

Bill No. HB 1607, 2nd Eng.

Amendment No. Barcode 053070

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Latvala moved the following amendment:

Senate Amendment (with title amendment)

On page 23, line 27, through page 63, line 3, delete those lines

and insert:

Section 16. Effective July 1, 2001, subsections (2) and (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.--

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

(a) Agreements may be made among property insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but are unable to procure, such insurance through ordinary methods; and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications shall be subject to the applicable provisions of this chapter.

(b) The department shall require all insurers holding

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1 a certificate of authority to transact property insurance on a
2 direct basis in this state, other than joint underwriting
3 associations and other entities formed pursuant to this
4 section, to provide windstorm coverage to applicants from
5 areas determined to be eligible pursuant to paragraph (c) who
6 in good faith are entitled to, but are unable to procure, such
7 coverage through ordinary means; or it shall adopt a
8 reasonable plan or plans for the equitable apportionment or
9 sharing among such insurers and insureds who procure property
10 insurance in this state pursuant to part VIII of chapter 626.

11 Such insurers shall be subject to assessment by the
12 association and shall be collectively referred to as
13 "assessable insurers" of windstorm coverage, which may include
14 formation of an association for this purpose. As used in this
15 subsection, the term "property insurance" means insurance on
16 real or personal property, as defined in s. 624.604, whether
17 written by member insurers or procured by assessable insurers,
18 including insurance for fire, industrial fire, allied lines,
19 farmowners multiperil, homeowners' multiperil, commercial
20 multiperil, and mobile homes, and including liability
21 coverages on all such insurance, but excluding inland marine
22 as defined in s. 624.607(3) and excluding vehicle insurance as
23 defined in s. 624.605(1)(a) other than insurance on mobile
24 homes used as permanent dwellings. The department shall adopt
25 rules that provide a formula for the recovery and repayment of
26 any deferred assessments.

27 1. For the purpose of this section, properties
28 eligible for such windstorm coverage are defined as dwellings,
29 buildings, and other structures, including mobile homes which
30 are used as dwellings and which are tied down in compliance
31 with mobile home tie-down requirements prescribed by the

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1 Department of Highway Safety and Motor Vehicles pursuant to s.
2 320.8325, and the contents of all such properties. An
3 applicant or policyholder is eligible for coverage only if an
4 offer of coverage cannot be obtained by or for the applicant
5 or policyholder from an admitted insurer at approved rates.

6 2.a.(I) All insurers required to be members of such
7 association and assessable insurers shall participate in its
8 writings, expenses, and losses. Surplus of the association
9 shall be retained for the payment of claims and shall not be
10 distributed to the member insurers or assessable insurers.

11 Such participation by member insurers shall be in the
12 proportion that the net direct premiums of each member insurer
13 written for property insurance in this state during the
14 preceding calendar year bear to the aggregate net direct
15 premiums for property insurance ~~of all member insurers~~, as
16 reduced by any credits for voluntary writings, in this state
17 during the preceding calendar year. For the purposes of this
18 subsection, the term "net direct premiums" means direct
19 written premiums for property insurance, reduced by premium
20 for liability coverage and for the following if included in
21 allied lines: rain and hail on growing crops; livestock;
22 association direct premiums booked; National Flood Insurance
23 Program direct premiums; and similar deductions specifically
24 authorized by the plan of operation and approved by the
25 department. A member's participation shall begin on the first
26 day of the calendar year following the year in which it is
27 issued a certificate of authority to transact property
28 insurance in the state and shall terminate 1 year after the
29 end of the calendar year during which it no longer holds a
30 certificate of authority to transact property insurance in the
31 state. The commissioner, after review of annual statements,

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1 other reports, and any other statistics that the commissioner
2 deems necessary, shall certify to the association the
3 aggregate direct premiums written for property insurance in
4 this state ~~by all member insurers.~~

5 (II) The plan of operation shall provide for a board
6 of directors consisting of the members of the State Board of
7 Administration, which shall oversee the operations of the
8 association and shall carry out any other duties provided by
9 law. The board shall appoint an advisory council consisting
10 of an actuary, a meteorologist, an engineer, a representative
11 of insurers, a representative of insurance agents, and three
12 consumers who shall also be representatives of other
13 professions and industries, to provide the board with
14 information and advice in connection with its duties under
15 this section. Members of the advisory council shall be
16 eligible for per diem and travel expenses under s. 112.061.
17 The association shall not be considered a state agency and its
18 obligations shall not be considered obligations of the state.
19 In the event that specifying the State Board of Administration
20 as the board of directors of the corporation is judicially
21 determined, or determined by an advisory opinion of the
22 Florida Supreme Court, to subject the premiums or revenues of
23 the corporation to the revenue limitations of Article VII,
24 Section 1 of the Florida Constitution, the board of directors
25 of the corporation shall no longer be members of the State
26 Board of Administration and shall, instead, be the board of
27 the Residential Property and Casualty Joint Underwriting
28 Association as specified in subsection (6) ~~consisting of the~~
29 Insurance Consumer Advocate appointed under s. 627.0613, 1
30 consumer representative appointed by the Insurance
31 Commissioner, 1 consumer representative appointed by the

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1 ~~Governor, and 12 additional members appointed as specified in~~
2 ~~the plan of operation. One of the 12 additional members shall~~
3 ~~be elected by the domestic companies of this state on the~~
4 ~~basis of cumulative weighted voting based on the net direct~~
5 ~~premiums of domestic companies in this state. Nothing in the~~
6 ~~1997 amendments to this paragraph terminates the existing~~
7 ~~board or the terms of any members of the board.~~

8 (III) The plan of operation shall provide a formula
9 whereby a company voluntarily providing windstorm coverage in
10 affected areas will be relieved wholly or partially from
11 apportionment of a regular assessment pursuant to
12 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

13 (IV) A company which is a member of a group of
14 companies under common management may elect to have its
15 credits applied on a group basis, and any company or group may
16 elect to have its credits applied to any other company or
17 group.

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

21 (VI) The plan of operation may also provide for the
22 award of credits, for a period not to exceed 3 years, from a
23 regular assessment pursuant to sub-sub-subparagraph d.(I) or
24 sub-sub-subparagraph d.(II) as an incentive for taking
25 policies out of the Residential Property and Casualty Joint
26 Underwriting Association. In order to qualify for the
27 exemption under this sub-sub-subparagraph, the take-out plan
28 must provide that at least 40 percent of the policies removed
29 from the Residential Property and Casualty Joint Underwriting
30 Association cover risks located in Dade, Broward, and Palm
31 Beach Counties or at least 30 percent of the policies so

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1 removed cover risks located in Dade, Broward, and Palm Beach
2 Counties and an additional 50 percent of the policies so
3 removed cover risks located in other coastal counties, and
4 must also provide that no more than 15 percent of the policies
5 so removed may exclude windstorm coverage. With the approval
6 of the department, the association may waive these geographic
7 criteria for a take-out plan that removes at least the lesser
8 of 100,000 Residential Property and Casualty Joint
9 Underwriting Association policies or 15 percent of the total
10 number of Residential Property and Casualty Joint Underwriting
11 Association policies, provided the governing board of the
12 Residential Property and Casualty Joint Underwriting
13 Association certifies that the take-out plan will materially
14 reduce the Residential Property and Casualty Joint
15 Underwriting Association's 100-year probable maximum loss from
16 hurricanes. With the approval of the department, the board
17 may extend such credits for an additional year if the insurer
18 guarantees an additional year of renewability for all policies
19 removed from the Residential Property and Casualty Joint
20 Underwriting Association, or for 2 additional years if the
21 insurer guarantees 2 additional years of renewability for all
22 policies removed from the Residential Property and Casualty
23 Joint Underwriting Association.

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

27 c. The Legislature finds that the potential for
28 unlimited deficit assessments under this subparagraph may
29 induce insurers to attempt to reduce their writings in the
30 voluntary market, and that such actions would worsen the
31 availability problems that the association was created to

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1 remedy. It is the intent of the Legislature that insurers
2 remain fully responsible for paying regular assessments and
3 collecting emergency assessments for any deficits of the
4 association; however, it is also the intent of the Legislature
5 to provide a means by which assessment liabilities may be
6 amortized over a period of years.

7 d.(I) When the deficit incurred in a particular
8 calendar year is 10 percent or less of the aggregate statewide
9 direct written premium for property insurance for the prior
10 calendar year for all member insurers, the association shall
11 levy an assessment on member insurers and assessable insurers
12 in an amount equal to the deficit.

13 (II) When the deficit incurred in a particular
14 calendar year exceeds 10 percent of the aggregate statewide
15 direct written premium for property insurance for the prior
16 calendar year ~~for all member insurers~~, the association shall
17 levy an assessment on member insurers and assessable insurers
18 in an amount equal to the greater of 10 percent of the deficit
19 or 10 percent of the aggregate statewide direct written
20 premium for property insurance for the prior calendar year ~~for~~
21 ~~member insurers~~. Any remaining deficit shall be recovered
22 through emergency assessments under sub-sub-subparagraph
23 (III).

24 (III) Upon a determination by the board of directors
25 that a deficit exceeds the amount that will be recovered
26 through regular assessments ~~on member insurers~~, pursuant to
27 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
28 board shall levy, after verification by the department,
29 emergency assessments to be collected by member insurers and
30 by underwriting associations created pursuant to this section
31 which write property insurance, and to be collected from

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1 assessable insureds upon issuance or renewal of property
2 insurance policies other than National Flood Insurance
3 policies in the year or years following levy of the regular
4 assessments. The amount of the emergency assessment collected
5 in a particular year shall be a uniform percentage of that
6 year's direct written premium for property insurance ~~for all~~
7 ~~member insurers~~ and underwriting associations, excluding
8 National Flood Insurance policy premiums, as annually
9 determined by the board and verified by the department. The
10 department shall verify the arithmetic calculations involved
11 in the board's determination within 30 days after receipt of
12 the information on which the determination was based.
13 Notwithstanding any other provision of law, each member
14 insurer and each underwriting association created pursuant to
15 this section shall collect emergency assessments from its
16 policyholders without such obligation being affected by any
17 credit, limitation, exemption, or deferment. Emergency
18 assessments levied by the association on assessable insureds
19 shall be collected by the surplus lines agent at the time the
20 surplus lines agent collects the surplus lines tax required by
21 s. 626.9320 and shall be paid to the Florida Surplus Lines
22 Service Office at the time the surplus lines agent pays the
23 surplus lines tax to the Florida Surplus Lines Service Office.
24 The emergency assessments so collected shall be transferred
25 directly to the association on a periodic basis as determined
26 by the association. The aggregate amount of emergency
27 assessments levied under this sub-sub-subparagraph in any
28 calendar year may not exceed the greater of 10 percent of the
29 amount needed to cover the original deficit, plus interest,
30 fees, commissions, required reserves, and other costs
31 associated with financing of the original deficit, or 10

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

22 (IV) Each member insurer's share of the total regular
23 assessments under sub-sub-subparagraph (I) or
24 sub-sub-subparagraph (II) shall be in the proportion that the
25 insurer's net direct premium for property insurance in this
26 state, for the year preceding the assessment bears to the
27 aggregate statewide net direct premium for property insurance
28 of all member insurers, as reduced by any credits for
29 voluntary writings for that year. The assessment percentage
30 applicable to each assessable insured shall be the ratio of
31 the amount being assessed under sub-sub-subparagraph d.(I) or

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1 sub-sub-subparagraph d.(II) to the aggregate statewide direct
2 written premium for property insurance for the prior year.
3 Assessments levied by the association on member insurers
4 pursuant to sub-sub-subparagraphs d.(I) and d.(II) shall be
5 paid as required by the association's plan of operation.
6 Assessments by the association on assessable insureds pursuant
7 to sub-sub-subparagraphs d.(I) and d.(II) shall be collected
8 by the surplus lines agent at the time the surplus lines agent
9 collects the surplus lines tax required by s. 626.9320 in
10 accordance with the procedures developed by the association
11 and the Florida Surplus Lines Service Office and set forth in
12 their respective plans of operation.

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

29 e. The governing body of any unit of local government,
30 any residents of which are insured under the plan, may issue
31 bonds as defined in s. 125.013 or s. 166.101 to fund an

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

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1 remain unsold 60 days after issuance, the department shall
2 require all insurers subject to assessment to purchase the
3 bonds, which shall be treated as admitted assets; each insurer
4 shall be required to purchase that percentage of the unsold
5 portion of the bond issue that equals the insurer's relative
6 share of assessment liability under this subsection. An
7 insurer shall not be required to purchase the bonds to the
8 extent that the department determines that the purchase would
9 endanger or impair the solvency of the insurer. The authority
10 granted by this sub-subparagraph is additional to any bonding
11 authority granted by subparagraph 6.

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

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1 be deferred. However, there shall be no limitation or
2 deferment of an emergency assessment to be collected from
3 policyholders under sub-sub-subparagraph 2.d.(III).

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

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

21 b. The association may require arbitration of a rate
22 filing under s. 627.062(6).

23 It is the intent of the Legislature that the rates for
24 coverage provided by the association be actuarially sound and
25 not competitive with approved rates charged in the admitted
26 voluntary market such that the association functions as a
27 residual market mechanism to provide insurance only when the
28 insurance cannot be procured in the voluntary market. The
29 plan of operation shall provide a mechanism to assure that,
30 beginning no later than January 1, 1999, the rates charged by
31 the association for each line of business are reflective of

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1 approved rates in the voluntary market for hurricane coverage
2 for each line of business in the various areas eligible for
3 association coverage.

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

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

26 (I) Whether the likelihood of a loss for the
27 individual risk is substantially higher than for other risks
28 of the same class; and

29 (II) Whether the uncertainty associated with the
30 individual risk is such that an appropriate premium cannot be
31 determined.

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

e. The policies issued by the association must provide that if the association obtains an offer from an authorized insurer to cover the risk with equivalent coverage at rates that are no higher than the total premium that the insured is paying (after application of any discounts the insured may be receiving at the time of the offer) and if the offering insurer makes available at no increased premium additional endorsements or policies that will replace all coverages which the insured then has at its approved rates under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy must be canceled as of 60 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this sub-subparagraph.

f. Association policies and applications must include a notice that the association policy could, under this section, be replaced with a policy issued by an authorized insurer that does not provide coverage identical to the coverage provided by the association. The notice shall 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 g. If the risk accepts an offer of coverage through
4 the market assistance program or through a mechanism
5 established by the association, either before the policy is
6 issued by the association or during the first 30 days of
7 coverage by the association, and the producing agent who
8 submitted the application to the association is not currently
9 appointed by the insurer, the insurer shall either:

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

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

20
21 If the new or producing agent is unwilling or unable to accept
22 appointment, the new insurer shall pay the agent in accordance
23 with sub-sub-subparagraph (I).

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

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

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1 customary commission of the association; or
 2 (II) Offer to allow the producing agent of record of
 3 the association policy to continue servicing the policy for a
 4 period of not less than 1 year and offer to pay the agent the
 5 greater of the insurer's or the association's usual and
 6 customary commission for the type of policy written.

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

11 6.a. The plan of operation may authorize the formation
 12 of a private nonprofit corporation, a private nonprofit
 13 unincorporated association, a partnership, a trust, a limited
 14 liability company, or a nonprofit mutual company which may be
 15 empowered, among other things, to borrow money by issuing
 16 bonds or by incurring other indebtedness and to accumulate
 17 reserves or funds to be used for the payment of insured
 18 catastrophe losses. The plan may authorize all actions
 19 necessary to facilitate the issuance of bonds, including the
 20 pledging of assessments or other revenues.

21 b. Any entity created under this subsection, or any
 22 entity formed for the purposes of this subsection, may sue and
 23 be sued, may borrow money; issue bonds, notes, or debt
 24 instruments; pledge or sell assessments, market equalization
 25 surcharges and other surcharges, rights, premiums, contractual
 26 rights, projected recoveries from the Florida Hurricane
 27 Catastrophe Fund, other reinsurance recoverables, and other
 28 assets as security for such bonds, notes, or debt instruments;
 29 enter into any contracts or agreements necessary or proper to
 30 accomplish such borrowings; and take other actions necessary
 31 to carry out the purposes of this subsection. The association

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1 may issue bonds or incur other indebtedness, or have bonds
2 issued on its behalf by a unit of local government pursuant to
3 subparagraph (g)2., in the absence of a hurricane or other
4 weather-related event, upon a determination by the association
5 subject to approval by the department that such action would
6 enable it to efficiently meet the financial obligations of the
7 association and that such financings are reasonably necessary
8 to effectuate the requirements of this subsection. Any such
9 entity may accumulate reserves and retain surpluses as of the
10 end of any association year to provide for the payment of
11 losses incurred by the association during that year or any
12 future year. The association shall incorporate and continue
13 the plan of operation and articles of agreement in effect on
14 the effective date of chapter 76-96, Laws of Florida, to the
15 extent that it is not inconsistent with chapter 76-96, and as
16 subsequently modified consistent with chapter 76-96. The board
17 of directors and officers currently serving shall continue to
18 serve until their successors are duly qualified as provided
19 under the plan. The assets and obligations of the plan in
20 effect immediately prior to the effective date of chapter
21 76-96 shall be construed to be the assets and obligations of
22 the successor plan created herein.

23 c. In recognition of s. 10, Art. I of the State
24 Constitution, prohibiting the impairment of obligations of
25 contracts, it is the intent of the Legislature that no action
26 be taken whose purpose is to impair any bond indenture or
27 financing agreement or any revenue source committed by
28 contract to such bond or other indebtedness issued or incurred
29 by the association or any other entity created under this
30 subsection.

31 7. On such coverage, an agent's remuneration shall be

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1 that amount of money payable to the agent by the terms of his
2 or her contract with the company with which the business is
3 placed. However, no commission will be paid on that portion of
4 the premium which is in excess of the standard premium of that
5 company.

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

22 9. Notwithstanding any other provision of law:

23 a. The pledge or sale of, the lien upon, and the
24 security interest in any rights, revenues, or other assets of
25 the association created or purported to be created pursuant to
26 any financing documents to secure any bonds or other
27 indebtedness of the association shall be and remain valid and
28 enforceable, notwithstanding the commencement of and during
29 the continuation of, and after, any rehabilitation,
30 insolvency, liquidation, bankruptcy, receivership,
31 conservatorship, reorganization, or similar proceeding against

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1 the association under the laws of this state or any other
2 applicable laws.

3 b. No such proceeding shall relieve the association of
4 its obligation, or otherwise affect its ability to perform its
5 obligation, to continue to collect, or levy and collect,
6 assessments, market equalization or other surcharges,
7 projected recoveries from the Florida Hurricane Catastrophe
8 Fund, reinsurance recoverables, or any other rights, revenues,
9 or other assets of the association pledged.

10 c. Each such pledge or sale of, lien upon, and
11 security interest in, including the priority of such pledge,
12 lien, or security interest, any such assessments, emergency
13 assessments, market equalization or renewal surcharges,
14 projected recoveries from the Florida Hurricane Catastrophe
15 Fund, reinsurance recoverables, or other rights, revenues, or
16 other assets which are collected, or levied and collected,
17 after the commencement of and during the pendency of or after
18 any such proceeding shall continue unaffected by such
19 proceeding.

20 d. As used in this subsection, the term "financing
21 documents" means any agreement, instrument, or other document
22 now existing or hereafter created evidencing any bonds or
23 other indebtedness of the association or pursuant to which any
24 such bonds or other indebtedness has been or may be issued and
25 pursuant to which any rights, revenues, or other assets of the
26 association are pledged or sold to secure the repayment of
27 such bonds or indebtedness, together with the payment of
28 interest on such bonds or such indebtedness, or the payment of
29 any other obligation of the association related to such bonds
30 or indebtedness.

31 e. Any such pledge or sale of assessments, revenues,

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1 contract rights or other rights or assets of the association
2 shall constitute a lien and security interest, or sale, as the
3 case may be, that is immediately effective and attaches to
4 such assessments, revenues, contract, or other rights or
5 assets, whether or not imposed or collected at the time the
6 pledge or sale is made. Any such pledge or sale is effective,
7 valid, binding, and enforceable against the association or
8 other entity making such pledge or sale, and valid and binding
9 against and superior to any competing claims or obligations
10 owed to any other person or entity, including policyholders in
11 this state, asserting rights in any such assessments,
12 revenues, contract, or other rights or assets to the extent
13 set forth in and in accordance with the terms of the pledge or
14 sale contained in the applicable financing documents, whether
15 or not any such person or entity has notice of such pledge or
16 sale and without the need for any physical delivery,
17 recordation, filing, or other action.

18 f. There shall be no liability on the part of, and no
19 cause of action of any nature shall arise against, any member
20 insurer or its agents or employees, agents or employees of the
21 association, members of the board of directors of the
22 association, or the department or its representatives, for any
23 action taken by them in the performance of their duties or
24 responsibilities under this subsection. Such immunity does not
25 apply to actions for breach of any contract or agreement
26 pertaining to insurance, or any willful tort.

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

31 a. The association shall retain such expert tax

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1 counsel and bond counsel as necessary and expend such funds as
2 necessary to pursue such negotiations or litigation as may
3 lead to favorable tax rulings.

4 b. The association shall, no later than January 1,
5 2002, provide a report to the Governor, the Insurance
6 Commissioner, the President of the Senate, and the Speaker of
7 the House of Representatives detailing the status of the
8 negotiations or litigation and recommending statutory changes,
9 if any, needed to secure favorable tax rulings.

10 (c) The provisions of paragraph (b) are applicable
11 only with respect to:

12 1. Those areas that were eligible for coverage under
13 this subsection on April 9, 1993; or

14 2. Any county or area as to which the department,
15 after public hearing, finds that the following criteria exist:

16 a. Due to the lack of windstorm insurance coverage in
17 the county or area so affected, economic growth and
18 development is being deterred or otherwise stifled in such
19 county or area, mortgages are in default, and financial
20 institutions are unable to make loans;

21 b. The county or area so affected has adopted and is
22 enforcing the structural requirements of the State Minimum
23 Building Codes, as defined in s. 553.73, for new construction
24 and has included adequate minimum floor elevation requirements
25 for structures in areas subject to inundation; and

26 c. Extending windstorm insurance coverage to such
27 county or area is consistent with and will implement and
28 further the policies and objectives set forth in applicable
29 state laws, rules, and regulations governing coastal
30 management, coastal construction, comprehensive planning,
31 beach and shore preservation, barrier island preservation,

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1 coastal zone protection, and the Coastal Zone Protection Act
2 of 1985.

3
4 Any time after the department has determined that the criteria
5 referred to in this subparagraph do not exist with respect to
6 any county or area of the state, it may, after a subsequent
7 public hearing, declare that such county or area is no longer
8 eligible for windstorm coverage through the plan.

9 (d) For the purpose of evaluating whether the criteria
10 of paragraph (c) are met, such criteria shall be applied as
11 the situation would exist if policies had not been written by
12 the Florida Residential Property and Casualty Joint
13 Underwriting Association and property insurance for such
14 policyholders was not available.

15 (e) Notwithstanding the provisions of subparagraph
16 (c)2. or paragraph (d), eligibility shall not be extended to
17 any area that was not eligible on March 1, 1997, except that
18 the department may act with respect to any petition on which a
19 hearing was held prior to May 9, 1997.

20 (f) Notwithstanding the provisions of paragraph (c),
21 after October 1, 2001, the association may not accept an
22 application for coverage under a new policy, in the area
23 between I-95 and U.S. 1 in Miami-Dade, Broward, and Palm Beach
24 Counties. The provisions of this paragraph do not prevent the
25 association from renewing coverage for risks that are insured
26 by the association on October 1, 2001.

27 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
28 UNDERWRITING ASSOCIATION.--

29 (a) There is created a joint underwriting association
30 for equitable apportionment or sharing among insurers of
31 property and casualty insurance covering residential property,

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1 for applicants who are in good faith entitled, but are unable,
2 to procure insurance through the voluntary market. The
3 association shall operate pursuant to a plan of operation
4 approved by order of the department. The plan is subject to
5 continuous review by the department. The department may, by
6 order, withdraw approval of all or part of a plan if the
7 department determines that conditions have changed since
8 approval was granted and that the purposes of the plan require
9 changes in the plan. For the purposes of this subsection,
10 residential coverage includes both personal lines residential
11 coverage, which consists of the type of coverage provided by
12 homeowner's, mobile home owner's, dwelling, tenant's,
13 condominium unit owner's, and similar policies, and commercial
14 lines residential coverage, which consists of the type of
15 coverage provided by condominium association, apartment
16 building, and similar policies.

17 (b)1. All insurers authorized to write subject lines
18 of business in this state, other than underwriting
19 associations or other entities created under this section,
20 must participate in and be members of the Residential Property
21 and Casualty Joint Underwriting Association. A member's
22 participation shall begin on the first day of the calendar
23 year following the year in which the member was issued a
24 certificate of authority to transact insurance for subject
25 lines of business in this state and shall terminate 1 year
26 after the end of the first calendar year during which the
27 member no longer holds a certificate of authority to transact
28 insurance for subject lines of business in this state.
29 Insureds who procure one or more subject lines of business in
30 this state pursuant to part VIII of chapter 626 shall be
31 subject to assessment by the association and shall be

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1 collectively referred to as "assessable insureds".

2 2. All revenues, assets, liabilities, losses, and
3 expenses of the association shall be divided into two separate
4 accounts, one of which is for personal lines residential
5 coverages and the other of which is for commercial lines
6 residential coverages. Revenues, assets, liabilities, losses,
7 and expenses not attributable to particular coverages shall be
8 prorated between the accounts.

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

10 a. When the deficit incurred in a particular calendar
11 year is not greater than 10 percent of the aggregate statewide
12 direct written premium for the subject lines of business for
13 the prior calendar year for all member insurers, the entire
14 deficit shall be recovered through assessments of member
15 insurers under paragraph (g).

16 b. When the deficit incurred in a particular calendar
17 year exceeds 10 percent of the aggregate statewide direct
18 written premium for the subject lines of business for the
19 prior calendar year for all member insurers, the association
20 shall levy an assessment on member insurers in an amount equal
21 to the greater of 10 percent of the deficit or 10 percent of
22 the aggregate statewide direct written premium for the subject
23 lines of business for the prior calendar year for all member
24 insurers. Any remaining deficit shall be recovered through
25 emergency assessments under sub-subparagraph d.

26 c. Each member insurer's share of the total assessment
27 under sub-subparagraph a. or sub-subparagraph b. shall be in
28 the proportion that the member insurer's direct written
29 premium for the subject lines of business for the year
30 preceding the assessment bears to the aggregate statewide
31 direct written premium for the subject lines of business for

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1 that year for all member insurers.

2 d. Upon a determination by the board of governors that
3 a deficit in an account exceeds the amount that will be
4 recovered through regular assessments on member insurers under
5 sub-subparagraph a. or sub-subparagraph b., the board shall
6 levy, after verification by the department, emergency
7 assessments to be collected by member insurers and by
8 underwriting associations created under this section which
9 write subject lines of business upon issuance or renewal of
10 policies for subject lines of business, excluding National
11 Flood Insurance policies, in the year or years following levy
12 of the regular assessments. The amount of the emergency
13 assessment collected in a particular year shall be a uniform
14 percentage of that year's direct written premium for subject
15 lines of business for all member insurers and underwriting
16 associations, excluding National Flood Insurance Program
17 policy premiums, as annually determined by the board and
18 verified by the department. The department shall verify the
19 arithmetic calculations involved in the board's determination
20 within 30 days after receipt of the information on which the
21 determination was based. Notwithstanding any other provision
22 of law, each member insurer and each underwriting association
23 created under this section which writes subject lines of
24 business shall collect emergency assessments from its
25 policyholders without such obligation being affected by any
26 credit, limitation, exemption, or deferment. The emergency
27 assessments so collected shall be transferred directly to the
28 association on a periodic basis as determined by the
29 association. The aggregate amount of emergency assessments
30 levied under this sub-subparagraph in any calendar year may
31 not exceed the greater of 10 percent of the amount needed to

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1 cover the original deficit, plus interest, fees, commissions,
 2 required reserves, and other costs associated with financing
 3 of the original deficit, or 10 percent of the aggregate
 4 statewide direct written premium for subject lines of business
 5 written by member insurers and underwriting associations for
 6 the prior year, plus interest, fees, commissions, required
 7 reserves, and other costs associated with financing the
 8 original deficit.

9 e. The board may pledge the proceeds of assessments,
 10 projected recoveries from the Florida Hurricane Catastrophe
 11 Fund, other insurance and reinsurance recoverables, market
 12 equalization surcharges and other surcharges, and other funds
 13 available to the association as the source of revenue for and
 14 to secure bonds issued under paragraph (g), bonds or other
 15 indebtedness issued under subparagraph (c)3., or lines of
 16 credit or other financing mechanisms issued or created under
 17 this subsection, or to retire any other debt incurred as a
 18 result of deficits or events giving rise to deficits, or in
 19 any other way that the board determines will efficiently
 20 recover such deficits. The purpose of the lines of credit or
 21 other financing mechanisms is to provide additional resources
 22 to assist the association in covering claims and expenses
 23 attributable to a catastrophe. As used in this subsection, the
 24 term "assessments" includes regular assessments under
 25 sub-subparagraph a., sub-subparagraph b., or subparagraph
 26 (g)1. and emergency assessments under sub-subparagraph d.
 27 Emergency assessments collected under sub-subparagraph d. are
 28 not part of an insurer's rates, are not premium, and are not
 29 subject to premium tax, fees, or commissions; however, failure
 30 to pay the emergency assessment shall be treated as failure to
 31 pay premium. The emergency assessments under sub-subparagraph

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1 d. shall continue as long as any bonds issued or other
2 indebtedness incurred with respect to a deficit for which the
3 assessment was imposed remain outstanding, unless adequate
4 provision has been made for the payment of such bonds or other
5 indebtedness pursuant to the documents governing such bonds or
6 other indebtedness.

7 f. As used in this subsection, the term "subject lines
8 of business" means, with respect to the personal lines
9 account, any personal lines policy defined in s. 627.4025, and
10 means, with respect to the commercial lines account, all
11 commercial property and commercial fire insurance.

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

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

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

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

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1 HO-4, or HO-6 policy.

2 b. Standard personal lines policy forms without wind
3 coverage, which are the same as the policies described in
4 sub-subparagraph a. except that they do not include wind
5 coverage.

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

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

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

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

24 3. May provide that the association may employ or
25 otherwise contract with individuals or other entities to
26 provide administrative or professional services that may be
27 appropriate to effectuate the plan. The association shall
28 have the power to borrow funds, by issuing bonds or by
29 incurring other indebtedness, and shall have other powers
30 reasonably necessary to effectuate the requirements of this
31 subsection. The association may issue bonds or incur other

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

22 4. Must require that the association operate subject
23 to the supervision and approval of a board of governors
24 consisting of 13 individuals, including 1 who is elected as
25 chair. The board shall consist of:

- 26 a. The insurance consumer advocate appointed under s.
27 627.0613.
- 28 b. Five members designated by the insurance industry.
- 29 c. Five consumer representatives appointed by the
30 Insurance Commissioner. Two of the consumer representatives
31 must, at the time of appointment, be holders of policies

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1 issued by the association, who are selected with consideration
2 given to reflecting the geographic balance of association
3 policyholders. Two of the consumer members must be individuals
4 who are minority persons as defined in s. 288.703(3). One of
5 the consumer members shall have expertise in the field of
6 mortgage lending.

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

12

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

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

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

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

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1 appointed by the insurer, the insurer shall either:

2 (A) Pay to the producing agent of record of the
3 policy, for the first year, an amount that is the greater of
4 the insurer's usual and customary commission for the type of
5 policy written or a fee equal to the usual and customary
6 commission of the association; or

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

12
13 If the new or producing agent is unwilling or unable to accept
14 appointment, the new insurer shall pay the agent in accordance
15 with sub-sub-sub-subparagraph (A).

16 (II) When the association enters into a contractual
17 agreement for a take-out plan, the producing agent of record
18 of the association policy is entitled to retain any unearned
19 commission on the policy, and the insurer shall either:

20 (A) Pay to the producing agent of record of the
21 association policy, for the first year, an amount that is the
22 greater of the insurer's usual and customary commission for
23 the type of policy written or a fee equal to the usual and
24 customary commission of the association; or

25 (B) Offer to allow the producing agent of record of
26 the association policy to continue servicing the policy for a
27 period of not less than 1 year and offer to pay the agent the
28 greater of the insurer's or the association's usual and
29 customary commission for the type of policy written.

30
31 If the new or producing agent is unwilling or unable to accept

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

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

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

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

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

18
19 If the new or producing agent is unwilling or unable to accept
20 appointment, the new insurer shall pay the agent in accordance
21 with sub-sub-sub-subparagraph (A).

22 (II) When the association enters into a contractual
23 agreement for a take-out plan, the producing agent of record
24 of the association policy is entitled to retain any unearned
25 commission on the policy, and the insurer shall either:

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

31 (B) Offer to allow the producing agent of record of

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1 the association policy to continue servicing the policy for a
2 period of not less than 1 year and offer to pay the agent the
3 greater of the insurer's or the association's usual and
4 customary 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-sub-subparagraph (A). ~~If the risk accepts an~~
9 ~~offer of coverage through the market assistance plan or an~~
10 ~~offer of coverage through a mechanism established by the~~
11 ~~association before a policy is issued to the risk by the~~
12 ~~association, and the producing agent who submitted the~~
13 ~~application to the plan or the association is not currently~~
14 ~~appointed by the insurer, the insurer shall either appoint the~~
15 ~~agent to service the risk or, if the insurer places the~~
16 ~~coverage through a new agent, require the new agent who then~~
17 ~~writes the policy to pay not less than 50 percent of the first~~
18 ~~year's commission to the producing agent who submitted the~~
19 ~~application to the plan, except that if the new agent is an~~
20 ~~employee or exclusive agent of the insurer, the new agent~~
21 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
22 ~~of splitting the commission.~~ If the risk is not able to obtain
23 any such offer, the risk is eligible for a policy including
24 wind coverage issued by the association.

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

29 6. Must include rules for classifications of risks and
30 rates therefor.

31 7. Must provide that if premium and investment income

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1 attributable to a particular plan year are in excess of
2 projected losses and expenses of the plan attributable to that
3 year, such excess shall be held in surplus. Such surplus shall
4 be available to defray deficits as to future years and shall
5 be used for that purpose prior to assessing member insurers as
6 to any plan year.

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

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

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

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

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

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

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1 equalization surcharge in a percentage equal to the total
2 amount of such regular assessments divided by the aggregate
3 statewide direct written premium for subject lines of business
4 for member insurers for the prior calendar year. Market
5 equalization surcharges under this subparagraph are not
6 considered premium and are not subject to commissions, fees,
7 or premium taxes; however, failure to pay a market
8 equalization surcharge shall be treated as failure to pay
9 premium.

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

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

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1 the coverage provided by the association. The notice shall
2 also specify that acceptance of association coverage creates a
3 conclusive presumption that the applicant or policyholder is
4 aware of this potential.

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

21 (d)1. It is the intent of the Legislature that the
22 rates for coverage provided by the association be actuarially
23 sound and not competitive with approved rates charged in the
24 admitted voluntary market, so that the association functions
25 as a residual market mechanism to provide insurance only when
26 the insurance cannot be procured in the voluntary market.
27 Rates shall include an appropriate catastrophe loading factor
28 that reflects the actual catastrophic exposure of the
29 association and recognizes that the association has little or
30 no capital or surplus; and the association shall carefully
31 review each rate filing to assure that provider compensation

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1 is not excessive.

2 2. For each county, the average rates of the
3 association for each line of business for personal lines
4 residential policies shall be no lower than the average rates
5 charged by the insurer that had the highest average rate in
6 that county among the 20 insurers with the greatest total
7 direct written premium in the state for that line of business
8 in the preceding year, except that with respect to mobile home
9 coverages, the average rates of the association shall be no
10 lower than the average rates charged by the insurer that had
11 the highest average rate in that county among the 5 insurers
12 with the greatest total written premium for mobile home
13 owner's policies in the state in the preceding year.

14 3. Rates for commercial residential coverage shall not
15 be subject to the requirements of subparagraph 2., but shall
16 be subject to all other requirements of this paragraph and s.
17 627.062.

18 4. Nothing in this paragraph shall require or allow
19 the association to adopt a rate that is inadequate under s.
20 627.062 or to reduce rates approved under s. 627.062.

21 5. The association may require arbitration of a filing
22 pursuant to s. 627.062(6). Rate filings of the association
23 under this paragraph shall be made on a use and file basis
24 under s. 627.062(2)(a)2. The association shall make a rate
25 filing at least once a year, but no more often than quarterly.

26 (e) Coverage through the association is hereby
27 activated effective upon approval of the plan, and shall
28 remain activated until coverage is deactivated pursuant to
29 paragraph (f). Thereafter, coverage through the association
30 shall be reactivated by order of the department only under one
31 of the following circumstances:

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1 1. If the market assistance plan receives a minimum of
2 100 applications for coverage within a 3-month period, or 200
3 applications for coverage within a 1-year period or less for
4 residential coverage, unless the market assistance plan
5 provides a quotation from admitted carriers at their filed
6 rates for at least 90 percent of such applicants. Any market
7 assistance plan application that is rejected because an
8 individual risk is so hazardous as to be uninsurable using the
9 criteria specified in subparagraph (c)8. shall not be included
10 in the minimum percentage calculation provided herein. In the
11 event that there is a legal or administrative challenge to a
12 determination by the department that the conditions of this
13 subparagraph have been met for eligibility for coverage in the
14 association, any eligible risk may obtain coverage during the
15 pendency of such challenge.

16 2. In response to a state of emergency declared by the
17 Governor under s. 252.36, the department may activate coverage
18 by order for the period of the emergency upon a finding by the
19 department that the emergency significantly affects the
20 availability of residential property insurance.

21 (f) The activities of the association shall be
22 reviewed at least annually by the board and, upon
23 recommendation by the board or petition of any interested
24 party, coverage shall be deactivated if the department finds
25 that the conditions giving rise to its activation no longer
26 exist.

27 (g)1. The board shall certify to the department its
28 needs for annual assessments as to a particular calendar year,
29 and any startup or interim assessments that it deems to be
30 necessary to sustain operations as to a particular year
31 pending the receipt of annual assessments. Upon verification,

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1 the department shall approve such certification, and the board
2 shall levy such annual, startup, or interim assessments. Such
3 assessments shall be prorated as provided in paragraph (b).
4 The board shall take all reasonable and prudent steps
5 necessary to collect the amount of assessment due from each
6 participating member insurer, including, if prudent, filing
7 suit to collect such assessment. If the board is unable to
8 collect an assessment from any member insurer, the uncollected
9 assessments shall be levied as an additional assessment
10 against the participating member insurers and any
11 participating member insurer required to pay an additional
12 assessment as a result of such failure to pay shall have a
13 cause of action against such nonpaying member insurer.
14 Assessments shall be included as an appropriate factor in the
15 making of rates.

16 2. The governing body of any unit of local government,
17 any residents of which are insured by the association, may
18 issue bonds as defined in s. 125.013 or s. 166.101 from time
19 to time to fund an assistance program, in conjunction with the
20 association, for the purpose of defraying deficits of the
21 association. In order to avoid needless and indiscriminate
22 proliferation, duplication, and fragmentation of such
23 assistance programs, any unit of local government, any
24 residents of which are insured by the association, may provide
25 for the payment of losses, regardless of whether or not the
26 losses occurred within or outside of the territorial
27 jurisdiction of the local government. Revenue bonds may not be
28 issued until validated pursuant to chapter 75, unless a state
29 of emergency is declared by executive order or proclamation of
30 the Governor pursuant to s. 252.36 making such findings as are
31 necessary to determine that it is in the best interests of,

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

29 3.a. In addition to any credits, bonuses, or
30 exemptions provided under s. 627.3511, the board shall adopt a
31 program for the reduction of both new and renewal writings in

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1 the association. The board may consider any prudent and not
 2 unfairly discriminatory approach to reducing association
 3 writings, but must adopt at least a credit against assessment
 4 liability or other liability that provides an incentive for
 5 insurers to take risks out of the association and to keep
 6 risks out of the association by maintaining or increasing
 7 voluntary writings in counties in which association risks are
 8 highly concentrated and a program to provide a formula under
 9 which an insurer voluntarily taking risks out of the
 10 association by maintaining or increasing voluntary writings
 11 will be relieved wholly or partially from assessments under
 12 sub-subparagraphs (b)3.a. and b.

13 b. Any credit or exemption from regular assessments
 14 adopted under this subparagraph shall last no longer than the
 15 3 years following the cancellation or expiration of the policy
 16 by the association. With the approval of the department, the
 17 board may extend such credits for an additional year if the
 18 insurer guarantees an additional year of renewability for all
 19 policies removed from the association, or for 2 additional
 20 years if the insurer guarantees 2 additional years of
 21 renewability for all policies so removed.

22 c. There shall be no credit, limitation, exemption, or
 23 deferment from emergency assessments to be collected from
 24 policyholders pursuant to sub-subparagraph (b)3.d.

25 4. The plan shall provide for the deferment, in whole
 26 or in part, of the assessment of a member insurer, other than
 27 an emergency assessment collected from policyholders pursuant
 28 to sub-subparagraph (b)3.d., if the department finds that
 29 payment of the assessment would endanger or impair the
 30 solvency of the insurer. In the event an assessment against a
 31 member insurer is deferred in whole or in part, the amount by

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1 which such assessment is deferred may be assessed against the
2 other member insurers in a manner consistent with the basis
3 for assessments set forth in paragraph (b).

4 (h) Nothing in this subsection shall be construed to
5 preclude the issuance of residential property insurance
6 coverage pursuant to part VIII of chapter 626.

7 (i) There shall be no liability on the part of, and no
8 cause of action of any nature shall arise against, any member
9 insurer or its agents or employees, the association or its
10 agents or employees, members of the board of governors or
11 their respective designees at a board meeting, association
12 committee members, or the department or its representatives,
13 for any action taken by them in the performance of their
14 duties or responsibilities under this subsection. Such
15 immunity does not apply to:

16 1. Any of the foregoing persons or entities for any
17 willful tort;

18 2. The association or its servicing or producing
19 agents for breach of any contract or agreement pertaining to
20 insurance coverage;

21 3. The association with respect to issuance or payment
22 of debt; or

23 4. Any member insurer with respect to any action to
24 enforce a member insurer's obligations to the association
25 under this subsection.

26 (j) The Residential Property and Casualty Joint
27 Underwriting Association is not a state agency, board, or
28 commission. However, for the purposes of s. 199.183(1), the
29 Residential Property and Casualty Joint Underwriting
30 Association shall be considered a political subdivision of the
31 state and shall be exempt from the corporate income tax.

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1 (k) Upon a determination by the board of governors
2 that the conditions giving rise to the establishment and
3 activation of the association no longer exist, and upon the
4 consent thereto by order of the department, the association is
5 dissolved. Upon dissolution, the assets of the association
6 shall be applied first to pay all debts, liabilities, and
7 obligations of the association, including the establishment of
8 reasonable reserves for any contingent liabilities or
9 obligations, and all remaining assets of the association shall
10 become property of the state and deposited in the Florida
11 Hurricane Catastrophe Fund.

12 (l) All obligations, rights, assets, and liabilities
13 of the Florida Property and Casualty Joint Underwriting
14 Association created by subsection (5), which obligations,
15 rights, assets, or liabilities relate to the provision of
16 commercial lines residential property insurance coverage as
17 described in this section are hereby transferred to the
18 Residential Property and Casualty Joint Underwriting
19 Association. The Residential Property and Casualty Joint
20 Underwriting Association is not required to issue endorsements
21 or certificates of assumption to insureds during the remaining
22 term of in-force transferred policies.

23 (m) Notwithstanding any other provision of law:

24 1. The pledge or sale of, the lien upon, and the
25 security interest in any rights, revenues, or other assets of
26 the association created or purported to be created pursuant to
27 any financing documents to secure any bonds or other
28 indebtedness of the association shall be and remain valid and
29 enforceable, notwithstanding the commencement of and during
30 the continuation of, and after, any rehabilitation,
31 insolvency, liquidation, bankruptcy, receivership,

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1 conservatorship, reorganization, or similar proceeding against
2 the association under the laws of this state.

3 2. No such proceeding shall relieve the association of
4 its obligation, or otherwise affect its ability to perform its
5 obligation, to continue to collect, or levy and collect,
6 assessments, market equalization or other surcharges under
7 subparagraph (c)10., or any other rights, revenues, or other
8 assets of the association pledged pursuant to any financing
9 documents.

10 3. Each such pledge or sale of, lien upon, and
11 security interest in, including the priority of such pledge,
12 lien, or security interest, any such assessments, market
13 equalization or other surcharges, or other rights, revenues,
14 or other assets which are collected, or levied and collected,
15 after the commencement of and during the pendency of, or
16 after, any such proceeding shall continue unaffected by such
17 proceeding. As used in this subsection, the term "financing
18 documents" means any agreement or agreements, instrument or
19 instruments, or other document or documents now existing or
20 hereafter created evidencing any bonds or other indebtedness
21 of the association or pursuant to which any such bonds or
22 other indebtedness has been or may be issued and pursuant to
23 which any rights, revenues, or other assets of the association
24 are pledged or sold to secure the repayment of such bonds or
25 indebtedness, together with the payment of interest on such
26 bonds or such indebtedness, or the payment of any other
27 obligation of the association related to such bonds or
28 indebtedness.

29 4. Any such pledge or sale of assessments, revenues,
30 contract rights, or other rights or assets of the association
31 shall constitute a lien and security interest, or sale, as the

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1 case may be, that is immediately effective and attaches to
2 such assessments, revenues, or contract rights or other rights
3 or assets, whether or not imposed or collected at the time the
4 pledge or sale is made. Any such pledge or sale is effective,
5 valid, binding, and enforceable against the association or
6 other entity making such pledge or sale, and valid and binding
7 against and superior to any competing claims or obligations
8 owed to any other person or entity, including policyholders in
9 this state, asserting rights in any such assessments,
10 revenues, or contract rights or other rights or assets to the
11 extent set forth in and in accordance with the terms of the
12 pledge or sale contained in the applicable financing
13 documents, whether or not any such person or entity has notice
14 of such pledge or sale and without the need for any physical
15 delivery, recordation, filing, or other action.

16 (n)1. The following records of the Residential
17 Property and Casualty Joint Underwriting Association are
18 confidential and exempt from the provisions of s. 119.07(1)
19 and s. 24(a), Art. I of the State Constitution:

20 a. Underwriting files, except that a policyholder or
21 an applicant shall have access to his or her own underwriting
22 files.

23 b. Claims files, until termination of all litigation
24 and settlement of all claims arising out of the same incident,
25 although portions of the claims files may remain exempt, as
26 otherwise provided by law. Confidential and exempt claims file
27 records may be released to other governmental agencies upon
28 written request and demonstration of need; such records held
29 by the receiving agency remain confidential and exempt as
30 provided for herein.

31 c. Records obtained or generated by an internal

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1 auditor pursuant to a routine audit, until the audit is
2 completed, or if the audit is conducted as part of an
3 investigation, until the investigation is closed or ceases to
4 be active. An investigation is considered "active" while the
5 investigation is being conducted with a reasonable, good faith
6 belief that it could lead to the filing of administrative,
7 civil, or criminal proceedings.

8 d. Matters reasonably encompassed in privileged
9 attorney-client communications.

10 e. Proprietary information licensed to the association
11 under contract and the contract provides for the
12 confidentiality of such proprietary information.

13 f. All information relating to the medical condition
14 or medical status of an association employee which is not
15 relevant to the employee's capacity to perform his or her
16 duties, except as otherwise provided in this paragraph.
17 Information which is exempt shall include, but is not limited
18 to, information relating to workers' compensation, insurance
19 benefits, and retirement or disability benefits.

20 g. Upon an employee's entrance into the employee
21 assistance program, a program to assist any employee who has a
22 behavioral or medical disorder, substance abuse problem, or
23 emotional difficulty which affects the employee's job
24 performance, all records relative to that participation shall
25 be confidential and exempt from the provisions of s. 119.07(1)
26 and s. 24(a), Art. I of the State Constitution, except as
27 otherwise provided in s. 112.0455(11).

28 h. Information relating to negotiations for financing,
29 reinsurance, depopulation, or contractual services, until the
30 conclusion of the negotiations.

31 i. Minutes of closed meetings regarding underwriting

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1 files, and minutes of closed meetings regarding an open claims
2 file until termination of all litigation and settlement of all
3 claims with regard to that claim, except that information
4 otherwise confidential or exempt by law will be redacted.

5
6 When an authorized insurer is considering underwriting a risk
7 insured by the association, relevant underwriting files and
8 confidential claims files may be released to the insurer
9 provided the insurer agrees in writing, notarized and under
10 oath, to maintain the confidentiality of such files. When a
11 file is transferred to an insurer that file is no longer a
12 public record because it is not held by an agency subject to
13 the provisions of the public records law. Underwriting files
14 and confidential claims files may also be released to staff of
15 and the board of governors of the market assistance plan
16 established pursuant to s. 627.3515, who must retain the
17 confidentiality of such files, except such files may be
18 released to authorized insurers that are considering assuming
19 the risks to which the files apply, provided the insurer
20 agrees in writing, notarized and under oath, to maintain the
21 confidentiality of such files. Finally, the association or
22 the board or staff of the market assistance plan may make the
23 following information obtained from underwriting files and
24 confidential claims files available to licensed general lines
25 insurance agents: name, address, and telephone number of the
26 residential property owner or insured; location of the risk;
27 rating information; loss history; and policy type. The
28 receiving licensed general lines insurance agent must retain
29 the confidentiality of the information received.

30 2. Portions of meetings of the Residential Property
31 and Casualty Joint Underwriting Association are exempt from

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1 the provisions of s. 286.011 and s. 24(b), Art. I of the State
2 Constitution wherein confidential underwriting files or
3 confidential open claims files are discussed. All portions of
4 association meetings which are closed to the public shall be
5 recorded by a court reporter. The court reporter shall record
6 the times of commencement and termination of the meeting, all
7 discussion and proceedings, the names of all persons present
8 at any time, and the names of all persons speaking. No
9 portion of any closed meeting shall be off the record.
10 Subject to the provisions hereof and s. 119.07(2)(a), the
11 court reporter's notes of any closed meeting shall be retained
12 by the association for a minimum of 5 years. A copy of the
13 transcript, less any exempt matters, of any closed meeting
14 wherein claims are discussed shall become public as to
15 individual claims after settlement of the claim.

16 Section 17. Subsection (4) of section 627.3511,
17 Florida Statutes, is amended to read:

18 627.3511 Depopulation of Residential Property and
19 Casualty Joint Underwriting Association.--

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

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

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1 ~~policy written if the term of the association policy was in~~
 2 ~~excess of 6 months, or one-half of such usual and customary~~
 3 ~~commission if the term of the association policy was 6 months~~
 4 ~~or less; or~~

5 (b) Offer to allow the producing agent of record of
 6 the association policy to continue servicing the policy for a
 7 period of not less than 1 year and offer to pay the agent the
 8 greater of the insurer's or the association's usual and
 9 customary 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 paragraph (a).The insurer need not take any further
 14 action if the offer is rejected. This subsection does not
 15 apply to any reciprocal interinsurance exchange, nonprofit
 16 federation, or any subsidiary or affiliate of such
 17 organization. This subsection does not apply if the agent is
 18 also the agent of record on the new coverage. The requirement
 19 of this subsection that the producing agent of record is
 20 entitled to retain the unearned commission on an association
 21 policy does not apply to a policy for which coverage has been
 22 provided in the association for 30 days or less or for which a
 23 cancellation notice has been issued pursuant to s.

24 627.351(6)(c)11. during the first 30 days of coverage.

25 Section 18. Subsection (7) of section 627.7295,
 26 Florida Statutes, is amended to read:

27 627.7295 Motor vehicle insurance contracts.--

28 (7) A policy of private passenger motor vehicle
 29 insurance or a binder for such a policy may be initially
 30 issued in this state only if the insurer or agent has
 31 collected from the insured an amount equal to 2 months'

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1 premium. An insurer, agent, or premium finance company may
2 not directly or indirectly take any action resulting in the
3 insured having paid from the insured's own funds an amount
4 less than the 2 months' premium required by this subsection.
5 This subsection applies without regard to whether the premium
6 is financed by a premium finance company or is paid pursuant
7 to a periodic payment plan of an insurer or an insurance
8 agent. This subsection does not apply if an insured or member
9 of the insured's family is renewing or replacing a policy or a
10 binder for such policy written by the same insurer or a member
11 of the same insurer group. This subsection does not apply to
12 an insurer that issues private passenger motor vehicle
13 coverage primarily to active duty or former military personnel
14 or their dependents. This subsection does not apply if all
15 policy payments are paid pursuant to a payroll deduction plan
16 or an automatic electronic funds transfer payment plan from
17 the policyholder, provided that the first policy payment may
18 be ~~is~~ made by cash, cashier's check, check, or a money order.
19 This subsection and subsection (4) do not apply if all policy
20 payments to an insurer are paid pursuant to an automatic
21 electronic funds transfer payment plan from an agent or a
22 managing general agent, or if the policy is issued pursuant to
23 the transfer of a book of business by an agent from one
24 insurer to another, provided that ~~and if~~ the policy includes,
25 at a minimum, personal injury protection pursuant to ss.
26 627.730-627.7405; motor vehicle property damage liability
27 pursuant to s. 627.7275; and bodily injury liability in at
28 least the amount of \$10,000 because of bodily injury to, or
29 death of, one person in any one accident and in the amount of
30 \$20,000 because of bodily injury to, or death of, two or more
31 persons in any one accident. This subsection and subsection

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1 (4) do not apply if an insured has had a policy in effect for
2 at least 6 months, the insured's agent is terminated by the
3 insurer that issued the policy, and the insured obtains
4 coverage on the policy's renewal date with a new company
5 through the terminated agent.

6 Section 19. Subsection (1) of section 627.901, Florida
7 Statutes, is amended to read:

8 627.901 Premium financing by an insurance agent or
9 agency.--

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

25 Section 20. Paragraphs (n) of subsection (1) of
26 section 626.9541, Florida Statutes, is amended to read:

27 626.9541 Unfair methods of competition and unfair or
28 deceptive acts or practices defined.--

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

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- 1 (n) Free insurance prohibited.--
- 2 1. Advertising, offering, or providing free insurance
- 3 as an inducement to the purchase or sale of real or personal
- 4 property or of services directly or indirectly connected with
- 5 such real or personal property.
- 6 2. For the purposes of this paragraph, "free"
- 7 insurance is:
- 8 a. Insurance for which no identifiable and additional
- 9 charge is made to the purchaser of such real property,
- 10 personal property, or services.
- 11 b. Insurance for which an identifiable or additional
- 12 charge is made in an amount less than the cost of such
- 13 insurance as to the seller or other person, other than the
- 14 insurer, providing the same.
- 15 3. Subparagraphs 1. and 2. do not apply to:
- 16 a. Insurance of, loss of, or damage to the real or
- 17 personal property involved in any such sale or services, under
- 18 a policy covering the interests therein of the seller or
- 19 vendor.
- 20 b. Blanket disability insurance as defined in s.
- 21 627.659.
- 22 c. Credit life insurance or credit disability
- 23 insurance.
- 24 d. Any individual, isolated, nonrecurring unadvertised
- 25 transaction not in the regular course of business.
- 26 e. Title insurance.
- 27 f. Any purchase agreement involving the purchase of a
- 28 cemetery lot or lots in which, under stated conditions, any
- 29 balance due is forgiven upon the death of the purchaser.
- 30 g. Life insurance, trip cancellation insurance, or
- 31 lost baggage insurance offered by a travel agency as part of a

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1 travel package offered by and booked through the agency.

2 h. Third-party payor programs approved by the
3 department.

4 4. Using the word "free" or words which imply the
5 provision of insurance without a cost to describe life or
6 disability insurance, in connection with the advertising or
7 offering for sale of any kind of goods, merchandise, or
8 services.

9 Section 21. Section 627.7013, Florida Statutes, is
10 amended to read:

11 627.7013 Orderly markets for personal lines
12 residential property insurance.--

13 (1) FINDINGS AND PURPOSE.--

14 (a) The Legislature finds, on May 1, 2001, that
15 personal lines residential property insurers, as a condition
16 of doing business in this state, have a responsibility to
17 contribute to an orderly market for personal lines residential
18 property insurance and that there is a compelling state
19 interest in maintaining an orderly market for personal lines
20 residential property insurance. The Legislature further finds
21 that Hurricane Andrew, which caused over \$15 billion of
22 insured losses in South Florida, has reinforced the need of
23 consumers to have reliable homeowner's insurance coverage;
24 however, the enormous monetary impact to insurers of Hurricane
25 Andrew claims has prompted insurers to propose substantial
26 cancellation or nonrenewal of their homeowner's insurance
27 policyholders. The Legislature further finds that the massive
28 cancellations and nonrenewals announced, proposed, or
29 contemplated by certain insurers constituted ~~constitute~~ a
30 significant danger to the public health, safety, and welfare,
31 and destabilized ~~destabilize~~ the insurance market and that

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1 such danger to the public health, safety, and welfare, and
2 destabilization of the market may occur after another
3 hurricane. In furtherance of the overwhelming public
4 necessity for an orderly market for property insurance, if the
5 Governor and Cabinet determine, after a hurricane and the
6 declaration by the Governor of a state of emergency pursuant
7 to s. 252.36, that a danger to the public health, safety, and
8 welfare exists due to the threat of massive cancellations and
9 non-renewals by insurers, the Governor and Cabinet may issue
10 an order imposing ~~the Legislature, in chapter 93-401, Laws of~~
11 ~~Florida, imposed,~~ for a limited time, not to exceed 180 days,
12 a moratorium on cancellation or nonrenewal of ~~personal lines~~
13 residential property insurance policies subject to such
14 conditions and exceptions as the Governor and Cabinet may
15 reasonably require to adequately protect the public health,
16 safety, and welfare. ~~The Legislature further finds that upon~~
17 ~~expiration of the moratorium, additional actions are required~~
18 ~~to maintain an orderly market for personal lines residential~~
19 ~~property insurance in this state. The purposes of this section~~
20 ~~are to provide for a phaseout of the moratorium and to require~~
21 ~~advance planning and approval for programs of exposure~~
22 ~~reduction.~~

23 ~~(b) The Legislature finds, as of the beginning of the~~
24 ~~1996 Regular Session of the Legislature, that:~~

25 ~~1. The conditions described in paragraph (a) remain~~
26 ~~applicable to the property insurance market in this state in~~
27 ~~1996 and are likely to remain applicable for several years~~
28 ~~thereafter.~~

29 ~~2. The Residential Property and Casualty Joint~~
30 ~~Underwriting Association, a residual market mechanism created~~
31 ~~to alleviate temporary unavailability of property insurance~~

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1 ~~coverage, remains the primary or exclusive source of new~~
2 ~~property insurance coverage in significant portions of the~~
3 ~~state.~~

4 ~~3. Recent enactments intended to restore a~~
5 ~~competitive, private sector property insurance market,~~
6 ~~including creation and enhancement of the Florida Hurricane~~
7 ~~Catastrophe Fund, incentives for depopulation of the~~
8 ~~Residential Property and Casualty Joint Underwriting~~
9 ~~Association, incentives for hurricane loss mitigation and~~
10 ~~prevention, creation of the Florida Commission on Hurricane~~
11 ~~Loss Projection Methodology, and revisions of laws relating to~~
12 ~~rates and coverages, are beginning to have their intended~~
13 ~~effects; however, the market instability that persists could~~
14 ~~frustrate these efforts to restore the market.~~

15 ~~4. The moratorium completion provided in this section~~
16 ~~is the least intrusive method for maintaining an orderly~~
17 ~~market, insofar as it applies only to hurricane-related~~
18 ~~cancellations and nonrenewals of personal lines residential~~
19 ~~policies that were in force on the effective date, and insofar~~
20 ~~as it allows an insurer annually to nonrenew up to 5 percent~~
21 ~~of the total number of such policies as of the effective date.~~

22 ~~(c) The Legislature finds, as of January 1, 1998,~~
23 ~~that:~~

24 ~~1. The conditions described in paragraphs (a) and (b)~~
25 ~~remain applicable to the property insurance market in this~~
26 ~~state in 1998 and are likely to remain applicable for several~~
27 ~~years thereafter.~~

28 ~~2. The general instability of the market is reflected~~
29 ~~by the following facts:~~

30 ~~a. In spite of depopulation efforts under which~~
31 ~~approximately 600,000 policies have been transferred from the~~

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1 ~~Residential Property and Casualty Joint Underwriting~~
2 ~~Association to the voluntary market, the joint underwriting~~
3 ~~association, with approximately 500,000 policies in force,~~
4 ~~remains the primary or exclusive source of new property~~
5 ~~insurance coverage in significant portions of the state.~~

6 ~~b. The Florida Windstorm Underwriting Association is~~
7 ~~growing rapidly, with more than 400,000 policies in force,~~
8 ~~approximately half of which were initially issued in 1997.~~

9 ~~3. A further extension of the operation of this~~
10 ~~section until June 1, 2001, will provide an opportunity for~~
11 ~~the market to stabilize and for continuation of residual~~
12 ~~market depopulation efforts.~~

13 ~~(2) MORATORIUM COMPLETION.--~~

14 ~~(a) As used in this subsection, the term "total number~~
15 ~~of policies" means the number of an insurer's policies of a~~
16 ~~specified type that were in force on June 1, 1996, or the date~~
17 ~~on which this section became law, whichever was later.~~

18 ~~(b) The following restrictions apply only to~~
19 ~~cancellation or nonrenewal of personal lines residential~~
20 ~~property insurance policies that were in force on June 1,~~
21 ~~1996, or the date on which this section became law, whichever~~
22 ~~was later.~~

23 ~~1. In any 12-month period, an insurer may not cancel~~
24 ~~or nonrenew more than 5 percent of such insurer's total number~~
25 ~~of homeowner's policies, 5 percent of such insurer's total~~
26 ~~number of mobile home owner's policies, or 5 percent of such~~
27 ~~insurer's total number of personal lines residential policies~~
28 ~~of all types and classes in the state for the purpose of~~
29 ~~reducing the insurer's exposure to hurricane claims and may~~
30 ~~not, with respect to any county, cancel or nonrenew more than~~
31 ~~10 percent of its total number of homeowner's policies, 10~~

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1 ~~percent of its total number of mobile home owner's policies,~~
2 ~~or 10 percent of its total number of personal lines~~
3 ~~residential policies of all types and classes in the county~~
4 ~~for the purpose of reducing the insurer's exposure to~~
5 ~~hurricane claims. This subparagraph does not prohibit any~~
6 ~~cancellations or nonrenewals of such policies for any other~~
7 ~~lawful reason unrelated to the risk of loss from hurricane~~
8 ~~exposure.~~

9 ~~2.a. If, for any 12-month period, an insurer proposes~~
10 ~~to cancel or nonrenew personal lines residential policies to~~
11 ~~an extent not authorized by subparagraph 1. for the purpose of~~
12 ~~reducing exposure to hurricane claims, the insurer must file a~~
13 ~~phaseout plan with the department at least 90 days prior to~~
14 ~~the effective date of the plan. In the plan, the insurer must~~
15 ~~demonstrate to the department that the insurer is protecting~~
16 ~~market stability and the interests of its policyholders. The~~
17 ~~plan may not be implemented unless it is approved by the~~
18 ~~department. In developing the plan, the insurer must consider~~
19 ~~policyholder longevity, the use of voluntary incentives to~~
20 ~~accomplish the reduction, and geographic distribution. The~~
21 ~~insurer must demonstrate that under the plan the insurer will~~
22 ~~not cancel or nonrenew more policies in the 12-month period~~
23 ~~than the largest number of similar policies the insurer~~
24 ~~canceled or nonrenewed for any reason in any 12-month period~~
25 ~~between August 24, 1989, and August 24, 1992.~~

26 ~~b. If the insurer considers the number of~~
27 ~~cancellations and nonrenewals under sub-subparagraph a. to be~~
28 ~~insufficient, the insurer may apply for approval of additional~~
29 ~~cancellations or nonrenewals on the basis of an unreasonable~~
30 ~~risk of insolvency. In evaluating a request under this~~
31 ~~sub-subparagraph, the department shall consider and shall~~

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1 ~~require the insurer to provide information relevant to: the~~
2 ~~insurer's size, market concentration, and general financial~~
3 ~~condition; the portion of the insurer's business in this state~~
4 ~~represented by personal lines residential property insurance;~~
5 ~~the reasonableness of assumptions with respect to size,~~
6 ~~frequency, severity, and path of hurricanes; the reinsurance~~
7 ~~available to the insurer and potential recoveries from the~~
8 ~~Florida Hurricane Catastrophe Fund; and the extent to which~~
9 ~~the insurer's assets have been voluntarily transferred by~~
10 ~~dividend or otherwise from the insurer to its stockholders,~~
11 ~~parent companies, or affiliated companies since June 1, 1996,~~
12 ~~or the date on which this section became law, whichever was~~
13 ~~later. In the implementation of exposure reductions under this~~
14 ~~sub-subparagraph, the department and the insurer shall~~
15 ~~consider such factors as policyholder longevity, the use of~~
16 ~~voluntary incentives to accomplish the exposure reduction, and~~
17 ~~geographic distribution.~~

18 ~~c. A policy shall not be counted as having been~~
19 ~~canceled or nonrenewed for purposes of this subsection if any~~
20 ~~of the following apply:~~

21 ~~(I) The policy was canceled or nonrenewed for an~~
22 ~~underwriting reason unrelated to the risk of loss from~~
23 ~~hurricane exposure, nonpayment of premium, or any other lawful~~
24 ~~reason that is unrelated to the risk of loss from hurricane~~
25 ~~exposure. The department shall consider the reason specified~~
26 ~~in the notice of cancellation or nonrenewal to be the reason~~
27 ~~for the cancellation or nonrenewal unless the department finds~~
28 ~~by a preponderance of the evidence that the stated reason was~~
29 ~~not the insurer's actual reason for the cancellation or~~
30 ~~nonrenewal.~~

31 ~~(II) The cancellation or nonrenewal was initiated by~~

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1 ~~the insured.~~

2 ~~(III) The insurer has offered the policyholder~~
3 ~~replacement or alternative coverage at approved rates, which~~
4 ~~coverage meets the requirements of the secondary mortgage~~
5 ~~market.~~

6 ~~d. In addition to any other cancellations or~~
7 ~~nonrenewals subject to the limitations in this subsection, a~~
8 ~~policy shall be considered as having been canceled or~~
9 ~~nonrenewed for purposes of this subsection if:~~

10 ~~(I) The insurer implements a rate increase under the~~
11 ~~use-and-file provisions of s. 627.062(2)(a)2., which rate~~
12 ~~increase exceeds 150 percent of the increase ultimately~~
13 ~~approved by the department, and, while the rate filing was~~
14 ~~pending, the policyholder voluntarily canceled or nonrenewed~~
15 ~~the policy and obtained replacement coverage from another~~
16 ~~insurer, including the Residential Property and Casualty Joint~~
17 ~~Underwriting Association; or~~

18 ~~(II) The insurer reduces the commission to an agent by~~
19 ~~more than 25 percent and the agent thereafter places the risk~~
20 ~~with another insurer, including the Residential Property and~~
21 ~~Casualty Joint Underwriting Association, or the Florida~~
22 ~~Windstorm Underwriting Association.~~

23 ~~e. The department must approve or disapprove an~~
24 ~~application for a waiver within 90 days after the department~~
25 ~~receives the application for waiver.~~

26 ~~3. In addition to the cancellations or nonrenewals~~
27 ~~authorized under this section, an insurer may cancel or~~
28 ~~nonrenew policies to the extent authorized by an exemption~~
29 ~~from or waiver of either the moratorium created by chapter~~
30 ~~93-401, Laws of Florida, or the moratorium phaseout under~~
31 ~~former s. 627.7013(2).~~

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1 ~~4. Notwithstanding any provisions of this section to~~
2 ~~the contrary, this section does not apply to any insurer that,~~
3 ~~prior to August 24, 1992, filed notice of such insurer's~~
4 ~~intent to discontinue writing insurance in this state under s.~~
5 ~~624.430, and for which a finding has been made by the~~
6 ~~department, the Division of Administrative Hearings of the~~
7 ~~Department of Management Services, or a court that such notice~~
8 ~~satisfied all requirements of s. 624.430. Nothing in this~~
9 ~~section shall be construed to authorize an insurer to withdraw~~
10 ~~from any line of property insurance business for the purpose~~
11 ~~of reducing exposure to risk of hurricane loss if such~~
12 ~~withdrawal commenced at any time that the moratorium under~~
13 ~~chapter 93-401, Laws of Florida, or the moratorium phaseout~~
14 ~~under this section is in effect.~~

15 ~~5. The following actions by an insurer do not~~
16 ~~constitute cancellations or nonrenewals for purposes of this~~
17 ~~subsection:~~

18 ~~a. The transfer of a risk from one admitted insurer to~~
19 ~~another admitted insurer, unless the terms of the new or~~
20 ~~replacement policy place the policyholder in default of a~~
21 ~~mortgage obligation.~~

22 ~~b. An increase in the hurricane deductible applicable~~
23 ~~to the policy, unless the new deductible places the~~
24 ~~policyholder in default of a mortgage obligation or the~~
25 ~~deductible exceeds the limits specified in s. 627.701.~~

26 ~~c. Any other lawful change in coverage that does not~~
27 ~~place the policyholder in default of a mortgage obligation.~~

28 ~~d. A cancellation or nonrenewal that is part of the~~
29 ~~same action as the removal of a policy including windstorm or~~
30 ~~hurricane coverage from the Residential Property and Casualty~~
31 ~~Joint Underwriting Association.~~

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1 ~~6. In order to assure fair and effective enforcement~~
2 ~~of this subsection, each insurer shall, no later than October~~
3 ~~1, 1996, report to the department the policy number of each~~
4 ~~policy subject to this subsection, arranged by county. The~~
5 ~~report shall include the policy number for each personal lines~~
6 ~~residential policy that was in force on June 1, 1996, or the~~
7 ~~date this section became law, whichever was later. Beginning~~
8 ~~October 1, 1996, each insurer shall also report, on a monthly~~
9 ~~basis, all cancellations and nonrenewals of policies included~~
10 ~~in such policy list and the reasons for the cancellations and~~
11 ~~nonrenewals.~~

12 ~~(c) The department may adopt rules to implement this~~
13 ~~subsection.~~

14 ~~(d) This section shall cease to operate at such time~~
15 ~~as the department determines that the insured value of all~~
16 ~~residential properties insured by the Florida Windstorm~~
17 ~~Underwriting Association and all properties insured by the~~
18 ~~Residential Property and Casualty Joint Underwriting~~
19 ~~Association under policies providing wind coverage, combined,~~
20 ~~has remained below \$25 billion for 3 consecutive months, based~~
21 ~~on exposure data reported to the department by the~~
22 ~~associations.~~

23 ~~(e) This subsection is repealed on June 1, 2001.~~

24 Section 22. Subsection (7) is added to section 631.57,
25 Florida Statutes, to read:

26 631.57 Powers and duties of the association.--

27 (7) Notwithstanding any other provision of law, the
28 net direct written premiums of medical malpractice insurance
29 are not subject to assessment under this section to cover
30 claims and administrative costs for the type of insurance
31 defined in s. 624.604.

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1 Section 23. Effective June 1, 2001, section 627.7014,
2 Florida Statutes, is repealed.

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4

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

6 And the title is amended as follows:

7 On page 2, line 15, through page 3, line 8, delete
8 those lines

9
10

and insert:

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amending s. 627.351, F.S.; specifying
membership of the board of the Florida
Windstorm Underwriting Association; revising
criteria for limited apportionment; specifying
duties with respect to pursuit of federal tax
exemptions and tax-free bond status; revising
conditions under which a risk is no longer
eligible for coverage from the association;
providing standards for certain payments to
agents of record of Florida Windstorm
Underwriting Association and Residential
Property and Casualty Joint Underwriting
Association policies; providing that risks in
certain areas are not eligible for new coverage
from the association; amending s. 627.3511,
F.S.; revising agent compensation in connection
with take-out plans; amending s. 627.7295,
F.S.; revising the exceptions to the
requirement that 2 months' premium be collected
by an insurer or agent for private passenger
motor vehicle insurance policies; amending s.

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1 627.901, F.S.; revising the method of
2 calculating interest or service charges for
3 premium financing by an insurance agent or
4 insurance agency; amending s. 626.9541, F.S.;
5 adding an exception to the prohibition against
6 free insurance; amending s. 631.57, F.S.;
7 exempting medical malpractice premiums from
8 assessments by the Florida Insurance Guaranty
9 Association due to insolvent property insurers;
10 amending s. 627.7013, F.S.; authorizing the
11 Governor and Cabinet to issue an order imposing
12 a moratorium on cancellation or nonrenewal of
13 residential property insurance policies;
14 deleting the provisions of the current
15 limitations on the number of residential
16 property insurance policies that may be
17 cancelled or nonrenewed; amending s. 631.57,
18 F.S.; exempting medical malpractice premiums
19 from assessments that are due to insolvent
20 property insurers; repealing s. 627.7014, F.S.;
21 repealing the current limitations on the number
22 of commercial residential property insurance
23 policies that may not be cancelled or
24 nonrenewed;

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