

1
2 An act relating to property insurance plans;
3 creating the Insurance Policy Holder Protection
4 Act; amending ss. 627.351, 627.3511, F.S.;
5 revising certain agent commission payment and
6 policy servicing procedures and requirements;
7 adding an area eligible for coverage from the
8 Florida Windstorm Underwriting Association;
9 creating s. 627.3517, F.S.; preserving a
10 policyholder's right to select and maintain
11 certain agents; authorizing the Department of
12 Insurance to adopt rules to preserve such
13 right; providing application; providing an
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. This act may be cited as the "Insurance
19 Policy Holder Protection Act."

20 Section 2. Paragraphs (b) and (e) of subsection (2)
21 and paragraph (c) of subsection (6) of section 627.351,
22 Florida Statutes, are amended to read:

23 627.351 Insurance risk apportionment plans.--

24 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

25 (b) The department shall require all insurers holding
26 a certificate of authority to transact property insurance on a
27 direct basis in this state, other than joint underwriting
28 associations and other entities formed pursuant to this
29 section, to provide windstorm coverage to applicants from
30 areas determined to be eligible pursuant to paragraph (c) who
31 in good faith are entitled to, but are unable to procure, such

1 coverage through ordinary means; or it shall adopt a
2 reasonable plan or plans for the equitable apportionment or
3 sharing among such insurers of windstorm coverage, which may
4 include formation of an association for this purpose. As used
5 in this subsection, the term "property insurance" means
6 insurance on real or personal property, as defined in s.
7 624.604, including insurance for fire, industrial fire, allied
8 lines, farmowners multiperil, homeowners' multiperil,
9 commercial multiperil, and mobile homes, and including
10 liability coverages on all such insurance, but excluding
11 inland marine as defined in s. 624.607(3) and excluding
12 vehicle insurance as defined in s. 624.605(1)(a) other than
13 insurance on mobile homes used as permanent dwellings. The
14 department shall adopt rules that provide a formula for the
15 recovery and repayment of any deferred assessments.

16 1. For the purpose of this section, properties
17 eligible for such windstorm coverage are defined as dwellings,
18 buildings, and other structures, including mobile homes which
19 are used as dwellings and which are tied down in compliance
20 with mobile home tie-down requirements prescribed by the
21 Department of Highway Safety and Motor Vehicles pursuant to s.
22 320.8325, and the contents of all such properties. An
23 applicant or policyholder is eligible for coverage only if an
24 offer of coverage cannot be obtained by or for the applicant
25 or policyholder from an admitted insurer at approved rates.

26 2.a.(I) All insurers required to be members of such
27 association shall participate in its writings, expenses, and
28 losses. Surplus of the association shall be retained for the
29 payment of claims and shall not be distributed to the member
30 insurers. Such participation by member insurers shall be in
31 the proportion that the net direct premiums of each member

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

24 (II) The plan of operation shall provide for a board
25 of directors consisting of the Insurance Consumer Advocate
26 appointed under s. 627.0613, 1 consumer representative
27 appointed by the Insurance Commissioner, 1 consumer
28 representative appointed by the Governor, and 12 additional
29 members appointed as specified in the plan of operation. One
30 of the 12 additional members shall be elected by the domestic
31 companies of this state on the basis of cumulative weighted

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 b. The association may require arbitration of a rate
28 filing under s. 627.062(6). It is the intent of the
29 Legislature that the rates for coverage provided by the
30 association be actuarially sound and not competitive with
31 approved rates charged in the admitted voluntary market such

1 that the association functions as a residual market mechanism
2 to provide insurance only when the insurance cannot be
3 procured in the voluntary market. The plan of operation shall
4 provide a mechanism to assure that, beginning no later than
5 January 1, 1999, the rates charged by the association for each
6 line of business are reflective of approved rates in the
7 voluntary market for hurricane coverage for each line of
8 business in the various areas eligible for association
9 coverage.

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

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

1 (I) Whether the likelihood of a loss for the
2 individual risk is substantially higher than for other risks
3 of the same class; and

4 (II) Whether the uncertainty associated with the
5 individual risk is such that an appropriate premium cannot be
6 determined.

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

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

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

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

29
30 If the producing agent is unwilling or unable to accept
31 appointment, the new insurer shall pay the agent in accordance

1 with sub-sub-subparagraph (I). Subject to the provisions of s.
2 627.3517,the policies issued by the association must provide
3 that if the association obtains an offer from an authorized
4 insurer to cover the risk at its approved rates under either a
5 standard policy including wind coverage or, if consistent with
6 the insurer's underwriting rules as filed with the department,
7 a basic policy including wind coverage, the risk is no longer
8 eligible for coverage through the association. Upon
9 termination of eligibility, the association shall provide
10 written notice to the policyholder and agent of record stating
11 that the association policy must be canceled as of 60 days
12 after the date of the notice because of the offer of coverage
13 from an authorized insurer. Other provisions of the insurance
14 code relating to cancellation and notice of cancellation do
15 not apply to actions under this sub-subparagraph.

16 f. When the association enters into a contractual
17 agreement for a take-out plan, the producing agent of record
18 of the association policy is entitled to retain any unearned
19 commission on the policy, and the insurer shall:

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

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

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1 If the producing agent is unwilling or unable to accept
2 appointment, the new insurer shall pay the agent in accordance
3 with sub-sub-subparagraph (I).~~Association policies and~~
4 ~~applications must include a notice that the association policy~~
5 ~~could, under this section, be replaced with a policy issued by~~
6 ~~an authorized insurer that does not provide coverage identical~~
7 ~~to the coverage provided by the association. The notice shall~~
8 ~~also specify that acceptance of association coverage creates a~~
9 ~~conclusive presumption that the applicant or policyholder is~~
10 ~~aware of this potential.~~

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

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

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

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

31

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 (e)1. Notwithstanding the provisions of subparagraph
29 (c)2. or paragraph (d), eligibility shall not be extended to
30 any area that was not eligible on March 1, 1997, except that
31

1 the department may act with respect to any petition on which a
2 hearing was held prior to May 9, 1997.

3 2. Notwithstanding the provisions of subparagraph 1.,
4 the following area is eligible for coverage under this
5 subsection effective July 1, 2002: the area within Port
6 Canaveral which is bordered on the south by the City of Cape
7 Canaveral, bordered on the west by the Banana River, and
8 bordered on the north by United States Government property.

9 (6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
10 UNDERWRITING ASSOCIATION.--

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

12 1. May provide for one or more designated insurers,
13 able and willing to provide policy and claims service, to act
14 on behalf of the association to provide such service. Each
15 licensed agent shall be entitled to indicate the order of
16 preference regarding who will service the business placed by
17 the agent. The association shall adhere to each agent's
18 preferences unless after consideration of other factors in
19 assigning agents, including, but not limited to, servicing
20 capacity and fee arrangements, the association has reason to
21 believe it is in the best interest of the association to make
22 a different assignment.

23 2. Must provide for adoption of residential property
24 and casualty insurance policy forms, which forms must be
25 approved by the department prior to use. The association
26 shall adopt the following policy forms:

27 a. Standard personal lines policy forms including wind
28 coverage, which are multiperil policies providing what is
29 generally considered to be full coverage of a residential
30 property similar to the coverage provided under an HO-2, HO-3,
31 HO-4, or HO-6 policy.

1 b. Standard personal lines policy forms without wind
2 coverage, which are the same as the policies described in
3 sub-subparagraph a. except that they do not include wind
4 coverage.

5 c. Basic personal lines policy forms including wind
6 coverage, which are policies similar to an HO-8 policy or a
7 dwelling fire policy that provide coverage meeting the
8 requirements of the secondary mortgage market, but which
9 coverage is more limited than the coverage under a standard
10 policy.

11 d. Basic personal lines policy forms without wind
12 coverage, which are the same as the policies described in
13 sub-subparagraph c. except that they do not include wind
14 coverage.

15 e. Commercial lines residential policy forms including
16 wind coverage that are generally similar to the basic perils
17 of full coverage obtainable for commercial residential
18 structures in the admitted voluntary market.

19 f. Commercial lines residential policy forms without
20 wind coverage, which are the same as the policies described in
21 sub-subparagraph e. except that they do not include wind
22 coverage.

23 3. May provide that the association may employ or
24 otherwise contract with individuals or other entities to
25 provide administrative or professional services that may be
26 appropriate to effectuate the plan. The association shall
27 have the power to borrow funds, by issuing bonds or by
28 incurring other indebtedness, and shall have other powers
29 reasonably necessary to effectuate the requirements of this
30 subsection. The association may issue bonds or incur other
31 indebtedness, or have bonds issued on its behalf by a unit of

1 local government pursuant to subparagraph (g)2., in the
2 absence of a hurricane or other weather-related event, upon a
3 determination by the association, subject to approval by the
4 department, that such action would enable it to efficiently
5 meet the financial obligations of the association and that
6 such financings are reasonably necessary to effectuate the
7 requirements of this subsection. The association is
8 authorized to take all actions needed to facilitate tax-free
9 status for any such bonds or indebtedness, including formation
10 of trusts or other affiliated entities. The association shall
11 have the authority to pledge assessments, projected recoveries
12 from the Florida Hurricane Catastrophe Fund, other reinsurance
13 recoverables, market equalization and other surcharges, and
14 other funds available to the association as security for bonds
15 or other indebtedness. In recognition of s. 10, Art. I of the
16 State Constitution, prohibiting the impairment of obligations
17 of contracts, it is the intent of the Legislature that no
18 action be taken whose purpose is to impair any bond indenture
19 or financing agreement or any revenue source committed by
20 contract to such bond or other indebtedness.

21 4. Must require that the association operate subject
22 to the supervision and approval of a board of governors
23 consisting of 13 individuals, including 1 who is elected as
24 chair. The board shall consist of:

25 a. The insurance consumer advocate appointed under s.
26 627.0613.

27 b. Five members designated by the insurance industry.

28 c. Five consumer representatives appointed by the
29 Insurance Commissioner. Two of the consumer representatives
30 must, at the time of appointment, be holders of policies
31 issued by the association, who are selected with consideration

1 given to reflecting the geographic balance of association
2 policyholders. Two of the consumer members must be individuals
3 who are minority persons as defined in s. 288.703(3). One of
4 the consumer members shall have expertise in the field of
5 mortgage lending.

6 d. Two representatives of the insurance industry
7 appointed by the Insurance Commissioner. Of the two insurance
8 industry representatives appointed by the Insurance
9 Commissioner, at least one must be an individual who is a
10 minority person as defined in s. 288.703(3).

11

12 Any board member may be disapproved or removed and replaced by
13 the commissioner at any time for cause. All board members,
14 including the chair, must be appointed to serve for 3-year
15 terms beginning annually on a date designated by the plan.

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

18 a. Subject to the provisions of s. 627.3517, with
19 respect to personal lines residential risks, if the risk is
20 offered coverage from an authorized insurer at the insurer's
21 approved rate under either a standard policy including wind
22 coverage or, if consistent with the insurer's underwriting
23 rules as filed with the department, a basic policy including
24 wind coverage, the risk is not eligible for any policy issued
25 by the association. If the risk is not able to obtain any such
26 offer, the risk is eligible for either a standard policy
27 including wind coverage or a basic policy including wind
28 coverage issued by the association; however, if the risk could
29 not be insured under a standard policy including wind coverage
30 regardless of market conditions, the risk shall be eligible
31 for a basic policy including wind coverage unless rejected

1 under subparagraph 8. The association shall determine the type
2 of policy to be provided on the basis of objective standards
3 specified in the underwriting manual and based on generally
4 accepted underwriting practices.

5 (I) If the risk accepts an offer of coverage through
6 the market assistance plan or an offer of coverage through a
7 mechanism established by the association before a policy is
8 issued to the risk by the association or during the first 30
9 days of coverage by the association, and the producing agent
10 who submitted the application to the plan or to the
11 association is not currently appointed by the insurer, the
12 insurer shall:

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

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

23
24 If the producing agent is unwilling or unable to accept
25 appointment, the new insurer shall pay the agent in accordance
26 with sub-sub-sub-subparagraph (A).

27 (II) When the association enters into a contractual
28 agreement for a take-out plan, the producing agent of record
29 of the association policy is entitled to retain any unearned
30 commission on the policy, and the insurer shall:

31

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

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

11
12 If the producing agent is unwilling or unable to accept
13 appointment, the new insurer shall pay the agent in accordance
14 with sub-sub-sub-paragraph (A).either appoint the agent to
15 service the risk or, if the insurer places the coverage
16 through a new agent, require the new agent who then writes the
17 policy to pay not less than 50 percent of the first year's
18 commission to the producing agent who submitted the
19 application to the plan or the association, except that if the
20 new agent is an employee or exclusive agent of the insurer,
21 the new agent shall pay a policy fee of \$50 to the producing
22 agent in lieu of splitting the commission.

23
24 If the risk is not able to obtain any such offer, the risk is
25 eligible for either a standard policy including wind coverage
26 or a basic policy including wind coverage issued by the
27 association; however, if the risk could not be insured under a
28 standard policy including wind coverage regardless of market
29 conditions, the risk shall be eligible for a basic policy
30 including wind coverage unless rejected under subparagraph 8.
31 The association shall determine the type of policy to be

1 ~~provided on the basis of objective standards specified in the~~
2 ~~underwriting manual and based on generally accepted~~
3 ~~underwriting practices.~~

4 b. With respect to commercial lines residential risks,
5 if the risk is offered coverage under a policy including wind
6 coverage from an authorized insurer at its approved rate, the
7 risk is not eligible for any policy issued by the association.
8 If the risk is not able to obtain any such offer, the risk is
9 eligible for a policy including wind coverage issued by the
10 association.

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

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

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

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

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

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

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

15
16 If the producing agent is unwilling or unable to accept
17 appointment, the new insurer shall pay the agent in accordance
18 with sub-sub-subparagraph (A). ~~either appoint the agent to~~
19 ~~service the risk or, if the insurer places the coverage~~
20 ~~through a new agent, require the new agent who then writes the~~
21 ~~policy to pay not less than 50 percent of the first year's~~
22 ~~commission to the producing agent who submitted the~~
23 ~~application to the plan, except that if the new agent is an~~
24 ~~employee or exclusive agent of the insurer, the new agent~~
25 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
26 ~~of splitting the commission.~~

27
28 ~~if the risk is not able to obtain any such offer, the risk is~~
29 ~~eligible for a policy including wind coverage issued by the~~
30 ~~association.~~

31

1 c. This subparagraph does not require the association
2 to provide wind coverage or hurricane coverage in any area in
3 which such coverage is available through the Florida Windstorm
4 Underwriting Association.

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

7 7. Must provide that if premium and investment income
8 attributable to a particular plan year are in excess of
9 projected losses and expenses of the plan attributable to that
10 year, such excess shall be held in surplus. Such surplus shall
11 be available to defray deficits as to future years and shall
12 be used for that purpose prior to assessing member insurers as
13 to any plan year.

14 8. Must provide objective criteria and procedures to
15 be uniformly applied for all applicants in determining whether
16 an individual risk is so hazardous as to be uninsurable. In
17 making this determination and in establishing the criteria and
18 procedures, the following shall be considered:

19 a. Whether the likelihood of a loss for the individual
20 risk is substantially higher than for other risks of the same
21 class; and

22 b. Whether the uncertainty associated with the
23 individual risk is such that an appropriate premium cannot be
24 determined.

25
26 The acceptance or rejection of a risk by the association shall
27 be construed as the private placement of insurance, and the
28 provisions of chapter 120 shall not apply.

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

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

17 11. The policies issued by the association must
18 provide that, if the association or the market assistance plan
19 obtains an offer from an authorized insurer to cover the risk
20 at its approved rates under either a standard policy including
21 wind coverage or a basic policy including wind coverage, the
22 risk is no longer eligible for coverage through the
23 association. However, if the risk is located in an area in
24 which Florida Windstorm Underwriting Association coverage is
25 available, such an offer of a standard or basic policy
26 terminates eligibility regardless of whether or not the offer
27 includes wind coverage. Upon termination of eligibility, the
28 association shall provide written notice to the policyholder
29 and agent of record stating that the association policy shall
30 be canceled as of 60 days after the date of the notice because
31 of the offer of coverage from an authorized insurer. Other

1 provisions of the insurance code relating to cancellation and
2 notice of cancellation do not apply to actions under this
3 subparagraph.

4 12. Association policies and applications must include
5 a notice that the association policy could, under this section
6 or s. 627.3511, be replaced with a policy issued by an
7 admitted insurer that does not provide coverage identical to
8 the coverage provided by the association. The notice shall
9 also specify that acceptance of association coverage creates a
10 conclusive presumption that the applicant or policyholder is
11 aware of this potential.

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

28 Section 3. Subsection (4) of section 627.3511, Florida
29 Statutes, is amended to read:

30 627.3511 Depopulation of Residential Property and
31 Casualty Joint Underwriting Association.--

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

7 (a) Pay to the producing agent of record of the
8 association policy, for the first year, an amount that is the
9 greater of ~~equal to~~ the insurer's usual and customary
10 commission for the type of policy written or a fee equal to
11 the ~~if the term of the association policy was in excess of 6~~
12 ~~months, or one-half of such usual and customary commission if~~
13 ~~the term of the association policy was 6 months or less; or~~

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

19
20 If the producing agent is unwilling or unable to accept
21 appointment, the new insurer shall pay the agent in accordance
22 with paragraph (a).~~The insurer need not take any further~~
23 ~~action if the offer is rejected. This subsection does not~~
24 ~~apply to any reciprocal interinsurance exchange, nonprofit~~
25 ~~federation, or any subsidiary or affiliate of such~~
26 ~~organization. This subsection does not apply if the agent is~~
27 ~~also the agent of record on the new coverage.~~The requirement
28 of this subsection that the producing agent of record is
29 entitled to retain the unearned commission on an association
30 policy does not apply to a policy for which coverage has been
31 provided in the association for 30 days or less or for which a

1 cancellation notice has been issued pursuant to s.
2 627.351(6)(c)11. during the first 30 days of coverage.

3 Section 4. Section 627.3517, Florida Statutes, is
4 created to read:

5 627.3517 Consumer choice.--No provision of s. 627.351,
6 s. 627.3511, or s. 627.3515 shall be construed to impair the
7 right of any insurance risk apportionment plan policyholder,
8 upon receipt of any keepout or takeout offer, to retain his or
9 her current agent, so long as that agent is duly licensed and
10 appointed by the insurance risk apportionment plan or
11 otherwise authorized to place business with the insurance risk
12 apportionment plan. This right shall not be cancelled,
13 suspended, impeded, abridged, or otherwise compromised by any
14 rule, plan of operation, or depopulation plan, whether through
15 keepout, takeout, midterm assumption, or any other means, of
16 any insurance risk apportionment plan or depopulation plan,
17 including, but not limited to, those described in s. 627.351,
18 s. 627.3511, or s. 627.3515. The department shall adopt any
19 rules necessary to cause any insurance risk apportionment plan
20 or market assistance plan under such sections to demonstrate
21 that the operations of the plan do not interfere with,
22 promote, or allow interference with the rights created under
23 this section. If the policyholder's current agent is unable or
24 unwilling to be appointed with the insurer making the takeout
25 or keepout offer, the policyholder shall not be disqualified
26 from participation in the appropriate insurance risk
27 apportionment plan because of an offer of coverage in the
28 voluntary market. An offer of full property insurance coverage
29 by the insurer currently insuring either the ex-wind or
30 wind-only coverage on the policy to which the offer applies
31 shall not be considered a takeout or keepout offer. Any rule,

1 plan of operation, or plan of depopulation, through keepout,
2 takeout, midterm assumption, or any other means, of any
3 property insurance risk apportionment plan under s. 627.351(2)
4 or s. 627.351(6) is subject to s. 627.351(2)(b), s.
5 627.351(6)(c), and s. 627.351(4).

6 Section 5. This act shall take effect upon becoming a
7 law.

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