

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

1 for title insurance policies; amending s.
2 627.918, F.S.; directing the department to
3 adopt rules relating to reporting formats;
4 amending s. 641.31, F.S.; specifying
5 reimbursement for emergency services under
6 health maintenance organization contracts;
7 amending s. 641.3108, F.S.; requiring health
8 maintenance organizations to provide certain
9 information to subscriber groups whose contract
10 is not renewed for certain reasons; amending s.
11 631.55, F.S.; creating a medical malpractice
12 account within the Florida Insurance Guaranty
13 Association; amending s. 627.351, F.S.;
14 increasing the qualifying statutory surplus
15 amount for the Florida Windstorm Underwriting
16 Association Limited Apportionment Status;
17 providing an effective date.

18

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

20

21 Section 1. Subsection (6) is added to section
22 624.3161, Florida Statutes, to read:

23 624.3161 Market conduct examinations.--

24 (6) The department shall adopt rules as necessary to
25 effectuate the market conduct examination process, to assure
26 compliance by the person examined with the applicable
27 provisions of the Insurance Code. Such rules shall not exceed
28 the authority of the statutes involved in the market conduct
29 examination.

30 Section 2. Subsection (8) is added to section 626.171,
31 Florida Statutes, to read:

1 626.171 Application for license.--

2 (8) The department shall adopt rules to effectuate the
3 license application process, including photo identification,
4 background checks and credit reports, prelicensing courses,
5 the impact of criminal and law enforcement history, and other
6 relevant information in an effort to determine an applicant's
7 fitness and trustworthiness to engage in the business of
8 insurance.

9 Section 3. Paragraphs (n) and (o) of subsection (1) of
10 section 626.9541, Florida Statutes, are amended to read:

11 626.9541 Unfair methods of competition and unfair or
12 deceptive acts or practices defined.--

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

16 (n) Free insurance prohibited.--

17 1. Advertising, offering, or providing free insurance
18 as an inducement to the purchase or sale of real or personal
19 property or of services directly or indirectly connected with
20 such real or personal property.

21 2. For the purposes of this paragraph, "free"
22 insurance is:

23 a. Insurance for which no identifiable and additional
24 charge is made to the purchaser of such real property,
25 personal property, or services.

26 b. Insurance for which an identifiable or additional
27 charge is made in an amount less than the cost of such
28 insurance as to the seller or other person, other than the
29 insurer, providing the same.

30 3. Subparagraphs 1. and 2. do not apply to:
31

- 1 a. Insurance of, loss of, or damage to the real or
2 personal property involved in any such sale or services, under
3 a policy covering the interests therein of the seller or
4 vendor.
- 5 b. Blanket disability insurance as defined in s.
6 627.659.
- 7 c. Credit life insurance or credit disability
8 insurance.
- 9 d. Any individual, isolated, nonrecurring unadvertised
10 transaction not in the regular course of business.
- 11 e. Title insurance.
- 12 f. Any purchase agreement involving the purchase of a
13 cemetery lot or lots in which, under stated conditions, any
14 balance due is forgiven upon the death of the purchaser.
- 15 g. Life insurance, trip cancellation insurance, or
16 lost baggage insurance offered by a travel agency as part of a
17 travel package offered by and booked through the agency.
- 18 h. Third-party payor programs approved by the
19 department.
- 20 4. Using the word "free" or words which imply the
21 provision of insurance without a cost to describe life or
22 disability insurance, in connection with the advertising or
23 offering for sale of any kind of goods, merchandise, or
24 services.
- 25 (o) Illegal dealings in premiums; excess or reduced
26 charges for insurance.--
- 27 1. Knowingly collecting any sum as a premium or charge
28 for insurance, which is not then provided, or is not in due
29 course to be provided, subject to acceptance of the risk by
30 the insurer, by an insurance policy issued by an insurer as
31 permitted by this code.

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

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

31

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

9 (I) Lawfully parked;

10 (II) Reimbursed by, or on behalf of, a person
11 responsible for the accident or has a judgment against such
12 person;

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

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

19 (V) Not convicted of a moving traffic violation in
20 connection with the accident, but the operator of the other
21 automobile involved in such accident was convicted of a moving
22 traffic violation;

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

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

27 (VIII) Not at fault as evidenced by a written
28 statement from the insured establishing facts demonstrating
29 lack of fault which are not rebutted by information in the
30 insurer's file from which the insurer in good faith determines
31 that the insured was substantially at fault.

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

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

14 a. A second infraction committed within an 18-month
15 period, or a third or subsequent infraction committed within a
16 36-month period.

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

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

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

31

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

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

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

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

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

28 12. No insurer shall impose or request an additional
29 premium, cancel a policy, or issue a nonrenewal notice on any
30 insurance policy or contract because of any traffic infraction
31 when adjudication has been withheld and no points have been

1 assessed pursuant to s. 318.14(9) and (10). However, this
2 subparagraph does not apply to traffic infractions involving
3 accidents in which the insurer has incurred a loss due to the
4 fault of the insured.

5 Section 4. Section 626.9552, Florida Statutes, is
6 created to read:

7 626.9552 Single interest insurance.--

8 (1) When single interest insurance is written at the
9 expense of the purchaser or borrower in connection with a
10 finance or loan transaction, a clear and concise statement
11 must be furnished the purchaser or borrower advising the
12 purchaser or borrower that the insurance effected is solely
13 for the interest of the financing entity, and that no
14 protection thereunder exists for the benefit of the purchaser
15 or borrower. When single interest insurance is written, no
16 effort may be made by the insurer to recover the amount of any
17 payment from the borrower. Single interest insurance policies
18 must be clearly stamped or printed on the declarations page,
19 "Single Interest Only---No Subrogation." Single interest
20 insurance is to be placed only after it has been determined
21 that no other kind of insurance can be placed on the risk,
22 except with the consent of the purchaser or borrower. Single
23 interest may be written in cases of inland marine installment
24 sales floater policies. If insurance cannot be obtained for
25 the dual protection of the purchaser or borrower, and the
26 seller or lender or financing entity for all the coverages
27 contemplated, or if obtained, is canceled by the insurer
28 before expiration, the seller or lender or financing entity
29 may obtain insurance to protect his or her interest in the
30 motor vehicle or other personal property, and the purchaser or
31 borrower may be required to pay the cost thereof. In such

1 event the seller or lender or financing entity shall promptly
2 notify the purchaser or borrower that such insurance cannot be
3 obtained, or has been canceled, and credit to the purchaser or
4 borrower the difference between the amount charged for dual
5 protection insurance and the actual cost of such single
6 interest insurance, less, in the event of cancellation, the
7 earned premium on the dual interest insurance for the period
8 it was in force. If the purchaser or borrower procures
9 acceptable dual interest insurance within 30 days after the
10 date of such notice and provides the seller or lender, or
11 finance entity with evidence that the premium therefore has
12 been paid, there is no charge to him or her for the single
13 interest coverage. As used in this section, the term
14 "financing entity" means a finance company, bank, or other
15 lending institution. However, those lenders licensed under the
16 Consumer Finance Act, chapter 516, must provide coverage
17 issued in the name of the borrower containing the customary
18 mortgagee or loss payee clause.

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

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

24 Section 5. Paragraph (a) of subsection (2) of section
25 627.062, Florida Statutes, is amended to read:

26 627.062 Rate standards.--

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

28 (a) Insurers or rating organizations shall establish
29 and use rates, rating schedules, or rating manuals to allow
30 the insurer a reasonable rate of return on such classes of
31 insurance written in this state. Copies ~~A copy~~ of rates,

1 rating schedules, rating manuals, premium credits or discount
2 schedules, and surcharge schedules, and changes thereto, shall
3 be filed with the department under one of the following
4 procedures:

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

23 2. If the filing is not made in accordance with the
24 provisions of subparagraph 1., such filing shall be made as
25 soon as practicable, but no later than 30 days after the
26 effective date, and shall be considered a "use and file"
27 filing. An insurer making a "use and file" filing is
28 potentially subject to an order by the department to return to
29 policyholders portions of rates found to be excessive, as
30 provided in paragraph (h).

31

1 Section 6. Subsection (4) is added to section
2 627.0625, Florida Statutes, to read:

3 627.0625 Commercial property and casualty risk
4 management plans.--

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

11 Section 7. Subsection (8) of section 627.0651, Florida
12 Statutes, is amended to read:

13 627.0651 Making and use of rates for motor vehicle
14 insurance.--

15 (8) Rates are not unfairly discriminatory if averaged
16 broadly among members of a group; nor are rates unfairly
17 discriminatory even though they are lower than rates for
18 nonmembers of the group. However, such rates are unfairly
19 discriminatory if they are not actuarially measurable and
20 credible and sufficiently related to actual or expected loss
21 and expense experience of the group so as to assure that
22 nonmembers of the group are not unfairly discriminated
23 against. Use of a single United States Postal Service zip code
24 as a rating territory shall be deemed unfairly discriminatory.
25 An insurer may not impose a surcharge or discount for
26 liability coverages based on the type of vehicle without
27 providing acceptable actuarial justification.

28 Section 8. Section 627.385, Florida Statutes, is
29 created to read:

30 627.385 Conduct of residual market board members.--
31

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

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

19 (c) This section applies to the Florida Medical
20 Malpractice Joint Underwriting Association, the Florida
21 Automobile Joint Underwriting Association, the Florida
22 Workers' Compensation Joint Underwriting Association, the
23 Florida Comprehensive Health Association, the Florida
24 Windstorm Underwriting Association, the Florida Property and
25 Casualty Joint Underwriting Association, the Florida
26 Residential Property and Casualty Joint Underwriting
27 Association, and the board members thereof.

28 (2) To ensure that the board is free from potential
29 conflict or inappropriate behavior the following are adopted
30 in the plan of operation of the subject residual market in
31 this state.

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

4 (b) A board member or board member representative may
5 not use his or her position to foster or facilitate any
6 special pecuniary gain for himself or herself, his or her
7 member company, or any other entity in which the board member
8 or board member representative or the member company has a
9 substantial financial interest, except as otherwise provided
10 in paragraph (a).

11 (c) A board member or board member representative may
12 not use his or her position on the board to secure or promote
13 any business relationship from which he or she may derive a
14 financial gain.

15 (d) A board member or designee may not receive any
16 gift or gratuity, except as provided in s. 112.3248, other
17 than meals, while acting in his or her capacity as a board
18 member.

19 (3) Board members and board member representatives
20 shall maintain reasonable board expenses based on state travel
21 policy as set forth in s. 112.061. The board shall develop a
22 detailed policy regarding board member travel, which policy
23 must be based on s. 112.061 and is subject to the approval of
24 the department.

25 Section 9. Section 627.4065, Florida Statutes, is
26 created to read:

27 627.4065 Insured's right to return policy; notice.--A
28 health insurance policy issued or issued for delivery in this
29 state must have printed or stamped thereon or attached thereto
30 a notice in a prominent place stating in substance that the
31 policyholder may return the policy to the insurer within 10

1 days after its delivery and may have the premium paid refunded
2 if, after examination of the policy or contract, the
3 policyholder is not satisfied with it for any reason. The
4 notice must provide that if the policyholder, pursuant to such
5 notice, returns the policy or contract to the insurer at its
6 home office or branch office or to the agent through whom it
7 was purchased, it is considered void from the beginning and
8 the parties are in the same position as if no policy or
9 contract had been issued. This section does not apply to group
10 policies, single premium nonrenewable policies or travel
11 accident policies.

12 Section 10. Section 627.41345, Florida Statutes, is
13 created to read:

14 627.41345 Certificate of insurance.--An insurer or
15 agent may not issue or sign a certificate of insurance that
16 contains terms or conditions that differ from those in the
17 policy under which the certificate of insurance is issued. In
18 the event of a conflict, the terms of the policy under which
19 the certificate of insurance is issued shall control.

20 Section 11. Subsection (9) is added to section
21 627.7015, Florida Statutes, to read:

22 627.7015 Alternative procedure for resolution of
23 disputed property insurance claims.--

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

27 (a) With respect to which the insurer has a reasonable
28 basis to suspect fraud;

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

31

1 (c) With respect to which the insurer has a reasonable
2 basis to believe that the claimant has intentionally made a
3 material misrepresentation of fact which is relevant to the
4 claim, and the entire request for payment of a loss has been
5 denied on the basis of the material misrepresentation; or

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

9 Section 12. Section 627.7276, Florida Statutes, is
10 amended to read:

11 627.7276 Notice of limited coverage.--

12 (1) The following notice of limited coverage shall ~~An~~
13 ~~automobile policy that does not contain coverage for bodily~~
14 ~~injury and property damage must~~ be clearly stamped or printed
15 on any automobile insurance policy that provides coverage only
16 for first-party damage to the insured vehicle, but does not
17 provide coverage for bodily injury liability, property damage
18 liability, or personal injury protection ~~to the effect that~~
19 ~~such coverage is not included in the policy in the following~~
20 ~~manner:~~

21
22 "THIS POLICY DOES NOT PROVIDE BODILY INJURY
23 LIABILITY, AND PROPERTY DAMAGE LIABILITY, OR
24 PERSONAL INJURY PROTECTION INSURANCE OR ANY
25 OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM
26 CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH
27 ANY FINANCIAL RESPONSIBILITY LAW OR WITH THE
28 FLORIDA MOTOR VEHICLE NO-FAULT LAW."

29
30 (2) This legend must appear on the policy declaration
31 page ~~and on the filing back of the policy~~ and be printed in a

1 contrasting color from that used on the policy and in type
2 larger than the largest type used in the text thereof, as an
3 overprint or by a rubber stamp impression.

4 Section 13. Section 627.795, Florida Statutes, is
5 created to read:

6 627.795 Policy exceptions.--

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

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

13 Section 14. Subsection (1) of section 627.918, Florida
14 Statutes, is amended to read:

15 627.918 Reporting formats.--

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

21 Section 15. Subsection (12) of section 641.31, Florida
22 Statutes, is amended to read:

23 641.31 Health maintenance contracts.--

24 (12) Each health maintenance contract, certificate, or
25 member handbook shall state that emergency services and care
26 shall be provided to subscribers in emergency situations not
27 permitting treatment through the health maintenance
28 organization's providers, without prior notification to and
29 approval of the organization. Reimbursement for covered
30 services and supplies under this section shall be governed by
31 the provisions of s. 641.513(5), up to the subscriber contract

1 benefit limits.~~Not less than 75 percent of the reasonable~~
2 ~~charges for covered services and supplies shall be paid by the~~
3 ~~organization, up to the subscriber contract benefit limits.~~
4 Payment also may be subject to additional applicable copayment
5 provisions, not to exceed \$100 per claim. The health
6 maintenance contract, certificate, or member handbook shall
7 contain the definitions of "emergency services and care" and
8 "emergency medical condition" as specified in s. 641.19(7) and
9 (8), shall describe procedures for determination by the health
10 maintenance organization of whether the services qualify for
11 reimbursement as emergency services and care, and shall
12 contain specific examples of what does constitute an
13 emergency. In providing for emergency services and care as a
14 covered service, a health maintenance organization shall be
15 governed by s. 641.513.

16 Section 16. 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 17. Subsection (2) of section 631.55, Florida
6 Statutes, is amended to read:

7 631.55 Creation of the association.--

8 (2) For the purposes of administration and assessment,
9 the association shall be divided into four ~~three~~ separate
10 accounts:

11 (a) The auto liability account;

12 (b) The auto physical damage account; ~~and~~

13 (c) The medical malpractice account; and

14 (d)~~(c)~~ The account for all other insurance to which
15 this part applies.

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

18 627.351 Insurance risk apportionment plans.--

19 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

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

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

19 (II) The plan of operation shall provide for a board
20 of directors consisting of the Insurance Consumer Advocate
21 appointed under s. 627.0613, 1 consumer representative
22 appointed by the Insurance Commissioner, 1 consumer
23 representative appointed by the Governor, and 12 additional
24 members appointed as specified in the plan of operation. One
25 of the 12 additional members shall be elected by the domestic
26 companies of this state on the basis of cumulative weighted
27 voting based on the net direct premiums of domestic companies
28 in this state. Nothing in the 1997 amendments to this
29 paragraph terminates the existing board or the terms of any
30 members of the board.

31

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

6 (IV) A company which is a member of a group of
7 companies under common management may elect to have its
8 credits applied on a group basis, and any company or group may
9 elect to have its credits applied to any other company or
10 group.

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

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

1 of 100,000 Residential Property and Casualty Joint
2 Underwriting Association policies or 15 percent of the total
3 number of Residential Property and Casualty Joint Underwriting
4 Association policies, provided the governing board of the
5 Residential Property and Casualty Joint Underwriting
6 Association certifies that the take-out plan will materially
7 reduce the Residential Property and Casualty Joint
8 Underwriting Association's 100-year probable maximum loss from
9 hurricanes. With the approval of the department, the board
10 may extend such credits for an additional year if the insurer
11 guarantees an additional year of renewability for all policies
12 removed from the Residential Property and Casualty Joint
13 Underwriting Association, or for 2 additional years if the
14 insurer guarantees 2 additional years of renewability for all
15 policies removed from the Residential Property and Casualty
16 Joint Underwriting Association.

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

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

31

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

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

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

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

1 | been made for the payment of such bonds or other indebtedness
2 | pursuant to the document governing such bonds or other
3 | indebtedness. Emergency assessments collected under this
4 | sub-sub-subparagraph are not part of an insurer's rates, are
5 | not premium, and are not subject to premium tax, fees, or
6 | commissions; however, failure to pay the emergency assessment
7 | shall be treated as failure to pay premium.

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

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

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

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

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

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

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

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

24 b. The association may require arbitration of a rate
25 filing under s. 627.062(6). It is the intent of the
26 Legislature that the rates for coverage provided by the
27 association be actuarially sound and not competitive with
28 approved rates charged in the admitted voluntary market such
29 that the association functions as a residual market mechanism
30 to provide insurance only when the insurance cannot be
31 procured in the voluntary market. The plan of operation shall

1 provide a mechanism to assure that, beginning no later than
2 January 1, 1999, the rates charged by the association for each
3 line of business are reflective of approved rates in the
4 voluntary market for hurricane coverage for each line of
5 business in the various areas eligible for association
6 coverage.

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 6.a. The plan of operation may authorize the formation
2 of a private nonprofit corporation, a private nonprofit
3 unincorporated association, a partnership, a trust, a limited
4 liability company, or a nonprofit mutual company which may be
5 empowered, among other things, to borrow money by issuing
6 bonds or by incurring other indebtedness and to accumulate
7 reserves or funds to be used for the payment of insured
8 catastrophe losses. The plan may authorize all actions
9 necessary to facilitate the issuance of bonds, including the
10 pledging of assessments or other revenues.

11 b. Any entity created under this subsection, or any
12 entity formed for the purposes of this subsection, may sue and
13 be sued, may borrow money; issue bonds, notes, or debt
14 instruments; pledge or sell assessments, market equalization
15 surcharges and other surcharges, rights, premiums, contractual
16 rights, projected recoveries from the Florida Hurricane
17 Catastrophe Fund, other reinsurance recoverables, and other
18 assets as security for such bonds, notes, or debt instruments;
19 enter into any contracts or agreements necessary or proper to
20 accomplish such borrowings; and take other actions necessary
21 to carry out the purposes of this subsection. The association
22 may issue bonds or incur other indebtedness, or have bonds
23 issued on its behalf by a unit of local government pursuant to
24 subparagraph (g)2., in the absence of a hurricane or other
25 weather-related event, upon a determination by the association
26 subject to approval by the department that such action would
27 enable it to efficiently meet the financial obligations of the
28 association and that such financings are reasonably necessary
29 to effectuate the requirements of this subsection. Any such
30 entity may accumulate reserves and retain surpluses as of the
31 end of any association year to provide for the payment of

1 losses incurred by the association during that year or any
2 future year. The association shall incorporate and continue
3 the plan of operation and articles of agreement in effect on
4 the effective date of chapter 76-96, Laws of Florida, to the
5 extent that it is not inconsistent with chapter 76-96, and as
6 subsequently modified consistent with chapter 76-96. The board
7 of directors and officers currently serving shall continue to
8 serve until their successors are duly qualified as provided
9 under the plan. The assets and obligations of the plan in
10 effect immediately prior to the effective date of chapter
11 76-96 shall be construed to be the assets and obligations of
12 the successor plan created herein.

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

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

27 8. Subject to approval by the department, the
28 association may establish different eligibility requirements
29 and operational procedures for any line or type of coverage
30 for any specified eligible area or portion of an eligible area
31 if the board determines that such changes to the eligibility

1 requirements and operational procedures are justified due to
2 the voluntary market being sufficiently stable and competitive
3 in such area or for such line or type of coverage and that
4 consumers who, in good faith, are unable to obtain insurance
5 through the voluntary market through ordinary methods would
6 continue to have access to coverage from the association. When
7 coverage is sought in connection with a real property
8 transfer, such requirements and procedures shall not provide
9 for an effective date of coverage later than the date of the
10 closing of the transfer as established by the transferor, the
11 transferee, and, if applicable, the lender.

12 9. Notwithstanding any other provision of law:

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

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

31

1 c. Each such pledge or sale of, lien upon, and
2 security interest in, including the priority of such pledge,
3 lien, or security interest, any such assessments, emergency
4 assessments, market equalization or renewal surcharges,
5 projected recoveries from the Florida Hurricane Catastrophe
6 Fund, reinsurance recoverables, or other rights, revenues, or
7 other assets which are collected, or levied and collected,
8 after the commencement of and during the pendency of or after
9 any such proceeding shall continue unaffected by such
10 proceeding.

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

22 e. Any such pledge or sale of assessments, revenues,
23 contract rights or other rights or assets of the association
24 shall constitute a lien and security interest, or sale, as the
25 case may be, that is immediately effective and attaches to
26 such assessments, revenues, contract, or other rights or
27 assets, whether or not imposed or collected at the time the
28 pledge or sale is made. Any such pledge or sale is effective,
29 valid, binding, and enforceable against the association or
30 other entity making such pledge or sale, and valid and binding
31 against and superior to any competing claims or obligations

1 owed to any other person or entity, including policyholders in
2 this state, asserting rights in any such assessments,
3 revenues, contract, or other rights or assets to the extent
4 set forth in and in accordance with the terms of the pledge or
5 sale contained in the applicable financing documents, whether
6 or not any such person or entity has notice of such pledge or
7 sale and without the need for any physical delivery,
8 recordation, filing, or other action.

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

18 Section 19. This act shall take effect upon becoming a
19 law.

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