

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 626.9541, F.S.; correcting a cross-reference;
4 amending s. 631.001, F.S.; providing
5 construction and purposes; providing a short
6 title; amending s. 631.011, F.S.; providing
7 additional definitions; creating s. 631.025,
8 F.S.; specifying application to certain persons
9 and entities; amending s. 631.041, F.S.;
10 limiting application of certain time
11 restrictions; correcting a cross-reference;
12 creating s. 631.113, F.S.; providing for
13 tolling certain time limitations in certain
14 actions; amending s. 631.141, F.S.; vesting the
15 Department of Insurance with certain rights as
16 receiver; amending s. 631.154, F.S.; including
17 certain costs and expenses of the department in
18 costs and expenses entitled to be recovered by
19 the receiver under certain circumstances;
20 creating s. 631.156, F.S.; providing for
21 investigations by the department preliminary or
22 incidental to receivership proceedings;
23 providing department powers; authorizing the
24 department to provide certain information in
25 such investigations; granting the department
26 certain discretionary powers; creating s.
27 631.157, F.S.; imposing liability on certain
28 persons or entities for certain actions;
29 specifying amounts of damages; providing
30 construction; providing costs and expenses
31 entitled to be recovered by the receiver under

1 certain circumstances; providing a time certain
 2 for bringing certain actions; amending s.
 3 631.57, F.S.; clarifying that the association
 4 has the same legal defenses available to the
 5 insolvent insurer; creating s. 631.3995, F.S.;
 6 providing procedures and requirements for
 7 closing an estate; providing for deposit of
 8 certain assets into the Closed Estate Fund
 9 Trust Account; providing for uses of such
 10 account; providing for reopening certain
 11 proceedings; amending s. 631.54, F.S.; revising
 12 a definition; creating s. 817.2341, F.S.;
 13 providing criminal penalties for certain
 14 activities; amending s. 631.57, F.S.;
 15 specifying assessment liability; amending s.
 16 324.031, F.S.; providing for establishing
 17 financial responsibility with respect to
 18 damages arising out of the operation of certain
 19 vehicles; providing definitions; amending s.
 20 627.351, F.S.; specifying membership of the
 21 boards of the Florida Windstorm Underwriting
 22 Association and the Residential Property and
 23 Casualty Joint Underwriting Association;
 24 revising criteria for limited apportionment;
 25 providing rate standards; specifying duties
 26 with respect to pursuit of federal tax
 27 exemptions and tax-free bond status; providing
 28 premium tax exemption; providing for
 29 appropriation of funds for hurricane loss
 30 mitigation purposes; providing standards for
 31 certain payments to a gents of record of

1 Florida Winstorm Underwriting Association and
2 Residential Property and Casualty Joint
3 Underwriting Association policies; amending s.
4 627.3511, F.S.; revising agent compensation in
5 connection with take-out plans; amending s.
6 627.7013, F.S.; delaying the repeal date of the
7 moratorium on hurricane-related cancellation or
8 nonrenewal of property insurance policies;
9 amending s. 624.4072, F.S.; increasing a period
10 of exemption from certain taxes and assessments
11 for certain minority businesses; extending a
12 future repeal; amending ss. 624.3161, 626.171,
13 F.S.; directing the department to adopt rules
14 relating to market conduct examinations and
15 license applications; amending s. 626.9541,
16 F.S.; revising provisions relating to unfair
17 competition and deceptive practices; creating
18 s. 626.9651, F.S.; directing the department to
19 adopt rules to govern the use of a consumer's
20 nonpublic personal financial and health
21 information by health insurers and health
22 maintenance organizations; providing standards
23 governing the rules; amending s. 627.062, F.S.;
24 providing for filing forms for rate standards;
25 amending s. 627.0625, F.S.; authorizing the
26 department to adopt rules relating to
27 third-party claimants; amending s. 627.0651,
28 F.S.; prohibiting motor vehicle insurers from
29 imposing a surcharge or a discount due to
30 certain factors; creating s. 627.385, F.S.;
31 providing rules of conduct for residual market

1 board members; creating s. 627.4065, F.S.;
2 providing for notice of right to return health
3 insurance policies; creating s. 627.41345,
4 F.S.; prohibiting an insurer or agent from
5 issuing or signing certain certificates of
6 insurance; providing that the terms of the
7 policy control in case of conflict; amending s.
8 627.7015, F.S.; defining "claim" for purposes
9 of alternative procedures for resolution of
10 disputed property insurance claims; amending s.
11 627.7276, F.S.; providing for notice of
12 coverage of automobile policies; creating s.
13 627.795, F.S.; providing guidelines for title
14 insurance policies; creating 626.9552, F.S.;
15 providing standards for single interest
16 insurance; amending s. 627.918, F.S.; directing
17 the department to adopt rules relating to
18 reporting formats; amending s. 641.3108, F.S.;
19 requiring health maintenance organizations to
20 provide certain information to subscriber
21 groups whose contract is not renewed for
22 certain reasons; requiring certain meetings of
23 the Florida Windstorm Underwriting Association
24 to be open to the public; requiring notice;
25 providing effective dates.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Paragraph (w) of subsection (1) of section
30 626.9541, Florida Statutes, is amended to read:

31

1 626.9541 Unfair methods of competition and unfair or
2 deceptive acts or practices defined.--

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

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

8 1. Whether or not delinquency proceedings as to the
9 insurer have been or are to be initiated, but while such
10 insolvency or impairment exists, no director or officer of an
11 insurer, except with the written permission of the Department
12 of Insurance, shall authorize or permit the insurer to solicit
13 or accept new or renewal insurance risks in this state after
14 such director or officer knew, or reasonably should have
15 known, that the insurer was insolvent or impaired. "Impaired"
16 includes impairment for capital or surplus, as defined in s.
17 631.011(12)~~(9)~~and(13)~~(10)~~.

18 2. Any such director or officer, upon conviction of a
19 violation of this paragraph, is guilty of a felony of the
20 third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.084.

22 Section 2. Section 631.001, Florida Statutes, is
23 amended to read:

24 (Substantial rewording of section.

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

26 631.001 Construction; purposes.--

27 (1) The underlying purposes and policies of the
28 provisions of this part, which are integral elements of the
29 regulation of the business of insurance and are of vital
30 public interest and concern, are to:

31

1 (a) Protect the interests of insureds, claimants,
2 creditors, and the public.

3 (b) Provide a comprehensive scheme for the
4 receivership of insurers.

5 (c) Establish this state as a reciprocal state in
6 those states which, in substance and effect, enact the
7 National Association of Insurance Commissioners Rehabilitation
8 and Liquidation Model Act or the Uniform Insurers Liquidation
9 Act.

10 (d) Make more efficient the administration of insurer
11 receiverships on an interstate and international basis.

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

14 (f) Implement improved methods for rehabilitating
15 insurers, which methods involve the cooperation and management
16 expertise of the insurance industry.

17 (g) Enhance the efficiency and economy of liquidation
18 through clarification and specification of the law to minimize
19 legal uncertainty and litigation.

20 (h) Lessen the problems of interstate rehabilitation
21 and liquidation of an entity subject to the provisions of this
22 part by facilitating cooperation between states in the
23 liquidation process and by extension of the scope of personal
24 jurisdiction over debtors of the insurer outside this state.

25 (i) Establish a system which equitably apportions any
26 unavoidable loss.

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

29 (2) This part shall be liberally construed to effect
30 the purposes stated in subsection (1) and shall specifically
31 authorize the department in its capacity as administrator,

1 conservator, rehabilitator, receiver, liquidator, or similar
2 capacity to pursue any actions for damages or other recoveries
3 on behalf of the insurer and its policyholders, creditors, and
4 estate.

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

7 Section 3. Section 631.011, Florida Statutes, is
8 amended to read:

9 631.011 Definitions.--For the purpose of this part,
10 the term:

11 (1) "Affiliate" means any entity which exercises
12 control over or is controlled by the insurer, directly or
13 indirectly through:

- 14 (a) Equity ownership of voting securities;
- 15 (b) Common managerial control; or
- 16 (c) Collusive participation by the management of the
17 insurer and affiliate in the management of the insurer or the
18 affiliate.

19 (2) "Ancillary state" means, any state other than a
20 domiciliary state.

21 (3) "Assets," as used in this section ~~subsections~~
22 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.

23 (4) "Bona fide holder for value" means a holder who,
24 while not possessing information that would lead a reasonable
25 person in the holder's position to believe that the insurer is
26 financially impaired, and while unaware of the imminence or
27 pendency of any receivership proceeding against the insurer,
28 has, in the exercise of reasonable business judgment,
29 exchanged his or her own funds, assets, or property for funds,
30 assets, or property of the insurer having an equivalent market
31 value.

1 ~~(5)(4)~~ "Court" refers to the circuit court in which
2 the receivership proceeding is pending.

3 ~~(6)(5)~~ "Delinquency proceeding" means any proceeding
4 commenced against an insurer pursuant to this chapter for the
5 purpose of liquidating, rehabilitating, reorganizing, or
6 conserving such insurer.

7 ~~(7)(6)~~ "Domiciliary state" means the state in which an
8 insurer is incorporated or organized or, in the case of an
9 insurer incorporated or organized in a foreign country, the
10 state in which such insurer, having become authorized to do
11 business in such state, has, at the commencement of a
12 delinquency proceeding, the largest amount of its assets held
13 in trust and assets held on deposit for the benefit of its
14 policyholders or policyholders and creditors in the United
15 States; and any such insurer is deemed to be domiciled in such
16 state.

17 (8) "Fair consideration" means that consideration
18 which is given for property or assets of an insurer when, in
19 exchange for the property or assets and in good faith,
20 property is conveyed, services are rendered, or an enforceable
21 obligation not invalidated by the receivership proceedings is
22 created, having a value to the insurer of not less than the
23 value of the property or assets given in exchange.

24 ~~(9)(7)~~ "Foreign country" means territory not in any
25 state.

26 ~~(10)(8)~~ "General assets" means all property, real,
27 personal, or otherwise, not specifically mortgaged, pledged,
28 deposited, or otherwise encumbered for the security or benefit
29 of specified persons or a limited class or classes of persons,
30 and as to such specifically encumbered property the term
31 includes all such property or its proceeds in excess of the

1 amount necessary to discharge the sum or sums secured thereby.
2 Assets held in trust and assets held on deposit for the
3 security or benefit of all policyholders or all policyholders
4 and creditors in the United States shall be deemed general
5 assets.

6 (11) "Good faith," as applied to a transferee or
7 transferor under this part, means honesty in fact and
8 intention and includes the exercise of reasonable business
9 judgment, together with the absence of information that would
10 lead a reasonable person in the same position to know that the
11 insurer is financially impaired or insolvent and together with
12 the absence of knowledge regarding the imminence or pendency
13 of any receivership proceeding against the insurer.

14 (12)~~(9)~~ "Impairment of capital" means that the minimum
15 surplus required to be maintained in s. 624.408 has been
16 dissipated and the insurer is not possessed of assets at least
17 equal to all its liabilities together with its total issued
18 and outstanding capital stock, if a stock insurer, or the
19 minimum surplus or net trust fund required by s. 624.407, if a
20 mutual, reciprocal, or business trust insurer.

21 (13)~~(10)~~ "Impairment of surplus" means that the
22 surplus of a stock insurer, the additional surplus of a mutual
23 or reciprocal insurer, or the additional net trust fund of a
24 business trust insurer does not comply with the requirements
25 of s. 624.408.

26 (14)~~(11)~~ "Insolvency" means that all the assets of the
27 insurer, if made immediately available, would not be
28 sufficient to discharge all its liabilities or that the
29 insurer is unable to pay its debts as they become due in the
30 usual course of business. When the context of any provision of
31 this code so indicates, insolvency also includes and is

1 defined as "impairment of surplus," as defined in subsection
2 ~~(13)(9)~~, and "impairment of capital," as defined in subsection
3 ~~(12)(8)~~.

4 ~~(15)(12)~~ "Insurer," in addition to persons so defined
5 under s. 624.03, also includes persons purporting to be
6 insurers or organizing, or holding themselves out as
7 organizing, in this state for the purpose of becoming insurers
8 and all insurers who have insureds resident in this state.

9 ~~(16)(13)~~ "Liabilities," as used in subsections ~~(12)~~
10 ~~and (14)(8)-(10)~~, means all liabilities, including those
11 specifically required in s. 625.041.

12 ~~(17)(14)~~ "Person" includes natural persons,
13 corporations, partnerships, trusts, estates, and sole
14 proprietorships.

15 ~~(18)~~ "Property," with respect to an insolvent entity,
16 includes all right, title, and interest of the insolvent
17 entity whether legal or equitable, tangible or intangible, or
18 choate or inchoate and includes choses in action, contract
19 rights, and any other interest recognized under the laws of
20 this state. When an order of conservation, rehabilitation, or
21 liquidation is entered, the term also includes entitlements
22 that existed prior to the entry of the order and those that
23 may arise by operation of the provisions of this chapter or
24 other provisions of law allowing the department to avoid prior
25 transfers or assert other rights in its capacity as receiver.
26 The term also includes all records and data that are otherwise
27 the property of the insolvent insurer, however stored,
28 including, but not limited to, claims and claim files,
29 application files, litigation files, premium records, rate
30 books, underwriting manuals, personnel records, or financial
31 records, or similar records within the possession, custody, or

1 control of a managing general agent, third-party
2 administrator, management company, accountant, attorney,
3 affiliate, or other person. The term does not include
4 privileged or confidential documents of an insolvent insurer
5 generated by a third party.

6 ~~(19)~~~~(15)~~ "Receiver" means a receiver, liquidator,
7 rehabilitator, or conservator, as the context may require.

8 ~~(20)~~~~(16)~~ "Reciprocal state" means any state other than
9 this state in which in substance and effect the provisions of
10 the Insurers Rehabilitation and Liquidation Act are in force,
11 including the provisions requiring that the commissioner of
12 insurance or equivalent insurance supervisory official be the
13 receiver of a delinquent insurer.

14 ~~(21)~~~~(17)~~ "Secured claim" means any claim secured by
15 mortgage, trust deed, pledge, deposit as security, escrow, or
16 otherwise but does not include a special deposit claim, a
17 claim against general assets, or a claim based on mere
18 possession. The term also includes a claim which more than 4
19 months before the commencement of a delinquency proceeding in
20 the state of the insurer's domicile has become a lien upon
21 specific assets by reason of judicial process.

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

26 ~~(23)~~~~(19)~~ "State" is as defined in s. 624.08.

27 Section 4. Section 631.025, Florida Statutes, is
28 created to read:

29 631.025 Persons and entities subject to this
30 part.--Delinquency proceedings authorized by this part may be
31 initiated against any insurer as defined in s. 631.011(15) if

1 the statutory grounds are present as to that insurer, and the
2 receivership court may exercise jurisdiction over any person
3 required to cooperate with the department pursuant to s.
4 631.391 and over all persons made subject to the court's
5 jurisdiction by other provisions of law. Such persons include,
6 but are not limited to:

7 (1) A person who is transacting or has transacted
8 insurance business in or from this state and against whom
9 claims arising from that business exist or may exist in the
10 future.

11 (2) A person who purports to transact an insurance
12 business in this state, and any person or entity who acts as
13 an insurer, transacts insurance, or otherwise engages in
14 insurance activities in or from this state, with or without a
15 certificate of authority or proper authority from the
16 department.

17 (3) An insurer who has insureds residing in this
18 state.

19 (4) All other persons organized or in the process of
20 organizing with the intent to transact an insurance business
21 in this state.

22 Section 5. Paragraph (d) of subsection (1) of section
23 631.041, Florida Statutes, is amended, and subsection (6) is
24 added to that section, to read:

25 631.041 Automatic stay; relief from stay;
26 injunctions.--

27 (1) An application or petition under s. 631.031
28 operates as a matter of law as an automatic stay applicable to
29 all persons and entities, other than the receiver, which shall
30 be permanent and survive the entry of an order of
31

1 conservation, rehabilitation, or liquidation, and which shall
2 prohibit:

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

7 (6) No statute of limitations or defense of laches
8 shall run with respect to any action by or against an insurer
9 between the filing of a petition for conservation,
10 rehabilitation, or liquidation against an insurer and the
11 order granting or denying that petition. If the petition is
12 denied, any action against the insurer that might have been
13 commenced when the petition was filed may be commenced for at
14 least 60 days after the order denying such relief.

15 Section 6. Section 631.113, Florida Statutes, is
16 created to read:

17 631.113 Extension of time.--

18 (1) The running of any unexpired statute of
19 limitations as to any claims brought by the administrator,
20 conservator, rehabilitator, receiver, or liquidator, or an
21 official or agency exercising powers pursuant to this chapter
22 seeking damages or other recoveries on behalf of an insurer,
23 its policyholders, its creditors, or its estate, shall be
24 tolled for a period of 4 years from the entry of an order
25 placing the administrator, conservator, rehabilitator,
26 receiver, liquidator, or similar official or agency over the
27 insurer, provided, if the delinquency proceedings brought
28 pursuant to this chapter against the insurer terminate in less
29 than 4 years, such tolling shall cease at the time when the
30 proceedings are finally concluded, including all appeals
31 therefrom. Further, the right of action does not accrue and

1 the limitations period for any such action does not run during
2 the time when the insurer is controlled by parties acting
3 contrary to the company's interests or when the facts giving
4 rise to such claim are fraudulently concealed from regulatory
5 authorities or from any members of company management. The
6 provisions of chapter 95 shall be construed so as to be
7 consistent with the provisions of this section. The receiver
8 may institute any action or proceeding on behalf of the estate
9 of the insurer while any statute of limitation is tolled
10 pursuant to this section. The tolling shall be in addition to
11 any other applicable tolling provision.

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

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

23 631.141 Conduct of delinquency proceeding; domestic
24 and alien insurers.--

25 (6) The department as receiver is vested with and may
26 assert all rights belonging to policyholders, creditors, and
27 the estate as well as all rights of the entity or entities in
28 receivership, except to the extent that an individual claim is
29 personal and unique to that claimant and recovery thereon
30 could not inure to the benefit of the estate or to other
31 claimants.

1 Section 8. Paragraph (d) of subsection (6) of section
2 631.154, Florida Statutes, is amended to read:

3 631.154 Funds or other property in the possession of
4 third person.--

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

8 (d) All costs, investigative and other expenses, which
9 include the department's in-house staff and staff attorney's
10 expenses, costs, and salaries, expended in necessary to the
11 recovery of the property or funds, and reasonable attorney's
12 fees.

13 Section 9. Section 631.156, Florida Statutes, is
14 created to read:

15 631.156 Investigation by the department.--

16 (1) Preliminary or incidental to a petition for
17 receivership proceedings, the department may, and if appointed
18 receiver shall, undertake a full investigation to determine
19 the causes and reasons for the insolvency, the discovery and
20 location of assets to be recovered, the recovery of such
21 assets, whether the filing of false statements with the
22 department contributed to the insolvency, and, in conjunction
23 with the department's Division of Insurance Fraud or any other
24 appropriate agency of state or federal government, whether any
25 law of this state, any other state, or the Federal Government
26 relating to the solvency of the insurer has been violated. In
27 the furtherance of such investigation, the department may:

28 (a) Examine and review any and all documents that are
29 reasonably calculated to disclose or lead to the disclosure of
30 the causes and reasons for the insolvency, the discovery and
31 location of assets to be recovered, the recovery of such

1 assets, the truth or falsity of statements filed with the
2 department, and whether any law of this state, any other
3 state, or the Federal Government has been violated.

4 (b) Take statements or depositions under oath of any
5 person whose testimony is reasonably calculated to disclose or
6 lead to the disclosure of the causes and reasons for the
7 insolvency, the discovery of and location of assets to be
8 recovered, the recovery of such assets, the truth or falsity
9 of statements filed with the department, and whether any law
10 of this state, any other state, or the Federal Government has
11 been violated.

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

14 (d) Examine and review the books, records, and
15 documents of any affiliate, controlling person, officer,
16 director, manager, trustee, agent, adjuster, employee, or
17 independent contractor of any insurer or affiliate and any
18 other person who possesses any executive authority over, or
19 who exercises or has exercised any control over, any segment
20 of the affairs of the insurer or affiliate, to the extent such
21 examination is reasonably calculated to disclose or lead to
22 the disclosure of the causes and reasons for the insolvency,
23 the discovery and location of assets to be recovered, the
24 recovery of such assets, the truth or falsity of statements
25 filed with the department, and whether any law of this state,
26 any other state, or the Federal Government has been violated.

27 (2) In its capacity as receiver, the department may
28 provide documents, books and records, other investigative
29 products, work product, and analysis, including copies of any
30 or all of the foregoing items, to the Division of Insurance
31 Fraud or any other appropriate agency of state or federal

1 government. The sharing of information, investigative
2 products, or analysis shall not waive any work product or
3 other privilege that would otherwise apply under common law,
4 chapter 119, or any other law.

5 (3) The department, as the court's receiver, is
6 granted the discretion to determine what books, records,
7 documents, or testimony would be reasonably calculated to
8 disclose or lead to the disclosure of the causes and reasons
9 for the insolvency, the discovery and location of assets to be
10 recovered, the recovery of the assets, the truth or falsity of
11 statements filed with the department, and whether any law of
12 this state or of the United States has been violated, subject
13 to the court's power to review such determination or appoint a
14 general master to review such determination. A party
15 asserting that any documents requested by the department under
16 this section are not subject to review, or that any particular
17 testimony may not be obtained, shall present such contention
18 by written motion to the receivership court within 20 days
19 after receipt of the request and shall be fully responsible
20 for the loss of any evidence which occurs after the department
21 first informs said party of its request therefor. The court
22 shall, as expeditiously as possible, determine whether the
23 department has abused its discretion in seeking such evidence
24 or testimony, with the objecting party having the burden of
25 proof. A party who fails to produce the requested evidence or
26 testimony without filing a proper timely objection, or who
27 having unsuccessfully asserted such objection fails thereafter
28 to furnish the evidence or testimony, within the time provided
29 by the court or the department, shall be subject to the
30 contempt powers of the court, in addition to any other

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1 applicable penalties which may be provided in the Florida
2 Insurance Code or other law.

3 Section 10. Section 631.157, Florida Statutes, is
4 created to read:

5 631.157 Civil action by the receiver.--

6 (1) Any person who is engaged in the business of
7 insurance or who acts as or is an officer, director, agent, or
8 employee of any person engaged in the business of insurance,
9 or is involved, other than as an insured or beneficiary under
10 a policy of insurance, in a transaction relating to the
11 conduct of affairs of such a business, and who willfully
12 obtains or uses, as defined in s. 812.012(2), any asset or
13 property, including, but not limited to, moneys, funds,
14 premiums, credits, or other property of an insurer, shall be
15 liable to the department as receiver for the use and benefit
16 of an insolvent insurer's estate, creditors, and
17 policyholders, as follows:

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

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

30 (2) Any person who is engaged in the business of
31 insurance or who acts as or is an officer, director, agent, or

1 employee of any person engaged in the business of insurance,
2 or is involved, other than as an insured or beneficiary under
3 a policy of insurance, in a transaction relating to the
4 conduct of affairs of such a business, and who, while having
5 actual knowledge or such constructive knowledge as should have
6 been obtained through reasonable inquiry by a person in such
7 position, if such person knowingly misreports, or knowingly
8 makes any false entry of, a material fact in any book, report,
9 or statement of an insurer with the intent to deceive such
10 insurer, including any officer, employee, or agent of such
11 insurer, the department, or any agent or examiner appointed by
12 the department to examine the affairs of such person or of the
13 insurer, concerning the financial condition or solvency of
14 such business, shall be liable to the department as receiver
15 for the use and benefit of an insolvent insurer's estate,
16 creditors, and policyholders, as follows:

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

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

27 (3) If the asset or property that has been obtained or
28 used was reported to the department as being available to the
29 insurer as an admitted asset and such asset is unavailable to
30 the receiver for payment of the obligations of the insurer at
31 the time when a receivership proceeding is instituted, the

1 obtaining or using shall be presumed to have jeopardized the
2 safety and soundness of the insurer and to have been a
3 significant cause of such insurer's being placed in
4 conservation, rehabilitation, or liquidation, with the burden
5 of proof on the defendants to show otherwise.

6 (4) If the receiver is successful in establishing a
7 claim under this section, the receiver shall be entitled to
8 recover all of its costs, investigative and other expenses,
9 which shall include the department's in-house staff and staff
10 attorney's expenses, costs, and salaries, expended in the
11 prosecution of the action, and reasonable attorney's fees.
12 The receiver shall be exempt from the provisions of s. 57.111.

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

18 Section 11. Paragraph (b) of subsection (1) of section
19 631.57, Florida Statutes, is amended to read:

20 631.57 Powers and duties of the association.--

21 (1) The association shall:

22 (b) Be deemed the insurer to the extent of its
23 obligation on the covered claims, and, to such extent, shall
24 have all rights, duties, defenses, and obligations of the
25 insolvent insurer as if the insurer had not become insolvent.
26 In no event shall the association be liable for any penalties
27 or interest.

28 Section 12. Section 631.3995, Florida Statutes, is
29 created to read:

30 631.3995 Closing of estate; Closed Estate Fund Trust
31 Account.--

1 (1) When all assets justifying the expense of
2 collection and distribution have been marshaled and
3 distributed under this part, the department shall petition the
4 court to terminate the liquidation proceedings and to close
5 the estate. The court may grant such other relief as may be
6 appropriate, including, but not limited to, a full discharge
7 of all liability and responsibility of the liquidator, the
8 reservation of assets for administrative expenses incurred in
9 the closing of the estate, and any other actions the
10 department feels necessary or appropriate for closing the
11 estate.

12 (2) Any remaining reserved assets that are provided
13 for in subsection (1) and that may not be practicably or
14 economically distributed to claimants shall be deposited into
15 a segregated account to be known as the Closed Estate Fund
16 Trust Account, if created by law. The department may use
17 moneys held in the account for paying the administrative
18 expenses of companies subject to this part that lack
19 sufficient assets to allow the department to perform its
20 duties and obligations under this part. An annual audit of the
21 Closed Estate Fund Trust Account shall be performed regardless
22 of its balance.

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

27 Section 13. Subsection (3) of section 631.54, Florida
28 Statutes, is amended to read:

29 631.54 Definitions.--As used in this part:

30 (3) "Covered claim" means an unpaid claim, including
31 one of unearned premiums, which arises out of, and is within

1 the coverage, and not in excess of, the applicable limits of
2 an insurance policy to which this part applies, issued by an
3 insurer, if such insurer becomes an insolvent insurer after
4 October 1, 1970, and the claimant or insured is a resident of
5 this state at the time of the insured event or the property
6 from which the claim arises is permanently located in this
7 state. "Covered claim" shall not include any amount due any
8 reinsurer, insurer, insurance pool, or underwriting
9 association, as subrogation, contribution, indemnification,
10 ~~recoveries~~ or otherwise. Member insurers shall have no right
11 of subrogation against the insured of any insolvent member.

12 Section 14. Section 817.2341, Florida Statutes, is
13 created to read:

14 817.2341 Crimes by or affecting persons engaged in the
15 administration of any insurer or entity organized pursuant to
16 chapter 624 or chapter 641.--

17 (1)(a) Any person who makes a false entry of a
18 material fact in any book, report, or statement relating to a
19 transaction of an insurer or entity organized pursuant to
20 chapter 624 or chapter 641, intending thereby to deceive any
21 person about the financial condition or solvency of such
22 insurer or entity, commits a felony of the third degree,
23 punishable as provided in s. 775.082, s. 775.083, or s.
24 775.084.

25 (b) If such false entry of a material fact is made
26 with the intent to deceive any person as to the impairment of
27 capital, as defined in s. 631.011(12), of such insurer or
28 entity or is the significant cause of such insurer or entity
29 being placed in conservation, rehabilitation, or liquidation
30 by a court, the offense is a felony of the first degree,
31

1 punishable as provided in s. 775.082, s. 775.083, or s.
2 775.084.

3 (2)(a) Any person who knowingly makes a material false
4 statement or report to the department or any agent of the
5 department, or who knowingly and materially overvalues any
6 property in any document or report prepared to be presented to
7 the department or any agent of the department, commits a
8 felony of the third degree, punishable as provided in s.
9 775.082, s. 775.083, or s. 775.084.

10 (b) If such material false statement or report or such
11 material overvaluation is made with the intent to deceive any
12 person as to the impairment of capital, as defined in s.
13 631.011(12), of an insurer or entity organized pursuant to
14 chapter 624 or chapter 641, or is the significant cause of
15 such insurer or entity being placed in conservation,
16 rehabilitation, or liquidation by a court, the offense is a
17 felony of the first degree, punishable as provided in s.
18 775.082, s. 775.083, or s. 775.084.

19 Section 15. Subsection (7) is added to section 631.57,
20 Florida Statutes, to read:

21 631.57 Powers and duties of the association.--

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
26 defined in s. 624.604.

27 Section 16. Section 324.031, Florida Statutes, is
28 amended to read:

29 324.031 Manner of proving financial
30 responsibility.--The owner or operator of a taxicab,
31 limousine, jitney, or any other for-hire passenger

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

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

12 (2) Posting with the department a satisfactory bond of
13 a surety company authorized to do business in this state,
14 conditioned for payment of the amount specified in s.
15 324.021(7);

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

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

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

1 ~~\$150,000~~ combined single limits. The operator of any vehicle
2 with limits of coverage in the amount of
3 \$100,000/300,000/50,000 or \$500,000 combined limits shall be
4 deemed both the common carrier operating such vehicle and the
5 owner of such vehicle, and no other person or entity shall be
6 responsible in damages for the operator's negligence. For
7 purposes of this section, "operator" shall mean the driver.

8 Section 17. Effective July 1, 2001, paragraph (b) of
9 subsection (2) and paragraph (c) of subsection (6) of section
10 627.351, Florida Statutes, are amended, and paragraph (f) is
11 added to subsection (2) of said section, to read:

12 627.351 Insurance risk apportionment plans.--

13 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

1 vehicle insurance as defined in s. 624.605(1)(a) other than
2 insurance on mobile homes used as permanent dwellings. The
3 department shall adopt rules that provide a formula for the
4 recovery and repayment of any deferred assessments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (V) If regular deficit assessments are made under
 21 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
 22 the Residential Property and Casualty Joint Underwriting
 23 Association under sub-subparagraph (6)(b)3.a. or
 24 sub-subparagraph (6)(b)3.b., the association shall levy upon
 25 the association's policyholders, as part of its next rate
 26 filing, or by a separate rate filing solely for this purpose,
 27 a market equalization surcharge in a percentage equal to the
 28 total amount of such regular assessments divided by the
 29 aggregate statewide direct written premium for property
 30 insurance for member insurers for the prior calendar year.
 31 Market equalization surcharges under this sub-sub-subparagraph

1 are not considered premium and are not subject to commissions,
2 fees, or premium taxes; however, failure to pay a market
3 equalization surcharge shall be treated as failure to pay
4 premium.

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

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

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

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

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

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

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

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

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

29 (III) Notwithstanding any other provision of law,
 30 windstorm rates under this subsection previously adjudicated
 31 for use and in effect as of the effective date of this act,

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

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

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

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

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 associaton 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 associaton 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 18. Subsection (4) of section 627.3511,
8 Florida 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 19. Subsection (2) of section 627.7013,
17 Florida 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 20. 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 21. 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 22. Subsection (8) is added to section
14 626.171, 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 29. 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 30. 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 31. 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 32. 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 33. 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 34. 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 35. 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 36. 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 37. 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 38. Except as otherwise provided herein, this
11 act shall take effect upon becoming a law.