

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. 641.3108, F.S.; requiring health
5 maintenance organizations to provide certain
6 information to subscriber groups whose contract
7 is not renewed for certain reasons; amending s.
8 631.57, F.S.; exempting malpractice premiums
9 from assessments that are due to insolvent
10 property insurers; amending s. 627.351, F.S.;
11 increasing the qualifying statutory surplus
12 amount for the Florida Windstorm Underwriting
13 Association Limited Apportionment Status;
14 amending s. 627.7295, F.S.; providing an
15 additional exception to a requirement that a
16 minimum of 2 months' premium be collected to
17 issue a policy or binder for motor vehicle
18 insurance; amending s. 627.901, F.S.;
19 authorizing insurance agents and insurers that
20 finance premiums for certain policies to charge
21 interest or a service charge at a specified
22 rate on unpaid premiums on those policies;
23 creating s. 626.9651, F.S.; directing the
24 department to adopt rules to govern the use of
25 a consumer's nonpublic personal financial and
26 health information by health insurers and
27 health maintenance organizations; providing
28 standards governing the rules; providing an
29 effective date.

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

1 Section 1. Subsection (6) is added to section
2 624.3161, Florida Statutes, to read:

3 624.3161 Market conduct examinations.--

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

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

12 626.171 Application for license.--

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

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

22 626.9541 Unfair methods of competition and unfair or
23 deceptive acts or practices defined.--

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

27 (n) Free insurance prohibited.--

28 1. Advertising, offering, or providing free insurance
29 as an inducement to the purchase or sale of real or personal
30 property or of services directly or indirectly connected with
31 such real or personal property.

- 1 2. For the purposes of this paragraph, "free"
2 insurance is:
- 3 a. Insurance for which no identifiable and additional
4 charge is made to the purchaser of such real property,
5 personal property, or services.
- 6 b. Insurance for which an identifiable or additional
7 charge is made in an amount less than the cost of such
8 insurance as to the seller or other person, other than the
9 insurer, providing the same.
- 10 3. Subparagraphs 1. and 2. do not apply to:
- 11 a. Insurance of, loss of, or damage to the real or
12 personal property involved in any such sale or services, under
13 a policy covering the interests therein of the seller or
14 vendor.
- 15 b. Blanket disability insurance as defined in s.
16 627.659.
- 17 c. Credit life insurance or credit disability
18 insurance.
- 19 d. Any individual, isolated, nonrecurring unadvertised
20 transaction not in the regular course of business.
- 21 e. Title insurance.
- 22 f. Any purchase agreement involving the purchase of a
23 cemetery lot or lots in which, under stated conditions, any
24 balance due is forgiven upon the death of the purchaser.
- 25 g. Life insurance, trip cancellation insurance, or
26 lost baggage insurance offered by a travel agency as part of a
27 travel package offered by and booked through the agency.
- 28 h. Third-party payor programs approved by the
29 department.
- 30 4. Using the word "free" or words which imply the
31 provision of insurance without a cost to describe life or

1 disability insurance, in connection with the advertising or
2 offering for sale of any kind of goods, merchandise, or
3 services.

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

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

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

3 3.a. Imposing or requesting an additional premium for
4 a policy of motor vehicle liability, personal injury
5 protection, medical payment, or collision insurance or any
6 combination thereof or refusing to renew the policy solely
7 because the insured was involved in a motor vehicle accident
8 unless the insurer's file contains information from which the
9 insurer in good faith determines that the insured was
10 substantially at fault in the accident.

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

19 (I) Lawfully parked;

20 (II) Reimbursed by, or on behalf of, a person
21 responsible for the accident or has a judgment against such
22 person;

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

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

29 (V) Not convicted of a moving traffic violation in
30 connection with the accident, but the operator of the other
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1 automobile involved in such accident was convicted of a moving
2 traffic violation;

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

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

7 (VIII) Not at fault as evidenced by a written
8 statement from the insured establishing facts demonstrating
9 lack of fault which are not rebutted by information in the
10 insurer's file from which the insurer in good faith determines
11 that the insured was substantially at fault.

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

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

25 a. A second infraction committed within an 18-month
26 period, or a third or subsequent infraction committed within a
27 36-month period.

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

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1 5. Upon the request of the insured, the insurer and
2 licensed agent shall supply to the insured the complete proof
3 of fault or other criteria which justifies the additional
4 charge or cancellation.

5 6. No insurer shall impose or request an additional
6 premium for motor vehicle insurance, cancel or refuse to issue
7 a policy, or refuse to renew a policy because the insured or
8 the applicant is a handicapped or physically disabled person,
9 so long as such handicap or physical disability does not
10 substantially impair such person's mechanically assisted
11 driving ability.

12 7. No insurer may cancel or otherwise terminate any
13 insurance contract or coverage, or require execution of a
14 consent to rate endorsement, during the stated policy term for
15 the purpose of offering to issue, or issuing, a similar or
16 identical contract or coverage to the same insured with the
17 same exposure at a higher premium rate or continuing an
18 existing contract or coverage with the same exposure at an
19 increased premium.

20 8. No insurer may issue a nonrenewal notice on any
21 insurance contract or coverage, or require execution of a
22 consent to rate endorsement, for the purpose of offering to
23 issue, or issuing, a similar or identical contract or coverage
24 to the same insured at a higher premium rate or continuing an
25 existing contract or coverage at an increased premium without
26 meeting any applicable notice requirements.

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

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1 10. Imposing or requesting an additional premium for
2 motor vehicle comprehensive or uninsured motorist coverage
3 solely because the insured was involved in a motor vehicle
4 accident or was convicted of a moving traffic violation.

5 11. No insurer shall cancel or issue a nonrenewal
6 notice on any insurance policy or contract without complying
7 with any applicable cancellation or nonrenewal provision
8 required under the Florida Insurance Code.

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

17 Section 4. Section 626.9552, Florida Statutes, is
18 created to read:

19 626.9552 Single interest insurance.--

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

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

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

6 Section 5. Paragraph (a) of subsection (2) of section
7 627.062, Florida Statutes, is amended to read:

8 627.062 Rate standards.--

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

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

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

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

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

13 Section 6. Subsection (4) is added to section
14 627.0625, Florida Statutes, to read:

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

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

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

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

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

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

9 Section 8. Section 627.385, Florida Statutes, is
10 created to read:

11 627.385 Conduct of residual market board members.--

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

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

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

1 Automobile Joint Underwriting Association, the Florida
2 Workers' Compensation Joint Underwriting Association, the
3 Florida Comprehensive Health Association, the Florida
4 Windstorm Underwriting Association, the Florida Property and
5 Casualty Joint Underwriting Association, the Florida
6 Residential Property and Casualty Joint Underwriting
7 Association, and the board members thereof.

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

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

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

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

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

30 (3) Board members and board member representatives
31 shall maintain reasonable board expenses based on state travel

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

5 Section 9. Section 627.4065, Florida Statutes, is
6 created to read:

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

23 Section 10. Section 627.41345, Florida Statutes, is
24 created to read:

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

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1 Section 11. Subsection (9) is added to section
2 627.7015, Florida Statutes, to read:

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

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

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

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

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

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

20 Section 12. Section 627.7276, Florida Statutes, is
21 amended to read:

22 627.7276 Notice of limited coverage.--

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

1
2 "THIS POLICY DOES NOT PROVIDE BODILY INJURY
3 LIABILITY, AND PROPERTY DAMAGE LIABILITY, OR
4 PERSONAL INJURY PROTECTION INSURANCE OR ANY
5 OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM
6 CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH
7 ANY FINANCIAL RESPONSIBILITY LAW OR WITH THE
8 FLORIDA MOTOR VEHICLE NO-FAULT LAW."
9

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

15 Section 13. Section 627.795, Florida Statutes, is
16 created to read:

17 627.795 Policy exceptions.--

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

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

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

26 627.918 Reporting formats.--

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

1 Section 15. Subsection (3) of section 641.3108,
2 Florida Statutes, is amended to read:

3 641.3108 Notice of cancellation of contract.--

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

21 Section 16. Subsection (7) is added to section 631.57,
22 Florida Statutes, to read:

23 631.57 Powers and duties of the association.--

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

29 Section 17. Paragraph (b) of subsection (2) of section
30 627.351, Florida Statutes, is amended to read:

31 627.351 Insurance risk apportionment plans.--

1 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

24 1. For the purpose of this section, properties
25 eligible for such windstorm coverage are defined as dwellings,
26 buildings, and other structures, including mobile homes which
27 are used as dwellings and which are tied down in compliance
28 with mobile home tie-down requirements prescribed by the
29 Department of Highway Safety and Motor Vehicles pursuant to s.
30 320.8325, and the contents of all such properties. An
31 applicant or policyholder is eligible for coverage only if an

1 offer of coverage cannot be obtained by or for the applicant
2 or policyholder from an admitted insurer at approved rates.

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

1 (II) The plan of operation shall provide for a board
2 of directors consisting of the Insurance Consumer Advocate
3 appointed under s. 627.0613, 1 consumer representative
4 appointed by the Insurance Commissioner, 1 consumer
5 representative appointed by the Governor, and 12 additional
6 members appointed as specified in the plan of operation. One
7 of the 12 additional members shall be elected by the domestic
8 companies of this state on the basis of cumulative weighted
9 voting based on the net direct premiums of domestic companies
10 in this state. Nothing in the 1997 amendments to this
11 paragraph terminates the existing board or the terms of any
12 members of the board.

13 (III) The plan of operation shall provide a formula
14 whereby a company voluntarily providing windstorm coverage in
15 affected areas will be relieved wholly or partially from
16 apportionment of a regular assessment pursuant to
17 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

18 (IV) A company which is a member of a group of
19 companies under common management may elect to have its
20 credits applied on a group basis, and any company or group may
21 elect to have its credits applied to any other company or
22 group.

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

26 (VI) The plan of operation may also provide for the
27 award of credits, for a period not to exceed 3 years, from a
28 regular assessment pursuant to sub-sub-subparagraph d.(I) or
29 sub-sub-subparagraph d.(II) as an incentive for taking
30 policies out of the Residential Property and Casualty Joint
31 Underwriting Association. In order to qualify for the

1 exemption under this sub-sub-subparagraph, the take-out plan
2 must provide that at least 40 percent of the policies removed
3 from the Residential Property and Casualty Joint Underwriting
4 Association cover risks located in Dade, Broward, and Palm
5 Beach Counties or at least 30 percent of the policies so
6 removed cover risks located in Dade, Broward, and Palm Beach
7 Counties and an additional 50 percent of the policies so
8 removed cover risks located in other coastal counties, and
9 must also provide that no more than 15 percent of the policies
10 so removed may exclude windstorm coverage. With the approval
11 of the department, the association may waive these geographic
12 criteria for a take-out plan that removes at least the lesser
13 of 100,000 Residential Property and Casualty Joint
14 Underwriting Association policies or 15 percent of the total
15 number of Residential Property and Casualty Joint Underwriting
16 Association policies, provided the governing board of the
17 Residential Property and Casualty Joint Underwriting
18 Association certifies that the take-out plan will materially
19 reduce the Residential Property and Casualty Joint
20 Underwriting Association's 100-year probable maximum loss from
21 hurricanes. With the approval of the department, the board
22 may extend such credits for an additional year if the insurer
23 guarantees an additional year of renewability for all policies
24 removed from the Residential Property and Casualty Joint
25 Underwriting Association, or for 2 additional years if the
26 insurer guarantees 2 additional years of renewability for all
27 policies removed from the Residential Property and Casualty
28 Joint Underwriting Association.

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

1 c. The Legislature finds that the potential for
2 unlimited deficit assessments under this subparagraph may
3 induce insurers to attempt to reduce their writings in the
4 voluntary market, and that such actions would worsen the
5 availability problems that the association was created to
6 remedy. It is the intent of the Legislature that insurers
7 remain fully responsible for paying regular assessments and
8 collecting emergency assessments for any deficits of the
9 association; however, it is also the intent of the Legislature
10 to provide a means by which assessment liabilities may be
11 amortized over a period of years.

12 d.(I) When the deficit incurred in a particular
13 calendar year is 10 percent or less of the aggregate statewide
14 direct written premium for property insurance for the prior
15 calendar year for all member insurers, the association shall
16 levy an assessment on member insurers in an amount equal to
17 the deficit.

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

28 (III) Upon a determination by the board of directors
29 that a deficit exceeds the amount that will be recovered
30 through regular assessments on member insurers, pursuant to
31 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the

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

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

19 (IV) Each member insurer's share of the total regular
20 assessments under sub-sub-subparagraph (I) or
21 sub-sub-subparagraph (II) shall be in the proportion that the
22 insurer's net direct premium for property insurance in this
23 state, for the year preceding the assessment bears to the
24 aggregate statewide net direct premium for property insurance
25 of all member insurers, as reduced by any credits for
26 voluntary writings for that year.

27 (V) If regular deficit assessments are made under
28 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
29 the Residential Property and Casualty Joint Underwriting
30 Association under sub-subparagraph (6)(b)3.a. or
31 sub-subparagraph (6)(b)3.b., the association shall levy upon

1 the association's policyholders, as part of its next rate
2 filing, or by a separate rate filing solely for this purpose,
3 a market equalization surcharge in a percentage equal to the
4 total amount of such regular assessments divided by the
5 aggregate statewide direct written premium for property
6 insurance for member insurers for the prior calendar year.
7 Market equalization surcharges under this sub-sub-subparagraph
8 are not considered premium and are not subject to commissions,
9 fees, or premium taxes; however, failure to pay a market
10 equalization surcharge shall be treated as failure to pay
11 premium.

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

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

26 3. The plan shall also provide that any member with a
27 surplus as to policyholders of \$25~~\$20~~ million or less writing
28 25 percent or more of its total countrywide property insurance
29 premiums in this state may petition the department, within the
30 first 90 days of each calendar year, to qualify as a limited
31 apportionment company. The apportionment of such a member

1 company in any calendar year for which it is qualified shall
2 not exceed its gross participation, which shall not be
3 affected by the formula for voluntary writings. In no event
4 shall a limited apportionment company be required to
5 participate in any apportionment of losses pursuant to
6 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
7 in the aggregate which exceeds \$50 million after payment of
8 available plan funds in any calendar year. However, a limited
9 apportionment company shall collect from its policyholders any
10 emergency assessment imposed under sub-sub-subparagraph
11 2.d.(III). The plan shall provide that, if the department
12 determines that any regular assessment will result in an
13 impairment of the surplus of a limited apportionment company,
14 the department may direct that all or part of such assessment
15 be deferred. However, there shall be no limitation or
16 deferment of an emergency assessment to be collected from
17 policyholders under sub-sub-subparagraph 2.d.(III).

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

31

1 5.a. The plan of operation may include deductibles and
2 rules for classification of risks and rate modifications
3 consistent with the objective of providing and maintaining
4 funds sufficient to pay catastrophe losses.

5 b. The association may require arbitration of a rate
6 filing under s. 627.062(6). It is the intent of the
7 Legislature that the rates for coverage provided by the
8 association be actuarially sound and not competitive with
9 approved rates charged in the admitted voluntary market such
10 that the association functions as a residual market mechanism
11 to provide insurance only when the insurance cannot be
12 procured in the voluntary market. The plan of operation shall
13 provide a mechanism to assure that, beginning no later than
14 January 1, 1999, the rates charged by the association for each
15 line of business are reflective of approved rates in the
16 voluntary market for hurricane coverage for each line of
17 business in the various areas eligible for association
18 coverage.

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

1 specified in this subparagraph with or without facultative or
2 other reinsurance coverage, as the association determines
3 appropriate.

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

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

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

16
17 The acceptance or rejection of a risk by the association
18 pursuant to such criteria and procedures must be construed as
19 the private placement of insurance, and the provisions of
20 chapter 120 do not apply.

21 e. The policies issued by the association must provide
22 that if the association obtains an offer from an authorized
23 insurer to cover the risk at its approved rates under either a
24 standard policy including wind coverage or, if consistent with
25 the insurer's underwriting rules as filed with the department,
26 a basic policy including wind coverage, the risk is no longer
27 eligible for coverage through the association. Upon
28 termination of eligibility, the association shall provide
29 written notice to the policyholder and agent of record stating
30 that the association policy must be canceled as of 60 days
31 after the date of the notice because of the offer of coverage

1 from an authorized insurer. Other provisions of the insurance
2 code relating to cancellation and notice of cancellation do
3 not apply to actions under this sub-subparagraph.

4 f. Association policies and applications must include
5 a notice that the association policy could, under this
6 section, be replaced with a policy issued by an authorized
7 insurer that does not provide coverage identical to the
8 coverage provided by the association. The notice shall also
9 specify that acceptance of association coverage creates a
10 conclusive presumption that the applicant or policyholder is
11 aware of this potential.

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

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

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

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

1 7. On such coverage, an agent's remuneration shall be
2 that amount of money payable to the agent by the terms of his
3 or her contract with the company with which the business is
4 placed. However, no commission will be paid on that portion of
5 the premium which is in excess of the standard premium of that
6 company.

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

23 9. Notwithstanding any other provision of law:

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

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

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

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

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

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

30 627.7295 Motor vehicle insurance contracts.--

31

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

1 least the amount of \$10,000 because of bodily injury to, or
2 death of, one person in any one accident and in the amount of
3 \$20,000 because of bodily injury to, or death of, two or more
4 persons in any one accident. This subsection and subsection
5 (4) do not apply if an insured has had a policy in effect for
6 at least 6 months, the insured's agent is terminated by the
7 insurer that issued the policy, and the insured obtains
8 coverage on the policy's renewal date with a new company
9 through the terminated agent.

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

12 627.901 Premium financing by an insurance agent or
13 agency.--

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

29 Section 20. Section 626.9651, Florida Statutes, is
30 created to read:

31

1 626.9651 Privacy.--The department shall adopt rules
2 consistent with other provisions of the Insurance Code to
3 govern the use of a consumer's nonpublic personal financial
4 and health information. These rules shall be based on,
5 consistent with, and not more restrictive than the National
6 Association of Insurance Commissioners' Privacy of Consumer
7 Financial and Health Information Regulation adopted September
8 26, 2000, by the National Association of Insurance
9 Commissioners, provided, however, the rules shall permit the
10 use and disclosure of nonpublic personal health information
11 for scientific, medical, or public policy research in
12 accordance with federal law. In addition, these rules shall
13 be consistent with, and not more restrictive than, the
14 standards contained in Title V of the Gramm-Leach-Bliley Act
15 of 1999 (Pub. L. No. 106-102). Any health insurer or health
16 maintenance organization determined by the department to be in
17 compliance with, or to be actively undertaking compliance
18 with, the consumer privacy protection rules promulgated by the
19 United States Department of Health and Human Services, in
20 conformance with the Health Insurance Portability and
21 Affordability Act, shall be deemed in compliance with this
22 section. This section shall take effect July 1, 2001.

23 Section 21. Except as otherwise expressly provided in
24 this act, this act shall take effect upon becoming a law.
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