

By the Committees on Rules; Budget Subcommittee on General Government Appropriations; and Banking and Insurance; and Senators Richter and Hays

595-03920-11

2011408c3

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 amending s. 215.555, F.S.; revising the definition of
4 "losses," relating to the Florida Hurricane
5 Catastrophe Fund, to exclude certain losses; providing
6 applicability; amending s. 215.5595, F.S.; authorizing
7 an insurer to renegotiate the terms a surplus note
8 issued before a certain date; providing limitations;
9 amending s. 624.407, F.S.; revising the amount of
10 surplus funds required for domestic insurers applying
11 for a certificate of authority after a certain date;
12 amending s. 624.408, F.S.; revising the minimum
13 surplus that must be maintained by certain insurers;
14 authorizing the Office of Insurance Regulation to
15 reduce the surplus requirement under specified
16 circumstances; amending s. 624.4095, F.S.; excluding
17 certain premiums for federal multiple-peril crop
18 insurance from calculations for an insurer's gross
19 writing ratio; requiring insurers to disclose the
20 gross written premiums for federal multiple-peril crop
21 insurance in a financial statement; amending s.
22 624.424, F.S.; revising the frequency that an insurer
23 may use the same accountant or partner to prepare an
24 annual audited financial report; amending s. 626.854,
25 F.S.; providing limitations on the amount of
26 compensation that may be received by a public adjuster
27 for a reopened or supplemental claim; providing
28 statements that may be considered deceptive or
29 misleading if made in any public adjuster's

595-03920-11

2011408c3

30 advertisement or solicitation; providing a definition
31 for the term "written advertisement"; requiring that a
32 disclaimer be included in any public adjuster's
33 written advertisement; providing requirements for such
34 disclaimer; requiring certain persons who act on
35 behalf of an insurer to provide notice to the insurer,
36 claimant, public adjuster, or legal representative for
37 an onsite inspection of the insured property;
38 authorizing the insured or claimant to deny access to
39 the property if notice is not provided; requiring the
40 public adjuster to ensure prompt notice of certain
41 property loss claims; providing that an insurer be
42 allowed to interview the insured directly about the
43 loss claim; prohibiting the insurer from obstructing
44 or preventing the public adjuster from communicating
45 with the insured; requiring that the insurer
46 communicate with the public adjuster in an effort to
47 reach an agreement as to the scope of the covered loss
48 under the insurance policy; prohibiting a public
49 adjuster from restricting or preventing persons acting
50 on behalf of the insured from having reasonable access
51 to the insured or the insured's property; prohibiting
52 a public adjuster from restricting or preventing the
53 insured's adjuster from having reasonable access to or
54 inspecting the insured's property; authorizing the
55 insured's adjuster to be present for the inspection;
56 prohibiting a licensed contractor or subcontractor
57 from adjusting a claim on behalf of an insured if such
58 contractor or subcontractor is not a licensed public

595-03920-11

2011408c3

59 adjuster; providing an exception; amending s.
60 626.8651, F.S.; requiring that a public adjuster
61 apprentice complete a minimum number of hours of
62 continuing education to qualify for licensure;
63 amending s. 626.8796, F.S.; providing requirements for
64 a public adjuster contract; creating s. 626.70132,
65 F.S.; requiring that notice of a claim, supplemental
66 claim, or reopened claim be given to the insurer
67 within a specified period after a windstorm or
68 hurricane occurs; providing a definition for the terms
69 "supplemental claim" or "reopened claim"; providing
70 applicability; repealing s. 627.0613(4), F.S.,
71 relating to the requirement that the consumer advocate
72 for the Chief Financial Officer prepare an annual
73 report card for each personal residential property
74 insurer; amending s. 627.062, F.S.; requiring that the
75 office issue an approval rather than a notice of
76 intent to approve following its approval of a file and
77 use filing; authorizing the office to disapprove a
78 rate filing because the coverage is inadequate or the
79 insurer charges a higher premium due to certain
80 discriminatory factors; extending the expiration date
81 for making a "file and use" filing; prohibiting the
82 Office of Insurance Regulation from, directly or
83 indirectly, impeding the right of an insurer to
84 acquire policyholders, advertise or appoint agents, or
85 regulate agent commissions; revising the information
86 that must be included in a rate filing relating to
87 certain reinsurance or financing products; deleting a

595-03920-11

2011408c3

88 provision that prohibited an insurer from making
89 certain rate filings within a certain period of time
90 after a rate increase; deleting a provision
91 prohibiting an insurer from filing for a rate increase
92 within 6 months after it makes certain rate filings;
93 deleting obsolete provisions relating to legislation
94 enacted during the 2003 Special Session D of the
95 Legislature; providing for the submission of
96 additional or supplementary information pursuant to a
97 rate filing; amending s. 627.0629, F.S.; deleting
98 obsolete provisions; deleting a requirement that the
99 Office of Insurance Regulation propose a method for
100 establishing discounts, debits, credits, and other
101 rate differentials for hurricane mitigation by a
102 certain date; requiring the Financial Services
103 Commission to adopt rules relating to such debits by a
104 certain date; deleting a provision that prohibits an
105 insurer from including an expense or profit load in
106 the cost of reinsurance to replace the Temporary
107 Increase in Coverage Limits; conforming provisions to
108 changes made by the act; amending s. 627.351, F.S.;
109 renaming the "Citizens Property Insurance Corporation"
110 as the "Taxpayer-Funded Property Insurance
111 Corporation"; requiring policies issued by the
112 corporation to include a provision that prohibits
113 policyholders from engaging the services of a public
114 adjuster until after the corporation has tendered an
115 offer; limiting an adjuster's fee for a claim against
116 the corporation; renaming the "high-risk account" as

595-03920-11

2011408c3

117 the "coastal account"; revising the conditions under
118 which the Citizens policyholder surcharge may be
119 imposed; providing that members of the Citizens
120 Property Insurance Corporation Board of Governors are
121 not prohibited from practicing in a certain profession
122 if not prohibited by law or ordinance; limiting
123 coverage for damage from sinkholes after a certain
124 date and providing that the corporation must require
125 repair of the property as a condition of any payment;
126 prohibiting board members from voting on certain
127 measures; exempting sinkhole coverage from the
128 corporation's annual rate increase requirements;
129 deleting a requirement that the board reduce the
130 boundaries of certain high-risk areas eligible for
131 wind-only coverages under certain circumstances;
132 amending s. 627.3511, F.S.; conforming provisions to
133 changes made by the act; amending s. 627.4133, F.S.;
134 revising the requirements for providing an insured
135 with notice of nonrenewal, cancellation, or
136 termination of personal lines or commercial
137 residential property insurance; authorizing an insurer
138 to cancel policies after 45 days' notice if the Office
139 of Insurance Regulation determines that the
140 cancellation of policies is necessary to protect the
141 interests of the public or policyholders; authorizing
142 the Office of Insurance Regulation to place an insurer
143 under administrative supervision or appoint a receiver
144 upon the consent of the insurer under certain
145 circumstances; creating s. 627.43141, F.S.; providing

595-03920-11

2011408c3

146 definitions; requiring the delivery of a "Notice of
147 Change in Policy Terms" under certain circumstances;
148 specifying requirements for such notice; specifying
149 actions constituting proof of notice; authorizing
150 policy renewals to contain a change in policy terms;
151 providing that receipt of payment by an insurer is
152 deemed acceptance of new policy terms by an insured;
153 providing that the original policy remains in effect
154 until the occurrence of specified events if an insurer
155 fails to provide notice; providing intent; amending s.
156 627.7011, F.S.; requiring the insurer to pay the
157 actual cash value of an insured loss for a dwelling,
158 less any applicable deductible; requiring a
159 policyholder to enter into a contract for the
160 performance of building and structural repairs unless
161 waived by the insurer; restricting insurers and
162 contractors from requiring advance payments for
163 repairs and expenses; requiring the insurer to offer
164 coverage under which the insurer is obligated to pay
165 replacement costs; authorizing the insurer to offer
166 coverage that limits the initial payment for personal
167 property to the actual cash value of the property to
168 be replaced and to require the insured to provide
169 receipts for purchases; requiring the insurer to
170 provide notice of this process in the insurance
171 contract; prohibiting an insurer from requiring the
172 insured to advance payment; amending s. 627.70131,
173 F.S.; specifying application of certain time periods
174 to initial or supplemental property insurance claim

595-03920-11

2011408c3

175 notices and payments; providing legislative findings
176 with respect to 2005 statutory changes relating to
177 sinkhole insurance coverage and statutory changes in
178 this act; amending s. 627.706, F.S.; authorizing an
179 insurer to limit coverage for catastrophic ground
180 cover collapse to the principal building and to have
181 discretion to provide additional coverage; allowing
182 the deductible to include costs relating to an
183 investigation of whether sinkhole activity is present;
184 revising definitions; defining the term "structural
185 damage"; providing an insurer with discretion to
186 provide a policyholder with an opportunity to purchase
187 an endorsement to sinkhole coverage; placing a 2-year
188 statute of repose on claims for sinkhole coverage;
189 amending s. 627.7061, F.S.; conforming provisions to
190 changes made by the act; repealing s. 627.7065, F.S.,
191 relating to the establishment of a sinkhole database;
192 amending s. 627.707, F.S.; revising provisions
193 relating to the investigation of sinkholes by
194 insurers; deleting a requirement that the insurer
195 provide a policyholder with a statement regarding
196 testing for sinkhole activity; providing a time
197 limitation for demanding sinkhole testing by a
198 policyholder and entering into a contract for repairs;
199 requiring all repairs to be completed within a certain
200 time; providing exceptions; providing a criminal
201 penalty on a policyholder for accepting rebates from
202 persons performing repairs; amending s. 627.7073,
203 F.S.; revising provisions relating to inspection

595-03920-11

2011408c3

204 reports; providing that the presumption that the
205 report is correct shifts the burden of proof; revising
206 the reports that an insurer must file with the clerk
207 of the court; requiring the policyholder to file
208 certain reports as a precondition to accepting
209 payment; requiring the professional engineer
210 responsible for monitoring sinkhole repairs to issue a
211 report and certification to the property owner and
212 file such report with the court; providing that the
213 act does not create liability for an insurer based on
214 a representation or certification by the engineer;
215 amending s. 627.7074, F.S.; revising provisions
216 relating to neutral evaluation; requiring evaluation
217 in order to make certain determinations; requiring
218 that the neutral evaluator be allowed access to
219 structures being evaluated; providing grounds for
220 disqualifying an evaluator; allowing the Department of
221 Financial Services to appoint an evaluator if the
222 parties cannot come to agreement; revising the
223 timeframes for scheduling a neutral evaluation
224 conference; authorizing an evaluator to enlist another
225 evaluator or other professionals; providing a time
226 certain for issuing a report; providing that certain
227 information is confidential; revising provisions
228 relating to compliance with the evaluator's
229 recommendations; providing that the evaluator is an
230 agent of the department for the purposes of immunity
231 from suit; requiring the department to adopt rules;
232 amending s. 627.711, F.S.; deleting the requirement

595-03920-11

2011408c3

233 that the insurer pay for verification of a uniform
234 mitigation verification form that the insurer
235 requires; amending s. 627.712, F.S.; conforming
236 provisions to changes made by the act; providing
237 effective dates.

238

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

240

241 Section 1. Effective June 1, 2011, paragraph (d) of
242 subsection (2) of section 215.555, Florida Statutes, is amended
243 to read

244 215.555 Florida Hurricane Catastrophe Fund.—

245 (2) DEFINITIONS.—As used in this section:

246 (d) "Losses" means all ~~direct~~ incurred losses under covered
247 policies, including ~~which shall include losses for~~ additional
248 living expenses not to exceed 40 percent of the insured value of
249 a residential structure or its contents and amounts paid as fees
250 on behalf of or inuring to the benefit of a policyholder ~~shall~~
251 ~~exclude loss adjustment expenses.~~ The term "Losses" does not
252 include:

253 1. Losses for fair rental value, loss of rent or rental
254 income, or business interruption losses;

255 2. Losses under liability coverages;

256 3. Property losses that are proximately caused by any peril
257 other than a covered event, including, but not limited to, fire,
258 theft, flood or rising water, or windstorm that does not
259 constitute a covered event;

260 4. Amounts paid as the result of a voluntary expansion of
261 coverage by the insurer, including, but not limited to, a waiver

595-03920-11

2011408c3

262 of an applicable deductible;

263 5. Amounts paid to reimburse a policyholder for condominium
264 association or homeowners' association loss assessments or under
265 similar coverages for contractual liabilities;

266 6. Amounts paid as bad faith awards, punitive damage
267 awards, or other court-imposed fines, sanctions, or penalties;

268 7. Amounts in excess of the coverage limits under the
269 covered policy; or

270 8. Allocated or unallocated loss adjustment expenses.

271 Section 2. The amendment to s. 215.555, Florida Statutes,
272 made by this act applies first to the Florida Hurricane
273 Catastrophe Fund reimbursement contract that takes effect June
274 1, 2011.

275 Section 3. Subsection (12) is added to section 215.5595,
276 Florida Statutes, to read:

277 215.5595 Insurance Capital Build-Up Incentive Program.—

278 (12) The insurer may request that the board renegotiate the
279 terms of any surplus note issued under this section before
280 January 1, 2011. The request must be submitted to the board by
281 January 1, 2012. If the insurer agrees to accelerate the payment
282 period of the note by at least 5 years, the board must agree to
283 exempt the insurer from the premium-to-surplus ratios required
284 under paragraph (2) (d). If the insurer agrees to an acceleration
285 of the payment period for less than 5 years, the board may,
286 after consultation with the Office of Insurance Regulation,
287 agree to an appropriate revision of the premium-to-surplus
288 ratios required under paragraph (2) (d) for the remaining term of
289 the note if the revised ratios are not lower than a minimum
290 writing ratio of net premium to surplus of at least 1 to 1 and,

595-03920-11

2011408c3

291 alternatively, a minimum writing ratio of gross premium to
292 surplus of at least 3 to 1.

293 Section 4. Section 624.407, Florida Statutes, is amended to
294 read:

295 624.407 Surplus ~~Capital~~ funds required; new insurers.—

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

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

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

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

309 (d) For all insurers other than life insurers and life and
310 health insurers, 10 percent of the insurer's total liabilities;

311 or

312 (e) Notwithstanding paragraph (a) or paragraph (d), for a
313 domestic insurer that transacts residential property insurance
314 and is:

315 1. Not a wholly owned subsidiary of an insurer domiciled in
316 any other state, \$15 million.

317 2. ~~however, a domestic insurer that transacts residential~~
318 ~~property insurance and is~~ A wholly owned subsidiary of an
319 insurer domiciled in any other state, ~~shall possess surplus as~~

595-03920-11

2011408c3

320 ~~to policyholders of at least \$50 million.~~

321 (2) Notwithstanding subsection (1), a new insurer may not
322 be required, but no insurer shall be required under this
323 ~~subsection~~ to have surplus as to policyholders greater than \$100
324 million.

325 (3)~~(2)~~ The requirements of this section shall be based upon
326 all the kinds of insurance actually transacted or to be
327 transacted by the insurer in any and all areas in which it
328 operates, whether or not only a portion of such kinds of
329 insurance are ~~to be~~ transacted in this state.

330 (4)~~(3)~~ As to surplus funds as to policyholders required for
331 qualification to transact one or more kinds of insurance,
332 domestic mutual insurers are governed by chapter 628, and
333 domestic reciprocal insurers are governed by chapter 629.

334 (5)~~(4)~~ For the purposes of this section, liabilities do
335 ~~shall~~ not include liabilities required under s. 625.041(4). For
336 purposes of computing minimum surplus funds as to policyholders
337 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities
338 required under s. 625.041(4).

339 (6)~~(5)~~ The provisions of this section, as amended by
340 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to
341 insurers applying for a certificate of authority on or after
342 October 1, 1989 ~~the effective date of this act~~.

343 Section 5. Section 624.408, Florida Statutes, is amended to
344 read:

345 624.408 Surplus funds ~~as to policyholders~~ required; current
346 ~~new and existing~~ insurers.-

347 (1)~~(a)~~ To maintain a certificate of authority to transact
348 any one kind or combinations of kinds of insurance, as defined

595-03920-11

2011408c3

349 in part V of this chapter, an insurer in this state must ~~shall~~
 350 at all times maintain surplus funds as to policyholders at least
 351 ~~not less than~~ the greater of:

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

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

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

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

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

365 (f)(b) For residential any property insurers not and
 366 casualty insurer holding a certificate of authority before July
 367 1, 2011 ~~on December 1, 1993,~~ \$15 million. ~~the~~

368 (g) For residential property insurers holding a certificate
 369 of authority before July 1, 2011, and until June 30, 2016, \$5
 370 million; on or after July 1, 2016, and until June 30, 2021, \$10
 371 million; on or after July 1, 2021, \$15 million. The office may
 372 reduce this surplus requirement if the insurer is not writing
 373 new business, has premiums in force of less than \$1 million per
 374 year in residential property insurance, or is a mutual insurance
 375 company. following amounts apply instead of the \$4 million
 376 required by subparagraph (a)5.:

377 1. On December 31, 2001, and until December 30, 2002, \$3

595-03920-11

2011408c3

378 million.

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

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

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

384 (2) For purposes of this section, liabilities do ~~shall~~ not
385 include liabilities required under s. 625.041(4). For purposes
386 of computing minimum surplus as to policyholders pursuant to s.
387 625.305(1), liabilities ~~shall~~ include liabilities required under
388 s. 625.041(4).

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

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

394 Section 6. Subsection (7) is added to section 624.4095,
395 Florida Statutes, to read:

396 624.4095 Premiums written; restrictions.—

397 (7) For the purposes of this section and ss. 624.407 and
398 624.408, with respect to capital and surplus requirements, gross
399 written premiums for federal multiple-peril crop insurance which
400 are ceded to the Federal Crop Insurance Corporation or
401 authorized reinsurers may not be included in the calculation of
402 an insurer's gross writing ratio. The liabilities for ceded
403 reinsurance premiums payable for federal multiple-peril crop
404 insurance ceded to the Federal Crop Insurance Corporation and
405 authorized reinsurers shall be netted against the asset for
406 amounts recoverable from reinsurers. Each insurer that writes

595-03920-11

2011408c3

407 other insurance products together with federal multiple-peril
408 crop insurance must disclose in the notes to its annual and
409 quarterly financial statements, or in a supplement to those
410 statements, the gross written premiums for federal multiple-
411 peril crop insurance.

412 Section 7. Paragraph (d) of subsection (8) of section
413 624.424, Florida Statutes, is amended to read:

414 624.424 Annual statement and other information.—

415 (8)

416 (d) An insurer may not use the same accountant or partner
417 of an accounting firm responsible for preparing the report
418 required by this subsection for more than 5 7 consecutive years.
419 Following this period, the insurer may not use such accountant
420 or partner for a period of 5 2 years, but may use another
421 accountant or partner of the same firm. An insurer may request
422 the office to waive this prohibition based upon an unusual
423 hardship to the insurer and a determination that the accountant
424 is exercising independent judgment that is not unduly influenced
425 by the insurer considering such factors as the number of
426 partners, expertise of the partners or the number of insurance
427 clients of the accounting firm; the premium volume of the
428 insurer; and the number of jurisdictions in which the insurer
429 transacts business.

430 Section 8. Effective June 1, 2011, subsection (11) of
431 section 626.854, Florida Statutes, is amended to read:

432 626.854 "Public adjuster" defined; prohibitions.—The
433 Legislature finds that it is necessary for the protection of the
434 public to regulate public insurance adjusters and to prevent the
435 unauthorized practice of law.

595-03920-11

2011408c3

436 (11) (a) If a public adjuster enters into a contract with an
437 insured or claimant to reopen a claim or ~~to~~ file a supplemental
438 claim that seeks additional payments for a claim that has been
439 previously paid in part or in full or settled by the insurer,
440 the public adjuster may not charge, agree to, or accept any
441 compensation, payment, commission, fee, or other thing of value
442 based on a previous settlement or previous claim payments by the
443 insurer for the same cause of loss. The charge, compensation,
444 payment, commission, fee, or other thing of value must ~~may~~ be
445 based only on the claim payments or settlement obtained through
446 the work of the public adjuster after entering into the contract
447 with the insured or claimant. Compensation for the reopened or
448 supplemental claim may not exceed 20 percent of the reopened or
449 supplemental claim payment. The contracts described in this
450 paragraph are not subject to the limitations in paragraph (b).

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

454 1. Ten percent of the amount of insurance claim payments
455 made by the insurer for claims based on events that are the
456 subject of a declaration of a state of emergency by the
457 Governor. This provision applies to claims made during the
458 period of 1 year after the declaration of emergency. After that
459 year, the limitations in subparagraph 2. apply.

460 2. Twenty percent of the amount of ~~all other~~ insurance
461 claim payments made by the insurer for claims that are not based
462 on events that are the subject of a declaration of a state of
463 emergency by the Governor.

464

595-03920-11

2011408c3

465 The provisions of subsections (5)-(13) apply only to residential
466 property insurance policies and condominium association policies
467 as defined in s. 718.111(11).

468 Section 9. Effective January 1, 2012, section 626.854,
469 Florida Statutes, as amended by this act, is amended to read:

470 626.854 "Public adjuster" defined; prohibitions.—The
471 Legislature finds that it is necessary for the protection of the
472 public to regulate public insurance adjusters and to prevent the
473 unauthorized practice of law.

474 (1) A "public adjuster" is any person, except a duly
475 licensed attorney at law as exempted under ~~hereinafter~~ in s.
476 626.860 ~~provided~~, who, for money, commission, or any other thing
477 of value, prepares, completes, or files an insurance claim form
478 for an insured or third-party claimant or who, for money,
479 commission, or any other thing of value, acts ~~or aids in any~~
480 ~~manner~~ on behalf of, or aids an insured or third-party claimant
481 in negotiating for or effecting the settlement of a claim or
482 claims for loss or damage covered by an insurance contract or
483 who advertises for employment as an adjuster of such claims. The
484 term, ~~and~~ also includes any person who, for money, commission,
485 or any other thing of value, solicits, investigates, or adjusts
486 such claims on behalf of a ~~any such~~ public adjuster.

487 (2) This definition does not apply to:

488 (a) A licensed health care provider or employee thereof who
489 prepares or files a health insurance claim form on behalf of a
490 patient.

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

493 (3) A public adjuster may not give legal advice or. ~~A~~

595-03920-11

2011408c3

494 ~~public adjuster may not~~ act on behalf of or aid any person in
495 negotiating or settling a claim relating to bodily injury,
496 death, or noneconomic damages.

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

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

505 (6) A public adjuster may not directly or indirectly
506 through any other person or entity initiate contact or engage in
507 face-to-face or telephonic solicitation or enter into a contract
508 with any insured or claimant under an insurance policy until at
509 least 48 hours after the occurrence of an event that may be the
510 subject of a claim under the insurance policy unless contact is
511 initiated by the insured or claimant.

512 (7) An insured or claimant may cancel a public adjuster's
513 contract to adjust a claim without penalty or obligation within
514 3 business days after the date on which the contract is executed
515 or within 3 business days after the date on which the insured or
516 claimant has notified the insurer of the claim, by phone or in
517 writing, whichever is later. The public adjuster's contract must
518 ~~shall~~ disclose to the insured or claimant his or her right to
519 cancel the contract and advise the insured or claimant that
520 notice of cancellation must be submitted in writing and sent by
521 certified mail, return receipt requested, or other form of
522 mailing that ~~which~~ provides proof thereof, to the public

595-03920-11

2011408c3

523 adjuster at the address specified in the contract; provided,
524 during any state of emergency as declared by the Governor and
525 for ~~a period of~~ 1 year after the date of loss, the insured or
526 claimant has ~~shall have~~ 5 business days after the date on which
527 the contract is executed to cancel a public adjuster's contract.

528 (8) It is an unfair and deceptive insurance trade practice
529 pursuant to s. 626.9541 for a public adjuster or any other
530 person to circulate or disseminate any advertisement,
531 announcement, or statement containing any assertion,
532 representation, or statement with respect to the business of
533 insurance which is untrue, deceptive, or misleading.

534 (a) The following statements, made in any public adjuster's
535 advertisement or solicitation, are considered deceptive or
536 misleading:

537 1. A statement or representation that invites an insured
538 policyholder to submit a claim when the policyholder does not
539 have covered damage to insured property.

540 2. A statement or representation that invites an insured
541 policyholder to submit a claim by offering monetary or other
542 valuable inducement.

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

546 4. A statement or representation, or use of a logo or
547 shield, that implies or could mistakenly be construed to imply
548 that the solicitation was issued or distributed by a
549 governmental agency or is sanctioned or endorsed by a
550 governmental agency.

551 (b) For purposes of this paragraph, the term "written

595-03920-11

2011408c3

552 advertisement" includes only newspapers, magazines, flyers, and
553 bulk mailers. The following disclaimer, which is not required to
554 be printed on standard size business cards, must be added in
555 bold print and capital letters in typeface no smaller than the
556 typeface of the body of the text to all written advertisements
557 by a public adjuster:

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

562

563 (9) A public adjuster, a public adjuster apprentice, or any
564 person or entity acting on behalf of a public adjuster or public
565 adjuster apprentice may not give or offer to give a monetary
566 loan or advance to a client or prospective client.

567 (10) A public adjuster, public adjuster apprentice, or any
568 individual or entity acting on behalf of a public adjuster or
569 public adjuster apprentice may not give or offer to give,
570 directly or indirectly, any article of merchandise having a
571 value in excess of \$25 to any individual for the purpose of
572 advertising or as an inducement to entering into a contract with
573 a public adjuster.

574 (11) (a) If a public adjuster enters into a contract with an
575 insured or claimant to reopen a claim or file a supplemental
576 claim that seeks additional payments for a claim that has been
577 previously paid in part or in full or settled by the insurer,
578 the public adjuster may not charge, agree to, or accept any
579 compensation, payment, commission, fee, or other thing of value
580 based on a previous settlement or previous claim payments by the

595-03920-11

2011408c3

581 insurer for the same cause of loss. The charge, compensation,
582 payment, commission, fee, or other thing of value must be based
583 only on the claim payments or settlement obtained through the
584 work of the public adjuster after entering into the contract
585 with the insured or claimant. Compensation for the reopened or
586 supplemental claim may not exceed 20 percent of the reopened or
587 supplemental claim payment. The contracts described in this
588 paragraph are not subject to the limitations in paragraph (b).

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

592 1. Ten percent of the amount of insurance claim payments
593 made by the insurer for claims based on events that are the
594 subject of a declaration of a state of emergency by the
595 Governor. This provision applies to claims made during the year
596 after the declaration of emergency. After that year, the
597 limitations in subparagraph 2. apply.

598 2. Twenty percent of the amount of insurance claim payments
599 made by the insurer for claims that are not based on events that
600 are the subject of a declaration of a state of emergency by the
601 Governor.

602 (12) Each public adjuster must ~~shall~~ provide to the
603 claimant or insured a written estimate of the loss to assist in
604 the submission of a proof of loss or any other claim for payment
605 of insurance proceeds. The public adjuster shall retain such
606 written estimate for at least 5 years and shall make the ~~such~~
607 estimate available to the claimant or insured and the department
608 upon request.

609 (13) A public adjuster, public adjuster apprentice, or any

595-03920-11

2011408c3

610 person acting on behalf of a public adjuster or apprentice may
611 not accept referrals of business from any person with whom the
612 public adjuster conducts business if there is any form or manner
613 of agreement to compensate the person, ~~whether~~ directly or
614 indirectly, for referring business to the public adjuster. A
615 public adjuster may not compensate any person, except for
616 another public adjuster, ~~whether~~ directly or indirectly, for the
617 principal purpose of referring business to the public adjuster.

618 (14) A company employee adjuster, independent adjuster,
619 attorney, investigator, or other persons acting on behalf of an
620 insurer that needs access to an insured or claimant or to the
621 insured property that is the subject of a claim must provide at
622 least 48 hours' notice to the insured or claimant, public
623 adjuster, or legal representative before scheduling a meeting
624 with the claimant or an onsite inspection of the insured
625 property. The insured or claimant may deny access to the
626 property if the notice has not been provided. The insured or
627 claimant may waive the 48-hour notice.

628 (15) A public adjuster must ensure prompt notice of
629 property loss claims submitted to an insurer by or through a
630 public adjuster or on which a public adjuster represents the
631 insured at the time the claim or notice of loss is submitted to
632 the insurer. The public adjuster must ensure that notice is
633 given to the insurer, the public adjuster's contract is provided
634 to the insurer, the property is available for inspection of the
635 loss or damage by the insurer, and the insurer is given an
636 opportunity to interview the insured directly about the loss and
637 claim. The insurer must be allowed to obtain necessary
638 information to investigate and respond to the claim.

595-03920-11

2011408c3

639 (a) The insurer may not exclude the public adjuster from
640 its in-person meetings with the insured. The insurer shall meet
641 or communicate with the public adjuster in an effort to reach
642 agreement as to the scope of the covered loss under the
643 insurance policy. This section does not impair the terms and
644 conditions of the insurance policy in effect at the time the
645 claim is filed.

646 (b) A public adjuster may not restrict or prevent an
647 insurer, company employee adjuster, independent adjuster,
648 attorney, investigator, or other person acting on behalf of the
649 insurer from having reasonable access at reasonable times to an
650 insured or claimant or to the insured property that is the
651 subject of a claim.

652 (c) A public adjuster may not act or fail to reasonably act
653 in any manner that obstructs or prevents an insurer or insurer's
654 adjuster from timely conducting an inspection of any part of the
655 insured property for which there is a claim for loss or damage.
656 The public adjuster representing the insured may be present for
657 the insurer's inspection, but if the unavailability of the
658 public adjuster otherwise delays the insurer's timely inspection
659 of the property, the public adjuster or the insured must allow
660 the insurer to have access to the property without the
661 participation or presence of the public adjuster or insured in
662 order to facilitate the insurer's prompt inspection of the loss
663 or damage.

664 (16) A licensed contractor under part I of chapter 489, or
665 a subcontractor, may not adjust a claim on behalf of an insured
666 unless licensed and compliant as a public adjuster under this
667 chapter. However, the contractor may discuss or explain a bid

595-03920-11

2011408c3

668 for construction or repair of covered property with the
669 residential property owner who has suffered loss or damage
670 covered by a property insurance policy, or the insurer of such
671 property, if the contractor is doing so for the usual and
672 customary fees applicable to the work to be performed as stated
673 in the contract between the contractor and the insured.

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

677 Section 10. Effective January 1, 2012, subsection (6) of
678 section 626.8651, Florida Statutes, is amended to read:

679 626.8651 Public adjuster apprentice license;
680 qualifications.—

681 (6) To qualify for licensure as a public adjuster, a public
682 adjuster apprentice must shall complete: at

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

688 (b) A minimum of 8 hours of continuing education specific
689 to the practice of a public adjuster, 2 hours of which must
690 relate to ethics. The continuing education must be designed to
691 inform the licensee about the current insurance laws of this
692 state for the purpose of enabling him or her to engage in
693 business as an insurance adjuster fairly and without injury to
694 the public and to adjust all claims in accordance with the
695 insurance contract and the laws of this state.

696 Section 11. Effective January 1, 2012, section 626.8796,

595-03920-11

2011408c3

697 Florida Statutes, is amended to read:

698 626.8796 Public adjuster contracts; fraud statement.-

699 (1) All contracts for public adjuster services must be in
700 writing and ~~must~~ prominently display the following statement on
701 the contract: "Pursuant to s. 817.234, Florida Statutes, any
702 person who, with the intent to injure, defraud, or deceive an
703 ~~any~~ insurer or insured, prepares, presents, or causes to be
704 presented a proof of loss or estimate of cost or repair of
705 damaged property in support of a claim under an insurance policy
706 knowing that the proof of loss or estimate of claim or repairs
707 contains ~~any~~ false, incomplete, or misleading information
708 concerning any fact or thing material to the claim commits a
709 felony of the third degree, punishable as provided in s.
710 775.082, s. 775.083, or s. 775.084, Florida Statutes."

711 (2) A public adjuster contract must contain the full name,
712 permanent business address, and license number of the public
713 adjuster; the full name of the public adjusting firm; and the
714 insured's full name and street address, together with a brief
715 description of the loss. The contract must state the percentage
716 of compensation for the public adjuster's services; the type of
717 claim, including an emergency claim, nonemergency claim, or
718 supplemental claim; the signatures of the public adjuster and
719 all named insureds; and the signature date. If all of the named
720 insureds signatures are not available, the public adjuster must
721 submit an affidavit signed by the available named insureds
722 attesting that they have authority to enter into the contract
723 and settle all claim issues on behalf of the named insureds. An
724 unaltered copy of the executed contract must be remitted to the
725 insurer within 30 days after execution.

595-03920-11

2011408c3

726 Section 12. Effective June 1, 2011, section 626.70132,
727 Florida Statutes, is created to read:

728 626.70132 Notice of windstorm or hurricane claim.—A claim,
729 supplemental claim, or reopened claim under an insurance policy
730 that provides property insurance, as defined in s. 624.604, for
731 loss or damage caused by the peril of windstorm or hurricane is
732 barred unless notice of the claim, supplemental claim, or
733 reopened claim was given to the insurer in accordance with the
734 terms of the policy within 3 years after the hurricane first
735 made landfall or the windstorm caused the covered damage. For
736 purposes of this section, the term "supplemental claim" or
737 "reopened claim" means any additional claim for recovery from
738 the insurer for losses from the same hurricane or windstorm
739 which the insurer has previously adjusted pursuant to the
740 initial claim. This section does not affect any applicable
741 limitation on civil actions provided in s. 95.11 for claims,
742 supplemental claims, or reopened claims timely filed under this
743 section.

744 Section 13. Subsection (4) of section 627.0613, Florida
745 Statutes, is repealed.

746 Section 14. Section 627.062, Florida Statutes, is amended
747 to read:

748 627.062 Rate standards.—

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

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

753 (a) Insurers or rating organizations shall establish and
754 use rates, rating schedules, or rating manuals that ~~to~~ allow the

595-03920-11

2011408c3

755 insurer a reasonable rate of return on the ~~such~~ classes of
756 insurance written in this state. A copy of rates, rating
757 schedules, rating manuals, premium credits or discount
758 schedules, and surcharge schedules, and changes thereto, must
759 ~~shall~~ be filed with the office under one of the following
760 procedures ~~except as provided in subparagraph 3.:~~

761 1. If the filing is made at least 90 days before the
762 proposed effective date and ~~the filing~~ is not implemented during
763 the office's review of the filing and any proceeding and
764 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file
765 and use" filing. In such case, the office shall finalize its
766 review by issuance of an approval ~~a notice of intent to approve~~
767 or a notice of intent to disapprove within 90 days after receipt
768 of the filing. The approval ~~notice of intent to approve~~ and the
769 notice of intent to disapprove constitute agency action for
770 purposes of the Administrative Procedure Act. Requests for
771 supporting information, requests for mathematical or mechanical
772 corrections, or notification to the insurer by the office of its
773 preliminary findings does ~~shall~~ not toll the 90-day period
774 during any such proceedings and subsequent judicial review. The
775 rate shall be deemed approved if the office does not issue an
776 approval ~~a notice of intent to approve~~ or a notice of intent to
777 disapprove within 90 days after receipt of the filing.

778 2. If the filing is not made in accordance with ~~the~~
779 ~~provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as
780 soon as practicable, but within ~~no later than~~ 30 days after the
781 effective date, and is ~~shall be~~ considered a "use and file"
782 filing. An insurer making a "use and file" filing is potentially
783 subject to an order by the office to return to policyholders

595-03920-11

2011408c3

784 those portions of rates found to be excessive, as provided in
785 paragraph (h).

786 3. For all property insurance filings made or submitted
787 after January 25, 2007, but before May 1, 2012 ~~December 31,~~
788 ~~2010~~, an insurer seeking a rate that is greater than the rate
789 most recently approved by the office shall make a "file and use"
790 filing. For purposes of this subparagraph, motor vehicle
791 collision and comprehensive coverages are not considered ~~to be~~
792 property coverages.

793 (b) Upon receiving a rate filing, the office shall review
794 the ~~rate~~ filing to determine if a rate is excessive, inadequate,
795 or unfairly discriminatory. In making that determination, the
796 office shall, in accordance with generally accepted and
797 reasonable actuarial techniques, consider the following factors:

798 1. Past and prospective loss experience within and without
799 this state.

800 2. Past and prospective expenses.

801 3. The degree of competition among insurers for the risk
802 insured.

803 4. Investment income reasonably expected by the insurer,
804 consistent with the insurer's investment practices, from
805 investable premiums anticipated in the filing, plus any other
806 expected income from currently invested assets representing the
807 amount expected on unearned premium reserves and loss reserves.
808 The commission may adopt rules using reasonable techniques of
809 actuarial science and economics to specify the manner in which
810 insurers ~~shall~~ calculate investment income attributable to ~~such~~
811 classes of insurance written in this state and the manner in
812 which ~~such~~ investment income is ~~shall be~~ used to calculate

595-03920-11

2011408c3

813 insurance rates. Such manner must ~~shall~~ contemplate allowances
814 for an underwriting profit factor and full consideration of
815 investment income which produce a reasonable rate of return;
816 however, investment income from invested surplus may not be
817 considered.

818 5. The reasonableness of the judgment reflected in the
819 filing.

820 6. Dividends, savings, or unabsorbed premium deposits
821 allowed or returned to Florida policyholders, members, or
822 subscribers.

823 7. The adequacy of loss reserves.

824 8. The cost of reinsurance. The office may ~~shall~~ not
825 disapprove a rate as excessive solely due to the insurer having
826 obtained catastrophic reinsurance to cover the insurer's
827 estimated 250-year probable maximum loss or any lower level of
828 loss.

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

831 10. Conflagration and catastrophe hazards, if applicable.

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

836 12. A reasonable margin for underwriting profit and
837 contingencies.

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

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

841 (c) In the case of fire insurance rates, consideration must

595-03920-11

2011408c3

842 shall be given to the availability of water supplies and the
843 experience of the fire insurance business during a period of not
844 less than the most recent 5-year period for which such
845 experience is available.

846 (d) If conflagration or catastrophe hazards are considered
847 ~~given consideration~~ by an insurer in its rates or rating plan,
848 including surcharges and discounts, the insurer shall establish
849 a reserve for that portion of the premium allocated to such
850 hazard and ~~shall~~ maintain the premium in a catastrophe reserve.
851 ~~Any~~ Removal of such premiums from the reserve for purposes other
852 than paying claims associated with a catastrophe or purchasing
853 reinsurance for catastrophes must be approved by ~~shall be~~
854 ~~subject to approval of~~ the office. Any ceding commission
855 received by an insurer purchasing reinsurance for catastrophes
856 must ~~shall~~ be placed in the catastrophe reserve.

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

861 1. Rates shall be deemed excessive if they are likely to
862 produce a profit from Florida business which ~~that~~ is
863 unreasonably high in relation to the risk involved in the class
864 of business or if expenses are unreasonably high in relation to
865 services rendered.

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

870 3. Rates shall be deemed inadequate if they are clearly

595-03920-11

2011408c3

871 insufficient, together with the investment income attributable
872 to them, to sustain projected losses and expenses in the class
873 of business to which they apply.

874 4. A rating plan, including discounts, credits, or
875 surcharges, shall be deemed unfairly discriminatory if it fails
876 to clearly and equitably reflect consideration of the
877 policyholder's participation in a risk management program
878 adopted pursuant to s. 627.0625.

879 5. A rate shall be deemed inadequate as to the premium
880 charged to a risk or group of risks if discounts or credits are
881 allowed which exceed a reasonable reflection of expense savings
882 and reasonably expected loss experience from the risk or group
883 of risks.

884 6. A rate shall be deemed unfairly discriminatory as to a
885 risk or group of risks if the application of premium discounts,
886 credits, or surcharges among such risks does not bear a
887 reasonable relationship to the expected loss and expense
888 experience among the various risks.

889 (f) In reviewing a rate filing, the office may require the
890 insurer to provide, at the insurer's expense, all information
891 necessary to evaluate the condition of the company and the
892 reasonableness of the filing according to the criteria
893 enumerated in this section.

894 (g) The office may at any time review a rate, rating
895 schedule, rating manual, or rate change; the pertinent records
896 of the insurer; and market conditions. If the office finds on a
897 preliminary basis that a rate may be excessive, inadequate, or
898 unfairly discriminatory, the office shall initiate proceedings
899 to disapprove the rate and shall so notify the insurer. However,

595-03920-11

2011408c3

900 the office may not disapprove as excessive any rate for which it
901 has given final approval or which has been deemed approved for a
902 ~~period of~~ 1 year after the effective date of the filing unless
903 the office finds that a material misrepresentation or material
904 error was made by the insurer or was contained in the filing.
905 Upon being ~~se~~ notified, the insurer or rating organization
906 shall, within 60 days, file with the office all information that
907 ~~which~~, in the belief of the insurer or organization, proves the
908 reasonableness, adequacy, and fairness of the rate or rate
909 change. The office shall issue an approval ~~a notice of intent to~~
910 ~~approve~~ or a notice of intent to disapprove pursuant to ~~the~~
911 ~~procedures of~~ paragraph (a) within 90 days after receipt of the
912 insurer's initial response. In such instances and in any
913 administrative proceeding relating to the legality of the rate,
914 the insurer or rating organization shall carry the burden of
915 proof by a preponderance of the evidence to show that the rate
916 is not excessive, inadequate, or unfairly discriminatory. After
917 the office notifies an insurer that a rate may be excessive,
918 inadequate, or unfairly discriminatory, unless the office
919 withdraws the notification, the insurer may ~~shall~~ not alter the
920 rate except to conform to ~~with~~ the office's notice until the
921 earlier of 120 days after the date the notification was provided
922 or 180 days after the date of implementing ~~the implementation of~~
923 the rate. The office ~~may~~, subject to chapter 120, may disapprove
924 without the 60-day notification any rate increase filed by an
925 insurer within the prohibited time period or during the time
926 that the legality of the increased rate is being contested.

927 (h) If ~~In the event~~ the office finds that a rate or rate
928 change is excessive, inadequate, or unfairly discriminatory, the

595-03920-11

2011408c3

929 office shall issue an order of disapproval specifying that a new
930 rate or rate schedule, which responds to the findings of the
931 office, be filed by the insurer. The office shall further order,
932 for any "use and file" filing made in accordance with
933 subparagraph (a)2., that premiums charged each policyholder
934 constituting the portion of the rate above that which was
935 actuarially justified be returned to the ~~such~~ policyholder in
936 the form of a credit or refund. If the office finds that an
937 insurer's rate or rate change is inadequate, the new rate or
938 rate schedule filed with the office in response to such a
939 finding is ~~shall be~~ applicable only to new or renewal business
940 of the insurer written on or after the effective date of the
941 responsive filing.

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

944 1. Prohibit any insurer, including any residual market plan
945 or joint underwriting association, from paying acquisition costs
946 based on the full amount of premium, as defined in s. 627.403,
947 applicable to any policy, or prohibit any such insurer from
948 including the full amount of acquisition costs in a rate filing;
949 or-

950 2. Impede, abridge, or otherwise compromise an insurer's
951 right to acquire policyholders, advertise, or appoint agents,
952 including the calculation, manner, or amount of such agent
953 commissions, if any.

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

957 (k)1. An insurer may make a separate filing limited solely

595-03920-11

2011408c3

958 to an adjustment of its rates for reinsurance or financing costs
959 incurred in the purchase of reinsurance or financing products to
960 replace or finance the payment of the amount covered by the
961 Temporary Increase in Coverage Limits (TICL) portion of the
962 Florida Hurricane Catastrophe Fund including replacement
963 reinsurance for the TICL reductions made pursuant to s.
964 215.555(17)(e); the actual cost paid due to the application of
965 the TICL premium factor pursuant to s. 215.555(17)(f); and the
966 actual cost paid due to the application of the cash build-up
967 factor pursuant to s. 215.555(5)(b) if the insurer:

968 a. Elects to purchase financing products such as a
969 liquidity instrument or line of credit, in which case the cost
970 included in ~~the~~ filing for the liquidity instrument or line of
971 credit may not result in a premium increase exceeding 3 percent
972 for any individual policyholder. All costs contained in the
973 filing may not result in an overall premium increase of more
974 than 10 percent for any individual policyholder.

975 b. An insurer that makes a separate filing relating to
976 reinsurance or financing products must include ~~Includes in the~~
977 ~~filing~~ a copy of all of its reinsurance, liquidity instrument,
978 or line of credit contracts; proof of the billing or payment for
979 the contracts; and the calculation upon which the proposed rate
980 change is based demonstrating ~~demonstrates~~ that the costs meet
981 the criteria of this section ~~and are not loaded for expenses or~~
982 ~~profit for the insurer making the filing.~~

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

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

986 e. ~~Does not file for a rate increase under any other~~

595-03920-11

2011408c3

987 ~~paragraph within 6 months after making a filing under this~~
988 ~~paragraph.~~

989 c.f. An insurer that purchases reinsurance or financing
990 products from an affiliated company may make a separate filing
991 ~~in compliance with this paragraph does so~~ only if the costs for
992 such reinsurance or financing products are charged at or below
993 charges made for comparable coverage by nonaffiliated reinsurers
994 or financial entities making such coverage or financing products
995 available in this state.

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

998 3. An insurer that elects to implement a rate change under
999 this paragraph must file its rate filing with the office at
1000 least 45 days before the effective date of the rate change.
1001 After an insurer submits a complete filing that meets all of the
1002 requirements of this paragraph, the office has 45 days after the
1003 date of the filing to review the rate filing and determine if
1004 the rate is excessive, inadequate, or unfairly discriminatory.

1005 (1) The office may disapprove a rate for sinkhole coverage
1006 only if the rate is inadequate or the insurer charges an
1007 applicant or an insured a higher premium solely because of the
1008 applicant's or the insured's race, religion, sex, national
1009 origin, or marital status. Policies subject to this paragraph
1010 may not be counted in the calculation under s. 627.171(2).

1011
1012 The provisions of this subsection do ~~shall~~ not apply to workers'
1013 compensation, ~~and~~ and employer's liability insurance, and ~~to~~ motor
1014 vehicle insurance.

1015 (3) (a) For individual risks that are not rated in

595-03920-11

2011408c3

1016 accordance with the insurer's rates, rating schedules, rating
1017 manuals, and underwriting rules filed with the office and that
1018 ~~which~~ have been submitted to the insurer for individual rating,
1019 the insurer must maintain documentation on each risk subject to
1020 individual risk rating. The documentation must identify the
1021 named insured and specify the characteristics and classification
1022 of the risk supporting the reason for the risk being
1023 individually risk rated, including any modifications to existing
1024 approved forms to be used on the risk. The insurer must maintain
1025 these records for ~~a period of~~ at least 5 years after the
1026 effective date of the policy.

1027 (b) Individual risk rates and modifications to existing
1028 approved forms are not subject to this part or part II, except
1029 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
1030 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
1031 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
1032 627.4265, 627.427, and 627.428, but are subject to all other
1033 applicable provisions of this code and rules adopted thereunder.

1034 (c) This subsection does not apply to private passenger
1035 motor vehicle insurance.

1036 (d)1. The following categories or kinds of insurance and
1037 types of commercial lines risks are not subject to paragraph
1038 (2) (a) or paragraph (2) (f):

1039 a. Excess or umbrella.

1040 b. Surety and fidelity.

1041 c. Boiler and machinery and leakage and fire extinguishing
1042 equipment.

1043 d. Errors and omissions.

1044 e. Directors and officers, employment practices, and

595-03920-11

2011408c3

1045 management liability.

1046 f. Intellectual property and patent infringement liability.

1047 g. Advertising injury and Internet liability insurance.

1048 h. Property risks rated under a highly protected risks
1049 rating plan.

1050 i. Any other commercial lines categories or kinds of
1051 insurance or types of commercial lines risks that the office
1052 determines should not be subject to paragraph (2)(a) or
1053 paragraph (2)(f) because of the existence of a competitive
1054 market for such insurance, similarity of such insurance to other
1055 categories or kinds of insurance not subject to paragraph (2)(a)
1056 or paragraph (2)(f), or to improve the general operational
1057 efficiency of the office.

1058 2. Insurers or rating organizations shall establish and use
1059 rates, rating schedules, or rating manuals to allow the insurer
1060 a reasonable rate of return on insurance and risks described in
1061 subparagraph 1. which are written in this state.

1062 3. An insurer must notify the office of any changes to
1063 rates for insurance and risks described in subparagraph 1.
1064 within no later than 30 days after the effective date of the
1065 change. The notice must include the name of the insurer, the
1066 type or kind of insurance subject to rate change, total premium
1067 written during the immediately preceding year by the insurer for
1068 the type or kind of insurance subject to the rate change, and
1069 the average statewide percentage change in rates. Underwriting
1070 files, premiums, losses, and expense statistics with regard to
1071 such insurance and risks ~~described in subparagraph 1.~~ written by
1072 an insurer must ~~shall~~ be maintained by the insurer and subject
1073 to examination by the office. Upon examination, the office

595-03920-11

2011408c3

1074 ~~shall~~, in accordance with generally accepted and reasonable
1075 actuarial techniques, shall consider the rate factors in
1076 paragraphs (2)(b), (c), and (d) and the standards in paragraph
1077 (2)(e) to determine if the rate is excessive, inadequate, or
1078 unfairly discriminatory.

1079 4. A rating organization must notify the office of any
1080 changes to loss cost for insurance and risks described in
1081 subparagraph 1. within ~~no later than~~ 30 days after the effective
1082 date of the change. The notice must include the name of the
1083 rating organization, the type or kind of insurance subject to a
1084 loss cost change, loss costs during the immediately preceding
1085 year for the type or kind of insurance subject to the loss cost
1086 change, and the average statewide percentage change in loss
1087 cost. Loss and exposure statistics with regard to risks
1088 applicable to loss costs for a rating organization not subject
1089 to paragraph (2)(a) or paragraph (2)(f) must ~~shall~~ be maintained
1090 by the rating organization and are subject to examination by the
1091 office. Upon examination, the office ~~shall~~, in accordance with
1092 generally accepted and reasonable actuarial techniques, shall
1093 consider the rate factors in paragraphs (2)(b)-(d) and the
1094 standards in paragraph (2)(e) to determine if the rate is
1095 excessive, inadequate, or unfairly discriminatory.

1096 5. In reviewing a rate, the office may require the insurer
1097 to provide, at the insurer's expense, all information necessary
1098 to evaluate the condition of the company and the reasonableness
1099 of the rate according to the applicable criteria described in
1100 this section.

1101 (4) The establishment of any rate, rating classification,
1102 rating plan or schedule, or variation thereof in violation of

595-03920-11

2011408c3

1103 part IX of chapter 626 is also in violation of this section. ~~In~~
1104 ~~order to enhance the ability of consumers to compare premiums~~
1105 ~~and to increase the accuracy and usefulness of rate-comparison~~
1106 ~~information provided by the office to the public, the office~~
1107 ~~shall develop a proposed standard rating territory plan to be~~
1108 ~~used by all authorized property and casualty insurers for~~
1109 ~~residential property insurance. In adopting the proposed plan,~~
1110 ~~the office may consider geographical characteristics relevant to~~
1111 ~~risk, county lines, major roadways, existing rating territories~~
1112 ~~used by a significant segment of the market, and other relevant~~
1113 ~~factors. Such plan shall be submitted to the President of the~~
1114 ~~Senate and the Speaker of the House of Representatives by~~
1115 ~~January 15, 2006. The plan may not be implemented unless~~
1116 ~~authorized by further act of the Legislature.~~

1117 (5) With respect to a rate filing involving coverage of the
1118 type for which the insurer is required to pay a reimbursement
1119 premium to the Florida Hurricane Catastrophe Fund, the insurer
1120 may fully recoup in its property insurance premiums any
1121 reimbursement premiums paid to the ~~Florida Hurricane Catastrophe~~
1122 ~~fund, together with reasonable costs of other reinsurance;~~
1123 however, but except as otherwise provided in this section, the
1124 insurer may not recoup reinsurance costs that duplicate coverage
1125 provided by the ~~Florida Hurricane Catastrophe~~ fund. An insurer
1126 may not recoup more than 1 year of reimbursement premium at a
1127 time. Any under-recoupment from the prior year may be added to
1128 the following year's reimbursement premium, and any over-
1129 recoupment must ~~shall~~ be subtracted from the following year's
1130 reimbursement premium.

1131 (6) (a) If an insurer requests an administrative hearing

595-03920-11

2011408c3

1132 pursuant to s. 120.57 related to a rate filing under this
1133 section, the director of the Division of Administrative Hearings
1134 shall expedite the hearing and assign an administrative law
1135 judge who shall commence the hearing within 30 days after the
1136 receipt of the formal request and ~~shall~~ enter a recommended
1137 order within 30 days after the hearing or within 30 days after
1138 receipt of the hearing transcript by the administrative law
1139 judge, whichever is later. Each party shall have ~~be allowed~~ 10
1140 days in which to submit written exceptions to the recommended
1141 order. The office shall enter a final order within 30 days after
1142 the entry of the recommended order. The provisions of this
1143 paragraph may be waived upon stipulation of all parties.

1144 (b) Upon entry of a final order, the insurer may request a
1145 expedited appellate review pursuant to the Florida Rules of
1146 Appellate Procedure. It is the intent of the Legislature that
1147 the First District Court of Appeal grant an insurer's request
1148 for an expedited appellate review.

1149 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~
1150 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~
1151 control to the extent of any conflict with other provisions of
1152 this section.

1153 (a) ~~(b)~~ Any portion of a judgment entered or settlement paid
1154 as a result of a statutory or common-law bad faith action and
1155 any portion of a judgment entered which awards punitive damages
1156 against an insurer may not be included in the insurer's rate
1157 base, and ~~shall not be~~ used to justify a rate or rate change.
1158 Any common-law bad faith action identified as such, any portion
1159 of a settlement entered as a result of a statutory or common-law
1160 action, or any portion of a settlement wherein an insurer agrees

595-03920-11

2011408c3

1161 to pay specific punitive damages may not be used to justify a
1162 rate or rate change. The portion of the taxable costs and
1163 attorney's fees which is identified as being related to the bad
1164 faith and punitive damages ~~in these judgments and settlements~~
1165 may not be included in the insurer's rate base and used ~~may not~~
1166 ~~be utilized~~ to justify a rate or rate change.

1167 (b) ~~(e)~~ Upon reviewing a rate filing and determining whether
1168 the rate is excessive, inadequate, or unfairly discriminatory,
1169 the office shall consider, in accordance with generally accepted
1170 and reasonable actuarial techniques, past and present
1171 prospective loss experience, ~~either~~ using loss experience solely
1172 for this state or giving greater credibility to this state's
1173 loss data after applying actuarially sound methods of assigning
1174 credibility to such data.

1175 (c) ~~(d)~~ Rates shall be deemed excessive if, among other
1176 standards established by this section, the rate structure
1177 provides for replenishment of reserves or surpluses from
1178 premiums when the replenishment is attributable to investment
1179 losses.

1180 (d) ~~(e)~~ The insurer must apply a discount or surcharge based
1181 on the health care provider's loss experience or ~~shall~~ establish
1182 an alternative method giving due consideration to the provider's
1183 loss experience. The insurer must include in the filing a copy
1184 of the surcharge or discount schedule or a description of the
1185 alternative method used, and ~~must~~ provide a copy ~~of such~~
1186 ~~schedule or description~~, as approved by the office, to
1187 policyholders at the time of renewal and to prospective
1188 policyholders at the time of application for coverage.

1189 (e) ~~(f)~~ Each medical malpractice insurer must make a rate

595-03920-11

2011408c3

1190 filing under this section, sworn to by at least two executive
1191 officers of the insurer, at least once each calendar year.

1192 ~~(8)(a)1. No later than 60 days after the effective date of~~
1193 ~~medical malpractice legislation enacted during the 2003 Special~~
1194 ~~Session D of the Florida Legislature, the office shall calculate~~
1195 ~~a presumed factor that reflects the impact that the changes~~
1196 ~~contained in such legislation will have on rates for medical~~
1197 ~~malpractice insurance and shall issue a notice informing all~~
1198 ~~insurers writing medical malpractice coverage of such presumed~~
1199 ~~factor. In determining the presumed factor, the office shall use~~
1200 ~~generally accepted actuarial techniques and standards provided~~
1201 ~~in this section in determining the expected impact on losses,~~
1202 ~~expenses, and investment income of the insurer. To the extent~~
1203 ~~that the operation of a provision of medical malpractice~~
1204 ~~legislation enacted during the 2003 Special Session D of the~~
1205 ~~Florida Legislature is stayed pending a constitutional~~
1206 ~~challenge, the impact of that provision shall not be included in~~
1207 ~~the calculation of a presumed factor under this subparagraph.~~

1208 ~~2. No later than 60 days after the office issues its notice~~
1209 ~~of the presumed rate change factor under subparagraph 1., each~~
1210 ~~insurer writing medical malpractice coverage in this state shall~~
1211 ~~submit to the office a rate filing for medical malpractice~~
1212 ~~insurance, which will take effect no later than January 1, 2004,~~
1213 ~~and apply retroactively to policies issued or renewed on or~~
1214 ~~after the effective date of medical malpractice legislation~~
1215 ~~enacted during the 2003 Special Session D of the Florida~~
1216 ~~Legislature. Except as authorized under paragraph (b), the~~
1217 ~~filing shall reflect an overall rate reduction at least as great~~
1218 ~~as the presumed factor determined under subparagraph 1. With~~

595-03920-11

2011408c3

1219 ~~respect to policies issued on or after the effective date of~~
1220 ~~such legislation and prior to the effective date of the rate~~
1221 ~~filing required by this subsection, the office shall order the~~
1222 ~~insurer to make a refund of the amount that was charged in~~
1223 ~~excess of the rate that is approved.~~

1224 ~~(b) Any insurer or rating organization that contends that~~
1225 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
1226 ~~or unfairly discriminatory shall separately state in its filing~~
1227 ~~the rate it contends is appropriate and shall state with~~
1228 ~~specificity the factors or data that it contends should be~~
1229 ~~considered in order to produce such appropriate rate. The~~
1230 ~~insurer or rating organization shall be permitted to use all of~~
1231 ~~the generally accepted actuarial techniques provided in this~~
1232 ~~section in making any filing pursuant to this subsection. The~~
1233 ~~office shall review each such exception and approve or~~
1234 ~~disapprove it prior to use. It shall be the insurer's burden to~~
1235 ~~actuarially justify any deviations from the rates required to be~~
1236 ~~filed under paragraph (a). The insurer making a filing under~~
1237 ~~this paragraph shall include in the filing the expected impact~~
1238 ~~of medical malpractice legislation enacted during the 2003~~
1239 ~~Special Session D of the Florida Legislature on losses,~~
1240 ~~expenses, and rates.~~

1241 ~~(c) If any provision of medical malpractice legislation~~
1242 ~~enacted during the 2003 Special Session D of the Florida~~
1243 ~~Legislature is held invalid by a court of competent~~
1244 ~~jurisdiction, the office shall permit an adjustment of all~~
1245 ~~medical malpractice rates filed under this section to reflect~~
1246 ~~the impact of such holding on such rates so as to ensure that~~
1247 ~~the rates are not excessive, inadequate, or unfairly~~

595-03920-11

2011408c3

1248 ~~discriminatory.~~

1249 ~~(d) Rates approved on or before July 1, 2003, for medical~~
1250 ~~malpractice insurance shall remain in effect until the effective~~
1251 ~~date of a new rate filing approved under this subsection.~~

1252 ~~(e) The calculation and notice by the office of the~~
1253 ~~presumed factor pursuant to paragraph (a) is not an order or~~
1254 ~~rule that is subject to chapter 120. If the office enters into a~~
1255 ~~contract with an independent consultant to assist the office in~~
1256 ~~calculating the presumed factor, such contract shall not be~~
1257 ~~subject to the competitive solicitation requirements of s.~~
1258 ~~287.057.~~

1259 (8)~~(9)~~(a) The chief executive officer or chief financial
1260 officer of a property insurer and the chief actuary of a
1261 property insurer must certify under oath and subject to the
1262 penalty of perjury, on a form approved by the commission, the
1263 following information, which must accompany a rate filing:

1264 1. The signing officer and actuary have reviewed the rate
1265 filing;

1266 2. Based on the signing officer's and actuary's knowledge,
1267 the rate filing does not contain any untrue statement of a
1268 material fact or omit to state a material fact necessary ~~in~~
1269 ~~order~~ to make the statements made, in light of the circumstances
1270 under which such statements were made, not misleading;

1271 3. Based on the signing officer's and actuary's knowledge,
1272 the information and other factors described in paragraph (2) (b),
1273 including, but not limited to, investment income, fairly present
1274 in all material respects the basis of the rate filing for the
1275 periods presented in the filing; and

1276 4. Based on the signing officer's and actuary's knowledge,

595-03920-11

2011408c3

1277 the rate filing reflects all premium savings that are reasonably
1278 expected to result from legislative enactments and are in
1279 accordance with generally accepted and reasonable actuarial
1280 techniques.

1281 (b) A signing officer or actuary who knowingly makes ~~making~~
1282 a false certification under this subsection commits a violation
1283 of s. 626.9541(1)(e) and is subject to the penalties under s.
1284 626.9521.

1285 (c) Failure to provide such certification by the officer
1286 and actuary shall result in the rate filing being disapproved
1287 without prejudice to be refiled.

1288 (d) The certification made pursuant to paragraph (a) is not
1289 rendered false if, after making the subject rate filing, the
1290 insurer provides the office with additional or supplementary
1291 information pursuant to a formal or informal request from the
1292 office. However, the actuary who is primarily responsible for
1293 preparing and submitting such information must certify the
1294 information in accordance with the certification required under
1295 paragraph (a) and the penalties in paragraph (b), except that
1296 the chief executive officer, chief financial officer, or chief
1297 actuary need not certify the additional or supplementary
1298 information.

1299 (e) ~~(d)~~ The commission may adopt rules and forms ~~pursuant to~~
1300 ~~ss. 120.536(1) and 120.54~~ to administer this subsection.

1301 (9) ~~(10)~~ The burden is on the office to establish that rates
1302 are excessive for personal lines residential coverage with a
1303 dwelling replacement cost of \$1 million or more or for a single
1304 condominium unit with a combined dwelling and contents
1305 replacement cost of \$1 million or more. Upon request of the

595-03920-11

2011408c3

1306 office, the insurer shall provide ~~to the office~~ such loss and
1307 expense information as the office reasonably needs to meet this
1308 burden.

1309 (10)~~(11)~~ Any interest paid pursuant to s. 627.70131(5) may
1310 not be included in the insurer's rate base and may not be used
1311 to justify a rate or rate change.

1312 Section 15. Subsections (1) and (5) and paragraph (b) of
1313 subsection (8) of section 627.0629, Florida Statutes, are
1314 amended to read:

1315 627.0629 Residential property insurance; rate filings.—

1316 (1)~~(a)~~ It is the intent of the Legislature that insurers
1317 ~~must~~ provide savings to consumers who install or implement
1318 windstorm damage mitigation techniques, alterations, or
1319 solutions to their properties to prevent windstorm losses. A
1320 rate filing for residential property insurance must include
1321 actuarially reasonable discounts, credits, or other rate
1322 differentials, or appropriate reductions in deductibles, for
1323 properties on which fixtures or construction techniques
1324 demonstrated to reduce the amount of loss in a windstorm have
1325 been installed or implemented. The fixtures or construction
1326 techniques must ~~shall~~ include, but are not ~~be~~ limited to,
1327 fixtures or construction techniques that ~~which~~ enhance roof
1328 strength, roof covering performance, roof-to-wall strength,
1329 wall-to-floor-to-foundation strength, opening protection, and
1330 window, door, and skylight strength. Credits, discounts, or
1331 other rate differentials, or appropriate reductions in
1332 deductibles, for fixtures and construction techniques that ~~which~~
1333 meet the minimum requirements of the Florida Building Code must
1334 be included in the rate filing. All insurance companies must

595-03920-11

2011408c3

1335 make a rate filing that ~~which~~ includes the credits, discounts,
1336 or other rate differentials or reductions in deductibles by
1337 February 28, 2003. By July 1, 2007, the office shall reevaluate
1338 the discounts, credits, other rate differentials, and
1339 appropriate reductions in deductibles for fixtures and
1340 construction techniques that meet the minimum requirements of
1341 the Florida Building Code, based upon actual experience or any
1342 other loss relativity studies available to the office. The
1343 office shall determine the discounts, credits, other rate
1344 differentials, and appropriate reductions in deductibles that
1345 reflect the full actuarial value of such revaluation, which may
1346 be used by insurers in rate filings.

1347 ~~(b) By February 1, 2011, the Office of Insurance~~
1348 ~~Regulation, in consultation with the Department of Financial~~
1349 ~~Services and the Department of Community Affairs, shall develop~~
1350 ~~and make publicly available a proposed method for insurers to~~
1351 ~~establish discounts, credits, or other rate differentials for~~
1352 ~~hurricane mitigation measures which directly correlate to the~~
1353 ~~numerical rating assigned to a structure pursuant to the uniform~~
1354 ~~home grading scale adopted by the Financial Services Commission~~
1355 ~~pursuant to s. 215.55865, including any proposed changes to the~~
1356 ~~uniform home grading scale. By October 1, 2011, the commission~~
1357 ~~shall adopt rules requiring insurers to make rate filings for~~
1358 ~~residential property insurance which revise insurers' discounts,~~
1359 ~~credits, or other rate differentials for hurricane mitigation~~
1360 ~~measures so that such rate differentials correlate directly to~~
1361 ~~the uniform home grading scale. The rules may include such~~
1362 ~~changes to the uniform home grading scale as the commission~~
1363 ~~determines are necessary, and may specify the minimum required~~

595-03920-11

2011408c3

1364 ~~discounts, credits, or other rate differentials. Such rate~~
1365 ~~differentials must be consistent with generally accepted~~
1366 ~~actuarial principles and wind-loss mitigation studies. The rules~~
1367 ~~shall allow a period of at least 2 years after the effective~~
1368 ~~date of the revised mitigation discounts, credits, or other rate~~
1369 ~~differentials for a property owner to obtain an inspection or~~
1370 ~~otherwise qualify for the revised credit, during which time the~~
1371 ~~insurer shall continue to apply the mitigation credit that was~~
1372 ~~applied immediately prior to the effective date of the revised~~
1373 ~~credit. Discounts, credits, and other rate differentials~~
1374 ~~established for rate filings under this paragraph shall~~
1375 ~~supersede, after adoption, the discounts, credits, and other~~
1376 ~~rate differentials included in rate filings under paragraph (a).~~

1377 (5) In order to provide an appropriate transition period,
1378 an insurer may, ~~in its sole discretion,~~ implement an approved
1379 rate filing for residential property insurance over a period of
1380 years. Such ~~An insurer electing to phase in its rate filing~~ must
1381 provide an informational notice to the office setting out its
1382 schedule for implementation of the phased-in rate filing. The ~~An~~
1383 insurer may include in its rate the actual cost of private
1384 market reinsurance that corresponds to available coverage of the
1385 Temporary Increase in Coverage Limits, TICL, from the Florida
1386 Hurricane Catastrophe Fund. The insurer may also include the
1387 cost of reinsurance to replace the TICL reduction implemented
1388 pursuant to s. 215.555(17)(d)9. However, this cost ~~for~~
1389 ~~reinsurance~~ may not include any expense or profit load or result
1390 in a total annual base rate increase in excess of 10 percent.

1391 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
1392 SOUNDNESS.—

595-03920-11

2011408c3

1393 (b) To the extent ~~that~~ funds are provided for this purpose
1394 in the General Appropriations Act, ~~the Legislature hereby~~
1395 ~~authorizes~~ the establishment of a program to be administered by
1396 the Citizens Property Insurance Corporation for homeowners
1397 insured in the coastal ~~high-risk~~ account is authorized.

1398 Section 16. Paragraphs (a), (b), (c), (d), (n), (v), and
1399 (y) of subsection (6) of section 627.351, Florida Statutes, are
1400 amended to read:

1401 627.351 Insurance risk apportionment plans.—

1402 (6) TAXPAYER-FUNDED ~~CITIZENS~~ PROPERTY INSURANCE
1403 CORPORATION.—

1404 (a) ~~It is~~ The public purpose of this subsection is to
1405 ensure that there is ~~the existence of~~ an orderly market for
1406 property insurance for residents ~~Floridians~~ and ~~Florida~~
1407 businesses of this state.

1408 1. The Legislature finds that private insurers are
1409 unwilling or unable to provide affordable property insurance
1410 coverage in this state to the extent sought and needed. The
1411 absence of affordable property insurance threatens the public
1412 health, safety, and welfare and likewise threatens the economic
1413 health of the state. The state therefore has a compelling public
1414 interest and a public purpose to assist in assuring that
1415 property in the state is insured and that it is insured at
1416 affordable rates so as to facilitate the remediation,
1417 reconstruction, and replacement of damaged or destroyed property
1418 in order to reduce or avoid the negative effects otherwise
1419 resulting to the public health, safety, and welfare, to the
1420 economy of the state, and to the revenues of the state and local
1421 governments which are needed to provide for the public welfare.

595-03920-11

2011408c3

1422 It is necessary, therefore, to provide affordable property
1423 insurance to applicants who are in good faith entitled to
1424 procure insurance through the voluntary market but are unable to
1425 do so. The Legislature intends, therefore, ~~by this subsection~~
1426 that affordable property insurance be provided and that it
1427 continue to be provided, as long as necessary, through the
1428 Taxpayer-Funded Citizens Property Insurance Corporation, a
1429 government entity that is an integral part of the state, and
1430 that is not a private insurance company. To that end, the
1431 ~~Citizens Property Insurance~~ corporation shall strive to increase
1432 the availability of affordable property insurance in this state,
1433 while achieving efficiencies and economies, and while providing
1434 service to policyholders, applicants, and agents which is no
1435 less than the quality generally provided in the voluntary
1436 market, for the achievement of the foregoing public purposes.
1437 Because it is essential for this government entity to have the
1438 maximum financial resources to pay claims following a
1439 catastrophic hurricane, it is the intent of the Legislature that
1440 the ~~Citizens Property Insurance~~ corporation continue to be an
1441 integral part of the state and that the income of the
1442 corporation be exempt from federal income taxation and that
1443 interest on the debt obligations issued by the corporation be
1444 exempt from federal income taxation.

1445 2. The Residential Property and Casualty Joint Underwriting
1446 Association originally created by this statute shall be known~~7~~
1447 ~~as of July 1, 2002,~~ as the Taxpayer-Funded Citizens Property
1448 Insurance Corporation. The corporation shall provide insurance
1449 for residential and commercial property, for applicants who are
1450 ~~in good faith~~ entitled, but, in good faith, are unable~~7~~ to

595-03920-11

2011408c3

1451 procure insurance through the voluntary market. The corporation
1452 shall operate pursuant to a plan of operation approved by order
1453 of the Financial Services Commission. The plan is subject to
1454 continuous review by the commission. The commission may, by
1455 order, withdraw approval of all or part of a plan if the
1456 commission determines that conditions have changed since
1457 approval was granted and that the purposes of the plan require
1458 changes in the plan. ~~The corporation shall continue to operate~~
1459 ~~pursuant to the plan of operation approved by the Office of~~
1460 ~~Insurance Regulation until October 1, 2006.~~ For the purposes of
1461 this subsection, residential coverage includes both personal
1462 lines residential coverage, which consists of the type of
1463 coverage provided by homeowner's, mobile home owner's, dwelling,
1464 tenant's, condominium unit owner's, and similar policies;7 and
1465 commercial lines residential coverage, which consists of the
1466 type of coverage provided by condominium association, apartment
1467 building, and similar policies.

1468 3. Effective January 1, 2009, a personal lines residential
1469 structure that has a dwelling replacement cost of \$2 million or
1470 more, or a single condominium unit that has a combined dwelling
1471 and contents ~~content~~ replacement cost of \$2 million or more is
1472 not eligible for coverage by the corporation. Such dwellings
1473 insured by the corporation on December 31, 2008, may continue to
1474 be covered by the corporation until the end of the policy term.
1475 However, such dwellings ~~that are insured by the corporation and~~
1476 ~~become ineligible for coverage due to the provisions of this~~
1477 ~~subparagraph~~ may reapply and obtain coverage if the property
1478 owner provides the corporation with a sworn affidavit from one
1479 or more insurance agents, on a form provided by the corporation,

595-03920-11

2011408c3

1480 stating that the agents have made their best efforts to obtain
1481 coverage and that the property has been rejected for coverage by
1482 at least one authorized insurer and at least three surplus lines
1483 insurers. If such conditions are met, the dwelling may be
1484 insured by the corporation for up to 3 years, after which time
1485 the dwelling is ineligible for coverage. The office shall
1486 approve the method used by the corporation for valuing the
1487 dwelling replacement cost for the purposes of this subparagraph.
1488 If a policyholder is insured by the corporation prior to being
1489 determined to be ineligible pursuant to this subparagraph and
1490 such policyholder files a lawsuit challenging the determination,
1491 the policyholder may remain insured by the corporation until the
1492 conclusion of the litigation.

1493 4. It is the intent of the Legislature that policyholders,
1494 applicants, and agents of the corporation receive service and
1495 treatment of the highest possible level but never less than that
1496 generally provided in the voluntary market. It is also ~~is~~
1497 intended that the corporation be held to service standards no
1498 less than those applied to insurers in the voluntary market by
1499 the office with respect to responsiveness, timeliness, customer
1500 courtesy, and overall dealings with policyholders, applicants,
1501 or agents of the corporation.

1502 5. Effective January 1, 2009, a personal lines residential
1503 structure that is located in the "wind-borne debris region," as
1504 defined in s. 1609.2, International Building Code (2006), and
1505 that has an insured value on the structure of \$750,000 or more
1506 is not eligible for coverage by the corporation unless the
1507 structure has opening protections as required under the Florida
1508 Building Code for a newly constructed residential structure in

595-03920-11

2011408c3

1509 that area. A residential structure shall be deemed to comply
1510 with ~~the requirements of~~ this subparagraph if it has shutters or
1511 opening protections on all openings and if such opening
1512 protections complied with the Florida Building Code at the time
1513 they were installed.

1514 6. In recognition of the corporation's status as a
1515 governmental entity, policies issued by the corporation must
1516 include a provision stating that as a condition of coverage with
1517 the corporation, policyholders may not engage the services of a
1518 public adjuster to represent the policyholder with respect to
1519 any claim filed under a policy issued by the corporation until
1520 after the corporation has tendered an offer with respect to such
1521 claim. For any claim filed under any policy of the corporation,
1522 a public adjuster may not request payment or be paid, on a
1523 contingency basis or based in any way, directly or indirectly,
1524 on a percentage of the claim amount, and may be paid only a
1525 reasonable hourly fee based on the actual hours of work
1526 performed, subject to a maximum of 5 percent of the additional
1527 amount actually paid over the amount that was originally offered
1528 by the corporation for any one claim.

1529 (b)1. All insurers authorized to write one or more subject
1530 lines of business in this state are subject to assessment by the
1531 corporation and, for the purposes of this subsection, are
1532 referred to collectively as "assessable insurers." Insurers
1533 writing one or more subject lines of business in this state
1534 pursuant to part VIII of chapter 626 are not assessable
1535 insurers, but insureds who procure one or more subject lines of
1536 business in this state pursuant to part VIII of chapter 626 are
1537 subject to assessment by the corporation and are referred to

595-03920-11

2011408c3

1538 collectively as "assessable insureds." An ~~authorized~~ insurer's
1539 assessment liability begins ~~shall begin~~ on the first day of the
1540 calendar year following the year in which the insurer was issued
1541 a certificate of authority to transact insurance for subject
1542 lines of business in this state and terminates ~~shall terminate~~ 1
1543 year after the end of the first calendar year during which the
1544 insurer no longer holds a certificate of authority to transact
1545 insurance for subject lines of business in this state.

1546 2.a. All revenues, assets, liabilities, losses, and
1547 expenses of the corporation shall be divided into three separate
1548 accounts as follows:

1549 (I) A personal lines account for personal residential
1550 policies issued by the corporation, or issued by the Residential
1551 Property and Casualty Joint Underwriting Association and renewed
1552 by the corporation, which provides ~~that provide~~ comprehensive,
1553 multiperil coverage on risks that are not located in areas
1554 eligible for coverage by ~~in~~ the Florida Windstorm Underwriting
1555 Association as those areas were defined on January 1, 2002, and
1556 for ~~such~~ policies that do not provide coverage for the peril of
1557 wind on risks that are located in such areas;

1558 (II) A commercial lines account for commercial residential
1559 and commercial nonresidential policies issued by the
1560 corporation, or issued by the Residential Property and Casualty
1561 Joint Underwriting Association and renewed by the corporation,
1562 which provides ~~that provide~~ coverage for basic property perils
1563 on risks that are not located in areas eligible for coverage by
1564 ~~in~~ the Florida Windstorm Underwriting Association as those areas
1565 were defined on January 1, 2002, and for ~~such~~ policies that do
1566 not provide coverage for the peril of wind on risks that are

595-03920-11

2011408c3

1567 located in such areas; and

1568 (III) A coastal ~~high-risk~~ account for personal residential

1569 policies and commercial residential and commercial

1570 nonresidential property policies issued by the corporation, or

1571 transferred to the corporation, which provides ~~that provide~~

1572 coverage for the peril of wind on risks that are located in

1573 areas eligible for coverage by ~~in~~ the Florida Windstorm

1574 Underwriting Association as those areas were defined on January

1575 1, 2002. The corporation may offer policies that provide

1576 multiperil coverage and the corporation shall continue to offer

1577 policies that provide coverage only for the peril of wind for

1578 risks located in areas eligible for coverage in the coastal

1579 ~~high-risk~~ account. In issuing multiperil coverage, the

1580 corporation may use its approved policy forms and rates for the

1581 personal lines account. An applicant or insured who is eligible

1582 to purchase a multiperil policy from the corporation may

1583 purchase a multiperil policy from an authorized insurer without

1584 prejudice to the applicant's or insured's eligibility to

1585 prospectively purchase a policy that provides coverage only for

1586 the peril of wind from the corporation. An applicant or insured

1587 who is eligible for a corporation policy that provides coverage

1588 only for the peril of wind may elect to purchase or retain such

1589 policy and also purchase or retain coverage excluding wind from

1590 an authorized insurer without prejudice to the applicant's or

1591 insured's eligibility to prospectively purchase a policy that

1592 provides multiperil coverage from the corporation. It is the

1593 goal of the Legislature that there ~~would~~ be an overall average

1594 savings of 10 percent or more for a policyholder who currently

1595 has a wind-only policy with the corporation, and an ex-wind

595-03920-11

2011408c3

1596 policy with a voluntary insurer or the corporation, and who ~~then~~
1597 obtains a multiperil policy from the corporation. It is the
1598 intent of the Legislature that the offer of multiperil coverage
1599 in the coastal ~~high-risk~~ account be made and implemented in a
1600 manner that does not adversely affect the tax-exempt status of
1601 the corporation or creditworthiness of or security for currently
1602 outstanding financing obligations or credit facilities of the
1603 coastal ~~high-risk~~ account, the personal lines account, or the
1604 commercial lines account. The coastal ~~high-risk~~ account must
1605 also include quota share primary insurance under subparagraph
1606 (c)2. The area eligible for coverage under the coastal ~~high-risk~~
1607 account also includes the area within Port Canaveral, which is
1608 bordered on the south by the City of Cape Canaveral, bordered on
1609 the west by the Banana River, and bordered on the north by
1610 Federal Government property.

1611 b. The three separate accounts must be maintained as long
1612 as financing obligations entered into by the Florida Windstorm
1613 Underwriting Association or Residential Property and Casualty
1614 Joint Underwriting Association are outstanding, in accordance
1615 with the terms of the corresponding financing documents. If ~~When~~
1616 the financing obligations are no longer outstanding, ~~in~~
1617 ~~accordance with the terms of the corresponding financing~~
1618 ~~documents,~~ the corporation may use a single account for all
1619 revenues, assets, liabilities, losses, and expenses of the
1620 corporation. Consistent with ~~the requirement of~~ this
1621 subparagraph and prudent investment policies that minimize the
1622 cost of carrying debt, the board shall exercise its best efforts
1623 to retire existing debt or ~~to~~ obtain the approval of necessary
1624 parties to amend the terms of existing debt, so as to structure

595-03920-11

2011408c3

1625 the most efficient plan to consolidate the three separate
1626 accounts into a single account.

1627 c. Creditors of the Residential Property and Casualty Joint
1628 Underwriting Association and ~~of~~ the accounts specified in sub-
1629 sub-subparagraphs a.(I) and (II) may have a claim against, and
1630 recourse to, those ~~the~~ accounts ~~referred to in sub-sub-~~
1631 ~~subparagraphs a.(I) and (II)~~ and shall have no claim against, or
1632 recourse to, the account referred to in sub-sub-subparagraph
1633 a.(III). Creditors of the Florida Windstorm Underwriting
1634 Association ~~shall~~ have a claim against, and recourse to, the
1635 account referred to in sub-sub-subparagraph a.(III) and ~~shall~~
1636 ~~have~~ no claim against, or recourse to, the accounts referred to
1637 in sub-sub-subparagraphs a.(I) and (II).

1638 d. Revenues, assets, liabilities, losses, and expenses not
1639 attributable to particular accounts shall be prorated among the
1640 accounts.

1641 e. The Legislature finds that the revenues of the
1642 corporation are revenues that are necessary to meet the
1643 requirements set forth in documents authorizing the issuance of
1644 bonds under this subsection.

1645 f. No part of the income of the corporation may inure to
1646 the benefit of any private person.

1647 3. With respect to a deficit in an account:

1648 a. After accounting for the ~~Citizens~~ policyholder surcharge
1649 imposed under sub-subparagraph h. i., ~~if when~~ the remaining
1650 projected deficit incurred in a particular calendar year:

1651 (I) Is not greater than 6 percent of the aggregate
1652 statewide direct written premium for the subject lines of
1653 business for the prior calendar year, the entire deficit shall

595-03920-11

2011408c3

1654 be recovered through regular assessments of assessable insurers
1655 under paragraph (q) and assessable insureds.

1656 (II)~~b.~~ ~~After accounting for the Citizens policyholder~~
1657 ~~surcharge imposed under sub-subparagraph i., when the remaining~~
1658 ~~projected deficit incurred in a particular calendar year Exceeds~~
1659 6 percent of the aggregate statewide direct written premium for
1660 the subject lines of business for the prior calendar year, the
1661 corporation shall levy regular assessments on assessable
1662 insurers under paragraph (q) and on assessable insureds in an
1663 amount equal to the greater of 6 percent of the deficit or 6
1664 percent of the aggregate statewide direct written premium for
1665 the subject lines of business for the prior calendar year. Any
1666 remaining deficit shall be recovered through emergency
1667 assessments under sub-subparagraph c. ~~d.~~

1668 ~~b.e.~~ Each assessable insurer's share of the amount being
1669 assessed under sub-subparagraph a. must ~~or sub-subparagraph b.~~
1670 ~~shall~~ be in the proportion that the assessable insurer's direct
1671 written premium for the subject lines of business for the year
1672 preceding the assessment bears to the aggregate statewide direct
1673 written premium for the subject lines of business for that year.
1674 The applicable assessment percentage ~~applicable to each~~
1675 ~~assessable insured~~ is the ratio of the amount being assessed
1676 under sub-subparagraph a. ~~or sub-subparagraph b.~~ to the
1677 aggregate statewide direct written premium for the subject lines
1678 of business for the prior year. Assessments levied by the
1679 corporation on assessable insurers under sub-subparagraph a.
1680 must ~~sub-subparagraphs a. and b. shall~~ be paid as required by
1681 the corporation's plan of operation and paragraph (q).
1682 Assessments levied by the corporation on assessable insureds

595-03920-11

2011408c3

1683 under sub-subparagraph a. ~~sub-subparagraphs a. and b.~~ shall be
1684 collected by the surplus lines agent at the time the surplus
1685 lines agent collects the surplus lines tax required by s.
1686 626.932, and ~~shall be~~ paid to the Florida Surplus Lines Service
1687 Office at the time the surplus lines agent pays the surplus
1688 lines tax to that ~~the Florida Surplus Lines Service~~ office. Upon
1689 receipt of regular assessments from surplus lines agents, the
1690 Florida Surplus Lines Service Office shall transfer the
1691 assessments directly to the corporation as determined by the
1692 corporation.

1693 ~~c.d.~~ Upon a determination by the board of governors that a
1694 deficit in an account exceeds the amount that will be recovered
1695 through regular assessments under sub-subparagraph a. ~~or sub-~~
1696 ~~subparagraph b.~~, plus the amount that is expected to be
1697 recovered through surcharges under sub-subparagraph h. i., ~~as to~~
1698 ~~the remaining projected deficit~~ the board ~~shall levy~~, after
1699 verification by the office, shall levy emergency assessments,
1700 for as many years as necessary to cover the deficits, to be
1701 collected by assessable insurers and the corporation and
1702 collected from assessable insureds upon issuance or renewal of
1703 policies for subject lines of business, excluding National Flood
1704 Insurance policies. The amount ~~of the emergency assessment~~
1705 collected in a particular year must ~~shall~~ be a uniform
1706 percentage of that year's direct written premium for subject
1707 lines of business and all accounts of the corporation, excluding
1708 National Flood Insurance Program policy premiums, as annually
1709 determined by the board and verified by the office. The office
1710 shall verify the arithmetic calculations involved in the board's
1711 determination within 30 days after receipt of the information on

595-03920-11

2011408c3

1712 which the determination was based. Notwithstanding any other
1713 provision of law, the corporation and each assessable insurer
1714 that writes subject lines of business shall collect emergency
1715 assessments from its policyholders without such obligation being
1716 affected by any credit, limitation, exemption, or deferment.
1717 Emergency assessments levied by the corporation on assessable
1718 insureds shall be collected by the surplus lines agent at the
1719 time the surplus lines agent collects the surplus lines tax
1720 required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus
1721 Lines Service Office at the time the surplus lines agent pays
1722 the surplus lines tax to that ~~the Florida Surplus Lines Service~~
1723 office. The emergency assessments ~~so~~ collected shall be
1724 transferred directly to the corporation on a periodic basis as
1725 determined by the corporation and ~~shall be~~ held by the
1726 corporation solely in the applicable account. The aggregate
1727 amount of emergency assessments levied for an account under this
1728 sub-subparagraph in any calendar year may, ~~at the discretion of~~
1729 ~~the board of governors,~~ be less than but may not exceed the
1730 greater of 10 percent of the amount needed to cover the deficit,
1731 plus interest, fees, commissions, required reserves, and other
1732 costs associated with financing ~~of~~ the original deficit, or 10
1733 percent of the aggregate statewide direct written premium for
1734 subject lines of business and ~~for~~ all accounts of the
1735 corporation for the prior year, plus interest, fees,
1736 commissions, required reserves, and other costs associated with
1737 financing the deficit.

1738 d.e. The corporation may pledge the proceeds of
1739 assessments, projected recoveries from the Florida Hurricane
1740 Catastrophe Fund, other insurance and reinsurance recoverables,

595-03920-11

2011408c3

1741 policyholder surcharges and other surcharges, and other funds
1742 available to the corporation as the source of revenue for and to
1743 secure bonds issued under paragraph (q), bonds or other
1744 indebtedness issued under subparagraph (c)3., or lines of credit
1745 or other financing mechanisms issued or created under this
1746 subsection, or to retire any other debt incurred as a result of
1747 deficits or events giving rise to deficits, or in any other way
1748 that the board determines will efficiently recover such
1749 deficits. The purpose of the lines of credit or other financing
1750 mechanisms is to provide additional resources to assist the
1751 corporation in covering claims and expenses attributable to a
1752 catastrophe. As used in this subsection, the term "assessments"
1753 includes regular assessments under sub-subparagraph a., ~~sub-~~
1754 ~~subparagraph b.~~, or subparagraph (q)1. and emergency assessments
1755 under sub-subparagraph d. Emergency assessments collected under
1756 sub-subparagraph d. are not part of an insurer's rates, are not
1757 premium, and are not subject to premium tax, fees, or
1758 commissions; however, failure to pay the emergency assessment
1759 shall be treated as failure to pay premium. The emergency
1760 assessments under sub-subparagraph c. ~~d.~~ shall continue as long
1761 as any bonds issued or other indebtedness incurred with respect
1762 to a deficit for which the assessment was imposed remain
1763 outstanding, unless adequate provision has been made for the
1764 payment of such bonds or other indebtedness pursuant to the
1765 documents governing such bonds or ~~other~~ indebtedness.

1766 e.f. As used in this subsection for purposes of any deficit
1767 incurred on or after January 25, 2007, the term "subject lines
1768 of business" means insurance written by assessable insurers or
1769 procured by assessable insureds for all property and casualty

595-03920-11

2011408c3

1770 lines of business in this state, but not including workers'
1771 compensation or medical malpractice. As used in this ~~the~~ sub-
1772 subparagraph, the term "property and casualty lines of business"
1773 includes all lines of business identified on Form 2, Exhibit of
1774 Premiums and Losses, in the annual statement required of
1775 authorized insurers under ~~by~~ s. 624.424 and any rule adopted
1776 under this section, except for those lines identified as
1777 accident and health insurance and except for policies written
1778 under the National Flood Insurance Program or the Federal Crop
1779 Insurance Program. For purposes of this sub-subparagraph, the
1780 term "workers' compensation" includes both workers' compensation
1781 insurance and excess workers' compensation insurance.

1782 ~~f.g.~~ The Florida Surplus Lines Service Office shall
1783 determine annually the aggregate statewide written premium in
1784 subject lines of business procured by assessable insureds and
1785 ~~shall~~ report that information to the corporation in a form and
1786 at a time the corporation specifies to ensure that the
1787 corporation can meet the requirements of this subsection and the
1788 corporation's financing obligations.

1789 ~~g.h.~~ The Florida Surplus Lines Service Office shall verify
1790 the proper application by surplus lines agents of assessment
1791 percentages for regular assessments and emergency assessments
1792 levied under this subparagraph on assessable insureds and ~~shall~~
1793 assist the corporation in ensuring the accurate, timely
1794 collection and payment of assessments by surplus lines agents as
1795 required by the corporation.

1796 ~~h.i.~~ If a deficit is incurred in any account in 2008 or
1797 thereafter, the board of governors shall levy a ~~Citizens~~
1798 policyholder surcharge against all policyholders of the

595-03920-11

2011408c3

1799 corporation. ~~for a 12-month period, which~~

1800 (I) The surcharge shall be levied ~~collected at the time of~~
1801 ~~issuance or renewal of a policy,~~ as a uniform percentage of the
1802 premium for the policy of up to 15 percent of such premium,
1803 which funds shall be used to offset the deficit.

1804 (II) The surcharge is payable upon cancellation or
1805 termination of the policy, upon renewal of the policy, or upon
1806 issuance of a new policy by the corporation within the first 12
1807 months after the date of the levy or the period of time
1808 necessary to fully collect the surcharge amount.

1809 (III) The corporation may not levy any regular assessments
1810 under paragraph (q) pursuant to sub-subparagraph a. or sub-
1811 subparagraph b. with respect to a particular year's deficit
1812 until the corporation has first levied the full amount of the
1813 surcharge authorized by this sub-subparagraph.

1814 (IV) The surcharge is ~~Citizens policyholder surcharges~~
1815 ~~under this sub-subparagraph are not considered premium and is~~
1816 ~~are not subject to commissions, fees, or premium taxes. However,~~
1817 ~~failure to pay the surcharge such surcharges shall be treated as~~
1818 ~~failure to pay premium.~~

1819 ~~i.j.~~ If the amount of any assessments or surcharges
1820 collected from corporation policyholders, assessable insurers or
1821 their policyholders, or assessable insureds exceeds the amount
1822 of the deficits, such excess amounts shall be remitted to and
1823 retained by the corporation in a reserve to be used by the
1824 corporation, as determined by the board of governors and
1825 approved by the office, to pay claims or reduce any past,
1826 present, or future plan-year deficits or to reduce outstanding
1827 debt.

595-03920-11

2011408c3

1828 (c) The corporation's plan of operation ~~of the corporation~~:

1829 1. Must provide for adoption of residential property and
1830 casualty insurance policy forms and commercial residential and
1831 nonresidential property insurance forms, which ~~forms~~ must be
1832 approved by the office before ~~prior to~~ use. The corporation
1833 shall adopt the following policy forms:

1834 a. Standard personal lines policy forms that are
1835 comprehensive multiperil policies providing full coverage of a
1836 residential property equivalent to the coverage provided in the
1837 private insurance market under an HO-3, HO-4, or HO-6 policy.

1838 b. Basic personal lines policy forms that are policies
1839 similar to an HO-8 policy or a dwelling fire policy that provide
1840 coverage meeting the requirements of the secondary mortgage
1841 market, but which ~~coverage~~ is more limited than the coverage
1842 under a standard policy.

1843 c. Commercial lines residential and nonresidential policy
1844 forms that are generally similar to the basic perils of full
1845 coverage obtainable for commercial residential structures and
1846 commercial nonresidential structures in the admitted voluntary
1847 market.

1848 d. Personal lines and commercial lines residential property
1849 insurance forms that cover the peril of wind only. The forms are
1850 applicable only to residential properties located in areas
1851 eligible for coverage under the coastal ~~high-risk~~ account
1852 referred to in sub-subparagraph (b)2.a.

1853 e. Commercial lines nonresidential property insurance forms
1854 that cover the peril of wind only. The forms are applicable only
1855 to nonresidential properties located in areas eligible for
1856 coverage under the coastal ~~high-risk~~ account referred to in sub-

595-03920-11

2011408c3

1857 subparagraph (b)2.a.

1858 f. The corporation may adopt variations of the policy forms
1859 listed in sub-subparagraphs a.-e. which ~~that~~ contain more
1860 restrictive coverage.

1861 ~~2.a.~~ Must provide that the corporation adopt a program in
1862 which the corporation and authorized insurers enter into quota
1863 share primary insurance agreements for hurricane coverage, as
1864 defined in s. 627.4025(2)(a), for eligible risks, and adopt
1865 property insurance forms for eligible risks which cover the
1866 peril of wind only.

1867 a. As used in this subsection, the term:

1868 (I) "Quota share primary insurance" means an arrangement in
1869 which the primary hurricane coverage of an eligible risk is
1870 provided in specified percentages by the corporation and an
1871 authorized insurer. The corporation and authorized insurer are
1872 each solely responsible for a specified percentage of hurricane
1873 coverage of an eligible risk as set forth in a quota share
1874 primary insurance agreement between the corporation and an
1875 authorized insurer and the insurance contract. The
1876 responsibility of the corporation or authorized insurer to pay
1877 its specified percentage of hurricane losses of an eligible
1878 risk, as set forth in the ~~quota share primary insurance~~
1879 agreement, may not be altered by the inability of the other
1880 party ~~to the agreement~~ to pay its specified percentage of
1881 ~~hurricane~~ losses. Eligible risks that are provided hurricane
1882 coverage through a quota share primary insurance arrangement
1883 must be provided policy forms that set forth the obligations of
1884 the corporation and authorized insurer under the arrangement,
1885 clearly specify the percentages of quota share primary insurance

595-03920-11

2011408c3

1886 provided by the corporation and authorized insurer, and
1887 conspicuously and clearly state that ~~neither~~ the authorized
1888 insurer and ~~nor~~ the corporation may not be held responsible
1889 beyond their ~~its~~ specified percentage of coverage of hurricane
1890 losses.

1891 (II) "Eligible risks" means personal lines residential and
1892 commercial lines residential risks that meet the underwriting
1893 criteria of the corporation and are located in areas that were
1894 eligible for coverage by the Florida Windstorm Underwriting
1895 Association on January 1, 2002.

1896 b. The corporation may enter into quota share primary
1897 insurance agreements with authorized insurers at corporation
1898 coverage levels of 90 percent and 50 percent.

1899 c. If the corporation determines that additional coverage
1900 levels are necessary to maximize participation in quota share
1901 primary insurance agreements by authorized insurers, the
1902 corporation may establish additional coverage levels. However,
1903 the corporation's quota share primary insurance coverage level
1904 may not exceed 90 percent.

1905 d. Any quota share primary insurance agreement entered into
1906 between an authorized insurer and the corporation must provide
1907 for a uniform specified percentage of coverage of hurricane
1908 losses, by county or territory as set forth by the corporation
1909 board, for all eligible risks of the authorized insurer covered
1910 under the ~~quota share primary insurance~~ agreement.

1911 e. Any quota share primary insurance agreement entered into
1912 between an authorized insurer and the corporation is subject to
1913 review and approval by the office. However, such agreement shall
1914 be authorized only as to insurance contracts entered into

595-03920-11

2011408c3

1915 between an authorized insurer and an insured who is already
1916 insured by the corporation for wind coverage.

1917 f. For all eligible risks covered under quota share primary
1918 insurance agreements, the exposure and coverage levels for both
1919 the corporation and authorized insurers shall be reported by the
1920 corporation to the Florida Hurricane Catastrophe Fund. For all
1921 policies of eligible risks covered under such ~~quota share~~
1922 ~~primary insurance~~ agreements, the corporation and the authorized
1923 insurer must ~~shall~~ maintain complete and accurate records for
1924 the purpose of exposure and loss reimbursement audits as
1925 required by ~~Florida Hurricane Catastrophe~~ fund rules. The
1926 corporation and the authorized insurer shall each maintain
1927 duplicate copies of policy declaration pages and supporting
1928 claims documents.

1929 g. The corporation board shall establish in its plan of
1930 operation standards for quota share agreements which ensure that
1931 there is no discriminatory application among insurers as to the
1932 terms of the ~~quota share~~ agreements, pricing of the ~~quota share~~
1933 agreements, incentive provisions if any, and consideration paid
1934 for servicing policies or adjusting claims.

1935 h. The quota share primary insurance agreement between the
1936 corporation and an authorized insurer must set forth the
1937 specific terms under which coverage is provided, including, but
1938 not limited to, the sale and servicing of policies issued under
1939 the agreement by the insurance agent of the authorized insurer
1940 producing the business, the reporting of information concerning
1941 eligible risks, the payment of premium to the corporation, and
1942 arrangements for the adjustment and payment of hurricane claims
1943 incurred on eligible risks by the claims adjuster and personnel

595-03920-11

2011408c3

1944 of the authorized insurer. Entering into a quota sharing
1945 insurance agreement between the corporation and an authorized
1946 insurer is ~~shall be~~ voluntary and at the discretion of the
1947 authorized insurer.

1948 3. May provide that the corporation may employ or otherwise
1949 contract with individuals or other entities to provide
1950 administrative or professional services that may be appropriate
1951 to effectuate the plan. The corporation may ~~shall have the power~~
1952 ~~to~~ borrow funds, by issuing bonds or by incurring other
1953 indebtedness, and shall have other powers reasonably necessary
1954 to effectuate the requirements of this subsection, including,
1955 without limitation, the power to issue bonds and incur other
1956 indebtedness in order to refinance outstanding bonds or other
1957 indebtedness. The corporation ~~may, but is not required to,~~ seek
1958 judicial validation of its bonds or other indebtedness under
1959 chapter 75. The corporation may issue bonds or incur other
1960 indebtedness, or have bonds issued on its behalf by a unit of
1961 local government pursuant to subparagraph (q)2.7 in the absence
1962 of a hurricane or other weather-related event, upon a
1963 determination by the corporation, subject to approval by the
1964 office, that such action would enable it to efficiently meet the
1965 financial obligations of the corporation and that such
1966 financings are reasonably necessary to effectuate the
1967 requirements of this subsection. The corporation may ~~is~~
1968 ~~authorized to~~ take all actions needed to facilitate tax-free
1969 status for ~~any~~ such bonds or indebtedness, including formation
1970 of trusts or other affiliated entities. The corporation may
1971 ~~shall have the authority to~~ pledge assessments, projected
1972 recoveries from the Florida Hurricane Catastrophe Fund, other

595-03920-11

2011408c3

1973 reinsurance recoverables, market equalization and other
1974 surcharges, and other funds available to the corporation as
1975 security for bonds or other indebtedness. In recognition of s.
1976 10, Art. I of the State Constitution, prohibiting the impairment
1977 of obligations of contracts, it is the intent of the Legislature
1978 that no action be taken whose purpose is to impair any bond
1979 indenture or financing agreement or any revenue source committed
1980 by contract to such bond or other indebtedness.

1981 4.~~a~~. Must require that the corporation operate subject to
1982 the supervision and approval of a board of governors consisting
1983 of eight individuals who are residents of this state, from
1984 different geographical areas of this state.

1985 a. The Governor, the Chief Financial Officer, the President
1986 of the Senate, and the Speaker of the House of Representatives
1987 shall each appoint two members of the board. At least one of the
1988 two members appointed by each appointing officer must have
1989 demonstrated expertise in insurance, and is deemed to be within
1990 the scope of the exemption provided in s. 112.313(7)(b). The
1991 Chief Financial Officer shall designate one of the appointees as
1992 chair. All board members serve at the pleasure of the appointing
1993 officer. All members of the board ~~of governors~~ are subject to
1994 removal at will by the officers who appointed them. All board
1995 members, including the chair, must be appointed to serve for 3-
1996 year terms beginning annually on a date designated by the plan.
1997 However, for the first term beginning on or after July 1, 2009,
1998 each appointing officer shall appoint one member of the board
1999 for a 2-year term and one member for a 3-year term. A ~~Any~~ board
2000 vacancy shall be filled for the unexpired term by the appointing
2001 officer. The Chief Financial Officer shall appoint a technical

595-03920-11

2011408c3

2002 advisory group to provide information and advice to the board ~~of~~
2003 ~~governors~~ in connection with the board's duties under this
2004 subsection. The executive director and senior managers of the
2005 corporation shall be engaged by the board and serve at the
2006 pleasure of the board. Any executive director appointed on or
2007 after July 1, 2006, is subject to confirmation by the Senate.
2008 The executive director is responsible for employing other staff
2009 as the corporation may require, subject to review and
2010 concurrence by the board.

2011 b. The board shall create a Market Accountability Advisory
2012 Committee to assist the corporation in developing awareness of
2013 its rates and its customer and agent service levels in
2014 relationship to the voluntary market insurers writing similar
2015 coverage.

2016 (I) The members of the advisory committee ~~shall~~ consist of
2017 the following 11 persons, one of whom must be elected chair by
2018 the members of the committee: four representatives, one
2019 appointed by the Florida Association of Insurance Agents, one by
2020 the Florida Association of Insurance and Financial Advisors, one
2021 by the Professional Insurance Agents of Florida, and one by the
2022 Latin American Association of Insurance Agencies; three
2023 representatives appointed by the insurers with the three highest
2024 voluntary market share of residential property insurance
2025 business in the state; one representative from the Office of
2026 Insurance Regulation; one consumer appointed by the board who is
2027 insured by the corporation at the time of appointment to the
2028 committee; one representative appointed by the Florida
2029 Association of Realtors; and one representative appointed by the
2030 Florida Bankers Association. All members shall be appointed to

595-03920-11

2011408c3

2031 ~~must serve for~~ 3-year terms and may serve for consecutive terms.

2032 (II) The committee shall report to the corporation at each
2033 board meeting on insurance market issues which may include rates
2034 and rate competition with the voluntary market; service,
2035 including policy issuance, claims processing, and general
2036 responsiveness to policyholders, applicants, and agents; and
2037 matters relating to depopulation.

2038 5. Must provide a procedure for determining the eligibility
2039 of a risk for coverage, as follows:

2040 a. Subject to ~~the provisions of~~ s. 627.3517, with respect
2041 to personal lines residential risks, if the risk is offered
2042 coverage from an authorized insurer at the insurer's approved
2043 rate under ~~either~~ a standard policy including wind coverage or,
2044 if consistent with the insurer's underwriting rules as filed
2045 with the office, a basic policy including wind coverage, for a
2046 new application to the corporation for coverage, the risk is not
2047 eligible for any policy issued by the corporation unless the
2048 premium for coverage from the authorized insurer is more than 15
2049 percent greater than the premium for comparable coverage from
2050 the corporation. If the risk is not able to obtain ~~any~~ such
2051 offer, the risk is eligible for ~~either~~ a standard policy
2052 including wind coverage or a basic policy including wind
2053 coverage issued by the corporation; however, if the risk could
2054 not be insured under a standard policy including wind coverage
2055 regardless of market conditions, the risk is ~~shall be~~ eligible
2056 for a basic policy including wind coverage unless rejected under
2057 subparagraph 8. However, ~~with regard to~~ a policyholder of the
2058 corporation or a policyholder removed from the corporation
2059 through an assumption agreement until the end of the assumption

595-03920-11

2011408c3

2060 period, ~~the policyholder~~ remains eligible for coverage from the
2061 corporation regardless of any offer of coverage from an
2062 authorized insurer or surplus lines insurer. The corporation
2063 shall determine the type of policy to be provided on the basis
2064 of objective standards specified in the underwriting manual and
2065 based on generally accepted underwriting practices.

2066 (I) If the risk accepts an offer of coverage through the
2067 market assistance plan or ~~an offer of coverage~~ through a
2068 mechanism established by the corporation before a policy is
2069 issued to the risk by the corporation or during the first 30
2070 days of coverage by the corporation, and the producing agent who
2071 submitted the application to the plan or to the corporation is
2072 not currently appointed by the insurer, the insurer shall:

2073 (A) Pay to the producing agent of record of the policy⁷ for
2074 the first year, an amount that is the greater of the insurer's
2075 usual and customary commission for the type of policy written or
2076 a fee equal to the usual and customary commission of the
2077 corporation; or

2078 (B) Offer to allow the producing agent of record of the
2079 policy to continue servicing the policy for at least a period of
2080 ~~not less than~~ 1 year and offer to pay the agent the greater of
2081 the insurer's or the corporation's usual and customary
2082 commission for the type of policy written.

2083
2084 If the producing agent is unwilling or unable to accept
2085 appointment, the new insurer shall pay the agent in accordance
2086 with sub-sub-sub-subparagraph (A).

2087 (II) If ~~When~~ the corporation enters into a contractual
2088 agreement for a take-out plan, the producing agent of record of

595-03920-11

2011408c3

2089 the corporation policy is entitled to retain any unearned
2090 commission on the policy, and the insurer shall:

2091 (A) Pay to the producing agent of record ~~of the corporation~~
2092 ~~policy~~, for the first year, an amount that is the greater of the
2093 insurer's usual and customary commission for the type of policy
2094 written or a fee equal to the usual and customary commission of
2095 the corporation; or

2096 (B) Offer to allow the producing agent of record ~~of the~~
2097 ~~corporation policy~~ to continue servicing the policy for at least
2098 ~~a period of not less than~~ 1 year and offer to pay the agent the
2099 greater of the insurer's or the corporation's usual and
2100 customary commission for the type of policy written.

2101
2102 If the producing agent is unwilling or unable to accept
2103 appointment, the new insurer shall pay the agent in accordance
2104 with sub-sub-sub-subparagraph (A).

2105 b. With respect to commercial lines residential risks, for
2106 a new application to the corporation for coverage, if the risk
2107 is offered coverage under a policy including wind coverage from
2108 an authorized insurer at its approved rate, the risk is not
2109 eligible for a ~~any~~ policy issued by the corporation unless the
2110 premium for coverage from the authorized insurer is more than 15
2111 percent greater than the premium for comparable coverage from
2112 the corporation. If the risk is not able to obtain any such
2113 offer, the risk is eligible for a policy including wind coverage
2114 issued by the corporation. However, ~~with regard to~~ a
2115 policyholder of the corporation or a policyholder removed from
2116 the corporation through an assumption agreement until the end of
2117 the assumption period, ~~the policyholder~~ remains eligible for

595-03920-11

2011408c3

2118 coverage from the corporation regardless of an ~~any~~ offer of
2119 coverage from an authorized insurer or surplus lines insurer.

2120 (I) If the risk accepts an offer of coverage through the
2121 market assistance plan or ~~an offer of coverage~~ through a
2122 mechanism established by the corporation before a policy is
2123 issued to the risk by the corporation or during the first 30
2124 days of coverage by the corporation, and the producing agent who
2125 submitted the application to the plan or the corporation is not
2126 currently appointed by the insurer, the insurer shall:

2127 (A) Pay to the producing agent of record of the policy, for
2128 the first year, an amount that is the greater of the insurer's
2129 usual and customary commission for the type of policy written or
2130 a fee equal to the usual and customary commission of the
2131 corporation; or

2132 (B) Offer to allow the producing agent of record of the
2133 policy to continue servicing the policy for at least ~~a period of~~
2134 ~~not less than~~ 1 year and offer to pay the agent the greater of
2135 the insurer's or the corporation's usual and customary
2136 commission for the type of policy written.

2137
2138 If the producing agent is unwilling or unable to accept
2139 appointment, the new insurer shall pay the agent in accordance
2140 with sub-sub-sub-subparagraph (A).

2141 (II) If ~~When~~ the corporation enters into a contractual
2142 agreement for a take-out plan, the producing agent of record of
2143 the corporation policy is entitled to retain any unearned
2144 commission on the policy, and the insurer shall:

2145 (A) Pay to the producing agent of record ~~of the corporation~~
2146 policy, for the first year, an amount that is the greater of the

595-03920-11

2011408c3

2147 insurer's usual and customary commission for the type of policy
2148 written or a fee equal to the usual and customary commission of
2149 the corporation; or

2150 (B) Offer to allow the producing agent of record ~~of the~~
2151 ~~corporation policy~~ to continue servicing the policy for at least
2152 ~~a period of not less than~~ 1 year and offer to pay the agent the
2153 greater of the insurer's or the corporation's usual and
2154 customary commission for the type of policy written.

2155

2156 If the producing agent is unwilling or unable to accept
2157 appointment, the new insurer shall pay the agent in accordance
2158 with sub-sub-sub-subparagraph (A).

2159 c. For purposes of determining comparable coverage under
2160 sub-subparagraphs a. and b., the comparison must ~~shall~~ be based
2161 on those forms and coverages that are reasonably comparable. The
2162 corporation may rely on a determination of comparable coverage
2163 and premium made by the producing agent who submits the
2164 application to the corporation, made in the agent's capacity as
2165 the corporation's agent. A comparison may be made solely of the
2166 premium with respect to the main building or structure only on
2167 the following basis: the same coverage A or other building
2168 limits; the same percentage hurricane deductible that applies on
2169 an annual basis or that applies to each hurricane for commercial
2170 residential property; the same percentage of ordinance and law
2171 coverage, if the same limit is offered by both the corporation
2172 and the authorized insurer; the same mitigation credits, to the
2173 extent the same types of credits are offered both by the
2174 corporation and the authorized insurer; the same method for loss
2175 payment, such as replacement cost or actual cash value, if the

595-03920-11

2011408c3

2176 same method is offered both by the corporation and the
2177 authorized insurer in accordance with underwriting rules; and
2178 any other form or coverage that is reasonably comparable as
2179 determined by the board. If an application is submitted to the
2180 corporation for wind-only coverage in the coastal ~~high-risk~~
2181 account, the premium for the corporation's wind-only policy plus
2182 the premium for the ex-wind policy that is offered by an
2183 authorized insurer to the applicant must ~~shall~~ be compared to
2184 the premium for multiperil coverage offered by an authorized
2185 insurer, subject to the standards for comparison specified in
2186 this subparagraph. If the corporation or the applicant requests
2187 from the authorized insurer a breakdown of the premium of the
2188 offer by types of coverage so that a comparison may be made by
2189 the corporation or its agent and the authorized insurer refuses
2190 or is unable to provide such information, the corporation may
2191 treat the offer as not being an offer of coverage from an
2192 authorized insurer at the insurer's approved rate.

2193 6. Must include rules for classifications of risks and
2194 rates ~~therefor~~.

2195 7. Must provide that if premium and investment income for
2196 an account attributable to a particular calendar year are in
2197 excess of projected losses and expenses for the account
2198 attributable to that year, such excess shall be held in surplus
2199 in the account. Such surplus must ~~shall~~ be available to defray
2200 deficits in that account as to future years and ~~shall be~~ used
2201 for that purpose before ~~prior to~~ assessing assessable insurers
2202 and assessable insureds as to any calendar year.

2203 8. Must provide objective criteria and procedures to be
2204 uniformly applied to ~~for~~ all applicants in determining whether

595-03920-11

2011408c3

2205 an individual risk is so hazardous as to be uninsurable. In
2206 making this determination and in establishing the criteria and
2207 procedures, the following must ~~shall~~ be considered:

2208 a. Whether the likelihood of a loss for the individual risk
2209 is substantially higher than for other risks of the same class;
2210 and

2211 b. Whether the uncertainty associated with the individual
2212 risk is such that an appropriate premium cannot be determined.

2213
2214 The acceptance or rejection of a risk by the corporation shall
2215 be construed as the private placement of insurance, and the
2216 provisions of chapter 120 do ~~shall~~ not apply.

2217 9. Must provide that the corporation ~~shall~~ make its best
2218 efforts to procure catastrophe reinsurance at reasonable rates,
2219 to cover its projected 100-year probable maximum loss as
2220 determined by the board of governors.

2221 10. The policies issued by the corporation must provide
2222 that, if the corporation or the market assistance plan obtains
2223 an offer from an authorized insurer to cover the risk at its
2224 approved rates, the risk is no longer eligible for renewal
2225 through the corporation, except as otherwise provided in this
2226 subsection.

2227 11. Corporation policies and applications must include a
2228 notice that the corporation policy could, under this section, be
2229 replaced with a policy issued by an authorized insurer which
2230 ~~that~~ does not provide coverage identical to the coverage
2231 provided by the corporation. The notice must ~~shall~~ also specify
2232 that acceptance of corporation coverage creates a conclusive
2233 presumption that the applicant or policyholder is aware of this

595-03920-11

2011408c3

2234 potential.

2235 12. May establish, subject to approval by the office,
2236 different eligibility requirements and operational procedures
2237 for any line or type of coverage for any specified county or
2238 area if the board determines that such changes ~~to the~~
2239 ~~eligibility requirements and operational procedures~~ are
2240 justified due to the voluntary market being sufficiently stable
2241 and competitive in such area or for such line or type of
2242 coverage and that consumers who, in good faith, are unable to
2243 obtain insurance through the voluntary market through ordinary
2244 methods ~~would~~ continue to have access to coverage from the
2245 corporation. If ~~When~~ coverage is sought in connection with a
2246 real property transfer, the ~~such~~ requirements and procedures may
2247 ~~shall~~ not provide ~~for~~ an effective date of coverage later than
2248 the date of the closing of the transfer as established by the
2249 transferor, the transferee, and, if applicable, the lender.

2250 13. Must provide that, with respect to the coastal high-
2251 ~~risk~~ account, any assessable insurer with a surplus as to
2252 policyholders of \$25 million or less writing 25 percent or more
2253 of its total countrywide property insurance premiums in this
2254 state may petition the office, within the first 90 days of each
2255 calendar year, to qualify as a limited apportionment company. A
2256 regular assessment levied by the corporation on a limited
2257 apportionment company for a deficit incurred by the corporation
2258 for the coastal high-risk account ~~in 2006 or thereafter~~ may be
2259 paid to the corporation on a monthly basis as the assessments
2260 are collected by the limited apportionment company from its
2261 insureds pursuant to s. 627.3512, but the regular assessment
2262 must be paid in full within 12 months after being levied by the

595-03920-11

2011408c3

2263 corporation. A limited apportionment company shall collect from
2264 its policyholders any emergency assessment imposed under sub-
2265 subparagraph (b)3.d. The plan must ~~shall~~ provide that, if the
2266 office determines that any regular assessment will result in an
2267 impairment of the surplus of a limited apportionment company,
2268 the office may direct that all or part of such assessment be
2269 deferred as provided in subparagraph (q)4. However, ~~there shall~~
2270 ~~be no limitation or deferment of~~ an emergency assessment to be
2271 collected from policyholders under sub-subparagraph (b)3.d. may
2272 not be limited or deferred.

2273 14. Must provide that the corporation appoint as its
2274 licensed agents only those agents who also hold an appointment
2275 as defined in s. 626.015(3) with an insurer who at the time of
2276 the agent's initial appointment by the corporation is authorized
2277 to write and is actually writing personal lines residential
2278 property coverage, commercial residential property coverage, or
2279 commercial nonresidential property coverage within the state.

2280 15. Must provide, ~~by July 1, 2007,~~ a premium payment plan
2281 option to its policyholders which, ~~allows~~ at a minimum, allows
2282 for quarterly and semiannual payment of premiums. A monthly
2283 payment plan may, but is not required to, be offered.

2284 16. Must limit coverage on mobile homes or manufactured
2285 homes built before ~~prior to~~ 1994 to actual cash value of the
2286 dwelling rather than replacement costs of the dwelling.

2287 17. May provide such limits of coverage as the board
2288 determines, consistent with the requirements of this subsection.

2289 18. May require commercial property to meet specified
2290 hurricane mitigation construction features as a condition of
2291 eligibility for coverage.

595-03920-11

2011408c3

2292 19. Must offer sinkhole coverage. However, effective
2293 February 1, 2012, coverage is not included for losses to
2294 appurtenant structures, driveways, sidewalks, decks, or patios
2295 that are directly or indirectly caused by sinkhole activity. The
2296 corporation shall exclude such coverage using a notice of
2297 coverage change, which may be included with the policy renewal,
2298 and not by issuance of a notice of nonrenewal of the excluded
2299 coverage upon renewal of the current policy.

2300 20. As a condition for making payment for damage caused by
2301 the peril of sinkhole, regardless of whether such payment is
2302 made pursuant to the contract, mediation, neutral evaluation,
2303 appraisal, arbitration, settlement, or litigation, the payment
2304 must be dedicated entirely to the costs of repairing the
2305 structure or remediation of the land. Unless this condition is
2306 met, the corporation is prohibited from making payment.

2307 (d)1. All prospective employees for senior management
2308 positions, as defined by the plan of operation, are subject to
2309 background checks as a prerequisite for employment. The office
2310 shall conduct the background checks ~~on such prospective~~
2311 ~~employees~~ pursuant to ss. 624.34, 624.404(3), and 628.261.

2312 2. On or before July 1 of each year, employees of the
2313 corporation must ~~are required to~~ sign and submit a statement
2314 attesting that they do not have a conflict of interest, as
2315 defined in part III of chapter 112. As a condition of
2316 employment, all prospective employees must ~~are required to~~ sign
2317 and submit to the corporation a conflict-of-interest statement.

2318 3. Senior managers and members of the board of governors
2319 are subject to ~~the provisions of~~ part III of chapter 112,
2320 including, but not limited to, the code of ethics and public

595-03920-11

2011408c3

2321 disclosure and reporting of financial interests, pursuant to s.
2322 112.3145. Notwithstanding s. 112.3143(2), a board member may not
2323 vote on any measure that would inure to his or her special
2324 private gain or loss; that he or she knows would inure to the
2325 special private gain or loss of any principal by whom he or she
2326 is retained or to the parent organization or subsidiary of a
2327 corporate principal by which he or she is retained, other than
2328 an agency as defined in s. 112.312; or that he or she knows
2329 would inure to the special private gain or loss of a relative or
2330 business associate of the public officer. Before the vote is
2331 taken, such member shall publicly state to the assembly the
2332 nature of his or her interest in the matter from which he or she
2333 is abstaining from voting and, within 15 days after the vote
2334 occurs, disclose the nature of his or her interest as a public
2335 record in a memorandum filed with the person responsible for
2336 recording the minutes of the meeting, who shall incorporate the
2337 memorandum in the minutes. Senior managers and board members are
2338 also required to file such disclosures with the Commission on
2339 Ethics and the Office of Insurance Regulation. The executive
2340 director of the corporation or his or her designee shall notify
2341 each existing and newly appointed ~~and existing appointed~~ member
2342 of the board of governors and senior managers of their duty to
2343 comply with the reporting requirements of part III of chapter
2344 112. At least quarterly, the executive director or his or her
2345 designee shall submit to the Commission on Ethics a list of
2346 names of the senior managers and members of the board of
2347 governors who are subject to the public disclosure requirements
2348 under s. 112.3145.

2349 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other

595-03920-11

2011408c3

2350 provision of law, an employee or board member may not knowingly
2351 accept, directly or indirectly, any gift or expenditure from a
2352 person or entity, or an employee or representative of such
2353 person or entity, which ~~that~~ has a contractual relationship with
2354 the corporation or who is under consideration for a contract. An
2355 employee or board member who fails to comply with subparagraph
2356 3. or this subparagraph is subject to penalties provided under
2357 ss. 112.317 and 112.3173.

2358 5. Any senior manager of the corporation who is employed on
2359 or after January 1, 2007, regardless of the date of hire, who
2360 subsequently retires or terminates employment is prohibited from
2361 representing another person or entity before the corporation for
2362 2 years after retirement or termination of employment from the
2363 corporation.

2364 6. Any senior manager of the corporation who is employed on
2365 or after January 1, 2007, regardless of the date of hire, who
2366 subsequently retires or terminates employment is prohibited from
2367 having any employment or contractual relationship for 2 years
2368 with an insurer that has entered into a take-out bonus agreement
2369 with the corporation.

2370 (n)1. Rates for coverage provided by the corporation must
2371 ~~shall~~ be actuarially sound and subject to ~~the requirements of s.~~
2372 627.062, except as otherwise provided in this paragraph. The
2373 corporation shall file its recommended rates with the office at
2374 least annually. The corporation shall provide any additional
2375 information regarding the rates which the office requires. The
2376 office shall consider the recommendations of the board and issue
2377 a final order establishing the rates for the corporation within
2378 45 days after the recommended rates are filed. The corporation

595-03920-11

2011408c3

2379 may not pursue an administrative challenge or judicial review of
2380 the final order of the office.

2381 2. In addition to the rates otherwise determined pursuant
2382 to this paragraph, the corporation shall impose and collect an
2383 amount equal to the premium tax provided ~~for~~ in s. 624.509 to
2384 augment the financial resources of the corporation.

2385 3. After the public hurricane loss-projection model under
2386 s. 627.06281 has been found to be accurate and reliable by the
2387 Florida Commission on Hurricane Loss Projection Methodology, the
2388 ~~that~~ model shall serve as the minimum benchmark for determining
2389 the windstorm portion of the corporation's rates. This
2390 subparagraph does not require or allow the corporation to adopt
2391 rates lower than the rates otherwise required or allowed by this
2392 paragraph.

2393 4. The rate filings for the corporation which were approved
2394 by the office and ~~which~~ took effect January 1, 2007, are
2395 rescinded, except for those rates that were lowered. As soon as
2396 possible, the corporation shall begin using the lower rates that
2397 were in effect on December 31, 2006, and ~~shall~~ provide refunds
2398 to policyholders who ~~have~~ paid higher rates as a result of that
2399 rate filing. The rates in effect on December 31, 2006, ~~shall~~
2400 remain in effect for the 2007 and 2008 calendar years except for
2401 any rate change that results in a lower rate. The next rate
2402 change that may increase rates shall take effect pursuant to a
2403 new rate filing recommended by the corporation and established
2404 by the office, subject to ~~the requirements of~~ this paragraph.

2405 5. Beginning on July 15, 2009, and annually ~~each year~~
2406 thereafter, the corporation must make a recommended actuarially
2407 sound rate filing for each personal and commercial line of

595-03920-11

2011408c3

2408 business it writes, to be effective no earlier than January 1,
2409 2010.

2410 6. Beginning on or after January 1, 2010, and
2411 notwithstanding the board's recommended rates and the office's
2412 final order regarding the corporation's filed rates under
2413 subparagraph 1., the corporation shall annually implement a rate
2414 increase ~~each year~~ which, except for sinkhole coverage, does not
2415 exceed 10 percent for any single policy issued by the
2416 corporation, excluding coverage changes and surcharges.

2417 7. The corporation may also implement an increase to
2418 reflect the effect on the corporation of the cash buildup factor
2419 pursuant to s. 215.555(5) (b).

2420 8. The corporation's implementation of rates as prescribed
2421 in subparagraph 6. shall cease for any line of business written
2422 by the corporation upon the corporation's implementation of
2423 actuarially sound rates. Thereafter, the corporation shall
2424 annually make a recommended actuarially sound rate filing for
2425 each commercial and personal line of business the corporation
2426 writes.

2427 (v)1. Effective July 1, 2002, policies of the Residential
2428 Property and Casualty Joint Underwriting Association ~~shall~~
2429 become policies of the corporation. All obligations, rights,
2430 assets and liabilities of the ~~Residential Property and Casualty~~
2431 ~~Joint Underwriting~~ association, including bonds, note and debt
2432 obligations, and the financing documents pertaining to them
2433 become those of the corporation as of July 1, 2002. The
2434 corporation is not required to issue endorsements or
2435 certificates of assumption to insureds during the remaining term
2436 of in-force transferred policies.

595-03920-11

2011408c3

2437 2. Effective July 1, 2002, policies of the Florida
2438 Windstorm Underwriting Association are transferred to the
2439 corporation and ~~shall~~ become policies of the corporation. All
2440 obligations, rights, assets, and liabilities of the ~~Florida~~
2441 ~~Windstorm Underwriting~~ association, including bonds, note and
2442 debt obligations, and the financing documents pertaining to them
2443 are transferred to and assumed by the corporation on July 1,
2444 2002. The corporation is not required to issue endorsements or
2445 certificates of assumption to insureds during the remaining term
2446 of in-force transferred policies.

2447 3. The Florida Windstorm Underwriting Association and the
2448 Residential Property and Casualty Joint Underwriting Association
2449 shall take all actions necessary ~~as may be proper~~ to further
2450 evidence the transfers and ~~shall~~ provide the documents and
2451 instruments of further assurance as may reasonably be requested
2452 by the corporation for that purpose. The corporation shall
2453 execute assumptions and instruments as the trustees or other
2454 parties to the financing documents of the Florida Windstorm
2455 Underwriting Association or the Residential Property and
2456 Casualty Joint Underwriting Association may reasonably request
2457 to further evidence the transfers and assumptions, which
2458 transfers and assumptions, however, are effective on the date
2459 provided under this paragraph whether or not, and regardless of
2460 the date on which, the assumptions or instruments are executed
2461 by the corporation. Subject to the relevant financing documents
2462 pertaining to their outstanding bonds, notes, indebtedness, or
2463 other financing obligations, the moneys, investments,
2464 receivables, choses in action, and other intangibles of the
2465 Florida Windstorm Underwriting Association shall be credited to

595-03920-11

2011408c3

2466 the coastal ~~high-risk~~ account of the corporation, and those of
2467 the personal lines residential coverage account and the
2468 commercial lines residential coverage account of the Residential
2469 Property and Casualty Joint Underwriting Association shall be
2470 credited to the personal lines account and the commercial lines
2471 account, respectively, of the corporation.

2472 4. Effective July 1, 2002, a new applicant for property
2473 insurance coverage who would otherwise have been eligible for
2474 coverage in the Florida Windstorm Underwriting Association is
2475 eligible for coverage from the corporation as provided in this
2476 subsection.

2477 5. The transfer of all policies, obligations, rights,
2478 assets, and liabilities from the Florida Windstorm Underwriting
2479 Association to the corporation and the renaming of the
2480 Residential Property and Casualty Joint Underwriting Association
2481 as the corporation does not ~~shall in no way~~ affect the coverage
2482 with respect to covered policies as defined in s. 215.555(2)(c)
2483 provided to these entities by the Florida Hurricane Catastrophe
2484 Fund. The coverage provided by the ~~Florida Hurricane Catastrophe~~
2485 fund to the Florida Windstorm Underwriting Association based on
2486 its exposures as of June 30, 2002, and each June 30 thereafter
2487 shall be redesignated as coverage for the coastal ~~high-risk~~
2488 account of the corporation. Notwithstanding any other provision
2489 of law, the coverage provided by the ~~Florida Hurricane~~
2490 ~~Catastrophe~~ fund to the Residential Property and Casualty Joint
2491 Underwriting Association based on its exposures as of June 30,
2492 2002, and each June 30 thereafter shall be transferred to the
2493 personal lines account and the commercial lines account of the
2494 corporation. Notwithstanding any other provision of law, the

595-03920-11

2011408c3

2495 coastal ~~high-risk~~ account shall be treated, for all Florida
2496 Hurricane Catastrophe Fund purposes, as if it were a separate
2497 participating insurer with its own exposures, reimbursement
2498 premium, and loss reimbursement. Likewise, the personal lines
2499 and commercial lines accounts shall be viewed together, for all
2500 ~~Florida Hurricane Catastrophe~~ fund purposes, as if the two
2501 accounts were one and represent a single, separate participating
2502 insurer with its own exposures, reimbursement premium, and loss
2503 reimbursement. The coverage provided by the ~~Florida Hurricane~~
2504 ~~Catastrophe~~ fund to the corporation shall constitute and operate
2505 as a full transfer of coverage from the Florida Windstorm
2506 Underwriting Association and Residential Property and Casualty
2507 Joint Underwriting to the corporation.

2508 (y) It is the intent of the Legislature that the amendments
2509 to this subsection enacted in 2002 should, over time, reduce the
2510 probable maximum windstorm losses in the residual markets and
2511 ~~should reduce~~ the potential assessments to be levied on property
2512 insurers and policyholders statewide. In furtherance of this
2513 intent, ~~+~~

2514 ~~1.~~ the board shall, on or before February 1 of each year,
2515 provide a report to the President of the Senate and the Speaker
2516 of the House of Representatives showing the reduction or
2517 increase in the 100-year probable maximum loss attributable to
2518 wind-only coverages and the quota share program under this
2519 subsection combined, as compared to the benchmark 100-year
2520 probable maximum loss of the Florida Windstorm Underwriting
2521 Association. For purposes of this paragraph, the benchmark 100-
2522 year probable maximum loss of the Florida Windstorm Underwriting
2523 Association is ~~shall be~~ the calculation dated February 2001 and

595-03920-11

2011408c3

2524 based on November 30, 2000, exposures. In order to ensure
2525 comparability of data, the board shall use the same methods for
2526 calculating its probable maximum loss as were used to calculate
2527 the benchmark probable maximum loss.

2528 ~~2. Beginning December 1, 2010, if the report under~~
2529 ~~subparagraph 1. for any year indicates that the 100-year~~
2530 ~~probable maximum loss attributable to wind-only coverages and~~
2531 ~~the quota share program combined does not reflect a reduction of~~
2532 ~~at least 25 percent from the benchmark, the board shall reduce~~
2533 ~~the boundaries of the high-risk area eligible for wind-only~~
2534 ~~coverages under this subsection in a manner calculated to reduce~~
2535 ~~such probable maximum loss to an amount at least 25 percent~~
2536 ~~below the benchmark.~~

2537 ~~3. Beginning February 1, 2015, if the report under~~
2538 ~~subparagraph 1. for any year indicates that the 100-year~~
2539 ~~probable maximum loss attributable to wind-only coverages and~~
2540 ~~the quota share program combined does not reflect a reduction of~~
2541 ~~at least 50 percent from the benchmark, the boundaries of the~~
2542 ~~high-risk area eligible for wind-only coverages under this~~
2543 ~~subsection shall be reduced by the elimination of any area that~~
2544 ~~is not seaward of a line 1,000 feet inland from the Intracoastal~~
2545 ~~Waterway.~~

2546 Section 17. Paragraph (a) of subsection (5) of section
2547 627.3511, Florida Statutes, is amended to read:

2548 627.3511 Depopulation of Citizens Property Insurance
2549 Corporation.—

2550 (5) APPLICABILITY.—

2551 (a) The take-out bonus provided by subsection (2) and the
2552 exemption from assessment provided by paragraph (3) (a) apply

595-03920-11

2011408c3

2553 only if the corporation policy is replaced by ~~either~~ a standard
2554 policy including wind coverage or, if consistent with the
2555 insurer's underwriting rules ~~as~~ filed with the office, a basic
2556 policy including wind coverage; however, for ~~with respect to~~
2557 risks located in areas where coverage through the coastal high-
2558 ~~risk~~ account of the corporation is available, the replacement
2559 policy need not provide wind coverage. The insurer must renew
2560 the replacement policy at approved rates on substantially
2561 similar terms for four additional 1-year terms, unless canceled
2562 or not renewed by the policyholder. If an insurer assumes the
2563 corporation's obligations for a policy, it must issue a
2564 replacement policy for a 1-year term upon expiration of the
2565 corporation policy and must renew the replacement policy at
2566 approved rates on substantially similar terms for four
2567 additional 1-year terms, unless canceled or not renewed by the
2568 policyholder. For each replacement policy canceled or nonrenewed
2569 by the insurer for any reason during the 5-year coverage period
2570 ~~required by this paragraph~~, the insurer must remove from the
2571 corporation one additional policy covering a risk similar to the
2572 risk covered by the canceled or nonrenewed policy. In addition
2573 ~~to these requirements~~, the corporation must place the bonus
2574 moneys in escrow for ~~a period of~~ 5 years; such moneys may be
2575 released from escrow only to pay claims. If the policy is
2576 canceled or nonrenewed before the end of the 5-year period, the
2577 amount of the take-out bonus must be prorated for the time
2578 period the policy was insured. A take-out bonus provided by
2579 subsection (2) or subsection (6) is ~~shall not be considered~~
2580 premium income for purposes of taxes and assessments under the
2581 Florida Insurance Code and ~~shall~~ remain the property of the

595-03920-11

2011408c3

2582 corporation, subject to the prior security interest of the
2583 insurer under the escrow agreement until it is released from
2584 escrow; ~~and~~ after it is released from escrow it is ~~shall be~~
2585 considered an asset of the insurer and credited to the insurer's
2586 capital and surplus.

2587 Section 18. Paragraph (b) of subsection (2) of section
2588 627.4133, Florida Statutes, is amended to read:

2589 627.4133 Notice of cancellation, nonrenewal, or renewal
2590 premium.—

2591 (2) With respect to any personal lines or commercial
2592 residential property insurance policy, including, but not
2593 limited to, any homeowner's, mobile home owner's, farmowner's,
2594 condominium association, condominium unit owner's, apartment
2595 building, or other policy covering a residential structure or
2596 its contents:

2597 (b) The insurer shall give the named insured written notice
2598 of nonrenewal, cancellation, or termination at least 90 ~~100~~ days
2599 before ~~prior to~~ the effective date of the nonrenewal,
2600 cancellation, or termination. ~~However, the insurer shall give at~~
2601 ~~least 100 days' written notice, or written notice by June 1,~~
2602 ~~whichever is earlier, for any nonrenewal, cancellation, or~~
2603 ~~termination that would be effective between June 1 and November~~
2604 ~~30. The notice must include the reason or reasons for the~~
2605 ~~nonrenewal, cancellation, or termination, except that:~~

2606 1. ~~The insurer shall give the named insured written notice~~
2607 ~~of nonrenewal, cancellation, or termination at least 180 days~~
2608 ~~prior to the effective date of the nonrenewal, cancellation, or~~
2609 ~~termination for a named insured whose residential structure has~~
2610 ~~been insured by that insurer or an affiliated insurer for at~~

595-03920-11

2011408c3

2611 ~~least a 5-year period immediately prior to the date of the~~
2612 ~~written notice.~~

2613 1.2. ~~If~~ When cancellation is for nonpayment of premium, at
2614 least 10 days' written notice of cancellation accompanied by the
2615 reason therefor must ~~shall~~ be given. As used in this
2616 subparagraph, the term "nonpayment of premium" means failure of
2617 the named insured to discharge when due ~~any of~~ her or his
2618 obligations in connection with the payment of premiums on a
2619 policy or any installment of such premium, whether the premium
2620 is payable directly to the insurer or its agent or indirectly
2621 under any premium finance plan or extension of credit, or
2622 failure to maintain membership in an organization if such
2623 membership is a condition precedent to insurance coverage. The
2624 term ~~"Nonpayment of premium"~~ also means the failure of a
2625 financial institution to honor an insurance applicant's check
2626 after delivery to a licensed agent for payment of a premium,
2627 even if the agent has previously delivered or transferred the
2628 premium to the insurer. If a dishonored check represents the
2629 initial premium payment, the contract and all contractual
2630 obligations are ~~shall be~~ void ab initio unless the nonpayment is
2631 cured within the earlier of 5 days after actual notice by
2632 certified mail is received by the applicant or 15 days after
2633 notice is sent to the applicant by certified mail or registered
2634 mail, and if the contract is void, any premium received by the
2635 insurer from a third party must ~~shall~~ be refunded to that party
2636 in full.

2637 2.3. ~~If~~ When such cancellation or termination occurs during
2638 the first 90 days ~~during which~~ the insurance is in force and the
2639 insurance is canceled or terminated for reasons other than

595-03920-11

2011408c3

2640 nonpayment of premium, at least 20 days' written notice of
2641 cancellation or termination accompanied by the reason therefor
2642 must ~~shall~~ be given unless ~~except where~~ there has been a
2643 material misstatement or misrepresentation or failure to comply
2644 with the underwriting requirements established by the insurer.

2645 3.4. The requirement for providing written notice ~~of~~
2646 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective
2647 between June 1 and November 30 does not apply to the following
2648 situations, but the insurer remains subject to the requirement
2649 to provide such notice at least 100 days before ~~prior to~~ the
2650 effective date of nonrenewal:

2651 a. A policy that is nonrenewed due to a revision in the
2652 coverage for sinkhole losses and catastrophic ground cover
2653 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
2654 ~~2007-1, Laws of Florida.~~

2655 b. A policy that is nonrenewed by Citizens Property
2656 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2657 that has been assumed by an authorized insurer offering
2658 replacement ~~or renewal~~ coverage to the policyholder is exempt
2659 from the notice requirements of paragraph (a) and this
2660 paragraph. In such cases, the corporation must give the named
2661 insured written notice of nonrenewal at least 45 days before the
2662 effective date of the nonrenewal.

2663
2664 After the policy has been in effect for 90 days, the policy may
2665 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there
2666 has been a material misstatement, a nonpayment of premium, a
2667 failure to comply with underwriting requirements established by
2668 the insurer within 90 days after ~~of~~ the date of effectuation of

595-03920-11

2011408c3

2669 coverage, or a substantial change in the risk covered by the
2670 policy or ~~if when~~ the cancellation is for all insureds under
2671 such policies for a given class of insureds. This paragraph does
2672 not apply to individually rated risks having a policy term of
2673 less than 90 days.

2674 4. Notwithstanding any other provision of law, an insurer
2675 may cancel or nonrenew a property insurance policy after at
2676 least 45 days' notice if the office finds that the early
2677 cancellation of some or all of the insurer's policies is
2678 necessary to protect the best interests of the public or
2679 policyholders and the office approves the insurer's plan for
2680 early cancellation or nonrenewal of some or all of its policies.
2681 The office may base such finding upon the financial condition of
2682 the insurer, lack of adequate reinsurance coverage for hurricane
2683 risk, or other relevant factors. The office may condition its
2684 finding on the consent of the insurer to be placed under
2685 administrative supervision pursuant to s. 624.81 or to the
2686 appointment of a receiver under chapter 631.

2687 Section 19. Section 627.43141, Florida Statutes, is created
2688 to read:

2689 627.43141 Notice of change in policy terms.-

2690 (1) As used in this section, the term:

2691 (a) "Change in policy terms" means the modification,
2692 addition, or deletion of any term, coverage, duty, or condition
2693 from the previous policy. The correction of typographical or
2694 scrivener's errors or the application of mandated legislative
2695 changes is not a change in policy terms.

2696 (b) "Policy" means a written contract or written agreement
2697 for personal lines property and casualty insurance, or the

595-03920-11

2011408c3

2698 certificate of such insurance, by whatever name called, and
2699 includes all clauses, riders, endorsements, and papers that are
2700 a part of such policy. The term does not include a binder as
2701 defined in s. 627.420 unless the duration of the binder period
2702 exceeds 60 days.

2703 (c) "Renewal" means the issuance and delivery by an insurer
2704 of a policy superseding at the end of the policy period a policy
2705 previously issued and delivered by the same insurer or the
2706 issuance and delivery of a certificate or notice extending the
2707 term of a policy beyond its policy period or term. Any policy
2708 that has a policy period or term of less than 6 months or that
2709 does not have a fixed expiration date shall, for purposes of
2710 this section, be considered as written for successive policy
2711 periods or terms of 6 months.

2712 (2) A renewal policy may contain a change in policy terms.
2713 If a renewal policy does contains such change, the insurer must
2714 give the named insured written notice of the change, which must
2715 be enclosed along with the written notice of renewal premium
2716 required by ss. 627.4133 and 627.728. Such notice shall be
2717 entitled "Notice of Change in Policy Terms."

2718 (3) Although not required, proof of mailing or registered
2719 mailing through the United States Postal Service of the Notice
2720 of Change in Policy Terms to the named insured at the address
2721 shown in the policy is sufficient proof of notice.

2722 (4) Receipt of the premium payment for the renewal policy
2723 by the insurer is deemed to be acceptance of the new policy
2724 terms by the named insured.

2725 (5) If an insurer fails to provide the notice required in
2726 subsection (2), the original policy terms remain in effect until

595-03920-11

2011408c3

2727 the next renewal and the proper service of the notice, or until
2728 the effective date of replacement coverage obtained by the named
2729 insured, whichever occurs first.

2730 (6) The intent of this section is to:

2731 (a) Allow an insurer to make a change in policy terms
2732 without nonrenewing those policyholders that the insurer wishes
2733 to continue insuring.

2734 (b) Alleviate concern and confusion to the policyholder
2735 caused by the required policy nonrenewal for the limited issue
2736 if an insurer intends to renew the insurance policy, but the new
2737 policy contains a change in policy terms.

2738 (c) Encourage policyholders to discuss their coverages with
2739 their insurance agents.

2740 Section 20. Section 627.7011, Florida Statutes, is amended
2741 to read:

2742 627.7011 Homeowners' policies; offer of replacement cost
2743 coverage and law and ordinance coverage.—

2744 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
2745 insurance policy ~~on or after October 1, 2005, or prior to the~~
2746 ~~first renewal of a homeowner's insurance policy on or after~~
2747 ~~October 1, 2005,~~ the insurer must offer each of the following:

2748 (a) A policy or endorsement providing that any loss that
2749 ~~which~~ is repaired or replaced will be adjusted on the basis of
2750 replacement costs to the dwelling not exceeding policy limits ~~as~~
2751 ~~to the dwelling,~~ rather than actual cash value, but not
2752 including costs necessary to meet applicable laws and ordinances
2753 regulating the construction, use, or repair of any property or
2754 requiring the tearing down of any property, including the costs
2755 of removing debris.

595-03920-11

2011408c3

2756 (b) A policy or endorsement providing that, subject to
2757 other policy provisions, any loss that ~~which~~ is repaired or
2758 replaced at any location will be adjusted on the basis of
2759 replacement costs to the dwelling not exceeding policy limits ~~as~~
2760 ~~to the dwelling~~, rather than actual cash value, and also
2761 including costs necessary to meet applicable laws and ordinances
2762 regulating the construction, use, or repair of any property or
2763 requiring the tearing down of any property, including the costs
2764 of removing debris. † However, ~~such~~ additional costs necessary to
2765 meet applicable laws and ordinances may be limited to ~~either~~ 25
2766 percent or 50 percent of the dwelling limit, as selected by the
2767 policyholder, and such coverage applies ~~shall apply~~ only to
2768 repairs of the damaged portion of the structure unless the total
2769 damage to the structure exceeds 50 percent of the replacement
2770 cost of the structure.

2771
2772 An insurer is not required to make the offers required by this
2773 subsection with respect to the issuance or renewal of a
2774 homeowner's policy that contains the provisions specified in
2775 paragraph (b) for law and ordinance coverage limited to 25
2776 percent of the dwelling limit, except that the insurer must
2777 offer the law and ordinance coverage limited to 50 percent of
2778 the dwelling limit. This subsection does not prohibit the offer
2779 of a guaranteed replacement cost policy.

2780 (2) Unless the insurer obtains the policyholder's written
2781 refusal of the policies or endorsements specified in subsection
2782 (1), any policy covering the dwelling is deemed to include the
2783 law and ordinance coverage limited to 25 percent of the dwelling
2784 limit. The rejection or selection of alternative coverage shall

595-03920-11

2011408c3

2785 be made on a form approved by the office. The form must ~~shall~~
2786 fully advise the applicant of the nature of the coverage being
2787 rejected. If this form is signed by a named insured, it is ~~will~~
2788 ~~be~~ conclusively presumed that there was an informed, knowing
2789 rejection of the coverage or election of the alternative
2790 coverage on behalf of all insureds. Unless the policyholder
2791 requests in writing the coverage specified in this section, it
2792 need not be provided in or supplemental to any other policy that
2793 renews, insures, extends, changes, supersedes, or replaces an
2794 existing policy if ~~when~~ the policyholder has rejected the
2795 coverage specified in this section or has selected alternative
2796 coverage. The insurer must provide the ~~such~~ policyholder with
2797 notice of the availability of such coverage in a form approved
2798 by the office at least once every 3 years. The failure to
2799 provide such notice constitutes a violation of this code, but
2800 does not affect the coverage provided under the policy.

2801 (3) In the event of a loss for which a dwelling or personal
2802 property is insured on the basis of replacement costs:

2803 (a) For a dwelling, the insurer must initially pay at least
2804 the actual cash value of the insured loss, less any applicable
2805 deductible. To receive payment from an insurer for replacement
2806 costs, the policyholder must enter into a contract for the
2807 performance of building and structural repairs, unless the
2808 requirement for a contract is waived by the insurer. The insurer
2809 shall pay any remaining amounts necessary to perform such
2810 repairs as work is performed and expenses are incurred. The
2811 insurer or any contractor or subcontractor may not require the
2812 policyholder to advance payment for such repairs or expenses,
2813 with the exception of incidental expenses to mitigate further

595-03920-11

2011408c3

2814 damage. If a total loss of a dwelling occurs, the insurer shall
2815 pay the replacement cost coverage without reservation or
2816 holdback of any depreciation in value, pursuant to s. 627.702.

2817 (b) For personal property:

2818 1. The insurer must offer coverage under which the insurer
2819 is obligated to pay the replacement cost without reservation or
2820 holdback for any depreciation in value, whether or not the
2821 insured replaces the property.

2822 2. The insurer may also offer coverage under which the
2823 insurer may limit the initial payment to the actual cash value
2824 of the personal property to be replaced, require the insured to
2825 provide receipts for the purchase of the property financed by
2826 the initial payment, use such receipts to make the next payment
2827 requested by the insured for the replacement of insured
2828 property, and continue this process until the insured remits all
2829 receipts up to the policy limits for replacement costs. The
2830 insurer must provide clear notice of this process in the
2831 insurance contract. The insurer may not require the policyholder
2832 to advance payment for the replaced property, ~~the insurer shall~~
2833 ~~pay the replacement cost without reservation or holdback of any~~
2834 ~~depreciation in value, whether or not the insured replaces or~~
2835 ~~repairs the dwelling or property.~~

2836 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed on~~
2837 ~~or after October 1, 2005,~~ must include in bold type no smaller
2838 than 18 points the following statement:

2839
2840 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
2841 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
2842 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE

595-03920-11

2011408c3

2843 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
2844 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
2845 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT.”
2846

2847 The intent of this subsection is to encourage policyholders to
2848 purchase sufficient coverage to protect them in case events
2849 excluded from the standard homeowners policy, such as law and
2850 ordinance enforcement and flood, combine with covered events to
2851 produce damage or loss to the insured property. The intent is
2852 also to encourage policyholders to discuss these issues with
2853 their insurance agent.

2854 (5) ~~Nothing in This section does not: shall be construed to~~

2855 (a) Apply to policies not considered to be “homeowners’
2856 policies,” as that term is commonly understood in the insurance
2857 industry. ~~This section specifically does not~~

2858 (b) Apply to mobile home policies. ~~Nothing in this section~~

2859 (c) ~~Limit shall be construed as limiting~~ the ability of an
2860 ~~any~~ insurer to reject or nonrenew any insured or applicant on
2861 the grounds that the structure does not meet underwriting
2862 criteria applicable to replacement cost or law and ordinance
2863 policies or for other lawful reasons.

2864 (d) ~~(6) This section does not~~ Prohibit an insurer from
2865 limiting its liability under a policy or endorsement providing
2866 that loss will be adjusted on the basis of replacement costs to
2867 the lesser of:

2868 1. ~~(a)~~ The limit of liability shown on the policy
2869 declarations page;

2870 2. ~~(b)~~ The reasonable and necessary cost to repair the
2871 damaged, destroyed, or stolen covered property; or

595-03920-11

2011408c3

2872 3.~~(e)~~ The reasonable and necessary cost to replace the
2873 damaged, destroyed, or stolen covered property.

2874 (e)~~(7)~~ ~~This section does not~~ Prohibit an insurer from
2875 exercising its right to repair damaged property in compliance
2876 with its policy and s. 627.702(7).

2877 Section 21. Paragraph (a) of subsection (5) of section
2878 627.70131, Florida Statutes, is amended to read:

2879 627.70131 Insurer's duty to acknowledge communications
2880 regarding claims; investigation.-

2881 (5) (a) Within 90 days after an insurer receives notice of
2882 an initial, reopened, or supplemental ~~a~~ property insurance claim
2883 from a policyholder, the insurer shall pay or deny such claim or
2884 a portion of the claim unless the failure to pay ~~such claim or a~~
2885 ~~portion of the claim~~ is caused by factors beyond the control of
2886 the insurer which reasonably prevent such payment. Any payment
2887 of an initial or supplemental ~~a~~ claim or portion of such ~~a~~ claim
2888 made paid 90 days after the insurer receives notice of the
2889 claim, or made paid more than 15 days after there are no longer
2890 factors beyond the control of the insurer which reasonably
2891 prevented such payment, whichever is later, bears ~~shall bear~~
2892 interest at the rate set forth in s. 55.03. Interest begins to
2893 accrue from the date the insurer receives notice of the claim.
2894 The provisions of this subsection may not be waived, voided, or
2895 nullified by the terms of the insurance policy. If there is a
2896 right to prejudgment interest, the insured shall select whether
2897 to receive prejudgment interest or interest under this
2898 subsection. Interest is payable when the claim or portion of the
2899 claim is paid. Failure to comply with this subsection
2900 constitutes a violation of this code. However, failure to comply

595-03920-11

2011408c3

2901 with this subsection does ~~shall~~ not form the sole basis for a
2902 private cause of action.

2903 Section 22. The Legislature finds and declares:

2904 (1) There is a compelling state interest in maintaining a
2905 viable and orderly private-sector market for property insurance
2906 in this state. The lack of a viable and orderly property market
2907 reduces the availability of property insurance coverage to state
2908 residents, increases the cost of property insurance, and
2909 increases the state's reliance on a residual property insurance
2910 market and its potential for imposing assessments on
2911 policyholders throughout the state.

2912 (2) In 2005, the Legislature revised ss. 627.706-627.7074,
2913 Florida Statutes, to adopt certain geological or technical
2914 terms; to increase reliance on objective, scientific testing
2915 requirements; and generally to reduce the number of sinkhole
2916 claims and related disputes arising under prior law. The
2917 Legislature determined that since the enactment of these
2918 statutory revisions, both private-sector insurers and Citizens
2919 Property Insurance Corporation have, nevertheless, continued to
2920 experience high claims frequency and severity for sinkhole
2921 insurance claims. In addition, many properties remain unrepaired
2922 even after loss payments, which reduces the local property tax
2923 base and adversely affects the real estate market. Therefore,
2924 the Legislature finds that losses associated with sinkhole
2925 claims adversely affect the public health, safety, and welfare
2926 of this state and its citizens.

2927 (3) Pursuant to sections 19 through 24 of this act,
2928 technical or scientific definitions adopted in the 2005
2929 legislation are clarified to implement and advance the

595-03920-11

2011408c3

2930 Legislature's intended reduction of sinkhole claims and
2931 disputes. The legal presumption intended by the Legislature is
2932 clarified to reduce disputes and litigation associated with the
2933 technical reviews associated with sinkhole claims. Certain other
2934 revisions to ss. 627.706-627.7074, Florida Statutes, are enacted
2935 to advance legislative intent to rely on scientific or technical
2936 determinations relating to sinkholes and sinkhole claims, reduce
2937 the number and cost of disputes relating to sinkhole claims, and
2938 ensure that repairs are made commensurate with the scientific
2939 and technical determinations and insurance claims payments.

2940 Section 23. Section 627.706, Florida Statutes, is reordered
2941 and amended to read:

2942 627.706 Sinkhole insurance; catastrophic ground cover
2943 collapse; definitions.-

2944 (1) Every insurer authorized to transact property insurance
2945 in this state must ~~shall~~ provide coverage for a catastrophic
2946 ground cover collapse. However, the insurer may restrict such
2947 coverage to the principal building, as defined in the applicable
2948 policy. The insurer may ~~and shall~~ make available, for an
2949 appropriate additional premium, coverage for sinkhole losses on
2950 any structure, including the contents of personal property
2951 contained therein, to the extent provided in the form to which
2952 the coverage attaches. A policy for residential property
2953 insurance may include a deductible amount applicable to sinkhole
2954 losses, including any expenses incurred by an insurer
2955 investigating whether sinkhole activity is present. The
2956 deductible may be equal to 1 percent, 2 percent, 5 percent, or
2957 10 percent of the policy dwelling limits, with appropriate
2958 premium discounts offered with each deductible amount.

595-03920-11

2011408c3

2959 (2) As used in ss. 627.706-627.7074, and as used in
2960 connection with any policy providing coverage for a catastrophic
2961 ground cover collapse or for sinkhole losses, the term:

2962 (a) "Catastrophic ground cover collapse" means geological
2963 activity that results in all the following:

- 2964 1. The abrupt collapse of the ground cover;
- 2965 2. A depression in the ground cover clearly visible to the
2966 naked eye;
- 2967 3. Structural damage to the covered building, including the
2968 foundation; and
- 2969 4. The insured structure being condemned and ordered to be
2970 vacated by the governmental agency authorized by law to issue
2971 such an order for that structure.

2972
2973 Contents coverage applies if there is a loss resulting from a
2974 catastrophic ground cover collapse. ~~Structural~~ Damage consisting
2975 merely of the settling or cracking of a foundation, structure,
2976 or building does not constitute a loss resulting from a
2977 catastrophic ground cover collapse.

2978 (b) "Neutral evaluation" means the alternative dispute
2979 resolution provided in s. 627.7074.

2980 (c) "Neutral evaluator" means a professional engineer or a
2981 professional geologist who has completed a course of study in
2982 alternative dispute resolution designed or approved by the
2983 department for use in the neutral evaluation process and who is
2984 determined to be fair and impartial.

2985 (f) ~~(b)~~ "Sinkhole" means a landform created by subsidence of
2986 soil, sediment, or rock as underlying strata are dissolved by
2987 groundwater. A sinkhole forms ~~may form~~ by collapse into

595-03920-11

2011408c3

2988 subterranean voids created by dissolution of limestone or
2989 dolostone or by subsidence as these strata are dissolved.

2990 (h)~~(e)~~ "Sinkhole loss" means structural damage to the
2991 covered building, including the foundation, caused by sinkhole
2992 activity. Contents coverage and additional living expenses ~~shall~~
2993 apply only if there is structural damage to the covered building
2994 caused by sinkhole activity.

2995 (g)~~(d)~~ "Sinkhole activity" means settlement or systematic
2996 weakening of the earth supporting ~~such~~ property only if the ~~when~~
2997 ~~such~~ settlement or systematic weakening results from
2998 contemporary movement or raveling of soils, sediments, or rock
2999 materials into subterranean voids created by the effect of water
3000 on a limestone or similar rock formation.

3001 (d)~~(e)~~ "Professional engineer" means a person, as defined
3002 in s. 471.005, who has a bachelor's degree or higher in
3003 engineering and has successfully completed at least five courses
3004 in any combination of the following: geotechnical engineering,
3005 structural engineering, soil mechanics, foundations, or geology
3006 ~~with a specialty in the geotechnical engineering field. A~~
3007 professional engineer must also have ~~geotechnical~~ experience and
3008 expertise in the identification of sinkhole activity as well as
3009 other potential causes of structural damage ~~to the structure.~~

3010 (e)~~(f)~~ "Professional geologist" means a person, as defined
3011 in ~~by~~ s. 492.102, who has a bachelor's degree or higher in
3012 geology or related earth science and ~~with expertise in the~~
3013 ~~geology of Florida. A professional geologist must have~~
3014 ~~geological~~ experience and expertise in the identification of
3015 sinkhole activity as well as other potential geologic causes of
3016 structural damage ~~to the structure.~~

595-03920-11

2011408c3

3017 (i) "Structural damage" means:

3018 1. A covered building that suffers foundation movement
3019 outside an acceptable variance under the applicable building
3020 code;

3021 2. Damage to a covered building, including the foundation,
3022 which prevents the primary structural members or primary
3023 structural systems from supporting the loads and forces they
3024 were designed to support; and

3025 3. As may be further defined by the applicable policy.

3026 ~~(3) On or before June 1, 2007, Every insurer authorized to~~
3027 ~~transact property insurance in this state shall make a proper~~
3028 ~~filing with the office for the purpose of extending the~~
3029 ~~appropriate forms of property insurance to include coverage for~~
3030 ~~eatastrophic ground cover collapse or for sinkhole losses.~~
3031 ~~coverage for catastrophic ground cover collapse may not go into~~
3032 ~~effect until the effective date provided for in the filing~~
3033 ~~approved by the office.~~

3034 ~~(3)(4)~~ Insurers offering policies that exclude coverage for
3035 sinkhole losses must ~~shall~~ inform policyholders in bold type of
3036 not less than 14 points as follows: "YOUR POLICY PROVIDES
3037 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS
3038 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,
3039 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. ~~YOU~~
3040 ~~MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN~~
3041 ~~ADDITIONAL PREMIUM."~~

3042 ~~(4)(5)~~ An insurer offering sinkhole coverage to
3043 policyholders before or after the adoption of s. 30, chapter
3044 2007-1, Laws of Florida, may nonrenew the policies of
3045 policyholders maintaining sinkhole coverage ~~in Pasco County or~~

595-03920-11

2011408c3

3046 ~~Hernando County,~~ at the option of the insurer, and provide an
3047 offer of coverage that ~~to such policyholders which~~ includes
3048 catastrophic ground cover collapse and excludes sinkhole
3049 coverage. Insurers acting in accordance with this subsection are
3050 subject to the following requirements:

3051 (a) Policyholders must be notified that a nonrenewal is for
3052 purposes of removing sinkhole coverage, and that the
3053 policyholder is ~~still~~ being offered a policy that provides
3054 coverage for catastrophic ground cover collapse.

3055 (b) Policyholders must be provided an actuarially
3056 reasonable premium credit or discount for the removal of
3057 sinkhole coverage and provision of only catastrophic ground
3058 cover collapse.

3059 (c) Subject to the provisions of this subsection and the
3060 insurer's approved underwriting or insurability guidelines, the
3061 insurer may ~~shall~~ provide each policyholder with the opportunity
3062 to purchase an endorsement to his or her policy providing
3063 sinkhole coverage and may require an inspection of the property
3064 before issuance of a sinkhole coverage endorsement.

3065 (d) Section 624.4305 does not apply to nonrenewal notices
3066 issued pursuant to this subsection.

3067 (5) Any claim, including, but not limited to, initial,
3068 supplemental, and reopened claims under an insurance policy that
3069 provides sinkhole coverage is barred unless notice of the claim
3070 was given to the insurer in accordance with the terms of the
3071 policy within 2 years after the policyholder knew or reasonably
3072 should have known about the sinkhole loss.

3073 Section 24. Section 627.7061, Florida Statutes, is amended
3074 to read:

595-03920-11

2011408c3

3075 627.7061 Coverage inquiries.—Inquiries about coverage on a
3076 property insurance contract are not claim activity, unless an
3077 actual claim is filed by the policyholder which insured that
3078 results in a company investigation of the claim.

3079 Section 25. Section 627.7065, Florida Statutes, is
3080 repealed.

3081 Section 26. Section 627.707, Florida Statutes, is amended
3082 to read:

3083 627.707 ~~Standards for~~ Investigation of sinkhole claims by
3084 policyholders insurers; insurer payment; nonrenewals.—Upon
3085 receipt of a claim for a sinkhole loss to a covered building, an
3086 insurer must meet the following standards in investigating a
3087 claim:

3088 (1) The insurer must inspect ~~make an inspection of~~ the
3089 policyholder's insured's premises to determine if there is
3090 structural ~~has been physical~~ damage that ~~to the structure which~~
3091 may be the result of sinkhole activity.

3092 (2) If the insurer confirms that structural damage exists
3093 but is unable to identify a valid cause of such damage or
3094 discovers that such damage is consistent with sinkhole loss
3095 ~~Following the insurer's initial inspection~~, the insurer shall
3096 engage a professional engineer or a professional geologist to
3097 conduct testing as provided in s. 627.7072 to determine the
3098 cause of the loss within a reasonable professional probability
3099 and issue a report as provided in s. 627.7073, only if sinkhole
3100 loss is covered under the policy. Except as provided in
3101 subsection (6), the fees and costs of the professional engineer
3102 or professional geologist shall be paid by the insurer.÷

3103 ~~(a) The insurer is unable to identify a valid cause of the~~

595-03920-11

2011408c3

3104 ~~damage or discovers damage to the structure which is consistent~~
3105 ~~with sinkhole loss; or~~

3106 ~~(b) The policyholder demands testing in accordance with~~
3107 ~~this section or s. 627.7072.~~

3108 (3) Following the initial inspection of the policyholder's
3109 ~~insured~~ premises, the insurer shall provide written notice to
3110 the policyholder disclosing the following information:

3111 (a) What the insurer has determined to be the cause of
3112 damage, if the insurer has made such a determination.

3113 (b) A statement of the circumstances under which the
3114 insurer is required to engage a professional engineer or a
3115 professional geologist to verify or eliminate sinkhole loss and
3116 to engage a professional engineer to make recommendations
3117 regarding land and building stabilization and foundation repair.

3118 ~~(c) A statement regarding the right of the policyholder to~~
3119 ~~request testing by a professional engineer or a professional~~
3120 ~~geologist and the circumstances under which the policyholder may~~
3121 ~~demand certain testing.~~

3122 (4) If the insurer determines that there is no sinkhole
3123 loss, the insurer may deny the claim. If coverage for sinkhole
3124 loss is available and ~~If the insurer denies the claim on such~~
3125 basis, without performing testing under s. 627.7072, the
3126 policyholder may demand testing by the insurer ~~under s.~~
3127 ~~627.7072.~~ The policyholder's demand for testing must be
3128 communicated to the insurer in writing within 60 days after the
3129 policyholder's receipt of the insurer's denial of the claim.

3130 (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is
3131 verified, the insurer shall pay to stabilize the land and
3132 building and repair the foundation in accordance with the

595-03920-11

2011408c3

3133 recommendations of the professional engineer retained pursuant
3134 to subsection (2), as provided under s. 627.7073, and in
3135 ~~consultation~~ with notice to the policyholder, subject to the
3136 coverage and terms of the policy. The insurer shall pay for
3137 other repairs to the structure and contents in accordance with
3138 the terms of the policy.

3139 (a) ~~(b)~~ The insurer may limit its total claims payment to
3140 the actual cash value of the sinkhole loss, which does not
3141 include ~~including~~ underpinning or grouting or any other repair
3142 technique performed below the existing foundation of the
3143 building, until the policyholder enters into a contract for the
3144 performance of building stabilization or foundation repairs in
3145 accordance with the recommendations set forth in the insurer's
3146 report issued pursuant to s. 627.7073.

3147 (b) In order to prevent additional damage to the building
3148 or structure, the policyholder must enter into a contract for
3149 the performance of building stabilization or foundation repairs
3150 within 90 days after the insurance company confirms coverage for
3151 the sinkhole loss and notifies the policyholder of such
3152 confirmation. This time period is tolled if either party invokes
3153 the neutral evaluation process.

3154 (c) After the policyholder enters into the contract for the
3155 performance of building stabilization or foundation repairs, the
3156 insurer shall pay the amounts necessary to begin and perform
3157 such repairs as the work is performed and the expenses are
3158 incurred. The insurer may not require the policyholder to
3159 advance payment for such repairs. If repair covered by a
3160 personal lines residential property insurance policy has begun
3161 and the professional engineer selected or approved by the

595-03920-11

2011408c3

3162 insurer determines that the repair cannot be completed within
3163 the policy limits, the insurer must ~~either~~ complete the
3164 professional engineer's recommended repair or tender the policy
3165 limits to the policyholder without a reduction for the repair
3166 expenses incurred.

3167 (d) The stabilization and all other repairs to the
3168 structure and contents must be completed within 12 months after
3169 entering into the contract for repairs described in paragraph
3170 (b) unless:

3171 1. There is a mutual agreement between the insurer and the
3172 policyholder;

3173 2. The claim is involved with the neutral evaluation
3174 process;

3175 3. The claim is in litigation; or

3176 4. The claim is under appraisal.

3177 (e) ~~(e)~~ Upon the insurer's obtaining the written approval of
3178 the policyholder and any lienholder, the insurer may make
3179 payment directly to the persons selected by the policyholder to
3180 perform the land and building stabilization and foundation
3181 repairs. The decision by the insurer to make payment to such
3182 persons does not hold the insurer liable for the work performed.
3183 The policyholder may not accept a rebate from any person
3184 performing the repairs specified in this section. If a
3185 policyholder does receive a rebate, coverage is void and the
3186 policyholder must refund the amount of the rebate to the
3187 insurer. Any person making the repairs specified in this section
3188 who offers a rebate, or any policyholder who accepts a rebate
3189 for such repairs, commits insurance fraud punishable as a third
3190 degree felony as provided in s. 775.082, s. 775.083, or s.

595-03920-11

2011408c3

3191 775.084.

3192 ~~(6) Except as provided in subsection (7), the fees and~~
3193 ~~costs of the professional engineer or the professional geologist~~
3194 ~~shall be paid by the insurer.~~

3195 (6)~~(7)~~ If the insurer obtains, pursuant to s. 627.7073,
3196 written certification that there is no sinkhole loss ~~or that the~~
3197 ~~cause of the damage was not sinkhole activity, and if the~~
3198 ~~policyholder has submitted the sinkhole claim without good faith~~
3199 ~~grounds for submitting such claim,~~ the policyholder shall
3200 reimburse the insurer for 50 percent of the actual costs of the
3201 analyses and services provided under ss. 627.7072 and 627.7073;
3202 however, a policyholder is not required to reimburse an insurer
3203 more than the deductible or \$2,500, whichever is greater, with
3204 respect to any claim. A policyholder is required to pay
3205 reimbursement under this subsection only if the policyholder
3206 requested the testing and report provided pursuant to ss.
3207 627.7072 and 627.7073 and the insurer, before ~~prior to~~ ordering
3208 the analysis under s. 627.7072, informs the policyholder in
3209 writing of the policyholder's potential liability for
3210 reimbursement and gives the policyholder the opportunity to
3211 withdraw the claim.

3212 ~~(7)~~~~(8)~~ An ~~No~~ insurer may not ~~shall~~ nonrenew any policy of
3213 property insurance on the basis of filing of claims for partial
3214 loss caused by sinkhole damage or clay shrinkage if ~~as long as~~
3215 the total of such payments does not equal or exceed the current
3216 policy limits of coverage for the policy in effect on the date
3217 of loss, for property damage to the covered building, as set
3218 forth on the declarations page, or if ~~and provided the~~
3219 policyholder insured ~~has~~ repaired the structure in accordance

595-03920-11

2011408c3

3220 with the engineering recommendations made pursuant to subsection
3221 (2) upon which any payment or policy proceeds were based. If the
3222 insurer pays such limits, it may nonrenew the policy.

3223 ~~(8)-(9)~~ The insurer may engage a professional structural
3224 engineer to make recommendations as to the repair of the
3225 structure.

3226 Section 27. Section 627.7073, Florida Statutes, is amended
3227 to read:

3228 627.7073 Sinkhole reports.—

3229 (1) Upon completion of testing as provided in s. 627.7072,
3230 the professional engineer or professional geologist shall issue
3231 a report and certification to the insurer and the policyholder
3232 as provided in this section.

3233 (a) Sinkhole loss is verified if, based upon tests
3234 performed in accordance with s. 627.7072, a professional
3235 engineer or a professional geologist issues a written report and
3236 certification stating:

3237 1. That structural damage to the covered building has been
3238 identified within a reasonable professional probability.

3239 ~~2.1.~~ That the cause of the ~~actual-physical-and~~ structural
3240 damage is sinkhole activity within a reasonable professional
3241 probability.

3242 ~~3.2.~~ That the analyses conducted were of sufficient scope
3243 to identify sinkhole activity as the cause of damage within a
3244 reasonable professional probability.

3245 ~~4.3.~~ A description of the tests performed.

3246 ~~5.4.~~ A recommendation by the professional engineer of
3247 methods for stabilizing the land and building and for making
3248 repairs to the foundation.

595-03920-11

2011408c3

3249 (b) If there is no structural damage or if sinkhole
3250 activity is eliminated as the cause of such damage to the
3251 covered building structure, the professional engineer or
3252 professional geologist shall issue a written report and
3253 certification to the policyholder and the insurer stating:

3254 1. That there is no structural damage or the cause of such
3255 ~~the~~ damage is not sinkhole activity within a reasonable
3256 professional probability.

3257 2. That the analyses and tests conducted were of sufficient
3258 scope to eliminate sinkhole activity as the cause of the
3259 structural damage within a reasonable professional probability.

3260 3. A statement of the cause of the structural damage within
3261 a reasonable professional probability.

3262 4. A description of the tests performed.

3263 (c) The respective findings, opinions, and recommendations
3264 of the professional engineer or professional geologist as to the
3265 cause of distress to the property and the findings, opinions,
3266 and recommendations of the insurer's professional engineer as to
3267 land and building stabilization and foundation repair set forth
3268 by s. 627.7072 shall be presumed correct, which presumption
3269 shifts the burden of proof in accordance with s. 90.302(2). The
3270 presumption of correctness is based upon public policy concerns
3271 regarding the affordability of sinkhole coverage, consistency in
3272 claims handling, and a reduction in the number of disputed
3273 sinkhole claims.

3274 (2) ~~(a)~~ An ~~Any~~ insurer that has paid a claim for a sinkhole
3275 loss shall file a copy of the report and certification, prepared
3276 pursuant to subsection (1), including the legal description of
3277 the real property and the name of the property owner, the

595-03920-11

2011408c3

3278 neutral evaluator's report, if any, which indicates that
3279 sinkhole activity caused the damage claimed, a copy of the
3280 certification indicating that stabilization has been completed,
3281 if applicable, and the amount of the payment, with the county
3282 clerk of court, who shall record the report and certification.
3283 The insurer shall bear the cost of filing and recording one or
3284 more reports and certifications ~~the report and certification.~~
3285 There shall be no cause of action or liability against an
3286 insurer for compliance with this section.

3287 (a) The recording of the report and certification does not:

3288 1. Constitute a lien, encumbrance, or restriction on the
3289 title to the real property or constitute a defect in the title
3290 to the real property;

3291 2. Create any cause of action or liability against any
3292 grantor of the real property for breach of any warranty of good
3293 title or warranty against encumbrances; or

3294 3. Create any cause of action or liability against any
3295 title insurer that insures the title to the real property.

3296 (b) As a precondition to accepting payment for a sinkhole
3297 loss, the policyholder must file a copy of any sinkhole report
3298 regarding the insured property which was prepared on behalf or
3299 at the request of the policyholder. The policyholder shall bear
3300 the cost of filing and recording the sinkhole report. The
3301 recording of the report does not:

3302 1. Constitute a lien, encumbrance, or restriction on the
3303 title to the real property or constitute a defect in the title
3304 to the real property;

3305 2. Create any cause of action or liability against any
3306 grantor of the real property for breach of any warranty of good

595-03920-11

2011408c3

3307 title or warranty against encumbrances; or

3308 3. Create any cause of action or liability against a title
3309 insurer that insures the title to the real property.

3310 (c) ~~(b)~~ The seller of real property upon which a sinkhole
3311 claim has been made by the seller and paid by the insurer must
3312 ~~shall~~ disclose to the buyer of such property, before the
3313 closing, that a claim has been paid and whether or not the full
3314 amount of the proceeds were used to repair the sinkhole damage.

3315 (3) Upon completion of any building stabilization or
3316 foundation repairs for a verified sinkhole loss, the
3317 professional engineer responsible for monitoring the repairs
3318 shall issue a report to the property owner which specifies what
3319 repairs have been performed and certifies within a reasonable
3320 degree of professional probability that such repairs have been
3321 properly performed. The professional engineer issuing the report
3322 shall file a copy of the report and certification, which
3323 includes a legal description of the real property and the name
3324 of the property owner, with the county clerk of the court, who
3325 shall record the report and certification. This subsection does
3326 not create liability for an insurer based on any representation
3327 or certification by a professional engineer related to the
3328 stabilization or foundation repairs for the verified sinkhole
3329 loss.

3330 Section 28. Section 627.7074, Florida Statutes, is amended
3331 to read:

3332 627.7074 Alternative procedure for resolution of disputed
3333 sinkhole insurance claims.-

3334 ~~(1) As used in this section, the term:~~

3335 ~~(a) "Neutral evaluation" means the alternative dispute~~

595-03920-11

2011408c3

3336 ~~resolution provided for in this section.~~

3337 ~~(b) "Neutral evaluator" means a professional engineer or a~~
3338 ~~professional geologist who has completed a course of study in~~
3339 ~~alternative dispute resolution designed or approved by the~~
3340 ~~department for use in the neutral evaluation process, who is~~
3341 ~~determined to be fair and impartial.~~

3342 (1)(2)(a) The department shall:

3343 (a) Certify and maintain a list of persons who are neutral
3344 evaluators.

3345 ~~(b) The department shall~~ Prepare a consumer information
3346 pamphlet for distribution by insurers to policyholders which
3347 clearly describes the neutral evaluation process and includes
3348 information ~~and forms~~ necessary for the policyholder to request
3349 a neutral evaluation.

3350 (2) Neutral evaluation is available to either party if a
3351 sinkhole report has been issued pursuant to s. 627.7073. At a
3352 minimum, neutral evaluation must determine:

3353 (a) Causation;

3354 (b) All methods of stabilization and repair both above and
3355 below ground;

3356 (c) The costs for stabilization and all repairs; and

3357 (d) Information necessary to carry out subsection (12).

3358 (3) Following the receipt of the report provided under s.
3359 627.7073 or the denial of a claim for a sinkhole loss, the
3360 insurer shall notify the policyholder of his or her right to
3361 participate in the neutral evaluation program under this
3362 section. Neutral evaluation supersedes the alternative dispute
3363 resolution process under s. 627.7015, but does not invalidate
3364 the appraisal clause of the insurance policy. The insurer shall

595-03920-11

2011408c3

3365 provide to the policyholder the consumer information pamphlet
3366 prepared by the department pursuant to subsection (1)
3367 electronically or by United States mail ~~paragraph (2)(b)~~.

3368 (4) Neutral evaluation is nonbinding, but mandatory if
3369 requested by either party. A request for neutral evaluation may
3370 be filed with the department by the policyholder or the insurer
3371 on a form approved by the department. The request for neutral
3372 evaluation must state the reason for the request and must
3373 include an explanation of all the issues in dispute at the time
3374 of the request. Filing a request for neutral evaluation tolls
3375 the applicable time requirements for filing suit for ~~a period of~~
3376 60 days following the conclusion of the neutral evaluation
3377 process or the time prescribed in s. 95.11, whichever is later.

3378 (5) Neutral evaluation shall be conducted as an informal
3379 process in which formal rules of evidence and procedure need not
3380 be observed. A party to neutral evaluation is not required to
3381 attend neutral evaluation if a representative of the party
3382 attends and has the authority to make a binding decision on
3383 behalf of the party. All parties shall participate in the
3384 evaluation in good faith. The neutral evaluator must be allowed
3385 reasonable access to the interior and exterior of insured
3386 structures to be evaluated or for which a claim has been made.
3387 Any reports initiated by the policyholder, or an agent of the
3388 policyholder, confirming a sinkhole loss or disputing another
3389 sinkhole report regarding insured structures must be provided to
3390 the neutral evaluator before the evaluator's physical inspection
3391 of the insured property.

3392 (6) The insurer shall pay reasonable ~~the~~ costs associated
3393 with the neutral evaluation. However, if a party chooses to hire

595-03920-11

2011408c3

3394 a court reporter or stenographer to contemporaneously record and
3395 document the neutral evaluation, that party must bear such
3396 costs.

3397 (7) Upon receipt of a request for neutral evaluation, the
3398 department shall provide the parties a list of certified neutral
3399 evaluators. ~~The parties shall mutually select a neutral~~
3400 ~~evaluator from the list and promptly inform the department. If~~
3401 ~~the parties cannot agree to a neutral evaluator within 10~~
3402 ~~business days,~~ The department shall allow the parties to submit
3403 requests to disqualify evaluators on the list for cause.

3404 (a) The department shall disqualify neutral evaluators for
3405 cause based only on any of the following grounds:

3406 1. A familial relationship exists between the neutral
3407 evaluator and either party or a representative of either party
3408 within the third degree.

3409 2. The proposed neutral evaluator has, in a professional
3410 capacity, previously represented either party or a
3411 representative of either party, in the same or a substantially
3412 related matter.

3413 3. The proposed neutral evaluator has, in a professional
3414 capacity, represented another person in the same or a
3415 substantially related matter and that person's interests are
3416 materially adverse to the interests of the parties. The term
3417 "substantially related matter" means participation by the
3418 neutral evaluator on the same claim, property, or adjacent
3419 property.

3420 4. The proposed neutral evaluator has, within the preceding
3421 5 years, worked as an employer or employee of any party to the
3422 case.

595-03920-11

2011408c3

3423 (b) The parties shall appoint a neutral evaluator from the
3424 department list and promptly inform the department. If the
3425 parties cannot agree to a neutral evaluator within 14 days, the
3426 department shall appoint a neutral evaluator from the list of
3427 certified neutral evaluators. The department shall allow each
3428 party to disqualify two neutral evaluators without cause. Upon
3429 selection or appointment, the department shall promptly refer
3430 the request to the neutral evaluator.

3431 (c) Within 14 ~~5~~ business days after the referral, the
3432 neutral evaluator shall notify the policyholder and the insurer
3433 of the date, time, and place of the neutral evaluation
3434 conference. The conference may be held by telephone, if feasible
3435 and desirable. The neutral evaluator shall make reasonable
3436 efforts to hold the ~~neutral evaluation~~ conference ~~shall be held~~
3437 within 90 ~~45~~ days after the receipt of the request by the
3438 department. Failure of the neutral evaluator to hold the
3439 conference within 90 days does not invalidate either party's
3440 right to neutral evaluation or to a neutral evaluation
3441 conference held outside this timeframe.

3442 ~~(8) The department shall adopt rules of procedure for the~~
3443 ~~neutral evaluation process.~~

3444 ~~(8)-(9)~~ For policyholders not represented by an attorney, a
3445 consumer affairs specialist of the department or an employee
3446 designated as the primary contact for consumers on issues
3447 relating to sinkholes under s. 20.121 shall be available for
3448 consultation to the extent that he or she may lawfully do so.

3449 ~~(9)-(10)~~ Evidence of an offer to settle a claim during the
3450 neutral evaluation process, as well as any relevant conduct or
3451 statements made in negotiations concerning the offer to settle a

595-03920-11

2011408c3

3452 claim, is inadmissible to prove liability or absence of
3453 liability for the claim or its value, except as provided in
3454 subsection (14) ~~(13)~~.

3455 (10)~~(11)~~ Regardless of when noticed, any court proceeding
3456 related to the subject matter of the neutral evaluation shall be
3457 stayed pending completion of the neutral evaluation and for 5
3458 days after the filing of the neutral evaluator's report with the
3459 court.

3460 (11) If, based upon his or her professional training and
3461 credentials, a neutral evaluator is qualified to determine only
3462 disputes relating to causation or method of repair, the
3463 department shall allow the neutral evaluator to enlist the
3464 assistance of another professional from the neutral evaluators
3465 list not previously stricken, who, based upon his or her
3466 professional training and credentials, is able to provide an
3467 opinion as to other disputed issues. A professional who would be
3468 disqualified for any reason listed in subsection (7) must be
3469 disqualified. The neutral evaluator may also use the services of
3470 professional engineers and professional geologists who are not
3471 certified as neutral evaluators, as well as licensed building
3472 contractors, in order to ensure that all items in dispute are
3473 addressed and the neutral evaluation can be completed. Any
3474 professional engineer, professional geologist, or licensed
3475 building contractor retained may be disqualified for any of the
3476 reasons listed in subsection (7). The neutral evaluator may
3477 request the entity that performed the investigation pursuant to
3478 s. 627.7072 perform such additional and reasonable testing as
3479 deemed necessary in the professional opinion of the neutral
3480 evaluator.

595-03920-11

2011408c3

3481 (12) ~~At For matters that are not resolved by the parties at~~
3482 the conclusion of the neutral evaluation, the neutral evaluator
3483 shall prepare a report describing all matters that are the
3484 subject of the neutral evaluation, including whether, ~~stating~~
3485 ~~that~~ in his or her opinion, the sinkhole loss has been verified
3486 or eliminated within a reasonable degree of professional
3487 probability and, if verified, whether the sinkhole activity
3488 caused structural damage to the covered building, and if so, the
3489 need for and estimated costs of stabilizing the land and any
3490 covered ~~structures or~~ buildings and other appropriate
3491 remediation or necessary building ~~structural~~ repairs due to the
3492 sinkhole loss. The evaluator's report shall be sent to all
3493 parties ~~in attendance at the neutral evaluation~~ and to the
3494 department, within 14 days after completing the neutral
3495 evaluation conference.

3496 (13) The recommendation of the neutral evaluator is not
3497 binding on any party, and the parties retain access to the
3498 court. The neutral evaluator's written recommendation, oral
3499 testimony, and full report shall be admitted ~~is admissible~~ in
3500 any ~~subsequent~~ action, litigation, or proceeding relating to the
3501 claim or to the cause of action giving rise to the claim.
3502 However, oral or written statements or nonverbal conduct
3503 intended to make an assertion made by a party or neutral
3504 evaluator during the course of neutral evaluation, other than
3505 those statements or conduct expressly required to be admitted by
3506 this subsection, are confidential and may not be disclosed to a
3507 person other than a party to neutral evaluation or a party's
3508 counsel.

3509 (14) If the neutral evaluator ~~first~~ verifies the existence

595-03920-11

2011408c3

3510 of a sinkhole that caused structural damage and, ~~second,~~
3511 recommends the need for and estimates costs of stabilizing the
3512 land and any covered ~~structures or~~ buildings and other
3513 appropriate remediation or building structural repairs, which
3514 ~~costs~~ exceed the amount that the insurer estimates as necessary
3515 to stabilize and repair, and the insurer refuses to comply with
3516 the neutral evaluator's findings and recommendations ~~has offered~~
3517 ~~to pay the policyholder,~~ the insurer is liable to the
3518 policyholder for up to \$2,500 in attorney's fees for the
3519 attorney's participation in the neutral evaluation process. ~~For~~
3520 ~~purposes of this subsection, the term "offer to pay" means a~~
3521 ~~written offer signed by the insurer or its legal representative~~
3522 ~~and delivered to the policyholder within 10 days after the~~
3523 ~~insurer receives notice that a request for neutral evaluation~~
3524 ~~has been made under this section.~~

3525 (15) If the insurer timely agrees in writing to comply and
3526 timely complies with the recommendation of the neutral
3527 evaluator, but the policyholder declines to resolve the matter
3528 in accordance with the recommendation of the neutral evaluator
3529 pursuant to this section:

3530 (a) The insurer is not liable for extracontractual damages
3531 related to a claim for a sinkhole loss but only as related to
3532 the issues determined by the neutral evaluation process. This
3533 section does not affect or impair claims for extracontractual
3534 damages unrelated to the issues determined by the neutral
3535 evaluation process contained in this section; and

3536 (b) The actions of the insurer are not a confession of
3537 judgment or admission of liability, and the insurer is not
3538 liable for attorney's fees under s. 627.428 or other provisions

595-03920-11

2011408c3

3539 of the insurance code unless the policyholder obtains a judgment
3540 that is more favorable than the recommendation of the neutral
3541 evaluator.

3542 (16) If the insurer agrees to comply with the neutral
3543 evaluator's report, payments shall be made in accordance with
3544 the terms and conditions of the applicable insurance policy
3545 pursuant to s. 627.707(5).

3546 (17) Neutral evaluators are deemed to be agents of the
3547 department and have immunity from suit as provided in s. 44.107.

3548 (18) The department shall adopt rules of procedure for the
3549 neutral evaluation process.

3550 Section 29. Subsection (8) of section 627.711, Florida
3551 Statutes, is amended to read:

3552 627.711 Notice of premium discounts for hurricane loss
3553 mitigation; uniform mitigation verification inspection form.—

3554 (8) ~~At its expense,~~ The insurer may require that a any
3555 uniform mitigation verification form provided by a policyholder,
3556 a policyholder's agency, or an authorized mitigation inspector
3557 or inspection company be independently verified by an inspector,
3558 an inspection company, or an independent third-party quality
3559 assurance provider which possesses ~~does possess~~ a quality
3560 assurance program before ~~prior to~~ accepting the uniform
3561 mitigation verification form as valid.

3562 Section 30. Subsection (1) of section 627.712, Florida
3563 Statutes, is amended to read:

3564 627.712 Residential windstorm coverage required;
3565 availability of exclusions for windstorm or contents.—

3566 (1) An insurer issuing a residential property insurance
3567 policy must provide windstorm coverage. Except as provided in

595-03920-11

2011408c3

3568 paragraph (2)(c), this section does not apply ~~with respect~~ to
3569 risks that are eligible for wind-only coverage from Citizens
3570 Property Insurance Corporation under s. 627.351(6), and ~~with~~
3571 ~~respect to~~ risks that are not eligible for coverage from
3572 Citizens Property Insurance Corporation under s. 627.351(6)(a)3.
3573 or 5. A risk ineligible for ~~Citizens~~ coverage by the corporation
3574 under s. 627.351(6)(a)3. or 5. is exempt from ~~the requirements~~
3575 ~~of~~ this section only if the risk is located within the
3576 boundaries of the coastal ~~high-risk~~ account of the corporation.

3577 Section 31. Except as otherwise expressly provided in this
3578 act and except for this section, which shall take effect June 1,
3579 2011, this act shall take effect July 1, 2011.