

1                   A bill to be entitled  
2                   An act relating to insurance; amending s.  
3                   631.57, F.S.; specifying assessment liability;  
4                   amending s. 324.031, F.S.; providing for  
5                   establishing financial responsibility with  
6                   respect to damages arising out of the operation  
7                   of certain vehicles; providing definitions;  
8                   amending s. 627.351, F.S.; specifying  
9                   membership of the boards of the Florida  
10                  Windstorm Underwriting Association and the  
11                  Residential Property and Casualty Joint  
12                  Underwriting Association; revising criteria for  
13                  limited apportionment; providing rate  
14                  standards; specifying duties with respect to  
15                  pursuit of federal tax exemptions and tax-free  
16                  bond status; providing premium tax exemption;  
17                  providing for appropriation of funds for  
18                  hurricane loss mitigation purposes; providing  
19                  standards for certain payments to agents of  
20                  record of Florida Winstorm Underwriting  
21                  Association and Residential Property and  
22                  Casualty Joint Underwriting Association  
23                  policies; amending s. 627.3511, F.S.; revising  
24                  agent compensation in connection with take-out  
25                  plans; amending s. 627.7013, F.S.; delaying the  
26                  repeal date of the moratorium on  
27                  hurricane-related cancellation or nonrenewal of  
28                  property insurance policies; amending s.  
29                  624.4072, F.S.; increasing a period of  
30                  exemption from certain taxes and assessments  
31                  for certain minority businesses; extending a

1 future repeal; amending ss. 624.3161, 626.171,  
2 F.S.; directing the department to adopt rules  
3 relating to market conduct examinations and  
4 license applications; amending s. 626.9541,  
5 F.S.; revising provisions relating to unfair  
6 competition and deceptive practices; creating  
7 s. 626.9651, F.S.; directing the department to  
8 adopt rules to govern the use of a consumer's  
9 nonpublic personal financial and health  
10 information by health insurers and health  
11 maintenance organizations; providing standards  
12 governing the rules; amending s. 627.062, F.S.;  
13 providing for filing forms for rate standards;  
14 amending s. 627.0625, F.S.; authorizing the  
15 department to adopt rules relating to  
16 third-party claimants; amending s. 627.0651,  
17 F.S.; prohibiting motor vehicle insurers from  
18 imposing a surcharge or a discount due to  
19 certain factors; creating s. 627.385, F.S.;  
20 providing rules of conduct for residual market  
21 board members; creating s. 627.4065, F.S.;  
22 providing for notice of right to return health  
23 insurance policies; creating s. 627.41345,  
24 F.S.; prohibiting an insurer or agent from  
25 issuing or signing certain certificates of  
26 insurance; providing that the terms of the  
27 policy control in case of conflict; amending s.  
28 627.7015, F.S.; defining "claim" for purposes  
29 of alternative procedures for resolution of  
30 disputed property insurance claims; amending s.  
31 627.7276, F.S.; providing for notice of

1 coverage of automobile policies; creating s.  
2 627.795, F.S.; providing guidelines for title  
3 insurance policies; creating 626.9552, F.S.;  
4 providing standards for single interest  
5 insurance; amending s. 627.918, F.S.; directing  
6 the department to adopt rules relating to  
7 reporting formats; amending s. 641.3108, F.S.;  
8 requiring health maintenance organizations to  
9 provide certain information to subscriber  
10 groups whose contract is not renewed for  
11 certain reasons; requiring certain meetings of  
12 the Florida Windstorm Underwriting Association  
13 to be open to the public; requiring notice;  
14 providing an effective date.

15

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

17

18 Section 1. Subsection (7) is added to section 631.57,  
19 Florida Statutes, to read:

20

631.57 Powers and duties of the association.--

21

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

26

27 Section 2. Section 324.031, Florida Statutes, is  
28 amended to read:

29

30 324.031 Manner of proving financial  
31 responsibility.--The owner or operator of a taxicab,  
limousine, jitney, or any other for-hire passenger  
transportation vehicle may prove financial responsibility by

1 providing satisfactory evidence of holding a motor vehicle  
2 liability policy as defined in s. 324.021(8) or s. 324.151,  
3 which policy is issued by an insurance carrier which is a  
4 member of the Florida Insurance Guaranty Association. The  
5 operator or owner of any other vehicle may prove his or her  
6 financial responsibility by:

7 (1) Furnishing satisfactory evidence of holding a  
8 motor vehicle liability policy, providing single limits of  
9 \$100,000/300,000/50,000 or \$500,000 combined limits, as  
10 defined in ss. 324.021(8) and 324.151;

11 (2) Posting with the department a satisfactory bond of  
12 a surety company authorized to do business in this state,  
13 conditioned for payment of the amount specified in s.  
14 324.021(7);

15 (3) Furnishing a certificate of the department showing  
16 a deposit of cash or securities in accordance with s. 324.161;  
17 or

18 (4) Furnishing a certificate of self-insurance issued  
19 by the department in accordance with s. 324.171.  
20

21 Any person, including any firm, partnership, association,  
22 corporation, or other person, other than a natural person,  
23 electing to use the method of proof specified in subsection  
24 (2) or subsection (3) shall post a bond or deposit equal to  
25 the number of vehicles owned times \$30,000, to a maximum of  
26 \$120,000; in addition, any such person, other than a natural  
27 person, shall maintain insurance providing coverage in excess  
28 of limits of \$10,000/20,000/10,000 or \$30,000 combined single  
29 limits, and such excess insurance shall provide minimum limits  
30 of \$100,000/300,000/50,000~~\$50,000/100,000/50,000~~ or \$500,000  
31 ~~\$150,000~~ combined single limits. The operator of any vehicle

1 with limits of coverage in the amount of  
2 \$100,000/300,000/50,000 or \$500,000 combined limits shall be  
3 deemed both the common carrier operating such vehicle and the  
4 owner of such vehicle, and no other person or entity shall be  
5 responsible in damages for the operator's negligence. For  
6 purposes of this section, "operator" shall mean the driver.

7 Section 3. Effective July 1, 2001, paragraph (b) of  
8 subsection (2) and paragraph (c) of subsection (6) of section  
9 627.351, Florida Statutes, are amended, and paragraph (f) is  
10 added to subsection (2) of said section, to read:

11 627.351 Insurance risk apportionment plans.--

12 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

13 (b) The department shall require all insurers holding  
14 a certificate of authority to transact property insurance on a  
15 direct basis in this state, other than joint underwriting  
16 associations and other entities formed pursuant to this  
17 section, to provide windstorm coverage to applicants from  
18 areas determined to be eligible pursuant to paragraph (c) who  
19 in good faith are entitled to, but are unable to procure, such  
20 coverage through ordinary means; or it shall adopt a  
21 reasonable plan or plans for the equitable apportionment or  
22 sharing among such insurers of windstorm coverage, which may  
23 include formation of an association for this purpose. As used  
24 in this subsection, the term "property insurance" means  
25 insurance on real or personal property, as defined in s.  
26 624.604, including insurance for fire, industrial fire, allied  
27 lines, farmowners multiperil, homeowners' multiperil,  
28 commercial multiperil, and mobile homes, and including  
29 liability coverages on all such insurance, but excluding  
30 inland marine as defined in s. 624.607(3) and excluding  
31 vehicle insurance as defined in s. 624.605(1)(a) other than

1 insurance on mobile homes used as permanent dwellings. The  
2 department shall adopt rules that provide a formula for the  
3 recovery and repayment of any deferred assessments.

4 1. For the purpose of this section, properties  
5 eligible for such windstorm coverage are defined as dwellings,  
6 buildings, and other structures, including mobile homes which  
7 are used as dwellings and which are tied down in compliance  
8 with mobile home tie-down requirements prescribed by the  
9 Department of Highway Safety and Motor Vehicles pursuant to s.  
10 320.8325, and the contents of all such properties. An  
11 applicant or policyholder is eligible for coverage only if an  
12 offer of coverage cannot be obtained by or for the applicant  
13 or policyholder from an admitted insurer at approved rates.

14 2.a.(I) All insurers required to be members of such  
15 association shall participate in its writings, expenses, and  
16 losses. Surplus of the association shall be retained for the  
17 payment of claims and shall not be distributed to the member  
18 insurers. Such participation by member insurers shall be in  
19 the proportion that the net direct premiums of each member  
20 insurer written for property insurance in this state during  
21 the preceding calendar year bear to the aggregate net direct  
22 premiums for property insurance of all member insurers, as  
23 reduced by any credits for voluntary writings, in this state  
24 during the preceding calendar year. For the purposes of this  
25 subsection, the term "net direct premiums" means direct  
26 written premiums for property insurance, reduced by premium  
27 for liability coverage and for the following if included in  
28 allied lines: rain and hail on growing crops; livestock;  
29 association direct premiums booked; National Flood Insurance  
30 Program direct premiums; and similar deductions specifically  
31 authorized by the plan of operation and approved by the

1 department. A member's participation shall begin on the first  
2 day of the calendar year following the year in which it is  
3 issued a certificate of authority to transact property  
4 insurance in the state and shall terminate 1 year after the  
5 end of the calendar year during which it no longer holds a  
6 certificate of authority to transact property insurance in the  
7 state. The commissioner, after review of annual statements,  
8 other reports, and any other statistics that the commissioner  
9 deems necessary, shall certify to the association the  
10 aggregate direct premiums written for property insurance in  
11 this state by all member insurers.

12 (II) The plan of operation shall provide for a board  
13 of directors consisting of the members of the State Board of  
14 Administration, which shall oversee the operations of the  
15 association and shall carry out any other duties provided by  
16 law. The board shall appoint an advisory council consisting  
17 of an actuary, a meteorologist, an engineer, a representative  
18 of insurers, a representative of insurance agents, and three  
19 consumers who shall also be representatives of other  
20 professions and industries, to provide the board with  
21 information and advice in connection with its duties under  
22 this section. Members of the advisory council shall be  
23 eligible for per diem and travel expenses under s. 112.061.  
24 The association shall not be considered a state agency and its  
25 obligations shall not be considered obligations of the state  
26 consisting of the Insurance Consumer Advocate appointed under  
27 s. 627.0613, 1 consumer representative appointed by the  
28 Insurance Commissioner, 1 consumer representative appointed by  
29 the Governor, and 12 additional members appointed as specified  
30 in the plan of operation. One of the 12 additional members  
31 shall be elected by the domestic companies of this state on

1 ~~the basis of cumulative weighted voting based on the net~~  
2 ~~direct premiums of domestic companies in this state. Nothing~~  
3 ~~in the 1997 amendments to this paragraph terminates the~~  
4 ~~existing board or the terms of any members of the board.~~

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

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

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

18 (VI) The plan of operation may also provide for the  
19 award of credits, for a period not to exceed 3 years, from a  
20 regular assessment pursuant to sub-sub-subparagraph d.(I) or  
21 sub-sub-subparagraph d.(II) as an incentive for taking  
22 policies out of the Residential Property and Casualty Joint  
23 Underwriting Association. In order to qualify for the  
24 exemption under this sub-sub-subparagraph, the take-out plan  
25 must provide that at least 40 percent of the policies removed  
26 from the Residential Property and Casualty Joint Underwriting  
27 Association cover risks located in Dade, Broward, and Palm  
28 Beach Counties or at least 30 percent of the policies so  
29 removed cover risks located in Dade, Broward, and Palm Beach  
30 Counties and an additional 50 percent of the policies so  
31 removed cover risks located in other coastal counties, and



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

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

24           c. The Legislature finds that the potential for  
 25 unlimited deficit assessments under this subparagraph may  
 26 induce insurers to attempt to reduce their writings in the  
 27 voluntary market, and that such actions would worsen the  
 28 availability problems that the association was created to  
 29 remedy. It is the intent of the Legislature that insurers  
 30 remain fully responsible for paying regular assessments and  
 31 collecting emergency assessments for any deficits of the

1 association; however, it is also the intent of the Legislature  
2 to provide a means by which assessment liabilities may be  
3 amortized over a period of years.

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

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

20 (III) Upon a determination by the board of directors  
21 that a deficit exceeds the amount that will be recovered  
22 through regular assessments on member insurers, pursuant to  
23 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the  
24 board shall levy, after verification by the department,  
25 emergency assessments to be collected by member insurers and  
26 by underwriting associations created pursuant to this section  
27 which write property insurance, upon issuance or renewal of  
28 property insurance policies other than National Flood  
29 Insurance policies in the year or years following levy of the  
30 regular assessments. The amount of the emergency assessment  
31 collected in a particular year shall be a uniform percentage

1 of that year's direct written premium for property insurance  
 2 for all member insurers and underwriting associations,  
 3 excluding National Flood Insurance policy premiums, as  
 4 annually determined by the board and verified by the  
 5 department. The department shall verify the arithmetic  
 6 calculations involved in the board's determination within 30  
 7 days after receipt of the information on which the  
 8 determination was based. Notwithstanding any other provision  
 9 of law, each member insurer and each underwriting association  
 10 created pursuant to this section shall collect emergency  
 11 assessments from its policyholders without such obligation  
 12 being affected by any credit, limitation, exemption, or  
 13 deferment. The emergency assessments so collected shall be  
 14 transferred directly to the association on a periodic basis as  
 15 determined by the association. The aggregate amount of  
 16 emergency assessments levied under this sub-sub-subparagraph  
 17 in any calendar year may not exceed the greater of 10 percent  
 18 of the amount needed to cover the original deficit, plus  
 19 interest, fees, commissions, required reserves, and other  
 20 costs associated with financing of the original deficit, or 10  
 21 percent of the aggregate statewide direct written premium for  
 22 property insurance written by member insurers and underwriting  
 23 associations for the prior year, plus interest, fees,  
 24 commissions, required reserves, and other costs associated  
 25 with financing the original deficit. The board may pledge the  
 26 proceeds of the emergency assessments under this  
 27 sub-sub-subparagraph as the source of revenue for bonds, to  
 28 retire any other debt incurred as a result of the deficit or  
 29 events giving rise to the deficit, or in any other way that  
 30 the board determines will efficiently recover the deficit. The  
 31 emergency assessments under this sub-sub-subparagraph shall

1 continue as long as any bonds issued or other indebtedness  
 2 incurred with respect to a deficit for which the assessment  
 3 was imposed remain outstanding, unless adequate provision has  
 4 been made for the payment of such bonds or other indebtedness  
 5 pursuant to the document governing such bonds or other  
 6 indebtedness. Emergency assessments collected under this  
 7 sub-sub-subparagraph are not part of an insurer's rates, are  
 8 not premium, and are not subject to premium tax, fees, or  
 9 commissions; however, failure to pay the emergency assessment  
 10 shall be treated as failure to pay premium.

11 (IV) Each member insurer's share of the total regular  
 12 assessments under sub-sub-subparagraph (I) or  
 13 sub-sub-subparagraph (II) shall be in the proportion that the  
 14 insurer's net direct premium for property insurance in this  
 15 state, for the year preceding the assessment bears to the  
 16 aggregate statewide net direct premium for property insurance  
 17 of all member insurers, as reduced by any credits for  
 18 voluntary writings for that year.

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

1 fees, or premium taxes; however, failure to pay a market  
2 equalization surcharge shall be treated as failure to pay  
3 premium.

4 e. The governing body of any unit of local government,  
5 any residents of which are insured under the plan, may issue  
6 bonds as defined in s. 125.013 or s. 166.101 to fund an  
7 assistance program, in conjunction with the association, for  
8 the purpose of defraying deficits of the association. In order  
9 to avoid needless and indiscriminate proliferation,  
10 duplication, and fragmentation of such assistance programs,  
11 any unit of local government, any residents of which are  
12 insured by the association, may provide for the payment of  
13 losses, regardless of whether or not the losses occurred  
14 within or outside of the territorial jurisdiction of the local  
15 government. Revenue bonds may not be issued until validated  
16 pursuant to chapter 75, unless a state of emergency is  
17 declared by executive order or proclamation of the Governor  
18 pursuant to s. 252.36 making such findings as are necessary to  
19 determine that it is in the best interests of, and necessary  
20 for, the protection of the public health, safety, and general  
21 welfare of residents of this state and the protection and  
22 preservation of the economic stability of insurers operating  
23 in this state, and declaring it an essential public purpose to  
24 permit certain municipalities or counties to issue bonds as  
25 will provide relief to claimants and policyholders of the  
26 association and insurers responsible for apportionment of plan  
27 losses. Any such unit of local government may enter into such  
28 contracts with the association and with any other entity  
29 created pursuant to this subsection as are necessary to carry  
30 out this paragraph. Any bonds issued under this  
31 sub-subparagraph shall be payable from and secured by moneys

1 received by the association from assessments under this  
2 subparagraph, and assigned and pledged to or on behalf of the  
3 unit of local government for the benefit of the holders of  
4 such bonds. The funds, credit, property, and taxing power of  
5 the state or of the unit of local government shall not be  
6 pledged for the payment of such bonds. If any of the bonds  
7 remain unsold 60 days after issuance, the department shall  
8 require all insurers subject to assessment to purchase the  
9 bonds, which shall be treated as admitted assets; each insurer  
10 shall be required to purchase that percentage of the unsold  
11 portion of the bond issue that equals the insurer's relative  
12 share of assessment liability under this subsection. An  
13 insurer shall not be required to purchase the bonds to the  
14 extent that the department determines that the purchase would  
15 endanger or impair the solvency of the insurer. The authority  
16 granted by this sub-subparagraph is additional to any bonding  
17 authority granted by subparagraph 6.

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

1 apportionment company shall collect from its policyholders any  
 2 emergency assessment imposed under sub-sub-subparagraph  
 3 2.d.(III). The plan shall provide that, if the department  
 4 determines that any regular assessment will result in an  
 5 impairment of the surplus of a limited apportionment company,  
 6 the department may direct that all or part of such assessment  
 7 be deferred. However, there shall be no limitation or  
 8 deferment of an emergency assessment to be collected from  
 9 policyholders under sub-sub-subparagraph 2.d.(III).

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

23 5.a. The plan of operation may include deductibles and  
 24 rules for classification of risks and rate modifications  
 25 consistent with the objective of providing and maintaining  
 26 funds sufficient to pay catastrophe losses.

27 b.(I) Subject to the provisions of  
 28 sub-sub-subparagraph (II), all rate filings under this  
 29 subsection relating to coverage for windstorm losses must  
 30 reflect historical insurance data. When using a computer model  
 31 in making a rate filing under this subsection, the association

1 may use only a computer model which is based upon standards  
 2 and guidelines developed or established by the Florida  
 3 Commission on Hurricane Loss Projection Methodology under s.  
 4 627.0628. Consideration of historical insurance data and the  
 5 use of computer models shall be consistent with applicable  
 6 Standards of Practice of the American Academy of Actuaries.  
 7 The association may require arbitration of a rate filing under  
 8 s. 627.062(6).

9 ~~(II) It is the intent of the Legislature that the~~  
 10 Rates for coverage provided by the association must be  
 11 actuarially sound and not competitive with approved rates  
 12 charged in the admitted voluntary market such that the  
 13 association functions as a residual market mechanism to  
 14 provide insurance only when the insurance cannot be procured  
 15 in the voluntary market. The plan of operation shall provide  
 16 a mechanism to assure that the average base rates for each  
 17 line of business charged by the association for hurricane  
 18 coverage for each unmitigated risk in a particular county  
 19 shall be no lower than the highest department-approved rate  
 20 within the association's eligible area for hurricane coverage  
 21 in the voluntary market for each line of business in such  
 22 county, among the 20 largest insurers actually writing such  
 23 coverage in such county, beginning no later than January 1,  
 24 ~~1999, the rates charged by the association for each line of~~  
 25 ~~business are reflective of approved rates in the voluntary~~  
 26 ~~market for hurricane coverage for each line of business in the~~  
 27 ~~various areas eligible for association coverage.~~

28 ~~(III) Notwithstanding any other provision of law,~~  
 29 windstorm rates under this subsection previously adjudicated  
 30 for use and in effect as of the effective date of this act,  
 31 and the related mitigation credit program, shall apply to



1 rates of the association and shall continue in effect until  
2 such rates are fully phased in. The rate for a particular  
3 group or class of policies may be increased only after the  
4 full phase-in of the current rate plan as to that group or  
5 class of policies.

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

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

28 (I) Whether the likelihood of a loss for the  
29 individual risk is substantially higher than for other risks  
30 of the same class; and  
31

1 (II) Whether the uncertainty associated with the  
2 individual risk is such that an appropriate premium cannot be  
3 determined.

4  
5 The acceptance or rejection of a risk by the association  
6 pursuant to such criteria and procedures must be construed as  
7 the private placement of insurance, and the provisions of  
8 chapter 120 do not apply.

9 e. The policies issued by the association must provide  
10 that if the association obtains an offer from an authorized  
11 insurer to cover the risk at its approved rates under either a  
12 standard policy including wind coverage or, if consistent with  
13 the insurer's underwriting rules as filed with the department,  
14 a basic policy including wind coverage, the risk is no longer  
15 eligible for coverage through the association. Upon  
16 termination of eligibility, the association shall provide  
17 written notice to the policyholder and agent of record stating  
18 that the association policy must be canceled as of 60 days  
19 after the date of the notice because of the offer of coverage  
20 from an authorized insurer. Other provisions of the insurance  
21 code relating to cancellation and notice of cancellation do  
22 not apply to actions under this sub-subparagraph.

23 f. Association policies and applications must include  
24 a notice that the association policy could, under this  
25 section, be replaced with a policy issued by an authorized  
26 insurer that does not provide coverage identical to the  
27 coverage provided by the association. The notice shall also  
28 specify that acceptance of association coverage creates a  
29 conclusive presumption that the applicant or policyholder is  
30 aware of this potential.

31

1           g. 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           (I) 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           (II) Offer to allow the producing agency 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-subparagraph (I).

22           h. 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           (I) 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

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

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

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

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

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

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

30 7. On such coverage, an agent's remuneration shall be  
 31 that amount of money payable to the agent by the terms of his

1 or her contract with the company with which the business is  
2 placed. However, no commission will be paid on that portion of  
3 the premium which is in excess of the standard premium of that  
4 company.

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

21         9. Notwithstanding any other provision of law:

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

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

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

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

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



1           a. The association shall retain such expert tax  
2 counsel and bond counsel as necessary and expend such funds as  
3 necessary to pursue such negotiations or litigation as may  
4 lead to favorable tax rulings.

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

11           (f)1. In recognition of the fact that the association  
12 created under this subsection furthers an essentially  
13 governmental purpose, the association is exempt from premium  
14 taxes effective July 1, 2002.

15           2. Beginning with the 2002-2003 fiscal year, and except  
16 for years in which the association is collecting regular or  
17 emergency assessments under this subsection, the association  
18 shall annually transfer the sum of \$5 million to the General  
19 Revenue Fund, which moneys shall be appropriated for hurricane  
20 loss mitigation purposes as specified in s. 215.555(7)(c).  
21 Such appropriations are in addition to any appropriations  
22 required or authorized by s. 215.555(7)(c).

23           (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT  
24 UNDERWRITING ASSOCIATION.--

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

26           1. May provide for one or more designated insurers,  
27 able and willing to provide policy and claims service, to act  
28 on behalf of the association to provide such service. Each  
29 licensed agent shall be entitled to indicate the order of  
30 preference regarding who will service the business placed by  
31 the agent. The association shall adhere to each agent's

1 preferences unless after consideration of other factors in  
2 assigning agents, including, but not limited to, servicing  
3 capacity and fee arrangements, the association has reason to  
4 believe it is in the best interest of the association to make  
5 a different assignment.

6           2. Must provide for adoption of residential property  
7 and casualty insurance policy forms, which forms must be  
8 approved by the department prior to use. The association  
9 shall adopt the following policy forms:

10           a. Standard personal lines policy forms including wind  
11 coverage, which are multiperil policies providing what is  
12 generally considered to be full coverage of a residential  
13 property similar to the coverage provided under an HO-2, HO-3,  
14 HO-4, or HO-6 policy.

15           b. Standard personal lines policy forms without wind  
16 coverage, which are the same as the policies described in  
17 sub-subparagraph a. except that they do not include wind  
18 coverage.

19           c. Basic personal lines policy forms including wind  
20 coverage, which are policies similar to an HO-8 policy or a  
21 dwelling fire policy that provide coverage meeting the  
22 requirements of the secondary mortgage market, but which  
23 coverage is more limited than the coverage under a standard  
24 policy.

25           d. Basic personal lines policy forms without wind  
26 coverage, which are the same as the policies described in  
27 sub-subparagraph c. except that they do not include wind  
28 coverage.

29           e. Commercial lines residential policy forms including  
30 wind coverage that are generally similar to the basic perils  
31

1 of full coverage obtainable for commercial residential  
2 structures in the admitted voluntary market.

3 f. Commercial lines residential policy forms without  
4 wind coverage, which are the same as the policies described in  
5 sub-subparagraph e. except that they do not include wind  
6 coverage.

7 3. May provide that the association may employ or  
8 otherwise contract with individuals or other entities to  
9 provide administrative or professional services that may be  
10 appropriate to effectuate the plan. The association shall  
11 have the power to borrow funds, by issuing bonds or by  
12 incurring other indebtedness, and shall have other powers  
13 reasonably necessary to effectuate the requirements of this  
14 subsection. The association may issue bonds or incur other  
15 indebtedness, or have bonds issued on its behalf by a unit of  
16 local government pursuant to subparagraph (g)2., in the  
17 absence of a hurricane or other weather-related event, upon a  
18 determination by the association, subject to approval by the  
19 department, that such action would enable it to efficiently  
20 meet the financial obligations of the association and that  
21 such financings are reasonably necessary to effectuate the  
22 requirements of this subsection. The association is  
23 authorized to take all actions needed to facilitate tax-free  
24 status for any such bonds or indebtedness, including formation  
25 of trusts or other affiliated entities. The association shall  
26 have the authority to pledge assessments, projected recoveries  
27 from the Florida Hurricane Catastrophe Fund, other reinsurance  
28 recoverables, market equalization and other surcharges, and  
29 other funds available to the association as security for bonds  
30 or other indebtedness. In recognition of s. 10, Art. I of the  
31 State Constitution, prohibiting the impairment of obligations

1 of contracts, it is the intent of the Legislature that no  
2 action be taken whose purpose is to impair any bond indenture  
3 or financing agreement or any revenue source committed by  
4 contract to such bond or other indebtedness.

5 4. Must require that the association operate subject  
6 to the supervision and approval of a board of governors  
7 consisting of the members of the State Board of  
8 Administration consisting of 13 individuals, including 1 who  
9 is elected as chair. The board shall consist of:

10 a. ~~The insurance consumer advocate appointed under s.~~  
11 ~~627.0613.~~

12 b. ~~Five members designated by the insurance industry.~~

13 c. ~~Five consumer representatives appointed by the~~  
14 ~~Insurance Commissioner. Two of the consumer representatives~~  
15 ~~must, at the time of appointment, be holders of policies~~  
16 ~~issued by the association, who are selected with consideration~~  
17 ~~given to reflecting the geographic balance of association~~  
18 ~~policyholders. Two of the consumer members must be individuals~~  
19 ~~who are minority persons as defined in s. 288.703(3). One of~~  
20 ~~the consumer members shall have expertise in the field of~~  
21 ~~mortgage lending.~~

22 d. ~~Two representatives of the insurance industry~~  
23 ~~appointed by the Insurance Commissioner. Of the two insurance~~  
24 ~~industry representatives appointed by the Insurance~~  
25 ~~Commissioner, at least one must be an individual who is a~~  
26 ~~minority person as defined in s. 288.703(3).~~

27  
28 ~~Any board member may be disapproved or removed and replaced by~~  
29 ~~the commissioner at any time for cause. All board members,~~  
30 ~~including the chair, must be appointed to serve for 3-year~~  
31 ~~terms beginning annually on a date designated by the plan.~~

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

3           a. With respect to personal lines residential risks,  
4 if the risk is offered coverage from an authorized insurer at  
5 the insurer's approved rate under either a standard policy  
6 including wind coverage or, if consistent with the insurer's  
7 underwriting rules as filed with the department, a basic  
8 policy including wind coverage, the risk is not eligible for  
9 any policy issued by the association.

10           (I) If the risk accepts an offer of coverage through  
11 the market assistance program or through a mechanism  
12 established by the association, either before the policy is  
13 issued by the association or during the first 30 days of  
14 coverage by the association, and the producing agent who  
15 submitted the application to the association is not currently  
16 appointed by the insurer, the insurer shall either:

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

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

27  
28 If the new or producing agent is unwilling or unable to accept  
29 appointment, the new insurer shall pay the agent in accordance  
30 with sub-sub-sub-subparagraph (A).

31

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

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

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

15  
16 If the new or producing agent is unwilling or unable to accept  
17 appointment, the new insurer shall pay the agent in accordance  
18 with sub-sub-sub-paragraph (A).~~If the risk accepts an~~  
19 ~~offer of coverage through the market assistance plan or an~~  
20 ~~offer of coverage through a mechanism established by the~~  
21 ~~association before a policy is issued to the risk by the~~  
22 ~~association or during the first 30 days of coverage by the~~  
23 ~~association, and the producing agent who submitted the~~  
24 ~~application to the plan or to the association is not currently~~  
25 ~~appointed by the insurer, the insurer shall either appoint the~~  
26 ~~agent to service the risk or, if the insurer places the~~  
27 ~~coverage through a new agent, require the new agent who then~~  
28 ~~writes the policy to pay not less than 50 percent of the first~~  
29 ~~year's commission to the producing agent who submitted the~~  
30 ~~application to the plan or the association, except that if the~~  
31 ~~new agent is an employee or exclusive agent of the insurer,~~

1 ~~the new agent shall pay a policy fee of \$50 to the producing~~  
2 ~~agent in lieu of splitting the commission.~~ If the risk is not  
3 able to obtain any such offer, the risk is eligible for either  
4 a standard policy including wind coverage or a basic policy  
5 including wind coverage issued by the association; however, if  
6 the risk could not be insured under a standard policy  
7 including wind coverage regardless of market conditions, the  
8 risk shall be eligible for a basic policy including wind  
9 coverage unless rejected under subparagraph 8. The association  
10 shall determine the type of policy to be provided on the basis  
11 of objective standards specified in the underwriting manual  
12 and based on generally accepted underwriting practices.

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

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

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

29       (B) Offer to allow the producing agent of record of  
30 the policy to continue servicing the policy for a period of  
31 not less than 1 year and offer to pay the agent the greater of

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

3  
4 If the new or producing agent is unwilling or unable to accept  
5 appointment, the new insurer shall pay the agent in accordance  
6 with sub-sub-sub-subparagraph (A).

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

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

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

21  
22 If the new or producing agent is unwilling or unable to accept  
23 appointment, the new insurer shall pay the agent in accordance  
24 with sub-sub-sub-subparagraph (A). ~~If the risk accepts an~~  
25 ~~offer of coverage through the market assistance plan or an~~  
26 ~~offer of coverage through a mechanism established by the~~  
27 ~~association before a policy is issued to the risk by the~~  
28 ~~association, and the producing agent who submitted the~~  
29 ~~application to the plan or the association is not currently~~  
30 ~~appointed by the insurer, the insurer shall either appoint the~~  
31 ~~agent to service the risk or, if the insurer places the~~



1 ~~coverage through a new agent, require the new agent who then~~  
2 ~~writes the policy to pay not less than 50 percent of the first~~  
3 ~~year's commission to the producing agent who submitted the~~  
4 ~~application to the plan, except that if the new agent is an~~  
5 ~~employee or exclusive agent of the insurer, the new agent~~  
6 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~  
7 ~~of splitting the commission.~~If the risk is not able to obtain  
8 any such offer, the risk is eligible for a policy including  
9 wind coverage issued by the association.

10 c. This subparagraph does not require the association  
11 to provide wind coverage or hurricane coverage in any area in  
12 which such coverage is available through the Florida Windstorm  
13 Underwriting Association.

14 6. Must include rules for classifications of risks and  
15 rates therefor.

16 7. Must provide that if premium and investment income  
17 attributable to a particular plan year are in excess of  
18 projected losses and expenses of the plan attributable to that  
19 year, such excess shall be held in surplus. Such surplus shall  
20 be available to defray deficits as to future years and shall  
21 be used for that purpose prior to assessing member insurers as  
22 to any plan year.

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

28 a. Whether the likelihood of a loss for the individual  
29 risk is substantially higher than for other risks of the same  
30 class; and

31

1           b. Whether the uncertainty associated with the  
2 individual risk is such that an appropriate premium cannot be  
3 determined.

4  
5 The acceptance or rejection of a risk by the association shall  
6 be construed as the private placement of insurance, and the  
7 provisions of chapter 120 shall not apply.

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

11           10. Must provide that in the event of regular deficit  
12 assessments under sub-subparagraph (b)3.a. or sub-subparagraph  
13 (b)3.b., or by the Florida Windstorm Underwriting Association  
14 under sub-sub-subparagraph (2)(b)2.d.(I) or  
15 sub-sub-subparagraph (2)(b)2.d.(II), the association shall  
16 levy upon association policyholders in its next rate filing,  
17 or by a separate rate filing solely for this purpose, a market  
18 equalization surcharge in a percentage equal to the total  
19 amount of such regular assessments divided by the aggregate  
20 statewide direct written premium for subject lines of business  
21 for member insurers for the prior calendar year. Market  
22 equalization surcharges under this subparagraph are not  
23 considered premium and are not subject to commissions, fees,  
24 or premium taxes; however, failure to pay a market  
25 equalization surcharge shall be treated as failure to pay  
26 premium.

27           11. The policies issued by the association must  
28 provide that, if the association or the market assistance plan  
29 obtains an offer from an authorized insurer to cover the risk  
30 at its approved rates under either a standard policy including  
31 wind coverage or a basic policy including wind coverage, the

1 risk is no longer eligible for coverage through the  
2 association. However, if the risk is located in an area in  
3 which Florida Windstorm Underwriting Association coverage is  
4 available, such an offer of a standard or basic policy  
5 terminates eligibility regardless of whether or not the offer  
6 includes wind coverage. Upon termination of eligibility, the  
7 association shall provide written notice to the policyholder  
8 and agent of record stating that the association policy shall  
9 be canceled as of 60 days after the date of the notice because  
10 of the offer of coverage from an authorized insurer. Other  
11 provisions of the insurance code relating to cancellation and  
12 notice of cancellation do not apply to actions under this  
13 subparagraph.

14         12. Association policies and applications must include  
15 a notice that the association policy could, under this section  
16 or s. 627.3511, be replaced with a policy issued by an  
17 admitted insurer that does not provide coverage identical to  
18 the coverage provided by the association. The notice shall  
19 also specify that acceptance of association coverage creates a  
20 conclusive presumption that the applicant or policyholder is  
21 aware of this potential.

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

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

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

9 627.3511 Depopulation of Residential Property and  
10 Casualty Joint Underwriting Association.--

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

17 (a) Pay to the producing agent of record of the  
18 association policy, for the first year, an amount that is the  
19 greater of the insurer's usual and customary commission for  
20 the type of policy written or a fee equal to the usual and  
21 customary commission of the association ~~an amount equal to the~~  
22 ~~insurer's usual and customary commission for the type of~~  
23 ~~policy written if the term of the association policy was in~~  
24 ~~excess of 6 months, or one-half of such usual and customary~~  
25 ~~commission if the term of the association policy was 6 months~~  
26 ~~or less; or~~

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

1  
2 If the new or producing agent is unwilling or unable to accept  
3 appointment, the new insurer shall pay the agent in accordance  
4 with paragraph (a).The insurer need not take any further  
5 action if the offer is rejected. This subsection does not  
6 apply to any reciprocal interinsurance exchange, nonprofit  
7 federation, or any subsidiary or affiliate of such  
8 organization. This subsection does not apply if the agent is  
9 also the agent of record on the new coverage. The requirement  
10 of this subsection that the producing agent of record is  
11 entitled to retain the unearned commission on an association  
12 policy does not apply to a policy for which coverage has been  
13 provided in the association for 30 days or less or for which a  
14 cancellation notice has been issued pursuant to s.  
15 627.351(6)(c)11. during the first 30 days of coverage.

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

18 627.7013 Orderly markets for personal lines  
19 residential property insurance.--

20 (2) MORATORIUM COMPLETION.--

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

25 (b) The following restrictions apply only to  
26 cancellation or nonrenewal of personal lines residential  
27 property insurance policies that were in force on June 1,  
28 1996, or the date on which this section became law, whichever  
29 was later.

30 1. In any 12-month period, an insurer may not cancel  
31 or nonrenew more than 5 percent of such insurer's total number

1 of homeowner's policies, 5 percent of such insurer's total  
2 number of mobile home owner's policies, or 5 percent of such  
3 insurer's total number of personal lines residential policies  
4 of all types and classes in the state for the purpose of  
5 reducing the insurer's exposure to hurricane claims and may  
6 not, with respect to any county, cancel or nonrenew more than  
7 10 percent of its total number of homeowner's policies, 10  
8 percent of its total number of mobile home owner's policies,  
9 or 10 percent of its total number of personal lines  
10 residential policies of all types and classes in the county  
11 for the purpose of reducing the insurer's exposure to  
12 hurricane claims. This subparagraph does not prohibit any  
13 cancellations or nonrenewals of such policies for any other  
14 lawful reason unrelated to the risk of loss from hurricane  
15 exposure.

16           2.a. If, for any 12-month period, an insurer proposes  
17 to cancel or nonrenew personal lines residential policies to  
18 an extent not authorized by subparagraph 1. for the purpose of  
19 reducing exposure to hurricane claims, the insurer must file a  
20 phaseout plan with the department at least 90 days prior to  
21 the effective date of the plan. In the plan, the insurer must  
22 demonstrate to the department that the insurer is protecting  
23 market stability and the interests of its policyholders. The  
24 plan may not be implemented unless it is approved by the  
25 department. In developing the plan, the insurer must consider  
26 policyholder longevity, the use of voluntary incentives to  
27 accomplish the reduction, and geographic distribution. The  
28 insurer must demonstrate that under the plan the insurer will  
29 not cancel or nonrenew more policies in the 12-month period  
30 than the largest number of similar policies the insurer  
31

1 canceled or nonrenewed for any reason in any 12-month period  
2 between August 24, 1989, and August 24, 1992.

3       b. If the insurer considers the number of  
4 cancellations and nonrenewals under sub-subparagraph a. to be  
5 insufficient, the insurer may apply for approval of additional  
6 cancellations or nonrenewals on the basis of an unreasonable  
7 risk of insolvency. In evaluating a request under this  
8 sub-subparagraph, the department shall consider and shall  
9 require the insurer to provide information relevant to: the  
10 insurer's size, market concentration, and general financial  
11 condition; the portion of the insurer's business in this state  
12 represented by personal lines residential property insurance;  
13 the reasonableness of assumptions with respect to size,  
14 frequency, severity, and path of hurricanes; the reinsurance  
15 available to the insurer and potential recoveries from the  
16 Florida Hurricane Catastrophe Fund; and the extent to which  
17 the insurer's assets have been voluntarily transferred by  
18 dividend or otherwise from the insurer to its stockholders,  
19 parent companies, or affiliated companies since June 1, 1996,  
20 or the date on which this section became law, whichever was  
21 later. In the implementation of exposure reductions under this  
22 sub-subparagraph, the department and the insurer shall  
23 consider such factors as policyholder longevity, the use of  
24 voluntary incentives to accomplish the exposure reduction, and  
25 geographic distribution.

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

29           (I) The policy was canceled or nonrenewed for an  
30 underwriting reason unrelated to the risk of loss from  
31 hurricane exposure, nonpayment of premium, or any other lawful

1 reason that is unrelated to the risk of loss from hurricane  
2 exposure. The department shall consider the reason specified  
3 in the notice of cancellation or nonrenewal to be the reason  
4 for the cancellation or nonrenewal unless the department finds  
5 by a preponderance of the evidence that the stated reason was  
6 not the insurer's actual reason for the cancellation or  
7 nonrenewal.

8 (II) The cancellation or nonrenewal was initiated by  
9 the insured.

10 (III) The insurer has offered the policyholder  
11 replacement or alternative coverage at approved rates, which  
12 coverage meets the requirements of the secondary mortgage  
13 market.

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

18 (I) The insurer implements a rate increase under the  
19 use-and-file provisions of s. 627.062(2)(a)2., which rate  
20 increase exceeds 150 percent of the increase ultimately  
21 approved by the department, and, while the rate filing was  
22 pending, the policyholder voluntarily canceled or nonrenewed  
23 the policy and obtained replacement coverage from another  
24 insurer, including the Residential Property and Casualty Joint  
25 Underwriting Association; or

26 (II) The insurer reduces the commission to an agent by  
27 more than 25 percent and the agent thereafter places the risk  
28 with another insurer, including the Residential Property and  
29 Casualty Joint Underwriting Association, or the Florida  
30 Windstorm Underwriting Association.

31



1 e. The department must approve or disapprove an  
2 application for a waiver within 90 days after the department  
3 receives the application for waiver.

4 3. In addition to the cancellations or nonrenewals  
5 authorized under this section, an insurer may cancel or  
6 nonrenew policies to the extent authorized by an exemption  
7 from or waiver of either the moratorium created by chapter  
8 93-401, Laws of Florida, or the moratorium phaseout under  
9 former s. 627.7013(2).

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

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

27 a. The transfer of a risk from one admitted insurer to  
28 another admitted insurer, unless the terms of the new or  
29 replacement policy place the policyholder in default of a  
30 mortgage obligation.

31

1           b. An increase in the hurricane deductible applicable  
2 to the policy, unless the new deductible places the  
3 policyholder in default of a mortgage obligation or the  
4 deductible exceeds the limits specified in s. 627.701.

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

7           d. A cancellation or nonrenewal that is part of the  
8 same action as the removal of a policy including windstorm or  
9 hurricane coverage from the Residential Property and Casualty  
10 Joint Underwriting Association.

11           6. In order to assure fair and effective enforcement  
12 of this subsection, each insurer shall, no later than October  
13 1, 1996, report to the department the policy number of each  
14 policy subject to this subsection, arranged by county. The  
15 report shall include the policy number for each personal lines  
16 residential policy that was in force on June 1, 1996, or the  
17 date this section became law, whichever was later. Beginning  
18 October 1, 1996, each insurer shall also report, on a monthly  
19 basis, all cancellations and nonrenewals of policies included  
20 in such policy list and the reasons for the cancellations and  
21 nonrenewals.

22           (c) The department may adopt rules to implement this  
23 subsection.

24           (d) This section shall cease to operate at such time  
25 as the department determines that the insured value of all  
26 residential properties insured by the Florida Windstorm  
27 Underwriting Association and all properties insured by the  
28 Residential Property and Casualty Joint Underwriting  
29 Association under policies providing wind coverage, combined,  
30 has remained below \$25 billion for 3 consecutive months, based  
31

1 on exposure data reported to the department by the  
2 associations.

3 (e) This subsection is repealed on June 1, 2004 ~~2001~~.

4 Section 6. Subsections (1) and (4) of section  
5 624.4072, Florida Statutes, are amended to read:

6 624.4072 Minority-owned property and casualty  
7 insurers; limited exemption for taxation and assessments.--

8 (1) A minority business that is at least 51 percent  
9 owned by minority persons, as defined in s. 288.703(3),  
10 initially issued a certificate of authority in this state as  
11 an authorized insurer after May 1, 1998, to write property and  
12 casualty insurance shall be exempt, for a period not to exceed  
13 10 ~~5~~ years from the date of receiving its certificate of  
14 authority, from the following taxes and assessments:

15 (a) Taxes imposed under ss. 175.101, 185.08, and  
16 624.509;

17 (b) Assessments by the Florida Residential Property  
18 and Casualty Joint Underwriting Association or by the Florida  
19 Windstorm Underwriting Association, as provided under s.  
20 627.351, except for emergency assessments collected from  
21 policyholders pursuant to s. 627.351(2)(b)2.d.(III) and  
22 (6)(b)3.d. Any such insurer shall be a member insurer of the  
23 Florida Windstorm Underwriting Association and the Florida  
24 Residential Property and Casualty Joint Underwriting  
25 Association. The premiums of such insurer shall be included in  
26 determining, for the Florida Windstorm Underwriting  
27 Association, the aggregate statewide direct written premium  
28 for property insurance and in determining, for the Florida  
29 Residential Property and Casualty Joint Underwriting  
30 Association, the aggregate statewide direct written premium  
31 for the subject lines of business for all member insurers.

1           (4) This section is repealed effective December 31,  
2 2010 ~~July 1, 2003~~, and the tax and assessment exemptions  
3 authorized by this section shall terminate on such date.

4           Section 7. Subsection (6) is added to section  
5 624.3161, Florida Statutes, to read:

6           624.3161 Market conduct examinations.--

7           (6) The department shall adopt rules as necessary to  
8 effectuate the market conduct examination process, to assure  
9 compliance by the person examined with the applicable  
10 provisions of the Insurance Code. Such rules shall not exceed  
11 the authority of the statutes involved in the market conduct  
12 examination.

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

15           626.171 Application for license.--

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

23           Section 9. Paragraph (o) of subsection (1) of section  
24 626.9541, Florida Statutes, is amended to read:

25           626.9541 Unfair methods of competition and unfair or  
26 deceptive acts or practices defined.--

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

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

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

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

28           3.a. Imposing or requesting an additional premium for  
29 a policy of motor vehicle liability, personal injury  
30 protection, medical payment, or collision insurance or any  
31 combination thereof or refusing to renew the policy solely

1 because the insured was involved in a motor vehicle accident  
2 unless the insurer's file contains information from which the  
3 insurer in good faith determines that the insured was  
4 substantially at fault in the accident.

5       b. An insurer which imposes and collects such a  
6 surcharge or which refuses to renew such policy shall, in  
7 conjunction with the notice of premium due or notice of  
8 nonrenewal, notify the named insured that he or she is  
9 entitled to reimbursement of such amount or renewal of the  
10 policy under the conditions listed below and will subsequently  
11 reimburse him or her or renew the policy, if the named insured  
12 demonstrates that the operator involved in the accident was:

13       (I) Lawfully parked;

14       (II) Reimbursed by, or on behalf of, a person  
15 responsible for the accident or has a judgment against such  
16 person;

17       (III) Struck in the rear by another vehicle headed in  
18 the same direction and was not convicted of a moving traffic  
19 violation in connection with the accident;

20       (IV) Hit by a "hit-and-run" driver, if the accident  
21 was reported to the proper authorities within 24 hours after  
22 discovering the accident;

23       (V) Not convicted of a moving traffic violation in  
24 connection with the accident, but the operator of the other  
25 automobile involved in such accident was convicted of a moving  
26 traffic violation;

27       (VI) Finally adjudicated not to be liable by a court  
28 of competent jurisdiction;

29       (VII) In receipt of a traffic citation which was  
30 dismissed or nolle prossed; or

31

1 (VIII) Not at fault as evidenced by a written  
2 statement from the insured establishing facts demonstrating  
3 lack of fault which are not rebutted by information in the  
4 insurer's file from which the insurer in good faith determines  
5 that the insured was substantially at fault.

6 c. In addition to the other provisions of this  
7 subparagraph, an insurer may not fail to renew a policy if the  
8 insured has had only one accident in which he or she was at  
9 fault within the current 3-year period. However, an insurer  
10 may nonrenew a policy for reasons other than accidents in  
11 accordance with s. 627.728. This subparagraph does not  
12 prohibit nonrenewal of a policy under which the insured has  
13 had three or more accidents, regardless of fault, during the  
14 most recent 3-year period.

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

19 a. A second infraction committed within an 18-month  
20 period, or a third or subsequent infraction committed within a  
21 36-month period.

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

25 5. Upon the request of the insured, the insurer and  
26 licensed agent shall supply to the insured the complete proof  
27 of fault or other criteria which justifies the additional  
28 charge or cancellation.

29 6. No insurer shall impose or request an additional  
30 premium for motor vehicle insurance, cancel or refuse to issue  
31 a policy, or refuse to renew a policy because the insured or

1 the applicant is a handicapped or physically disabled person,  
2 so long as such handicap or physical disability does not  
3 substantially impair such person's mechanically assisted  
4 driving ability.

5 7. No insurer may cancel or otherwise terminate any  
6 insurance contract or coverage, or require execution of a  
7 consent to rate endorsement, during the stated policy term for  
8 the purpose of offering to issue, or issuing, a similar or  
9 identical contract or coverage to the same insured with the  
10 same exposure at a higher premium rate or continuing an  
11 existing contract or coverage with the same exposure at an  
12 increased premium.

13 8. No insurer may issue a nonrenewal notice on any  
14 insurance contract or coverage, or require execution of a  
15 consent to rate endorsement, for the purpose of offering to  
16 issue, or issuing, a similar or identical contract or coverage  
17 to the same insured at a higher premium rate or continuing an  
18 existing contract or coverage at an increased premium without  
19 meeting any applicable notice requirements.

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

24 10. Imposing or requesting an additional premium for  
25 motor vehicle comprehensive or uninsured motorist coverage  
26 solely because the insured was involved in a motor vehicle  
27 accident or was convicted of a moving traffic violation.

28 11. No insurer shall cancel or issue a nonrenewal  
29 notice on any insurance policy or contract without complying  
30 with any applicable cancellation or nonrenewal provision  
31 required under the Florida Insurance Code.



1           12. No insurer shall impose or request an additional  
 2 premium, cancel a policy, or issue a nonrenewal notice on any  
 3 insurance policy or contract because of any traffic infraction  
 4 when adjudication has been withheld and no points have been  
 5 assessed pursuant to s. 318.14(9) and (10). However, this  
 6 subparagraph does not apply to traffic infractions involving  
 7 accidents in which the insurer has incurred a loss due to the  
 8 fault of the insured.

9           Section 10. Section 626.9651, Florida Statutes, is  
 10 created to read:

11           626.9651 Privacy.--The department shall adopt rules  
 12 consistent with other provisions of the Insurance Code to  
 13 govern the use of a consumer's nonpublic personal financial  
 14 and health information. These rules shall be based on,  
 15 consistent with, and not more restrictive than the National  
 16 Association of Insurance Commissioners' Privacy of Consumer  
 17 Financial and Health Information Regulation adopted September  
 18 26, 2000, by the National Association of Insurance  
 19 Commissioners, provided, however, the rules shall permit the  
 20 use and disclosure of nonpublic personal health information  
 21 for scientific, medical, or public policy research in  
 22 accordance with federal law. In addition, these rules shall  
 23 be consistent with, and not more restrictive than, the  
 24 standards contained in Title V of the Gramm-Leach-Bliley Act  
 25 of 1999 (public law 106-102). Any health insurer or health  
 26 maintenance organization determined by the department to be in  
 27 compliance with, or to be actively undertaking compliance  
 28 with, the consumer privacy protection rules promulgated by the  
 29 United States Department of Health and Human Services, in  
 30 conformance with the Health Insurance Portability and  
 31

1 Affordability Act, shall be deemed in compliance with this  
2 section. This section shall become effective July 1, 2001.

3 Section 11. Paragraph (a) of subsection (2) of section  
4 627.062, Florida Statutes, is amended to read:

5 627.062 Rate standards.--

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

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

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

1 to approve or a notice of intent to disapprove within 90 days  
2 after receipt of the filing.

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

11           Section 12. Subsection (4) is added to Section  
12 627.0625, Florida Statutes, to read:

13           627.0625 Commercial property and casualty risk  
14 management plans.--

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

21           Section 13. Subsection (8) of section 627.0651,  
22 Florida Statutes, is amended to read:

23           627.0651 Making and use of rates for motor vehicle  
24 insurance.--

25           (8) Rates are not unfairly discriminatory if averaged  
26 broadly among members of a group; nor are rates unfairly  
27 discriminatory even though they are lower than rates for  
28 nonmembers of the group. However, such rates are unfairly  
29 discriminatory if they are not actuarially measurable and  
30 credible and sufficiently related to actual or expected loss  
31 and expense experience of the group so as to assure that

1 nonmembers of the group are not unfairly discriminated  
2 against. Use of a single United States Postal Service zip code  
3 as a rating territory shall be deemed unfairly discriminatory.  
4 An insurer may not impose a surcharge or discount for  
5 liability coverages based on the type of vehicle without  
6 providing acceptable actuarial justification.

7 Section 14. Section 627.385, Florida Statutes, is  
8 created to read:

9 627.385 Conduct of residual market board members.--

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

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

28 (c) This section applies to the Florida Medical  
29 Malpractice Joint Underwriting Association, the Florida  
30 Automobile Joint Underwriting Association, the Florida  
31 Workers' Compensation Joint Underwriting Association, the

1 Florida Comprehensive Health Association, the Florida  
2 Windstorm Underwriting Association, the Florida Property and  
3 Casualty Joint Underwriting Association, the Florida  
4 Residential Property and Casualty Joint Underwriting  
5 Association, and the board members thereof.

6 (2) To ensure that the board is free from potential  
7 conflict or inappropriate behavior the following are adopted  
8 in the plan of operation of the subject residual market in  
9 this state.

10 (a) A board member may not act as a servicing carrier  
11 or administering entity for the subject plan, other than a  
12 claim adjustment contract open to all members of the plan.

13 (b) A board member or board member representative may  
14 not use his or her position to foster or facilitate any  
15 special pecuniary gain for himself or herself, his or her  
16 member company, or any other entity in which the board member  
17 or board member representative or the member company has a  
18 substantial financial interest, except as otherwise provided  
19 in paragraph (a).

20 (c) A board member or board member representative may  
21 not use his or her position on the board to secure or promote  
22 any business relationship from which he or she may derive a  
23 financial gain.

24 (d) A board member or designee may not receive any  
25 gift or gratuity, except as provided in s. 112.3248, other  
26 than meals, while acting in his or her capacity as a board  
27 member.

28 (3) Board members and board member representatives  
29 shall maintain reasonable board expenses based on state travel  
30 policy as set forth in s. 112.061. The board shall develop a  
31 detailed policy regarding board member travel, which policy

1 must be based on s. 112.061 and is subject to the approval of  
2 the department.

3 Section 15. Section 627.4065, Florida Statutes, is  
4 created to read:

5 627.4065 Insured's right to return policy; notice.--A  
6 health insurance policy issued or issued for delivery in this  
7 state must have printed or stamped thereon or attached thereto  
8 a notice in a prominent place stating in substance that the  
9 policyholder may return the policy to the insurer within 10  
10 days after its delivery and may have the premium paid refunded  
11 if, after examination of the policy or contract, the  
12 policyholder is not satisfied with it for any reason. The  
13 notice must provide that if the policyholder, pursuant to such  
14 notice, returns the policy or contract to the insurer at its  
15 home office or branch office or to the agent through whom it  
16 was purchased, it is considered void from the beginning and  
17 the parties are in the same position as if no policy or  
18 contract had been issued. This section does not apply to group  
19 policies, single premium nonrenewable policies, or travel  
20 accident policies.

21 Section 16. Section 627.41345 Certificate of  
22 insurance.--An insurer or agent may not issue or sign a  
23 certificate of insurance that contains terms or conditions  
24 that differ from those in the policy under which the  
25 certificate of insurance is issued. In the event of a  
26 conflict, the terms of the policy under which the certificate  
27 of insurance is issued shall control.

28 Section 17. Subsection (9) is added to section  
29 627.7015, Florida Statutes, to read:

30 627.7015 Alternative procedure for resolution of  
31 disputed property insurance claims.--

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

4           (a) With respect to which the insurer has a reasonable  
5 basis to suspect fraud;

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

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

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

16           Section 18. Section 627.7276, Florida Statutes, is  
17 amended to read:

18           627.7276 Notice of limited coverage.--

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

28  
29           "THIS POLICY DOES NOT PROVIDE BODILY INJURY  
30           LIABILITY, AND PROPERTY DAMAGE LIABILITY, OR  
31           PERSONAL INJURY PROTECTION INSURANCE OR ANY

1 OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM  
2 CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH  
3 ANY FINANCIAL RESPONSIBILITY LAW OR WITH THE  
4 FLORIDA MOTOR VEHICLE NO-FAULT LAW."  
5

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

11 Section 19. Section 627.795, Florida Statutes, is  
12 created to read:

13 627.795 Policy exceptions.--

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

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

20 Section 20. Section 626.9552, Florida Statutes, is  
21 created to read:

22 626.9552 Single interest insurance.--

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



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

1 issued in the name of the borrower containing the customary  
2 mortgagee or loss payee clause.

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

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

8 Section 21. Subsection (1) of section 627.918, Florida  
9 Statutes, is amended to read:

10 627.918 Reporting formats.--

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

16 Section 22. Subsection (3) of section 641.3108,  
17 Florida Statutes, is amended to read:

18 641.3108 Notice of cancellation of contract.--

19 (3) In the case of a health maintenance contract  
20 issued to an employer or person holding the contract on behalf  
21 of the subscriber group, the health maintenance organization  
22 may make the notification through the employer or group  
23 contract holder, and, if the health maintenance organization  
24 elects to take this action through the employer or group  
25 contract holder, the organization shall be deemed to have  
26 complied with the provisions of this section upon notifying  
27 the employer or group contract holder of the requirements of  
28 this section and requesting the employer or group contract  
29 holder to forward to all subscribers the notice required  
30 herein. If a subscriber group contract is not renewed due to  
31 claim experience, the subscriber group is entitled to receive

1 information concerning its loss ratio. If requested by a  
2 subscriber group, a detailed claim experience record may be  
3 provided at a reasonable expense. The record shall maintain  
4 subscriber confidentiality.

5 Section 23. Any meeting of the board or a committee of  
6 the Florida Windstorm Underwriting Association, held pursuant  
7 to s. 627.351, Florida Statutes, shall be open to the public  
8 and notice shall be provided to the public pursuant to s.  
9 286.011, Florida Statutes.

10 Section 24. This act shall take effect upon becoming a  
11 law.