimbursement premium at a
1033 time. Any under-recoupment from the prior year may be added to
1034 the following year's reimbursement premium, and any over-
1035 recoupment must ~~shall~~ be subtracted from the following year's
1036 reimbursement premium.

1037 (6) (a) If an insurer requests an administrative hearing
1038 pursuant to s. 120.57 related to a rate filing under this
1039 section, the director of the Division of Administrative Hearings
1040 shall expedite the hearing and assign an administrative law
1041 judge who shall commence the hearing within 30 days after the
1042 receipt of the formal request and ~~shall~~ enter a recommended
1043 order within 30 days after the hearing or within 30 days after
1044 receipt of the hearing transcript by the administrative law

37-00264B-11

2011408

1045 judge, whichever is later. Each party shall have ~~be allowed~~ 10
1046 days in which to submit written exceptions to the recommended
1047 order. The office shall enter a final order within 30 days after
1048 the entry of the recommended order. The provisions of this
1049 paragraph may be waived upon stipulation of all parties.

1050 (b) Upon entry of a final order, the insurer may request a
1051 expedited appellate review pursuant to the Florida Rules of
1052 Appellate Procedure. It is the intent of the Legislature that
1053 the First District Court of Appeal grant an insurer's request
1054 for an expedited appellate review.

1055 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~
1056 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~
1057 control to the extent of any conflict with other provisions of
1058 this section.

1059 ~~(a)~~ ~~(b)~~ Any portion of a judgment entered or settlement paid
1060 as a result of a statutory or common-law bad faith action and
1061 any portion of a judgment entered which awards punitive damages
1062 against an insurer may not be included in the insurer's rate
1063 base, and ~~shall not be~~ used to justify a rate or rate change.
1064 Any common-law bad faith action identified as such, any portion
1065 of a settlement entered as a result of a statutory or common-law
1066 action, or any portion of a settlement wherein an insurer agrees
1067 to pay specific punitive damages may not be used to justify a
1068 rate or rate change. The portion of the taxable costs and
1069 attorney's fees which is identified as being related to the bad
1070 faith and punitive damages ~~in these judgments and settlements~~
1071 may not be included in the insurer's rate base and used ~~may not~~
1072 ~~be utilized~~ to justify a rate or rate change.

1073 ~~(b)~~ ~~(c)~~ Upon reviewing a rate filing and determining whether

37-00264B-11

2011408

1074 the rate is excessive, inadequate, or unfairly discriminatory,
1075 the office shall consider, in accordance with generally accepted
1076 and reasonable actuarial techniques, past and present
1077 prospective loss experience, ~~either~~ using loss experience solely
1078 for this state or giving greater credibility to this state's
1079 loss data after applying actuarially sound methods of assigning
1080 credibility to such data.

1081 (c)~~(d)~~ Rates shall be deemed excessive if, among other
1082 standards established by this section, the rate structure
1083 provides for replenishment of reserves or surpluses from
1084 premiums when the replenishment is attributable to investment
1085 losses.

1086 (d)~~(e)~~ The insurer must apply a discount or surcharge based
1087 on the health care provider's loss experience or ~~shall~~ establish
1088 an alternative method giving due consideration to the provider's
1089 loss experience. The insurer must include in the filing a copy
1090 of the surcharge or discount schedule or a description of the
1091 alternative method used, and ~~must~~ provide a copy ~~of such~~
1092 ~~schedule or description~~, as approved by the office, to
1093 policyholders at the time of renewal and to prospective
1094 policyholders at the time of application for coverage.

1095 (e)~~(f)~~ Each medical malpractice insurer must make a rate
1096 filing under this section, sworn to by at least two executive
1097 officers of the insurer, at least once each calendar year.

1098 ~~(8)(a)1. No later than 60 days after the effective date of~~
1099 ~~medical malpractice legislation enacted during the 2003 Special~~
1100 ~~Session D of the Florida Legislature, the office shall calculate~~
1101 ~~a presumed factor that reflects the impact that the changes~~
1102 ~~contained in such legislation will have on rates for medical~~

37-00264B-11

2011408

1103 ~~malpractice insurance and shall issue a notice informing all~~
1104 ~~insurers writing medical malpractice coverage of such presumed~~
1105 ~~factor. In determining the presumed factor, the office shall use~~
1106 ~~generally accepted actuarial techniques and standards provided~~
1107 ~~in this section in determining the expected impact on losses,~~
1108 ~~expenses, and investment income of the insurer. To the extent~~
1109 ~~that the operation of a provision of medical malpractice~~
1110 ~~legislation enacted during the 2003 Special Session D of the~~
1111 ~~Florida Legislature is stayed pending a constitutional~~
1112 ~~challenge, the impact of that provision shall not be included in~~
1113 ~~the calculation of a presumed factor under this subparagraph.~~

1114 ~~2. No later than 60 days after the office issues its notice~~
1115 ~~of the presumed rate change factor under subparagraph 1., each~~
1116 ~~insurer writing medical malpractice coverage in this state shall~~
1117 ~~submit to the office a rate filing for medical malpractice~~
1118 ~~insurance, which will take effect no later than January 1, 2004,~~
1119 ~~and apply retroactively to policies issued or renewed on or~~
1120 ~~after the effective date of medical malpractice legislation~~
1121 ~~enacted during the 2003 Special Session D of the Florida~~
1122 ~~Legislature. Except as authorized under paragraph (b), the~~
1123 ~~filing shall reflect an overall rate reduction at least as great~~
1124 ~~as the presumed factor determined under subparagraph 1. With~~
1125 ~~respect to policies issued on or after the effective date of~~
1126 ~~such legislation and prior to the effective date of the rate~~
1127 ~~filing required by this subsection, the office shall order the~~
1128 ~~insurer to make a refund of the amount that was charged in~~
1129 ~~excess of the rate that is approved.~~

1130 ~~(b) Any insurer or rating organization that contends that~~
1131 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~

37-00264B-11

2011408

1132 ~~or unfairly discriminatory shall separately state in its filing~~
1133 ~~the rate it contends is appropriate and shall state with~~
1134 ~~specificity the factors or data that it contends should be~~
1135 ~~considered in order to produce such appropriate rate. The~~
1136 ~~insurer or rating organization shall be permitted to use all of~~
1137 ~~the generally accepted actuarial techniques provided in this~~
1138 ~~section in making any filing pursuant to this subsection. The~~
1139 ~~office shall review each such exception and approve or~~
1140 ~~disapprove it prior to use. It shall be the insurer's burden to~~
1141 ~~actuarially justify any deviations from the rates required to be~~
1142 ~~filed under paragraph (a). The insurer making a filing under~~
1143 ~~this paragraph shall include in the filing the expected impact~~
1144 ~~of medical malpractice legislation enacted during the 2003~~
1145 ~~Special Session D of the Florida Legislature on losses,~~
1146 ~~expenses, and rates.~~

1147 ~~(c) If any provision of medical malpractice legislation~~
1148 ~~enacted during the 2003 Special Session D of the Florida~~
1149 ~~Legislature is held invalid by a court of competent~~
1150 ~~jurisdiction, the office shall permit an adjustment of all~~
1151 ~~medical malpractice rates filed under this section to reflect~~
1152 ~~the impact of such holding on such rates so as to ensure that~~
1153 ~~the rates are not excessive, inadequate, or unfairly~~
1154 ~~discriminatory.~~

1155 ~~(d) Rates approved on or before July 1, 2003, for medical~~
1156 ~~malpractice insurance shall remain in effect until the effective~~
1157 ~~date of a new rate filing approved under this subsection.~~

1158 ~~(e) The calculation and notice by the office of the~~
1159 ~~presumed factor pursuant to paragraph (a) is not an order or~~
1160 ~~rule that is subject to chapter 120. If the office enters into a~~

37-00264B-11

2011408

1161 ~~contract with an independent consultant to assist the office in~~
1162 ~~calculating the presumed factor, such contract shall not be~~
1163 ~~subject to the competitive solicitation requirements of s.~~
1164 ~~287.057.~~

1165 (8)~~(9)~~(a) The chief executive officer or chief financial
1166 officer of a property insurer and the chief actuary of a
1167 property insurer must certify under oath and subject to the
1168 penalty of perjury, on a form approved by the commission, the
1169 following information, which must accompany a rate filing:

1170 1. The signing officer and actuary have reviewed the rate
1171 filing;

1172 2. Based on the signing officer's and actuary's knowledge,
1173 the rate filing does not contain any untrue statement of a
1174 material fact or omit to state a material fact necessary ~~in~~
1175 ~~order~~ to make the statements made, in light of the circumstances
1176 under which such statements were made, not misleading;

1177 3. Based on the signing officer's and actuary's knowledge,
1178 the information and other factors described in paragraph (2) (b),
1179 including, but not limited to, investment income, fairly present
1180 in all material respects the basis of the rate filing for the
1181 periods presented in the filing; and

1182 4. Based on the signing officer's and actuary's knowledge,
1183 the rate filing reflects all premium savings that are reasonably
1184 expected to result from legislative enactments and are in
1185 accordance with generally accepted and reasonable actuarial
1186 techniques.

1187 (b) A signing officer or actuary who knowingly makes ~~making~~
1188 a false certification under this subsection commits a violation
1189 of s. 626.9541(1) (e) and is subject to the penalties under s.

37-00264B-11

2011408

1190 626.9521.

1191 (c) Failure to provide such certification by the officer
1192 and actuary shall result in the rate filing being disapproved
1193 without prejudice to be refiled.

1194 (d) A certification made pursuant to paragraph (a) is not
1195 rendered false if, after making the subject rate filing, the
1196 insurer provides the office with additional or supplementary
1197 information pursuant to a formal or informal request from the
1198 office.

1199 (e) ~~(d)~~ The commission may adopt rules and forms pursuant to
1200 ss. ~~120.536(1) and 120.54~~ to administer this subsection.

1201 (9) ~~(10)~~ The burden is on the office to establish that rates
1202 are excessive for personal lines residential coverage with a
1203 dwelling replacement cost of \$1 million or more or for a single
1204 condominium unit with a combined dwelling and contents
1205 replacement cost of \$1 million or more. Upon request of the
1206 office, the insurer shall provide ~~to the office~~ such loss and
1207 expense information as the office reasonably needs to meet this
1208 burden.

1209 (10) ~~(11)~~ Any interest paid pursuant to s. 627.70131(5) may
1210 not be included in the insurer's rate base and may not be used
1211 to justify a rate or rate change.

1212 Section 11. Subsections (1) and (5) and paragraph (b) of
1213 subsection (8) of section 627.0629, Florida Statutes, are
1214 amended to read:

1215 627.0629 Residential property insurance; rate filings.—

1216 (1) ~~(a)~~ It is the intent of the Legislature that insurers
1217 ~~must~~ provide the most accurate pricing signals available in
1218 order ~~savings~~ to encourage consumers to ~~who~~ install or implement

37-00264B-11

2011408

1219 windstorm damage mitigation techniques, alterations, or
1220 solutions to their properties to prevent windstorm losses. It is
1221 also the intent of the Legislature that implementation of
1222 mitigation discounts not result in a loss of income to the
1223 insurers granting the discounts, so that the aggregate of such
1224 discounts not exceed the aggregate of the expected reduction in
1225 loss attributable to the mitigation efforts for which discounts
1226 are granted. A rate filing for residential property insurance
1227 must include actuarially reasonable discounts, credits, debits,
1228 or other rate differentials, or appropriate reductions in
1229 deductibles, which provide the proper pricing for all
1230 properties. The rate filing must take into account the presence
1231 or absence of ~~on which~~ fixtures or construction techniques
1232 demonstrated to reduce the amount of loss in a windstorm which
1233 have been installed or implemented. The fixtures or construction
1234 techniques ~~must shall~~ include, but not be limited to, fixtures
1235 or construction techniques ~~that which~~ enhance roof strength,
1236 roof covering performance, roof-to-wall strength, wall-to-floor-
1237 to-foundation strength, opening protection, and window, door,
1238 and skylight strength. Credits, debits, discounts, or other rate
1239 differentials, or appropriate reductions or increases in
1240 deductibles, which recognize the presence or absence of ~~for~~
1241 fixtures and construction techniques ~~that which~~ meet the minimum
1242 requirements of the Florida Building Code must be included in
1243 the rate filing. If an insurer demonstrates that the aggregate
1244 of its mitigation discounts results in a reduction to revenue
1245 which exceeds the reduction of the aggregate loss that is
1246 expected to result from the mitigation, the insurer may recover
1247 the lost revenue through an increase in its base rates. ~~All~~

37-00264B-11

2011408

1248 ~~insurance companies must make a rate filing which includes the~~
1249 ~~credits, discounts, or other rate differentials or reductions in~~
1250 ~~deductibles by February 28, 2003. By July 1, 2007, the office~~
1251 ~~shall reevaluate the discounts, credits, other rate~~
1252 ~~differentials, and appropriate reductions in deductibles for~~
1253 ~~fixtures and construction techniques that meet the minimum~~
1254 ~~requirements of the Florida Building Code, based upon actual~~
1255 ~~experience or any other loss relativity studies available to the~~
1256 ~~office.~~ The office shall determine the discounts, credits,
1257 debits, other rate differentials, and appropriate reductions or
1258 increases in deductibles that reflect the full actuarial value
1259 of such revaluation, which may be used by insurers in rate
1260 filings.

1261 ~~(b) By February 1, 2011, the Office of Insurance~~
1262 ~~Regulation, in consultation with the Department of Financial~~
1263 ~~Services and the Department of Community Affairs, shall develop~~
1264 ~~and make publicly available a proposed method for insurers to~~
1265 ~~establish discounts, credits, or other rate differentials for~~
1266 ~~hurricane mitigation measures which directly correlate to the~~
1267 ~~numerical rating assigned to a structure pursuant to the uniform~~
1268 ~~home grading scale adopted by the Financial Services Commission~~
1269 ~~pursuant to s. 215.55865, including any proposed changes to the~~
1270 ~~uniform home grading scale. By October 1, 2011, the commission~~
1271 ~~shall adopt rules requiring insurers to make rate filings for~~
1272 ~~residential property insurance which revise insurers' discounts,~~
1273 ~~credits, or other rate differentials for hurricane mitigation~~
1274 ~~measures so that such rate differentials correlate directly to~~
1275 ~~the uniform home grading scale. The rules may include such~~
1276 ~~changes to the uniform home grading scale as the commission~~

37-00264B-11

2011408

1277 ~~determines are necessary, and may specify the minimum required~~
1278 ~~discounts, credits, or other rate differentials. Such rate~~
1279 ~~differentials must be consistent with generally accepted~~
1280 ~~actuarial principles and wind loss mitigation studies. The rules~~
1281 ~~shall allow a period of at least 2 years after the effective~~
1282 ~~date of the revised mitigation discounts, credits, or other rate~~
1283 ~~differentials for a property owner to obtain an inspection or~~
1284 ~~otherwise qualify for the revised credit, during which time the~~
1285 ~~insurer shall continue to apply the mitigation credit that was~~
1286 ~~applied immediately prior to the effective date of the revised~~
1287 ~~credit. Discounts, credits, and other rate differentials~~
1288 ~~established for rate filings under this paragraph shall~~
1289 ~~supersede, after adoption, the discounts, credits, and other~~
1290 ~~rate differentials included in rate filings under paragraph (a).~~

1291 (5) In order to provide an appropriate transition period,
1292 an insurer may, ~~in its sole discretion,~~ implement an approved
1293 rate filing for residential property insurance over a period of
1294 years. Such ~~An~~ insurer electing to phase in its rate filing must
1295 provide an informational notice to the office setting out its
1296 schedule for implementation of the phased-in rate filing. The ~~An~~
1297 insurer may include in its rate the actual cost of private
1298 market reinsurance that corresponds to available coverage of the
1299 Temporary Increase in Coverage Limits, TICL, from the Florida
1300 Hurricane Catastrophe Fund. The insurer may also include the
1301 cost of reinsurance to replace the TICL reduction implemented
1302 pursuant to s. 215.555(17)(d)9. However, this cost ~~for~~
1303 ~~reinsurance may not include any expense or profit load or result~~
1304 in a total annual base rate increase in excess of 10 percent.

1305 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL

37-00264B-11

2011408

1306 SOUNDNESS.—

1307 (b) To the extent ~~that~~ funds are provided for this purpose
 1308 in the General Appropriations Act, ~~the Legislature hereby~~
 1309 ~~authorizes~~ the establishment of a program to be administered by
 1310 the Citizens Property Insurance Corporation for homeowners
 1311 insured in the coastal ~~high-risk~~ account is authorized.

1312 Section 12. Paragraphs (b), (c), (d), (v), and (y) of
 1313 subsection (6) of section 627.351, Florida Statutes, are amended
 1314 to read:

1315 627.351 Insurance risk apportionment plans.—

1316 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1317 (b)1. All insurers authorized to write one or more subject
 1318 lines of business in this state are subject to assessment by the
 1319 corporation and, for the purposes of this subsection, are
 1320 referred to collectively as "assessable insurers." Insurers
 1321 writing one or more subject lines of business in this state
 1322 pursuant to part VIII of chapter 626 are not assessable
 1323 insurers, but insureds who procure one or more subject lines of
 1324 business in this state pursuant to part VIII of chapter 626 are
 1325 subject to assessment by the corporation and are referred to
 1326 collectively as "assessable insureds." An ~~authorized~~ insurer's
 1327 assessment liability begins ~~shall begin~~ on the first day of the
 1328 calendar year following the year in which the insurer was issued
 1329 a certificate of authority to transact insurance for subject
 1330 lines of business in this state and terminates ~~shall terminate~~ 1
 1331 year after the end of the first calendar year during which the
 1332 insurer no longer holds a certificate of authority to transact
 1333 insurance for subject lines of business in this state.

1334 2.a. All revenues, assets, liabilities, losses, and

37-00264B-11

2011408__

1335 expenses of the corporation shall be divided into three separate
1336 accounts as follows:

1337 (I) A personal lines account for personal residential
1338 policies issued by the corporation, or issued by the Residential
1339 Property and Casualty Joint Underwriting Association and renewed
1340 by the corporation, which provides ~~that provide~~ comprehensive,
1341 multiperil coverage on risks that are not located in areas
1342 eligible for coverage by ~~in~~ the Florida Windstorm Underwriting
1343 Association as those areas were defined on January 1, 2002, and
1344 for ~~such~~ policies that do not provide coverage for the peril of
1345 wind on risks that are located in such areas;

1346 (II) A commercial lines account for commercial residential
1347 and commercial nonresidential policies issued by the
1348 corporation, or issued by the Residential Property and Casualty
1349 Joint Underwriting Association and renewed by the corporation,
1350 which provides ~~that provide~~ coverage for basic property perils
1351 on risks that are not located in areas eligible for coverage by
1352 ~~in~~ the Florida Windstorm Underwriting Association as those areas
1353 were defined on January 1, 2002, and for ~~such~~ policies that do
1354 not provide coverage for the peril of wind on risks that are
1355 located in such areas; and

1356 (III) A coastal high-risk ~~high-risk~~ account for personal residential
1357 policies and commercial residential and commercial
1358 nonresidential property policies issued by the corporation, or
1359 transferred to the corporation, which provides ~~that provide~~
1360 coverage for the peril of wind on risks that are located in
1361 areas eligible for coverage by ~~in~~ the Florida Windstorm
1362 Underwriting Association as those areas were defined on January
1363 1, 2002. The corporation may offer policies that provide

37-00264B-11

2011408

1364 multiperil coverage and the corporation shall continue to offer
1365 policies that provide coverage only for the peril of wind for
1366 risks located in areas eligible for coverage in the coastal
1367 ~~high-risk~~ account. In issuing multiperil coverage, the
1368 corporation may use its approved policy forms and rates for the
1369 personal lines account. An applicant or insured who is eligible
1370 to purchase a multiperil policy from the corporation may
1371 purchase a multiperil policy from an authorized insurer without
1372 prejudice to the applicant's or insured's eligibility to
1373 prospectively purchase a policy that provides coverage only for
1374 the peril of wind from the corporation. An applicant or insured
1375 who is eligible for a corporation policy that provides coverage
1376 only for the peril of wind may elect to purchase or retain such
1377 policy and also purchase or retain coverage excluding wind from
1378 an authorized insurer without prejudice to the applicant's or
1379 insured's eligibility to prospectively purchase a policy that
1380 provides multiperil coverage from the corporation. It is the
1381 goal of the Legislature that there ~~would~~ be an overall average
1382 savings of 10 percent or more for a policyholder who currently
1383 has a wind-only policy with the corporation, and an ex-wind
1384 policy with a voluntary insurer or the corporation, and who ~~then~~
1385 obtains a multiperil policy from the corporation. It is the
1386 intent of the Legislature that the offer of multiperil coverage
1387 in the coastal ~~high-risk~~ account be made and implemented in a
1388 manner that does not adversely affect the tax-exempt status of
1389 the corporation or creditworthiness of or security for currently
1390 outstanding financing obligations or credit facilities of the
1391 coastal ~~high-risk~~ account, the personal lines account, or the
1392 commercial lines account. The coastal ~~high-risk~~ account must

37-00264B-11

2011408

1393 also include quota share primary insurance under subparagraph
1394 (c)2. The area eligible for coverage under the coastal high-risk
1395 account also includes the area within Port Canaveral, which is
1396 bordered on the south by the City of Cape Canaveral, bordered on
1397 the west by the Banana River, and bordered on the north by
1398 Federal Government property.

1399 b. The three separate accounts must be maintained as long
1400 as financing obligations entered into by the Florida Windstorm
1401 Underwriting Association or Residential Property and Casualty
1402 Joint Underwriting Association are outstanding, in accordance
1403 with the terms of the corresponding financing documents. If ~~When~~
1404 the financing obligations are no longer outstanding, ~~in~~
1405 ~~accordance with the terms of the corresponding financing~~
1406 ~~documents,~~ the corporation may use a single account for all
1407 revenues, assets, liabilities, losses, and expenses of the
1408 corporation. Consistent with ~~the requirement of~~ this
1409 subparagraph and prudent investment policies that minimize the
1410 cost of carrying debt, the board shall exercise its best efforts
1411 to retire existing debt or ~~to~~ obtain the approval of necessary
1412 parties to amend the terms of existing debt, so as to structure
1413 the most efficient plan to consolidate the three separate
1414 accounts into a single account.

1415 c. Creditors of the Residential Property and Casualty Joint
1416 Underwriting Association and ~~of~~ the accounts specified in sub-
1417 sub-subparagraphs a.(I) and (II) may have a claim against, and
1418 recourse to, those ~~the~~ accounts ~~referred to in sub-sub-~~
1419 ~~subparagraphs a.(I) and (II) and shall have~~ no claim against, or
1420 recourse to, the account referred to in sub-sub-subparagraph
1421 a.(III). Creditors of the Florida Windstorm Underwriting

37-00264B-11

2011408

1422 Association ~~shall~~ have a claim against, and recourse to, the
 1423 account referred to in sub-sub-subparagraph a.(III) and ~~shall~~
 1424 ~~have~~ no claim against, or recourse to, the accounts referred to
 1425 in sub-sub-subparagraphs a.(I) and (II).

1426 d. Revenues, assets, liabilities, losses, and expenses not
 1427 attributable to particular accounts shall be prorated among the
 1428 accounts.

1429 e. The Legislature finds that the revenues of the
 1430 corporation are revenues that are necessary to meet the
 1431 requirements set forth in documents authorizing the issuance of
 1432 bonds under this subsection.

1433 f. No part of the income of the corporation may inure to
 1434 the benefit of any private person.

1435 3. With respect to a deficit in an account:

1436 a. After accounting for the ~~Citizens~~ policyholder surcharge
 1437 imposed under sub-subparagraph h. i., ~~if when~~ the remaining
 1438 projected deficit incurred in a particular calendar year:

1439 (I) Is not greater than 6 percent of the aggregate
 1440 statewide direct written premium for the subject lines of
 1441 business for the prior calendar year, the entire deficit shall
 1442 be recovered through regular assessments of assessable insurers
 1443 under paragraph (q) and assessable insureds.

1444 ~~(II)b. After accounting for the Citizens policyholder~~
 1445 ~~surcharge imposed under sub-subparagraph i., when the remaining~~
 1446 ~~projected deficit incurred in a particular calendar year Exceeds~~
 1447 6 percent of the aggregate statewide direct written premium for
 1448 the subject lines of business for the prior calendar year, the
 1449 corporation shall levy regular assessments on assessable
 1450 insurers under paragraph (q) and on assessable insureds in an

37-00264B-11

2011408

1451 amount equal to the greater of 6 percent of the deficit or 6
1452 percent of the aggregate statewide direct written premium for
1453 the subject lines of business for the prior calendar year. Any
1454 remaining deficit shall be recovered through emergency
1455 assessments under sub-subparagraph c. ~~d.~~

1456 ~~b.e.~~ Each assessable insurer's share of the amount being
1457 assessed under sub-subparagraph a. must ~~or sub-subparagraph b.~~
1458 ~~shall~~ be in the proportion that the assessable insurer's direct
1459 written premium for the subject lines of business for the year
1460 preceding the assessment bears to the aggregate statewide direct
1461 written premium for the subject lines of business for that year.
1462 The applicable assessment percentage ~~applicable to each~~
1463 ~~assessable insured~~ is the ratio of the amount being assessed
1464 under sub-subparagraph a. ~~or sub-subparagraph b.~~ to the
1465 aggregate statewide direct written premium for the subject lines
1466 of business for the prior year. Assessments levied by the
1467 corporation on assessable insurers under sub-subparagraphs a.
1468 and b. must ~~shall~~ be paid as required by the corporation's plan
1469 of operation and paragraph (q) . ~~Assessments levied by the~~
1470 ~~corporation on assessable insureds under sub-subparagraphs a.~~
1471 ~~and b. shall be~~ collected by the surplus lines agent at the time
1472 the surplus lines agent collects the surplus lines tax required
1473 by s. 626.932, and shall be paid to the Florida Surplus Lines
1474 Service Office at the time the surplus lines agent pays the
1475 surplus lines tax to that ~~the Florida Surplus Lines Service~~
1476 office. Upon receipt of regular assessments from surplus lines
1477 agents, the Florida Surplus Lines Service Office shall transfer
1478 the assessments directly to the corporation as determined by the
1479 corporation.

37-00264B-11

2011408

1480 ~~c.d.~~ Upon a determination by the board of governors that a
1481 deficit in an account exceeds the amount that will be recovered
1482 through regular assessments under sub-subparagraph a. ~~or sub-~~
1483 ~~subparagraph b.~~, plus the amount that is expected to be
1484 recovered through surcharges under sub-subparagraph h. i., ~~as to~~
1485 ~~the remaining projected deficit~~ the board ~~shall levy~~, after
1486 verification by the office, shall levy emergency assessments,
1487 for as many years as necessary to cover the deficits, to be
1488 collected by assessable insurers and the corporation and
1489 collected from assessable insureds upon issuance or renewal of
1490 policies for subject lines of business, excluding National Flood
1491 Insurance policies. The amount ~~of the emergency assessment~~
1492 collected in a particular year must ~~shall~~ be a uniform
1493 percentage of that year's direct written premium for subject
1494 lines of business and all accounts of the corporation, excluding
1495 National Flood Insurance Program policy premiums, as annually
1496 determined by the board and verified by the office. The office
1497 shall verify the arithmetic calculations involved in the board's
1498 determination within 30 days after receipt of the information on
1499 which the determination was based. Notwithstanding any other
1500 provision of law, the corporation and each assessable insurer
1501 that writes subject lines of business shall collect emergency
1502 assessments from its policyholders without such obligation being
1503 affected by any credit, limitation, exemption, or deferment.
1504 Emergency assessments levied by the corporation on assessable
1505 insureds shall be collected by the surplus lines agent at the
1506 time the surplus lines agent collects the surplus lines tax
1507 required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus
1508 Lines Service Office at the time the surplus lines agent pays

37-00264B-11

2011408

1509 the surplus lines tax to that ~~the Florida Surplus Lines Service~~
1510 office. The emergency assessments ~~se~~ collected shall be
1511 transferred directly to the corporation on a periodic basis as
1512 determined by the corporation and ~~shall be~~ held by the
1513 corporation solely in the applicable account. The aggregate
1514 amount of emergency assessments levied for an account under this
1515 sub-subparagraph in any calendar year may, ~~at the discretion of~~
1516 ~~the board of governors,~~ be less than but ~~may~~ not exceed the
1517 greater of 10 percent of the amount needed to cover the deficit,
1518 plus interest, fees, commissions, required reserves, and other
1519 costs associated with financing ~~of~~ the original deficit, or 10
1520 percent of the aggregate statewide direct written premium for
1521 subject lines of business and ~~for~~ all accounts of the
1522 corporation for the prior year, plus interest, fees,
1523 commissions, required reserves, and other costs associated with
1524 financing the deficit.

1525 d.e. The corporation may pledge the proceeds of
1526 assessments, projected recoveries from the Florida Hurricane
1527 Catastrophe Fund, other insurance and reinsurance recoverables,
1528 policyholder surcharges and other surcharges, and other funds
1529 available to the corporation as the source of revenue for and to
1530 secure bonds issued under paragraph (q), bonds or other
1531 indebtedness issued under subparagraph (c)3., or lines of credit
1532 or other financing mechanisms issued or created under this
1533 subsection, or to retire any other debt incurred as a result of
1534 deficits or events giving rise to deficits, or in any other way
1535 that the board determines will efficiently recover such
1536 deficits. The purpose of the lines of credit or other financing
1537 mechanisms is to provide additional resources to assist the

37-00264B-11

2011408

1538 corporation in covering claims and expenses attributable to a
1539 catastrophe. As used in this subsection, the term "assessments"
1540 includes regular assessments under sub-subparagraph a., ~~sub-~~
1541 ~~subparagraph b.~~, or subparagraph (q)1. and emergency assessments
1542 under sub-subparagraph d. Emergency assessments collected under
1543 sub-subparagraph d. are not part of an insurer's rates, are not
1544 premium, and are not subject to premium tax, fees, or
1545 commissions; however, failure to pay the emergency assessment
1546 shall be treated as failure to pay premium. The emergency
1547 assessments under sub-subparagraph c. ~~d.~~ shall continue as long
1548 as any bonds issued or other indebtedness incurred with respect
1549 to a deficit for which the assessment was imposed remain
1550 outstanding, unless adequate provision has been made for the
1551 payment of such bonds or other indebtedness pursuant to the
1552 documents governing such bonds or ~~other~~ indebtedness.

1553 e.f. As used in this subsection for purposes of any deficit
1554 incurred on or after January 25, 2007, the term "subject lines
1555 of business" means insurance written by assessable insurers or
1556 procured by assessable insureds for all property and casualty
1557 lines of business in this state, but not including workers'
1558 compensation or medical malpractice. As used in this ~~the~~ sub-
1559 subparagraph, the term "property and casualty lines of business"
1560 includes all lines of business identified on Form 2, Exhibit of
1561 Premiums and Losses, in the annual statement required of
1562 authorized insurers under ~~by~~ s. 624.424 and any rule adopted
1563 under this section, except for those lines identified as
1564 accident and health insurance and except for policies written
1565 under the National Flood Insurance Program or the Federal Crop
1566 Insurance Program. For purposes of this sub-subparagraph, the

37-00264B-11

2011408__

1567 term "workers' compensation" includes both workers' compensation
1568 insurance and excess workers' compensation insurance.

1569 ~~f.g.~~ The Florida Surplus Lines Service Office shall
1570 determine annually the aggregate statewide written premium in
1571 subject lines of business procured by assessable insureds and
1572 ~~shall~~ report that information to the corporation in a form and
1573 at a time the corporation specifies to ensure that the
1574 corporation can meet the requirements of this subsection and the
1575 corporation's financing obligations.

1576 ~~g.h.~~ The Florida Surplus Lines Service Office shall verify
1577 the proper application by surplus lines agents of assessment
1578 percentages for regular assessments and emergency assessments
1579 levied under this subparagraph on assessable insureds and ~~shall~~
1580 assist the corporation in ensuring the accurate, timely
1581 collection and payment of assessments by surplus lines agents as
1582 required by the corporation.

1583 ~~h.i.~~ If a deficit is incurred in any account in 2008 or
1584 thereafter, the board of governors shall levy a ~~Citizens~~
1585 policyholder surcharge against all policyholders of the
1586 corporation. ~~for a 12-month period, which~~

1587 (I) The surcharge shall be levied ~~collected at the time of~~
1588 ~~issuance or renewal of a policy,~~ as a uniform percentage of the
1589 premium for the policy of up to 15 percent of such premium,
1590 which funds shall be used to offset the deficit.

1591 (II) The surcharge is payable upon cancellation or
1592 termination of the policy, upon renewal of the policy, or upon
1593 issuance of a new policy by the corporation within the first 12
1594 months after the date of the levy or the period of time
1595 necessary to fully collect the surcharge amount.

37-00264B-11

2011408

1596 (III) The corporation may not levy any regular assessments
1597 under paragraph (q) pursuant to sub-subparagraph a. or sub-
1598 subparagraph b. with respect to a particular year's deficit
1599 until the corporation has first levied the full amount of the
1600 surcharge authorized by this sub-subparagraph.

1601 (IV) The surcharge is ~~Citizens policyholder surcharges~~
1602 ~~under this sub-subparagraph~~ are not considered premium and is
1603 ~~are~~ not subject to commissions, fees, or premium taxes. However,
1604 failure to pay the surcharge ~~such surcharges~~ shall be treated as
1605 failure to pay premium.

1606 ~~i.j.~~ If the amount of any assessments or surcharges
1607 collected from corporation policyholders, assessable insurers or
1608 their policyholders, or assessable insureds exceeds the amount
1609 of the deficits, such excess amounts shall be remitted to and
1610 retained by the corporation in a reserve to be used by the
1611 corporation, as determined by the board of governors and
1612 approved by the office, to pay claims or reduce any past,
1613 present, or future plan-year deficits or to reduce outstanding
1614 debt.

1615 (c) The corporation's plan of operation ~~of the corporation~~:

1616 1. Must provide for adoption of residential property and
1617 casualty insurance policy forms and commercial residential and
1618 nonresidential property insurance forms, which ~~forms~~ must be
1619 approved by the office before ~~prior to~~ use. The corporation
1620 shall adopt the following policy forms:

1621 a. Standard personal lines policy forms that are
1622 comprehensive multiperil policies providing full coverage of a
1623 residential property equivalent to the coverage provided in the
1624 private insurance market under an HO-3, HO-4, or HO-6 policy.

37-00264B-11

2011408__

1625 b. Basic personal lines policy forms that are policies
1626 similar to an HO-8 policy or a dwelling fire policy that provide
1627 coverage meeting the requirements of the secondary mortgage
1628 market, but which ~~coverage~~ is more limited than the coverage
1629 under a standard policy.

1630 c. Commercial lines residential and nonresidential policy
1631 forms that are generally similar to the basic perils of full
1632 coverage obtainable for commercial residential structures and
1633 commercial nonresidential structures in the admitted voluntary
1634 market.

1635 d. Personal lines and commercial lines residential property
1636 insurance forms that cover the peril of wind only. The forms are
1637 applicable only to residential properties located in areas
1638 eligible for coverage under the coastal ~~high-risk~~ account
1639 referred to in sub-subparagraph (b)2.a.

1640 e. Commercial lines nonresidential property insurance forms
1641 that cover the peril of wind only. The forms are applicable only
1642 to nonresidential properties located in areas eligible for
1643 coverage under the coastal ~~high-risk~~ account referred to in sub-
1644 subparagraph (b)2.a.

1645 f. The corporation may adopt variations of the policy forms
1646 listed in sub-subparagraphs a.-e. which ~~that~~ contain more
1647 restrictive coverage.

1648 2.a. Must provide that the corporation adopt a program in
1649 which the corporation and authorized insurers enter into quota
1650 share primary insurance agreements for hurricane coverage, as
1651 defined in s. 627.4025(2)(a), for eligible risks, and adopt
1652 property insurance forms for eligible risks which cover the
1653 peril of wind only.

37-00264B-11

2011408

1654 a. As used in this subsection, the term:

1655 (I) "Quota share primary insurance" means an arrangement in
1656 which the primary hurricane coverage of an eligible risk is
1657 provided in specified percentages by the corporation and an
1658 authorized insurer. The corporation and authorized insurer are
1659 each solely responsible for a specified percentage of hurricane
1660 coverage of an eligible risk as set forth in a quota share
1661 primary insurance agreement between the corporation and an
1662 authorized insurer and the insurance contract. The
1663 responsibility of the corporation or authorized insurer to pay
1664 its specified percentage of hurricane losses of an eligible
1665 risk, as set forth in the ~~quota share primary insurance~~
1666 agreement, may not be altered by the inability of the other
1667 party ~~to the agreement~~ to pay its specified percentage of
1668 ~~hurricane~~ losses. Eligible risks that are provided hurricane
1669 coverage through a quota share primary insurance arrangement
1670 must be provided policy forms that set forth the obligations of
1671 the corporation and authorized insurer under the arrangement,
1672 clearly specify the percentages of quota share primary insurance
1673 provided by the corporation and authorized insurer, and
1674 conspicuously and clearly state that ~~neither~~ the authorized
1675 insurer and ~~nor~~ the corporation may not be held responsible
1676 beyond their ~~its~~ specified percentage of coverage of hurricane
1677 losses.

1678 (II) "Eligible risks" means personal lines residential and
1679 commercial lines residential risks that meet the underwriting
1680 criteria of the corporation and are located in areas that were
1681 eligible for coverage by the Florida Windstorm Underwriting
1682 Association on January 1, 2002.

37-00264B-11

2011408

1683 b. The corporation may enter into quota share primary
1684 insurance agreements with authorized insurers at corporation
1685 coverage levels of 90 percent and 50 percent.

1686 c. If the corporation determines that additional coverage
1687 levels are necessary to maximize participation in quota share
1688 primary insurance agreements by authorized insurers, the
1689 corporation may establish additional coverage levels. However,
1690 the corporation's quota share primary insurance coverage level
1691 may not exceed 90 percent.

1692 d. Any quota share primary insurance agreement entered into
1693 between an authorized insurer and the corporation must provide
1694 for a uniform specified percentage of coverage of hurricane
1695 losses, by county or territory as set forth by the corporation
1696 board, for all eligible risks of the authorized insurer covered
1697 under the ~~quota share primary insurance~~ agreement.

1698 e. Any quota share primary insurance agreement entered into
1699 between an authorized insurer and the corporation is subject to
1700 review and approval by the office. However, such agreement shall
1701 be authorized only as to insurance contracts entered into
1702 between an authorized insurer and an insured who is already
1703 insured by the corporation for wind coverage.

1704 f. For all eligible risks covered under quota share primary
1705 insurance agreements, the exposure and coverage levels for both
1706 the corporation and authorized insurers shall be reported by the
1707 corporation to the Florida Hurricane Catastrophe Fund. For all
1708 policies of eligible risks covered under such ~~quota share~~
1709 ~~primary insurance~~ agreements, the corporation and the authorized
1710 insurer must ~~shall~~ maintain complete and accurate records for
1711 the purpose of exposure and loss reimbursement audits as

37-00264B-11

2011408

1712 required by ~~Florida Hurricane Catastrophe~~ fund rules. The
1713 corporation and the authorized insurer shall each maintain
1714 duplicate copies of policy declaration pages and supporting
1715 claims documents.

1716 g. The corporation board shall establish in its plan of
1717 operation standards for quota share agreements which ensure that
1718 there is no discriminatory application among insurers as to the
1719 terms of the ~~quota share~~ agreements, pricing of the ~~quota share~~
1720 agreements, incentive provisions if any, and consideration paid
1721 for servicing policies or adjusting claims.

1722 h. The quota share primary insurance agreement between the
1723 corporation and an authorized insurer must set forth the
1724 specific terms under which coverage is provided, including, but
1725 not limited to, the sale and servicing of policies issued under
1726 the agreement by the insurance agent of the authorized insurer
1727 producing the business, the reporting of information concerning
1728 eligible risks, the payment of premium to the corporation, and
1729 arrangements for the adjustment and payment of hurricane claims
1730 incurred on eligible risks by the claims adjuster and personnel
1731 of the authorized insurer. Entering into a quota sharing
1732 insurance agreement between the corporation and an authorized
1733 insurer is ~~shall be~~ voluntary and at the discretion of the
1734 authorized insurer.

1735 3. May provide that the corporation may employ or otherwise
1736 contract with individuals or other entities to provide
1737 administrative or professional services that may be appropriate
1738 to effectuate the plan. The corporation may ~~shall have the power~~
1739 ~~to~~ borrow funds, by issuing bonds or by incurring other
1740 indebtedness, and shall have other powers reasonably necessary

37-00264B-11

2011408

1741 to effectuate the requirements of this subsection, including,
1742 without limitation, the power to issue bonds and incur other
1743 indebtedness in order to refinance outstanding bonds or other
1744 indebtedness. The corporation may~~, but is not required to,~~ seek
1745 judicial validation of its bonds or other indebtedness under
1746 chapter 75. The corporation may issue bonds or incur other
1747 indebtedness, or have bonds issued on its behalf by a unit of
1748 local government pursuant to subparagraph (q)2.~~7~~ in the absence
1749 of a hurricane or other weather-related event, upon a
1750 determination by the corporation, subject to approval by the
1751 office, that such action would enable it to efficiently meet the
1752 financial obligations of the corporation and that such
1753 financings are reasonably necessary to effectuate the
1754 requirements of this subsection. The corporation may ~~is~~
1755 ~~authorized to~~ take all actions needed to facilitate tax-free
1756 status for ~~any~~ such bonds or indebtedness, including formation
1757 of trusts or other affiliated entities. The corporation may
1758 ~~shall have the authority to~~ pledge assessments, projected
1759 recoveries from the Florida Hurricane Catastrophe Fund, other
1760 reinsurance recoverables, market equalization and other
1761 surcharges, and other funds available to the corporation as
1762 security for bonds or other indebtedness. In recognition of s.
1763 10, Art. I of the State Constitution, prohibiting the impairment
1764 of obligations of contracts, it is the intent of the Legislature
1765 that no action be taken whose purpose is to impair any bond
1766 indenture or financing agreement or any revenue source committed
1767 by contract to such bond or other indebtedness.

1768 4.~~a~~. Must require that the corporation operate subject to
1769 the supervision and approval of a board of governors consisting

37-00264B-11

2011408

1770 of eight individuals who are residents of this state, from
1771 different geographical areas of this state.

1772 a. The Governor, the Chief Financial Officer, the President
1773 of the Senate, and the Speaker of the House of Representatives
1774 shall each appoint two members of the board. At least one of the
1775 two members appointed by each appointing officer must have
1776 demonstrated expertise in insurance, and is deemed to be within
1777 the scope of the exemption provided in s. 112.313(7)(b). The
1778 Chief Financial Officer shall designate one of the appointees as
1779 chair. All board members serve at the pleasure of the appointing
1780 officer. All members of the board ~~of governors~~ are subject to
1781 removal at will by the officers who appointed them. All board
1782 members, including the chair, must be appointed to serve for 3-
1783 year terms beginning annually on a date designated by the plan.
1784 However, for the first term beginning on or after July 1, 2009,
1785 each appointing officer shall appoint one member of the board
1786 for a 2-year term and one member for a 3-year term. A ~~Any~~ board
1787 vacancy shall be filled for the unexpired term by the appointing
1788 officer. The Chief Financial Officer shall appoint a technical
1789 advisory group to provide information and advice to the board ~~of~~
1790 ~~governors~~ in connection with the board's duties under this
1791 subsection. The executive director and senior managers of the
1792 corporation shall be engaged by the board and serve at the
1793 pleasure of the board. Any executive director appointed on or
1794 after July 1, 2006, is subject to confirmation by the Senate.
1795 The executive director is responsible for employing other staff
1796 as the corporation may require, subject to review and
1797 concurrence by the board.

1798 b. The board shall create a Market Accountability Advisory

37-00264B-11

2011408

1799 Committee to assist the corporation in developing awareness of
1800 its rates and its customer and agent service levels in
1801 relationship to the voluntary market insurers writing similar
1802 coverage.

1803 (I) The members of the advisory committee ~~shall~~ consist of
1804 the following 11 persons, one of whom must be elected chair by
1805 the members of the committee: four representatives, one
1806 appointed by the Florida Association of Insurance Agents, one by
1807 the Florida Association of Insurance and Financial Advisors, one
1808 by the Professional Insurance Agents of Florida, and one by the
1809 Latin American Association of Insurance Agencies; three
1810 representatives appointed by the insurers with the three highest
1811 voluntary market share of residential property insurance
1812 business in the state; one representative from the Office of
1813 Insurance Regulation; one consumer appointed by the board who is
1814 insured by the corporation at the time of appointment to the
1815 committee; one representative appointed by the Florida
1816 Association of Realtors; and one representative appointed by the
1817 Florida Bankers Association. All members shall be appointed to
1818 ~~must serve for~~ 3-year terms and may serve for consecutive terms.

1819 (II) The committee shall report to the corporation at each
1820 board meeting on insurance market issues which may include rates
1821 and rate competition with the voluntary market; service,
1822 including policy issuance, claims processing, and general
1823 responsiveness to policyholders, applicants, and agents; and
1824 matters relating to depopulation.

1825 5. Must provide a procedure for determining the eligibility
1826 of a risk for coverage, as follows:

1827 a. Subject to ~~the provisions of~~ s. 627.3517, with respect

37-00264B-11

2011408

1828 to personal lines residential risks, if the risk is offered
1829 coverage from an authorized insurer at the insurer's approved
1830 rate under ~~either~~ a standard policy including wind coverage or,
1831 if consistent with the insurer's underwriting rules as filed
1832 with the office, a basic policy including wind coverage, for a
1833 new application to the corporation for coverage, the risk is not
1834 eligible for any policy issued by the corporation unless the
1835 premium for coverage from the authorized insurer is more than 15
1836 percent greater than the premium for comparable coverage from
1837 the corporation. If the risk is not able to obtain ~~any~~ such
1838 offer, the risk is eligible for ~~either~~ a standard policy
1839 including wind coverage or a basic policy including wind
1840 coverage issued by the corporation; however, if the risk could
1841 not be insured under a standard policy including wind coverage
1842 regardless of market conditions, the risk is ~~shall be~~ eligible
1843 for a basic policy including wind coverage unless rejected under
1844 subparagraph 8. However, ~~with regard to~~ a policyholder of the
1845 corporation or a policyholder removed from the corporation
1846 through an assumption agreement until the end of the assumption
1847 period, ~~the policyholder~~ remains eligible for coverage from the
1848 corporation regardless of any offer of coverage from an
1849 authorized insurer or surplus lines insurer. The corporation
1850 shall determine the type of policy to be provided on the basis
1851 of objective standards specified in the underwriting manual and
1852 based on generally accepted underwriting practices.

1853 (I) If the risk accepts an offer of coverage through the
1854 market assistance plan or ~~an offer of coverage~~ through a
1855 mechanism established by the corporation before a policy is
1856 issued to the risk by the corporation or during the first 30

37-00264B-11

2011408

1857 days of coverage by the corporation, and the producing agent who
1858 submitted the application to the plan or to the corporation is
1859 not currently appointed by the insurer, the insurer shall:

1860 (A) Pay to the producing agent of record of the policy, ~~for~~ for
1861 the first year, an amount that is the greater of the insurer's
1862 usual and customary commission for the type of policy written or
1863 a fee equal to the usual and customary commission of the
1864 corporation; or

1865 (B) Offer to allow the producing agent of record of the
1866 policy to continue servicing the policy for at least ~~a period of~~
1867 ~~not less than~~ 1 year and offer to pay the agent the greater of
1868 the insurer's or the corporation's usual and customary
1869 commission for the type of policy written.

1870
1871 If the producing agent is unwilling or unable to accept
1872 appointment, the new insurer shall pay the agent in accordance
1873 with sub-sub-sub-subparagraph (A).

1874 (II) If ~~When~~ the corporation enters into a contractual
1875 agreement for a take-out plan, the producing agent of record of
1876 the corporation policy is entitled to retain any unearned
1877 commission on the policy, and the insurer shall:

1878 (A) Pay to the producing agent of record ~~of the corporation~~
1879 ~~policy~~, for the first year, an amount that is the greater of the
1880 insurer's usual and customary commission for the type of policy
1881 written or a fee equal to the usual and customary commission of
1882 the corporation; or

1883 (B) Offer to allow the producing agent of record ~~of the~~
1884 ~~corporation policy~~ to continue servicing the policy for at least
1885 ~~a period of not less than~~ 1 year and offer to pay the agent the

37-00264B-11

2011408

1886 greater of the insurer's or the corporation's usual and
1887 customary commission for the type of policy written.

1888
1889 If the producing agent is unwilling or unable to accept
1890 appointment, the new insurer shall pay the agent in accordance
1891 with sub-sub-sub-subparagraph (A).

1892 b. With respect to commercial lines residential risks, for
1893 a new application to the corporation for coverage, if the risk
1894 is offered coverage under a policy including wind coverage from
1895 an authorized insurer at its approved rate, the risk is not
1896 eligible for a ~~any~~ policy issued by the corporation unless the
1897 premium for coverage from the authorized insurer is more than 15
1898 percent greater than the premium for comparable coverage from
1899 the corporation. If the risk is not able to obtain any such
1900 offer, the risk is eligible for a policy including wind coverage
1901 issued by the corporation. However, ~~with regard to~~ a
1902 policyholder of the corporation or a policyholder removed from
1903 the corporation through an assumption agreement until the end of
1904 the assumption period, ~~the policyholder~~ remains eligible for
1905 coverage from the corporation regardless of an ~~any~~ offer of
1906 coverage from an authorized insurer or surplus lines insurer.

1907 (I) If the risk accepts an offer of coverage through the
1908 market assistance plan or ~~an offer of coverage~~ through a
1909 mechanism established by the corporation before a policy is
1910 issued to the risk by the corporation or during the first 30
1911 days of coverage by the corporation, and the producing agent who
1912 submitted the application to the plan or the corporation is not
1913 currently appointed by the insurer, the insurer shall:

1914 (A) Pay to the producing agent of record of the policy, for

37-00264B-11

2011408

1915 the first year, an amount that is the greater of the insurer's
1916 usual and customary commission for the type of policy written or
1917 a fee equal to the usual and customary commission of the
1918 corporation; or

1919 (B) Offer to allow the producing agent of record of the
1920 policy to continue servicing the policy for at least ~~a period of~~
1921 ~~not less than~~ 1 year and offer to pay the agent the greater of
1922 the insurer's or the corporation's usual and customary
1923 commission for the type of policy written.

1924
1925 If the producing agent is unwilling or unable to accept
1926 appointment, the new insurer shall pay the agent in accordance
1927 with sub-sub-sub-subparagraph (A).

1928 (II) If ~~When~~ the corporation enters into a contractual
1929 agreement for a take-out plan, the producing agent of record of
1930 the corporation policy is entitled to retain any unearned
1931 commission on the policy, and the insurer shall:

1932 (A) Pay to the producing agent of record ~~of the corporation~~
1933 policy, for the first year, an amount that is the greater of the
1934 insurer's usual and customary commission for the type of policy
1935 written or a fee equal to the usual and customary commission of
1936 the corporation; or

1937 (B) Offer to allow the producing agent of record ~~of the~~
1938 ~~corporation policy~~ to continue servicing the policy for at least
1939 ~~a period of not less than~~ 1 year and offer to pay the agent the
1940 greater of the insurer's or the corporation's usual and
1941 customary commission for the type of policy written.

1942
1943 If the producing agent is unwilling or unable to accept

37-00264B-11

2011408

1944 appointment, the new insurer shall pay the agent in accordance
1945 with sub-sub-sub-subparagraph (A).

1946 c. For purposes of determining comparable coverage under
1947 sub-subparagraphs a. and b., the comparison must ~~shall~~ be based
1948 on those forms and coverages that are reasonably comparable. The
1949 corporation may rely on a determination of comparable coverage
1950 and premium made by the producing agent who submits the
1951 application to the corporation, made in the agent's capacity as
1952 the corporation's agent. A comparison may be made solely of the
1953 premium with respect to the main building or structure only on
1954 the following basis: the same coverage A or other building
1955 limits; the same percentage hurricane deductible that applies on
1956 an annual basis or that applies to each hurricane for commercial
1957 residential property; the same percentage of ordinance and law
1958 coverage, if the same limit is offered by both the corporation
1959 and the authorized insurer; the same mitigation credits, to the
1960 extent the same types of credits are offered both by the
1961 corporation and the authorized insurer; the same method for loss
1962 payment, such as replacement cost or actual cash value, if the
1963 same method is offered both by the corporation and the
1964 authorized insurer in accordance with underwriting rules; and
1965 any other form or coverage that is reasonably comparable as
1966 determined by the board. If an application is submitted to the
1967 corporation for wind-only coverage in the coastal ~~high-risk~~
1968 account, the premium for the corporation's wind-only policy plus
1969 the premium for the ex-wind policy that is offered by an
1970 authorized insurer to the applicant must ~~shall~~ be compared to
1971 the premium for multiperil coverage offered by an authorized
1972 insurer, subject to the standards for comparison specified in

37-00264B-11

2011408

1973 this subparagraph. If the corporation or the applicant requests
1974 from the authorized insurer a breakdown of the premium of the
1975 offer by types of coverage so that a comparison may be made by
1976 the corporation or its agent and the authorized insurer refuses
1977 or is unable to provide such information, the corporation may
1978 treat the offer as not being an offer of coverage from an
1979 authorized insurer at the insurer's approved rate.

1980 6. Must include rules for classifications of risks and
1981 rates ~~therefor~~.

1982 7. Must provide that if premium and investment income for
1983 an account attributable to a particular calendar year are in
1984 excess of projected losses and expenses for the account
1985 attributable to that year, such excess shall be held in surplus
1986 in the account. Such surplus must ~~shall~~ be available to defray
1987 deficits in that account as to future years and ~~shall be~~ used
1988 for that purpose before ~~prior to~~ assessing assessable insurers
1989 and assessable insureds as to any calendar year.

1990 8. Must provide objective criteria and procedures to be
1991 uniformly applied to ~~for~~ all applicants in determining whether
1992 an individual risk is so hazardous as to be uninsurable. In
1993 making this determination and in establishing the criteria and
1994 procedures, the following must ~~shall~~ be considered:

1995 a. Whether the likelihood of a loss for the individual risk
1996 is substantially higher than for other risks of the same class;
1997 and

1998 b. Whether the uncertainty associated with the individual
1999 risk is such that an appropriate premium cannot be determined.

2000
2001 The acceptance or rejection of a risk by the corporation shall

37-00264B-11

2011408

2002 be construed as the private placement of insurance, and the
2003 provisions of chapter 120 do ~~shall~~ not apply.

2004 9. Must provide that the corporation ~~shall~~ make its best
2005 efforts to procure catastrophe reinsurance at reasonable rates,
2006 to cover its projected 100-year probable maximum loss as
2007 determined by the board of governors.

2008 10. The policies issued by the corporation must provide
2009 that, if the corporation or the market assistance plan obtains
2010 an offer from an authorized insurer to cover the risk at its
2011 approved rates, the risk is no longer eligible for renewal
2012 through the corporation, except as otherwise provided in this
2013 subsection.

2014 11. Corporation policies and applications must include a
2015 notice that the corporation policy could, under this section, be
2016 replaced with a policy issued by an authorized insurer which
2017 ~~that~~ does not provide coverage identical to the coverage
2018 provided by the corporation. The notice must ~~shall~~ also specify
2019 that acceptance of corporation coverage creates a conclusive
2020 presumption that the applicant or policyholder is aware of this
2021 potential.

2022 12. May establish, subject to approval by the office,
2023 different eligibility requirements and operational procedures
2024 for any line or type of coverage for any specified county or
2025 area if the board determines that such changes ~~to the~~
2026 ~~eligibility requirements and operational procedures~~ are
2027 justified due to the voluntary market being sufficiently stable
2028 and competitive in such area or for such line or type of
2029 coverage and that consumers who, in good faith, are unable to
2030 obtain insurance through the voluntary market through ordinary

37-00264B-11

2011408

2031 methods ~~would~~ continue to have access to coverage from the
2032 corporation. If ~~When~~ coverage is sought in connection with a
2033 real property transfer, the ~~such~~ requirements and procedures may
2034 ~~shall~~ not provide ~~for~~ an effective date of coverage later than
2035 the date of the closing of the transfer as established by the
2036 transferor, the transferee, and, if applicable, the lender.

2037 13. Must provide that, with respect to the coastal ~~high-~~
2038 ~~risk~~ account, any assessable insurer with a surplus as to
2039 policyholders of \$25 million or less writing 25 percent or more
2040 of its total countrywide property insurance premiums in this
2041 state may petition the office, within the first 90 days of each
2042 calendar year, to qualify as a limited apportionment company. A
2043 regular assessment levied by the corporation on a limited
2044 apportionment company for a deficit incurred by the corporation
2045 for the coastal ~~high-risk~~ account ~~in 2006 or thereafter~~ may be
2046 paid to the corporation on a monthly basis as the assessments
2047 are collected by the limited apportionment company from its
2048 insureds pursuant to s. 627.3512, but the regular assessment
2049 must be paid in full within 12 months after being levied by the
2050 corporation. A limited apportionment company shall collect from
2051 its policyholders any emergency assessment imposed under sub-
2052 subparagraph (b)3.d. The plan must ~~shall~~ provide that, if the
2053 office determines that any regular assessment will result in an
2054 impairment of the surplus of a limited apportionment company,
2055 the office may direct that all or part of such assessment be
2056 deferred as provided in subparagraph (q)4. However, ~~there shall~~
2057 ~~be no limitation or deferment of~~ an emergency assessment to be
2058 collected from policyholders under sub-subparagraph (b)3.d. may
2059 not be limited or deferred.

37-00264B-11

2011408

2060 14. Must provide that the corporation appoint as its
2061 licensed agents only those agents who also hold an appointment
2062 as defined in s. 626.015(3) with an insurer who at the time of
2063 the agent's initial appointment by the corporation is authorized
2064 to write and is actually writing personal lines residential
2065 property coverage, commercial residential property coverage, or
2066 commercial nonresidential property coverage within the state.

2067 15. Must provide, ~~by July 1, 2007,~~ a premium payment plan
2068 option to its policyholders which, ~~allows~~ at a minimum, allows
2069 for quarterly and semiannual payment of premiums. A monthly
2070 payment plan may, but is not required to, be offered.

2071 16. Must limit coverage on mobile homes or manufactured
2072 homes built before ~~prior to~~ 1994 to actual cash value of the
2073 dwelling rather than replacement costs of the dwelling.

2074 17. May provide such limits of coverage as the board
2075 determines, consistent with the requirements of this subsection.

2076 18. May require commercial property to meet specified
2077 hurricane mitigation construction features as a condition of
2078 eligibility for coverage.

2079 (d)1. All prospective employees for senior management
2080 positions, as defined by the plan of operation, are subject to
2081 background checks as a prerequisite for employment. The office
2082 shall conduct the background checks ~~on such prospective~~
2083 ~~employees~~ pursuant to ss. 624.34, 624.404(3), and 628.261.

2084 2. On or before July 1 of each year, employees of the
2085 corporation must ~~are required to~~ sign and submit a statement
2086 attesting that they do not have a conflict of interest, as
2087 defined in part III of chapter 112. As a condition of
2088 employment, all prospective employees must ~~are required to~~ sign

37-00264B-11

2011408

2089 and submit to the corporation a conflict-of-interest statement.

2090 3. Senior managers and members of the board of governors
2091 are subject to ~~the provisions of~~ part III of chapter 112,
2092 including, but not limited to, the code of ethics and public
2093 disclosure and reporting of financial interests, pursuant to s.
2094 112.3145. Notwithstanding s. 112.3143(2), a board member may not
2095 vote on any measure that would inure to his or her special
2096 private gain or loss; that he or she knows would inure to the
2097 special private gain or loss of any principal by whom he or she
2098 is retained or to the parent organization or subsidiary of a
2099 corporate principal by which he or she is retained, other than
2100 an agency as defined in s. 112.312; or that he or she knows
2101 would inure to the special private gain or loss of a relative or
2102 business associate of the public officer. Before the vote is
2103 taken, such member shall publicly state to the assembly the
2104 nature of his or her interest in the matter from which he or she
2105 is abstaining from voting and, within 15 days after the vote
2106 occurs, disclose the nature of his or her interest as a public
2107 record in a memorandum filed with the person responsible for
2108 recording the minutes of the meeting, who shall incorporate the
2109 memorandum in the minutes. Senior managers and board members are
2110 also required to file such disclosures with the Commission on
2111 Ethics and the Office of Insurance Regulation. The executive
2112 director of the corporation or his or her designee shall notify
2113 each existing and newly appointed ~~and existing~~ appointed member
2114 of the board of governors and senior managers of their duty to
2115 comply with the reporting requirements of part III of chapter
2116 112. At least quarterly, the executive director or his or her
2117 designee shall submit to the Commission on Ethics a list of

37-00264B-11

2011408

2118 names of the senior managers and members of the board of
2119 governors who are subject to the public disclosure requirements
2120 under s. 112.3145.

2121 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other
2122 provision of law, an employee or board member may not knowingly
2123 accept, directly or indirectly, any gift or expenditure from a
2124 person or entity, or an employee or representative of such
2125 person or entity, which ~~that~~ has a contractual relationship with
2126 the corporation or who is under consideration for a contract. An
2127 employee or board member who fails to comply with subparagraph
2128 3. or this subparagraph is subject to penalties provided under
2129 ss. 112.317 and 112.3173.

2130 5. Any senior manager of the corporation who is employed on
2131 or after January 1, 2007, regardless of the date of hire, who
2132 subsequently retires or terminates employment is prohibited from
2133 representing another person or entity before the corporation for
2134 2 years after retirement or termination of employment from the
2135 corporation.

2136 6. Any senior manager of the corporation who is employed on
2137 or after January 1, 2007, regardless of the date of hire, who
2138 subsequently retires or terminates employment is prohibited from
2139 having any employment or contractual relationship for 2 years
2140 with an insurer that has entered into a take-out bonus agreement
2141 with the corporation.

2142 (v)1. Effective July 1, 2002, policies of the Residential
2143 Property and Casualty Joint Underwriting Association ~~shall~~
2144 become policies of the corporation. All obligations, rights,
2145 assets and liabilities of the ~~Residential Property and Casualty~~
2146 ~~Joint Underwriting~~ association, including bonds, note and debt

37-00264B-11

2011408

2147 obligations, and the financing documents pertaining to them
2148 become those of the corporation as of July 1, 2002. The
2149 corporation is not required to issue endorsements or
2150 certificates of assumption to insureds during the remaining term
2151 of in-force transferred policies.

2152 2. Effective July 1, 2002, policies of the Florida
2153 Windstorm Underwriting Association are transferred to the
2154 corporation and ~~shall~~ become policies of the corporation. All
2155 obligations, rights, assets, and liabilities of the ~~Florida~~
2156 ~~Windstorm Underwriting~~ association, including bonds, note and
2157 debt obligations, and the financing documents pertaining to them
2158 are transferred to and assumed by the corporation on July 1,
2159 2002. The corporation is not required to issue endorsements or
2160 certificates of assumption to insureds during the remaining term
2161 of in-force transferred policies.

2162 3. The Florida Windstorm Underwriting Association and the
2163 Residential Property and Casualty Joint Underwriting Association
2164 shall take all actions necessary ~~as may be proper~~ to further
2165 evidence the transfers and ~~shall~~ provide the documents and
2166 instruments of further assurance as may reasonably be requested
2167 by the corporation for that purpose. The corporation shall
2168 execute assumptions and instruments as the trustees or other
2169 parties to the financing documents of the Florida Windstorm
2170 Underwriting Association or the Residential Property and
2171 Casualty Joint Underwriting Association may reasonably request
2172 to further evidence the transfers and assumptions, which
2173 transfers and assumptions, however, are effective on the date
2174 provided under this paragraph whether or not, and regardless of
2175 the date on which, the assumptions or instruments are executed

37-00264B-11

2011408

2176 by the corporation. Subject to the relevant financing documents
2177 pertaining to their outstanding bonds, notes, indebtedness, or
2178 other financing obligations, the moneys, investments,
2179 receivables, choses in action, and other intangibles of the
2180 Florida Windstorm Underwriting Association shall be credited to
2181 the coastal ~~high-risk~~ account of the corporation, and those of
2182 the personal lines residential coverage account and the
2183 commercial lines residential coverage account of the Residential
2184 Property and Casualty Joint Underwriting Association shall be
2185 credited to the personal lines account and the commercial lines
2186 account, respectively, of the corporation.

2187 4. Effective July 1, 2002, a new applicant for property
2188 insurance coverage who would otherwise have been eligible for
2189 coverage in the Florida Windstorm Underwriting Association is
2190 eligible for coverage from the corporation as provided in this
2191 subsection.

2192 5. The transfer of all policies, obligations, rights,
2193 assets, and liabilities from the Florida Windstorm Underwriting
2194 Association to the corporation and the renaming of the
2195 Residential Property and Casualty Joint Underwriting Association
2196 as the corporation does not ~~shall in no way~~ affect the coverage
2197 with respect to covered policies as defined in s. 215.555(2)(c)
2198 provided to these entities by the Florida Hurricane Catastrophe
2199 Fund. The coverage provided by the ~~Florida Hurricane Catastrophe~~
2200 fund to the Florida Windstorm Underwriting Association based on
2201 its exposures as of June 30, 2002, and each June 30 thereafter
2202 shall be redesignated as coverage for the coastal ~~high-risk~~
2203 account of the corporation. Notwithstanding any other provision
2204 of law, the coverage provided by the ~~Florida Hurricane~~

37-00264B-11

2011408

2205 ~~Catastrophe~~ fund to the Residential Property and Casualty Joint
2206 Underwriting Association based on its exposures as of June 30,
2207 2002, and each June 30 thereafter shall be transferred to the
2208 personal lines account and the commercial lines account of the
2209 corporation. Notwithstanding any other provision of law, the
2210 coastal ~~high-risk~~ account shall be treated, for all Florida
2211 Hurricane Catastrophe Fund purposes, as if it were a separate
2212 participating insurer with its own exposures, reimbursement
2213 premium, and loss reimbursement. Likewise, the personal lines
2214 and commercial lines accounts shall be viewed together, for all
2215 ~~Florida Hurricane Catastrophe~~ fund purposes, as if the two
2216 accounts were one and represent a single, separate participating
2217 insurer with its own exposures, reimbursement premium, and loss
2218 reimbursement. The coverage provided by the ~~Florida Hurricane~~
2219 ~~Catastrophe~~ fund to the corporation shall constitute and operate
2220 as a full transfer of coverage from the Florida Windstorm
2221 Underwriting Association and Residential Property and Casualty
2222 Joint Underwriting to the corporation.

2223 (y) It is the intent of the Legislature that the amendments
2224 to this subsection enacted in 2002 should, over time, reduce the
2225 probable maximum windstorm losses in the residual markets and
2226 ~~should reduce~~ the potential assessments to be levied on property
2227 insurers and policyholders statewide. In furtherance of this
2228 intent:

2229 1. The board shall, on or before February 1 of each year,
2230 provide a report to the President of the Senate and the Speaker
2231 of the House of Representatives showing the reduction or
2232 increase in the 100-year probable maximum loss attributable to
2233 wind-only coverages and the quota share program under this

37-00264B-11

2011408

2234 subsection combined, as compared to the benchmark 100-year
2235 probable maximum loss of the Florida Windstorm Underwriting
2236 Association. For purposes of this paragraph, the benchmark 100-
2237 year probable maximum loss of the Florida Windstorm Underwriting
2238 Association is ~~shall be~~ the calculation dated February 2001 and
2239 based on November 30, 2000, exposures. In order to ensure
2240 comparability of data, the board shall use the same methods for
2241 calculating its probable maximum loss as were used to calculate
2242 the benchmark probable maximum loss.

2243 2. Beginning December 1, 2013 ~~2010~~, if the report under
2244 subparagraph 1. for any year indicates that the 100-year
2245 probable maximum loss attributable to wind-only coverages and
2246 the quota share program combined does not reflect a reduction of
2247 at least 25 percent from the benchmark, the board shall reduce
2248 the boundaries of the high-risk area eligible for wind-only
2249 coverages ~~under this subsection~~ in a manner calculated to reduce
2250 the ~~such~~ probable maximum loss to an amount at least 25 percent
2251 below the benchmark.

2252 3. Beginning February 1, 2015, if the report under
2253 subparagraph 1. for any year indicates that the 100-year
2254 probable maximum loss attributable to wind-only coverages and
2255 the quota share program combined does not reflect a reduction of
2256 at least 50 percent from the benchmark, the boundaries of the
2257 high-risk area eligible for wind-only coverages ~~under this~~
2258 ~~subsection~~ shall be reduced by the elimination of any area that
2259 is not seaward of a line 1,000 feet inland from the Intracoastal
2260 Waterway.

2261 Section 13. Paragraph (a) of subsection (5) of section
2262 627.3511, Florida Statutes, is amended to read:

37-00264B-11

2011408

2263 627.3511 Depopulation of Citizens Property Insurance
2264 Corporation.—

2265 (5) APPLICABILITY.—

2266 (a) The take-out bonus provided by subsection (2) and the
2267 exemption from assessment provided by paragraph (3)(a) apply
2268 only if the corporation policy is replaced by ~~either~~ a standard
2269 policy including wind coverage or, if consistent with the
2270 insurer's underwriting rules ~~as~~ filed with the office, a basic
2271 policy including wind coverage; however, for ~~with respect to~~
2272 risks located in areas where coverage through the coastal high-
2273 ~~risk~~ account of the corporation is available, the replacement
2274 policy need not provide wind coverage. The insurer must renew
2275 the replacement policy at approved rates on substantially
2276 similar terms for four additional 1-year terms, unless canceled
2277 or not renewed by the policyholder. If an insurer assumes the
2278 corporation's obligations for a policy, it must issue a
2279 replacement policy for a 1-year term upon expiration of the
2280 corporation policy and must renew the replacement policy at
2281 approved rates on substantially similar terms for four
2282 additional 1-year terms, unless canceled or not renewed by the
2283 policyholder. For each replacement policy canceled or nonrenewed
2284 by the insurer for any reason during the 5-year coverage period
2285 ~~required by this paragraph~~, the insurer must remove from the
2286 corporation one additional policy covering a risk similar to the
2287 risk covered by the canceled or nonrenewed policy. In addition
2288 ~~to these requirements~~, the corporation must place the bonus
2289 moneys in escrow for ~~a period of~~ 5 years; such moneys may be
2290 released from escrow only to pay claims. If the policy is
2291 canceled or nonrenewed before the end of the 5-year period, the

37-00264B-11

2011408

2292 amount of the take-out bonus must be prorated for the time
2293 period the policy was insured. A take-out bonus provided by
2294 subsection (2) or subsection (6) is ~~shall~~ not be considered
2295 premium income for purposes of taxes and assessments under the
2296 Florida Insurance Code and ~~shall~~ remain the property of the
2297 corporation, subject to the prior security interest of the
2298 insurer under the escrow agreement until it is released from
2299 escrow; ~~and~~ after it is released from escrow it is ~~shall be~~
2300 considered an asset of the insurer and credited to the insurer's
2301 capital and surplus.

2302 Section 14. Paragraph (b) of subsection (2) of section
2303 627.4133, Florida Statutes, is amended to read:

2304 627.4133 Notice of cancellation, nonrenewal, or renewal
2305 premium.—

2306 (2) With respect to any personal lines or commercial
2307 residential property insurance policy, including, but not
2308 limited to, any homeowner's, mobile home owner's, farmowner's,
2309 condominium association, condominium unit owner's, apartment
2310 building, or other policy covering a residential structure or
2311 its contents:

2312 (b) The insurer shall give the named insured written notice
2313 of nonrenewal, cancellation, or termination at least 100 days
2314 before ~~prior to~~ the effective date of ~~the nonrenewal,~~
2315 ~~cancellation, or termination~~. However, the insurer shall give at
2316 least 100 days' written notice, or written notice by June 1,
2317 whichever is earlier, for any nonrenewal, cancellation, or
2318 termination that would be effective between June 1 and November
2319 30. The notice must include the reason or reasons for the
2320 nonrenewal, cancellation, or termination, except that:

37-00264B-11

2011408

2321 1. The insurer must ~~shall~~ give the named insured written
2322 notice ~~of nonrenewal, cancellation, or termination~~ at least 180
2323 days before ~~prior to~~ the effective date of the nonrenewal,
2324 cancellation, or termination for a named insured whose
2325 residential structure has been insured by that insurer or an
2326 affiliated insurer for at least a 5-year period immediately
2327 before ~~prior to~~ the date of the written notice.

2328 2. If ~~When~~ cancellation is for nonpayment of premium, at
2329 least 10 days' written notice of cancellation accompanied by the
2330 reason therefor must ~~shall~~ be given. As used in this
2331 subparagraph, the term "nonpayment of premium" means failure of
2332 the named insured to discharge when due ~~any of~~ her or his
2333 obligations in connection with the payment of premiums on a
2334 policy or any installment of such premium, whether the premium
2335 is payable directly to the insurer or its agent or indirectly
2336 under any premium finance plan or extension of credit, or
2337 failure to maintain membership in an organization if such
2338 membership is a condition precedent to insurance coverage. The
2339 term ~~"Nonpayment of premium"~~ also means the failure of a
2340 financial institution to honor an insurance applicant's check
2341 after delivery to a licensed agent for payment of a premium,
2342 even if the agent has previously delivered or transferred the
2343 premium to the insurer. If a dishonored check represents the
2344 initial premium payment, the contract and all contractual
2345 obligations are ~~shall be~~ void ab initio unless the nonpayment is
2346 cured within the earlier of 5 days after actual notice by
2347 certified mail is received by the applicant or 15 days after
2348 notice is sent to the applicant by certified mail or registered
2349 mail, and if the contract is void, any premium received by the

37-00264B-11

2011408

2350 insurer from a third party must ~~shall~~ be refunded to that party
2351 in full.

2352 3. If ~~When~~ such cancellation or termination occurs during
2353 the first 90 days ~~during which~~ the insurance is in force and the
2354 insurance is canceled or terminated for reasons other than
2355 nonpayment of premium, at least 20 days' written notice of
2356 cancellation or termination accompanied by the reason therefor
2357 must ~~shall~~ be given unless ~~except where~~ there has been a
2358 material misstatement or misrepresentation or failure to comply
2359 with the underwriting requirements established by the insurer.

2360 4. The requirement for providing written notice ~~of~~
2361 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective
2362 between June 1 and November 30 does not apply to the following
2363 situations, but the insurer remains subject to the requirement
2364 to provide such notice at least 100 days before ~~prior to~~ the
2365 effective date of nonrenewal:

2366 a. A policy that is nonrenewed due to a revision in the
2367 coverage for sinkhole losses and catastrophic ground cover
2368 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
2369 ~~2007-1, Laws of Florida.~~

2370 b. A policy that is nonrenewed by Citizens Property
2371 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2372 that has been assumed by an authorized insurer offering
2373 replacement ~~or renewal~~ coverage to the policyholder is exempt
2374 from the notice requirements of paragraph (a) and this
2375 paragraph. In such cases, the corporation must give the named
2376 insured written notice of nonrenewal at least 45 days before the
2377 effective date of the nonrenewal.

2378

37-00264B-11

2011408

2379 After the policy has been in effect for 90 days, the policy may
2380 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there
2381 has been a material misstatement, a nonpayment of premium, a
2382 failure to comply with underwriting requirements established by
2383 the insurer within 90 days after ~~of~~ the date of effectuation of
2384 coverage, or a substantial change in the risk covered by the
2385 policy or if ~~when~~ the cancellation is for all insureds under
2386 such policies for a given class of insureds. This paragraph does
2387 not apply to individually rated risks having a policy term of
2388 less than 90 days.

2389 5. Notwithstanding any other provision of law, an insurer
2390 may cancel or nonrenew a property insurance policy after at
2391 least 45 days' notice if the office finds that the early
2392 cancellation of some or all of the insurer's policies is
2393 necessary to protect the best interests of the public or
2394 policyholders and the office approves the insurer's plan for
2395 early cancellation or nonrenewal of some or all of its policies.
2396 The office may base such finding upon the financial condition of
2397 the insurer, lack of adequate reinsurance coverage for hurricane
2398 risk, or other relevant factors. The office may condition its
2399 finding on the consent of the insurer to be placed under
2400 administrative supervision pursuant to s. 624.81 or to the
2401 appointment of a receiver under chapter 631.

2402 Section 15. Section 627.43141, Florida Statutes, is created
2403 to read:

2404 627.43141 Notice of change in policy terms.-

2405 (1) As used in this section, the term:

2406 (a) "Change in policy terms" means the modification,
2407 addition, or deletion of any term, coverage, duty, or condition

37-00264B-11

2011408

2408 from the previous policy. The correction of typographical or
2409 scrivener's errors or the application of mandated legislative
2410 changes is not a change in policy terms.

2411 (b) "Policy" means a written contract of personal lines
2412 property insurance or a written agreement for insurance, or the
2413 certificate of such insurance, by whatever name called, and
2414 includes all clauses, riders, endorsements, and papers that are
2415 a part of such policy. The term does not include a binder as
2416 defined in s. 627.420 unless the duration of the binder period
2417 exceeds 60 days.

2418 (c) "Renewal" means the issuance and delivery by an insurer
2419 of a policy superseding at the end of the policy period a policy
2420 previously issued and delivered by the same insurer or the
2421 issuance and delivery of a certificate or notice extending the
2422 term of a policy beyond its policy period or term. Any policy
2423 that has a policy period or term of less than 6 months or that
2424 does not have a fixed expiration date shall, for purposes of
2425 this section, be considered as written for successive policy
2426 periods or terms of 6 months.

2427 (2) A renewal policy may contain a change in policy terms.
2428 If a renewal policy does contains such change, the insurer must
2429 give the named insured written notice of the change, which must
2430 be enclosed along with the written notice of renewal premium
2431 required by ss. 627.4133 and 627.728. Such notice shall be
2432 entitled "Notice of Change in Policy Terms."

2433 (3) Although not required, proof of mailing or registered
2434 mailing through the United States Postal Service of the Notice
2435 of Change in Policy Terms to the named insured at the address
2436 shown in the policy is sufficient proof of notice.

37-00264B-11

2011408

2437 (4) Receipt of the premium payment for the renewal policy
2438 by the insurer is deemed to be acceptance of the new policy
2439 terms by the named insured.

2440 (5) If an insurer fails to provide the notice required in
2441 subsection (2), the original policy terms remain in effect until
2442 the next renewal and the proper service of the notice, or until
2443 the effective date of replacement coverage obtained by the named
2444 insured, whichever occurs first.

2445 (6) The intent of this section is to:

2446 (a) Allow an insurer to make a change in policy terms
2447 without nonrenewing those policyholders that the insurer wishes
2448 to continue insuring.

2449 (b) Alleviate concern and confusion to the policyholder
2450 caused by the required policy nonrenewal for the limited issue
2451 if an insurer intends to renew the insurance policy, but the new
2452 policy contains a change in policy terms.

2453 (c) Encourage policyholders to discuss their coverages with
2454 their insurance agents.

2455 Section 16. Section 627.7011, Florida Statutes, is amended
2456 to read:

2457 627.7011 Homeowners' policies; offer of replacement cost
2458 coverage and law and ordinance coverage.—

2459 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
2460 insurance policy ~~on or after October 1, 2005, or prior to the~~
2461 ~~first renewal of a homeowner's insurance policy on or after~~
2462 ~~October 1, 2005,~~ the insurer must offer each of the following:

2463 (a) A policy or endorsement providing that any loss that
2464 ~~which~~ is repaired or replaced will be adjusted on the basis of
2465 replacement costs to the dwelling not exceeding policy limits ~~as~~

37-00264B-11

2011408

2466 ~~to the dwelling~~, rather than actual cash value, but not
2467 including costs necessary to meet applicable laws and ordinances
2468 regulating the construction, use, or repair of any property or
2469 requiring the tearing down of any property, including the costs
2470 of removing debris.

2471 (b) A policy or endorsement providing that, subject to
2472 other policy provisions, any loss that ~~which~~ is repaired or
2473 replaced at any location will be adjusted on the basis of
2474 replacement costs to the dwelling not exceeding policy limits ~~as~~
2475 ~~to the dwelling~~, rather than actual cash value, and also
2476 including costs necessary to meet applicable laws and ordinances
2477 regulating the construction, use, or repair of any property or
2478 requiring the tearing down of any property, including the costs
2479 of removing debris. + However, ~~such~~ additional costs necessary to
2480 meet applicable laws and ordinances may be limited to ~~either~~ 25
2481 percent or 50 percent of the dwelling limit, as selected by the
2482 policyholder, and such coverage applies ~~shall apply~~ only to
2483 repairs of the damaged portion of the structure unless the total
2484 damage to the structure exceeds 50 percent of the replacement
2485 cost of the structure.

2486
2487 An insurer is not required to make the offers required by this
2488 subsection with respect to the issuance or renewal of a
2489 homeowner's policy that contains the provisions specified in
2490 paragraph (b) for law and ordinance coverage limited to 25
2491 percent of the dwelling limit, except that the insurer must
2492 offer the law and ordinance coverage limited to 50 percent of
2493 the dwelling limit. This subsection does not prohibit the offer
2494 of a guaranteed replacement cost policy.

37-00264B-11

2011408

2495 (2) Unless the insurer obtains the policyholder's written
2496 refusal of the policies or endorsements specified in subsection
2497 (1), any policy covering the dwelling is deemed to include the
2498 law and ordinance coverage limited to 25 percent of the dwelling
2499 limit. The rejection or selection of alternative coverage shall
2500 be made on a form approved by the office. The form must ~~shall~~
2501 fully advise the applicant of the nature of the coverage being
2502 rejected. If this form is signed by a named insured, it is ~~will~~
2503 ~~be~~ conclusively presumed that there was an informed, knowing
2504 rejection of the coverage or election of the alternative
2505 coverage on behalf of all insureds. Unless the policyholder
2506 requests in writing the coverage specified in this section, it
2507 need not be provided in or supplemental to any other policy that
2508 renews, insures, extends, changes, supersedes, or replaces an
2509 existing policy if ~~when~~ the policyholder has rejected the
2510 coverage specified in this section or has selected alternative
2511 coverage. The insurer must provide the ~~such~~ policyholder with
2512 notice of the availability of such coverage in a form approved
2513 by the office at least once every 3 years. The failure to
2514 provide such notice constitutes a violation of this code, but
2515 does not affect the coverage provided under the policy.

2516 (3) In the event of a loss for which a dwelling or personal
2517 property is insured on the basis of replacement costs:

2518 (a) For a dwelling, the insurer must initially pay at least
2519 the actual cash value of the insured loss, less any applicable
2520 deductible. An insured shall subsequently enter into a contract
2521 for the performance of building and structural repairs. The
2522 insurer shall pay any remaining amounts incurred to perform such
2523 repairs as the work is performed. With the exception of

37-00264B-11

2011408

2524 incidental expenses to mitigate further damage, the insurer or
2525 any contractor or subcontractor may not require the policyholder
2526 to advance payment for such repairs or expenses. The insurer may
2527 waive the requirement for a contract as provided in this
2528 paragraph. An insured shall have 1 year after the date the
2529 insurer pays actual cash value to make a claim for replacement
2530 cost. If a total loss of a dwelling occurs, the insurer shall
2531 pay the replacement cost coverage without reservation or
2532 holdback of any depreciation in value, pursuant to s. 627.702.

2533 (b) For personal property, the insurer may limit its
2534 initial payment to the actual cash value or 50 percent of the
2535 replacement cost value, whichever is greater, and must pay the
2536 reservation or holdback amount upon the insured's providing a
2537 receipt for the replaced property. The insurer must provide
2538 clear notice of this process in the insurance contract ~~shall pay~~
2539 ~~the replacement cost without reservation or holdback of any~~
2540 ~~depreciation in value, whether or not the insured replaces or~~
2541 ~~repairs the dwelling or property.~~

2542 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed on~~
2543 ~~or after October 1, 2005,~~ must include in bold type no smaller
2544 than 18 points the following statement:

2545
2546 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
2547 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
2548 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
2549 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
2550 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
2551 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."
2552

37-00264B-11

2011408

2553 The intent of this subsection is to encourage policyholders to
2554 purchase sufficient coverage to protect them in case events
2555 excluded from the standard homeowners policy, such as law and
2556 ordinance enforcement and flood, combine with covered events to
2557 produce damage or loss to the insured property. The intent is
2558 also to encourage policyholders to discuss these issues with
2559 their insurance agent.

2560 (5) ~~Nothing in~~ This section does not: ~~shall be construed to~~

2561 (a) Apply to policies not considered to be "homeowners'
2562 policies," as that term is commonly understood in the insurance
2563 industry. ~~This section specifically does not~~

2564 (b) Apply to mobile home policies. ~~Nothing in this section~~

2565 (c) Limit ~~shall be construed as limiting~~ the ability of an
2566 ~~any~~ insurer to reject or nonrenew any insured or applicant on
2567 the grounds that the structure does not meet underwriting
2568 criteria applicable to replacement cost or law and ordinance
2569 policies or for other lawful reasons.

2570 (d) ~~(6)~~ ~~This section does not~~ Prohibit an insurer from
2571 limiting its liability under a policy or endorsement providing
2572 that loss will be adjusted on the basis of replacement costs to
2573 the lesser of:

2574 1. ~~(a)~~ The limit of liability shown on the policy
2575 declarations page;

2576 2. ~~(b)~~ The reasonable and necessary cost to repair the
2577 damaged, destroyed, or stolen covered property; or

2578 3. ~~(e)~~ The reasonable and necessary cost to replace the
2579 damaged, destroyed, or stolen covered property.

2580 (e) ~~(7)~~ ~~This section does not~~ Prohibit an insurer from
2581 exercising its right to repair damaged property in compliance

37-00264B-11

2011408

2582 with its policy and s. 627.702(7).

2583 Section 17. Paragraph (a) of subsection (5) of section
2584 627.70131, Florida Statutes, is amended to read:

2585 627.70131 Insurer's duty to acknowledge communications
2586 regarding claims; investigation.-

2587 (5) (a) Within 90 days after an insurer receives notice of
2588 an initial, reopened, or supplemental a property insurance claim
2589 from a policyholder, the insurer shall pay or deny such claim or
2590 a portion of the claim unless the failure to pay ~~such claim or a~~
2591 ~~portion of the claim~~ is caused by factors beyond the control of
2592 the insurer which reasonably prevent such payment. Any payment
2593 of an initial or supplemental a claim or portion of such a claim
2594 made paid 90 days after the insurer receives notice of the
2595 claim, or made paid more than 15 days after there are no longer
2596 factors beyond the control of the insurer which reasonably
2597 prevented such payment, whichever is later, bears ~~shall bear~~
2598 interest at the rate set forth in s. 55.03. Interest begins to
2599 accrue from the date the insurer receives notice of the claim.
2600 The provisions of this subsection may not be waived, voided, or
2601 nullified by the terms of the insurance policy. If there is a
2602 right to prejudgment interest, the insured shall select whether
2603 to receive prejudgment interest or interest under this
2604 subsection. Interest is payable when the claim or portion of the
2605 claim is paid. Failure to comply with this subsection
2606 constitutes a violation of this code. However, failure to comply
2607 with this subsection does ~~shall~~ not form the sole basis for a
2608 private cause of action.

2609 Section 18. The Legislature finds and declares:

2610 (1) There is a compelling state interest in maintaining a

37-00264B-11

2011408

2611 viable and orderly private-sector market for property insurance
2612 in this state. The lack of a viable and orderly property market
2613 reduces the availability of property insurance coverage to state
2614 residents, increases the cost of property insurance, and
2615 increases the state's reliance on a residual property insurance
2616 market and its potential for imposing assessments on
2617 policyholders throughout the state.

2618 (2) In 2005, the Legislature revised ss. 627.706-627.7074,
2619 Florida Statutes, to adopt certain geological or technical
2620 terms; to increase reliance on objective, scientific testing
2621 requirements; and generally to reduce the number of sinkhole
2622 claims and related disputes arising under prior law. The
2623 Legislature determined that since the enactment of these
2624 statutory revisions, both private-sector insurers and Citizens
2625 Property Insurance Corporation have, nevertheless, continued to
2626 experience high claims frequency and severity for sinkhole
2627 insurance claims. In addition, many properties remain unrepaired
2628 even after loss payments, which reduces the local property tax
2629 base and adversely affects the real estate market. Therefore,
2630 the Legislature finds that losses associated with sinkhole
2631 claims adversely affect the public health, safety, and welfare
2632 of this state and its citizens.

2633 (3) Pursuant to sections 19 through 24 of this act,
2634 technical or scientific definitions adopted in the 2005
2635 legislation are clarified to implement and advance the
2636 Legislature's intended reduction of sinkhole claims and
2637 disputes. The legal presumption intended by the Legislature is
2638 clarified to reduce disputes and litigation associated with the
2639 technical reviews associated with sinkhole claims. Certain other

37-00264B-11

2011408

2640 revisions to ss. 627.706-627.7074, Florida Statutes, are enacted
2641 to advance legislative intent to rely on scientific or technical
2642 determinations relating to sinkholes and sinkhole claims, reduce
2643 the number and cost of disputes relating to sinkhole claims, and
2644 ensure that repairs are made commensurate with the scientific
2645 and technical determinations and insurance claims payments.

2646 Section 19. Section 627.706, Florida Statutes, is reordered
2647 and amended to read:

2648 627.706 Sinkhole insurance; catastrophic ground cover
2649 collapse; definitions.—

2650 (1) Every insurer authorized to transact residential
2651 property insurance, as described in s. 627.4025, in this state
2652 must ~~shall~~ provide coverage for a catastrophic ground cover
2653 collapse. However, the insurer may restrict such coverage to the
2654 principal building, as defined in the applicable policy. The
2655 insurer may ~~and shall~~ make available, for an appropriate
2656 additional premium, coverage for sinkhole losses on any
2657 structure, including the contents of personal property contained
2658 therein, to the extent provided in the form to which the
2659 coverage attaches. A policy for residential property insurance
2660 may include a deductible amount applicable to sinkhole losses,
2661 including any expenses incurred by an insurer investigating
2662 whether sinkhole activity is present. The deductible may be
2663 equal to 1 percent, 2 percent, 5 percent, or 10 percent of the
2664 policy dwelling limits, with appropriate premium discounts
2665 offered with each deductible amount.

2666 (2) As used in ss. 627.706-627.7074, and as used in
2667 connection with any policy providing coverage for a catastrophic
2668 ground cover collapse or for sinkhole losses, the term:

37-00264B-11

2011408

2669 (a) "Catastrophic ground cover collapse" means geological
2670 activity that results in all the following:

- 2671 1. The abrupt collapse of the ground cover;
2672 2. A depression in the ground cover clearly visible to the
2673 naked eye;
2674 3. Structural damage to the covered building, including the
2675 foundation; and
2676 4. The insured structure being condemned and ordered to be
2677 vacated by the governmental agency authorized by law to issue
2678 such an order for that structure.

2679
2680 Contents coverage applies if there is a loss resulting from a
2681 catastrophic ground cover collapse. ~~Structural~~ Damage consisting
2682 merely of the settling or cracking of a foundation, structure,
2683 or building does not constitute a loss resulting from a
2684 catastrophic ground cover collapse.

2685 (b) "Neutral evaluation" means the alternative dispute
2686 resolution provided in s. 627.7074.

2687 (c) "Neutral evaluator" means a professional engineer or a
2688 professional geologist who has completed a course of study in
2689 alternative dispute resolution designed or approved by the
2690 department for use in the neutral evaluation process and who is
2691 determined to be fair and impartial.

2692 (f) ~~(b)~~ "Sinkhole" means a landform created by subsidence of
2693 soil, sediment, or rock as underlying strata are dissolved by
2694 groundwater. A sinkhole forms ~~may form~~ by collapse into
2695 subterranean voids created by dissolution of limestone or
2696 dolostone or by subsidence as these strata are dissolved.

2697 (h) ~~(e)~~ "Sinkhole loss" means structural damage to the

37-00264B-11

2011408

2698 covered building, including the foundation, caused by sinkhole
2699 activity. Contents coverage and additional living expenses ~~shall~~
2700 apply only if there is structural damage to the covered building
2701 caused by sinkhole activity.

2702 (g) ~~(d)~~ "Sinkhole activity" means settlement or systematic
2703 weakening of the earth supporting ~~such~~ property only if the ~~when~~
2704 ~~such~~ settlement or systematic weakening results from
2705 contemporary movement or raveling of soils, sediments, or rock
2706 materials into subterranean voids created by the effect of water
2707 on a limestone or similar rock formation.

2708 (d) ~~(e)~~ "Professional engineer" means a person, as defined
2709 in s. 471.005, who has a bachelor's degree or higher in
2710 engineering and has successfully completed at least five courses
2711 in any combination of the following: geotechnical engineering,
2712 structural engineering, soil mechanics, foundations, or geology
2713 ~~with a specialty in the geotechnical engineering field.~~ A
2714 professional engineer must also have ~~geotechnical~~ experience and
2715 ~~expertise~~ in the identification of sinkhole activity as well as
2716 other potential causes of structural damage ~~to the structure.~~

2717 (e) ~~(f)~~ "Professional geologist" means a person, as defined
2718 in ~~by~~ s. 492.102, who has a bachelor's degree or higher in
2719 geology or related earth science and ~~with expertise in the~~
2720 ~~geology of Florida.~~ A professional geologist must have
2721 ~~geological~~ experience and ~~expertise~~ in the identification of
2722 sinkhole activity as well as other potential geologic causes of
2723 structural damage ~~to the structure.~~

2724 (i) "Structural damage" means:

2725 1. A covered building that suffers foundation movement
2726 outside an acceptable variance under the applicable building

37-00264B-11

2011408

2727 code;

2728 2. Damage to a covered building, including the foundation,
 2729 which prevents the primary structural members or primary
 2730 structural systems from supporting the loads and forces they
 2731 were designed to support; and

2732 3. As may be further defined by the applicable policy.

2733 ~~(3) On or before June 1, 2007, Every insurer authorized to~~
 2734 ~~transact property insurance in this state shall make a proper~~
 2735 ~~filing with the office for the purpose of extending the~~
 2736 ~~appropriate forms of property insurance to include coverage for~~
 2737 ~~eatastrophic ground cover collapse or for sinkhole losses.~~
 2738 ~~coverage for catastrophic ground cover collapse may not go into~~
 2739 ~~effect until the effective date provided for in the filing~~
 2740 ~~approved by the office.~~

2741 (3)(4) Insurers offering policies that exclude coverage for
 2742 sinkhole losses must ~~shall~~ inform policyholders in bold type of
 2743 not less than 14 points as follows: "YOUR POLICY PROVIDES
 2744 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS
 2745 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,
 2746 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. ~~YOU~~
 2747 ~~MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN~~
 2748 ~~ADDITIONAL PREMIUM."~~

2749 (4)(5) An insurer offering sinkhole coverage to
 2750 policyholders before or after the adoption of s. 30, chapter
 2751 2007-1, Laws of Florida, may nonrenew the policies of
 2752 policyholders maintaining sinkhole coverage ~~in Pasco County or~~
 2753 ~~Hernando County,~~ at the option of the insurer, and provide an
 2754 offer of coverage that ~~to such policyholders which~~ includes
 2755 catastrophic ground cover collapse and excludes sinkhole

37-00264B-11

2011408

2756 coverage. Insurers acting in accordance with this subsection are
2757 subject to the following requirements:

2758 (a) Policyholders must be notified that a nonrenewal is for
2759 purposes of removing sinkhole coverage, and that the
2760 policyholder is ~~still~~ being offered a policy that provides
2761 coverage for catastrophic ground cover collapse.

2762 (b) Policyholders must be provided an actuarially
2763 reasonable premium credit or discount for the removal of
2764 sinkhole coverage and provision of only catastrophic ground
2765 cover collapse.

2766 (c) Subject to the provisions of this subsection and the
2767 insurer's approved underwriting or insurability guidelines, the
2768 insurer shall provide each policyholder with the opportunity to
2769 purchase an endorsement to his or her policy providing sinkhole
2770 coverage and may require an inspection of the property before
2771 issuance of a sinkhole coverage endorsement.

2772 (d) Section 624.4305 does not apply to nonrenewal notices
2773 issued pursuant to this subsection.

2774 (5) Any claim, including, but not limited to, initial,
2775 supplemental, and reopened claims under an insurance policy that
2776 provides sinkhole coverage is barred unless notice of the claim
2777 was given to the insurer in accordance with the terms of the
2778 policy within 2 years after the policyholder knew or reasonably
2779 should have known about the sinkhole loss.

2780 Section 20. Section 627.7061, Florida Statutes, is amended
2781 to read:

2782 627.7061 Coverage inquiries.—Inquiries about coverage on a
2783 property insurance contract are not claim activity, unless an
2784 actual claim is filed by the policyholder which ~~insured that~~

37-00264B-11

2011408

2785 results in a company investigation of the claim.

2786 Section 21. Section 627.7065, Florida Statutes, is
2787 repealed.

2788 Section 22. Section 627.707, Florida Statutes, is amended
2789 to read:

2790 627.707 ~~Standards for~~ Investigation of sinkhole claims by
2791 policyholders insurers; insurer payment; nonrenewals.—Upon
2792 receipt of a claim for a sinkhole loss to a covered building, an
2793 insurer must meet the following standards in investigating a
2794 claim:

2795 (1) The insurer must inspect ~~make an inspection of the~~
2796 policyholder's insured's premises to determine if there is
2797 structural ~~has been physical~~ damage that ~~to the structure which~~
2798 may be the result of sinkhole activity.

2799 (2) If the insurer confirms that structural damage exists
2800 but is unable to identify a valid cause of such damage or
2801 discovers that such damage is consistent with sinkhole loss
2802 ~~Following the insurer's initial inspection,~~ the insurer shall
2803 engage a professional engineer or a professional geologist to
2804 conduct testing as provided in s. 627.7072 to determine the
2805 cause of the loss within a reasonable professional probability
2806 and issue a report as provided in s. 627.7073, only if sinkhole
2807 loss is covered under the policy. Except as provided in
2808 subsection (6), the fees and costs of the professional engineer
2809 or professional geologist shall be paid by the insurer.÷

2810 ~~(a) The insurer is unable to identify a valid cause of the~~
2811 ~~damage or discovers damage to the structure which is consistent~~
2812 ~~with sinkhole loss; or~~

2813 ~~(b) The policyholder demands testing in accordance with~~

37-00264B-11

2011408

2814 ~~this section or s. 627.7072.~~

2815 (3) Following the initial inspection of the policyholder's
2816 ~~insured~~ premises, the insurer shall provide written notice to
2817 the policyholder disclosing the following information:

2818 (a) What the insurer has determined to be the cause of
2819 damage, if the insurer has made such a determination.

2820 (b) A statement of the circumstances under which the
2821 insurer is required to engage a professional engineer or a
2822 professional geologist to verify or eliminate sinkhole loss and
2823 to engage a professional engineer to make recommendations
2824 regarding land and building stabilization and foundation repair.

2825 ~~(c) A statement regarding the right of the policyholder to~~
2826 ~~request testing by a professional engineer or a professional~~
2827 ~~geologist and the circumstances under which the policyholder may~~
2828 ~~demand certain testing.~~

2829 (4) If the insurer determines that there is no sinkhole
2830 loss, the insurer may deny the claim. If coverage for sinkhole
2831 loss is available and ~~If the insurer denies the claim on such~~
2832 basis, without performing testing under s. 627.7072, the
2833 policyholder may demand testing by the insurer ~~under s.~~
2834 ~~627.7072.~~ The policyholder's demand for testing must be
2835 communicated to the insurer in writing within 60 days after the
2836 policyholder's receipt of the insurer's denial of the claim.

2837 (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is
2838 verified, the insurer shall pay to stabilize the land and
2839 building and repair the foundation in accordance with the
2840 recommendations of the professional engineer retained pursuant
2841 to subsection (2), as provided under s. 627.7073, and in
2842 ~~consultation~~ with notice to the policyholder, subject to the

37-00264B-11

2011408

2843 coverage and terms of the policy. The insurer shall pay for
2844 other repairs to the structure and contents in accordance with
2845 the terms of the policy.

2846 (a) ~~(b)~~ The insurer may limit its total claims payment to
2847 the actual cash value of the sinkhole loss, which does not
2848 include ~~including~~ underpinning or grouting or any other repair
2849 technique performed below the existing foundation of the
2850 building, until the policyholder enters into a contract for the
2851 performance of building stabilization or foundation repairs in
2852 accordance with the recommendations set forth in s. 627.7073.

2853 (b) In order to prevent additional damage to the building
2854 or structure, the policyholder must enter into a contract for
2855 the performance of building stabilization or foundation repairs
2856 within 90 days after the insurance company confirms coverage for
2857 the sinkhole loss and notifies the policyholder of such
2858 confirmation. This time period is tolled if either party invokes
2859 the neutral evaluation process.

2860 (c) After the policyholder enters into the contract for the
2861 performance of building stabilization or foundation repairs, the
2862 insurer shall pay the amounts necessary to begin and perform
2863 such repairs as the work is performed and the expenses are
2864 incurred. The insurer may not require the policyholder to
2865 advance payment for such repairs. If repair covered by a
2866 personal lines residential property insurance policy has begun
2867 and the professional engineer selected or approved by the
2868 insurer determines that the repair cannot be completed within
2869 the policy limits, the insurer must ~~either~~ complete the
2870 professional engineer's recommended repair or tender the policy
2871 limits to the policyholder without a reduction for the repair

37-00264B-11

2011408

2872 expenses incurred.

2873 (d) The stabilization and all other repairs to the
2874 structure and contents must be completed within 12 months after
2875 entering into the contract for repairs described in paragraph
2876 (b) unless:

2877 1. There is a mutual agreement between the insurer and the
2878 policyholder;

2879 2. The claim is involved with the neutral evaluation
2880 process;

2881 3. The claim is in litigation; or

2882 4. The claim is under appraisal.

2883 (e) ~~(e)~~ Upon the insurer's obtaining the written approval of
2884 the ~~policyholder~~ and any lienholder, the insurer may make
2885 payment directly to the persons selected by the policyholder to
2886 perform the land and building stabilization and foundation
2887 repairs. The decision by the insurer to make payment to such
2888 persons does not hold the insurer liable for the work performed.
2889 The policyholder may not accept a rebate from any person
2890 performing the repairs specified in this section. If a
2891 policyholder does receive a rebate, coverage is void ab initio
2892 and the policyholder must refund any payments made under such
2893 coverage. Any person making the repairs specified in this
2894 section who offers a rebate, or any policyholder who accepts a
2895 rebate for such repairs, commits insurance fraud punishable as a
2896 third degree felony as provided in s. 775.082, s. 775.083, or s.
2897 775.084.

2898 ~~(6) Except as provided in subsection (7), the fees and~~
2899 ~~costs of the professional engineer or the professional geologist~~
2900 ~~shall be paid by the insurer.~~

37-00264B-11

2011408

2901 (6)~~(7)~~ If the insurer obtains, pursuant to s. 627.7073,
2902 written certification that there is no sinkhole loss ~~or that the~~
2903 ~~cause of the damage was not sinkhole activity, and if the~~
2904 ~~policyholder has submitted the sinkhole claim without good faith~~
2905 ~~grounds for submitting such claim,~~ the policyholder shall
2906 reimburse the insurer for 50 percent of the actual costs of the
2907 analyses and services provided under ss. 627.7072 and 627.7073;
2908 however, a policyholder is not required to reimburse an insurer
2909 more than the deductible or \$2,500, whichever is greater, with
2910 respect to any claim. A policyholder is required to pay
2911 reimbursement under this subsection only if the insurer, before
2912 ~~prior to~~ ordering the analysis under s. 627.7072, informs the
2913 policyholder in writing of the policyholder's potential
2914 liability for reimbursement and gives the policyholder the
2915 opportunity to withdraw the claim.

2916 (7)~~(8)~~ An ~~No~~ insurer may not shall nonrenew any policy of
2917 property insurance on the basis of filing of claims for partial
2918 loss caused by sinkhole damage or clay shrinkage if as long as
2919 the total of such payments does not equal or exceed the ~~current~~
2920 policy limits of coverage for the policy in effect on the date
2921 of loss, for property damage to the covered building, as set
2922 forth on the declarations page, or if and provided the
2923 policyholder insured has repaired the structure in accordance
2924 with the engineering recommendations made pursuant to subsection
2925 (2) upon which any payment or policy proceeds were based. If the
2926 insurer pays such limits, it may nonrenew the policy.

2927 (8)~~(9)~~ The insurer may engage a professional structural
2928 engineer to make recommendations as to the repair of the
2929 structure.

37-00264B-11

2011408

2930 Section 23. Section 627.7073, Florida Statutes, is amended
2931 to read:

2932 627.7073 Sinkhole reports.—

2933 (1) Upon completion of testing as provided in s. 627.7072,
2934 the professional engineer or professional geologist shall issue
2935 a report and certification to the insurer and the policyholder
2936 as provided in this section.

2937 (a) Sinkhole loss is verified if, based upon tests
2938 performed in accordance with s. 627.7072, a professional
2939 engineer or a professional geologist issues a written report and
2940 certification stating:

2941 1. That structural damage to the covered building has been
2942 identified within a reasonable professional probability.

2943 ~~2.1.~~ That the cause of the ~~actual physical and~~ structural
2944 damage is sinkhole activity within a reasonable professional
2945 probability.

2946 ~~3.2.~~ That the analyses conducted were of sufficient scope
2947 to identify sinkhole activity as the cause of damage within a
2948 reasonable professional probability.

2949 ~~4.3.~~ A description of the tests performed.

2950 ~~5.4.~~ A recommendation by the professional engineer of
2951 methods for stabilizing the land and building and for making
2952 repairs to the foundation.

2953 (b) If there is no structural damage or if sinkhole
2954 activity is eliminated as the cause of such damage to the
2955 covered building structure, the professional engineer or
2956 professional geologist shall issue a written report and
2957 certification to the policyholder and the insurer stating:

2958 1. That there is no structural damage or the cause of such

37-00264B-11

2011408

2959 ~~the~~ damage is not sinkhole activity within a reasonable
2960 professional probability.

2961 2. That the analyses and tests conducted were of sufficient
2962 scope to eliminate sinkhole activity as the cause of the
2963 structural damage within a reasonable professional probability.

2964 3. A statement of the cause of the structural damage within
2965 a reasonable professional probability.

2966 4. A description of the tests performed.

2967 (c) The respective findings, opinions, and recommendations
2968 of the professional engineer or professional geologist as to the
2969 cause of distress to the property and the findings, opinions,
2970 and recommendations of the insurer's professional engineer as to
2971 land and building stabilization and foundation repair set forth
2972 by s. 627.7072 shall be presumed correct, which presumption
2973 shifts the burden of proof in accordance with s. 90.302(2). The
2974 presumption of correctness is based upon public policy concerns
2975 regarding the affordability of sinkhole coverage, consistency in
2976 claims handling, and a reduction in the number of disputed
2977 sinkhole claims.

2978 (2)~~(a)~~ Any insurer that has paid a claim for a sinkhole
2979 loss shall file a copy of the report and certification, prepared
2980 pursuant to subsection (1), including the legal description of
2981 the real property and the name of the property owner, with the
2982 county clerk of court, who shall record the report and
2983 certification. The insurer shall bear the cost of filing and
2984 recording one or more reports and certifications ~~the report and~~
2985 ~~certification~~. There shall be no cause of action or liability
2986 against an insurer for compliance with this section.

2987 (a) The recording of the report and certification does not:

37-00264B-11

2011408

2988 1. Constitute a lien, encumbrance, or restriction on the
2989 title to the real property or constitute a defect in the title
2990 to the real property;

2991 2. Create any cause of action or liability against any
2992 grantor of the real property for breach of any warranty of good
2993 title or warranty against encumbrances; or

2994 3. Create any cause of action or liability against any
2995 title insurer that insures the title to the real property.

2996 (b) As a precondition to accepting payment for a sinkhole
2997 loss, the policyholder shall file a copy of any report prepared
2998 regarding the insured property, including the neutral
2999 evaluator's report that indicates that sinkhole activity caused
3000 the damage claimed.

3001 (c) ~~(b)~~ The seller of real property upon which a sinkhole
3002 claim has been made by the seller and paid by the insurer must
3003 shall disclose to the buyer of such property, before the
3004 closing, that a claim has been paid, the amount of the payment,
3005 and whether or not the full amount of the proceeds were used to
3006 repair the sinkhole damage. Before the closing, the seller must
3007 also provide to the buyer a copy of the report prepared pursuant
3008 to subsection (1) and any other report regarding the subject
3009 property, including the neutral evaluator's report, as well as a
3010 copy of the certification indicating that stabilization has been
3011 completed, if applicable.

3012 Section 24. Section 627.7074, Florida Statutes, is amended
3013 to read:

3014 627.7074 Alternative procedure for resolution of disputed
3015 sinkhole insurance claims.—

3016 ~~(1) As used in this section, the term:~~

37-00264B-11

2011408

3017 ~~(a) "Neutral evaluation" means the alternative dispute~~
3018 ~~resolution provided for in this section.~~

3019 ~~(b) "Neutral evaluator" means a professional engineer or a~~
3020 ~~professional geologist who has completed a course of study in~~
3021 ~~alternative dispute resolution designed or approved by the~~
3022 ~~department for use in the neutral evaluation process, who is~~
3023 ~~determined to be fair and impartial.~~

3024 (1)(2)(a) The department shall:

3025 (a) Certify and maintain a list of persons who are neutral
3026 evaluators.

3027 ~~(b) The department shall~~ Prepare a consumer information
3028 pamphlet for distribution by insurers to policyholders which
3029 clearly describes the neutral evaluation process and includes
3030 information ~~and forms~~ necessary for the policyholder to request
3031 a neutral evaluation.

3032 (2) Neutral evaluation is available to either party if a
3033 sinkhole report has been issued pursuant to s. 627.7073. At a
3034 minimum, neutral evaluation must determine:

3035 (a) Causation;

3036 (b) All methods of stabilization and repair both above and
3037 below ground;

3038 (c) The costs for stabilization and all repairs; and

3039 (d) Information necessary to carry out subsection (12).

3040 (3) Following the receipt of the report provided under s.
3041 627.7073 or the denial of a claim for a sinkhole loss, the
3042 insurer shall notify the policyholder of his or her right to
3043 participate in the neutral evaluation program under this
3044 section. Neutral evaluation supersedes the alternative dispute
3045 resolution process under s. 627.7015, but does not invalidate

37-00264B-11

2011408

3046 the appraisal clause of the insurance policy. The insurer shall
3047 provide to the policyholder the consumer information pamphlet
3048 prepared by the department pursuant to subsection (1)
3049 electronically or by United States mail ~~paragraph (2) (b).~~

3050 (4) Neutral evaluation is nonbinding, but mandatory if
3051 requested by either party. A request for neutral evaluation may
3052 be filed with the department by the policyholder or the insurer
3053 on a form approved by the department. The request for neutral
3054 evaluation must state the reason for the request and must
3055 include an explanation of all the issues in dispute at the time
3056 of the request. Filing a request for neutral evaluation tolls
3057 the applicable time requirements for filing suit for ~~a period of~~
3058 60 days following the conclusion of the neutral evaluation
3059 process or the time prescribed in s. 95.11, whichever is later.

3060 (5) Neutral evaluation shall be conducted as an informal
3061 process in which formal rules of evidence and procedure need not
3062 be observed. A party to neutral evaluation is not required to
3063 attend neutral evaluation if a representative of the party
3064 attends and has the authority to make a binding decision on
3065 behalf of the party. All parties shall participate in the
3066 evaluation in good faith. The neutral evaluator must be allowed
3067 reasonable access to the interior and exterior of insured
3068 structures to be evaluated or for which a claim has been made.
3069 Any reports initiated by the policyholder, or an agent of the
3070 policyholder, confirming a sinkhole loss or disputing another
3071 sinkhole report regarding insured structures must be provided to
3072 the neutral evaluator before the evaluator's physical inspection
3073 of the insured property.

3074 (6) The insurer shall pay reasonable ~~the~~ costs associated

37-00264B-11

2011408__

3075 with the neutral evaluation. However, if a party chooses to hire
3076 a court reporter or stenographer to contemporaneously record and
3077 document the neutral evaluation, that party must bear such
3078 costs.

3079 (7) Upon receipt of a request for neutral evaluation, the
3080 department shall provide the parties a list of certified neutral
3081 evaluators. ~~The parties shall mutually select a neutral~~
3082 ~~evaluator from the list and promptly inform the department. If~~
3083 ~~the parties cannot agree to a neutral evaluator within 10~~
3084 ~~business days,~~ The department shall allow the parties to submit
3085 requests to disqualify evaluators on the list for cause.

3086 (a) The department shall disqualify neutral evaluators for
3087 cause based only on any of the following grounds:

3088 1. A familial relationship exists between the neutral
3089 evaluator and either party or a representative of either party
3090 within the third degree.

3091 2. The proposed neutral evaluator has, in a professional
3092 capacity, previously represented either party or a
3093 representative of either party, in the same or a substantially
3094 related matter.

3095 3. The proposed neutral evaluator has, in a professional
3096 capacity, represented another person in the same or a
3097 substantially related matter and that person's interests are
3098 materially adverse to the interests of the parties. The term
3099 "substantially related matter" means participation by the
3100 neutral evaluator on the same claim, property, or adjacent
3101 property.

3102 4. The proposed neutral evaluator has, within the preceding
3103 5 years, worked as an employer or employee of any party to the

37-00264B-11

2011408

3104 case.

3105 (b) The parties shall appoint a neutral evaluator from the
3106 department list and promptly inform the department. If the
3107 parties cannot agree to a neutral evaluator within 14 days, the
3108 department shall appoint a neutral evaluator from the list of
3109 certified neutral evaluators. The department shall allow each
3110 party to disqualify two neutral evaluators without cause. Upon
3111 selection or appointment, the department shall promptly refer
3112 the request to the neutral evaluator.

3113 (c) Within 14 ~~5~~ business days after the referral, the
3114 neutral evaluator shall notify the policyholder and the insurer
3115 of the date, time, and place of the neutral evaluation
3116 conference. The conference may be held by telephone, if feasible
3117 and desirable. The neutral evaluator shall make reasonable
3118 efforts to hold the ~~neutral evaluation~~ conference ~~shall be held~~
3119 within 90 ~~45~~ days after the receipt of the request by the
3120 department. Failure of the neutral evaluator to hold the
3121 conference within 90 days does not invalidate either party's
3122 right to neutral evaluation or to a neutral evaluation
3123 conference held outside this timeframe.

3124 ~~(8) The department shall adopt rules of procedure for the~~
3125 ~~neutral evaluation process.~~

3126 ~~(8)(9)~~ For policyholders not represented by an attorney, a
3127 consumer affairs specialist of the department or an employee
3128 designated as the primary contact for consumers on issues
3129 relating to sinkholes under s. 20.121 shall be available for
3130 consultation to the extent that he or she may lawfully do so.

3131 ~~(9)(10)~~ Evidence of an offer to settle a claim during the
3132 neutral evaluation process, as well as any relevant conduct or

37-00264B-11

2011408__

3133 statements made in negotiations concerning the offer to settle a
3134 claim, is inadmissible to prove liability or absence of
3135 liability for the claim or its value, except as provided in
3136 subsection (14) ~~(13)~~.

3137 (10) ~~(11)~~ Regardless of when noticed, any court proceeding
3138 related to the subject matter of the neutral evaluation shall be
3139 stayed pending completion of the neutral evaluation and for 5
3140 days after the filing of the neutral evaluator's report with the
3141 court.

3142 (11) If, based upon his or her professional training and
3143 credentials, a neutral evaluator is qualified to determine only
3144 disputes relating to causation or method of repair, the
3145 department shall allow the neutral evaluator to enlist the
3146 assistance of another professional from the neutral evaluators
3147 list not previously stricken, who, based upon his or her
3148 professional training and credentials, is able to provide an
3149 opinion as to other disputed issues. A professional who would be
3150 disqualified for any reason listed in subsection (7) must be
3151 disqualified. The neutral evaluator may also use the services of
3152 professional engineers and professional geologists who are not
3153 certified as neutral evaluators, as well as licensed building
3154 contractors, in order to ensure that all items in dispute are
3155 addressed and the neutral evaluation can be completed. Any
3156 professional engineer, professional geologist, or licensed
3157 building contractor retained may be disqualified for any of the
3158 reasons listed in subsection (7). The neutral evaluator may
3159 request the entity that performed the investigation pursuant to
3160 s. 627.7072 perform such additional and reasonable testing as
3161 deemed necessary in the professional opinion of the neutral

37-00264B-11

2011408__

3162 evaluator.

3163 (12) ~~At~~ ~~For matters that are not resolved by the parties at~~
3164 the conclusion of the neutral evaluation, the neutral evaluator
3165 shall prepare a report describing all matters that are the
3166 subject of the neutral evaluation, including whether, stating
3167 ~~that~~ in his or her opinion, the sinkhole loss has been verified
3168 or eliminated within a reasonable degree of professional
3169 probability and, if verified, whether the sinkhole activity
3170 caused structural damage to the covered building, and if so, the
3171 need for and estimated costs of stabilizing the land and any
3172 covered ~~structures or~~ buildings and other appropriate
3173 remediation or necessary building structural repairs due to the
3174 sinkhole loss. The evaluator's report shall be sent to all
3175 parties ~~in attendance at the neutral evaluation~~ and to the
3176 department, within 14 days after completing the neutral
3177 evaluation conference.

3178 (13) The recommendation of the neutral evaluator is not
3179 binding on any party, and the parties retain access to the
3180 court. The neutral evaluator's written recommendation, oral
3181 testimony, and full report shall be admitted ~~is admissible~~ in
3182 any ~~subsequent~~ action, litigation, or proceeding relating to the
3183 claim or to the cause of action giving rise to the claim.
3184 However, oral or written statements or nonverbal conduct
3185 intended to make an assertion made by a party or neutral
3186 evaluator during the course of neutral evaluation, other than
3187 those statements or conduct expressly required to be admitted by
3188 this subsection, are confidential and may not be disclosed to a
3189 person other than a party to neutral evaluation or a party's
3190 counsel.

37-00264B-11

2011408

3191 (14) If the neutral evaluator ~~first~~ verifies the existence
3192 of a sinkhole that caused structural damage and ~~second,~~
3193 recommends the need for and estimates costs of stabilizing the
3194 land and any covered ~~structures or~~ buildings and other
3195 appropriate remediation or building structural repairs, which
3196 ~~costs~~ exceed the amount that the insurer estimates as necessary
3197 to stabilize and repair, and the insurer refuses to comply with
3198 the neutral evaluator's findings and recommendations ~~has offered~~
3199 ~~to pay the policyholder,~~ the insurer is liable to the
3200 policyholder for up to \$2,500 in attorney's fees for the
3201 attorney's participation in the neutral evaluation process. ~~For~~
3202 ~~purposes of this subsection, the term "offer to pay" means a~~
3203 ~~written offer signed by the insurer or its legal representative~~
3204 ~~and delivered to the policyholder within 10 days after the~~
3205 ~~insurer receives notice that a request for neutral evaluation~~
3206 ~~has been made under this section.~~

3207 (15) If the insurer timely agrees in writing to comply and
3208 timely complies with the recommendation of the neutral
3209 evaluator, but the policyholder declines to resolve the matter
3210 in accordance with the recommendation of the neutral evaluator
3211 pursuant to this section:

3212 (a) The insurer is not liable for extracontractual damages
3213 related to a claim for a sinkhole loss but only as related to
3214 the issues determined by the neutral evaluation process. This
3215 section does not affect or impair claims for extracontractual
3216 damages unrelated to the issues determined by the neutral
3217 evaluation process contained in this section; and

3218 (b) The actions of the insurer are not a confession of
3219 judgment or admission of liability, and the insurer is not

37-00264B-11

2011408

3220 liable for attorney's fees under s. 627.428 or other provisions
3221 of the insurance code unless the policyholder obtains a judgment
3222 that is more favorable than the recommendation of the neutral
3223 evaluator.

3224 (16) If the insurer agrees to comply with the neutral
3225 evaluator's report, payments shall be made in accordance with
3226 the terms and conditions of the applicable insurance policy
3227 pursuant to s. 627.707(5).

3228 (17) Neutral evaluators are deemed to be agents of the
3229 department and have immunity from suit as provided in s. 44.107.

3230 (18) The department shall adopt rules of procedure for the
3231 neutral evaluation process.

3232 Section 25. Subsection (1) of section 627.712, Florida
3233 Statutes, is amended to read:

3234 627.712 Residential windstorm coverage required;
3235 availability of exclusions for windstorm or contents.—

3236 (1) An insurer issuing a residential property insurance
3237 policy must provide windstorm coverage. Except as provided in
3238 paragraph (2)(c), this section does not apply ~~with respect~~ to
3239 risks that are eligible for wind-only coverage from Citizens
3240 Property Insurance Corporation under s. 627.351(6), and ~~with~~
3241 ~~respect to~~ risks that are not eligible for coverage from
3242 Citizens Property Insurance Corporation under s. 627.351(6)(a)3.
3243 or 5. A risk ineligible for ~~Citizens~~ coverage by the corporation
3244 under s. 627.351(6)(a)3. or 5. is exempt from ~~the requirements~~
3245 ~~of~~ this section only if the risk is located within the
3246 boundaries of the coastal high-risk ~~high-risk~~ account of the corporation.

3247 Section 26. Except as otherwise expressly provided in this
3248 act and except for this section, which shall take effect June 1,

37-00264B-11

2011408__

3249

2011, this act shall take effect July 1, 2011.