

By Senator Campbell

33-126-01

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 627.351, F.S.; deleting provisions authorizing
4 certain associations to require rate
5 arbitration of rate filings; repealing s.
6 627.062(6), F.S., relating to an insurer's
7 alternative under rate standards to require
8 arbitration of rate filings; providing an
9 effective date.

10

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

12

13 Section 1. Paragraph (b) of subsection (2) and
14 paragraph (d) of subsection (6) of section 627.351, Florida
15 Statutes, are amended to read:

16

627.351 Insurance risk apportionment plans.--

17

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

18

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

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

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

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

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

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

29 (III) The plan of operation shall provide a formula
30 whereby a company voluntarily providing windstorm coverage in
31 affected areas will be relieved wholly or partially from

1 apportionment of a regular assessment pursuant to
2 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

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

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

11 (VI) The plan of operation may also provide for the
12 award of credits, for a period not to exceed 3 years, from a
13 regular assessment pursuant to sub-sub-subparagraph d.(I) or
14 sub-sub-subparagraph d.(II) as an incentive for taking
15 policies out of the Residential Property and Casualty Joint
16 Underwriting Association. In order to qualify for the
17 exemption under this sub-sub-subparagraph, the take-out plan
18 must provide that at least 40 percent of the policies removed
19 from the Residential Property and Casualty Joint Underwriting
20 Association cover risks located in Dade, Broward, and Palm
21 Beach Counties or at least 30 percent of the policies so
22 removed cover risks located in Dade, Broward, and Palm Beach
23 Counties and an additional 50 percent of the policies so
24 removed cover risks located in other coastal counties, and
25 must also provide that no more than 15 percent of the policies
26 so removed may exclude windstorm coverage. With the approval
27 of the department, the association may waive these geographic
28 criteria for a take-out plan that removes at least the lesser
29 of 100,000 Residential Property and Casualty Joint
30 Underwriting Association policies or 15 percent of the total
31 number of Residential Property and Casualty Joint Underwriting

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

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

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

28 d.(I) When the deficit incurred in a particular
29 calendar year is 10 percent or less of the aggregate statewide
30 direct written premium for property insurance for the prior
31 calendar year for all member insurers, the association shall

1 | levy an assessment on member insurers in an amount equal to
2 | the deficit.

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

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

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

1 not premium, and are not subject to premium tax, fees, or
2 commissions; however, failure to pay the emergency assessment
3 shall be treated as failure to pay premium.

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

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

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

1 | the purpose of defraying deficits of the association. In order
2 | to avoid needless and indiscriminate proliferation,
3 | duplication, and fragmentation of such assistance programs,
4 | any unit of local government, any residents of which are
5 | insured by the association, may provide for the payment of
6 | losses, regardless of whether or not the losses occurred
7 | within or outside of the territorial jurisdiction of the local
8 | government. Revenue bonds may not be issued until validated
9 | pursuant to chapter 75, unless a state of emergency is
10 | declared by executive order or proclamation of the Governor
11 | pursuant to s. 252.36 making such findings as are necessary to
12 | determine that it is in the best interests of, and necessary
13 | for, the protection of the public health, safety, and general
14 | welfare of residents of this state and the protection and
15 | preservation of the economic stability of insurers operating
16 | in this state, and declaring it an essential public purpose to
17 | permit certain municipalities or counties to issue bonds as
18 | will provide relief to claimants and policyholders of the
19 | association and insurers responsible for apportionment of plan
20 | losses. Any such unit of local government may enter into such
21 | contracts with the association and with any other entity
22 | created pursuant to this subsection as are necessary to carry
23 | out this paragraph. Any bonds issued under this
24 | sub-subparagraph shall be payable from and secured by moneys
25 | received by the association from assessments under this
26 | subparagraph, and assigned and pledged to or on behalf of the
27 | unit of local government for the benefit of the holders of
28 | such bonds. The funds, credit, property, and taxing power of
29 | the state or of the unit of local government shall not be
30 | pledged for the payment of such bonds. If any of the bonds
31 | remain unsold 60 days after issuance, the department shall

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

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

1 | deferment of an emergency assessment to be collected from
2 | policyholders under sub-sub-subparagraph 2.d.(III).

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

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

20 | b. ~~The association may require arbitration of a rate~~
21 | ~~filing under s. 627.062(6).~~ It is the intent of the
22 | Legislature that the rates for coverage provided by the
23 | association be actuarially sound and not competitive with
24 | approved rates charged in the admitted voluntary market such
25 | that the association functions as a residual market mechanism
26 | to provide insurance only when the insurance cannot be
27 | procured in the voluntary market. The plan of operation shall
28 | provide a mechanism to assure that, beginning no later than
29 | January 1, 1999, the rates charged by the association for each
30 | line of business are reflective of approved rates in the
31 | voluntary market for hurricane coverage for each line of

1 business in the various areas eligible for association
2 coverage.

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

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

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

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

31

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

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

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

27 6.a. The plan of operation may authorize the formation
28 of a private nonprofit corporation, a private nonprofit
29 unincorporated association, a partnership, a trust, a limited
30 liability company, or a nonprofit mutual company which may be
31 empowered, among other things, to borrow money by issuing

1 bonds or by incurring other indebtedness and to accumulate
2 reserves or funds to be used for the payment of insured
3 catastrophe losses. The plan may authorize all actions
4 necessary to facilitate the issuance of bonds, including the
5 pledging of assessments or other revenues.

6 b. Any entity created under this subsection, or any
7 entity formed for the purposes of this subsection, may sue and
8 be sued, may borrow money; issue bonds, notes, or debt
9 instruments; pledge or sell assessments, market equalization
10 surcharges and other surcharges, rights, premiums, contractual
11 rights, projected recoveries from the Florida Hurricane
12 Catastrophe Fund, other reinsurance recoverables, and other
13 assets as security for such bonds, notes, or debt instruments;
14 enter into any contracts or agreements necessary or proper to
15 accomplish such borrowings; and take other actions necessary
16 to carry out the purposes of this subsection. The association
17 may issue bonds or incur other indebtedness, or have bonds
18 issued on its behalf by a unit of local government pursuant to
19 subparagraph (g)2., in the absence of a hurricane or other
20 weather-related event, upon a determination by the association
21 subject to approval by the department that such action would
22 enable it to efficiently meet the financial obligations of the
23 association and that such financings are reasonably necessary
24 to effectuate the requirements of this subsection. Any such
25 entity may accumulate reserves and retain surpluses as of the
26 end of any association year to provide for the payment of
27 losses incurred by the association during that year or any
28 future year. The association shall incorporate and continue
29 the plan of operation and articles of agreement in effect on
30 the effective date of chapter 76-96, Laws of Florida, to the
31 extent that it is not inconsistent with chapter 76-96, and as

1 subsequently modified consistent with chapter 76-96. The board
2 of directors and officers currently serving shall continue to
3 serve until their successors are duly qualified as provided
4 under the plan. The assets and obligations of the plan in
5 effect immediately prior to the effective date of chapter
6 76-96 shall be construed to be the assets and obligations of
7 the successor plan created herein.

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

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

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

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

7 9. Notwithstanding any other provision of law:

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

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

26 c. Each such pledge or sale of, lien upon, and
27 security interest in, including the priority of such pledge,
28 lien, or security interest, any such assessments, emergency
29 assessments, market equalization or renewal surcharges,
30 projected recoveries from the Florida Hurricane Catastrophe
31 Fund, reinsurance recoverables, or other rights, revenues, or

1 other assets which are collected, or levied and collected,
2 after the commencement of and during the pendency of or after
3 any such proceeding shall continue unaffected by such
4 proceeding.

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

16 e. Any such pledge or sale of assessments, revenues,
17 contract rights or other rights or assets of the association
18 shall constitute a lien and security interest, or sale, as the
19 case may be, that is immediately effective and attaches to
20 such assessments, revenues, contract, or other rights or
21 assets, whether or not imposed or collected at the time the
22 pledge or sale is made. Any such pledge or sale is effective,
23 valid, binding, and enforceable against the association or
24 other entity making such pledge or sale, and valid and binding
25 against and superior to any competing claims or obligations
26 owed to any other person or entity, including policyholders in
27 this state, asserting rights in any such assessments,
28 revenues, contract, or other rights or assets to the extent
29 set forth in and in accordance with the terms of the pledge or
30 sale contained in the applicable financing documents, whether
31 or not any such person or entity has notice of such pledge or

1 sale and without the need for any physical delivery,
2 recordation, filing, or other action.

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

12 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
13 UNDERWRITING ASSOCIATION.--

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

26 2. For each county, the average rates of the
27 association for each line of business for personal lines
28 residential policies shall be no lower than the average rates
29 charged by the insurer that had the highest average rate in
30 that county among the 20 insurers with the greatest total
31 direct written premium in the state for that line of business

1 in the preceding year, except that with respect to mobile home
2 coverages, the average rates of the association shall be no
3 lower than the average rates charged by the insurer that had
4 the highest average rate in that county among the 5 insurers
5 with the greatest total written premium for mobile home
6 owner's policies in the state in the preceding year.

7 3. Rates for commercial residential coverage shall not
8 be subject to the requirements of subparagraph 2., but shall
9 be subject to all other requirements of this paragraph and s.
10 627.062.

11 4. Nothing in this paragraph shall require or allow
12 the association to adopt a rate that is inadequate under s.
13 627.062 or to reduce rates approved under s. 627.062.

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

19 Section 2. Subsection (6) of section 627.062, Florida
20 Statutes, is repealed.

21 Section 3. This act shall take effect October 1, 2001.

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23 *****

24 SENATE SUMMARY

25 Deletes provisions authorizing insurers, the Florida
26 Windstorm Underwriting Association, and the Residential
27 Property and Casualty Joint Underwriting Association to
demanding a rate hearing.