

By Representative Brown

1 A bill to be entitled
2 An act relating to property insurance plans;
3 providing a short title; amending ss. 627.351
4 and 627.3511, F.S.; revising certain agent
5 commission payment and policy servicing
6 procedures and requirements; creating s.
7 627.3517, F.S.; preserving a policyholder's
8 right to select and maintain certain agents;
9 authorizing the Department of Insurance to
10 adopt rules to preserve such right; providing
11 application; providing an effective date.

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

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15 Section 1. This act may be cited as "The Insurance
16 Policyholder Protection Act of 2002."

17 Section 2. Paragraph (b) of subsection (2) and
18 paragraph (c) of subsection (6) of section 627.351, Florida
19 Statutes, are amended to read:

20 627.351 Insurance risk apportionment plans.--

21 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 to provide a means by which assessment liabilities may be
2 amortized over a period of years.

3 d.(I) When the deficit incurred in a particular
4 calendar year is 10 percent or less 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 deficit.

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

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

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

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

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

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

1 equalization surcharge shall be treated as failure to pay
2 premium.

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

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

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

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

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

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

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

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

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

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

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

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

30 (c) The plan of operation of the association:
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1 1. May provide for one or more designated insurers,
2 able and willing to provide policy and claims service, to act
3 on behalf of the association to provide such service. Each
4 licensed agent shall be entitled to indicate the order of
5 preference regarding who will service the business placed by
6 the agent. The association shall adhere to each agent's
7 preferences unless after consideration of other factors in
8 assigning agents, including, but not limited to, servicing
9 capacity and fee arrangements, the association has reason to
10 believe it is in the best interest of the association to make
11 a different assignment.

12 2. Must provide for adoption of residential property
13 and casualty insurance policy forms, which forms must be
14 approved by the department prior to use. The association
15 shall adopt the following policy forms:

16 a. Standard personal lines policy forms including wind
17 coverage, which are multiperil policies providing what is
18 generally considered to be full coverage of a residential
19 property similar to the coverage provided under an HO-2, HO-3,
20 HO-4, or HO-6 policy.

21 b. Standard personal lines policy forms without wind
22 coverage, which are the same as the policies described in
23 sub-subparagraph a. except that they do not include wind
24 coverage.

25 c. Basic personal lines policy forms including wind
26 coverage, which are policies similar to an HO-8 policy or a
27 dwelling fire policy that provide coverage meeting the
28 requirements of the secondary mortgage market, but which
29 coverage is more limited than the coverage under a standard
30 policy.

31

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

5 e. Commercial lines residential policy forms including
6 wind coverage that are generally similar to the basic perils
7 of full coverage obtainable for commercial residential
8 structures in the admitted voluntary market.

9 f. Commercial lines residential policy forms without
10 wind coverage, which are the same as the policies described in
11 sub-subparagraph e. except that they do not include wind
12 coverage.

13 3. May provide that the association may employ or
14 otherwise contract with individuals or other entities to
15 provide administrative or professional services that may be
16 appropriate to effectuate the plan. The association shall
17 have the power to borrow funds, by issuing bonds or by
18 incurring other indebtedness, and shall have other powers
19 reasonably necessary to effectuate the requirements of this
20 subsection. The association may issue bonds or incur other
21 indebtedness, or have bonds issued on its behalf by a unit of
22 local government pursuant to subparagraph (g)2., in the
23 absence of a hurricane or other weather-related event, upon a
24 determination by the association, subject to approval by the
25 department, that such action would enable it to efficiently
26 meet the financial obligations of the association and that
27 such financings are reasonably necessary to effectuate the
28 requirements of this subsection. The association is
29 authorized to take all actions needed to facilitate tax-free
30 status for any such bonds or indebtedness, including formation
31 of trusts or other affiliated entities. The association shall

1 have the authority to pledge assessments, projected recoveries
2 from the Florida Hurricane Catastrophe Fund, other reinsurance
3 recoverables, market equalization and other surcharges, and
4 other funds available to the association as security for bonds
5 or other indebtedness. In recognition of s. 10, Art. I of the
6 State Constitution, prohibiting the impairment of obligations
7 of contracts, it is the intent of the Legislature that no
8 action be taken whose purpose is to impair any bond indenture
9 or financing agreement or any revenue source committed by
10 contract to such bond or other indebtedness.

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

15 a. The insurance consumer advocate appointed under s.
16 627.0613.

17 b. Five members designated by the insurance industry.

18 c. Five consumer representatives appointed by the
19 Insurance Commissioner. Two of the consumer representatives
20 must, at the time of appointment, be holders of policies
21 issued by the association, who are selected with consideration
22 given to reflecting the geographic balance of association
23 policyholders. Two of the consumer members must be individuals
24 who are minority persons as defined in s. 288.703(3). One of
25 the consumer members shall have expertise in the field of
26 mortgage lending.

27 d. Two representatives of the insurance industry
28 appointed by the Insurance Commissioner. Of the two insurance
29 industry representatives appointed by the Insurance
30 Commissioner, at least one must be an individual who is a
31 minority person as defined in s. 288.703(3).

1
2 Any board member may be disapproved or removed and replaced by
3 the commissioner at any time for cause. All board members,
4 including the chair, must be appointed to serve for 3-year
5 terms beginning annually on a date designated by the plan.

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

8 a. With respect to personal lines residential risks,
9 if the risk is offered coverage from an authorized insurer at
10 the insurer's approved rate under either a standard policy
11 including wind coverage or, if consistent with the insurer's
12 underwriting rules as filed with the department, a basic
13 policy including wind coverage, the risk is not eligible for
14 any policy issued by the association. If the risk is not able
15 to obtain any such offer, the risk is eligible for either a
16 standard policy including wind coverage or a basic policy
17 including wind coverage issued by the association; however, if
18 the risk could not be insured under a standard policy
19 including wind coverage regardless of market conditions, the
20 risk shall be eligible for a basic policy including wind
21 coverage unless rejected under subparagraph 8. The association
22 shall determine the type of policy to be provided on the basis
23 of objective standards specified in the underwriting manual
24 and based on generally accepted underwriting practices.

25 (I) If the risk accepts an offer of coverage through
26 the market assistance plan or an offer of coverage through a
27 mechanism established by the association before a policy is
28 issued to the risk by the association or during the first 30
29 days of coverage by the association, and the producing agent
30 who submitted the application to the plan or to the

31

1 association is not currently appointed by the insurer, the
2 insurer shall:

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

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

13
14 If the new or producing agent is unwilling or unable to accept
15 appointment, the new insurer shall pay the agent in accordance
16 with sub-sub-sub-subparagraph (A).

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

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

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

31

1 If the new or producing agent is unwilling or unable to accept
2 appointment, the new insurer shall pay the agent in accordance
3 with sub-sub-sub-subparagraph (A).~~either appoint the agent to~~
4 ~~service the risk or, if the insurer places the coverage~~
5 ~~through a new agent, require the new agent who then writes the~~
6 ~~policy to pay not less than 50 percent of the first year's~~
7 ~~commission to the producing agent who submitted the~~
8 ~~application to the plan or the association, except that if the~~
9 ~~new agent is an employee or exclusive agent of the insurer,~~
10 ~~the new agent shall pay a policy fee of \$50 to the producing~~
11 ~~agent in lieu of splitting the commission.~~

12
13 ~~If the risk is not able to obtain any such offer, the risk is~~
14 ~~eligible for either a standard policy including wind coverage~~
15 ~~or a basic policy including wind coverage issued by the~~
16 ~~association; however, if the risk could not be insured under a~~
17 ~~standard policy including wind coverage regardless of market~~
18 ~~conditions, the risk shall be eligible for a basic policy~~
19 ~~including wind coverage unless rejected under subparagraph 8.~~
20 ~~The association shall determine the type of policy to be~~
21 ~~provided on the basis of objective standards specified in the~~
22 ~~underwriting manual and based on generally accepted~~
23 ~~underwriting practices.~~

24 b. With respect to commercial lines residential risks,
25 if the risk is offered coverage under a policy including wind
26 coverage from an authorized insurer at its approved rate, the
27 risk is not eligible for any policy issued by the association.
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 (I) If the risk accepts an offer of coverage through
2 the market assistance plan or an offer of coverage through a
3 mechanism established by the association before a policy is
4 issued to the risk by the association ~~or during the first 30~~
5 days of coverage by the association, and the producing agent
6 who submitted the application to the ~~plan or the~~ association
7 is not currently appointed by the insurer, the insurer shall:

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

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

18
19 If the new or producing agent is unwilling or unable to accept
20 appointment, the new insurer shall pay the agent in accordance
21 with sub-sub-sub-paragraph (A).

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

26 (A) Pay to the producing agent of record of the
27 association policy, for the first year, an amount that is the
28 greater of the insurer's usual and customary commission for
29 the type of policy written or a fee equal to the usual and
30 customary commission of the association; or

31

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

6
7 If the new or producing agent is unwilling or unable to accept
8 appointment, the new insurer shall pay the agent in accordance
9 with sub-sub-sub-subparagraph (A).~~either appoint the agent to~~
10 ~~service the risk or, if the insurer places the coverage~~
11 ~~through a new agent, require the new agent who then writes the~~
12 ~~policy to pay not less than 50 percent of the first year's~~
13 ~~commission to the producing agent who submitted the~~
14 ~~application to the plan, except that if the new agent is an~~
15 ~~employee or exclusive agent of the insurer, the new agent~~
16 ~~shall pay a policy fee of \$50 to the producing agent in lieu~~
17 ~~of splitting the commission.~~

18
19 ~~If the risk is not able to obtain any such offer, the risk is~~
20 ~~eligible for a policy including wind coverage issued by the~~
21 ~~association.~~

22 c. This subparagraph does not require the association
23 to provide wind coverage or hurricane coverage in any area in
24 which such coverage is available through the Florida Windstorm
25 Underwriting Association.

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

28 7. Must provide that if premium and investment income
29 attributable to a particular plan year are in excess of
30 projected losses and expenses of the plan attributable to that
31 year, such excess shall be held in surplus. Such surplus shall

1 be available to defray deficits as to future years and shall
2 be used for that purpose prior to assessing member insurers as
3 to any plan year.

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

9 a. Whether the likelihood of a loss for the individual
10 risk is substantially higher than for other risks of the same
11 class; and

12 b. Whether the uncertainty associated with the
13 individual risk is such that an appropriate premium cannot be
14 determined.

15
16 The acceptance or rejection of a risk by the association shall
17 be construed as the private placement of insurance, and the
18 provisions of chapter 120 shall not apply.

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

22 10. Must provide that in the event of regular deficit
23 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
24 (b)3.b., or by the Florida Windstorm Underwriting Association
25 under sub-sub-subparagraph (2)(b)2.d.(I) or
26 sub-sub-subparagraph (2)(b)2.d.(II), the association shall
27 levy upon association policyholders in its next rate filing,
28 or by a separate rate filing solely for this purpose, a market
29 equalization surcharge in a percentage equal to the total
30 amount of such regular assessments divided by the aggregate
31 statewide direct written premium for subject lines of business

1 for member insurers for the prior calendar year. Market
2 equalization surcharges under this subparagraph are not
3 considered premium and are not subject to commissions, fees,
4 or premium taxes; however, failure to pay a market
5 equalization surcharge shall be treated as failure to pay
6 premium.

7 11. The policies issued by the association must
8 provide that, if the association or the market assistance plan
9 obtains an offer from an authorized insurer to cover the risk
10 at its approved rates under either a standard policy including
11 wind coverage or a basic policy including wind coverage, the
12 risk is no longer eligible for coverage through the
13 association. However, if the risk is located in an area in
14 which Florida Windstorm Underwriting Association coverage is
15 available, such an offer of a standard or basic policy
16 terminates eligibility regardless of whether or not the offer
17 includes wind coverage. Upon termination of eligibility, the
18 association shall provide written notice to the policyholder
19 and agent of record stating that the association policy shall
20 be canceled as of 60 days after the date of the notice because
21 of the offer of coverage from an authorized insurer. Other
22 provisions of the insurance code relating to cancellation and
23 notice of cancellation do not apply to actions under this
24 subparagraph.

25 12. Association policies and applications must include
26 a notice that the association policy could, under this section
27 or s. 627.3511, be replaced with a policy issued by an
28 admitted insurer that does not provide coverage identical to
29 the coverage provided by the association. The notice shall
30 also specify that acceptance of association coverage creates a
31

1 conclusive presumption that the applicant or policyholder is
2 aware of this potential.

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

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

21 627.3511 Depopulation of Residential Property and
22 Casualty Joint Underwriting Association.--

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

29 (a) Pay to the producing agent of record of the
30 association policy, for the first year, an amount that is the
31 greater of ~~equal to~~ the insurer's usual and customary

1 commission for the type of policy written or a fee equal to
2 the if the term of the association policy was in excess of 6
3 months, or one-half of such usual and customary commission if
4 the term of the association policy was 6 months or less; or

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

10

11 If the new or producing agent is unwilling or unable to accept
12 appointment, the new insurer shall pay the agent in accordance
13 with paragraph (a).The insurer need not take any further
14 action if the offer is rejected. This subsection does not
15 apply to any reciprocal interinsurance exchange, nonprofit
16 federation, or any subsidiary or affiliate of such
17 organization. This subsection does not apply if the agent is
18 also the agent of record on the new coverage.The requirement
19 of this subsection that the producing agent of record is
20 entitled to retain the unearned commission on an association
21 policy does not apply to a policy for which coverage has been
22 provided in the association for 30 days or less or for which a
23 cancellation notice has been issued pursuant to s.
24 627.351(6)(c)11. during the first 30 days of coverage.

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

27 627.3517 Consumer choice.--No provision of this part
28 shall be construed to impair the right of any residual market
29 policyholder to select and maintain an agent of his or her own
30 choosing. This right shall not be canceled, suspended,
31 impeded, abridged, or otherwise compromised by any rule, plan

1 of operation, or depopulation plan, whether through keepout,
2 takeout, midterm assumption, or any other means, of any
3 insurance risk apportionment plan or depopulation plan,
4 including, but not limited to, those described in s. 627.351,
5 s. 627.3511, or s. 627.3515. The department shall adopt any
6 rules necessary to cause any insurance risk apportionment plan
7 or market assistance plan under this part to demonstrate that
8 the operations of the plan do not interfere with, promote, or
9 allow interference with the rights created under this section.
10 If the policyholder chooses an agent who is unable or
11 unwilling to be appointed with a particular carrier, the
12 policyholder shall not be disqualified from participation in
13 the appropriate residual market because of an offer of
14 coverage in the voluntary market. Any rule, plan of
15 operation, or plan of depopulation, through keepout, takeout,
16 midterm assumption, or any other means, of any insurance risk
17 apportionment plan is subject to ss. 627.351(2)(b) and
18 627.3511(4).

19 Section 5. This act shall take effect upon becoming a
20 law.

21 *****

22
23 HOUSE SUMMARY

24 Creates "The Insurance Policyholder Protection Act of
25 2002." Revises agent commission payment and policy
26 servicing procedures and requirements for agents securing
27 coverage for risks under a market assistance program or
28 plan of the Florida Windstorm Underwriting Association or
29 the Residential Property and Casualty Joint Underwriting
30 Association. Preserves a policyholder's right to select
31 and maintain an agent. See bill for details.