

By the Committee on Banking and Insurance; and Senator Fasano

311-2438-04

1                                   A bill to be entitled  
2           An act relating to insurance; amending s.  
3           20.121, F.S.; requiring the Division of  
4           Consumer Services of the Department of  
5           Financial Services to designate an employee as  
6           primary contact for consumers on issues  
7           involving sinkholes; amending s. 501.137, F.S.;  
8           requiring an insurer to reinstate, under  
9           certain circumstances, an insurance policy that  
10          is cancelled due to failure of the lender to  
11          pay a premium for which sufficient escrow funds  
12          are on deposit; requiring that the lender  
13          reimburse the property owner for any penalties  
14          or fees paid for purposes of reinstating the  
15          policy; requiring the lender to pay the  
16          increased cost of insurance premiums for a  
17          specified period of time under certain  
18          conditions; amending s. 624.4622, F.S.;  
19          providing that a local government  
20          self-insurance fund comply with specified  
21          provisions; amending s. 625.081, F.S.;  
22          providing an exception; amending s. 625.121,  
23          F.S.; providing for valuation of life insurance  
24          policies; amending s. 626.321, F.S.; limiting  
25          the types of business that may be transacted by  
26          personal lines agents; amending s. 627.476,  
27          F.S.; authorizing the use of certain mortality  
28          tables for purposes of the Standard  
29          Nonforfeiture Law for Life Insurance; creating  
30          s. 625.9743, F.S., relating to claim settlement  
31          practices for motor vehicle insurance;

1           prescribing standards to be followed by  
2           insurers; creating s. 626.9744, F.S., relating  
3           to claim settlement practices for homeowners'  
4           insurance; prescribing standards to be followed  
5           by insurers; amending s. 627.4091, F.S.;  
6           providing additional disclosure requirements  
7           with respect to a refusal to insure; amending  
8           s. 627.4133, F.S.; requiring property insurers  
9           to reinstate a canceled policy as required by  
10          s. 501.137, F.S.; restricting the use of  
11          certain claims as a cause for cancellation or  
12          nonrenewal; amending s. 627.7015, F.S.;  
13          providing that arbitration clauses do not  
14          preclude an insured from using the property  
15          claim mediation program; creating 627.7077,  
16          F.S.; providing for a feasibility study for a  
17          proposed Florida Sinkhole Insurance Facility;  
18          amending s. 627.838, F.S.; deleting a filing  
19          fee; amending s. 627.848, F.S.; specifying  
20          provisions for cancellation of insurance  
21          contracts; amending s. 627.849, F.S., to  
22          conform to the elimination of a filing fee;  
23          repealing s. 625.131, F.S., relating to credit  
24          life and disability policies; providing for  
25          construction of the act; providing effective  
26          dates.

27  
28       Be It Enacted by the Legislature of the State of Florida:

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30               Section 1. Paragraph (h) of subsection (2) of section  
31       20.121, Florida Statutes, is amended to read:

1           20.121 Department of Financial Services.--There is  
2 created a Department of Financial Services.

3           (2) DIVISIONS.--The Department of Financial Services  
4 shall consist of the following divisions:

5           (h) The Division of Consumer Services, which shall  
6 include a Bureau of Funeral and Cemetery Services.

7           1. The Division of Consumer Services shall perform the  
8 following functions concerning products or services regulated  
9 by the Department of Financial Services or by either office of  
10 the Financial Services Commission:

11           a. Receive inquiries and complaints from consumers.†

12           b. Prepare and disseminate such information as the  
13 department deems appropriate to inform or assist consumers.†

14           c. Provide direct assistance and advocacy for  
15 consumers who request such assistance or advocacy.†

16           d. With respect to apparent or potential violations of  
17 law or applicable rules by a person or entity licensed by the  
18 department or by either office of the commission, report such  
19 apparent or potential violation to the appropriate division of  
20 the department or office of the commission, which may take  
21 such further action as it deems appropriate.

22           e. Designate an employee of the division as primary  
23 contact for consumers on issues relating to sinkholes.

24           2. Any person licensed or issued a certificate of  
25 authority by the department or by the Office of Insurance  
26 Regulation shall respond, in writing, to the Division of  
27 Consumer Services within 20 days after receipt of a written  
28 request for information from the division concerning a  
29 consumer complaint. The response must address the issues and  
30 allegations raised in this complaint. The division may, in its  
31 discretion, impose an administrative penalty for failure to

1 comply with this subparagraph in an amount up to \$2,500 per  
2 violation upon any entity licensed by the department or the  
3 Office of Insurance Regulation and \$250 for the first  
4 violation, \$500 for the second violation and up to \$1,000 per  
5 violation thereafter upon any individual licensed by the  
6 department or the Office of Insurance Regulation.

7           3. The department may adopt rules to implement the  
8 provisions of this paragraph.

9           4. The powers, duties, and responsibilities expressed  
10 or granted in this paragraph shall not limit the powers,  
11 duties, and responsibilities of the Department of Financial  
12 Services, the Financial Services Commission, the Office of  
13 Insurance Regulation, or the Office of Financial Regulation  
14 set forth elsewhere in the Florida Statutes.

15           Section 2. Section 501.137, Florida Statutes, is  
16 amended to read:

17           501.137 Mortgage lenders; tax and insurance payments  
18 from escrow accounts; duties.--

19           (1) Every lender of money, whether a natural person or  
20 an artificial entity, whose loans are secured by a mortgage on  
21 real estate located within the state and who receives funds  
22 incidental thereto or in connection therewith for the payment  
23 of property taxes or hazard insurance premiums when the ~~such~~  
24 funds are held in escrow by or on behalf of the lender, shall  
25 promptly pay the ~~such~~ taxes or insurance premiums when the  
26 ~~such~~ taxes or premiums become due and adequate escrow funds  
27 are deposited, so that the maximum tax discount available may  
28 be obtained with regard to the taxable property and so that  
29 insurance coverage on the property does not lapse.

30           (2) If an escrow account for the ~~such~~ taxes or  
31 insurance premiums is deficient, the lender shall notify the

1 property owner within 15 days after the lender receives the  
2 notification of taxes due from the county tax collector or  
3 receives the notification from the insurer that a premium is  
4 due.

5 (3)(a) If the lender, as a result of neglect, fails to  
6 pay any tax or insurance premium when the tax or premium is  
7 due and there are sufficient escrow funds on deposit to pay  
8 the tax or premium, and if the property owner suffers a loss  
9 as a result of this ~~such~~ failure, then the lender is ~~will be~~  
10 liable for the ~~such~~ loss; except, however, that with respect  
11 to any loss which would otherwise have been insured, the  
12 extent of the ~~such~~ liability shall not exceed the coverage  
13 limits of any insurance policy which has lapsed.

14 (b) If the lender violates paragraph (a) and the  
15 premium payment is not more than 90 days overdue, the insurer  
16 shall reinstate the insurance policy, retroactive to the date  
17 of cancellation, and the lender shall reimburse the property  
18 owner for any penalty or fees imposed by the insurer and paid  
19 by the property owner for purposes of reinstating the policy.

20 (c) If the lender violates paragraph (a) and the  
21 premium payment is more than 90 days overdue or if the insurer  
22 refuses to reinstate the insurance policy, the lender shall  
23 pay the difference between the cost of the previous insurance  
24 policy and a new, comparable insurance policy for a period of  
25 2 years.

26 (4) At the expiration of the annual accounting period,  
27 the lender shall issue to the property owner an annual  
28 statement of the escrow account.

29 Section 3. Subsections (3) and (4) are added to  
30 section 624.4622, Florida Statutes, to read:

31 624.4622 Local government self-insurance funds.--

1           (3) Notwithstanding the provisions of subsection (2),  
2 a local government self-insurance fund created under this  
3 section after October 1, 2004, shall initially be organized as  
4 a commercial self-insurance fund under s. 624.462 or a group  
5 self-insurance fund under s. 624.4621 and, for the first 5  
6 years of its existence, shall be subject to all the  
7 requirements applied to commercial self-insurance funds or to  
8 group self-insurance funds, respectively.

9           (4)(a) A local government self-insurance fund formed  
10 after January 1, 2005, shall, for its first 5 fiscal years,  
11 file with the office full and true statements of its financial  
12 condition, transactions, and affairs. An annual statement  
13 covering the preceding fiscal year shall be filed within 60  
14 days after the end of the fund's fiscal year and quarterly  
15 statements shall be filed within 45 days after each such date.  
16 The office may, for good cause, grant an extension of time for  
17 filing an annual or quarterly statement. The statements shall  
18 contain information generally included in insurers' financial  
19 statements prepared in accordance with generally accepted  
20 insurance accounting principles and practices and in a form  
21 generally used by insurers for financial statements, sworn to  
22 by at least two executive officers of the self-insurance fund.  
23 The form for financial statements shall be the form currently  
24 approved by the National Association of Insurance  
25 Commissioners for use by property and casualty insurers.

26           (b) Each annual statement shall contain a statement of  
27 opinion on loss and loss adjustment expense reserves made by a  
28 member of the American Academy of Actuaries. Workpapers in  
29 support of the statement of opinion must be provided to the  
30 office upon request.

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1           Section 4. Section 625.081, Florida Statutes, is  
2 amended to read:

3           625.081 Reserve for health insurance.--For all health  
4 insurance policies, the insurer shall maintain an active life  
5 reserve which places a sound value on the insurer's  
6 liabilities under such policies; is not less than the reserve  
7 according to appropriate standards set forth in rules issued  
8 by the commission; and, with the exception of credit  
9 disability insurance, in no event, is less in the aggregate  
10 than the pro rata gross unearned premiums for such policies.

11           Section 5. Paragraphs (a), (e), and (f) of subsection  
12 (5) and subsection (13) of section 625.121, Florida Statutes,  
13 are amended, and paragraphs (k) and (l) are added to  
14 subsection (5) of that section, to read:

15           625.121 Standard Valuation Law; life insurance.--  
16           (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND  
17 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD  
18 NONFORFEITURE LAW.--Except as otherwise provided in paragraph  
19 (h) and subsections (6), (11), and (14), the minimum standard  
20 for the valuation of all such policies and contracts issued on  
21 or after the operative date of s. 627.476 (Standard  
22 Nonforfeiture Law for Life Insurance) shall be the  
23 commissioners' reserve valuation method defined in subsections  
24 (7), (11), and (14); 5 percent interest for group annuity and  
25 pure endowment contracts and 3.5 percent interest for all  
26 other such policies and contracts, or in the case of life  
27 insurance policies and contracts, other than annuity and pure  
28 endowment contracts, issued on or after July 1, 1973, 4  
29 percent interest for such policies issued prior to October 1,  
30 1979, and 4.5 percent interest for such policies issued on or  
31 after October 1, 1979; and the following tables:

1 (a) For all ordinary policies of life insurance issued  
2 on the standard basis, excluding any disability and accidental  
3 death benefits in such policies:

4 1. For policies issued prior to the operative date of  
5 s. 627.476(9), the commissioners' 1958 Standard Ordinary  
6 Mortality Table; except that, for any category of such  
7 policies issued on female risks, modified net premiums and  
8 present values, referred to in subsection (7), may be  
9 calculated according to an age not more than 6 years younger  
10 than the actual age of the insured. ~~and~~

11 2. For policies issued on or after the operative date  
12 of s. 627.476(9), the commissioners' 1980 Standard Ordinary  
13 Mortality Table or, at the election of the insurer for any one  
14 or more specified plans of life insurance, the commissioners'  
15 1980 Standard Ordinary Mortality Table with Ten-Year Select  
16 Mortality Factors.

17 3. For policies issued on or after July 1, 2004,  
18 ordinary mortality tables, adopted after 1980 by the National  
19 Association of Insurance Commissioners, adopted by rule by the  
20 commission for use in determining the minimum standard of  
21 valuation for such policies.

22 (e) For total and permanent disability benefits in or  
23 supplementary to ordinary policies or contracts:

24 1. For policies or contracts issued on or after  
25 January 1, 1966, the tables of period 2 disablement rates and  
26 the 1930 to 1950 termination rates of the 1952 disability  
27 study of the Society of Actuaries, with due regard to the type  
28 of benefit;

29 2. For policies or contracts issued on or after  
30 January 1, 1961, and prior to January 1, 1966, either those  
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1 tables or, at the option of the insurer, the class three  
2 disability table (1926); ~~and~~

3 3. For policies issued prior to January 1, 1961, the  
4 class three disability table (1926); ~~and-~~

5 4. For policies or contracts issued on or after July  
6 1, 2004, tables of disablement rates and termination rates  
7 adopted after 1980 by the National Association of Insurance  
8 Commissioners, adopted by rule by the commission for use in  
9 determining the minimum standard of valuation for those  
10 policies or contracts.

11  
12 Any such table for active lives shall be combined with a  
13 mortality table permitted for calculating the reserves for  
14 life insurance policies.

15 (f) For accidental death benefits in or supplementary  
16 to policies:

17 1. For policies issued on or after January 1, 1966,  
18 the 1959 Accidental Death Benefits Table;

19 2. For policies issued on or after January 1, 1961,  
20 and prior to January 1, 1966, either that table or, at the  
21 option of the insurer, the Intercompany Double Indemnity  
22 Mortality Table; ~~and~~

23 3. For policies issued prior to January 1, 1961, the  
24 Intercompany Double Indemnity Mortality Table; ~~and-~~

25 4. For policies issued on or after July 1, 2004,  
26 tables of accidental death benefits adopted after 1980 by the  
27 National Association of Insurance Commissioners, adopted by  
28 rule by the commission for use in determining the minimum  
29 standard of valuation for those policies.

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1 Either table shall be combined with a mortality table  
2 permitted for calculating the reserves for life insurance  
3 policies.

4 (k) For individual annuity and pure endowment  
5 contracts issued on or after July 1, 2004, excluding any  
6 disability and accidental death benefits purchased under those  
7 contracts, individual annuity mortality tables adopted after  
8 1980 by the National Association of Insurance Commissioners,  
9 adopted by rule by the commission for use in determining the  
10 minimum standard of valuation for those contracts.

11 (l) For all annuities and pure endowments purchased on  
12 or after July 1, 2004, under group annuity and pure endowment  
13 contracts, excluding any disability and accidental death  
14 benefits purchased under those contracts, group annuity  
15 mortality tables adopted after 1980 by the National  
16 Association of Insurance Commissioners, adopted by rule by the  
17 commission for use in determining the minimum standard of  
18 valuation for those contracts.

19 (13) ~~APPLICABILITY TO CREDIT LIFE AND DISABILITY~~  
20 ~~INSURANCE POLICIES.--~~

21 (a) For policies issued prior to January 1, 2004:

22 1. The minimum reserve for single-premium credit  
23 disability insurance, monthly premium credit life insurance  
24 and monthly premium credit disability insurance shall be the  
25 unearned gross premium.

26 2. As to single-premium credit life insurance  
27 policies, the insurer shall establish and maintain reserves  
28 that are not less than the value, at the valuation date, of  
29 the risk for the unexpired portion of the period for which the  
30 premium has been paid as computed on the basis of the  
31 commissioners' 1980 Standard Ordinary Mortality Table and 3.5

1 percent interest. At the discretion of the office, the insurer  
2 may make a reasonable assumption as to the ages at which net  
3 premiums are to be determined. In lieu of the foregoing basis,  
4 reserves based upon unearned gross premiums may be used at the  
5 option of the insurer.

6 (b) For policies issued on or after January 1, 2004:

7 1. The minimum reserve for single-premium credit  
8 disability insurance shall be either:

9 a. The unearned gross premium, or

10 b. Based upon a morbidity table that is adopted by the  
11 National Association of Insurance Commissioners and is  
12 specified in a rule the commission adopts pursuant to  
13 subsection (14).

14 2. The minimum reserve for monthly premium credit  
15 disability insurance shall be the unearned gross premium.

16 3. The minimum reserve for monthly premium credit life  
17 insurance shall be the unearned gross premium.

18 4. As to single-premium credit life insurance  
19 policies, the insurer shall establish and maintain reserves  
20 that are not less than the value, at the valuation date, of  
21 the risk for the unexpired portion of the period for which the  
22 premium has been paid as computed on the basis of the  
23 commissioners' 1980 Standard Ordinary Mortality Table or any  
24 ordinary mortality table, adopted after 1980 by the National  
25 Association of Insurance Commissioners, that is approved by  
26 rule adopted by the commission for use in determining the  
27 minimum standard of valuation for such policies; and an  
28 interest rate determined in accordance with subsection (6). At  
29 the discretion of the office, the insurer may make a  
30 reasonable assumption as to the ages at which net premiums are  
31 to be determined. In lieu of the foregoing basis, reserves

1 based upon unearned gross premiums may be used at the option  
2 of the insurer.~~This section does not apply as to those credit~~  
3 ~~life insurance policies for which reserves are computed and~~  
4 ~~maintained as required under s. 625.131.~~

5 Section 6. Paragraph (d) of subsection (1) and  
6 paragraph (a) of subsection (2) of section 626.321, Florida  
7 Statutes, are amended to read:

8 626.321 Limited licenses.--

9 (1) The department shall issue to a qualified  
10 individual, or a qualified individual or entity under  
11 paragraphs (c), (d), (e), and (i), a license as agent  
12 authorized to transact a limited class of business in any of  
13 the following categories:

14 (d) Baggage and motor vehicle excess liability  
15 insurance.--

16 1. License covering only insurance of personal effects  
17 except as provided in subparagraph 2. The license may be  
18 issued only:

19 a. To a full-time salaried employee of a common  
20 carrier or a full-time salaried employee or owner of a  
21 transportation ticket agency, which person is engaged in the  
22 sale or handling of transportation of baggage and personal  
23 effects of travelers, and may authorize the sale of such  
24 insurance only in connection with such transportation; or

25 b. To the full-time salaried employee of a licensed  
26 general lines agent, ~~a full-time salaried employee of a~~  
27 ~~business which offers motor vehicles for rent or lease, or to~~  
28 ~~a business office of a business entity that~~ which offers motor  
29 vehicles for rent or lease if insurance sales activities  
30 authorized by the license are in connection with and  
31 incidental to the rental of a motor vehicle limited to

1 ~~full-time salaried employees.~~ An entity applying for a license  
2 under this subsection:

3 (I) Is required to submit only one application for a  
4 license under s. 626.171. The requirements of s. 626.171(5)  
5 shall apply only to the officers and directors of the entity  
6 submitting the application.

7 (II) Is required to obtain a license for each office,  
8 branch office, or place of business making use of the entity's  
9 business name by applying to the department for the license on  
10 a simplified application form developed by rule of the  
11 department for this purpose.

12 (III) Is required to pay the applicable fees for a  
13 license as prescribed in s. 624.501, be appointed under s.  
14 626.112, and pay the prescribed appointment fee under s.  
15 624.501. A licensed and appointed entity shall be directly  
16 responsible and accountable for all acts of the licensee's  
17 employees.

18  
19 The purchaser of baggage insurance shall be provided written  
20 information disclosing that the insured's homeowner's policy  
21 may provide coverage for loss of personal effects and that the  
22 purchase of such insurance is not required in connection with  
23 the purchase of tickets or in connection with the lease or  
24 rental of a motor vehicle.

25 2. A business entity that ~~office licensed pursuant to~~  
26 ~~subparagraph 1., or a person licensed pursuant to subparagraph~~  
27 ~~1. who is a full-time salaried employee of a business which~~  
28 offers motor vehicles for rent or lease, may include lessees  
29 under a master contract providing coverage to the lessor or  
30 may transact excess motor vehicle liability insurance  
31 providing coverage in excess of the standard liability limits

1 provided by the lessor in its lease to a person renting or  
2 leasing a motor vehicle from the licensee's employer for  
3 liability arising in connection with the negligent operation  
4 of the leased or rented motor vehicle, provided that the lease  
5 or rental agreement is for not more than 30 days; that the  
6 lessee is not provided coverage for more than 30 consecutive  
7 days per lease period, and, if the lease is extended beyond 30  
8 days, the coverage may be extended one time only for a period  
9 not to exceed an additional 30 days; that the lessee is given  
10 written notice that his or her personal insurance policy  
11 providing coverage on an owned motor vehicle may provide  
12 additional excess coverage; and that the purchase of the  
13 insurance is not required in connection with the lease or  
14 rental of a motor vehicle. The excess liability insurance may  
15 be provided to the lessee as an additional insured on a policy  
16 issued to the licensee's employer.

17         3. A business entity that ~~office licensed pursuant to~~  
18 ~~subparagraph 1., or a person licensed pursuant to subparagraph~~  
19 ~~1. who is a full-time salaried employee of a business which~~  
20 offers motor vehicles for rent or lease, may, as an agent of  
21 an insurer, transact insurance that provides coverage for the  
22 liability of the lessee to the lessor for damage to the leased  
23 or rented motor vehicle if:

24             a. The lease or rental agreement is for not more than  
25 30 days; or the lessee is not provided coverage for more than  
26 30 consecutive days per lease period, but, if the lease is  
27 extended beyond 30 days, the coverage may be extended one time  
28 only for a period not to exceed an additional 30 days;

29             b. The lessee is given written notice that his or her  
30 personal insurance policy that provides coverage on an owned  
31

1 motor vehicle may provide such coverage with or without a  
2 deductible; and

3 c. The purchase of the insurance is not required in  
4 connection with the lease or rental of a motor vehicle.

5 (2) An entity applying for a license under this  
6 section is required to:

7 (a) Submit only one application for a license under s.  
8 626.171. The requirements of s. 626.171(4)~~s. 626.171(5)~~ shall  
9 only apply to the officers and directors of the entity  
10 submitting the application.

11 Section 7. Paragraph (h) of subsection (9) of section  
12 627.476, Florida Statutes, is amended to read:

13 627.476 Standard Nonforfeiture Law for Life  
14 Insurance.--

15 (9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT  
16 VALUES FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS  
17 SUBSECTION.--

18 (h) All adjusted premiums and present values referred  
19 to in this section shall for all policies of ordinary  
20 insurance be calculated on the basis of the Commissioners'  
21 1980 Standard Ordinary Mortality Table or, at the election of  
22 the insurer for any one or more specified plans of life  
23 insurance, the Commissioners' 1980 Standard Ordinary Mortality  
24 Table with Ten-Year Select Mortality Factors; shall for all  
25 policies of industrial insurance be calculated on the basis of  
26 the Commissioners' 1961 Standard Industrial Mortality Table;  
27 and shall for all policies issued in a particular calendar  
28 year be calculated on the basis of a rate of interest not  
29 exceeding the nonforfeiture interest rate as defined in this  
30 subsection for policies issued in that calendar year. However:  
31

1           1. At the option of the insurer, calculations for all  
2 policies issued in a particular calendar year may be made on  
3 the basis of a rate of interest not exceeding the  
4 nonforfeiture interest rate, as defined in this subsection,  
5 for policies issued in the immediately preceding calendar  
6 year.

7           2. Under any paid-up nonforfeiture benefit, including  
8 any paid-up dividend additions, any cash surrender value  
9 available, whether or not required by subsection (2), shall be  
10 calculated on the basis of the mortality table and rate of  
11 interest used in determining the amount of such paid-up  
12 nonforfeiture benefit and paid-up dividend additions, if any.

13           3. An insurer may calculate the amount of any  
14 guaranteed paid-up nonforfeiture benefit, including any  
15 paid-up additions under the policy, on the basis of an  
16 interest rate no lower than that specified in the policy for  
17 calculating cash surrender values.

18           4. In calculating the present value of any paid-up  
19 term insurance with accompanying pure endowment, if any,  
20 offered as a nonforfeiture benefit, the rates of mortality  
21 assumed may be not more than those shown in the Commissioners'  
22 1980 Extended Term Insurance Table for policies of ordinary  
23 insurance and not more than the Commissioners' 1961 Industrial  
24 Extended Term Insurance Table for policies of industrial  
25 insurance.

26           5. In lieu of the mortality tables specified in this  
27 section, at the option of the insurance company and subject to  
28 rules adopted by the commission, the insurance company may  
29 substitute:

30           a. The 1958 CSO or CET Smoker and Nonsmoker Mortality  
31 Tables, whichever is applicable, for policies issued on or



1 after the operative date of this subsection and before January  
2 1, 1989;

3 b. The 1980 CSO or CET Smoker and Nonsmoker Mortality  
4 Tables, whichever is applicable, for policies issued on or  
5 after the operative date of this subsection;

6 c. A mortality table that is a blend of the  
7 sex-distinct 1980 CSO or CET mortality table standard,  
8 whichever is applicable, or a mortality table that is a blend  
9 of the sex-distinct 1980 CSO or CET smoker and nonsmoker  
10 mortality table standards, whichever is applicable, for  
11 policies that are subject to the United States Supreme Court  
12 decision in Arizona Governing Committee v. Norris to prevent  
13 unfair discrimination in employment situations.

14 6. Ordinary mortality tables, adopted after 1980 by  
15 the National Association of Insurance Commissioners, adopted  
16 by rule by the commission for use in determining the minimum  
17 nonforfeiture standard may be substituted for the  
18 Commissioners' 1980 Standard Ordinary Mortality Table with or  
19 without Ten-Year Select Mortality Factors or for the  
20 Commissioners' 1980 Extended Term Insurance Table.

21 ~~7.6.~~ For insurance issued on a substandard basis, the  
22 calculation of any such adjusted premiums and present values  
23 may be based on appropriate modifications of the  
24 aforementioned tables.

25 Section 8. Section 626.9743, Florida Statutes, is  
26 created to read:

27 626.9743 Claim settlement practices relating to motor  
28 vehicle insurance.--

29 (1) This section shall apply to the adjustment and  
30 settlement of personal and commercial motor vehicle insurance  
31 claims.

1           (2) An insurer may not, when liability and damages  
2 owed under the policy are reasonably clear, recommend that a  
3 third-party claimant make a claim under his or her own policy  
4 solely to avoid paying the claim under the policy issued by  
5 that insurer.

6           (3) An insurer that elects to repair a motor vehicle  
7 and requires a specific repair shop for vehicle repairs shall  
8 cause the damaged vehicle to be restored to its physical  
9 condition as to performance and appearance prior to the loss  
10 at no additional cost to the insured or third-party claimant  
11 other than as stated in the policy.

12           (4) An insurer may not require the use of replacement  
13 parts in the repair of a motor vehicle which are not at least  
14 equal in kind and quality to the damaged parts prior to the  
15 loss in terms of fit, appearance, and performance.

16           (5) When the insurance policy provides for the  
17 adjustment and settlement of first-party motor vehicle total  
18 losses on the basis of actual cash value or replacement with  
19 another of like kind and quality, the insurer shall use one of  
20 the following methods:

21           (a) The insurer may elect a cash settlement based upon  
22 the actual cost to purchase a comparable motor vehicle,  
23 including sales tax, if applicable pursuant to subsection (9).  
24 Such cost may be derived from:

25           1. When comparable motor vehicles are available in the  
26 local market area, the cost of two or more such comparable  
27 motor vehicles available within the preceding 90 days;

28           2. The retail cost as determined from a generally  
29 recognized source such as a guidebook or electronic database  
30 that is generally available to the public; or

31

1           3. The retail cost using two or more quotations  
2 obtained by the insurer from two or more licensed dealers in  
3 the local market area.

4           (b) The insurer may elect to offer a replacement motor  
5 vehicle that is a specified comparable motor vehicle available  
6 to the insured, including sales tax if applicable pursuant to  
7 subsection (9), paid for by the insurer at no cost other than  
8 any deductible provided in the policy and betterment as  
9 provided in subsection (6). The offer must be documented in  
10 the insurer's claim file. For purposes of this subsection, a  
11 comparable motor vehicle is one that is made by the same  
12 manufacturer, of the same or newer model year, and of similar  
13 body type and that has similar options and mileage as the  
14 insured vehicle. Additionally, a comparable motor vehicle must  
15 be in as good or better overall condition than the insured  
16 vehicle and available for inspection within a reasonable  
17 distance of the insured's residence.

18           (c) When a motor vehicle total loss is adjusted or  
19 settled on a basis that varies from the methods described in  
20 paragraph (a) or paragraph (b), the determination of value  
21 must be supported by documentation, and any deductions from  
22 value must be itemized and specified in appropriate dollar  
23 amounts. The basis for such settlement shall be explained to  
24 the claimant in writing, if requested, and a copy of the  
25 explanation shall be retained in the insurer's claim file.

26           (d) Any other method agreed to by the claimant.

27           (6) When the amount offered in settlement reflects a  
28 reduction by the insurer because of betterment or  
29 depreciation, information pertaining to the reduction shall be  
30 maintained with the insurer's claim file. Deductions shall be  
31 itemized and specific as to dollar amount and shall accurately

1 reflect the value assigned to the betterment or depreciation.  
2 The basis for any deduction shall be explained to the claimant  
3 in writing, if requested, and a copy of the explanation shall  
4 be maintained with the insurer's claim file.

5 (7) Every insurer shall, if partial losses are settled  
6 on the basis of a written estimate prepared by or for the  
7 insurer, supply the insured a copy of the estimate upon which  
8 the settlement is based.

9 (8) Every insurer shall provide notice to an insured  
10 before termination of payment for previously authorized  
11 storage charges, and the notice shall provide 72 hours for the  
12 insured to remove the vehicle from storage before terminating  
13 payment of the storage charges.

14 (9) If sales tax will necessarily be incurred by a  
15 claimant upon replacement of a total loss or upon repair of a  
16 partial loss, the insurer may defer payment of the sales tax  
17 unless and until the obligation has actually been incurred.

18 (10) Nothing in this section shall be construed to  
19 preclude enforcement of policy provisions relating to  
20 settlement disputes.

21 Section 9. Section 626.9744, Florida Statutes, is  
22 created to read:

23 626.9744 Claim settlement practices relating to  
24 property insurance.--Unless otherwise provided by the policy,  
25 when a homeowner's insurance policy provides for the  
26 adjustment and settlement of first-party losses based on  
27 repair or replacement cost, the following requirements apply:

28 (1) When a loss requires repair or replacement of an  
29 item or part, any physical damage incurred in making such  
30 repair or replacement which is covered and not otherwise  
31 excluded by the policy shall be included in the loss to the

1 extent of any applicable limits. The insured may not be  
2 required to pay for betterment required by ordinance or code  
3 except for the applicable deductible, unless specifically  
4 excluded or limited by the policy.

5 (2) When a loss requires replacement of items and the  
6 replaced items do not match in quality, color, or size, the  
7 insurer shall make reasonable repairs or replacement of items  
8 in adjoining areas. In determining the extent of the repairs  
9 or replacement of items in adjoining areas, the insurer may  
10 consider the cost of repairing or replacing the undamaged  
11 portions of the property, the degree of uniformity that can be  
12 achieved without such cost, the remaining useful life of the  
13 undamaged portion, and other relevant factors.

14 (3) This section shall not be construed to make the  
15 insurer a warrantor of the repairs made pursuant to this  
16 section.

17 (4) Nothing in this section shall be construed to  
18 preclude enforcement of policy provisions relating to  
19 settlement disputes.

20 Section 10. Subsection (5) is added to section  
21 627.4091, Florida Statutes, to read:

22 627.4091 Specific reasons for denial, cancellation, or  
23 nonrenewal.--

24 (5) When an insurer refuses to provide coverage to an  
25 applicant due to adverse underwriting information, the insurer  
26 shall:

27 (a) Provide to the applicant specific information  
28 regarding the reasons for the refusal to insure.

29 (b) If the reason for the refusal to insure is based  
30 on a loss underwriting history or report from a consumer  
31 reporting agency, to the extent applicable identify the loss

1 underwriting history and notify the applicant of his or her  
2 right under the federal Fair and Accurate Credit Transactions  
3 Act to obtain a copy of the report from the consumer reporting  
4 agency.

5 Section 11. Effective upon this act becoming a law,  
6 subsections (4) and (5) are added to section 627.4133, Florida  
7 Statutes, to read:

8 627.4133 Notice of cancellation, nonrenewal, or  
9 renewal premium.--

10 (4) An insurer that cancels a property insurance  
11 policy on property secured by a mortgage due to the failure of  
12 the lender to timely pay the premium when due shall reinstate  
13 the policy as required by s. 501.137.

14 (5) A single claim on a property insurance policy  
15 which is the result of water damage may not be used as the  
16 sole cause for cancellation or nonrenewal unless the insurer  
17 can demonstrate that the insured has failed to take action as  
18 requested by the insurer to prevent a future similar  
19 occurrence of damage to the insured property.

20 Section 12. Subsection (10) is added to section  
21 627.7015, Florida Statutes, to read:

22 627.7015 Alternative procedure for resolution of  
23 disputed property insurance claims.--

24 (10) An arbitration clause in an insurance policy  
25 shall not preclude the insured from using the mediation  
26 program under this section.

27 Section 13. Section 627.7077, Florida Statutes, is  
28 created to read:

29 627.7077 Florida Sinkhole Insurance Facility and other  
30 matters related to affordability and availability of sinkhole  
31 insurance; feasibility study.--

1           (1) The Florida State University College of Business  
2 Department of Risk Management and Insurance shall, under the  
3 direction of the office, conduct a feasibility and  
4 cost-benefit study of a potential Florida Sinkhole Insurance  
5 Facility and of other matters related to affordability and  
6 availability of sinkhole insurance. The study shall be  
7 conducted in consultation with the State Board of  
8 Administration and the Florida Geological Survey. The  
9 university shall provide a preliminary report of its analysis,  
10 findings, and recommendations to the Financial Services  
11 Commission and the presiding officers of the Legislature no  
12 later than February 1, 2005, and shall provide a final report  
13 no later than April 1, 2005.

14           (2) The potential functions of the facility to be  
15 analyzed include:

16           (a) Serving as the direct insurer or the reinsurer for  
17 all or some sinkhole losses.

18           (b) Providing training, communication, and other  
19 educational services to the public, engineers, the  
20 construction industry, insurance professionals, or others.

21           (c) Providing uniform standards for use by insurers in  
22 evaluating sinkhole loss claims.

23           (d) Providing consulting services for insurers.

24           (e) Maintaining a public database of all confirmed  
25 sinkholes and paid sinkhole loss claims, for use by consumers  
26 and by the insurance, building construction, banking, and real  
27 estate industries.

28           (3) The feasibility study shall, at a minimum, address  
29 the following issues:

30           (a) Where the facility should be housed, including,  
31 but not limited to, the options of creating a separate

1 facility or using the Citizens Property Insurance Corporation  
2 or the Florida Hurricane Catastrophe Fund.

3 (b) Federal income taxation implications.

4 (c) Funding options and costs associated with  
5 operating the facility, including means of funding sinkhole  
6 insurance through premiums that are adequate to fund covered  
7 losses.

8 (d) Applicability of the experience of similar  
9 facilities of other states.

10 (e) Other economic impact considerations pertinent to  
11 a facility.

12 (f) Alternative dispute resolution mechanisms.

13 (g) The impact of all present requirements in the  
14 Florida Insurance Code on affordability and availability of  
15 sinkhole insurance and recommendations to address such  
16 impacts.

17 (4) The study shall be funded from a budget of no more  
18 than \$300,000, which will be funded by assessments on insurers  
19 issuing property insurance in this state. Such assessments  
20 shall be collected by the office and shall be prorated among  
21 such insurers according to a formula whereby each insurer  
22 shall pay a fraction of such budget, the numerator of which  
23 shall be such insurer's direct earned premiums for property  
24 insurance in this state and the denominator of which shall be  
25 the total direct earned premiums for property insurance in  
26 this state for calendar year 2003.

27 Section 14. Section 627.838, Florida Statutes, is  
28 amended to read:

29 627.838 Filing and approval of forms; service  
30 charges.--  
31



1           (1) No premium finance agreement form or related form  
2 shall be used in this state by a premium finance company  
3 unless it has been filed with and approved by the office.  
4 Every filing shall be made within 30 days of issuance or use.

5           (2) Each premium finance company shall file with the  
6 office the service charge and interest rate plan, including  
7 all modifications thereto, for informational purposes only.  
8 Every filing shall be made within 30 days of its effective  
9 date.

10           ~~(3) Each filing shall be accompanied by the filing fee~~  
11 ~~specified in s. 627.849.~~

12           Section 15. Paragraph (e) of subsection (1) of section  
13 627.848, Florida Statutes, is amended to read:

14           627.848 Cancellation of insurance contract upon  
15 default.--

16           (1) When a premium finance agreement contains a power  
17 of attorney or other authority enabling the premium finance  
18 company to cancel any insurance contract listed in the  
19 agreement, the insurance contract shall not be canceled unless  
20 cancellation is in accordance with the following provisions:

21           (e) Whenever a financed ~~an~~ insurance contract is  
22 canceled ~~in accordance with this section~~, the insurer shall,  
23 within 30 days of the requested cancellation date, ~~promptly~~  
24 return the unpaid balance due under the finance contract, up  
25 to the gross amount available upon the cancellation of the  
26 policy, to the premium finance company and any remaining  
27 unearned premium to the agent or the insured, or both, for the  
28 benefit of the insured or insureds. The insurer shall notify  
29 the insured and the agent of the amount of unearned premium  
30 returned to the premium finance company and the amount of  
31 unearned commission held by the agent. The premium finance

1 company shall either, within 30 days of the account being  
2 overpaid, refund to the insured for the insured's benefit any  
3 refund due on the account or, if the refund is sent or  
4 credited to the agent within 15 days of the overpayment,  
5 notify the insured of the refunded amount.~~within 15 days~~  
6 ~~shall notify the insured and the agent of the amount of~~  
7 ~~unearned premium.~~Within 15 days of receipt of notification  
8 from the premium finance company, the agent shall return such  
9 amount including any unearned commission to the insured or  
10 with the written approval of the insured apply such amount to  
11 the purchase of other insurance products regulated by the  
12 office. The commission may adopt rules necessary to implement  
13 the provisions of this subsection.

14 Section 16. Subsection (1) of section 627.849, Florida  
15 Statutes, is amended to read:

16 627.849 Fees.--

17 (1) The office shall collect in advance, and the  
18 persons so served shall pay to it in advance, the following  
19 fees:

- 20 (a) Annual license fee.....\$250  
21 (b) Investigation fee.....100  
22 (c) Annual report filing fee.....25  
23 ~~(d) Form filing fee.....10~~

24 Section 17. Section 625.131, Florida Statutes, is  
25 repealed.

26 Section 18. Nothing in this act shall be construed to  
27 create or be the basis of a civil action. Nothing in this act  
28 shall be construed as limiting settlement or adjustment of  
29 claims by methods that are otherwise permissible under Florida  
30 law.

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1           Section 19. Except as otherwise expressly provided in  
2 this act and except for this section, which shall take effect  
3 upon becoming a law, this act shall take effect July 1, 2004.  
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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 2038

4   Deletes proposed change to unfair trade practices law for  
5   refusal to insure based on past water damage or acts of God.

6   Removes the proposed ban on arbitration provisions in  
7   insurance policies, instead stating arbitration does not  
8   override a policyholder's right to mediation in a property  
9   insurance dispute.

10   Deletes proposed requirement that insurers establish  
11   comprehensive insurance coverage for residential property.

12   Requires insurers to notify policyholders denied coverage due  
13   to adverse underwriting information of their right to obtain  
14   the report relied on by the insurer from the consumer  
15   reporting agency.

16   Exempts credit disability insurance from the requirement that  
17   the insurer maintain an active life reserve that is less in  
18   the aggregate than the pro rata gross unearned premiums for  
19   such policies.

20   Allows insurers to use the minimum reserve requirements for  
21   single-premium credit disability insurance, monthly premium  
22   credit life insurance and monthly premium credit disability  
23   insurance established by the National Association of Insurance  
24   Commissioners.

25   Requires the F.S.U. Department of Risk Management and  
26   Insurance to conduct a feasibility and cost-benefit study for  
27   a potential Florida Sinkhole Insurance Facility and other  
28   matters related to the affordability and availability of  
29   sinkhole insurance.

30   Requires that new local government self-insurance trusts be  
31   formed as a group or commercial self-insurance fund and comply  
32   with applicable law for the first 5 years of existence.

33   Allows the Financial Services Commission to adopt the latest  
34   revisions to the minimum standards for valuation of life  
35   insurance policies, produced by the National Association of  
36   Insurance Commissioners, by rule rather than having to do so  
37   by legislation.

38   Allows insurers to use the minimum reserve requirements for  
39   single-premium credit disability insurance, monthly premium  
40   credit life insurance and monthly premium credit disability  
41   insurance established by the National Association of Insurance  
42   Commissioners.

43   Allows businesses that sell personal accident and motor  
44   vehicle excess liability insurance to submit one application  
45   to the Department in order to obtain licenses for each  
46   location of the business.

47   Revises language regarding the settlement of automobile  
48   insurance claims.

1 Removes the authority for the Department of Financial Services  
2 to adopt rules establishing requirements applicable to the  
3 adjustment and settlement of motor vehicle insurance claims.  
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