

By Senator Geller

31-274-04

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A bill to be entitled
An act relating to insurance rate standards;
amending s. 627.062, F.S.; deleting a provision
that allows insurers to require arbitration in
rate-filing matters; amending s. 627.351, F.S.,
relating to windstorm risk apportionment;
conforming a cross-reference; providing an
effective date.

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

Section 1. Subsection (6) of section 627.062, Florida
Statutes, is amended to read:

627.062 Rate standards.--

~~(6)(a) After any action with respect to a rate filing
that constitutes agency action for purposes of the
Administrative Procedure Act, except for a rate filing for
medical malpractice, an insurer may, in lieu of demanding a
hearing under s. 120.57, require arbitration of the rate
filing. Arbitration shall be conducted by a board of
arbitrators consisting of an arbitrator selected by the
office, an arbitrator selected by the insurer, and an
arbitrator selected jointly by the other two arbitrators. Each
arbitrator must be certified by the American Arbitration
Association. A decision is valid only upon the affirmative
vote of at least two of the arbitrators. No arbitrator may be
an employee of any insurance regulator or regulatory body or
of any insurer, regardless of whether or not the employing
insurer does business in this state. The office and the
insurer must treat the decision of the arbitrators as the~~

1 ~~final approval of a rate filing. Costs of arbitration shall be~~
2 ~~paid by the insurer.~~

3 ~~(b) Arbitration under this subsection shall be~~
4 ~~conducted pursuant to the procedures specified in ss.~~
5 ~~682.06-682.10. Either party may apply to the circuit court to~~
6 ~~vacate or modify the decision pursuant to s. 682.13 or s.~~
7 ~~682.14. The commission shall adopt rules for arbitration under~~
8 ~~this subsection, which rules may not be inconsistent with the~~
9 ~~arbitration rules of the American Arbitration Association as~~
10 ~~of January 1, 1996.~~

11 ~~(c) Upon initiation of the arbitration process, the~~
12 ~~insurer waives all rights to challenge the action of the~~
13 ~~office under the Administrative Procedure Act or any other~~
14 ~~provision of law; however, such rights are restored to the~~
15 ~~insurer if the arbitrators fail to render a decision within 90~~
16 ~~days after initiation of the arbitration process.~~

17 Section 2. Paragraph (b) of subsection (2) of section
18 627.351, Florida Statutes, is amended to read:

19 627.351 Insurance risk apportionment plans.--

20 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

21 (b) The department shall require all insurers holding
22 a certificate of authority to transact property insurance on a
23 direct basis in this state, other than joint underwriting
24 associations and other entities formed pursuant to this
25 section, to provide windstorm coverage to applicants from
26 areas determined to be eligible pursuant to paragraph (c) who
27 in good faith are entitled to, but are unable to procure, such
28 coverage through ordinary means; or it shall adopt a
29 reasonable plan or plans for the equitable apportionment or
30 sharing among such insurers of windstorm coverage, which may
31 include formation of an association for this purpose. As used

1 in this subsection, the term "property insurance" means
2 insurance on real or personal property, as defined in s.
3 624.604, including insurance for fire, industrial fire, allied
4 lines, farmowners multiperil, homeowners' multiperil,
5 commercial multiperil, and mobile homes, and including
6 liability coverages on all such insurance, but excluding
7 inland marine as defined in s. 624.607(3) and excluding
8 vehicle insurance as defined in s. 624.605(1)(a) other than
9 insurance on mobile homes used as permanent dwellings. The
10 department shall adopt rules that provide a formula for the
11 recovery and repayment of any deferred assessments.

12 1. For the purpose of this section, properties
13 eligible for such windstorm coverage are defined as dwellings,
14 buildings, and other structures, including mobile homes which
15 are used as dwellings and which are tied down in compliance
16 with mobile home tie-down requirements prescribed by the
17 Department of Highway Safety and Motor Vehicles pursuant to s.
18 320.8325, and the contents of all such properties. An
19 applicant or policyholder is eligible for coverage only if an
20 offer of coverage cannot be obtained by or for the applicant
21 or policyholder from an admitted insurer at approved rates.

22 2.a.(I) All insurers required to be members of such
23 association shall participate in its writings, expenses, and
24 losses. Surplus of the association shall be retained for the
25 payment of claims and shall not be distributed to the member
26 insurers. Such participation by member insurers shall be in
27 the proportion that the net direct premiums of each member
28 insurer written for property insurance in this state during
29 the preceding calendar year bear to the aggregate net direct
30 premiums for property insurance of all member insurers, as
31 reduced by any credits for voluntary writings, in this state

1 during the preceding calendar year. For the purposes of this
2 subsection, the term "net direct premiums" means direct
3 written premiums for property insurance, reduced by premium
4 for liability coverage and for the following if included in
5 allied lines: rain and hail on growing crops; livestock;
6 association direct premiums booked; National Flood Insurance
7 Program direct premiums; and similar deductions specifically
8 authorized by the plan of operation and approved by the
9 department. A member's participation shall begin on the first
10 day of the calendar year following the year in which it is
11 issued a certificate of authority to transact property
12 insurance in the state and shall terminate 1 year after the
13 end of the calendar year during which it no longer holds a
14 certificate of authority to transact property insurance in the
15 state. The commissioner, after review of annual statements,
16 other reports, and any other statistics that the commissioner
17 deems necessary, shall certify to the association the
18 aggregate direct premiums written for property insurance in
19 this state by all member insurers.

20 (II) Effective July 1, 2002, the association shall
21 operate subject to the supervision and approval of a board of
22 governors who are the same individuals that have been
23 appointed by the Treasurer to serve on the board of governors
24 of the Citizens Property Insurance Corporation.

25 (III) The plan of operation shall provide a formula
26 whereby a company voluntarily providing windstorm coverage in
27 affected areas will be relieved wholly or partially from
28 apportionment of a regular assessment pursuant to
29 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

30 (IV) A company which is a member of a group of
31 companies under common management may elect to have its

1 credits applied on a group basis, and any company or group may
2 elect to have its credits applied to any other company or
3 group.

4 (V) There shall be no credits or relief from
5 apportionment to a company for emergency assessments collected
6 from its policyholders under sub-sub-subparagraph d.(III).

7 (VI) The plan of operation may also provide for the
8 award of credits, for a period not to exceed 3 years, from a
9 regular assessment pursuant to sub-sub-subparagraph d.(I) or
10 sub-sub-subparagraph d.(II) as an incentive for taking
11 policies out of the Residential Property and Casualty Joint
12 Underwriting Association. In order to qualify for the
13 exemption under this sub-sub-subparagraph, the take-out plan
14 must provide that at least 40 percent of the policies removed
15 from the Residential Property and Casualty Joint Underwriting
16 Association cover risks located in Dade, Broward, and Palm
17 Beach Counties or at least 30 percent of the policies so
18 removed cover risks located in Dade, Broward, and Palm Beach
19 Counties and an additional 50 percent of the policies so
20 removed cover risks located in other coastal counties, and
21 must also provide that no more than 15 percent of the policies
22 so removed may exclude windstorm coverage. With the approval
23 of the department, the association may waive these geographic
24 criteria for a take-out plan that removes at least the lesser
25 of 100,000 Residential Property and Casualty Joint
26 Underwriting Association policies or 15 percent of the total
27 number of Residential Property and Casualty Joint Underwriting
28 Association policies, provided the governing board of the
29 Residential Property and Casualty Joint Underwriting
30 Association certifies that the take-out plan will materially
31 reduce the Residential Property and Casualty Joint

1 Underwriting Association's 100-year probable maximum loss from
2 hurricanes. With the approval of the department, the board
3 may extend such credits for an additional year if the insurer
4 guarantees an additional year of renewability for all policies
5 removed from the Residential Property and Casualty Joint
6 Underwriting Association, or for 2 additional years if the
7 insurer guarantees 2 additional years of renewability for all
8 policies removed from the Residential Property and Casualty
9 Joint Underwriting Association.

10 b. Assessments to pay deficits in the association
11 under this subparagraph shall be included as an appropriate
12 factor in the making of rates as provided in s. 627.3512.

13 c. The Legislature finds that the potential for
14 unlimited deficit assessments under this subparagraph may
15 induce insurers to attempt to reduce their writings in the
16 voluntary market, and that such actions would worsen the
17 availability problems that the association was created to
18 remedy. It is the intent of the Legislature that insurers
19 remain fully responsible for paying regular assessments and
20 collecting emergency assessments for any deficits of the
21 association; however, it is also the intent of the Legislature
22 to provide a means by which assessment liabilities may be
23 amortized over a period of years.

24 d.(I) When the deficit incurred in a particular
25 calendar year is 10 percent or less of the aggregate statewide
26 direct written premium for property insurance for the prior
27 calendar year for all member insurers, the association shall
28 levy an assessment on member insurers in an amount equal to
29 the deficit.

30 (II) When the deficit incurred in a particular
31 calendar year exceeds 10 percent of the aggregate statewide

1 direct written premium for property insurance for the prior
2 calendar year for all member insurers, the association shall
3 levy an assessment on member insurers in an amount equal to
4 the greater of 10 percent of the deficit or 10 percent of the
5 aggregate statewide direct written premium for property
6 insurance for the prior calendar year for member insurers. Any
7 remaining deficit shall be recovered through emergency
8 assessments under sub-sub-subparagraph (III).

9 (III) Upon a determination by the board of directors
10 that a deficit exceeds the amount that will be recovered
11 through regular assessments on member insurers, pursuant to
12 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
13 board shall levy, after verification by the department,
14 emergency assessments to be collected by member insurers and
15 by underwriting associations created pursuant to this section
16 which write property insurance, upon issuance or renewal of
17 property insurance policies other than National Flood
18 Insurance policies in the year or years following levy of the
19 regular assessments. The amount of the emergency assessment
20 collected in a particular year shall be a uniform percentage
21 of that year's direct written premium for property insurance
22 for all member insurers and underwriting associations,
23 excluding National Flood Insurance policy premiums, as
24 annually determined by the board and verified by the
25 department. The department shall verify the arithmetic
26 calculations involved in the board's determination within 30
27 days after receipt of the information on which the
28 determination was based. Notwithstanding any other provision
29 of law, each member insurer and each underwriting association
30 created pursuant to this section shall collect emergency
31 assessments from its policyholders without such obligation

1 being affected by any credit, limitation, exemption, or
2 deferment. The emergency assessments so collected shall be
3 transferred directly to the association on a periodic basis as
4 determined by the association. The aggregate amount of
5 emergency assessments levied under this sub-sub-subparagraph
6 in any calendar year may not exceed the greater of 10 percent
7 of the amount needed to cover the original deficit, plus
8 interest, fees, commissions, required reserves, and other
9 costs associated with financing of the original deficit, or 10
10 percent of the aggregate statewide direct written premium for
11 property insurance written by member insurers and underwriting
12 associations for the prior year, plus interest, fees,
13 commissions, required reserves, and other costs associated
14 with financing the original deficit. The board may pledge the
15 proceeds of the emergency assessments under this
16 sub-sub-subparagraph as the source of revenue for bonds, to
17 retire any other debt incurred as a result of the deficit or
18 events giving rise to the deficit, or in any other way that
19 the board determines will efficiently recover the deficit. The
20 emergency assessments under this sub-sub-subparagraph shall
21 continue as long as any bonds issued or other indebtedness
22 incurred with respect to a deficit for which the assessment
23 was imposed remain outstanding, unless adequate provision has
24 been made for the payment of such bonds or other indebtedness
25 pursuant to the document governing such bonds or other
26 indebtedness. Emergency assessments collected under this
27 sub-sub-subparagraph are not part of an insurer's rates, are
28 not premium, and are not subject to premium tax, fees, or
29 commissions; however, failure to pay the emergency assessment
30 shall be treated as failure to pay premium.

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1 (IV) Each member insurer's share of the total regular
2 assessments under sub-sub-subparagraph (I) or
3 sub-sub-subparagraph (II) shall be in the proportion that the
4 insurer's net direct premium for property insurance in this
5 state, for the year preceding the assessment bears to the
6 aggregate statewide net direct premium for property insurance
7 of all member insurers, as reduced by any credits for
8 voluntary writings for that year.

9 (V) If regular deficit assessments are made under
10 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
11 the Residential Property and Casualty Joint Underwriting
12 Association under sub-subparagraph (6)(b)3.a. or
13 sub-subparagraph (6)(b)3.b., the association shall levy upon
14 the association's policyholders, as part of its next rate
15 filing, or by a separate rate filing solely for this purpose,
16 a market equalization surcharge in a percentage equal to the
17 total amount of such regular assessments divided by the
18 aggregate statewide direct written premium for property
19 insurance for member insurers for the prior calendar year.
20 Market equalization surcharges under this sub-sub-subparagraph
21 are not considered premium and are not subject to commissions,
22 fees, or premium taxes; however, failure to pay a market
23 equalization surcharge shall be treated as failure to pay
24 premium.

25 e. The governing body of any unit of local government,
26 any residents of which are insured under the plan, may issue
27 bonds as defined in s. 125.013 or s. 166.101 to fund an
28 assistance program, in conjunction with the association, for
29 the purpose of defraying deficits of the association. In order
30 to avoid needless and indiscriminate proliferation,
31 duplication, and fragmentation of such assistance programs,

1 any unit of local government, any residents of which are
2 insured by the association, may provide for the payment of
3 losses, regardless of whether or not the losses occurred
4 within or outside of the territorial jurisdiction of the local
5 government. Revenue bonds may not be issued until validated
6 pursuant to chapter 75, unless a state of emergency is
7 declared by executive order or proclamation of the Governor
8 pursuant to s. 252.36 making such findings as are necessary to
9 determine that it is in the best interests of, and necessary
10 for, the protection of the public health, safety, and general
11 welfare of residents of this state and the protection and
12 preservation of the economic stability of insurers operating
13 in this state, and declaring it an essential public purpose to
14 permit certain municipalities or counties to issue bonds as
15 will provide relief to claimants and policyholders of the
16 association and insurers responsible for apportionment of plan
17 losses. Any such unit of local government may enter into such
18 contracts with the association and with any other entity
19 created pursuant to this subsection as are necessary to carry
20 out this paragraph. Any bonds issued under this
21 sub-subparagraph shall be payable from and secured by moneys
22 received by the association from assessments under this
23 subparagraph, and assigned and pledged to or on behalf of the
24 unit of local government for the benefit of the holders of
25 such bonds. The funds, credit, property, and taxing power of
26 the state or of the unit of local government shall not be
27 pledged for the payment of such bonds. If any of the bonds
28 remain unsold 60 days after issuance, the department shall
29 require all insurers subject to assessment to purchase the
30 bonds, which shall be treated as admitted assets; each insurer
31 shall be required to purchase that percentage of the unsold

1 portion of the bond issue that equals the insurer's relative
2 share of assessment liability under this subsection. An
3 insurer shall not be required to purchase the bonds to the
4 extent that the department determines that the purchase would
5 endanger or impair the solvency of the insurer. The authority
6 granted by this sub-subparagraph is additional to any bonding
7 authority granted by subparagraph 6.

8 3. The plan shall also provide that any member with a
9 surplus as to policyholders of \$20 million or less writing 25
10 percent or more of its total countrywide property insurance
11 premiums in this state may petition the department, within the
12 first 90 days of each calendar year, to qualify as a limited
13 apportionment company. The apportionment of such a member
14 company in any calendar year for which it is qualified shall
15 not exceed its gross participation, which shall not be
16 affected by the formula for voluntary writings. In no event
17 shall a limited apportionment company be required to
18 participate in any apportionment of losses pursuant to
19 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
20 in the aggregate which exceeds \$50 million after payment of
21 available plan funds in any calendar year. However, a limited
22 apportionment company shall collect from its policyholders any
23 emergency assessment imposed under sub-sub-subparagraph
24 2.d.(III). The plan shall provide that, if the department
25 determines that any regular assessment will result in an
26 impairment of the surplus of a limited apportionment company,
27 the department may direct that all or part of such assessment
28 be deferred. However, there shall be no limitation or
29 deferment of an emergency assessment to be collected from
30 policyholders under sub-sub-subparagraph 2.d.(III).

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1 4. The plan shall provide for the deferment, in whole
2 or in part, of a regular assessment of a member insurer under
3 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II),
4 but not for an emergency assessment collected from
5 policyholders under sub-sub-subparagraph 2.d.(III), if, in the
6 opinion of the commissioner, payment of such regular
7 assessment would endanger or impair the solvency of the member
8 insurer. In the event a regular assessment against a member
9 insurer is deferred in whole or in part, the amount by which
10 such assessment is deferred may be assessed against the other
11 member insurers in a manner consistent with the basis for
12 assessments set forth in sub-sub-subparagraph 2.d.(I) or
13 sub-sub-subparagraph 2.d.(II).

14 5.a. The plan of operation may include deductibles and
15 rules for classification of risks and rate modifications
16 consistent with the objective of providing and maintaining
17 funds sufficient to pay catastrophe losses.

18 b. ~~The association may require arbitration of a rate~~
19 ~~filing under s. 627.062(6).~~ It is the intent of the
20 Legislature that the rates for coverage provided by the
21 association be actuarially sound and not competitive with
22 approved rates charged in the admitted voluntary market such
23 that the association functions as a residual market mechanism
24 to provide insurance only when the insurance cannot be
25 procured in the voluntary market. The plan of operation shall
26 provide a mechanism to assure that, beginning no later than
27 January 1, 1999, the rates charged by the association for each
28 line of business are reflective of approved rates in the
29 voluntary market for hurricane coverage for each line of
30 business in the various areas eligible for association
31 coverage.

1 c. The association shall provide for windstorm
2 coverage on residential properties in limits up to \$10 million
3 for commercial lines residential risks and up to \$1 million
4 for personal lines residential risks. If coverage with the
5 association is sought for a residential risk valued in excess
6 of these limits, coverage shall be available to the risk up to
7 the replacement cost or actual cash value of the property, at
8 the option of the insured, if coverage for the risk cannot be
9 located in the authorized market. The association must accept
10 a commercial lines residential risk with limits above \$10
11 million or a personal lines residential risk with limits above
12 \$1 million if coverage is not available in the authorized
13 market. The association may write coverage above the limits
14 specified in this subparagraph with or without facultative or
15 other reinsurance coverage, as the association determines
16 appropriate.

17 d. The plan of operation must provide objective
18 criteria and procedures, approved by the department, to be
19 uniformly applied for all applicants in determining whether an
20 individual risk is so hazardous as to be uninsurable. In
21 making this determination and in establishing the criteria and
22 procedures, the following shall be considered:

23 (I) Whether the likelihood of a loss for the
24 individual risk is substantially higher than for other risks
25 of the same class; and

26 (II) Whether the uncertainty associated with the
27 individual risk is such that an appropriate premium cannot be
28 determined.

29

30 The acceptance or rejection of a risk by the association
31 pursuant to such criteria and procedures must be construed as

1 the private placement of insurance, and the provisions of
2 chapter 120 do not apply.

3 e. If the risk accepts an offer of coverage through
4 the market assistance program or through a mechanism
5 established by the association, either before the policy is
6 issued by the association or during the first 30 days of
7 coverage by the association, and the producing agent who
8 submitted the application to the association is not currently
9 appointed by the insurer, the insurer shall:

10 (I) Pay to the producing agent of record of the
11 policy, for the first year, an amount that is the greater of
12 the insurer's usual and customary commission for the type of
13 policy written or a fee equal to the usual and customary
14 commission of the association; or

15 (II) Offer to allow the producing agent of record of
16 the policy to continue servicing the policy for a period of
17 not less than 1 year and offer to pay the agent the greater of
18 the insurer's or the association's usual and customary
19 commission for the type of policy written.

20
21 If the producing agent is unwilling or unable to accept
22 appointment, the new insurer shall pay the agent in accordance
23 with sub-sub-subparagraph (I). Subject to the provisions of s.
24 627.3517, the policies issued by the association must provide
25 that if the association obtains an offer from an authorized
26 insurer to cover the risk at its approved rates under either a
27 standard policy including wind coverage or, if consistent with
28 the insurer's underwriting rules as filed with the department,
29 a basic policy including wind coverage, the risk is no longer
30 eligible for coverage through the association. Upon
31 termination of eligibility, the association shall provide

1 written notice to the policyholder and agent of record stating
2 that the association policy must be canceled as of 60 days
3 after the date of the notice because of the offer of coverage
4 from an authorized insurer. Other provisions of the insurance
5 code relating to cancellation and notice of cancellation do
6 not apply to actions under this sub-subparagraph.

7 f. When the association enters into a contractual
8 agreement for a take-out plan, the producing agent of record
9 of the association policy is entitled to retain any unearned
10 commission on the policy, and the insurer shall:

11 (I) Pay to the producing agent of record of the
12 association policy, for the first year, an amount that is the
13 greater of the insurer's usual and customary commission for
14 the type of policy written or a fee equal to the usual and
15 customary commission of the association; or

16 (II) Offer to allow the producing agent of record of
17 the association policy to continue servicing the policy for a
18 period of not less than 1 year and offer to pay the agent the
19 greater of the insurer's or the association's usual and
20 customary commission for the type of policy written.

21
22 If the producing agent is unwilling or unable to accept
23 appointment, the new insurer shall pay the agent in accordance
24 with sub-sub-subparagraph (I).

25 6.a. The plan of operation may authorize the formation
26 of a private nonprofit corporation, a private nonprofit
27 unincorporated association, a partnership, a trust, a limited
28 liability company, or a nonprofit mutual company which may be
29 empowered, among other things, to borrow money by issuing
30 bonds or by incurring other indebtedness and to accumulate
31 reserves or funds to be used for the payment of insured

1 catastrophe losses. The plan may authorize all actions
2 necessary to facilitate the issuance of bonds, including the
3 pledging of assessments or other revenues.

4 b. Any entity created under this subsection, or any
5 entity formed for the purposes of this subsection, may sue and
6 be sued, may borrow money; issue bonds, notes, or debt
7 instruments; pledge or sell assessments, market equalization
8 surcharges and other surcharges, rights, premiums, contractual
9 rights, projected recoveries from the Florida Hurricane
10 Catastrophe Fund, other reinsurance recoverables, and other
11 assets as security for such bonds, notes, or debt instruments;
12 enter into any contracts or agreements necessary or proper to
13 accomplish such borrowings; and take other actions necessary
14 to carry out the purposes of this subsection. The association
15 may issue bonds or incur other indebtedness, or have bonds
16 issued on its behalf by a unit of local government pursuant to
17 subparagraph (6)(g)2., in the absence of a hurricane or other
18 weather-related event, upon a determination by the association
19 subject to approval by the department that such action would
20 enable it to efficiently meet the financial obligations of the
21 association and that such financings are reasonably necessary
22 to effectuate the requirements of this subsection. Any such
23 entity may accumulate reserves and retain surpluses as of the
24 end of any association year to provide for the payment of
25 losses incurred by the association during that year or any
26 future year. The association shall incorporate and continue
27 the plan of operation and articles of agreement in effect on
28 the effective date of chapter 76-96, Laws of Florida, to the
29 extent that it is not inconsistent with chapter 76-96, and as
30 subsequently modified consistent with chapter 76-96. The board
31 of directors and officers currently serving shall continue to

1 serve until their successors are duly qualified as provided
2 under the plan. The assets and obligations of the plan in
3 effect immediately prior to the effective date of chapter
4 76-96 shall be construed to be the assets and obligations of
5 the successor plan created herein.

6 c. In recognition of s. 10, Art. I of the State
7 Constitution, prohibiting the impairment of obligations of
8 contracts, it is the intent of the Legislature that no action
9 be taken whose purpose is to impair any bond indenture or
10 financing agreement or any revenue source committed by
11 contract to such bond or other indebtedness issued or incurred
12 by the association or any other entity created under this
13 subsection.

14 7. On such coverage, an agent's remuneration shall be
15 that amount of money payable to the agent by the terms of his
16 or her contract with the company with which the business is
17 placed. However, no commission will be paid on that portion of
18 the premium which is in excess of the standard premium of that
19 company.

20 8. Subject to approval by the department, the
21 association may establish different eligibility requirements
22 and operational procedures for any line or type of coverage
23 for any specified eligible area or portion of an eligible area
24 if the board determines that such changes to the eligibility
25 requirements and operational procedures are justified due to
26 the voluntary market being sufficiently stable and competitive
27 in such area or for such line or type of coverage and that
28 consumers who, in good faith, are unable to obtain insurance
29 through the voluntary market through ordinary methods would
30 continue to have access to coverage from the association. When
31 coverage is sought in connection with a real property

1 transfer, such requirements and procedures shall not provide
2 for an effective date of coverage later than the date of the
3 closing of the transfer as established by the transferor, the
4 transferee, and, if applicable, the lender.

5 9. Notwithstanding any other provision of law:

6 a. The pledge or sale of, the lien upon, and the
7 security interest in any rights, revenues, or other assets of
8 the association created or purported to be created pursuant to
9 any financing documents to secure any bonds or other
10 indebtedness of the association shall be and remain valid and
11 enforceable, notwithstanding the commencement of and during
12 the continuation of, and after, any rehabilitation,
13 insolvency, liquidation, bankruptcy, receivership,
14 conservatorship, reorganization, or similar proceeding against
15 the association under the laws of this state or any other
16 applicable laws.

17 b. No such proceeding shall relieve the association of
18 its obligation, or otherwise affect its ability to perform its
19 obligation, to continue to collect, or levy and collect,
20 assessments, market equalization or other surcharges,
21 projected recoveries from the Florida Hurricane Catastrophe
22 Fund, reinsurance recoverables, or any other rights, revenues,
23 or other assets of the association pledged.

24 c. Each such pledge or sale of, lien upon, and
25 security interest in, including the priority of such pledge,
26 lien, or security interest, any such assessments, emergency
27 assessments, market equalization or renewal surcharges,
28 projected recoveries from the Florida Hurricane Catastrophe
29 Fund, reinsurance recoverables, or other rights, revenues, or
30 other assets which are collected, or levied and collected,
31 after the commencement of and during the pendency of or after

1 any such proceeding shall continue unaffected by such
2 proceeding.

3 d. As used in this subsection, the term "financing
4 documents" means any agreement, instrument, or other document
5 now existing or hereafter created evidencing any bonds or
6 other indebtedness of the association or pursuant to which any
7 such bonds or other indebtedness has been or may be issued and
8 pursuant to which any rights, revenues, or other assets of the
9 association are pledged or sold to secure the repayment of
10 such bonds or indebtedness, together with the payment of
11 interest on such bonds or such indebtedness, or the payment of
12 any other obligation of the association related to such bonds
13 or indebtedness.

14 e. Any such pledge or sale of assessments, revenues,
15 contract rights or other rights or assets of the association
16 shall constitute a lien and security interest, or sale, as the
17 case may be, that is immediately effective and attaches to
18 such assessments, revenues, contract, or other rights or
19 assets, whether or not imposed or collected at the time the
20 pledge or sale is made. Any such pledge or sale is effective,
21 valid, binding, and enforceable against the association or
22 other entity making such pledge or sale, and valid and binding
23 against and superior to any competing claims or obligations
24 owed to any other person or entity, including policyholders in
25 this state, asserting rights in any such assessments,
26 revenues, contract, or other rights or assets to the extent
27 set forth in and in accordance with the terms of the pledge or
28 sale contained in the applicable financing documents, whether
29 or not any such person or entity has notice of such pledge or
30 sale and without the need for any physical delivery,
31 recordation, filing, or other action.

1 f. There shall be no liability on the part of, and no
2 cause of action of any nature shall arise against, any member
3 insurer or its agents or employees, agents or employees of the
4 association, members of the board of directors of the
5 association, or the department or its representatives, for any
6 action taken by them in the performance of their duties or
7 responsibilities under this subsection. Such immunity does not
8 apply to actions for breach of any contract or agreement
9 pertaining to insurance, or any willful tort.

10 Section 3. This act shall take effect July 1, 2004.

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12
13 SENATE SUMMARY

14 Deletes a provision that permits an insurer to require
15 arbitration in matters regarding rate filings.