

By the Committee on Insurance and Representatives Brown,  
Wiles, Melvin, Kallinger, Kravitz and Rubio

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; adding an area  
7           eligible for coverage by the Florida Windstorm  
8           Underwriting Association; creating s. 627.3517,  
9           F.S.; preserving a policyholder's right to  
10          select and maintain certain agents; authorizing  
11          the Department of Insurance to adopt rules to  
12          preserve such right; providing application;  
13          providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

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

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

22           627.351 Insurance risk apportionment plans.--

23           (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

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

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

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

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

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

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

1 in this state. Nothing in the 1997 amendments to this  
2 paragraph terminates the existing board or the terms of any  
3 members of the board.

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

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

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

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

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

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

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

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:

31

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 s. 627.3517,the  
2 policies issued by the association must provide that if the  
3 association obtains an offer from an authorized insurer to  
4 cover the risk at its approved rates under either a standard  
5 policy including wind coverage or, if consistent with the  
6 insurer's underwriting rules as filed with the department, a  
7 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.

30  
31

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

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 s. 627.3517, with respect to personal  
19 lines residential risks, if the risk is offered coverage from  
20 an authorized insurer at the insurer's approved rate under  
21 either a standard policy including wind coverage or, if  
22 consistent with the insurer's underwriting rules as filed with  
23 the department, a basic policy including wind coverage, the  
24 risk is not eligible for any policy issued by the association.  
25 If the risk is not able to obtain any such offer, the risk is  
26 eligible for either a standard policy including wind coverage  
27 or a basic policy including wind coverage issued by the  
28 association; however, if the risk could not be insured under a  
29 standard policy including wind coverage regardless of market  
30 conditions, the risk shall be eligible for a basic policy  
31 including wind coverage unless rejected under subparagraph 8.

1 The association shall determine the type of policy to be  
2 provided on the basis of objective standards specified in the  
3 underwriting manual and based on generally accepted  
4 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-subparagraph (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-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. Any rule, plan of operation, or plan of  
29 depopulation, through keepout, takeout, midterm assumption, or  
30 any other means, of any property insurance risk apportionment  
31



1 plan under s. 627.351(2) or s. 627.351(6) is subject to ss.  
2 627.351(2)(b), 627.351(6)(c), and 627.3511(4).

3           Section 5. This act shall take effect upon becoming a  
4 law.

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