

hbd-032

Bill No. SB 1220, 2nd Eng.

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Lee, Bennett, Alexander, Flanagan, and Waters offered the following:

Amendment (with title amendment)

remove from the bill: everything after the enacting clause, and insert in lieu thereof:

Section 1. Section 624.4072, Florida Statutes, is amended to read:

624.4072 Minority-owned property and casualty insurers; limited exemption for taxation and assessments.--

(1) A minority business that is at least 51 percent owned by minority persons, as defined in s. 288.703(3), initially issued a certificate of authority in this state as an authorized insurer after May 1, 1998, to write property and casualty insurance shall be exempt, for a period not to exceed 10 5 years from the date of receiving its certificate of authority, from the following taxes and assessments:

(a) Taxes imposed under ss. 175.101, 185.08, and 624.509;

(b) Assessments by the Florida Residential Property

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1 and Casualty Joint Underwriting Association or by the Florida
2 Windstorm Underwriting Association, as provided under s.
3 627.351, except for emergency assessments collected from
4 policyholders pursuant to s. 627.351(2)(b)2.d.(III) and
5 (6)(b)3.d. Any such insurer shall be a member insurer of the
6 Florida Windstorm Underwriting Association and the Florida
7 Residential Property and Casualty Joint Underwriting
8 Association. The premiums of such insurer shall be included in
9 determining, for the Florida Windstorm Underwriting
10 Association, the aggregate statewide direct written premium
11 for property insurance and in determining, for the Florida
12 Residential Property and Casualty Joint Underwriting
13 Association, the aggregate statewide direct written premium
14 for the subject lines of business for all member insurers.

15 (2) Subsection (1) applies only to personal lines and
16 commercial lines residential property insurance policies as
17 defined in s. 627.4025, and applies only to an insurer that
18 has employees in this state and has a home office or a
19 regional office in this state. With respect to any tax year
20 or assessment year, the exemptions provided by subsection (1)
21 apply only if during the year an average of at least 10
22 percent of the insurer's Florida residential property policies
23 in force covered properties located in enterprise zones
24 designated pursuant to s. 290.0065.

25 (3) The provision of the definition of "minority
26 person" in s. 288.703(3) that requires residency in Florida
27 shall not apply to the term "minority person" as used in this
28 section or s. 627.3511.

29 (4) This section is repealed effective December 31,
30 ~~July 1 2010~~ 2003, and the tax and assessment exemptions
31 authorized by this section shall terminate on such date.

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1 Section 2. Paragraph (c) of subsection (3) of section
2 627.0628, Florida Statutes, is amended to read:

3 627.0628 Florida Commission on Hurricane Loss
4 Projection Methodology.--

5 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

6 (c) With respect to a rate filing under s. 627.062, an
7 insurer may employ actuarial methods, principles, standards,
8 models, or output ranges found by the commission to be
9 accurate or reliable to determine hurricane loss factors for
10 use in a rate filing under s. 627.062, which findings and
11 factors are admissible and relevant in consideration of a rate
12 filing by the department or in any arbitration or
13 administrative or judicial review. However, such findings and
14 factors are not admissible and relevant in consideration of a
15 rate filing unless the department has access to all factors
16 and assumptions that were used in developing the actuarial
17 methods, principles, standards, models, or output ranges found
18 by the commission to be accurate or reliable and the
19 department is not precluded from disclosing such information
20 in a rate proceeding. To the extent that such information is a
21 trade secret as defined in chapter 688, such information need
22 not be disclosed to the department unless it is specifically
23 covered by a valid exemption from chapter 119.

24 Section 3. Effective July 1, 2001, paragraph (b) of
25 subsection (2) and paragraph (c) of subsection (6) of section
26 627.351, Florida Statutes, are amended, and paragraph (f) is
27 added to subsection (2) of said section, to read:

28 627.351 Insurance risk apportionment plans.--

29 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

30 (b) The department shall require all insurers holding
31 a certificate of authority to transact property insurance on a

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1 direct basis in this state, other than joint underwriting
2 associations and other entities formed pursuant to this
3 section, to provide windstorm coverage to applicants from
4 areas determined to be eligible pursuant to paragraph (c) who
5 in good faith are entitled to, but are unable to procure, such
6 coverage through ordinary means; or it shall adopt a
7 reasonable plan or plans for the equitable apportionment or
8 sharing among such insurers of windstorm coverage, which may
9 include formation of an association for this purpose. As used
10 in this subsection, the term "property insurance" means
11 insurance on real or personal property, as defined in s.
12 624.604, including insurance for fire, industrial fire, allied
13 lines, farmowners multiperil, homeowners' multiperil,
14 commercial multiperil, and mobile homes, and including
15 liability coverages on all such insurance, but excluding
16 inland marine as defined in s. 624.607(3) and excluding
17 vehicle insurance as defined in s. 624.605(1)(a) other than
18 insurance on mobile homes used as permanent dwellings. The
19 department shall adopt rules that provide a formula for the
20 recovery and repayment of any deferred assessments.

21 1. For the purpose of this section, properties
22 eligible for such windstorm coverage are defined as dwellings,
23 buildings, and other structures, including mobile homes which
24 are used as dwellings and which are tied down in compliance
25 with mobile home tie-down requirements prescribed by the
26 Department of Highway Safety and Motor Vehicles pursuant to s.
27 320.8325, and the contents of all such properties. An
28 applicant or policyholder is eligible for coverage only if an
29 offer of coverage cannot be obtained by or for the applicant
30 or policyholder from an admitted insurer at approved rates.

31 2.a.(I) All insurers required to be members of such

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1 association shall participate in its writings, expenses, and
2 losses. Surplus of the association shall be retained for the
3 payment of claims and shall not be distributed to the member
4 insurers. Such participation by member insurers shall be in
5 the proportion that the net direct premiums of each member
6 insurer written for property insurance in this state during
7 the preceding calendar year bear to the aggregate net direct
8 premiums for property insurance of all member insurers, as
9 reduced by any credits for voluntary writings, in this state
10 during the preceding calendar year. For the purposes of this
11 subsection, the term "net direct premiums" means direct
12 written premiums for property insurance, reduced by premium
13 for liability coverage and for the following if included in
14 allied lines: rain and hail on growing crops; livestock;
15 association direct premiums booked; National Flood Insurance
16 Program direct premiums; and similar deductions specifically
17 authorized by the plan of operation and approved by the
18 department. A member's participation shall begin on the first
19 day of the calendar year following the year in which it is
20 issued a certificate of authority to transact property
21 insurance in the state and shall terminate 1 year after the
22 end of the calendar year during which it no longer holds a
23 certificate of authority to transact property insurance in the
24 state. The commissioner, after review of annual statements,
25 other reports, and any other statistics that the commissioner
26 deems necessary, shall certify to the association the
27 aggregate direct premiums written for property insurance in
28 this state by all member insurers.

29 (II) The plan of operation shall provide for a board
30 of directors consisting of the members of the State Board of
31 Administration, which shall oversee the operations of the

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1 association and shall carry out any other duties provided by
2 law. The board shall appoint an advisory council consisting
3 of an actuary, a meteorologist, an engineer, a representative
4 of insurers, a representative of insurance agents, and three
5 consumers who shall also be representatives of other
6 professions and industries, to provide the board with
7 information and advice in connection with its duties under
8 this section. Members of the advisory council shall be
9 eligible for per diem and travel expenses under s. 112.061.
10 The association shall not be considered a state agency and its
11 obligations shall not be considered obligations of the state
12 consisting of the Insurance Consumer Advocate appointed under
13 s. 627.0613, 1 consumer representative appointed by the
14 Insurance Commissioner, 1 consumer representative appointed by
15 the Governor, and 12 additional members appointed as specified
16 in the plan of operation. One of the 12 additional members
17 shall be elected by the domestic companies of this state on
18 the basis of cumulative weighted voting based on the net
19 direct premiums of domestic companies in this state. Nothing
20 in the 1997 amendments to this paragraph terminates the
21 existing board or the terms of any members of the board.

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

27 (IV) A company which is a member of a group of
28 companies under common management may elect to have its
29 credits applied on a group basis, and any company or group may
30 elect to have its credits applied to any other company or
31 group.

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

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1 guarantees an additional year of renewability for all policies
2 removed from the Residential Property and Casualty Joint
3 Underwriting Association, or for 2 additional years if the
4 insurer guarantees 2 additional years of renewability for all
5 policies removed from the Residential Property and Casualty
6 Joint Underwriting Association.

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

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

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

27 (II) When the deficit incurred in a particular
28 calendar year exceeds 10 percent of the aggregate statewide
29 direct written premium for property insurance for the prior
30 calendar year for all member insurers, the association shall
31 levy an assessment on member insurers in an amount equal to

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1 the greater of 10 percent of the deficit or 10 percent of the
2 aggregate statewide direct written premium for property
3 insurance for the prior calendar year for member insurers. Any
4 remaining deficit shall be recovered through emergency
5 assessments under sub-sub-subparagraph (III).

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

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

28 (IV) Each member insurer's share of the total regular
29 assessments under sub-sub-subparagraph (I) or
30 sub-sub-subparagraph (II) shall be in the proportion that the
31 insurer's net direct premium for property insurance in this

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1 state, for the year preceding the assessment bears to the
2 aggregate statewide net direct premium for property insurance
3 of all member insurers, as reduced by any credits for
4 voluntary writings for that year.

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

21 e. The governing body of any unit of local government,
22 any residents of which are insured under the plan, may issue
23 bonds as defined in s. 125.013 or s. 166.101 to fund an
24 assistance program, in conjunction with the association, for
25 the purpose of defraying deficits of the association. In order
26 to avoid needless and indiscriminate proliferation,
27 duplication, and fragmentation of such assistance programs,
28 any unit of local government, any residents of which are
29 insured by the association, may provide for the payment of
30 losses, regardless of whether or not the losses occurred
31 within or outside of the territorial jurisdiction of the local

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

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1 endanger or impair the solvency of the insurer. The authority
2 granted by this sub-subparagraph is additional to any bonding
3 authority granted by subparagraph 6.

4 3. The plan shall also provide that any member with a
5 surplus as to policyholders of ~~\$25~~^{\$20} million or less writing
6 25 percent or more of its total countrywide property insurance
7 premiums in this state may petition the department, within the
8 first 90 days of each calendar year, to qualify as a limited
9 apportionment company. The apportionment of such a member
10 company in any calendar year for which it is qualified shall
11 not exceed its gross participation, which shall not be
12 affected by the formula for voluntary writings. In no event
13 shall a limited apportionment company be required to
14 participate in any apportionment of losses pursuant to
15 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
16 in the aggregate which exceeds \$50 million after payment of
17 available plan funds in any calendar year. However, a limited
18 apportionment company shall collect from its policyholders any
19 emergency assessment imposed under sub-sub-subparagraph
20 2.d.(III). The plan shall provide that, if the department
21 determines that any regular assessment will result in an
22 impairment of the surplus of a limited apportionment company,
23 the department may direct that all or part of such assessment
24 be deferred. However, there shall be no limitation or
25 deferment of an emergency assessment to be collected from
26 policyholders under sub-sub-subparagraph 2.d.(III).

27 4. The plan shall provide for the deferment, in whole
28 or in part, of a regular assessment of a member insurer under
29 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II),
30 but not for an emergency assessment collected from
31 policyholders under sub-sub-subparagraph 2.d.(III), if, in the

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1 opinion of the commissioner, payment of such regular
2 assessment would endanger or impair the solvency of the member
3 insurer. In the event a regular assessment against a member
4 insurer is deferred in whole or in part, the amount by which
5 such assessment is deferred may be assessed against the other
6 member insurers in a manner consistent with the basis for
7 assessments set forth in sub-sub-subparagraph 2.d.(I) or
8 sub-sub-subparagraph 2.d.(II).

9 5.a. The plan of operation may include deductibles and
10 rules for classification of risks and rate modifications
11 consistent with the objective of providing and maintaining
12 funds sufficient to pay catastrophe losses.

13 b.(I) Subject to the provisions of
14 sub-sub-subparagraph (II), all rate filings under this
15 subsection relating to coverage for windstorm losses must
16 reflect historical insurance data. When using a computer model
17 in making a rate filing under this subsection, the association
18 may use only a computer model which is based upon standards
19 and guidelines developed or established by the Florida
20 Commission on Hurricane Loss Projection Methodology under s.
21 627.0628. Consideration of historical insurance data and the
22 use of computer models shall be consistent with applicable
23 Standards of Practice of the American Academy of Actuaries.
24 The association may require arbitration of a rate filing under
25 s. 627.062(6).

26 (II) It is the intent of the Legislature that the
27 Rates for coverage provided by the association must be
28 actuarially sound and not competitive with approved rates
29 charged in the admitted voluntary market such that the
30 association functions as a residual market mechanism to
31 provide insurance only when the insurance cannot be procured

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1 in the voluntary market. The plan of operation shall provide
2 a mechanism to assure that the average base rates for each
3 line of business charged by the association for hurricane
4 coverage for each unmitigated risk in a particular county
5 shall be no lower than the highest department-approved rate
6 within the association's eligible area for hurricane coverage
7 in the voluntary market for each line of business in such
8 county, among the 20 largest insurers actually writing such
9 coverage in such county, beginning no later than January 1,
10 ~~1999, the rates charged by the association for each line of~~
11 ~~business are reflective of approved rates in the voluntary~~
12 ~~market for hurricane coverage for each line of business in the~~
13 ~~various areas eligible for association coverage.~~

14 (III) Notwithstanding any other provision of law,
15 windstorm rates under this subsection previously adjudicated
16 for use and in effect as of the effective date of this act,
17 and the related mitigation credit program, shall apply to
18 rates of the association and shall continue in effect until
19 such rates are fully phased in. The rate for a particular
20 group or class of policies may be increased only after the
21 full phase-in of the current rate plan as to that group or
22 class of policies.

23 c. The association shall provide for windstorm
24 coverage on residential properties in limits up to \$10 million
25 for commercial lines residential risks and up to \$1 million
26 for personal lines residential risks. If coverage with the
27 association is sought for a residential risk valued in excess
28 of these limits, coverage shall be available to the risk up to
29 the replacement cost or actual cash value of the property, at
30 the option of the insured, if coverage for the risk cannot be
31 located in the authorized market. The association must accept

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1 a commercial lines residential risk with limits above \$10
2 million or a personal lines residential risk with limits above
3 \$1 million if coverage is not available in the authorized
4 market. The association may write coverage above the limits
5 specified in this subparagraph with or without facultative or
6 other reinsurance coverage, as the association determines
7 appropriate.

8 d. The plan of operation must provide objective
9 criteria and procedures, approved by the department, to be
10 uniformly applied for all applicants in determining whether an
11 individual risk is so hazardous as to be uninsurable. In
12 making this determination and in establishing the criteria and
13 procedures, the following shall be considered:

14 (I) Whether the likelihood of a loss for the
15 individual risk is substantially higher than for other risks
16 of the same class; and

17 (II) Whether the uncertainty associated with the
18 individual risk is such that an appropriate premium cannot be
19 determined.

20
21 The acceptance or rejection of a risk by the association
22 pursuant to such criteria and procedures must be construed as
23 the private placement of insurance, and the provisions of
24 chapter 120 do not apply.

25 e. The policies issued by the association must provide
26 that if the association obtains an offer from an authorized
27 insurer to cover the risk at its approved rates under either a
28 standard policy including wind coverage or, if consistent with
29 the insurer's underwriting rules as filed with the department,
30 a basic policy including wind coverage, the risk is no longer
31 eligible for coverage through the association. Upon

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1 termination of eligibility, the association shall provide
2 written notice to the policyholder and agent of record stating
3 that the association policy must be canceled as of 60 days
4 after the date of the notice because of the offer of coverage
5 from an authorized insurer. Other provisions of the insurance
6 code relating to cancellation and notice of cancellation do
7 not apply to actions under this sub-subparagraph. This
8 sub-subparagraph applies only to policies issued or renewed on
9 or after June 1, 2003.

10 f. Association policies and applications must include
11 a notice that the association policy could, under this
12 section, be replaced with a policy issued by an authorized
13 insurer that does not provide coverage identical to the
14 coverage provided by the association. The notice shall also
15 specify that acceptance of association coverage creates a
16 conclusive presumption that the applicant or policyholder is
17 aware of this potential. This sub-subparagraph applies only to
18 policies issued or renewed on or after June 1, 2003.

19 g. If the risk accepts an offer of coverage through
20 the market assistance program or through a mechanism
21 established by the association, either before the policy is
22 issued by the association or during the first 30 days of
23 coverage by the association, and the producing agent who
24 submitted the application to the association is not currently
25 appointed by the insurer, the insurer shall either:

26 (I) Pay to the producing agent of record of the
27 policy, for the first year, an amount that is the greater of
28 the insurer's usual and customary commission for the type of
29 policy written or a fee equal to the usual and customary
30 commission of the association; or

31 (II) Offer to allow the producing agency of record of

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1 the policy to continue servicing the policy for a period of
2 not less than 1 year and offer to pay the agent the greater of
3 the insurer's or the association's usual and customary
4 commission for the type of policy written.

5
6 If the new or producing agent is unwilling or unable to accept
7 appointment, the new insurer shall pay the agent in accordance
8 with sub-sub-subparagraph (I).

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

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

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

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

27 6.a. The plan of operation may authorize the formation
28 of a private nonprofit corporation, a private nonprofit
29 unincorporated association, a partnership, a trust, a limited
30 liability company, or a nonprofit mutual company which may be
31 empowered, among other things, to borrow money by issuing

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1 bonds or by incurring other indebtedness and to accumulate
2 reserves or funds to be used for the payment of insured
3 catastrophe losses. The plan may authorize all actions
4 necessary to facilitate the issuance of bonds, including the
5 pledging of assessments or other revenues.

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

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1 subsequently modified consistent with chapter 76-96. The board
2 of directors and officers currently serving shall continue to
3 serve until their successors are duly qualified as provided
4 under the plan. The assets and obligations of the plan in
5 effect immediately prior to the effective date of chapter
6 76-96 shall be construed to be the assets and obligations of
7 the successor plan created herein.

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

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

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

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1 continue to have access to coverage from the association. When
2 coverage is sought in connection with a real property
3 transfer, such requirements and procedures shall not provide
4 for an effective date of coverage later than the date of the
5 closing of the transfer as established by the transferor, the
6 transferee, and, if applicable, the lender.

7 9. Notwithstanding any other provision of law:

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

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

26 c. Each such pledge or sale of, lien upon, and
27 security interest in, including the priority of such pledge,
28 lien, or security interest, any such assessments, emergency
29 assessments, market equalization or renewal surcharges,
30 projected recoveries from the Florida Hurricane Catastrophe
31 Fund, reinsurance recoverables, or other rights, revenues, or

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1 other assets which are collected, or levied and collected,
2 after the commencement of and during the pendency of or after
3 any such proceeding shall continue unaffected by such
4 proceeding.

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

16 e. Any such pledge or sale of assessments, revenues,
17 contract rights or other rights or assets of the association
18 shall constitute a lien and security interest, or sale, as the
19 case may be, that is immediately effective and attaches to
20 such assessments, revenues, contract, or other rights or
21 assets, whether or not imposed or collected at the time the
22 pledge or sale is made. Any such pledge or sale is effective,
23 valid, binding, and enforceable against the association or
24 other entity making such pledge or sale, and valid and binding
25 against and superior to any competing claims or obligations
26 owed to any other person or entity, including policyholders in
27 this state, asserting rights in any such assessments,
28 revenues, contract, or other rights or assets to the extent
29 set forth in and in accordance with the terms of the pledge or
30 sale contained in the applicable financing documents, whether
31 or not any such person or entity has notice of such pledge or

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1 sale and without the need for any physical delivery,
2 recordation, filing, or other action.

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

12 10. It is the intent of the Legislature that the
13 association vigorously pursue an exemption from federal income
14 taxation and tax-free status for bonds issued by or on behalf
15 of the association. In furtherance of this intent:

16 a. The association shall retain such expert tax
17 counsel and bond counsel as necessary and expend such funds as
18 necessary to pursue such negotiations or litigation as may
19 lead to favorable tax rulings.

20 b. The association shall, no later than January 1,
21 2002, provide a report to the Governor, the Insurance
22 Commissioner, the President of the Senate, and the Speaker of
23 the House of Representatives detailing the status of the
24 negotiations or litigation and recommending statutory changes,
25 if any, needed to secure favorable tax rulings.

26 (f)1. In recognition of the fact that the association
27 created under this subsection furthers an essentially
28 governmental purpose, the association is exempt from premium
29 taxes effective July 1, 2002.

30 2. Beginning with the 2002-2003 fiscal year, and except
31 for years in which the association is collecting regular or

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1 emergency assessments under this subsection, the association
 2 shall annually transfer the sum of \$5 million to the General
 3 Revenue Fund, which moneys shall be appropriated for hurricane
 4 loss mitigation purposes as specified in s. 215.555(7)(c).
 5 Such appropriations are in addition to any appropriations
 6 required or authorized by s. 215.555(7)(c).

7 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
 8 UNDERWRITING ASSOCIATION.--

9 (c) The plan of operation of the association:

10 1. May provide for one or more designated insurers,
 11 able and willing to provide policy and claims service, to act
 12 on behalf of the association to provide such service. Each
 13 licensed agent shall be entitled to indicate the order of
 14 preference regarding who will service the business placed by
 15 the agent. The association shall adhere to each agent's
 16 preferences unless after consideration of other factors in
 17 assigning agents, including, but not limited to, servicing
 18 capacity and fee arrangements, the association has reason to
 19 believe it is in the best interest of the association to make
 20 a different assignment.

21 2. Must provide for adoption of residential property
 22 and casualty insurance policy forms, which forms must be
 23 approved by the department prior to use. The association
 24 shall adopt the following policy forms:

25 a. Standard personal lines policy forms including wind
 26 coverage, which are multiperil policies providing what is
 27 generally considered to be full coverage of a residential
 28 property similar to the coverage provided under an HO-2, HO-3,
 29 HO-4, or HO-6 policy.

30 b. Standard personal lines policy forms without wind
 31 coverage, which are the same as the policies described in

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1 sub-subparagraph a. except that they do not include wind
2 coverage.

3 c. Basic personal lines policy forms including wind
4 coverage, which are policies similar to an HO-8 policy or a
5 dwelling fire policy that provide coverage meeting the
6 requirements of the secondary mortgage market, but which
7 coverage is more limited than the coverage under a standard
8 policy.

9 d. Basic personal lines policy forms without wind
10 coverage, which are the same as the policies described in
11 sub-subparagraph c. except that they do not include wind
12 coverage.

13 e. Commercial lines residential policy forms including
14 wind coverage that are generally similar to the basic perils
15 of full coverage obtainable for commercial residential
16 structures in the admitted voluntary market.

17 f. Commercial lines residential policy forms without
18 wind coverage, which are the same as the policies described in
19 sub-subparagraph e. except that they do not include wind
20 coverage.

21 3. May provide that the association may employ or
22 otherwise contract with individuals or other entities to
23 provide administrative or professional services that may be
24 appropriate to effectuate the plan. The association shall
25 have the power to borrow funds, by issuing bonds or by
26 incurring other indebtedness, and shall have other powers
27 reasonably necessary to effectuate the requirements of this
28 subsection. The association may issue bonds or incur other
29 indebtedness, or have bonds issued on its behalf by a unit of
30 local government pursuant to subparagraph (g)2., in the
31 absence of a hurricane or other weather-related event, upon a

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1 determination by the association, subject to approval by the
2 department, that such action would enable it to efficiently
3 meet the financial obligations of the association and that
4 such financings are reasonably necessary to effectuate the
5 requirements of this subsection. The association is
6 authorized to take all actions needed to facilitate tax-free
7 status for any such bonds or indebtedness, including formation
8 of trusts or other affiliated entities. The association shall
9 have the authority to pledge assessments, projected recoveries
10 from the Florida Hurricane Catastrophe Fund, other reinsurance
11 recoverables, market equalization and other surcharges, and
12 other funds available to the association as security for bonds
13 or other indebtedness. In recognition of s. 10, Art. I of the
14 State Constitution, prohibiting the impairment of obligations
15 of contracts, it is the intent of the Legislature that no
16 action be taken whose purpose is to impair any bond indenture
17 or financing agreement or any revenue source committed by
18 contract to such bond or other indebtedness.

19 4. Must require that the association operate subject
20 to the supervision and approval of a board of governors
21 consisting of the members of the State Board of
22 Administration.~~consisting of 13 individuals, including 1 who~~
23 ~~is elected as chair. The board shall consist of:~~
24 a. ~~The insurance consumer advocate appointed under s.~~
25 ~~627.0613.~~
26 b. ~~Five members designated by the insurance industry.~~
27 c. ~~Five consumer representatives appointed by the~~
28 ~~Insurance Commissioner. Two of the consumer representatives~~
29 ~~must, at the time of appointment, be holders of policies~~
30 ~~issued by the association, who are selected with consideration~~
31 ~~given to reflecting the geographic balance of association~~

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~~1 policyholders. Two of the consumer members must be individuals
2 who are minority persons as defined in s. 288.703(3). One of
3 the consumer members shall have expertise in the field of
4 mortgage lending.~~

~~5 d. Two representatives of the insurance industry
6 appointed by the Insurance Commissioner. Of the two insurance
7 industry representatives appointed by the Insurance
8 Commissioner, at least one must be an individual who is a
9 minority person as defined in s. 288.703(3).~~

~~10
11 Any board member may be disapproved or removed and replaced by
12 the commissioner at any time for cause. All board members,
13 including the chair, must be appointed to serve for 3-year
14 terms beginning annually on a date designated by the plan.~~

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

17 a. With respect to personal lines residential risks,
18 if the risk is offered coverage from an authorized insurer at
19 the insurer's approved rate under either a standard policy
20 including wind coverage or, if consistent with the insurer's
21 underwriting rules as filed with the department, a basic
22 policy including wind coverage, the risk is not eligible for
23 any policy issued by the association.

24 (I) If the risk accepts an offer of coverage through
25 the market assistance program or through a mechanism
26 established by the association, either before the policy is
27 issued by the association or during the first 30 days of
28 coverage by the association, and the producing agent who
29 submitted the application to the association is not currently
30 appointed by the insurer, the insurer shall either:

31 (A) Pay to the producing agent of record of the

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1 policy, for the first year, an amount that is the greater of
2 the insurer's usual and customary commission for the type of
3 policy written or a fee equal to the usual and customary
4 commission of the association; or
5 (B) Offer to allow the producing agent of record of
6 the policy to continue servicing the policy for a period of
7 not less than 1 year and offer to pay the agent the greater of
8 the insurer's or the association's usual and customary
9 commission for the type of policy written.
10
11 If the new or producing agent is unwilling or unable to accept
12 appointment, the new insurer shall pay the agent in accordance
13 with sub-sub-sub-subparagraph (A).
14 (II) When the association enters into a contractual
15 agreement for a take-out plan, the producing agent of record
16 of the association policy is entitled to retain any unearned
17 commission on the policy, and the insurer shall either:
18 (A) Pay to the producing agent of record of the
19 association policy, for the first year, an amount that is the
20 greater of the insurer's usual and customary commission for
21 the type of policy written or a fee equal to the usual and
22 customary commission of the association; or
23 (B) Offer to allow the producing agent of record of
24 the associaton policy to continue servicing the policy for a
25 period of not less than 1 year and offer to pay the agent the
26 greater of the insurer's or the association's usual and
27 customary commission for the type of policy written.
28
29 If the new or producing agent is unwilling or unable to accept
30 appointment, the new insurer shall pay the agent in accordance
31 with sub-sub-sub-subparagraph (A).~~If the risk accepts an~~

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1 ~~offer of coverage through the market assistance plan or an~~
2 ~~offer of coverage through a mechanism established by the~~
3 ~~association before a policy is issued to the risk by the~~
4 ~~association or during the first 30 days of coverage by the~~
5 ~~association, and the producing agent who submitted the~~
6 ~~application to the plan or to the association is not currently~~
7 ~~appointed by the insurer, the insurer shall either appoint the~~
8 ~~agent to service the risk or, if the insurer places the~~
9 ~~coverage through a new agent, require the new agent who then~~
10 ~~writes the policy to pay not less than 50 percent of the first~~
11 ~~year's commission to the producing agent who submitted the~~
12 ~~application to the plan or the association, except that if the~~
13 ~~new agent is an employee or exclusive agent of the insurer,~~
14 ~~the new agent shall pay a policy fee of \$50 to the producing~~
15 ~~agent in lieu of splitting the commission. If the risk is not~~
16 ~~able to obtain any such offer, the risk is eligible for either~~
17 ~~a standard policy including wind coverage or a basic policy~~
18 ~~including wind coverage issued by the association; however, if~~
19 ~~the risk could not be insured under a standard policy~~
20 ~~including wind coverage regardless of market conditions, the~~
21 ~~risk shall be eligible for a basic policy including wind~~
22 ~~coverage unless rejected under subparagraph 8. The association~~
23 ~~shall determine the type of policy to be provided on the basis~~
24 ~~of objective standards specified in the underwriting manual~~
25 ~~and based on generally accepted underwriting practices.~~

26 b. With respect to commercial lines residential risks,
27 if the risk is offered coverage under a policy including wind
28 coverage from an authorized insurer at its approved rate, the
29 risk is not eligible for any policy issued by the association.

30 (I) If the risk accepts an offer of coverage through
31 the market assistance program or through a mechanism

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1 established by the association, either before the policy is
2 issued by the association or during the first 30 days of
3 coverage by the association, and the producing agent who
4 submitted the application to the association is not currently
5 appointed by the insurer, the insurer shall either:
6 (A) Pay to the producing agent of record of the
7 policy, for the first year, an amount that is the greater of
8 the insurer's usual and customary commission for the type of
9 policy written or a fee equal to the usual and customary
10 commission of the association; or
11 (B) Offer to allow the producing agent of record of
12 the policy to continue servicing the policy for a period of
13 not less than 1 year and offer to pay the agent the greater of
14 the insurer's or the association's usual and customary
15 commission for the type of policy written.
16
17 If the new or producing agent is unwilling or unable to accept
18 appointment, the new insurer shall pay the agent in accordance
19 with sub-sub-sub-subparagraph (A).
20 (II) When the association enters into a contractual
21 agreement for a take-out plan, the producing agent of record
22 of the association policy is entitled to retain any unearned
23 commission on the policy, and the insurer shall either:
24 (A) Pay to the producing agent of record of the
25 association policy, for the first year, an amount that is the
26 greater of the insurer's usual and customary commission for
27 the type of policy written or a fee equal to the usual and
28 customary commission of the association; or
29 (B) Offer to allow the producing agent of record of
30 the associaton policy to continue servicing the policy for a
31 period of not less than 1 year and offer to pay the agent the

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1 greater of the insurer's or the association's usual and
2 customary commission for the type of policy written.

3
4 If the new or producing agent is unwilling or unable to accept
5 appointment, the new insurer shall pay the agent in accordance
6 with sub-sub-sub-subparagraph (A). ~~If the risk accepts an~~
7 ~~offer of coverage through the market assistance plan or an~~
8 ~~offer of coverage through a mechanism established by the~~
9 ~~association before a policy is issued to the risk by the~~
10 ~~association, and the producing agent who submitted the~~
11 ~~application to the plan or the association is not currently~~
12 ~~appointed by the insurer, the insurer shall either appoint the~~
13 ~~agent to service the risk or, if the insurer places the~~
14 ~~coverage through a new agent, require the new agent who then~~
15 ~~writes the policy to pay not less than 50 percent of the first~~
16 ~~year's commission to the producing agent who submitted the~~
17 ~~application to the plan, except that if the new agent is an~~
18 ~~employee or exclusive agent of the insurer, the new agent~~
19 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
20 ~~of splitting the commission.~~ If the risk is not able to obtain
21 any such offer, the risk is eligible for a policy including
22 wind coverage issued by the association.

23 c. This subparagraph does not require the association
24 to provide wind coverage or hurricane coverage in any area in
25 which such coverage is available through the Florida Windstorm
26 Underwriting Association.

27 6. Must include rules for classifications of risks and
28 rates therefor.

29 7. Must provide that if premium and investment income
30 attributable to a particular plan year are in excess of
31 projected losses and expenses of the plan attributable to that

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1 year, such excess shall be held in surplus. Such surplus shall
2 be available to defray deficits as to future years and shall
3 be used for that purpose prior to assessing member insurers as
4 to any plan year.

5 8. Must provide objective criteria and procedures to
6 be uniformly applied for all applicants in determining whether
7 an individual risk is so hazardous as to be uninsurable. In
8 making this determination and in establishing the criteria and
9 procedures, the following shall be considered:

10 a. Whether the likelihood of a loss for the individual
11 risk is substantially higher than for other risks of the same
12 class; and

13 b. Whether the uncertainty associated with the
14 individual risk is such that an appropriate premium cannot be
15 determined.

16
17 The acceptance or rejection of a risk by the association shall
18 be construed as the private placement of insurance, and the
19 provisions of chapter 120 shall not apply.

20 9. Must provide that the association shall make its
21 best efforts to procure catastrophe reinsurance at reasonable
22 rates, as determined by the board of governors.

23 10. Must provide that in the event of regular deficit
24 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
25 (b)3.b., or by the Florida Windstorm Underwriting Association
26 under sub-sub-subparagraph (2)(b)2.d.(I) or
27 sub-sub-subparagraph (2)(b)2.d.(II), the association shall
28 levy upon association policyholders in its next rate filing,
29 or by a separate rate filing solely for this purpose, a market
30 equalization surcharge in a percentage equal to the total
31 amount of such regular assessments divided by the aggregate

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1 statewide direct written premium for subject lines of business
2 for member insurers for the prior calendar year. Market
3 equalization surcharges under this subparagraph are not
4 considered premium and are not subject to commissions, fees,
5 or premium taxes; however, failure to pay a market
6 equalization surcharge shall be treated as failure to pay
7 premium.

8 11. The policies issued by the association must
9 provide that, if the association or the market assistance plan
10 obtains an offer from an authorized insurer to cover the risk
11 at its approved rates under either a standard policy including
12 wind coverage or a basic policy including wind coverage, the
13 risk is no longer eligible for coverage through the
14 association. However, if the risk is located in an area in
15 which Florida Windstorm Underwriting Association coverage is
16 available, such an offer of a standard or basic policy
17 terminates eligibility regardless of whether or not the offer
18 includes wind coverage. Upon termination of eligibility, the
19 association shall provide written notice to the policyholder
20 and agent of record stating that the association policy shall
21 be canceled as of 60 days after the date of the notice because
22 of the offer of coverage from an authorized insurer. Other
23 provisions of the insurance code relating to cancellation and
24 notice of cancellation do not apply to actions under this
25 subparagraph.

26 12. Association policies and applications must include
27 a notice that the association policy could, under this section
28 or s. 627.3511, be replaced with a policy issued by an
29 admitted insurer that does not provide coverage identical to
30 the coverage provided by the association. The notice shall
31 also specify that acceptance of association coverage creates a

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1 conclusive presumption that the applicant or policyholder is
2 aware of this potential.

3 13. May establish, subject to approval by the
4 department, different eligibility requirements and operational
5 procedures for any line or type of coverage for any specified
6 county or area if the board determines that such changes to
7 the eligibility requirements and operational procedures are
8 justified due to the voluntary market being sufficiently
9 stable and competitive in such area or for such line or type
10 of coverage and that consumers who, in good faith, are unable
11 to obtain insurance through the voluntary market through
12 ordinary methods would continue to have access to coverage
13 from the association. When coverage is sought in connection
14 with a real property transfer, such requirements and
15 procedures shall not provide for an effective date of coverage
16 later than the date of the closing of the transfer as
17 established by the transferor, the transferee, and, if
18 applicable, the lender.

19 Section 4. Subsection (4) of section 627.3511, Florida
20 Statutes, is amended to read:

21 627.3511 Depopulation of Residential Property and
22 Casualty Joint Underwriting Association.--

23 (4) AGENT BONUS.--When the Residential Property and
24 Casualty Joint Underwriting Association enters into a
25 contractual agreement for a take-out plan that provides a
26 bonus to the insurer, the producing agent of record of the
27 association policy is entitled to retain any unearned
28 commission on such policy, and the insurer shall either:

29 (a) Pay to the producing agent of record of the
30 association policy, for the first year, an amount that is the
31 greater of the insurer's usual and customary commission for

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1 the type of policy written or a fee equal to the usual and
 2 customary commission of the association ~~an amount equal to the~~
 3 ~~insurer's usual and customary commission for the type of~~
 4 ~~policy written if the term of the association policy was in~~
 5 ~~excess of 6 months, or one-half of such usual and customary~~
 6 ~~commission if the term of the association policy was 6 months~~
 7 ~~or less; or~~

8 (b) Offer to allow the producing agent of record of
 9 the association policy to continue servicing the policy for a
 10 period of not less than 1 year and offer to pay the agent the
 11 greater of the insurer's or the association's usual and
 12 customary commission for the type of policy written.

13
 14 If the new or producing agent is unwilling or unable to accept
 15 appointment, the new insurer shall pay the agent in accordance
 16 with paragraph (a).The insurer need not take any further
 17 action if the offer is rejected. This subsection does not
 18 apply to any reciprocal interinsurance exchange, nonprofit
 19 federation, or any subsidiary or affiliate of such
 20 organization. This subsection does not apply if the agent is
 21 also the agent of record on the new coverage. The requirement
 22 of this subsection that the producing agent of record is
 23 entitled to retain the unearned commission on an association
 24 policy does not apply to a policy for which coverage has been
 25 provided in the association for 30 days or less or for which a
 26 cancellation notice has been issued pursuant to s.
 27 627.351(6)(c)11. during the first 30 days of coverage.

28 Section 5. Subsection (2) of section 627.7013, Florida
 29 Statutes is amended to read:

30 627.7013 Orderly markets for personal lines
 31 residential property insurance.--

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1 (2) MORATORIUM COMPLETION.--
2 (a) As used in this subsection, the term "total number
3 of policies" means the number of an insurer's policies of a
4 specified type that were in force on June 1, 1996, or the date
5 on which this section became law, whichever was later.
6 (b) The following restrictions apply only to
7 cancellation or nonrenewal of personal lines residential
8 property insurance policies that were in force on June 1,
9 1996, or the date on which this section became law, whichever
10 was later.
11 1. In any 12-month period, an insurer may not cancel
12 or nonrenew more than 5 percent of such insurer's total number
13 of homeowner's policies, 5 percent of such insurer's total
14 number of mobile home owner's policies, or 5 percent of such
15 insurer's total number of personal lines residential policies
16 of all types and classes in the state for the purpose of
17 reducing the insurer's exposure to hurricane claims and may
18 not, with respect to any county, cancel or nonrenew more than
19 10 percent of its total number of homeowner's policies, 10
20 percent of its total number of mobile home owner's policies,
21 or 10 percent of its total number of personal lines
22 residential policies of all types and classes in the county
23 for the purpose of reducing the insurer's exposure to
24 hurricane claims. This subparagraph does not prohibit any
25 cancellations or nonrenewals of such policies for any other
26 lawful reason unrelated to the risk of loss from hurricane
27 exposure.
28 2.a. If, for any 12-month period, an insurer proposes
29 to cancel or nonrenew personal lines residential policies to
30 an extent not authorized by subparagraph 1. for the purpose of
31 reducing exposure to hurricane claims, the insurer must file a

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1 phaseout plan with the department at least 90 days prior to
2 the effective date of the plan. In the plan, the insurer must
3 demonstrate to the department that the insurer is protecting
4 market stability and the interests of its policyholders. The
5 plan may not be implemented unless it is approved by the
6 department. In developing the plan, the insurer must consider
7 policyholder longevity, the use of voluntary incentives to
8 accomplish the reduction, and geographic distribution. The
9 insurer must demonstrate that under the plan the insurer will
10 not cancel or nonrenew more policies in the 12-month period
11 than the largest number of similar policies the insurer
12 canceled or nonrenewed for any reason in any 12-month period
13 between August 24, 1989, and August 24, 1992.

14 b. If the insurer considers the number of
15 cancellations and nonrenewals under sub-subparagraph a. to be
16 insufficient, the insurer may apply for approval of additional
17 cancellations or nonrenewals on the basis of an unreasonable
18 risk of insolvency. In evaluating a request under this
19 sub-subparagraph, the department shall consider and shall
20 require the insurer to provide information relevant to: the
21 insurer's size, market concentration, and general financial
22 condition; the portion of the insurer's business in this state
23 represented by personal lines residential property insurance;
24 the reasonableness of assumptions with respect to size,
25 frequency, severity, and path of hurricanes; the reinsurance
26 available to the insurer and potential recoveries from the
27 Florida Hurricane Catastrophe Fund; and the extent to which
28 the insurer's assets have been voluntarily transferred by
29 dividend or otherwise from the insurer to its stockholders,
30 parent companies, or affiliated companies since June 1, 1996,
31 or the date on which this section became law, whichever was

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1 later. In the implementation of exposure reductions under this
2 sub-subparagraph, the department and the insurer shall
3 consider such factors as policyholder longevity, the use of
4 voluntary incentives to accomplish the exposure reduction, and
5 geographic distribution.

6 c. A policy shall not be counted as having been
7 canceled or nonrenewed for purposes of this subsection if any
8 of the following apply:

9 (I) The policy was canceled or nonrenewed for an
10 underwriting reason unrelated to the risk of loss from
11 hurricane exposure, nonpayment of premium, or any other lawful
12 reason that is unrelated to the risk of loss from hurricane
13 exposure. The department shall consider the reason specified
14 in the notice of cancellation or nonrenewal to be the reason
15 for the cancellation or nonrenewal unless the department finds
16 by a preponderance of the evidence that the stated reason was
17 not the insurer's actual reason for the cancellation or
18 nonrenewal.

19 (II) The cancellation or nonrenewal was initiated by
20 the insured.

21 (III) The insurer has offered the policyholder
22 replacement or alternative coverage at approved rates, which
23 coverage meets the requirements of the secondary mortgage
24 market.

25 d. In addition to any other cancellations or
26 nonrenewals subject to the limitations in this subsection, a
27 policy shall be considered as having been canceled or
28 nonrenewed for purposes of this subsection if:

29 (I) The insurer implements a rate increase under the
30 use-and-file provisions of s. 627.062(2)(a)2., which rate
31 increase exceeds 150 percent of the increase ultimately

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1 approved by the department, and, while the rate filing was
2 pending, the policyholder voluntarily canceled or nonrenewed
3 the policy and obtained replacement coverage from another
4 insurer, including the Residential Property and Casualty Joint
5 Underwriting Association; or

6 (II) The insurer reduces the commission to an agent by
7 more than 25 percent and the agent thereafter places the risk
8 with another insurer, including the Residential Property and
9 Casualty Joint Underwriting Association, or the Florida
10 Windstorm Underwriting Association.

11 e. The department must approve or disapprove an
12 application for a waiver within 90 days after the department
13 receives the application for waiver.

14 3. In addition to the cancellations or nonrenewals
15 authorized under this section, an insurer may cancel or
16 nonrenew policies to the extent authorized by an exemption
17 from or waiver of either the moratorium created by chapter
18 93-401, Laws of Florida, or the moratorium phaseout under
19 former s. 627.7013(2).

20 4. Notwithstanding any provisions of this section to
21 the contrary, this section does not apply to any insurer that,
22 prior to August 24, 1992, filed notice of such insurer's
23 intent to discontinue writing insurance in this state under s.
24 624.430, and for which a finding has been made by the
25 department, the Division of Administrative Hearings of the
26 Department of Management Services, or a court that such notice
27 satisfied all requirements of s. 624.430. Nothing in this
28 section shall be construed to authorize an insurer to withdraw
29 from any line of property insurance business for the purpose
30 of reducing exposure to risk of hurricane loss if such
31 withdrawal commenced at any time that the moratorium under

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1 chapter 93-401, Laws of Florida, or the moratorium phaseout
2 under this section is in effect.

3 5. The following actions by an insurer do not
4 constitute cancellations or nonrenewals for purposes of this
5 subsection:

6 a. The transfer of a risk from one admitted insurer to
7 another admitted insurer, unless the terms of the new or
8 replacement policy place the policyholder in default of a
9 mortgage obligation.

10 b. An increase in the hurricane deductible applicable
11 to the policy, unless the new deductible places the
12 policyholder in default of a mortgage obligation or the
13 deductible exceeds the limits specified in s. 627.701.

14 c. Any other lawful change in coverage that does not
15 place the policyholder in default of a mortgage obligation.

16 d. A cancellation or nonrenewal that is part of the
17 same action as the removal of a policy including windstorm or
18 hurricane coverage from the Residential Property and Casualty
19 Joint Underwriting Association.

20 6. In order to assure fair and effective enforcement
21 of this subsection, each insurer shall, no later than October
22 1, 1996, report to the department the policy number of each
23 policy subject to this subsection, arranged by county. The
24 report shall include the policy number for each personal lines
25 residential policy that was in force on June 1, 1996, or the
26 date this section became law, whichever was later. Beginning
27 October 1, 1996, each insurer shall also report, on a monthly
28 basis, all cancellations and nonrenewals of policies included
29 in such policy list and the reasons for the cancellations and
30 nonrenewals.

31 (c) The department may adopt rules to implement this

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1 subsection.

2 (d) This section shall cease to operate at such time
3 as the department determines that the insured value of all
4 residential properties insured by the Florida Windstorm
5 Underwriting Association and all properties insured by the
6 Residential Property and Casualty Joint Underwriting
7 Association under policies providing wind coverage, combined,
8 has remained below \$25 billion for 3 consecutive months, based
9 on exposure data reported to the department by the
10 associations.

11 (e) This subsection is repealed on June 1, 2004 ~~2001~~.
12 Section 6. Effective January 7, 2003, subsection (3)
13 of section 20.04, Florida Statutes, is amended to read:

14 20.04 Structure of executive branch.--The executive
15 branch of state government is structured as follows:

16 (3) For their internal structure, all departments,
17 except for the Department of Insurance and Financial Services
18 ~~Banking and Finance~~, the Department of Children and Family
19 Services, the Department of Corrections, the Department of
20 Management Services, the Department of Revenue, and the
21 Department of Transportation, must adhere to the following
22 standard terms:

23 (a) The principal unit of the department is the
24 "division." Each division is headed by a "director."

25 (b) The principal unit of the division is the
26 "bureau." Each bureau is headed by a "chief."

27 (c) The principal unit of the bureau is the "section."
28 Each section is headed by an "administrator."

29 (d) If further subdivision is necessary, sections may
30 be divided into "subsections," which are headed by
31 "supervisors."

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1 Section 7. Section 20.121, Florida Statutes, is
2 created to read:

3 20.121 Office of Chief Financial Officer.--Effective
4 January 7, 2003, there is created the Office of Chief
5 Financial Officer. The head of the office is the Chief
6 Financial Officer. Pursuant to s. 4, Art. IV of the State
7 Constitution, the duties of the Chief Financial Officer are to
8 serve as the chief fiscal officer of the state, to settle and
9 approve accounts against the state, and to keep all state
10 funds and securities. The Chief Financial Officer is also the
11 administrator of the Government Employees Deferred
12 Compensation Plan and is responsible for carrying out laws
13 relating to unclaimed property and security for public
14 deposits.

15 Section 8. Section 20.131, Florida Statutes, is
16 created to read:

17 20.131 Department of Insurance and Financial
18 Services.--Effective January 7, 2003, there is created the
19 Department of Insurance and Financial Services. The Governor
20 and Cabinet shall serve as head of the department.

21 (1) EXECUTIVE DIRECTOR.--The executive director of the
22 Department of Insurance and Financial Services is the chief
23 administrator of the department and shall be appointed by the
24 Governor and Cabinet, subject to confirmation by the Senate.
25 The executive director serves at the pleasure of the Governor
26 and Cabinet. The functions of the executive director are
27 limited to personnel, administrative, and budgetary matters,
28 including administrative coordination of issues that affect
29 areas under the Offices of the Commissioner of Insurance, the
30 Commissioner of Financial Services, and the Commissioner of
31 Securities, and coordination of legislative activities.

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1 (2) DEPARTMENTAL STRUCTURE.--The Governor and Cabinet,
2 as head of the Department of Insurance and Financial Services,
3 shall adopt rules establishing the organizational structure of
4 the department. It is the intent of the Legislature to provide
5 the Governor and Cabinet with the flexibility to organize the
6 department in any manner they determine appropriate to promote
7 both efficiency and accountability, subject to the following
8 requirements:

9 (a) The major structural unit of the department is the
10 "office." Each office is headed by a "commissioner." The
11 offices are established as follows:

12 1. Office of the Commissioner of Insurance.--The
13 Office of the Commissioner of Insurance is responsible for all
14 activities of the department relating to the regulation of
15 insurance, insurance fraud, and state government risk
16 management. The head of the office is the Commissioner of
17 Insurance, who is also the State Fire Marshal.

18 2. Office of the Commissioner of Financial
19 Services.--The Office of the Commissioner of Financial
20 Services is responsible for all activities of the department
21 relating to the regulation of banks, credit unions, other
22 financial institutions, finance companies, and funeral and
23 cemetery services. The head of the office is the Commissioner
24 of Financial Services. The office includes the Division of
25 Financial Investigations, which is headed by a director who is
26 appointed by and serves at the pleasure of the commissioner.
27 The division shall function as a criminal justice agency for
28 purposes of ss. 943.045-943.08 and shall have a separate
29 budget.

30 3. Office of the Commissioner of Securities.--The
31 Office of the Commissioner of Securities is responsible for

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1 all activities of the department relating to the regulation of
2 securities. The head of the office is the Commissioner of
3 Securities.

4 (b) For purposes of final orders under chapter 120,
5 each commissioner is the agency head for all areas within that
6 commissioner's jurisdiction and shall be responsible for, and
7 take final agency action related to, orders within the
8 regulatory authority delegated to that commissioner's office.

9 (3) APPOINTMENT AND QUALIFICATIONS OF
10 COMMISSIONERS.--Each commissioner shall be appointed by, and
11 shall serve at the pleasure of, the executive director.
12 Appointment of a commissioner is subject to the approval of
13 the Governor and Cabinet. The minimum qualifications of the
14 commissioners are as follows:

15 (a) Prior to appointment as commissioner, the
16 Commissioner of Insurance must have had, within the previous
17 10 years, at least 5 years of responsible private sector
18 experience working full-time in an area under the regulatory
19 jurisdiction of the Office of the Commissioner of Insurance or
20 at least 5 years of experience as a senior examiner or other
21 senior employee of a state or federal agency having regulatory
22 responsibility over insurers or insurance agencies.

23 (b) Prior to appointment as commissioner, the
24 Commissioner of Financial Services must have had, within the
25 previous 10 years, at least 5 years of responsible private
26 sector experience working full-time in an area under the
27 regulatory jurisdiction of the Office of the Commissioner of
28 Financial Services or at least 5 years of experience as a
29 senior examiner or other senior employee of a state or federal
30 agency having regulatory responsibility over financial
31 institutions or finance companies.

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1 (c) Prior to appointment as commissioner, the
 2 Commissioner of Securities must have had, within the previous
 3 10 years, at least 5 years of responsible private sector
 4 experience working full-time in an area under the regulatory
 5 jurisdiction of the Office of the Commissioner of Securities
 6 or at least 5 years of experience as a senior examiner or
 7 other senior employee of a state or federal agency having
 8 regulatory responsibility over securities companies.

9 Section 9. Transfers.--

10 (1) TRANSFERS TO THE OFFICE OF CHIEF FINANCIAL
 11 OFFICER.--

12 (a) All powers, duties, functions, rules, records,
 13 personnel, property, and unexpended balances of
 14 appropriations, allocations, and other funds of the Office of
 15 the Comptroller;

16 (b) All powers, duties, functions, rules, records,
 17 personnel, property, and unexpended balances of
 18 appropriations, allocations, and other funds of the Department
 19 of Banking and Finance that relate to the constitutional
 20 functions of the Comptroller or to duties relating to
 21 unclaimed property;

22 (c) All powers, duties, functions, rules, records,
 23 personnel, property, and unexpended balances of
 24 appropriations, allocations, and other funds of the Office of
 25 the Treasurer, including the Government Employees Deferred
 26 Compensation Plan and duties relating to security for public
 27 deposits; and

28 (d) All powers, duties, functions, rules, records,
 29 personnel, property, and unexpended balances of
 30 appropriations, allocations, and other funds of the Department
 31 of Insurance that relate to the constitutional functions of

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1 the Treasurer
2
3 are transferred by a type two transfer, as defined in s.
4 20.06(2), Florida Statutes, to the Office of Chief Financial
5 Officer.
6 (2) TRANSFERS TO THE DEPARTMENT OF INSURANCE AND
7 FINANCIAL SERVICES.--
8 (a) All powers, duties, functions, rules, records,
9 personnel, property, and unexpended balances of
10 appropriations, allocations, and other funds of the Department
11 of Banking and Finance not otherwise transferred by this act;
12 and
13 (b) All powers, duties, functions, rules, records,
14 personnel, property, and unexpended balances of
15 appropriations, allocations, and other funds of the Department
16 of Insurance not otherwise transferred by this act
17
18 are transferred by a type two transfer, as defined in s.
19 20.06(2), Florida Statutes, to the Department of Insurance and
20 Financial Services.
21 (3) This section shall take effect January 7, 2003.
22 Section 10. Effective January 7, 2003, the rules of
23 the Department of Banking and Finance and of the Department of
24 Insurance that were in effect on January 6, 2003, shall become
25 rules of the Department of Insurance and Financial Services
26 and shall remain in effect until specifically amended or
27 repealed in the manner provided by law. However, any such
28 rules that relate to the constitutional functions of the
29 Comptroller or the Treasurer shall instead become rules of the
30 Office of Chief Financial Officer and shall remain in effect
31 until amended or repealed in the manner provided by law.

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1 Section 11. This act shall not affect the validity of
2 any judicial or administrative action involving the Department
3 of Banking and Finance or the Department of Insurance pending
4 on January 7, 2003, and the Department of Insurance and
5 Financial Services shall be substituted as a party in interest
6 in any such action. However, if the action involves the
7 constitutional functions of the Comptroller or Treasurer, the
8 Office of Chief Financial Officer shall instead be substituted
9 as a party in interest.

10 Section 12. Transitional provisions.--

11 (1) The office of executive director of the Department
12 of Insurance and Financial Services is created effective
13 August 1, 2001. By no later than August 1, 2001, the Governor
14 and Cabinet shall appoint a person, subject to confirmation by
15 the Senate, who will serve as the executive director of the
16 department. However, until the creation of the department
17 takes effect on January 7, 2003, that person shall serve as
18 the head of the Office of Transition Management under
19 subsection (2).

20 (2)(a) There is created the Office of Transition
21 Management. The office shall function independently but shall
22 for administrative purposes be treated as an office of the
23 Executive Office of the Governor.

24 (b) The head of the office is the executive director
25 appointed pursuant to subsection (1), who shall serve at the
26 pleasure of the Governor and Cabinet.

27 (c) The office shall manage the transition to the new
28 Department of Insurance and Financial Services and the new
29 Office of Chief Financial Officer. The management duties of
30 the office shall include, but not be limited to:

31 1. Assuring that, by no later than January 7, 2003,

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1 all positions within the Office of the Commissioner of
2 Insurance, the Office of the Commissioner of Financial
3 Services, and the Office of the Commissioner of Securities,
4 including all senior management positions, are occupied by
5 qualified persons.

6 2. Providing written recommendations to the
7 Legislature by no later than January 1, 2002, as to statutory
8 changes that are necessary or desirable to implement a
9 successful transition. These recommendations shall include,
10 but not be limited to, detailed legislative recommendations
11 regarding:

12 a. The need for, and structure of, investigative
13 services by the Office of Chief Financial Officer, including
14 confidentiality requirements.

15 b. Rulemaking procedures for the Department of
16 Insurance and Financial Services, including proposals to
17 streamline the rulemaking process and proposals regarding
18 adoption of emergency rules.

19 3. Providing a written report that specifies, on a
20 position-by-position basis, those positions that are subject
21 to transfer to the Office of Chief Financial Officer under
22 this act. Except as revised by the General Appropriations Act
23 or other legislation, the report under this subparagraph shall
24 be used to determine which positions within the Department of
25 Banking and Finance or the Department of Insurance will become
26 positions within the Office of Chief Financial Officer, and
27 which positions will become positions within the Department of
28 Insurance and Financial Services, on January 7, 2003. The
29 office shall provide the report to the Governor, the President
30 of the Senate, the Speaker of the House of Representatives,
31 and the chair of each fiscal committee or council of the

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1 Senate and the House of Representatives.

2 4. Taking action in advance on personnel, purchasing,
3 and administrative matters.

4 5. Submitting to the Governor and Cabinet a proposed
5 organizational plan for the Department of Insurance and
6 Financial Services, which plan the Governor and Cabinet may
7 adopt by rule.

8 6. Providing monthly written status reports to the
9 President of the Senate and the Speaker of the House of
10 Representatives.

11 7. Providing such other information as may be
12 requested by members or staff of the Legislature.

13 (d) The Department of Banking and Finance, the
14 Department of Insurance, the Office of the Comptroller, and
15 the Office of the Treasurer shall fully cooperate with the
16 Office of Transition Management and shall promptly provide the
17 office with any requested information.

18 (e) Funding for the Office of Transition Management
19 shall be as provided in the General Appropriations Act.

20 Section 13. No later than January 31, 2002, the
21 Division of Statutory Revision of the Office of Legislative
22 Services, in consultation with the appropriate substantive
23 committee staffs of the Senate and the House of
24 Representatives, shall submit to the President of the Senate
25 and the Speaker of the House of Representatives proposed
26 substantive legislation to conform the Florida Statutes to the
27 provisions of this act. The proposed legislation shall include
28 provisions:

29 (1) Changing the term "Comptroller" or "Treasurer" to
30 "Chief Financial Officer" with respect to functions of the
31 Chief Financial Officer.

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1 (2) Changing references to the Department of Banking
2 and Finance and the Department of Insurance to the Department
3 of Insurance and Financial Services, except with respect to
4 functions of the Chief Financial Officer.

5 (3) Otherwise conforming the Florida Statutes to the
6 abolition of the offices of Comptroller and Treasurer, the
7 creation of the Office of Chief Financial Officer, the
8 abolition of the Department of Banking and Finance and the
9 Department of Insurance, the creation of the Department of
10 Insurance and Financial Services, and the creation of the
11 offices of Commissioner of Insurance, Commissioner of
12 Financial Services, and Commissioner of Securities within the
13 Department of Insurance and Financial Services.

14 Section 14. Effective January 7, 2003, sections 20.12
15 and 20.13, Florida Statutes, are repealed.

16 Section 15. There is hereby appropriated \$227,984 from
17 the Grants and Donations Trust Fund in the Executive Office of
18 the Governor and two full-time equivalent (FTE) positions for
19 the purpose of funding the Office of Transition Management
20 within the Executive Office of the Governor. This shall be
21 funded by transfers of \$113,992 from the Administrative Trust
22 Fund of the Department of Banking and Finance and \$113,992
23 from the Insurance Commissioner's Regulatory Trust Fund of the
24 Department of Insurance to the Grants and Donations Trust Fund
25 in the Executive Office of the Governor. If funding for the
26 Office of Transition Management is provided in the 2001-2002
27 General Appropriations Act, this appropriation shall not take
28 effect.

29 Section 16. Subsection (6) is added to section
30 624.3161, Florida Statutes, to read:

31 624.3161 Market conduct examinations.--

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1 (6) The department shall adopt rules as necessary to
2 effectuate the market conduct examination process, to assure
3 compliance by the person examined with the applicable
4 provisions of the Insurance Code. Such rules shall not exceed
5 the authority of the statutes involved in the market conduct
6 examination.

7 Section 17. Subsection (8) is added to section
8 626.171, Florida Statutes, to read:

9 626.171 Application for license.--

10 (8) The department shall adopt rules to effectuate the
11 license application process, including photo identification,
12 background checks and credit reports, prelicensing courses,
13 the impact of criminal and law enforcement history, and other
14 relevant information in an effort to determine an applicant's
15 fitness and trustworthiness to engage in the business of
16 insurance.

17 Section 18. Paragraphs (o) and (w) of subsection (1)
18 of section 626.9541, Florida Statutes, are amended to read:

19 626.9541 Unfair methods of competition and unfair or
20 deceptive acts or practices defined.--

21 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
22 DECEPTIVE ACTS.--The following are defined as unfair methods
23 of competition and unfair or deceptive acts or practices:

24 (o) Illegal dealings in premiums; excess or reduced
25 charges for insurance.--

26 1. Knowingly collecting any sum as a premium or charge
27 for insurance, which is not then provided, or is not in due
28 course to be provided, subject to acceptance of the risk by
29 the insurer, by an insurance policy issued by an insurer as
30 permitted by this code.

31 2. Knowingly collecting as a premium or charge for

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1 insurance any sum in excess of or less than the premium or
2 charge applicable to such insurance, in accordance with the
3 applicable classifications and rates as filed with and
4 approved by the department, and as specified in the policy;
5 or, in cases when classifications, premiums, or rates are not
6 required by this code to be so filed and approved, premiums
7 and charges in excess of or less than those specified in the
8 policy and as fixed by the insurer. This provision shall not
9 be deemed to prohibit the charging and collection, by surplus
10 lines agents licensed under part VIII of this chapter, of the
11 amount of applicable state and federal taxes, or fees as
12 authorized by s. 626.916(4), in addition to the premium
13 required by the insurer or the charging and collection, by
14 licensed agents, of the exact amount of any discount or other
15 such fee charged by a credit card facility in connection with
16 the use of a credit card, as authorized by subparagraph (q)3.,
17 in addition to the premium required by the insurer. This
18 subparagraph shall not be construed to prohibit collection of
19 a premium for a universal life or a variable or indeterminate
20 value insurance policy made in accordance with the terms of
21 the contract.

22 3.a. Imposing or requesting an additional premium for
23 a policy of motor vehicle liability, personal injury
24 protection, medical payment, or collision insurance or any
25 combination thereof or refusing to renew the policy solely
26 because the insured was involved in a motor vehicle accident
27 unless the insurer's file contains information from which the
28 insurer in good faith determines that the insured was
29 substantially at fault in the accident.

30 b. An insurer which imposes and collects such a
31 surcharge or which refuses to renew such policy shall, in

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1 conjunction with the notice of premium due or notice of
2 nonrenewal, notify the named insured that he or she is
3 entitled to reimbursement of such amount or renewal of the
4 policy under the conditions listed below and will subsequently
5 reimburse him or her or renew the policy, if the named insured
6 demonstrates that the operator involved in the accident was:
7 (I) Lawfully parked;
8 (II) Reimbursed by, or on behalf of, a person
9 responsible for the accident or has a judgment against such
10 person;
11 (III) Struck in the rear by another vehicle headed in
12 the same direction and was not convicted of a moving traffic
13 violation in connection with the accident;
14 (IV) Hit by a "hit-and-run" driver, if the accident
15 was reported to the proper authorities within 24 hours after
16 discovering the accident;
17 (V) Not convicted of a moving traffic violation in
18 connection with the accident, but the operator of the other
19 automobile involved in such accident was convicted of a moving
20 traffic violation;
21 (VI) Finally adjudicated not to be liable by a court
22 of competent jurisdiction;
23 (VII) In receipt of a traffic citation which was
24 dismissed or nolle prossed; or
25 (VIII) Not at fault as evidenced by a written
26 statement from the insured establishing facts demonstrating
27 lack of fault which are not rebutted by information in the
28 insurer's file from which the insurer in good faith determines
29 that the insured was substantially at fault.
30 c. In addition to the other provisions of this
31 subparagraph, an insurer may not fail to renew a policy if the

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1 insured has had only one accident in which he or she was at
2 fault within the current 3-year period. However, an insurer
3 may nonrenew a policy for reasons other than accidents in
4 accordance with s. 627.728. This subparagraph does not
5 prohibit nonrenewal of a policy under which the insured has
6 had three or more accidents, regardless of fault, during the
7 most recent 3-year period.

8 4. Imposing or requesting an additional premium for,
9 or refusing to renew, a policy for motor vehicle insurance
10 solely because the insured committed a noncriminal traffic
11 infraction as described in s. 318.14 unless the infraction is:

12 a. A second infraction committed within an 18-month
13 period, or a third or subsequent infraction committed within a
14 36-month period.

15 b. A violation of s. 316.183, when such violation is a
16 result of exceeding the lawful speed limit by more than 15
17 miles per hour.

18 5. Upon the request of the insured, the insurer and
19 licensed agent shall supply to the insured the complete proof
20 of fault or other criteria which justifies the additional
21 charge or cancellation.

22 6. No insurer shall impose or request an additional
23 premium for motor vehicle insurance, cancel or refuse to issue
24 a policy, or refuse to renew a policy because the insured or
25 the applicant is a handicapped or physically disabled person,
26 so long as such handicap or physical disability does not
27 substantially impair such person's mechanically assisted
28 driving ability.

29 7. No insurer may cancel or otherwise terminate any
30 insurance contract or coverage, or require execution of a
31 consent to rate endorsement, during the stated policy term for

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1 the purpose of offering to issue, or issuing, a similar or
2 identical contract or coverage to the same insured with the
3 same exposure at a higher premium rate or continuing an
4 existing contract or coverage with the same exposure at an
5 increased premium.

6 8. No insurer may issue a nonrenewal notice on any
7 insurance contract or coverage, or require execution of a
8 consent to rate endorsement, for the purpose of offering to
9 issue, or issuing, a similar or identical contract or coverage
10 to the same insured at a higher premium rate or continuing an
11 existing contract or coverage at an increased premium without
12 meeting any applicable notice requirements.

13 9. No insurer shall, with respect to premiums charged
14 for motor vehicle insurance, unfairly discriminate solely on
15 the basis of age, sex, marital status, location of the risk,
16 accidents more than 3 years old, or scholastic achievement.

17 10. Imposing or requesting an additional premium for
18 motor vehicle comprehensive or uninsured motorist coverage
19 solely because the insured was involved in a motor vehicle
20 accident or was convicted of a moving traffic violation.

21 11. No insurer shall cancel or issue a nonrenewal
22 notice on any insurance policy or contract without complying
23 with any applicable cancellation or nonrenewal provision
24 required under the Florida Insurance Code.

25 12. No insurer shall impose or request an additional
26 premium, cancel a policy, or issue a nonrenewal notice on any
27 insurance policy or contract because of any traffic infraction
28 when adjudication has been withheld and no points have been
29 assessed pursuant to s. 318.14(9) and (10). However, this
30 subparagraph does not apply to traffic infractions involving
31 accidents in which the insurer has incurred a loss due to the

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1 fault of the insured.

2 (w) Soliciting or accepting new or renewal insurance
3 risks by insolvent or impaired insurer prohibited; penalty.--

4 1. Whether or not delinquency proceedings as to the
5 insurer have been or are to be initiated, but while such
6 insolvency or impairment exists, no director or officer of an
7 insurer, except with the written permission of the Department
8 of Insurance, shall authorize or permit the insurer to solicit
9 or accept new or renewal insurance risks in this state after
10 such director or officer knew, or reasonably should have
11 known, that the insurer was insolvent or impaired. "Impaired"
12 includes impairment for capital or surplus, as defined in s.
13 631.011(12)(9)and(13)(10).

14 2. Any such director or officer, upon conviction of a
15 violation of this paragraph, is guilty of a felony of the
16 third degree, punishable as provided in s. 775.082, s.
17 775.083, or s. 775.084.

18 Section 19. Section 626.9552, Florida Statutes, is
19 created to read:

20 626.9552 Single interest insurance.--

21 (1) When single interest insurance is written at the
22 expense of the purchaser or borrower in connection with a
23 finance or loan transaction, a clear and concise statement
24 must be furnished the purchaser or borrower advising the
25 purchaser or borrower that the insurance effected is solely
26 for the interest of the financing entity, and that no
27 protection thereunder exists for the benefit of the purchaser
28 or borrower. When single interest insurance is written, no
29 effort may be made by the insurer to recover the amount of any
30 payment from the borrower. Single interest insurance policies
31 must be clearly stamped or printed on the declarations page,

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1 "Single Interest Only---No Subrogation." Single interest
2 insurance is to be placed only after it has been determined
3 that no other kind of insurance can be placed on the risk,
4 except with the consent of the purchaser or borrower. Single
5 interest may be written in cases of inland marine installment
6 sales floater policies. If insurance cannot be obtained for
7 the dual protection of the purchaser or borrower, and the
8 seller or lender or financing entity for all the coverages
9 contemplated, or if obtained, is canceled by the insurer
10 before expiration, the seller or lender or financing entity
11 may obtain insurance to protect his or her interest in the
12 motor vehicle or other personal property, and the purchaser or
13 borrower may be required to pay the cost thereof. In such
14 event the seller or lender or financing entity shall promptly
15 notify the purchaser or borrower that such insurance cannot be
16 obtained, or has been canceled, and credit to the purchaser or
17 borrower the difference between the amount charged for dual
18 protection insurance and the actual cost of such single
19 interest insurance, less, in the event of cancellation, the
20 earned premium on the dual interest insurance for the period
21 it was in force. If the purchaser or borrower procures
22 acceptable dual interest insurance within 30 days after the
23 date of such notice and provides the seller or lender, or
24 finance entity with evidence that the premium therefore has
25 been paid, there is no charge to him or her for the single
26 interest coverage. As used in this section, the term
27 "financing entity" means a finance company, bank, or other
28 lending institution. However, those lenders licensed under the
29 Consumer Finance Act, chapter 516, must provide coverage
30 issued in the name of the borrower containing the customary
31 mortgagee or loss payee clause.

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1 (2) If a certificate is issued under a master policy,
2 the same coverage as provided in an individual policy will
3 apply.

4 (3) The provisions of this section do not apply to
5 title insurance as defined in s. 624.608.

6 Section 20. Paragraph (a) of subsection (2) of section
7 627.062, Florida Statutes, is amended to read:

8 627.062 Rate standards.--

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

10 (a) Insurers or rating organizations shall establish
11 and use rates, rating schedules, or rating manuals to allow
12 the insurer a reasonable rate of return on such classes of
13 insurance written in this state. Copies ~~A copy~~ of rates,
14 rating schedules, rating manuals, premium credits or discount
15 schedules, and surcharge schedules, and changes thereto, shall
16 be filed with the department under one of the following
17 procedures:

18 1. If the filing is made at least 90 days before the
19 proposed effective date and the filing is not implemented
20 during the department's review of the filing and any
21 proceeding and judicial review, then such filing shall be
22 considered a "file and use" filing. In such case, the
23 department shall finalize its review by issuance of a notice
24 of intent to approve or a notice of intent to disapprove
25 within 90 days after receipt of the filing. The notice of
26 intent to approve and the notice of intent to disapprove
27 constitute agency action for purposes of the Administrative
28 Procedure Act. Requests for supporting information, requests
29 for mathematical or mechanical corrections, or notification to
30 the insurer by the department of its preliminary findings
31 shall not toll the 90-day period during any such proceedings

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1 and subsequent judicial review. The rate shall be deemed
2 approved if the department does not issue a notice of intent
3 to approve or a notice of intent to disapprove within 90 days
4 after receipt of the filing.

5 2. If the filing is not made in accordance with the
6 provisions of subparagraph 1., such filing shall be made as
7 soon as practicable, but no later than 30 days after the
8 effective date, and shall be considered a "use and file"
9 filing. An insurer making a "use and file" filing is
10 potentially subject to an order by the department to return to
11 policyholders portions of rates found to be excessive, as
12 provided in paragraph (h).

13 Section 21. Subsection (4) is added to section
14 627.0625, Florida Statutes, to read:

15 627.0625 Commercial property and casualty risk
16 management plans.--

17 (4) Commercial motor vehicle policies that are issued
18 to satisfy mandatory financial responsibility requirements of
19 a state or local government must provide first dollar coverage
20 to third-party claimants without a deductible. With respect to
21 such practices, the department may adopt rules necessary to
22 assure that claims are administered fairly as required by law.

23 Section 22. Subsection (8) of section 627.0651,
24 Florida Statutes, is amended to read:

25 627.0651 Making and use of rates for motor vehicle
26 insurance.--

27 (8) Rates are not unfairly discriminatory if averaged
28 broadly among members of a group; nor are rates unfairly
29 discriminatory even though they are lower than rates for
30 nonmembers of the group. However, such rates are unfairly
31 discriminatory if they are not actuarially measurable and

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1 credible and sufficiently related to actual or expected loss
2 and expense experience of the group so as to assure that
3 nonmembers of the group are not unfairly discriminated
4 against. Use of a single United States Postal Service zip code
5 as a rating territory shall be deemed unfairly discriminatory.
6 An insurer may not impose a surcharge or discount for
7 liability coverages based on the type of vehicle without
8 providing acceptable actuarial justification.

9 Section 23. Section 627.385, Florida Statutes, is
10 created to read:

11 627.385 Conduct of residual market board members.--

12 (1)(a) For various insurance coverages, a residual
13 market has been created by legislation to provide a market of
14 last resort for individuals unable to secure coverage in the
15 voluntary market.

16 (b) Each residual market's enabling legislation calls
17 for the establishment of a board of governors or directors
18 that operates subject to a plan of operation. The board, in
19 carrying out its obligations, must engage in business
20 transactions in order to provide and administer the required
21 coverage and maintain adequate funds to support the plan. In
22 order for the board to fully execute its responsibilities
23 required by law, conflict of interest or inappropriate
24 activity by board members, or the appearance thereof, with
25 regard to member insurers or policyholders of the residual
26 market mechanism must be avoided. The Legislature has
27 determined that the provisions set forth in subsection (2) are
28 necessary to protect the public interest by ensuring fair,
29 reasonable, and beneficial board practice and activity.

30 (c) This section applies to the Florida Medical
31 Malpractice Joint Underwriting Association, the Florida

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1 Automobile Joint Underwriting Association, the Florida
2 Workers' Compensation Joint Underwriting Association, the
3 Florida Comprehensive Health Association, the Florida
4 Windstorm Underwriting Association, the Florida Property and
5 Casualty Joint Underwriting Association, the Florida
6 Residential Property and Casualty Joint Underwriting
7 Association, and the board members thereof.
8 (2) To ensure that the board is free from potential
9 conflict or inappropriate behavior the following are adopted
10 in the plan of operation of the subject residual market in
11 this state.
12 (a) A board member may not act as a servicing carrier
13 or administering entity for the subject plan, other than a
14 claim adjustment contract open to all members of the plan.
15 (b) A board member or board member representative may
16 not use his or her position to foster or facilitate any
17 special pecuniary gain for himself or herself, his or her
18 member company, or any other entity in which the board member
19 or board member representative or the member company has a
20 substantial financial interest, except as otherwise provided
21 in paragraph (a).
22 (c) A board member or board member representative may
23 not use his or her position on the board to secure or promote
24 any business relationship from which he or she may derive a
25 financial gain.
26 (d) A board member or designee may not receive any
27 gift or gratuity, except as provided in s. 112.3248, other
28 than meals, while acting in his or her capacity as a board
29 member.
30 (3) Board members and board member representatives
31 shall maintain reasonable board expenses based on state travel

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1 policy as set forth in s. 112.061. The board shall develop a
2 detailed policy regarding board member travel, which policy
3 must be based on s. 112.061 and is subject to the approval of
4 the department.

5 Section 24. Section 627.4065, Florida Statutes, is
6 created to read:

7 627.4065 Insured's right to return policy; notice.--A
8 health insurance policy issued or issued for delivery in this
9 state must have printed or stamped thereon or attached thereto
10 a notice in a prominent place stating in substance that the
11 policyholder may return the policy to the insurer within 10
12 days after its delivery and may have the premium paid refunded
13 if, after examination of the policy or contract, the
14 policyholder is not satisfied with it for any reason. The
15 notice must provide that if the policyholder, pursuant to such
16 notice, returns the policy or contract to the insurer at its
17 home office or branch office or to the agent through whom it
18 was purchased, it is considered void from the beginning and
19 the parties are in the same position as if no policy or
20 contract had been issued. This section does not apply to group
21 policies, single premium nonrenewable policies or travel
22 accident policies.

23 Section 25. Section 627.41345, Florida Statutes, is
24 created to read:

25 627.41345 Certificate of insurance.--An insurer or
26 agent may not issue or sign a certificate of insurance that
27 contains terms or conditions that differ from those in the
28 policy under which the certificate of insurance is issued. In
29 the event of a conflict, the terms of the policy under which
30 the certificate of insurance is issued shall control.

31 Section 26. Subsection (9) is added to section

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1 627.7015, Florida Statutes, to read:

2 627.7015 Alternative procedure for resolution of
3 disputed property insurance claims.--

4 (9) For purposes of this section, the term "claim"
5 refers to any dispute between an insurer and an insured
6 relating to a material issue of fact other than a dispute:

7 (a) With respect to which the insurer has a reasonable
8 basis to suspect fraud;

9 (b) Where, based on agreed-upon facts as to the cause
10 of loss, there is no coverage under the policy;

11 (c) With respect to which the insurer has a reasonable
12 basis to believe that the claimant has intentionally made a
13 material misrepresentation of fact which is relevant to the
14 claim, and the entire request for payment of a loss has been
15 denied on the basis of the material misrepresentation; or

16 (d) Where the amount in controversy is less than \$500,
17 unless the parties agree to mediate a dispute involving a
18 lesser amount.

19 Section 27. Section 627.7276, Florida Statutes, is
20 amended to read:

21 627.7276 Notice of limited coverage.--

22 (1) The following notice of limited coverage shall An
23 automobile policy that does not contain coverage for bodily
24 injury and property damage must be clearly stamped or printed
25 on any automobile insurance policy that provides coverage only
26 for first-party damage to the insured vehicle, but does not
27 provide coverage for bodily injury liability, property damage
28 liability, or personal injury protection to the effect that
29 such coverage is not included in the policy in the following
30 manner:

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1 "THIS POLICY DOES NOT PROVIDE BODILY INJURY
 2 LIABILITY, AND PROPERTY DAMAGE LIABILITY, OR
 3 PERSONAL INJURY PROTECTION INSURANCE OR ANY
 4 OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM
 5 CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH
 6 ANY FINANCIAL RESPONSIBILITY LAW OR WITH THE
 7 FLORIDA MOTOR VEHICLE NO-FAULT LAW."

8
 9 (2) This legend must appear on the policy declaration
 10 page ~~and on the filing back of the policy~~ and be printed in a
 11 contrasting color from that used on the policy and in type
 12 larger than the largest type used in the text thereof, as an
 13 overprint or by a rubber stamp impression.

14 Section 28. Section 627.795, Florida Statutes, is
 15 created to read:

16 627.795 Policy exceptions.--

17 (1) A title insurance commitment must be issued on all
 18 real estate closing transactions when a title insurance policy
 19 is to be issued, except for multiple conveyances on the same
 20 property such as timesharing.

21 (2) A gap exception may not be deleted on a commitment
 22 until the time of closing.

23 Section 29. Subsection (1) of section 627.918, Florida
 24 Statutes, is amended to read:

25 627.918 Reporting formats.--

26 (1) The department shall require that the reporting
 27 provided for in this part be made on forms adopted ~~established~~
 28 by the department or in a format compatible with the
 29 department's ~~its~~ electronic data processing equipment. The
 30 department shall adopt by rule standards for such approval.

31 Section 30. Subsection (3) of section 641.3108,

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1 Florida Statutes, is amended to read:

2 641.3108 Notice of cancellation of contract.--

3 (3) In the case of a health maintenance contract
4 issued to an employer or person holding the contract on behalf
5 of the subscriber group, the health maintenance organization
6 may make the notification through the employer or group
7 contract holder, and, if the health maintenance organization
8 elects to take this action through the employer or group
9 contract holder, the organization shall be deemed to have
10 complied with the provisions of this section upon notifying
11 the employer or group contract holder of the requirements of
12 this section and requesting the employer or group contract
13 holder to forward to all subscribers the notice required
14 herein. If a subscriber group contract is not renewed due to
15 claim experience, the subscriber group is entitled to receive
16 information concerning its loss ratio. If requested by a
17 subscriber group, a detailed claim experience record may be
18 provided at a reasonable expense. The record shall maintain
19 subscriber confidentiality.

20 Section 31. Subsection (7) of section 627.7295,
21 Florida Statutes, is amended to read:

22 627.7295 Motor vehicle insurance contracts.--

23 (7) A policy of private passenger motor vehicle
24 insurance or a binder for such a policy may be initially
25 issued in this state only if the insurer or agent has
26 collected from the insured an amount equal to 2 months'
27 premium. An insurer, agent, or premium finance company may
28 not directly or indirectly take any action resulting in the
29 insured having paid from the insured's own funds an amount
30 less than the 2 months' premium required by this subsection.
31 This subsection applies without regard to whether the premium

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1 is financed by a premium finance company or is paid pursuant
2 to a periodic payment plan of an insurer or an insurance
3 agent. This subsection does not apply if an insured or member
4 of the insured's family is renewing or replacing a policy or a
5 binder for such policy written by the same insurer or a member
6 of the same insurer group. This subsection does not apply to
7 an insurer that issues private passenger motor vehicle
8 coverage primarily to active duty or former military personnel
9 or their dependents. This subsection does not apply if all
10 policy payments are paid pursuant to a payroll deduction plan
11 or an automatic electronic funds transfer payment plan from
12 the policyholder, provided that the first policy payment may
13 be ~~is~~ made by cash, cashier's check, check, or a money order.
14 This subsection and subsection (4) do not apply if all policy
15 payments to an insurer are paid pursuant to an automatic
16 electronic funds transfer payment plan from an agent or a
17 managing general agent, or if the policy is issued pursuant to
18 the transfer of a book of business by an agent from one
19 insurer to another, provided that ~~and if~~ the policy includes,
20 at a minimum, personal injury protection pursuant to ss.
21 627.730-627.7405; motor vehicle property damage liability
22 pursuant to s. 627.7275; and bodily injury liability in at
23 least the amount of \$10,000 because of bodily injury to, or
24 death of, one person in any one accident and in the amount of
25 \$20,000 because of bodily injury to, or death of, two or more
26 persons in any one accident. This subsection and subsection
27 (4) do not apply if an insured has had a policy in effect for
28 at least 6 months, the insured's agent is terminated by the
29 insurer that issued the policy, and the insured obtains
30 coverage on the policy's renewal date with a new company
31 through the terminated agent.

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1 Section 32. Subsection (1) of section 627.901, Florida
2 Statutes, is amended to read:

3 627.901 Premium financing by an insurance agent or
4 agency.--

5 (1) A general lines agent may make reasonable service
6 charges for financing insurance premiums on policies issued or
7 business produced by such an agent or agency, s. 626.9541
8 notwithstanding. The service charge shall not exceed \$1 per
9 installment, or a \$6 total service charge per year, for any
10 premium balance of \$120 or less. For any premium balance
11 greater than \$120 but not more than \$220, the service charge
12 shall not exceed \$9 per year. The maximum service charge for
13 any premium balance greater than \$220 shall not exceed \$12 per
14 year. In lieu of such service charges, an insurance agent or
15 agency may charge interest or service charges, which may be
16 level amounts and subject to endorsement changes, that in the
17 aggregate do not exceed a rate of interest not to exceed 18
18 percent simple interest per year on the average unpaid balance
19 as billed over the term of the policy.

20 Section 33. Section 626.9651, Florida Statutes, is
21 created to read:

22 626.9651 Privacy.--The department shall adopt rules
23 consistent with other provisions of the Insurance Code to
24 govern the use of a consumer's nonpublic personal financial
25 and health information. These rules shall be based on,
26 consistent with, and not more restrictive than the National
27 Association of Insurance Commissioners' Privacy of Consumer
28 Financial and Health Information Regulation adopted September
29 26, 2000, by the National Association of Insurance
30 Commissioners, provided, however, the rules shall permit the
31 use and disclosure of nonpublic personal health information

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1 for scientific, medical, or public policy research in
 2 accordance with federal law. In addition, these rules shall
 3 be consistent with, and not more restrictive than, the
 4 standards contained in Title V of the Gramm-Leach-Bliley Act
 5 of 1999 (Pub. L. No. 106-102). Any health insurer or health
 6 maintenance organization determined by the department to be in
 7 compliance with, or to be actively undertaking compliance
 8 with, the consumer privacy protection rules promulgated by the
 9 United States Department of Health and Human Services, in
 10 conformance with the Health Insurance Portability and
 11 Affordability Act, shall be deemed in compliance with this
 12 section. This section shall take effect July 1, 2001.

13 Section 34. Section 631.001, Florida Statutes, is
 14 amended to read:

15 (Substantial rewording of section.

16 See s. 631.001, F.S., for present text.)

17 631.001 Construction; purposes.--

18 (1) The underlying purposes and policies of the
 19 provisions of this part, which are integral elements of the
 20 regulation of the business of insurance and are of vital
 21 public interest and concern, are to:

22 (a) Protect the interests of insureds, claimants,
 23 creditors, and the public.

24 (b) Provide a comprehensive scheme for the
 25 receivership of insurers.

26 (c) Establish this state as a reciprocal state in
 27 those states which, in substance and effect, enact the
 28 National Association of Insurance Commissioners Rehabilitation
 29 and Liquidation Model Act or the Uniform Insurers Liquidation
 30 Act.

31 (d) Make more efficient the administration of insurer

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1 receiverships on an interstate and international basis.

2 (e) Provide prompt corrective measures for any
3 potentially dangerous condition in an insurer.

4 (f) Implement improved methods for rehabilitating
5 insurers, which methods involve the cooperation and management
6 expertise of the insurance industry.

7 (g) Enhance the efficiency and economy of liquidation
8 through clarification and specification of the law to minimize
9 legal uncertainty and litigation.

10 (h) Lessen the problems of interstate rehabilitation
11 and liquidation of an entity subject to the provisions of this
12 part by facilitating cooperation between states in the
13 liquidation process and by extension of the scope of personal
14 jurisdiction over debtors of the insurer outside this state.

15 (i) Establish a system which equitably apportions any
16 unavoidable loss.

17 (j) Maximize recovery of assets for the benefit of the
18 insurer and its policyholders, creditors, and estate.

19 (2) This part shall be liberally construed to effect
20 the purposes stated in subsection (1) and shall specifically
21 authorize the department in its capacity as administrator,
22 conservator, rehabilitator, receiver, liquidator, or similar
23 capacity to pursue any actions for damages or other recoveries
24 on behalf of the insurer and its policyholders, creditors, and
25 estate.

26 (3) This part may be cited as the "Insurers
27 Rehabilitation and Liquidation Act."

28 Section 35. Section 631.011, Florida Statutes, is
29 amended to read:

30 631.011 Definitions.--For the purpose of this part,
31 the term:

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- 1 (1) "Affiliate" means any entity which exercises
- 2 control over or is controlled by the insurer, directly or
- 3 indirectly through:
- 4 (a) Equity ownership of voting securities;
- 5 (b) Common managerial control; or
- 6 (c) Collusive participation by the management of the
- 7 insurer and affiliate in the management of the insurer or the
- 8 affiliate.
- 9 (2) "Ancillary state" means, any state other than a
- 10 domiciliary state.
- 11 (3) "Assets," as used in this section ~~subsections~~
- 12 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.
- 13 (4) "Bona fide holder for value" means a holder who,
- 14 while not possessing information that would lead a reasonable
- 15 person in the holder's position to believe that the insurer is
- 16 financially impaired, and while unaware of the imminence or
- 17 pendency of any receivership proceeding against the insurer,
- 18 has, in the exercise of reasonable business judgment,
- 19 exchanged his or her own funds, assets, or property for funds,
- 20 assets, or property of the insurer having an equivalent market
- 21 value.
- 22 ~~(5)(4)~~ "Court" refers to the circuit court in which
- 23 the receivership proceeding is pending.
- 24 ~~(6)(5)~~ "Delinquency proceeding" means any proceeding
- 25 commenced against an insurer pursuant to this chapter for the
- 26 purpose of liquidating, rehabilitating, reorganizing, or
- 27 conserving such insurer.
- 28 ~~(7)(6)~~ "Domiciliary state" means the state in which an
- 29 insurer is incorporated or organized or, in the case of an
- 30 insurer incorporated or organized in a foreign country, the
- 31 state in which such insurer, having become authorized to do

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1 business in such state, has, at the commencement of a
2 delinquency proceeding, the largest amount of its assets held
3 in trust and assets held on deposit for the benefit of its
4 policyholders or policyholders and creditors in the United
5 States; and any such insurer is deemed to be domiciled in such
6 state.

7 (8) "Fair consideration" means that consideration
8 which is given for property or assets of an insurer when, in
9 exchange for the property or assets and in good faith,
10 property is conveyed, services are rendered, or an enforceable
11 obligation not invalidated by the receivership proceedings is
12 created, having a value to the insurer of not less than the
13 value of the property or assets given in exchange.

14 (9)(7) "Foreign country" means territory not in any
15 state.

16 (10)(8) "General assets" means all property, real,
17 personal, or otherwise, not specifically mortgaged, pledged,
18 deposited, or otherwise encumbered for the security or benefit
19 of specified persons or a limited class or classes of persons,
20 and as to such specifically encumbered property the term
21 includes all such property or its proceeds in excess of the
22 amount necessary to discharge the sum or sums secured thereby.
23 Assets held in trust and assets held on deposit for the
24 security or benefit of all policyholders or all policyholders
25 and creditors in the United States shall be deemed general
26 assets.

27 (11) "Good faith," as applied to a transferee or
28 transferor under this part, means honesty in fact and
29 intention and includes the exercise of reasonable business
30 judgment, together with the absence of information that would
31 lead a reasonable person in the same position to know that the

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1 insurer is financially impaired or insolvent and together with
 2 the absence of knowledge regarding the imminence or pendency
 3 of any receivership proceeding against the insurer.

4 (12)~~(9)~~ "Impairment of capital" means that the minimum
 5 surplus required to be maintained in s. 624.408 has been
 6 dissipated and the insurer is not possessed of assets at least
 7 equal to all its liabilities together with its total issued
 8 and outstanding capital stock, if a stock insurer, or the
 9 minimum surplus or net trust fund required by s. 624.407, if a
 10 mutual, reciprocal, or business trust insurer.

11 (13)~~(10)~~ "Impairment of surplus" means that the
 12 surplus of a stock insurer, the additional surplus of a mutual
 13 or reciprocal insurer, or the additional net trust fund of a
 14 business trust insurer does not comply with the requirements
 15 of s. 624.408.

16 (14)~~(11)~~ "Insolvency" means that all the assets of the
 17 insurer, if made immediately available, would not be
 18 sufficient to discharge all its liabilities or that the
 19 insurer is unable to pay its debts as they become due in the
 20 usual course of business. When the context of any provision of
 21 this code so indicates, insolvency also includes and is
 22 defined as "impairment of surplus," as defined in subsection
 23 (13)~~(9)~~, and "impairment of capital," as defined in subsection
 24 (12)~~(8)~~.

25 (15)~~(12)~~ "Insurer," in addition to persons so defined
 26 under s. 624.03, also includes persons purporting to be
 27 insurers or organizing, or holding themselves out as
 28 organizing, in this state for the purpose of becoming insurers
 29 and all insurers who have insureds resident in this state.

30 (16)~~(13)~~ "Liabilities," as used in subsections (12)
 31 and (14)~~(8)~~~~(10)~~, means all liabilities, including those

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1 specifically required in s. 625.041.

2 (17)(14) "Person" includes natural persons,
3 corporations, partnerships, trusts, estates, and sole
4 proprietorships.

5 (18) "Property," with respect to an insolvent entity,
6 includes all right, title, and interest of the insolvent
7 entity whether legal or equitable, tangible or intangible, or
8 choate or inchoate and includes choses in action, contract
9 rights, and any other interest recognized under the laws of
10 this state. When an order of conservation, rehabilitation, or
11 liquidation is entered, the term also includes entitlements
12 that existed prior to the entry of the order and those that
13 may arise by operation of the provisions of this chapter or
14 other provisions of law allowing the department to avoid prior
15 transfers or assert other rights in its capacity as receiver.
16 The term also includes all records and data that are otherwise
17 the property of the insolvent insurer, however stored,
18 including, but not limited to, claims and claim files,
19 application files, litigation files, premium records, rate
20 books, underwriting manuals, personnel records, or financial
21 records, or similar records within the possession, custody, or
22 control of a managing general agent, third-party
23 administrator, management company, accountant, attorney,
24 affiliate, or other person. The term does not include
25 privileged or confidential documents of an insolvent insurer
26 generated by a third party.

27 (19)(15) "Receiver" means a receiver, liquidator,
28 rehabilitator, or conservator, as the context may require.

29 (20)(16) "Reciprocal state" means any state other than
30 this state in which in substance and effect the provisions of
31 the Insurers Rehabilitation and Liquidation Act are in force,

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1 including the provisions requiring that the commissioner of
2 insurance or equivalent insurance supervisory official be the
3 receiver of a delinquent insurer.

4 (21)~~(17)~~ "Secured claim" means any claim secured by
5 mortgage, trust deed, pledge, deposit as security, escrow, or
6 otherwise but does not include a special deposit claim, a
7 claim against general assets, or a claim based on mere
8 possession. The term also includes a claim which more than 4
9 months before the commencement of a delinquency proceeding in
10 the state of the insurer's domicile has become a lien upon
11 specific assets by reason of judicial process.

12 (22)~~(18)~~ "Special deposit claim" means any claim
13 secured by a deposit made pursuant to statute for the security
14 or benefit of a limited class or classes of persons, but not
15 including any general assets.

16 (23)~~(19)~~ "State" is as defined in s. 624.08.

17 Section 36. Section 631.025, Florida Statutes, is
18 created to read:

19 631.025 Persons and entities subject to this
20 part.--Delinquency proceedings authorized by this part may be
21 initiated against any insurer as defined in s. 631.011(15) if
22 the statutory grounds are present as to that insurer, and the
23 receivership court may exercise jurisdiction over any person
24 required to cooperate with the department pursuant to s.
25 631.391 and over all persons made subject to the court's
26 jurisdiction by other provisions of law. Such persons include,
27 but are not limited to:

28 (1) A person who is transacting or has transacted
29 insurance business in or from this state and against whom
30 claims arising from that business exist or may exist in the
31 future.

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1 (2) A person who purports to transact an insurance
2 business in this state, and any person or entity who acts as
3 an insurer, transacts insurance, or otherwise engages in
4 insurance activities in or from this state, with or without a
5 certificate of authority or proper authority from the
6 department.

7 (3) An insurer who has insureds residing in this
8 state.

9 (4) All other persons organized or in the process of
10 organizing with the intent to transact an insurance business
11 in this state.

12 Section 37. Paragraph (d) of subsection (1) of section
13 631.041, Florida Statutes, is amended, and subsection (6) is
14 added to that section, to read:

15 631.041 Automatic stay; relief from stay;
16 injunctions.--

17 (1) An application or petition under s. 631.031
18 operates as a matter of law as an automatic stay applicable to
19 all persons and entities, other than the receiver, which shall
20 be permanent and survive the entry of an order of
21 conservation, rehabilitation, or liquidation, and which shall
22 prohibit:

23 (d) Any act to create, perfect, or enforce a lien
24 against property of the insurer, except that a secured claim
25 as defined in s. 631.011(21)(17) may proceed under s. 631.191
26 after the order of liquidation is entered;

27 (6) No statute of limitations or defense of laches
28 shall run with respect to any action by or against an insurer
29 between the filing of a petition for conservation,
30 rehabilitation, or liquidation against an insurer and the
31 order granting or denying that petition. If the petition is

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1 denied, any action against the insurer that might have been
2 commenced when the petition was filed may be commenced for at
3 least 60 days after the order denying such relief.

4 Section 38. Section 631.113, Florida Statutes, is
5 created to read:

6 631.113 Extension of time.--

7 (1) The running of any unexpired statute of
8 limitations as to any claims brought by the administrator,
9 conservator, rehabilitator, receiver, or liquidator, or an
10 official or agency exercising powers pursuant to this chapter
11 seeking damages or other recoveries on behalf of an insurer,
12 its policyholders, its creditors, or its estate, shall be
13 tolled for a period of 4 years from the entry of an order
14 placing the administrator, conservator, rehabilitator,
15 receiver, liquidator, or similar official or agency over the
16 insurer, provided, if the delinquency proceedings brought
17 pursuant to this chapter against the insurer terminate in less
18 than 4 years, such tolling shall cease at the time when the
19 proceedings are finally concluded, including all appeals
20 therefrom. Further, the right of action does not accrue and
21 the limitations period for any such action does not run during
22 the time when the insurer is controlled by parties acting
23 contrary to the company's interests or when the facts giving
24 rise to such claim are fraudulently concealed from regulatory
25 authorities or from any members of company management. The
26 provisions of chapter 95 shall be construed so as to be
27 consistent with the provisions of this section. The receiver
28 may institute any action or proceeding on behalf of the estate
29 of the insurer while any statute of limitation is tolled
30 pursuant to this section. The tolling shall be in addition to
31 any other applicable tolling provision.

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1 (2) For actions not covered by subsection (1), if any
 2 unexpired time period is fixed, by any agreement or in any
 3 proceeding, for doing any act for the benefit of the estate,
 4 the receiver shall have 180 days, or such longer period as the
 5 receivership court may allow for good cause shown, from the
 6 entry of the order of rehabilitation or liquidation to perform
 7 the act.

8 Section 39. Present subsections (6) through (9) of
 9 section 631.141, Florida Statutes, are renumbered as
 10 subsections (7) through (10), respectively, and a new
 11 subsection (6) is added to that section to read:

12 631.141 Conduct of delinquency proceeding; domestic
 13 and alien insurers.--

14 (6) The department as receiver is vested with and may
 15 assert all rights belonging to policyholders, creditors, and
 16 the estate as well as all rights of the entity or entities in
 17 receivership, except to the extent that an individual claim is
 18 personal and unique to that claimant and recovery thereon
 19 could not inure to the benefit of the estate or to other
 20 claimants.

21 Section 40. Paragraph (d) of subsection (6) of section
 22 631.154, Florida Statutes, is amended to read:

23 631.154 Funds or other property in the possession of
 24 third person.--

25 (6) Should the receiver be successful in establishing
 26 its claim or any part thereof, the receiver shall be entitled
 27 to recover judgment for the following:

28 (d) All costs, investigative and other expenses, which
 29 include the department's in-house staff and staff attorney's
 30 expenses, costs, and salaries, expended in necessary to the
 31 recovery of the property or funds, and reasonable attorney's

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1 fees.

2 Section 41. Section 631.156, Florida Statutes, is
3 created to read:

4 631.156 Investigation by the department.--

5 (1) Preliminary or incidental to a petition for
6 receivership proceedings, the department may, and if appointed
7 receiver shall, undertake a full investigation to determine
8 the causes and reasons for the insolvency, the discovery and
9 location of assets to be recovered, the recovery of such
10 assets, whether the filing of false statements with the
11 department contributed to the insolvency, and, in conjunction
12 with the department's Division of Insurance Fraud or any other
13 appropriate agency of state or federal government, whether any
14 law of this state, any other state, or the Federal Government
15 relating to the solvency of the insurer has been violated. In
16 the furtherance of such investigation, the department may:

17 (a) Examine and review any and all documents that are
18 reasonably calculated to disclose or lead to the disclosure of
19 the causes and reasons for the insolvency, the discovery and
20 location of assets to be recovered, the recovery of such
21 assets, the truth or falsity of statements filed with the
22 department, and whether any law of this state, any other
23 state, or the Federal Government has been violated.

24 (b) Take statements or depositions under oath of any
25 person whose testimony is reasonably calculated to disclose or
26 lead to the disclosure of the causes and reasons for the
27 insolvency, the discovery of and location of assets to be
28 recovered, the recovery of such assets, the truth or falsity
29 of statements filed with the department, and whether any law
30 of this state, any other state, or the Federal Government has
31 been violated.

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1 (c) Request the court having jurisdiction over the
2 receivership proceedings to issue any necessary subpoenas.

3 (d) Examine and review the books, records, and
4 documents of any affiliate, controlling person, officer,
5 director, manager, trustee, agent, adjuster, employee, or
6 independent contractor of any insurer or affiliate and any
7 other person who possesses any executive authority over, or
8 who exercises or has exercised any control over, any segment
9 of the affairs of the insurer or affiliate, to the extent such
10 examination is reasonably calculated to disclose or lead to
11 the disclosure of the causes and reasons for the insolvency,
12 the discovery and location of assets to be recovered, the
13 recovery of such assets, the truth or falsity of statements
14 filed with the department, and whether any law of this state,
15 any other state, or the Federal Government has been violated.

16 (2) In its capacity as receiver, the department may
17 provide documents, books and records, other investigative
18 products, work product, and analysis, including copies of any
19 or all of the foregoing items, to the Division of Insurance
20 Fraud or any other appropriate agency of state or federal
21 government. The sharing of information, investigative
22 products, or analysis shall not waive any work product or
23 other privilege that would otherwise apply under common law,
24 chapter 119, or any other law.

25 (3) The department, as the court's receiver, is
26 granted the discretion to determine what books, records,
27 documents, or testimony would be reasonably calculated to
28 disclose or lead to the disclosure of the causes and reasons
29 for the insolvency, the discovery and location of assets to be
30 recovered, the recovery of the assets, the truth or falsity of
31 statements filed with the department, and whether any law of

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1 this state or of the United States has been violated, subject
2 to the court's power to review such determination or appoint a
3 general master to review such determination. A party
4 asserting that any documents requested by the department under
5 this section are not subject to review, or that any particular
6 testimony may not be obtained, shall present such contention
7 by written motion to the receivership court within 20 days
8 after receipt of the request and shall be fully responsible
9 for the loss of any evidence which occurs after the department
10 first informs said party of its request therefor. The court
11 shall, as expeditiously as possible, determine whether the
12 department has abused its discretion in seeking such evidence
13 or testimony, with the objecting party having the burden of
14 proof. A party who fails to produce the requested evidence or
15 testimony without filing a proper timely objection, or who
16 having unsuccessfully asserted such objection fails thereafter
17 to furnish the evidence or testimony, within the time provided
18 by the court or the department, shall be subject to the
19 contempt powers of the court, in addition to any other
20 applicable penalties which may be provided in the Florida
21 Insurance Code or other law.

22 Section 42. Section 631.157, Florida Statutes, is
23 created to read:

24 631.157 Civil action by the receiver.--

25 (1) Any person who is engaged in the business of
26 insurance or who acts as or is an officer, director, agent, or
27 employee of any person engaged in the business of insurance,
28 or is involved, other than as an insured or beneficiary under
29 a policy of insurance, in a transaction relating to the
30 conduct of affairs of such a business, and who willfully
31 obtains or uses, as defined in s. 812.012(2), any asset or

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1 property, including, but not limited to, moneys, funds,
2 premiums, credits, or other property of an insurer, shall be
3 liable to the department as receiver for the use and benefit
4 of an insolvent insurer's estate, creditors, and
5 policyholders, as follows:

6 (a) If such obtaining or using did not jeopardize the
7 safety and soundness of an insurer and was not a significant
8 cause of such insurer's being placed in conservation,
9 rehabilitation, or liquidation, such person shall be liable
10 only for the full amount of any asset obtained or used, plus
11 prejudgment interest provided by law.

12 (b) If such obtaining or using jeopardized the safety
13 and soundness of an insurer or was a significant cause of such
14 insurer's being placed in conservation, rehabilitation, or
15 liquidation, such person shall be liable for triple the full
16 amount of any asset obtained or used, plus prejudgment
17 interest provided by law on the original amount.

18 (2) Any person who is engaged in the business of
19 insurance or who acts as or is an officer, director, agent, or
20 employee of any person engaged in the business of insurance,
21 or is involved, other than as an insured or beneficiary under
22 a policy of insurance, in a transaction relating to the
23 conduct of affairs of such a business, and who, while having
24 actual knowledge or such constructive knowledge as should have
25 been obtained through reasonable inquiry by a person in such
26 position, if such person knowingly misreports, or knowingly
27 makes any false entry of, a material fact in any book, report,
28 or statement of an insurer with the intent to deceive such
29 insurer, including any officer, employee, or agent of such
30 insurer, the department, or any agent or examiner appointed by
31 the department to examine the affairs of such person or of the

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1 insurer, concerning the financial condition or solvency of
2 such business, shall be liable to the department as receiver
3 for the use and benefit of an insolvent insurer's estate,
4 creditors, and policyholders, as follows:

5 (a) If such misreporting did not jeopardize the safety
6 and soundness of an insurer and was not a significant cause of
7 such insurer's being placed in conservation, rehabilitation,
8 or liquidation, such person shall be liable only for the full
9 amount of any asset misreported.

10 (b) If such misreporting jeopardized the safety and
11 soundness of an insurer or was a significant cause of such
12 insurer's being placed in conservation, rehabilitation, or
13 liquidation, such person shall be liable for triple the full
14 amount of any asset misreported.

15 (3) If the asset or property that has been obtained or
16 used was reported to the department as being available to the
17 insurer as an admitted asset and such asset is unavailable to
18 the receiver for payment of the obligations of the insurer at
19 the time when a receivership proceeding is instituted, the
20 obtaining or using shall be presumed to have jeopardized the
21 safety and soundness of the insurer and to have been a
22 significant cause of such insurer's being placed in
23 conservation, rehabilitation, or liquidation, with the burden
24 of proof on the defendants to show otherwise.

25 (4) If the receiver is successful in establishing a
26 claim under this section, the receiver shall be entitled to
27 recover all of its costs, investigative and other expenses,
28 which shall include the department's in-house staff and staff
29 attorney's expenses, costs, and salaries, expended in the
30 prosecution of the action, and reasonable attorney's fees.

31 The receiver shall be exempt from the provisions of s. 57.111.

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1 (5) An action under this section may be brought at any
2 time before the expiration of 4 years after the entry of the
3 initial order of rehabilitation or liquidation under this part
4 but shall be filed before the time the receivership proceeding
5 is closed or dismissed.

6 Section 43. Paragraph (b) of subsection (1) of section
7 631.57, Florida Statutes, is amended to read:

8 631.57 Powers and duties of the association.--

9 (1) The association shall:

10 (b) Be deemed the insurer to the extent of its
11 obligation on the covered claims, and, to such extent, shall
12 have all rights, duties, defenses,and obligations of the
13 insolvent insurer as if the insurer had not become insolvent.
14 In no event shall the association be liable for any penalties
15 or interest.

16 Section 44. Section 631.3995, Florida Statutes, is
17 created to read:

18 631.3995 Closing of estate; Closed Estate Fund Trust
19 Account.--

20 (1) When all assets justifying the expense of
21 collection and distribution have been marshaled and
22 distributed under this part, the department shall petition the
23 court to terminate the liquidation proceedings and to close
24 the estate. The court may grant such other relief as may be
25 appropriate, including, but not limited to, a full discharge
26 of all liability and responsibility of the liquidator, the
27 reservation of assets for administrative expenses incurred in
28 the closing of the estate, and any other actions the
29 department feels necessary or appropriate for closing the
30 estate.

31 (2) Any remaining reserved assets that are provided

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1 for in subsection (1) and that may not be practicably or
 2 economically distributed to claimants shall be deposited into
 3 a segregated account to be known as the Closed Estate Fund
 4 Trust Account, if created by law. The department may use
 5 moneys held in the account for paying the administrative
 6 expenses of companies subject to this part that lack
 7 sufficient assets to allow the department to perform its
 8 duties and obligations under this part. An annual audit of the
 9 Closed Estate Fund Trust Account shall be performed regardless
 10 of its balance.

11 (3) The department may petition the court to reopen
 12 the proceedings for good cause shown, including the marshaling
 13 of additional assets, and the court may enter such other
 14 orders as may be deemed appropriate.

15 Section 45. Subsection (3) of section 631.54, Florida
 16 Statutes, is amended to read:

17 631.54 Definitions.--As used in this part:

18 (3) "Covered claim" means an unpaid claim, including
 19 one of unearned premiums, which arises out of, and is within
 20 the coverage, and not in excess of, the applicable limits of
 21 an insurance policy to which this part applies, issued by an
 22 insurer, if such insurer becomes an insolvent insurer after
 23 October 1, 1970, and the claimant or insured is a resident of
 24 this state at the time of the insured event or the property
 25 from which the claim arises is permanently located in this
 26 state. "Covered claim" shall not include any amount due any
 27 reinsurer, insurer, insurance pool, or underwriting
 28 association, as subrogation, contribution, indemnification,
 29 ~~recoveries~~ or otherwise. Member insurers shall have no right
 30 of subrogation against the insured of any insolvent member.

31 Section 46. Section 817.2341, Florida Statutes, is

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1 created to read:

2 817.2341 Crimes by or affecting persons engaged in the
3 administration of any insurer or entity organized pursuant to
4 chapter 624 or chapter 641.--

5 (1)(a) Any person who makes a false entry of a
6 material fact in any book, report, or statement relating to a
7 transaction of an insurer or entity organized pursuant to
8 chapter 624 or chapter 641, intending thereby to deceive any
9 person about the financial condition or solvency of such
10 insurer or entity, commits a felony of the third degree,
11 punishable as provided in s. 775.082, s. 775.083, or s.
12 775.084.

13 (b) If such false entry of a material fact is made
14 with the intent to deceive any person as to the impairment of
15 capital, as defined in s. 631.011(12), of such insurer or
16 entity or is the significant cause of such insurer or entity
17 being placed in conservation, rehabilitation, or liquidation
18 by a court, the offense is a felony of the first degree,
19 punishable as provided in s. 775.082, s. 775.083, or s.
20 775.084.

21 (2)(a) Any person who knowingly makes a material false
22 statement or report to the department or any agent of the
23 department, or who knowingly and materially overvalues any
24 property in any document or report prepared to be presented to
25 the department or any agent of the department, commits a
26 felony of the third degree, punishable as provided in s.
27 775.082, s. 775.083, or s. 775.084.

28 (b) If such material false statement or report or such
29 material overvaluation is made with the intent to deceive any
30 person as to the impairment of capital, as defined in s.
31 631.011(12), of an insurer or entity organized pursuant to

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1 chapter 624 or chapter 641, or is the significant cause of
2 such insurer or entity being placed in conservation,
3 rehabilitation, or liquidation by a court, the offense is a
4 felony of the first degree, punishable as provided in s.
5 775.082, s. 775.083, or s. 775.084.

6 Section 47. Subsection (7) is added to section 631.57,
7 Florida Statutes, to read:

8 631.57 Powers and duties of the association.--
9 (7) Notwithstanding any other provision of law, the
10 net direct written premiums of medical malpractice insurance
11 are not subject to assessment under this section to cover
12 claims and administrative costs for the type of insurance
13 defined in s. 624.604.

14 Section 48. Except as otherwise provided herein, this
15 act shall take effect July 1, 2001.

16
17

18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 remove from the title of the bill: the entire title,

21

22 and insert in lieu thereof:

23 An act relating to financial matters; amending
24 s. 624.4072, F.S.; extending the term of the
25 exemption from taxes and assessments on
26 minority-owned property and casualty insurers;
27 postponing the scheduled repeal of the law;
28 amending s. 627.0628, F.S.; providing for
29 disclosure of certain information in connection
30 with the use of hurricane loss projection
31 models; amending s. 627.351, F.S.; specifying

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1 membership of the boards of the Florida
2 Windstorm Underwriting Association and the
3 Residential Property and Casualty Joint
4 Underwriting Association; revising criteria for
5 limited apportionment; providing rate
6 standards; specifying applicability of
7 mandatory take-out provisions; specifying
8 duties with respect to pursuit of federal tax
9 exemptions and tax-free bond status; providing
10 premium tax exemption; providing for
11 appropriation of funds for hurricane loss
12 mitigation purposes; providing standards for
13 certain payments to agents of record of Florida
14 Winstorm Underwriting Association and
15 Residential Property and Casualty Joint
16 Underwriting Association policies; amending s.
17 627.3511, F.S.; revising agent compensation in
18 connection with take-out plans; amending s.
19 627.7013, F.S.; delaying the repeal date of the
20 moratorium on hurricane-related cancellation or
21 nonrenewal of property insurance policies;
22 amending s. 20.04, F.S.; providing an exception
23 to departmental structure requirements;
24 deleting reference to the Department of Banking
25 and Finance and substituting the Department of
26 Insurance and Financial Services; creating s.
27 20.121, F.S.; creating the Office of Chief
28 Financial Officer; providing duties; creating
29 s. 20.131, F.S.; creating the Department of
30 Insurance and Financial Services; providing for
31 an executive director; providing for

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1 departmental structure; creating the Offices of
2 Commissioner of Insurance, Commissioner of
3 Financial Services, and Commissioner of
4 Securities; providing for appointment and
5 specifying qualifications for each
6 commissioner; providing jurisdiction for each
7 commissioner's office; transferring certain
8 powers, duties, functions, rules, records,
9 personnel, property, and unexpended balances of
10 appropriations, allocations, and other funds to
11 the Office of Chief Financial Officer and the
12 Department of Insurance and Financial Services;
13 specifying that rules of the Department of
14 Banking and Finance and the Department of
15 Insurance become rules of the Department of
16 Insurance and Financial Services; specifying
17 that such rules become rules of the Office of
18 Chief Financial Officer under certain
19 circumstances; providing for preservation of
20 validity of judicial or administrative actions
21 involving such departments; providing for
22 substitution of certain parties in interest in
23 such actions; creating the Office of Transition
24 Management; specifying powers and duties
25 thereof; requiring reports to the Governor and
26 the Legislature; directing the Division of
27 Statutory Revision to prepare proposed
28 substantive legislation by a certain time for
29 certain purposes; repealing ss. 20.12 and
30 20.13, F.S., relating to the Department of
31 Banking and Finance and the Department of

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1 Insurance, respectively; providing an
2 appropriation; amending ss. 624.3161, 626.171,
3 F.S.; directing the department to adopt rules
4 relating to market conduct examinations and
5 license applications; amending s. 626.9541,
6 F.S.; revising provisions relating to unfair
7 competition and deceptive practices; creating
8 s. 626.9552, F.S.; providing standards for
9 single interest insurance; amending s. 627.062,
10 F.S.; providing for filing forms for rate
11 standards; amending s. 627.0625, F.S.;
12 authorizing the department to adopt rules
13 relating to third-party claimants; amending s.
14 627.0651, F.S.; prohibiting motor vehicle
15 insurers from imposing a surcharge or a
16 discount due to certain factors; creating s.
17 627.385, F.S.; providing rules of conduct for
18 residual market board members; creating s.
19 627.4065, F.S.; providing for notice of right
20 to return health insurance policies; creating
21 s. 627.41345, F.S.; prohibiting an insurer or
22 agent from issuing or signing certain
23 certificates of insurance; providing that the
24 terms of the policy control in case of
25 conflict; amending s. 627.7015, F.S.; defining
26 the term "claim" for purposes of alternative
27 procedures for resolving disputed property
28 insurance claims; amending s. 627.7276, F.S.;
29 providing for notice of coverage of automobile
30 policies; creating s. 627.795, F.S.; providing
31 guidelines for title insurance policies;

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1 amending s. 627.918, F.S.; directing the
2 department to adopt rules relating to reporting
3 formats; amending s. 641.3108, F.S.; requiring
4 health maintenance organizations to provide
5 certain information to subscriber groups whose
6 contract is not renewed for certain reasons;
7 amending s. 627.7295, F.S.; providing an
8 additional exception to a requirement that a
9 minimum of 2 months' premium be collected to
10 issue a policy or binder for motor vehicle
11 insurance; amending s. 627.901, F.S.;
12 authorizing insurance agents and insurers that
13 finance premiums for certain policies to charge
14 interest or a service charge at a specified
15 rate on unpaid premiums on those policies;
16 creating s. 626.9651, F.S.; directing the
17 department to adopt rules to govern the use of
18 a consumer's nonpublic personal financial and
19 health information by health insurers and
20 health maintenance organizations; providing
21 standards governing the rules; amending s.
22 631.001, F.S.; providing construction and
23 purposes; providing a short title; amending s.
24 631.011, F.S.; providing additional
25 definitions; creating s. 631.025, F.S.;
26 specifying application to certain persons and
27 entities; amending s. 631.041, F.S.; limiting
28 application of certain time restrictions;
29 correcting a cross-reference; creating s.
30 631.113, F.S.; providing for tolling certain
31 time limitations in certain actions; amending

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Bill No. SB 1220, 2nd Eng.

Amendment No. ____ (for drafter's use only)

1 s. 631.141, F.S.; vesting the Department of
2 Insurance with certain rights as receiver;
3 amending s. 631.154, F.S.; including certain
4 costs and expenses of the department in costs
5 and expenses entitled to be recovered by the
6 receiver under certain circumstances; creating
7 s. 631.156, F.S.; providing for investigations
8 by the department preliminary or incidental to
9 receivership proceedings; providing department
10 powers; authorizing the department to provide
11 certain information in such investigations;
12 granting the department certain discretionary
13 powers; creating s. 631.157, F.S.; imposing
14 liability on certain persons or entities for
15 certain actions; specifying amounts of damages;
16 providing construction; providing costs and
17 expenses entitled to be recovered by the
18 receiver under certain circumstances; providing
19 a time certain for bringing certain actions;
20 amending s. 631.57, F.S.; clarifying that the
21 association has the same legal defenses
22 available to the insolvent insurer; creating s.
23 631.3995, F.S.; providing procedures and
24 requirements for closing an estate; providing
25 for deposit of certain assets into the Closed
26 Estate Fund Trust Account; providing for uses
27 of such account; providing for reopening
28 certain proceedings; amending s. 631.54, F.S.;
29 revising a definition; creating s. 817.2341,
30 F.S.; providing criminal penalties for certain
31 activities; amending s. 631.57, F.S.;

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Amendment No. ____ (for drafter's use only)

1 clarifying that the association has the same
2 legal defenses available to the insolvent
3 insurer; providing effective dates.
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