By the Committee on Banking and Insurance; and Senator Holzendorf

311-1801-00

A bill to be entitled

An act relating to reinsurance; amending s. 215.555, F.S.; revising the definition of the term "covered policy" for purposes of coverage by the Florida Hurricane Catastrophe Fund; revising the method of determining reimbursement to insurers by the Fund; amending s. 624.610, F.S.; setting the conditions for the allowance of credit for reinsurance; providing definitions; providing for grounds for denial or revocation of an assuming insurer's accreditation; providing criteria for the disallowance of credit for reinsurance for a ceding insurer; providing for the payment of costs and expenses; providing conditions for the allowance or disallowance of credit for reinsurance for assuming insurers maintaining trust funds in qualified United States financial institutions; providing intent that there is no conflict with arbitration agreements; providing for security; providing for the inclusion of certain health maintenance organizations within the term "ceding insurer"; providing conditions for the disallowance of credit with respect to a ceding domestic insurer; providing conditions for credit for reinsurance in cases of insolvency; providing for rights against a reinsurer; providing prohibitions applying to authorized insurers, other than certain surplus lines insurance; providing procedures and information required for a summary statement of each treaty; providing for exemptions from requirement of summary statements; providing for waiver; providing for cancellation; providing that there is no credit when there is no transfer of risk; granting authority to the Department of Insurance for rulemaking; requiring compliance with certain standards; requiring termination of approval of certain reinsurers under certain circumstances; providing an effective date for the application of cessions; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) and subsection (4) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.--

(2) DEFINITIONS.--As used in this section:

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner's, mobile home owner's, farm owner's, condominium association, condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including any joint underwriting association or similar entity created pursuant to law. <u>Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association, created pursuant</u>

to s. 627.351(6), or from the Florida Windstorm Underwriting Association, created pursuant to s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and either such association. Each assumption agreement between either association and such authorized insurer must be approved by the Florida Department of Insurance prior to the effective date of the assumption, and the Department of Insurance must provide written notification to the board within 15 working days after such approval."Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer.

(4) REIMBURSEMENT CONTRACTS.--

(a) The board shall enter into a contract with each insurer writing covered policies in this state to provide to the insurer the reimbursement described in paragraphs ~~paragraph~~ (b) and (d), in exchange for the reimbursement premium paid into the fund under subsection (5). As a condition of doing business in this state, each such insurer shall enter into such a contract.

(b)1. The contract shall contain a promise by the board to reimburse the insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

2. The insurer must elect one of the percentage coverage levels specified in this paragraph and may, upon renewal of a reimbursement contract, elect a lower percentage coverage level if no revenue bonds issued under subsection (6)

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after a covered event are outstanding, or elect a higher percentage coverage level, regardless of whether or not revenue bonds are outstanding. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 must elect the 90-percent coverage level.

3. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources; however, recoveries from such other sources, taken together with reimbursements under the contract, may not exceed 100 percent of the insurer's losses from covered events. If such recoveries and reimbursements exceed 100 percent of the insurer's losses from covered events, and if there is no agreement between the insurer and the reinsurer to the contrary, any amount in excess of 100 percent of the insurer's losses shall be returned to the fund.

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to a limit of $11 billion for that contract year, unless the board determines that there is sufficient estimated claims-paying capacity to provide $11 billion of capacity for the current contract year and an additional $11 billion of capacity for subsequent contract years. Upon such determination being made, the estimated claims-paying capacity for the current contract year shall be determined by adding to the $11 billion limit one-half of the fund's estimated claims-paying capacity in excess of $22 billion.

2. The contract shall require the board to annually notify insurers of the fund's estimated borrowing capacity for the next contract year, the projected year-end balance of the fund, and the insurer's estimated share of total reimbursement premium to be paid to the fund. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected year-end fund balance and the estimated borrowing capacity for that contract year as reported under this paragraph. In May and October of each year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity and the projected year-end balance of the fund for the current contract year.

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as directed by the board. The contract shall require the insurer to report to the board no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the board to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the board to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

2. <u>In determining reimbursements pursuant to this subsection, the contract shall provide that</u> ~~If the board~~

~~determines that the projected year-end balance of the fund, together with the amount that the board determines that it is possible to raise through revenue bonds issued under subsection (6) and through other borrowing and financing arrangements under paragraph (7)(b), are insufficient to pay reimbursement to all insurers at the level promised in the contract,~~the board shall:

a. First reimburse insurers writing covered policies, which insurers are in full compliance with this section and have petitioned the Department of Insurance and qualified as limited apportionment companies under s. 627.351(2)(b)3. The amount of such reimbursement shall be the lesser of $10 million or an amount equal to 10 times the insurer's reimbursement premium for the current year. The amount of reimbursement paid under this sub-subparagraph may not exceed the full amount of reimbursement promised in the reimbursement contract. This sub-subparagraph does not apply with respect to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds $2 billion. Only one member of any insurer group may receive reimbursement under this sub-subparagraph.

b. Next pay to each insurer such insurer's projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year; provided, entities created pursuant to s. 627.351 shall be further reimbursed in accordance with sub-subparagraph c.

c. Thereafter, establish, based on reimbursable losses, the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient to reimburse entities created pursuant to s. 627.351 for losses exceeding the amounts payable pursuant to sub-subparagraph b. for the current contract year.

(e)1. Except as provided in subparagraphs 2. and 3., the contract shall provide that if an insurer demonstrates to the board that it is likely to qualify for reimbursement under the contract, and demonstrates to the board that the immediate receipt of moneys from the board is likely to prevent the insurer from becoming insolvent, the board shall advance the insurer, at market interest rates, the amounts necessary to maintain the solvency of the insurer, up to 50 percent of the board's estimate of the reimbursement due the insurer. The insurer's reimbursement shall be reduced by an amount equal to the amount of the advance and interest thereon.

2. With respect only to an entity created under s. 627.351, the contract shall also provide that the board may, upon application by such entity, advance to such entity, at market interest rates, up to 90 percent of the lesser of:

a. The board's estimate of the amount of reimbursement due to such entity; or

b. The entity's share of the actual reimbursement premium paid for that contract year, multiplied by the currently available liquid assets of the fund. In order for the entity to qualify for an advance under this subparagraph, the entity must demonstrate to the board that the advance is essential to allow the entity to pay claims for a covered event and the board must determine that the fund's assets are sufficient and are sufficiently liquid to allow the board to make an advance to the entity and still fulfill the board's reimbursement obligations to other insurers. The entity's final reimbursement for any contract year in which an advance has been made under this subparagraph must be reduced by an amount equal to the amount of the advance and any interest on such advance. In order to determine what amounts, if any, are due the entity, the board may require the entity to report its exposure and its losses at any time to determine retention levels and reimbursements payable.

3. The contract shall also provide specifically and solely with respect to any limited apportionment company under s. 627.351(2)(b)3. that the board may, upon application by such company, advance to such company the amount of the estimated reimbursement payable to such company as calculated pursuant to paragraph (d), at market interest rates, if the board determines that the fund's assets are sufficient and are sufficiently liquid to permit the board to make an advance to such company and at the same time fulfill its reimbursement obligations to the insurers that are participants in the fund. Such company's final reimbursement for any contract year in which an advance pursuant to this subparagraph has been made shall be reduced by an amount equal to the amount of the advance and interest thereon. In order to determine what amounts, if any, are due to such company, the board may require such company to report its exposure and its losses at such times as may be required to determine retention levels and loss reimbursements payable.

(f) In order to ensure that insurers have properly reported the insured values on which the reimbursement premium is based and to ensure that insurers have properly reported the losses for which reimbursements have been made, the board shall inspect, examine, and audit the records of each insurer's covered policies at such times as the board deems appropriate and in such manner as is consistent with generally accepted auditing standards. The costs of the audits shall be borne by the board. However, in order to remove any incentive for an insurer to delay preparations for an audit, the board shall be reimbursed by the insurer for any audit expenses incurred in addition to the usual and customary costs of the audit, which additional expenses were incurred as a result of an insurer's failure, despite proper notice, to be prepared for the audit or as a result of an insurer's failure to provide requested information while the audit is in progress. If the board finds any insurer's records or other necessary information to be inadequate or inadequately posted, recorded, or maintained, the board may employ experts to reconstruct, rewrite, record, post, or maintain such records or information, at the expense of the insurer being audited, if such insurer has failed to maintain, complete, or correct such records or deficiencies after the board has given the insurer notice and a reasonable opportunity to do so. Any information contained in an audit report, which information is described in s. 215.557, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, as provided in s. 215.557. Nothing in this paragraph expands the exemption in s. 215.557.

(g) The contract shall provide that in the event of the insolvency of an insurer, the fund shall pay directly to the Florida Insurance Guaranty Association for the benefit of Florida policyholders of the insurer the net amount of all reimbursement moneys owed to the insurer. As used in this paragraph, the term "net amount of all reimbursement moneys" means that amount which remains after reimbursement for:

1. Preliminary or duplicate payments owed to private reinsurers or other inuring reinsurance payments to private

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reinsurers that satisfy statutory or contractual obligations of the insolvent insurer attributable to covered events to such reinsurers; or

2. Funds owed to a bank or other financial institution to cover obligations of the insolvent insurer under a credit agreement that assists the insolvent insurer in paying claims attributable to covered events.

Such private reinsurers, banks, or other financial institutions shall be reimbursed or otherwise paid prior to payment to the Florida Insurance Guaranty Association, notwithstanding any law to the contrary. The guaranty association shall pay all claims up to the maximum amount permitted by chapter 631; thereafter, any remaining moneys shall be paid pro rata to claims not fully satisfied. This paragraph does not apply to a joint underwriting association, risk apportionment plan, or other entity created under s. 627.351.

Section 2. Section 624.610, Florida Statutes, is amended to read:

(Substantial rewording of section. See
s. 624.610, F.S., for present text.)

624.610 Reinsurance.--

(1) The purpose of this section is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public. It is the intent of the Legislature to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the Legislature requires that upon the insolvency of a non-United States insurer or reinsurer which provides security to fund its

United States obligations in accordance with this section, such security shall be maintained in the United States and claims shall be filed with and valued by the State Insurance Commissioner with regulatory oversight, and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. ss. 1011-1012.

(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c). Credit must be allowed under paragraph (3)(a) or paragraph (3)(b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

(3)(a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is authorized to transact insurance or reinsurance in this state.

(b)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. An accredited reinsurer is one that:

a. Files with the department evidence of its submission to this state's jurisdiction;

b. Submits to this state's authority to examine its books and records;

c. Is licensed or authorized to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through, licensed, or authorized to transact insurance or reinsurance in at least one state;

d. Files annually with the department a copy of its annual statement filed with the insurance department of its state of domicile any quarterly statements if required by its state of domicile or such quarterly statements if specifically requested by the department, and a copy of its most recent audited financial statement; and

(I) Maintains a surplus as regards policyholders in an amount not less than $20 million and whose accreditation has not been denied by the department within 90 days after its submission; or

(II) Maintains a surplus as regards policyholders in an amount not less than $20 million and whose accreditation has been approved by the department.

2. The department may deny or revoke an assuming insurer's accreditation if the assuming insurer does not submit the required documentation pursuant to subparagraph 1., if the assuming insurer fails to meet all of the standards required of an accredited reinsurer, or if the assuming insurer's accreditation would be hazardous to the policyholders of this state. In determining whether to deny or revoke accreditation, the department may consider the qualifications of the assuming insurer with respect to all the following subjects:

a. Its financial stability;

b. The lawfulness and quality of its investments;

c. The competency, character, and integrity of its management;

d. The competency, character, and integrity of persons who own or have a controlling interest in the assuming insurer; and

e. Whether claims under its contracts are promptly and fairly adjusted and are promptly and fairly paid in accordance with the law and the terms of the contracts.

3. Credit must not be allowed a ceding insurer if the assuming insurer's accreditation has been revoked by the department after notice and the opportunity for a hearing.

4. The actual costs and expenses incurred by the department to review a reinsurer's request for accreditation and subsequent reviews must be charged to and collected from the requesting reinsurer. If the reinsurer fails to pay the actual costs and expenses promptly when due, the department may refuse to accredit the reinsurer or may revoke the reinsurer's accreditation.

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (5)(b), for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the department to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the department information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers. The assuming insurer shall submit to examination of its books and records by the department and bear the expense of examination.

2.a. Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(I) The commissioner of the state in which the trust is domiciled; or

(II) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

b. The form of the trust and any trust amendments must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner.

c. The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the commissioner in writing the balance of the trust and list the trust's investments at the preceding year end, and shall certify that the trust will not expire prior to the following December 31.

3. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million. The funds in the trust and trusteed surplus consist of assets of a quality substantially similar to that required in part II of chapter 625.

b.(I) In the case of a group including incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust consists of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which $100 million must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(II) The incorporated members of the group must not be engaged in any business other than underwriting of a member of the group, and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(d) Credit must be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), or paragraph (c), but only as to the insurance of risks located in jurisdictions in which the reinsurance is required to be purchased by a particular entity by applicable law or regulation of that jurisdiction.

(e) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state pursuant to paragraph (a) or paragraph (b), the credit permitted by paragraph (c) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1.a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the commissioner, pursuant to s. 48.151, or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

2. This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(f) If the assuming insurer does not meet the requirements of paragraph (a) or paragraph (b), the credit permitted by paragraph (c) is not allowed unless the assuming insurer agrees in the trust agreements, in substance, to the following conditions:

1. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by paragraph (c), or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a United States court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

2. The assets must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled which are applicable to the liquidation of domestic insurance companies.

3. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United

States ceding insurers of the grantor of the trust, the assets or part thereof must be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

4. The grantor shall waive any right otherwise available to it under United States law which is inconsistent with this provision.

(4) An asset allowed or a deduction from liability taken for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2) and (3) is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The deduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (5)(b). This security may be in the form of:

(a) Cash in United States dollars;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets pursuant to part II of chapter 625;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (5)(a), effective no later than December 31 of the year for which the filing is made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(d) Any other form of security acceptable to the department.

(5)(a) For purposes of paragraph (4)(c) regarding letters of credit, a "qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by United States or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the department or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the department.

(b) For purposes of those provisions of this law which specify institutions that are eligible to act as a fiduciary of a trust, a "qualified United States financial institution" means an institution that is a member of the Federal Reserve System or that has been determined by the department to meet the following criteria:

1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

2. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(6) For the purposes of this section only, the term "ceding insurer" includes any health maintenance organization operating under a certificate of authority issued under part I of chapter 641.

(7) After notice and an opportunity for a hearing, the department may disallow any credit that it finds would be contrary to the proper interests of the policyholders or stockholders of a ceding domestic insurer.

(8) Credit must be allowed to any ceding insurer for reinsurance otherwise complying with this section only when the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer. Such credit must be allowed to the ceding insurer for reinsurance otherwise complying with this section only when the reinsurance agreement provides that payments by the assuming insurer will be made directly to the ceding insurer or its receiver, except when:

(a) The reinsurance contract specifically provides payment to the named insured, assignee, or named beneficiary of the policy issued by the ceding insurer in the event of the insolvency of the ceding insurer; or

(b) The assuming insurer, with the consent of the named insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer in substitution for the obligations of the ceding insurer to the named insured.

<u>(9) No person, other than the ceding insurer, has any rights against the reinsurer which are not specifically set forth in the contract of reinsurance or in a specific written, signed agreement between the reinsurer and the person.</u>

<u>(10) An authorized insurer may not knowingly accept as assuming reinsurer any risk covering subject of insurance which is resident, located, or to be performed in this state and which is written directly by any insurer not then authorized to transact such insurance in this state, other than as to surplus lines insurance lawfully written under part VIII of chapter 626.</u>

<u>(11)(a) Any domestic or commercially domiciled insurer ceding directly written risks of loss under this section shall, within 30 days after receipt of a cover note or similar confirmation of coverage, or, without exception, no later than 6 months after the effective date of the reinsurance treaty, file with the department one copy of a summary statement containing the following information about each treaty:</u>

<u>1. The contract period;</u>

<u>2. The nature of the reinsured's business;</u>

<u>3. An indication as to whether the treaty is proportional, nonproportional, coinsurance, modified coinsurance, or indemnity, as applicable;</u>

<u>4. The ceding company's loss retention per risk;</u>

<u>5. The reinsured limits;</u>

<u>6. Any special contract restrictions;</u>

<u>7. A schedule of reinsurers assuming the risks of loss;</u>

<u>8. An indication as to whether payments to the assuming insurer are based on written premiums or earned premiums;</u>

9. Identification of any intermediary or broker used in obtaining the reinsurance and the commission paid to such intermediary or broker if known; and

10. Ceding commissions and allowances.

(b) The summary statement must be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the Insurance Commissioner may require the filing of any supporting information relating to the ceding of such risks as she or he deems necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the department that the relevant reinsurance treaty or treaties comply with the accounting requirements contained in any rule adopted by the department under subsection (14). If such certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate must state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty.

(c) This subsection applies to cessions of directly written risk or loss. This subsection does not apply to contracts of facultative reinsurance or to any ceding insurer with surplus as to policyholders that exceeds $100 million as of the immediately preceding December 31. Additionally, any ceding insurer otherwise subject to this section with less than $500,000 in direct premiums written in this state during the preceding calendar year or with less than 1,000 policyholders at the end of the preceding calendar year is exempt from the requirements of this subsection. However, any ceding insurer otherwise subject to this section with more than $250,000 in direct premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection.

(d) An authorized insurer not otherwise exempt from the provisions of this subsection shall provide the information required by this subsection with underlying and supporting documentation upon written request of the department.

(e) The department may, upon a showing of good cause, waive the requirements of this subsection.

(12) If the department finds that a reinsurance agreement creates a substantial risk of insolvency to either insurer entering into the reinsurance agreement, the department may by order require a cancellation of the reinsurance agreement.

(13) No credit shall be allowed for reinsurance with regard to which the reinsurance agreement does not create a meaningful transfer of risk of loss to the reinsurer.

(14) The department may adopt rules implementing the provisions of this section. Rules are authorized to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public. These rules shall be in substantial compliance with:

(a) The National Association of Insurance Commissioners model regulations relating to credit for reinsurance;

(b) Version 1999 of the National Association of Insurance Commissioners Accounting Practices and Procedures Manual; and

(c) The National Association of Insurance Commissioners model regulation for Credit for Reinsurance and Life and Health Reinsurance Agreements.

The department may further adopt rules to provide for transition from existing requirements for the approval of reinsurers to the accreditation of reinsurers pursuant to this section.

(15) Any reinsurer approved pursuant to s. 624.610(3)(a)2., as such provision existed prior to July 1, 2000, which fails to obtain accreditation pursuant to this section prior to December 30, 2003, shall have its approval terminated by operation of law on that date.

(16) This act shall apply to all cessions on or after January 1, 2001, under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 2001.

Section 3. This act shall take effect June 1, 2000.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2304

The committee substitute:

Amends s. 215.555, F.S., related to the Florida Hurricane Catastrophe Fund to: (1) revise the provision that limits each insurer's maximum recovery to its proportionate share of Fund premiums for that year, multiplied by the Fund's claims-paying capacity, by striking the provision that applies this limitation only if the Fund determines that it will not be able to raise sufficient funds to pay all insurers in full; and (2) amend the definition of "covered policy" to clarify that the Fund may provide coverage to insurers assuming liabilities for policies in the Florida Residential Property and Casualty Joint Underwriting Association or the Florida Windstorm Underwriting Association.

Changes the effective date of the bill from July 1, 2000, to June 1, 2000.