

Bill No. CS for CS for SB 1488, 1st Eng.

Barcode 240862

CHAMBER ACTION

Senate

House

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11 Senator Campbell moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 15, line 29, through

15 page 31, line 14, delete those lines

16 and insert:

17

18 Section 7. Paragraphs (a), (c), (i), and (q) of

19 subsection (6) of section 627.351, Florida Statutes, are

20 amended to read:

21 627.351 Insurance risk apportionment plans.--

22 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

23 (a)1. The Legislature finds that actual and threatened

24 catastrophic losses to property in this state from hurricanes

25 have caused insurers to be unwilling or unable to provide

26 property insurance coverage to the extent sought and needed.

27 It is in the public interest and a public purpose to assist in

28 assuring that property in the state is insured so as to

29 facilitate the remediation, reconstruction, and replacement of

30 damaged or destroyed property in order to reduce or avoid the

31 negative effects otherwise resulting to the public health,

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1 safety, and welfare; to the economy of the state; and to the
 2 revenues of the state and local governments needed to provide
 3 for the public welfare. It is necessary, therefore, to provide
 4 property insurance to applicants who are in good faith
 5 entitled to procure insurance through the voluntary market but
 6 are unable to do so. The Legislature intends by this
 7 subsection that property insurance be provided and that it
 8 continues, as long as necessary, through an entity organized
 9 to achieve efficiencies and economies, while providing service
 10 to policyholders, applicants, and agents that is no less than
 11 the quality generally provided in the voluntary market, all
 12 toward the achievement of the foregoing public purposes.
 13 Because it is essential for the corporation to have the
 14 maximum financial resources to pay claims following a
 15 catastrophic hurricane, it is the intent of the Legislature
 16 that the income of the corporation be exempt from federal
 17 income taxation and that interest on the debt obligations
 18 issued by the corporation be exempt from federal income
 19 taxation.

20 2. The Residential Property and Casualty Joint
 21 Underwriting Association originally created by this statute
 22 shall be known, as of July 1, 2002, as the Citizens Property
 23 Insurance Corporation. The corporation shall provide insurance
 24 for residential and commercial property, for applicants who
 25 are in good faith entitled, but are unable, to procure
 26 insurance through the voluntary market. The corporation shall
 27 operate pursuant to a plan of operation approved by order of
 28 the office. The plan is subject to continuous review by the
 29 office. The office may, by order, withdraw approval of all or
 30 part of a plan if the office determines that conditions have
 31 changed since approval was granted and that the purposes of

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1 the plan require changes in the plan. For the purposes of this
 2 subsection, residential coverage includes both personal lines
 3 residential coverage, which consists of the type of coverage
 4 provided by homeowner's, mobile home owner's, dwelling,
 5 tenant's, condominium unit owner's, and similar policies, and
 6 commercial lines residential coverage, which consists of the
 7 type of coverage provided by condominium association,
 8 apartment building, and similar policies.

9 3. It is the intent of the Legislature that
 10 policyholders, applicants, and agents of the corporation
 11 receive service and treatment of the highest possible level
 12 but never less than that generally provided in the voluntary
 13 market. It also is intended that the corporation be held to
 14 service standards no less than those applied to insurers in
 15 the voluntary market by the office with respect to
 16 responsiveness, timeliness, customer courtesy, and overall
 17 dealings with policyholders, applicants, or agents of the
 18 corporation.

19 (c) The plan of operation of the corporation:

20 1. Must provide for adoption of residential property
 21 and casualty insurance policy forms and commercial residential
 22 and nonresidential property insurance forms, which forms must
 23 be approved by the office prior to use. The corporation shall
 24 adopt the following policy forms:

25 a. Standard personal lines policy forms that are
 26 comprehensive multiperil policies providing full coverage of a
 27 residential property equivalent to the coverage provided in
 28 the private insurance market under an HO-3, HO-4, or HO-6
 29 policy.

30 b. Basic personal lines policy forms that are policies
 31 similar to an HO-8 policy or a dwelling fire policy that

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1 provide coverage meeting the requirements of the secondary
2 mortgage market, but which coverage is more limited than the
3 coverage under a standard policy.

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

8 d. Personal lines and commercial lines residential
9 property insurance forms that cover the peril of wind only.
10 The forms are applicable only to residential properties
11 located in areas eligible for coverage under the high-risk
12 account referred to in sub-subparagraph (b)2.a.

13 e. Commercial lines nonresidential property insurance
14 forms that cover the peril of wind only. The forms are
15 applicable only to nonresidential properties located in areas
16 eligible for coverage under the high-risk account referred to
17 in sub-subparagraph (b)2.a.

18 2.a. Must provide that the corporation adopt a program
19 in which the corporation and authorized insurers enter into
20 quota share primary insurance agreements for hurricane
21 coverage, as defined in s. 627.4025(2)(a), for eligible risks,
22 and adopt property insurance forms for eligible risks which
23 cover the peril of wind only. As used in this subsection, the
24 term:

25 (I) "Quota share primary insurance" means an
26 arrangement in which the primary hurricane coverage of an
27 eligible risk is provided in specified percentages by the
28 corporation and an authorized insurer. The corporation and
29 authorized insurer are each solely responsible for a specified
30 percentage of hurricane coverage of an eligible risk as set
31 forth in a quota share primary insurance agreement between the

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1 corporation and an authorized insurer and the insurance
2 contract. The responsibility of the corporation or authorized
3 insurer to pay its specified percentage of hurricane losses of
4 an eligible risk, as set forth in the quota share primary
5 insurance agreement, may not be altered by the inability of
6 the other party to the agreement to pay its specified
7 percentage of hurricane losses. Eligible risks that are
8 provided hurricane coverage through a quota share primary
9 insurance arrangement must be provided policy forms that set
10 forth the obligations of the corporation and authorized
11 insurer under the arrangement, clearly specify the percentages
12 of quota share primary insurance provided by the corporation
13 and authorized insurer, and conspicuously and clearly state
14 that neither the authorized insurer nor the corporation may be
15 held responsible beyond its specified percentage of coverage
16 of hurricane losses.

17 (II) "Eligible risks" means personal lines residential
18 and commercial lines residential risks that meet the
19 underwriting criteria of the corporation and are located in
20 areas that were eligible for coverage by the Florida Windstorm
21 Underwriting Association on January 1, 2002.

22 b. The corporation may enter into quota share primary
23 insurance agreements with authorized insurers at corporation
24 coverage levels of 90 percent and 50 percent.

25 c. If the corporation determines that additional
26 coverage levels are necessary to maximize participation in
27 quota share primary insurance agreements by authorized
28 insurers, the corporation may establish additional coverage
29 levels. However, the corporation's quota share primary
30 insurance coverage level may not exceed 90 percent.

31 d. Any quota share primary insurance agreement entered

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1 into between an authorized insurer and the corporation must
 2 provide for a uniform specified percentage of coverage of
 3 hurricane losses, by county or territory as set forth by the
 4 corporation board, for all eligible risks of the authorized
 5 insurer covered under the quota share primary insurance
 6 agreement.

7 e. Any quota share primary insurance agreement entered
 8 into between an authorized insurer and the corporation is
 9 subject to review and approval by the office. However, such
 10 agreement shall be authorized only as to insurance contracts
 11 entered into between an authorized insurer and an insured who
 12 is already insured by the corporation for wind coverage.

13 f. For all eligible risks covered under quota share
 14 primary insurance agreements, the exposure and coverage levels
 15 for both the corporation and authorized insurers shall be
 16 reported by the corporation to the Florida Hurricane
 17 Catastrophe Fund. For all policies of eligible risks covered
 18 under quota share primary insurance agreements, the
 19 corporation and the authorized insurer shall maintain complete
 20 and accurate records for the purpose of exposure and loss
 21 reimbursement audits as required by Florida Hurricane
 22 Catastrophe Fund rules. The corporation and the authorized
 23 insurer shall each maintain duplicate copies of policy
 24 declaration pages and supporting claims documents.

25 g. The corporation board shall establish in its plan
 26 of operation standards for quota share agreements which ensure
 27 that there is no discriminatory application among insurers as
 28 to the terms of quota share agreements, pricing of quota share
 29 agreements, incentive provisions if any, and consideration
 30 paid for servicing policies or adjusting claims.

31 h. The quota share primary insurance agreement between

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1 the corporation and an authorized insurer must set forth the
2 specific terms under which coverage is provided, including,
3 but not limited to, the sale and servicing of policies issued
4 under the agreement by the insurance agent of the authorized
5 insurer producing the business, the reporting of information
6 concerning eligible risks, the payment of premium to the
7 corporation, and arrangements for the adjustment and payment
8 of hurricane claims incurred on eligible risks by the claims
9 adjuster and personnel of the authorized insurer. Entering
10 into a quota sharing insurance agreement between the
11 corporation and an authorized insurer shall be voluntary and
12 at the discretion of the authorized insurer.

13 3. May provide that the corporation may employ or
14 otherwise contract with individuals or other entities to
15 provide administrative or professional services that may be
16 appropriate to effectuate the plan. The corporation shall have
17 the power to borrow funds, by issuing bonds or by incurring
18 other indebtedness, and shall have other powers reasonably
19 necessary to effectuate the requirements of this subsection,
20 including without limitation, the power to issue bonds and
21 incur other indebtedness in order to refinance outstanding
22 bonds or other indebtedness. The corporation may, but is not
23 required to, seek judicial validation of its bonds or other
24 indebtedness under chapter 75. The corporation may issue bonds
25 or incur other indebtedness, or have bonds issued on its
26 behalf by a unit of local government pursuant to subparagraph
27 (g)2., in the absence of a hurricane or other weather-related
28 event, upon a determination by the corporation, subject to
29 approval by the office, that such action would enable it to
30 efficiently meet the financial obligations of the corporation
31 and that such financings are reasonably necessary to

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1 effectuate the requirements of this subsection. The
2 corporation is authorized to take all actions needed to
3 facilitate tax-free status for any such bonds or indebtedness,
4 including formation of trusts or other affiliated entities.
5 The corporation shall have the authority to pledge
6 assessments, projected recoveries from the Florida Hurricane
7 Catastrophe Fund, other reinsurance recoverables, market
8 equalization and other surcharges, and other funds available
9 to the corporation as security for bonds or other
10 indebtedness. In recognition of s. 10, Art. I of the State
11 Constitution, prohibiting the impairment of obligations of
12 contracts, it is the intent of the Legislature that no action
13 be taken whose purpose is to impair any bond indenture or
14 financing agreement or any revenue source committed by
15 contract to such bond or other indebtedness.

16 4.a. Must require that the corporation operate subject
17 to the supervision and approval of a board of governors
18 consisting of 8 7 individuals who are residents of this state,
19 from different geographical areas of this state, ~~appointed by~~
20 ~~the Chief Financial Officer.~~ The Governor, the Chief Financial
21 Officer, the President of the Senate, and the Speaker of the
22 House of Representatives shall each appoint two members of the
23 board, effective August 1, 2005. At least one of the two
24 members appointed by each appointing officer must have
25 demonstrated expertise in insurance. The Chief Financial
26 Officer shall designate one of the appointees as chair. All
27 board members serve at the pleasure of the appointing officer
28 ~~Chief Financial Officer~~. All board members, including the
29 chair, must be appointed to serve for 3-year terms beginning
30 annually on a date designated by the plan. Any board vacancy
31 shall be filled for the unexpired term by the appointing

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1 ~~officer~~ ~~Chief Financial Officer~~. The Chief Financial Officer
2 shall appoint a technical advisory group to provide
3 information and advice to the board of governors in connection
4 with the board's duties under this subsection. The executive
5 director and senior managers of the corporation shall be
6 engaged by the board, as recommended by the Chief Financial
7 Officer and serve at the pleasure of the board ~~Chief Financial~~
8 ~~Officer~~. The executive director is responsible for employing
9 other staff as the corporation may require, subject to review
10 and concurrence by the board and ~~office of~~ the Chief Financial
11 Officer.

12 b. The board shall create a Market Accountability
13 Advisory Committee to assist the corporation in developing
14 awareness of its rates and its customer and agent service
15 levels in relationship to the voluntary market insurers
16 writing similar coverage. The members of the advisory
17 committee shall consist of the following 11 persons, one of
18 whom must be elected chair by the members of the committee:
19 four representatives, one appointed by the Florida Association
20 of Insurance Agents, one by the Florida Association of
21 Insurance and Financial Advisors, one by the Professional
22 Insurance Agents of Florida, and one by the Latin American
23 Association of Insurance Agencies; three representatives
24 appointed by the insurers with the three highest voluntary
25 market share of residential property insurance business in the
26 state; one representative from the Office of Insurance
27 Regulation; one consumer appointed by the board who is insured
28 by the corporation at the time of appointment to the
29 committee; one representative appointed by the Florida
30 Association of Realtors; and one representative appointed by
31 the Florida Bankers Association. All members must serve for

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1 3-year terms and may serve for consecutive terms. The
 2 committee shall report to the corporation at each board
 3 meeting on insurance market issues which may include rates and
 4 rate competition with the voluntary market; service, including
 5 policy issuance, claims processing, and general responsiveness
 6 to policyholders, applicants, and agents; and matters relating
 7 to depopulation.

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

10 a. Subject to the provisions of s. 627.3517, with
 11 respect to personal lines residential risks, if the risk is
 12 offered coverage from an authorized insurer at the insurer's
 13 approved rate under either a standard policy including wind
 14 coverage or, if consistent with the insurer's underwriting
 15 rules as filed with the office, a basic policy including wind
 16 coverage, the risk is not eligible for any policy issued by
 17 the corporation. If the risk is not able to obtain any such
 18 offer, the risk is eligible for either a standard policy
 19 including wind coverage or a basic policy including wind
 20 coverage issued by the corporation; however, if the risk could
 21 not be insured under a standard policy including wind coverage
 22 regardless of market conditions, the risk shall be eligible
 23 for a basic policy including wind coverage unless rejected
 24 under subparagraph 8. The corporation shall determine the type
 25 of policy to be provided on the basis of objective standards
 26 specified in the underwriting manual and based on generally
 27 accepted underwriting practices.

28 (I) If the risk accepts an offer of coverage through
 29 the market assistance plan or an offer of coverage through a
 30 mechanism established by the corporation before a policy is
 31 issued to the risk by the corporation or during the first 30

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1 days of coverage by the corporation, and the producing agent
2 who submitted the application to the plan or to the
3 corporation is not currently appointed by the insurer, the
4 insurer shall:

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

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

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

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

28 (B) Offer to allow the producing agent of record of
29 the corporation policy to continue servicing the policy for a
30 period of not less than 1 year and offer to pay the agent the
31 greater of the insurer's or the corporation's usual and

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1 customary commission for the type of policy written.

2

3 If the producing agent is unwilling or unable to accept
4 appointment, the new insurer shall pay the agent in accordance
5 with sub-sub-sub-subparagraph (A).

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

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

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

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

30

31 If the producing agent is unwilling or unable to accept

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1 appointment, the new insurer shall pay the agent in accordance
2 with sub-sub-sub-subparagraph (A).

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

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

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

17
18 If the producing agent is unwilling or unable to accept
19 appointment, the new insurer shall pay the agent in accordance
20 with sub-sub-sub-subparagraph (A).

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

23 7. Must provide that if premium and investment income
24 for an account attributable to a particular calendar year are
25 in excess of projected losses and expenses for the account
26 attributable to that year, such excess shall be held in
27 surplus in the account. Such surplus shall be available to
28 defray deficits in that account as to future years and shall
29 be used for that purpose prior to assessing assessable
30 insurers and assessable insureds as to any calendar year.

31 8. Must provide objective criteria and procedures to

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1 be uniformly applied for all applicants in determining whether
2 an individual risk is so hazardous as to be uninsurable. In
3 making this determination and in establishing the criteria and
4 procedures, the following shall be considered:

5 a. Whether the likelihood of a loss for the individual
6 risk is substantially higher than for other risks of the same
7 class; and

8 b. Whether the uncertainty associated with the
9 individual risk is such that an appropriate premium cannot be
10 determined.

11
12 The acceptance or rejection of a risk by the corporation shall
13 be construed as the private placement of insurance, and the
14 provisions of chapter 120 shall not apply.

15 9. Must provide that the corporation shall make its
16 best efforts to procure catastrophe reinsurance at reasonable
17 rates, to cover its projected 100-year probable maximum loss
18 as determined by the board of governors.

19 10. Must provide that in the event of regular deficit
20 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
21 (b)3.b., in the personal lines account, the commercial lines
22 residential account, or the high-risk account, the corporation
23 shall levy upon corporation policyholders in its next rate
24 filing, or by a separate rate filing solely for this purpose,
25 a market equalization surcharge arising from a regular
26 assessment in such account in a percentage equal to the total
27 amount of such regular assessments divided by the aggregate
28 statewide direct written premium for subject lines of business
29 for the prior calendar year. Market equalization surcharges
30 under this subparagraph are not considered premium and are not
31 subject to commissions, fees, or premium taxes; however,

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

3 11. The policies issued by the corporation must
4 provide that, if the corporation or the market assistance plan
5 obtains an offer from an authorized insurer to cover the risk
6 at its approved rates, the risk is no longer eligible for
7 renewal through the corporation.

8 12. Corporation policies and applications must include
9 a notice that the corporation policy could, under this
10 section, be replaced with a policy issued by an authorized
11 insurer that does not provide coverage identical to the
12 coverage provided by the corporation. The notice shall also
13 specify that acceptance of corporation coverage creates a
14 conclusive presumption that the applicant or policyholder is
15 aware of this potential.

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

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1 14. Must provide that, with respect to the high-risk
2 account, any assessable insurer with a surplus as to
3 policyholders of \$25 million or less writing 25 percent or
4 more of its total countrywide property insurance premiums in
5 this state may petition the office, within the first 90 days
6 of each calendar year, to qualify as a limited apportionment
7 company. In no event shall a limited apportionment company be
8 required to participate in the portion of any assessment,
9 within the high-risk account, pursuant to sub-subparagraph
10 (b)3.a. or sub-subparagraph (b)3.b. in the aggregate which
11 exceeds \$50 million after payment of available high-risk
12 account funds in any calendar year. However, a limited
13 apportionment company shall collect from its policyholders any
14 emergency assessment imposed under sub-subparagraph (b)3.d.
15 The plan shall provide that, if the office determines that any
16 regular assessment will result in an impairment of the surplus
17 of a limited apportionment company, the office may direct that
18 all or part of such assessment be deferred as provided in
19 subparagraph (g)4. However, there shall be no limitation or
20 deferment of an emergency assessment to be collected from
21 policyholders under sub-subparagraph (b)3.d.

22 15. Must provide that the corporation appoint as its
23 licensed agents only those agents who also hold an appointment
24 as defined in s. 626.015(3) with an insurer who at the time of
25 the agent's initial appointment by the corporation is
26 authorized to write and is actually writing personal lines
27 residential property coverage, commercial residential property
28 coverage, or commercial nonresidential property coverage
29 within the state.

30 (i) There shall be no liability on the part of, and no
31 cause of action of any nature shall arise against, any

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1 assessable insurer or its agents or employees, the corporation
 2 or its agents or employees, members of the board of governors
 3 or their respective designees at a board meeting, corporation
 4 committee members, or the office or its representatives, for
 5 any action taken by them in the performance of their duties or
 6 responsibilities under this subsection. Such immunity does not
 7 apply to:

- 8 1. Any of the foregoing persons or entities for any
- 9 willful tort;
- 10 2. The corporation or its producing agents for breach
- 11 of any contract or agreement pertaining to insurance coverage;
- 12 3. The corporation with respect to issuance or payment
- 13 of debt; ~~or~~
- 14 4. Any assessable insurer with respect to any action
- 15 to enforce an assessable insurer's obligations to the
- 16 corporation under this subsection; or
- 17 5. The corporation or its producing agents or any of
- 18 the foregoing persons or entities for violations of any of the
- 19 provisions of s. 624.155.

22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 On page 2, line 20, following the semicolon,

25

26 insert:

27 excluding certain additional persons from

28 immunity for liability;

31