

By the Committee on Banking and Insurance; and Senator Richter

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1 A bill to be entitled
2 An act relating to property insurance; amending s.
3 215.555, F.S.; delaying the repeal of a provision
4 exempting medical malpractice insurance premiums from
5 emergency assessments to the Hurricane Catastrophe
6 Fund; delaying the date on and after which medical
7 malpractice insurance premiums become subject to
8 emergency assessments; amending s. 624.408, F.S.;
9 revising the minimum surplus as to policyholders which
10 must be maintained by certain insurers; authorizing
11 the Office of Insurance Regulation to reduce the
12 surplus requirement under specified circumstances;
13 amending s. 626.9744, F.S.; requiring insurers to use
14 retail cost quotations or estimates based on current
15 market prices in determining repair or replacement
16 cost estimates; amending s. 627.0613, F.S.; requiring
17 the office of the consumer advocate to objectively
18 grade insurers annually based on the number of valid
19 consumer complaints and other measurable and objective
20 factors; defining the term "valid consumer complaint";
21 amending s. 627.062, F.S.; requiring that the office
22 issue an approval rather than a notice of intent to
23 approve following its approval of a file and use
24 filing; prohibiting the Office of Insurance Regulation
25 from, directly or indirectly, prohibiting an insurer
26 from paying acquisition costs based on the full amount
27 of the premium; prohibiting the Office of Insurance
28 Regulation from, directly or indirectly, impeding the
29 right of an insurer to acquire policyholders,

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30 advertise or appoint agents, or regulate agent
31 commissions; authorizing an insurer to make a rate
32 filing limited to changes in the cost of reinsurance,
33 the cost of financing products used as a replacement
34 for reinsurance, or changes in an inflation trend
35 factor published annually by the Office of Insurance
36 Regulation; providing that an insurer may use this
37 provision only if the increase from such filing and
38 any other rate filing does not exceed 10 percent for
39 any policyholder in a policy year; deleting provisions
40 relating to a rate filing for financing products
41 relating to the Temporary Increase in Coverage Limits;
42 revising the information that must be included in a
43 rate filing relating to certain reinsurance or
44 financing products; deleting a provision that
45 prohibited an insurer from making certain rate filings
46 within a certain period of time after a rate increase;
47 deleting a provision prohibiting an insurer from
48 filing for a rate increase within 6 months after it
49 makes certain rate filings; specifying the information
50 that an insurer must include in a rate filing based on
51 the change in an inflation trend factor published by
52 the Office of Insurance Regulation; requiring that the
53 office annually publish one or more inflation trend
54 factors; exempting the inflation trend factors from
55 rulemaking; providing that an insurer is not required
56 to adopt an inflation trend factor; requiring the
57 Office of Insurance Regulation to propose a plan for
58 developing a website, contingent upon an

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59 appropriation, which provides consumers with
60 information necessary to make an informed decision
61 when purchasing homeowners' insurance; requiring that
62 the Financial Services Commission review the proposed
63 plan to implement the website; specifying matters that
64 the Office of Insurance Regulation must consider in
65 developing the website; deleting obsolete provisions
66 relating to legislation enacted during the 2003
67 Special Session D of the Legislature; amending s.
68 627.0629, F.S.; providing legislative intent that
69 insurers provide consumers with accurate pricing
70 signals for alterations in order to minimize losses,
71 but that mitigation discounts not result in a loss of
72 income for the insurer; requiring rate filings for
73 residential property insurance to include actuarially
74 reasonable debits that provide proper pricing;
75 providing for an increase in base rates if mitigation
76 discounts exceed the aggregate reduction in expected
77 losses; requiring the Office of Insurance Regulation
78 to reevaluate discounts, debits, credits, and other
79 rate differentials by a certain date; requiring the
80 Office of Insurance Regulation, in consultation with
81 the Department of Financial Services and the
82 Department of Community Affairs, to develop a method
83 for insurers to establish debits for certain hurricane
84 mitigation measures by a certain date; requiring the
85 Financial Services Commission to adopt rules relating
86 to such debits by a certain date; deleting a provision
87 that prohibits an insurer from including an expense or

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88 profit load in the cost of reinsurance to replace the
89 Temporary Increase in Coverage Limits; amending s.
90 627.4133, F.S.; authorizing an insurer to cancel
91 policies after 45 days' notice if the Office of
92 Insurance Regulation determines that the cancellation
93 of policies is necessary to protect the interests of
94 the public or policyholders; authorizing the Office of
95 Insurance Regulation to place an insurer under
96 administrative supervision or appoint a receiver upon
97 the consent of the insurer under certain
98 circumstances; amending s. 627.7011, F.S.; authorizing
99 an insurer to pay the actual cash value for certain
100 losses, but requiring the insurer to pay the
101 reservation or holdback when the insured executes a
102 contract to replace or repair a dwelling or property
103 or provides a receipt to replace personal property;
104 amending s. 627.7015, F.S.; requiring the Department
105 of Financial Services to prepare a statement or
106 information by rule which must be included in a notice
107 by an insurer informing claimants of the right to
108 participate in a mediation program; specifying
109 documentation that an insurer and insured must provide
110 to a mediator in a dispute over an estimate to repair
111 or replace property; requiring the Department of
112 Financial Services to adopt rules specifying the type
113 of documentation that must be submitted during a
114 mediation; defining the term "claim dispute" as it
115 relates to disputes between an insurer and insured;
116 amending s. 631.011, F.S.; redefining the term

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117 "affiliate" to include certain entities that retail,
118 broker, administer, or underwrite insurance policies
119 on behalf of an insurer; amending s. 631.021, F.S.;
120 providing that the Circuit Court of Leon County is the
121 venue for certain actions collateral to a delinquency
122 proceeding involving an insurer; providing that the
123 Circuit Court of Leon County has exclusive
124 jurisdiction to identify funds, assets, and property
125 belonging to certain entities placed under
126 receivership; amending s. 631.025, F.S.; specifying
127 the persons over which the court in a delinquency
128 proceeding has exclusive jurisdiction; providing an
129 effective date.

130

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

132

133 Section 1. Paragraph (b) of subsection (6) of section
134 215.555, Florida Statutes, is amended to read:

135 215.555 Florida Hurricane Catastrophe Fund.—

136 (6) REVENUE BONDS.—

137 (b) *Emergency assessments*.—

138 1. If the board determines that the amount of revenue
139 produced under subsection (5) is insufficient to fund the
140 obligations, costs, and expenses of the fund and the
141 corporation, including repayment of revenue bonds and that
142 portion of the debt service coverage not met by reimbursement
143 premiums, the board shall direct the Office of Insurance
144 Regulation to levy, by order, an emergency assessment on direct
145 premiums for all property and casualty lines of business in this

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146 state, including property and casualty business of surplus lines
147 insurers regulated under part VIII of chapter 626, but not
148 including any workers' compensation premiums or medical
149 malpractice premiums. As used in this subsection, the term
150 "property and casualty business" includes all lines of business
151 identified on Form 2, Exhibit of Premiums and Losses, in the
152 annual statement required of authorized insurers by s. 624.424
153 and any rule adopted under this section, except for those lines
154 identified as accident and health insurance and except for
155 policies written under the National Flood Insurance Program. The
156 assessment shall be specified as a percentage of direct written
157 premium and is subject to annual adjustments by the board in
158 order to meet debt obligations. The same percentage shall apply
159 to all policies in lines of business subject to the assessment
160 issued or renewed during the 12-month period beginning on the
161 effective date of the assessment.

162 2. A premium is not subject to an annual assessment under
163 this paragraph in excess of 6 percent of premium with respect to
164 obligations arising out of losses attributable to any one
165 contract year, and a premium is not subject to an aggregate
166 annual assessment under this paragraph in excess of 10 percent
167 of premium. An annual assessment under this paragraph shall
168 continue as long as the revenue bonds issued with respect to
169 which the assessment was imposed are outstanding, including any
170 bonds the proceeds of which were used to refund the revenue
171 bonds, unless adequate provision has been made for the payment
172 of the bonds under the documents authorizing issuance of the
173 bonds.

174 3. Emergency assessments shall be collected from

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175 policyholders. Emergency assessments shall be remitted by
176 insurers as a percentage of direct written premium for the
177 preceding calendar quarter as specified in the order from the
178 Office of Insurance Regulation. The office shall verify the
179 accurate and timely collection and remittance of emergency
180 assessments and shall report the information to the board in a
181 form and at a time specified by the board. Each insurer
182 collecting assessments shall provide the information with
183 respect to premiums and collections as may be required by the
184 office to enable the office to monitor and verify compliance
185 with this paragraph.

186 4. With respect to assessments of surplus lines premiums,
187 each surplus lines agent shall collect the assessment at the
188 same time as the agent collects the surplus lines tax required
189 by s. 626.932, and the surplus lines agent shall remit the
190 assessment to the Florida Surplus Lines Service Office created
191 by s. 626.921 at the same time as the agent remits the surplus
192 lines tax to the Florida Surplus Lines Service Office. The
193 emergency assessment on each insured procuring coverage and
194 filing under s. 626.938 shall be remitted by the insured to the
195 Florida Surplus Lines Service Office at the time the insured
196 pays the surplus lines tax to the Florida Surplus Lines Service
197 Office. The Florida Surplus Lines Service Office shall remit the
198 collected assessments to the fund or corporation as provided in
199 the order levied by the Office of Insurance Regulation. The
200 Florida Surplus Lines Service Office shall verify the proper
201 application of such emergency assessments and shall assist the
202 board in ensuring the accurate and timely collection and
203 remittance of assessments as required by the board. The Florida

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204 Surplus Lines Service Office shall annually calculate the
205 aggregate written premium on property and casualty business,
206 other than workers' compensation and medical malpractice,
207 procured through surplus lines agents and insureds procuring
208 coverage and filing under s. 626.938 and shall report the
209 information to the board in a form and at a time specified by
210 the board.

211 5. Any assessment authority not used for a particular
212 contract year may be used for a subsequent contract year. If,
213 for a subsequent contract year, the board determines that the
214 amount of revenue produced under subsection (5) is insufficient
215 to fund the obligations, costs, and expenses of the fund and the
216 corporation, including repayment of revenue bonds and that
217 portion of the debt service coverage not met by reimbursement
218 premiums, the board shall direct the Office of Insurance
219 Regulation to levy an emergency assessment up to an amount not
220 exceeding the amount of unused assessment authority from a
221 previous contract year or years, plus an additional 4 percent
222 provided that the assessments in the aggregate do not exceed the
223 limits specified in subparagraph 2.

224 6. The assessments otherwise payable to the corporation
225 under this paragraph shall be paid to the fund unless and until
226 the Office of Insurance Regulation and the Florida Surplus Lines
227 Service Office have received from the corporation and the fund a
228 notice, which shall be conclusive and upon which they may rely
229 without further inquiry, that the corporation has issued bonds
230 and the fund has no agreements in effect with local governments
231 under paragraph (c). On or after the date of the notice and
232 until the date the corporation has no bonds outstanding, the

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233 fund shall have no right, title, or interest in or to the
234 assessments, except as provided in the fund's agreement with the
235 corporation.

236 7. Emergency assessments are not premium and are not
237 subject to the premium tax, to the surplus lines tax, to any
238 fees, or to any commissions. An insurer is liable for all
239 assessments that it collects and must treat the failure of an
240 insured to pay an assessment as a failure to pay the premium. An
241 insurer is not liable for uncollectible assessments.

242 8. When an insurer is required to return an unearned
243 premium, it shall also return any collected assessment
244 attributable to the unearned premium. A credit adjustment to the
245 collected assessment may be made by the insurer with regard to
246 future remittances that are payable to the fund or corporation,
247 but the insurer is not entitled to a refund.

248 9. When a surplus lines insured or an insured who has
249 procured coverage and filed under s. 626.938 is entitled to the
250 return of an unearned premium, the Florida Surplus Lines Service
251 Office shall provide a credit or refund to the agent or such
252 insured for the collected assessment attributable to the
253 unearned premium prior to remitting the emergency assessment
254 collected to the fund or corporation.

255 10. The exemption of medical malpractice insurance premiums
256 from emergency assessments under this paragraph is repealed May
257 31, 2013 ~~2010~~, and medical malpractice insurance premiums shall
258 be subject to emergency assessments attributable to loss events
259 occurring in the contract years commencing on June 1, 2013 ~~2010~~.

260 Section 2. Section 624.408, Florida Statutes, is amended to
261 read:

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262 624.408 Surplus as to policyholders required; new and
263 existing insurers.-

264 (1) ~~(a)~~ To maintain a certificate of authority to transact
265 any one kind or combinations of kinds of insurance, as defined
266 in part V of this chapter, an insurer in this state shall at all
267 times maintain surplus as to policyholders at least ~~not less~~
268 ~~than~~ the greater of:

269 (a)1. Except as provided in paragraphs (e), (f), and (g)
270 ~~subparagraph 5. and paragraph (b)~~, \$1.5 million;

271 (b)2. For life insurers, 4 percent of the insurer's total
272 liabilities;

273 (c)3. For life and health insurers, 4 percent of the
274 insurer's total liabilities plus 6 percent of the insurer's
275 liabilities relative to health insurance; or

276 (d)4. For all insurers other than mortgage guaranty
277 insurers, life insurers, and life and health insurers, 10
278 percent of the insurer's total liabilities.

279 (e)5. For property and casualty insurers, \$4 million,
280 except property and casualty insurers authorized to underwrite
281 any line of residential property insurance.

282 (f)6. For a residential any property and casualty insurer
283 not holding a certificate of authority before July 1, 2010 ~~on~~
284 ~~December 1, 1993~~, \$15 million. ~~the~~

285 (g)7. For a residential property insurer having a certificate
286 of authority before July 1, 2010, \$5 million until July 1, 2015,
287 and \$15 million after July 1, 2015. The office may reduce this
288 surplus requirement if the insurer is not writing new business,
289 has premiums in force of less than \$1 million per year in
290 residential property insurance, or is a mutual insurance

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291 ~~company. following amounts apply instead of the \$4 million~~
292 ~~required by subparagraph (a)5.:~~

293 ~~1. On December 31, 2001, and until December 30, 2002, \$3~~
294 ~~million.~~

295 ~~2. On December 31, 2002, and until December 30, 2003, \$3.25~~
296 ~~million.~~

297 ~~3. On December 31, 2003, and until December 30, 2004, \$3.6~~
298 ~~million.~~

299 ~~4. On December 31, 2004, and thereafter, \$4 million.~~

300 (2) For purposes of this section, liabilities do ~~shall~~ not
301 include liabilities required under s. 625.041(4). For purposes
302 of computing minimum surplus as to policyholders pursuant to s.
303 625.305(1), liabilities shall include liabilities required under
304 s. 625.041(4).

305 (3) This section does not require any ~~No insurer shall be~~
306 ~~required under this section~~ to have surplus as to policyholders
307 greater than \$100 million.

308 (4) A mortgage guaranty insurer shall maintain a minimum
309 surplus as required by s. 635.042.

310 Section 3. Section 626.9744, Florida Statutes, is amended
311 to read:

312 626.9744 Claim settlement practices relating to property
313 insurance.—Unless otherwise provided by the policy, if ~~when~~ a
314 homeowner's insurance policy provides for the adjustment and
315 settlement of first-party losses based on repair or replacement
316 cost, the following requirements apply:

317 (1) When a loss requires repair or replacement of an item
318 or part, any physical damage incurred in making such repair or
319 replacement which is covered and not otherwise excluded by the

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320 policy shall be included in the loss to the extent of any
321 applicable limits. The insured may not be required to pay for
322 betterment required by ordinance or code except for the
323 applicable deductible, unless specifically excluded or limited
324 by the policy.

325 (2) When a loss requires replacement of items and the
326 replaced items do not match in quality, color, or size, the
327 insurer shall make reasonable repairs or replacement of items in
328 adjoining areas. In determining the extent of the repairs or
329 replacement of items in adjoining areas, the insurer may
330 consider the cost of repairing or replacing the undamaged
331 portions of the property, the degree of uniformity that can be
332 achieved without such cost, the remaining useful life of the
333 undamaged portion, and other relevant factors.

334 (3) In determining repair or replacement cost estimates,
335 the insurer shall use only the following:

336 (a) The retail cost using quotations obtained by the
337 insurer or insured from licensed contractors or retail
338 establishments in the local market area; or

339 (b) Computer software or other databases that produce
340 estimates based on market prices for products, materials, and
341 labor in the local geographic region, if the pertinent portions
342 of the valuation documents generated by a database are provided
343 by the insurer to the first-party insured upon request.

344 ~~(4)-(3)~~ This section does shall not ~~be construed to~~ make the
345 insurer a warrantor of the repairs made pursuant to this
346 section.

347 ~~(5)-(4)~~ ~~Nothing in~~ This section does not shall ~~be construed~~
348 ~~to~~ authorize or preclude enforcement of policy provisions

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349 relating to settlement disputes.

350 Section 4. Section 627.0613, Florida Statutes, is amended
351 to read:

352 627.0613 Consumer advocate.—The Chief Financial Officer
353 must appoint a consumer advocate who must represent the general
354 public of the state before the department and the office. The
355 consumer advocate must report directly to the Chief Financial
356 Officer, but is not otherwise under the authority of the
357 department or of any employee of the department. The consumer
358 advocate has such powers as are necessary to carry out the
359 duties of the office of consumer advocate, including, but not
360 limited to, the powers to:

361 (1) Recommend to the department or office, by petition, the
362 commencement of any proceeding or action; appear in any
363 proceeding or action before the department or office; or appear
364 in any proceeding before the Division of Administrative Hearings
365 relating to subject matter under the jurisdiction of the
366 department or office.

367 (2) Have access to and use of all files, records, and data
368 of the department or office.

369 (3) Examine rate and form filings submitted to the office,
370 hire consultants as necessary to aid in the review process, and
371 recommend to the department or office any position deemed by the
372 consumer advocate to be in the public interest.

373 (4) By June 1, 2012, and each June 1 thereafter, prepare an
374 annual report card for each authorized personal residential
375 property insurer, on a form and using a letter-grade scale
376 developed by the commission by rule, which objectively grades
377 each insurer based on the following factors:

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378 (a) The number and nature of valid consumer complaints, as
379 a market share ratio, received by the department against the
380 insurer.

381 (b) The disposition of all valid consumer complaints
382 received by the department.

383 (c) The average length of time for payment of claims by the
384 insurer.

385 (d) Any other measurable and objective factors the
386 commission identifies as capable of assisting policyholders in
387 making informed choices about homeowner's insurance.

388
389 For purposes of this subsection, the term "valid consumer
390 complaint" a means written communication from a consumer which
391 expresses dissatisfaction with a specific personal residential
392 property insurer and whose conduct described in the
393 communication is found to constitute a violation of the
394 insurance laws of this state by the Division of Consumer
395 Services of the Department of Financial Services.

396 (5) Prepare an annual budget for presentation to the
397 Legislature by the department, which budget must be adequate to
398 carry out the duties of the office of consumer advocate.

399 Section 5. Section 627.062, Florida Statutes, is amended to
400 read:

401 627.062 Rate standards.—

402 (1) The rates for all classes of insurance to which the
403 provisions of this part are applicable shall not be excessive,
404 inadequate, or unfairly discriminatory.

405 (2) As to all such classes of insurance:

406 (a) Insurers or rating organizations shall establish and

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407 use rates, rating schedules, or rating manuals to allow the
408 insurer a reasonable rate of return on such classes of insurance
409 written in this state. A copy of rates, rating schedules, rating
410 manuals, premium credits or discount schedules, and surcharge
411 schedules, and changes thereto, shall be filed with the office
412 under one of the following procedures except as provided in
413 subparagraph 3.:

414 1. If the filing is made at least 90 days before the
415 proposed effective date and the filing is not implemented during
416 the office's review of the filing and any proceeding and
417 judicial review, then such filing shall be considered a "file
418 and use" filing. In such case, the office shall finalize its
419 review by issuance of an approval ~~a notice of intent to approve~~
420 or a notice of intent to disapprove within 90 days after receipt
421 of the filing. The approval ~~notice of intent to approve~~ and the
422 notice of intent to disapprove constitute agency action for
423 purposes of the Administrative Procedure Act. Requests for
424 supporting information, requests for mathematical or mechanical
425 corrections, or notification to the insurer by the office of its
426 preliminary findings shall not toll the 90-day period during any
427 such proceedings and subsequent judicial review. The rate shall
428 be deemed approved if the office does not issue an approval ~~a~~
429 ~~notice of intent to approve~~ or a notice of intent to disapprove
430 within 90 days after receipt of the filing.

431 2. If the filing is not made in accordance with the
432 provisions of subparagraph 1., such filing shall be made as soon
433 as practicable, but no later than 30 days after the effective
434 date, and shall be considered a "use and file" filing. An
435 insurer making a "use and file" filing is potentially subject to

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436 an order by the office to return to policyholders portions of
437 rates found to be excessive, as provided in paragraph (h).

438 3. For all property insurance filings made or submitted
439 after January 25, 2007, but before December 31, 2012 ~~2010~~, an
440 insurer seeking a rate that is greater than the rate most
441 recently approved by the office shall make a "file and use"
442 filing. For purposes of this subparagraph, motor vehicle
443 collision and comprehensive coverages are not considered to be
444 property coverages.

445 (b) Upon receiving a rate filing, the office shall review
446 the rate filing to determine if a rate is excessive, inadequate,
447 or unfairly discriminatory. In making that determination, the
448 office shall, in accordance with generally accepted and
449 reasonable actuarial techniques, consider the following factors:

450 1. Past and prospective loss experience within and without
451 this state.

452 2. Past and prospective expenses.

453 3. The degree of competition among insurers for the risk
454 insured.

455 4. Investment income reasonably expected by the insurer,
456 consistent with the insurer's investment practices, from
457 investable premiums anticipated in the filing, plus any other
458 expected income from currently invested assets representing the
459 amount expected on unearned premium reserves and loss reserves.
460 The commission may adopt rules using reasonable techniques of
461 actuarial science and economics to specify the manner in which
462 insurers shall calculate investment income attributable to such
463 classes of insurance written in this state and the manner in
464 which such investment income shall be used to calculate

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465 insurance rates. Such manner shall contemplate allowances for an
466 underwriting profit factor and full consideration of investment
467 income which produce a reasonable rate of return; however,
468 investment income from invested surplus may not be considered.

469 5. The reasonableness of the judgment reflected in the
470 filing.

471 6. Dividends, savings, or unabsorbed premium deposits
472 allowed or returned to Florida policyholders, members, or
473 subscribers.

474 7. The adequacy of loss reserves.

475 8. The cost of reinsurance. The office shall not disapprove
476 a rate as excessive solely due to the insurer having obtained
477 catastrophic reinsurance to cover the insurer's estimated 250-
478 year probable maximum loss or any lower level of loss.

479 9. Trend factors, including trends in actual losses per
480 insured unit for the insurer making the filing.

481 10. Conflagration and catastrophe hazards, if applicable.

482 11. Projected hurricane losses, if applicable, which must
483 be estimated using a model or method found to be acceptable or
484 reliable by the Florida Commission on Hurricane Loss Projection
485 Methodology, and as further provided in s. 627.0628.

486 12. A reasonable margin for underwriting profit and
487 contingencies.

488 13. The cost of medical services, if applicable.

489 14. Other relevant factors which impact upon the frequency
490 or severity of claims or upon expenses.

491 (c) In the case of fire insurance rates, consideration
492 shall be given to the availability of water supplies and the
493 experience of the fire insurance business during a period of not

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494 less than the most recent 5-year period for which such
495 experience is available.

496 (d) If conflagration or catastrophe hazards are given
497 consideration by an insurer in its rates or rating plan,
498 including surcharges and discounts, the insurer shall establish
499 a reserve for that portion of the premium allocated to such
500 hazard and shall maintain the premium in a catastrophe reserve.
501 Any removal of such premiums from the reserve for purposes other
502 than paying claims associated with a catastrophe or purchasing
503 reinsurance for catastrophes shall be subject to approval of the
504 office. Any ceding commission received by an insurer purchasing
505 reinsurance for catastrophes shall be placed in the catastrophe
506 reserve.

507 (e) After consideration of the rate factors provided in
508 paragraphs (b), (c), and (d), a rate may be found by the office
509 to be excessive, inadequate, or unfairly discriminatory based
510 upon the following standards:

511 1. Rates shall be deemed excessive if they are likely to
512 produce a profit from Florida business that is unreasonably high
513 in relation to the risk involved in the class of business or if
514 expenses are unreasonably high in relation to services rendered.

515 2. Rates shall be deemed excessive if, among other things,
516 the rate structure established by a stock insurance company
517 provides for replenishment of surpluses from premiums, when the
518 replenishment is attributable to investment losses.

519 3. Rates shall be deemed inadequate if they are clearly
520 insufficient, together with the investment income attributable
521 to them, to sustain projected losses and expenses in the class
522 of business to which they apply.

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523 4. A rating plan, including discounts, credits, or
524 surcharges, shall be deemed unfairly discriminatory if it fails
525 to clearly and equitably reflect consideration of the
526 policyholder's participation in a risk management program
527 adopted pursuant to s. 627.0625.

528 5. A rate shall be deemed inadequate as to the premium
529 charged to a risk or group of risks if discounts or credits are
530 allowed which exceed a reasonable reflection of expense savings
531 and reasonably expected loss experience from the risk or group
532 of risks.

533 6. A rate shall be deemed unfairly discriminatory as to a
534 risk or group of risks if the application of premium discounts,
535 credits, or surcharges among such risks does not bear a
536 reasonable relationship to the expected loss and expense
537 experience among the various risks.

538 (f) In reviewing a rate filing, the office may require the
539 insurer to provide at the insurer's expense all information
540 necessary to evaluate the condition of the company and the
541 reasonableness of the filing according to the criteria
542 enumerated in this section.

543 (g) The office may at any time review a rate, rating
544 schedule, rating manual, or rate change; the pertinent records
545 of the insurer; and market conditions. If the office finds on a
546 preliminary basis that a rate may be excessive, inadequate, or
547 unfairly discriminatory, the office shall initiate proceedings
548 to disapprove the rate and shall so notify the insurer. However,
549 the office may not disapprove as excessive any rate for which it
550 has given final approval or which has been deemed approved for a
551 period of 1 year after the effective date of the filing unless

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552 the office finds that a material misrepresentation or material
553 error was made by the insurer or was contained in the filing.
554 Upon being so notified, the insurer or rating organization
555 shall, within 60 days, file with the office all information
556 which, in the belief of the insurer or organization, proves the
557 reasonableness, adequacy, and fairness of the rate or rate
558 change. The office shall issue a notice of intent to approve or
559 a notice of intent to disapprove pursuant to the procedures of
560 paragraph (a) within 90 days after receipt of the insurer's
561 initial response. In such instances and in any administrative
562 proceeding relating to the legality of the rate, the insurer or
563 rating organization shall carry the burden of proof by a
564 preponderance of the evidence to show that the rate is not
565 excessive, inadequate, or unfairly discriminatory. After the
566 office notifies an insurer that a rate may be excessive,
567 inadequate, or unfairly discriminatory, unless the office
568 withdraws the notification, the insurer shall not alter the rate
569 except to conform with the office's notice until the earlier of
570 120 days after the date the notification was provided or 180
571 days after the date of the implementation of the rate. The
572 office may, subject to chapter 120, disapprove without the 60-
573 day notification any rate increase filed by an insurer within
574 the prohibited time period or during the time that the legality
575 of the increased rate is being contested.

576 (h) If ~~In the event~~ the office finds that a rate or rate
577 change is excessive, inadequate, or unfairly discriminatory, the
578 office shall issue an order of disapproval specifying that a new
579 rate or rate schedule which responds to the findings of the
580 office be filed by the insurer. The office shall further order,

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581 for any "use and file" filing made in accordance with
582 subparagraph (a)2., that premiums charged each policyholder
583 constituting the portion of the rate above that which was
584 actuarially justified be returned to such policyholder in the
585 form of a credit or refund. If the office finds that an
586 insurer's rate or rate change is inadequate, the new rate or
587 rate schedule filed with the office in response to such a
588 finding shall be applicable only to new or renewal business of
589 the insurer written on or after the effective date of the
590 responsive filing.

591 (i)1. Except as otherwise specifically provided in this
592 chapter, the office shall not, directly or indirectly, prohibit
593 any insurer, including any residual market plan or joint
594 underwriting association, from paying acquisition costs based on
595 the full amount of premium, as defined in s. 627.403, applicable
596 to any policy, or directly or indirectly prohibit any such
597 insurer from including the full amount of acquisition costs in a
598 rate filing.

599 2. The office shall not, directly or indirectly, impede,
600 abridge, or otherwise compromise an insurer's right to acquire
601 policyholders, advertise, or appoint agents, including the
602 calculation, manner, or amount of such agent commissions, if
603 any.

604 (j) With respect to residential property insurance rate
605 filings, the rate filing must account for mitigation measures
606 undertaken by policyholders to reduce hurricane losses.

607 (k)1.a. An insurer may make a separate filing limited
608 solely to an adjustment of its rates for reinsurance, the cost
609 of financing products used as a replacement for reinsurance, or

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610 financing costs incurred in the purchase of reinsurance, and an
611 inflation trend factor published by the office pursuant to
612 subparagraph 4. If an insurer chooses to make a separate filing
613 under this paragraph, it must implement the rate in such a
614 manner that all rate increases implemented as a result of the
615 separate filing, together with rate increases associated with
616 any other rate filing, do ~~or financing products to replace or~~
617 finance the payment of the amount covered by the Temporary
618 Increase in Coverage Limits (TICL) portion of the Florida
619 Hurricane Catastrophe Fund including replacement reinsurance for
620 the TICL reductions made pursuant to s. 215.555(17)(c); the
621 actual cost paid due to the application of the TICL premium
622 factor pursuant to s. 215.555(17)(f); and the actual cost paid
623 due to the application of the cash build-up factor pursuant to
624 s. 215.555(5)(b) if the insurer:

625 a. ~~Elects to purchase financing products such as a~~
626 ~~liquidity instrument or line of credit, in which case the cost~~
627 ~~included in the filing for the liquidity instrument or line of~~
628 ~~credit may not result in a premium increase exceeding 3 percent~~
629 ~~for any individual policyholder. All costs contained in the~~
630 ~~filing may not result in an overall premium increase of more~~
631 ~~than 10 percent for any individual policyholder, excluding~~
632 ~~coverage changes and surcharges, within the same policy year.~~

633 b. An insurer that makes a filing relating to reinsurance
634 or financing products must include the following ~~Includes~~ in the
635 filing: a copy of all of its reinsurance, liquidity instrument,
636 or line of credit contracts; proof of the billing or payment for
637 the contracts; and the calculation upon which the proposed rate
638 change is based demonstrating ~~demonstrates~~ that the costs meet

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639 the criteria of this section and ~~are not loaded for expenses or~~
640 ~~profit for the insurer making the filing.~~

641 c. Any filing made pursuant this paragraph may include only
642 the includes no other changes to its rates which are expressly
643 authorized by this paragraph in the filing.

644 ~~d. Has not implemented a rate increase within the 6 months~~
645 ~~immediately preceding the filing.~~

646 ~~e. Does not file for a rate increase under any other~~
647 ~~paragraph within 6 months after making a filing under this~~
648 ~~paragraph.~~

649 d.f. An insurer that purchases reinsurance or financing
650 products from an affiliated company may make a filing pursuant
651 to in compliance with this paragraph does so only if the costs
652 for such reinsurance or financing products are charged at or
653 below charges made for comparable coverage by nonaffiliated
654 reinsurers or financial entities making such coverage or
655 financing products available in this state.

656 e. An insurer that makes a filing as the result of a change
657 in an inflation trend factor published by the office need
658 support that filing only with rates and rating examples and an
659 explanation demonstrating the insurer's eligibility to adopt the
660 inflation trend factor.

661 2. An insurer may ~~only~~ make only one filing in any 12-month
662 period under this paragraph.

663 3. An insurer that elects to implement a rate change under
664 this paragraph must file its rate filing with the office at
665 least 45 days before the effective date of the rate change.
666 After an insurer submits a complete filing that meets all of the
667 requirements of this paragraph, the office has 45 days after the

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668 date of the filing to review the rate filing and determine if
669 the rate is excessive, inadequate, or unfairly discriminatory.

670 4. Beginning January 1, 2011, the office shall publish an
671 annual informational memorandum to establish one or more
672 inflation trend factors that may be stated separately for
673 personal and residential property and for building coverage,
674 contents coverage, additional living expense coverage, and
675 liability coverage, if applicable. These factors shall represent
676 an estimate of cost increases or decreases based upon publicly
677 available relevant data and economic indices that are identified
678 in the memorandum. Such factors are exempt from the rulemaking
679 requirements of chapter 120, and insurers are not required to
680 adopt the factors. The office may publish factors for any line
681 of insurance, but is required to publish a factor only for
682 residential property insurance.

683
684 The provisions of this subsection do ~~shall~~ not apply to workers'
685 compensation and employer's liability insurance and to motor
686 vehicle insurance.

687 (3) (a) For individual risks that are not rated in
688 accordance with the insurer's rates, rating schedules, rating
689 manuals, and underwriting rules filed with the office and which
690 have been submitted to the insurer for individual rating, the
691 insurer must maintain documentation on each risk subject to
692 individual risk rating. The documentation must identify the
693 named insured and specify the characteristics and classification
694 of the risk supporting the reason for the risk being
695 individually risk rated, including any modifications to existing
696 approved forms to be used on the risk. The insurer must maintain

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697 these records for a period of at least 5 years after the
698 effective date of the policy.

699 (b) Individual risk rates and modifications to existing
700 approved forms are not subject to this part or part II, except
701 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
702 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
703 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
704 627.4265, 627.427, and 627.428, but are subject to all other
705 applicable provisions of this code and rules adopted thereunder.

706 (c) This subsection does not apply to private passenger
707 motor vehicle insurance.

708 (4) (a) Contingent on specific appropriations made to
709 implement this subsection, in order to enhance the ability of
710 consumers to compare premiums and to increase the accuracy and
711 usefulness of rate and product comparison information for
712 homeowners' insurance, the office shall develop or contract with
713 a private entity to develop a comprehensive program for
714 providing the consumer with all available information necessary
715 to make an informed purchase of the insurance product that best
716 serves the needs of the individual.

717 (b) In developing the comprehensive program, the office
718 shall rely as much as is practical on information that is
719 currently available and shall consider:

720 1. The most efficient means for developing, hosting, and
721 operating a separate website that consolidates all consumer
722 information for price comparisons, filed complaints, financial
723 strength, underwriting, and receivership information and other
724 data useful to consumers;

725 2. Whether all admitted insurers should be required to

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726 submit additional information to populate the composite website
727 and how often such submissions must be made;

728 3. Whether all admitted insurers should be required to
729 provide links from the website into each individual insurer's
730 website in order to enable consumers to access product rate
731 information and apply for quotations;

732 4. Developing a plan to publicize the existence,
733 availability, and value of the website; and

734 5. Any other provision that would make relevant homeowners'
735 insurance information more readily available so that consumers
736 can make informed product comparisons and purchasing decisions.

737 (c) Before establishing the program or website, the office
738 shall conduct a cost-benefit analysis to determine the most
739 effective approach for establishing and operating the program
740 and website. Based on the results of the analysis, the office
741 shall submit a proposed implementation plan for review and
742 approval by the Financial Services Commission. The
743 implementation plan shall include an estimated timeline for
744 establishing the program and website; a description of the data
745 and functionality to be provided by the site, a strategy for
746 publicizing the website to consumers; a recommended approach for
747 developing, hosting, and operating the website; and an estimate
748 of all major nonrecurring and recurring costs required to
749 establish and operate the website. Upon approval of the plan,
750 the office may initiate the establishment of the program.

751 (5)-(4) The establishment of any rate, rating
752 classification, rating plan or schedule, or variation thereof in
753 violation of part IX of chapter 626 is also in violation of this
754 section. In order to enhance the ability of consumers to compare

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755 ~~premiums and to increase the accuracy and usefulness of rate-~~
756 ~~comparison information provided by the office to the public, the~~
757 ~~office shall develop a proposed standard rating territory plan~~
758 ~~to be used by all authorized property and casualty insurers for~~
759 ~~residential property insurance. In adopting the proposed plan,~~
760 ~~the office may consider geographical characteristics relevant to~~
761 ~~risk, county lines, major roadways, existing rating territories~~
762 ~~used by a significant segment of the market, and other relevant~~
763 ~~factors. Such plan shall be submitted to the President of the~~
764 ~~Senate and the Speaker of the House of Representatives by~~
765 ~~January 15, 2006. The plan may not be implemented unless~~
766 ~~authorized by further act of the Legislature.~~

767 (6)~~(5)~~ With respect to a rate filing involving coverage of
768 the type for which the insurer is required to pay a
769 reimbursement premium to the Florida Hurricane Catastrophe Fund,
770 the insurer may fully recoup in its property insurance premiums
771 any reimbursement premiums paid to the Florida Hurricane
772 Catastrophe Fund, together with reasonable costs of other
773 reinsurance, but except as otherwise provided in this section,
774 may not recoup reinsurance costs that duplicate coverage
775 provided by the Florida Hurricane Catastrophe Fund. An insurer
776 may not recoup more than 1 year of reimbursement premium at a
777 time. Any under-recoupment from the prior year may be added to
778 the following year's reimbursement premium, and any over-
779 recoupment shall be subtracted from the following year's
780 reimbursement premium.

781 (7)~~(6)~~ (a) If an insurer requests an administrative hearing
782 pursuant to s. 120.57 related to a rate filing under this
783 section, the director of the Division of Administrative Hearings

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784 shall expedite the hearing and assign an administrative law
785 judge who shall commence the hearing within 30 days after the
786 receipt of the formal request and shall enter a recommended
787 order within 30 days after the hearing or within 30 days after
788 receipt of the hearing transcript by the administrative law
789 judge, whichever is later. Each party shall be allowed 10 days
790 in which to submit written exceptions to the recommended order.
791 The office shall enter a final order within 30 days after the
792 entry of the recommended order. The provisions of this paragraph
793 may be waived upon stipulation of all parties.

794 (b) Upon entry of a final order, the insurer may request a
795 expedited appellate review pursuant to the Florida Rules of
796 Appellate Procedure. It is the intent of the Legislature that
797 the First District Court of Appeal grant an insurer's request
798 for an expedited appellate review.

799 (8)~~(7)~~(a) The provisions of this subsection apply only with
800 respect to rates for medical malpractice insurance and shall
801 control to the extent of any conflict with other provisions of
802 this section.

803 (b) Any portion of a judgment entered or settlement paid as
804 a result of a statutory or common-law bad faith action and any
805 portion of a judgment entered which awards punitive damages
806 against an insurer may not be included in the insurer's rate
807 base, and shall not be used to justify a rate or rate change.
808 Any common-law bad faith action identified as such, any portion
809 of a settlement entered as a result of a statutory or common-law
810 action, or any portion of a settlement wherein an insurer agrees
811 to pay specific punitive damages may not be used to justify a
812 rate or rate change. The portion of the taxable costs and

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813 attorney's fees which is identified as being related to the bad
814 faith and punitive damages in these judgments and settlements
815 may not be included in the insurer's rate base and may not be
816 used ~~utilized~~ to justify a rate or rate change.

817 (c) Upon reviewing a rate filing and determining whether
818 the rate is excessive, inadequate, or unfairly discriminatory,
819 the office shall consider, in accordance with generally accepted
820 and reasonable actuarial techniques, past and present
821 prospective loss experience, either using loss experience solely
822 for this state or giving greater credibility to this state's
823 loss data after applying actuarially sound methods of assigning
824 credibility to such data.

825 (d) Rates shall be deemed excessive if, among other
826 standards established by this section, the rate structure
827 provides for replenishment of reserves or surpluses from
828 premiums when the replenishment is attributable to investment
829 losses.

830 (e) The insurer must apply a discount or surcharge based on
831 the health care provider's loss experience or shall establish an
832 alternative method giving due consideration to the provider's
833 loss experience. The insurer must include in the filing a copy
834 of the surcharge or discount schedule or a description of the
835 alternative method used, and must provide a copy of such
836 schedule or description, as approved by the office, to
837 policyholders at the time of renewal and to prospective
838 policyholders at the time of application for coverage.

839 (f) Each medical malpractice insurer must make a rate
840 filing under this section, sworn to by at least two executive
841 officers of the insurer, at least once each calendar year.

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842 ~~(8)(a)1. No later than 60 days after the effective date of~~
843 ~~medical malpractice legislation enacted during the 2003 Special~~
844 ~~Session D of the Florida Legislature, the office shall calculate~~
845 ~~a presumed factor that reflects the impact that the changes~~
846 ~~contained in such legislation will have on rates for medical~~
847 ~~malpractice insurance and shall issue a notice informing all~~
848 ~~insurers writing medical malpractice coverage of such presumed~~
849 ~~factor. In determining the presumed factor, the office shall use~~
850 ~~generally accepted actuarial techniques and standards provided~~
851 ~~in this section in determining the expected impact on losses,~~
852 ~~expenses, and investment income of the insurer. To the extent~~
853 ~~that the operation of a provision of medical malpractice~~
854 ~~legislation enacted during the 2003 Special Session D of the~~
855 ~~Florida Legislature is stayed pending a constitutional~~
856 ~~challenge, the impact of that provision shall not be included in~~
857 ~~the calculation of a presumed factor under this subparagraph.~~

858 ~~2. No later than 60 days after the office issues its notice~~
859 ~~of the presumed rate change factor under subparagraph 1., each~~
860 ~~insurer writing medical malpractice coverage in this state shall~~
861 ~~submit to the office a rate filing for medical malpractice~~
862 ~~insurance, which will take effect no later than January 1, 2004,~~
863 ~~and apply retroactively to policies issued or renewed on or~~
864 ~~after the effective date of medical malpractice legislation~~
865 ~~enacted during the 2003 Special Session D of the Florida~~
866 ~~Legislature. Except as authorized under paragraph (b), the~~
867 ~~filing shall reflect an overall rate reduction at least as great~~
868 ~~as the presumed factor determined under subparagraph 1. With~~
869 ~~respect to policies issued on or after the effective date of~~
870 ~~such legislation and prior to the effective date of the rate~~

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871 ~~filing required by this subsection, the office shall order the~~
872 ~~insurer to make a refund of the amount that was charged in~~
873 ~~excess of the rate that is approved.~~

874 ~~(b) Any insurer or rating organization that contends that~~
875 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
876 ~~or unfairly discriminatory shall separately state in its filing~~
877 ~~the rate it contends is appropriate and shall state with~~
878 ~~specificity the factors or data that it contends should be~~
879 ~~considered in order to produce such appropriate rate. The~~
880 ~~insurer or rating organization shall be permitted to use all of~~
881 ~~the generally accepted actuarial techniques provided in this~~
882 ~~section in making any filing pursuant to this subsection. The~~
883 ~~office shall review each such exception and approve or~~
884 ~~disapprove it prior to use. It shall be the insurer's burden to~~
885 ~~actuarially justify any deviations from the rates required to be~~
886 ~~filed under paragraph (a). The insurer making a filing under~~
887 ~~this paragraph shall include in the filing the expected impact~~
888 ~~of medical malpractice legislation enacted during the 2003~~
889 ~~Special Session D of the Florida Legislature on losses,~~
890 ~~expenses, and rates.~~

891 ~~(c) If any provision of medical malpractice legislation~~
892 ~~enacted during the 2003 Special Session D of the Florida~~
893 ~~Legislature is held invalid by a court of competent~~
894 ~~jurisdiction, the office shall permit an adjustment of all~~
895 ~~medical malpractice rates filed under this section to reflect~~
896 ~~the impact of such holding on such rates so as to ensure that~~
897 ~~the rates are not excessive, inadequate, or unfairly~~
898 ~~discriminatory.~~

899 ~~(d) Rates approved on or before July 1, 2003, for medical~~

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900 ~~malpractice insurance shall remain in effect until the effective~~
901 ~~date of a new rate filing approved under this subsection.~~

902 ~~(c) The calculation and notice by the office of the~~
903 ~~presumed factor pursuant to paragraph (a) is not an order or~~
904 ~~rule that is subject to chapter 120. If the office enters into a~~
905 ~~contract with an independent consultant to assist the office in~~
906 ~~calculating the presumed factor, such contract shall not be~~
907 ~~subject to the competitive solicitation requirements of s.~~
908 ~~287.057.~~

909 (9) (a) The chief executive officer or chief financial
910 officer of a property insurer and the chief actuary of a
911 property insurer must certify under oath and subject to the
912 penalty of perjury, on a form approved by the commission, the
913 following information, which must accompany a rate filing:

914 1. The signing officer and actuary have reviewed the rate
915 filing;

916 2. Based on the signing officer's and actuary's knowledge,
917 the rate filing does not contain any untrue statement of a
918 material fact or omit to state a material fact necessary in
919 order to make the statements made, in light of the circumstances
920 under which such statements were made, not misleading;

921 3. Based on the signing officer's and actuary's knowledge,
922 the information and other factors described in paragraph (2) (b),
923 including, but not limited to, investment income, fairly present
924 in all material respects the basis of the rate filing for the
925 periods presented in the filing; and

926 4. Based on the signing officer's and actuary's knowledge,
927 the rate filing reflects all premium savings that are reasonably
928 expected to result from legislative enactments and are in

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929 accordance with generally accepted and reasonable actuarial
930 techniques.

931 (b) A signing officer or actuary knowingly making a false
932 certification under this subsection commits a violation of s.
933 626.9541(1)(e) and is subject to the penalties under s.
934 626.9521.

935 (c) Failure to provide such certification by the officer
936 and actuary shall result in the rate filing being disapproved
937 without prejudice to be refiled.

938 (d) The commission may adopt rules and forms pursuant to
939 ss. 120.536(1) and 120.54 to administer this subsection.

940 (10) The burden is on the office to establish that rates
941 are excessive for personal lines residential coverage with a
942 dwelling replacement cost of \$1 million or more or for a single
943 condominium unit with a combined dwelling and contents
944 replacement cost of \$1 million or more. Upon request of the
945 office, the insurer shall provide to the office such loss and
946 expense information as the office reasonably needs to meet this
947 burden.

948 (11) Any interest paid pursuant to s. 627.70131(5) may not
949 be included in the insurer's rate base and may not be used to
950 justify a rate or rate change.

951 Section 6. Section 627.0629, Florida Statutes, is amended
952 to read:

953 627.0629 Residential property insurance; rate filings.—

954 (1)(a) It is the intent of the Legislature that insurers
955 ~~must~~ provide the most accurate pricing signals available ~~savings~~
956 to encourage consumers to ~~who~~ install or implement windstorm
957 damage mitigation techniques, alterations, or solutions to their

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958 properties to prevent windstorm losses. It is also the intent of
959 the Legislature that implementation of mitigation discounts not
960 result in a loss of income to the insurers granting the
961 discounts, so that the aggregate of mitigation discounts should
962 not exceed the aggregate of the expected reduction in loss that
963 is attributable to the mitigation efforts for which discounts
964 are granted. A rate filing for residential property insurance
965 must include actuarially reasonable discounts, credits, debits,
966 or other rate differentials, or appropriate reductions in
967 deductibles, which provide the proper pricing for all
968 properties. The rate filing must take into account the presence
969 or absence of ~~on which~~ fixtures or construction techniques
970 demonstrated to reduce the amount of loss in a windstorm have
971 been installed or implemented. The fixtures or construction
972 techniques shall include, but not be limited to, fixtures or
973 construction techniques that ~~which~~ enhance roof strength, roof
974 covering performance, roof-to-wall strength, wall-to-floor-to-
975 foundation strength, opening protection, and window, door, and
976 skylight strength. Credits, debits, discounts, or other rate
977 differentials, or appropriate reductions or increases in
978 deductibles, which recognize the presence or absence of ~~for~~
979 fixtures and construction techniques that ~~which~~ meet the minimum
980 requirements of the Florida Building Code must be included in
981 the rate filing. If an insurer demonstrates that the aggregate
982 of its mitigation discounts results in a reduction to revenue
983 which exceeds the reduction of the aggregate loss that is
984 expected to result from the mitigation, that insurer may recover
985 the lost revenue through an increase in its base rates. ~~All~~
986 ~~insurance companies must make a rate filing which includes the~~

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987 ~~credits, discounts, or other rate differentials or reductions in~~
988 ~~deductibles by February 28, 2003.~~ By July 1, 2007, the office
989 shall reevaluate the discounts, credits, other rate
990 differentials, and appropriate reductions in deductibles for
991 fixtures and construction techniques that meet the minimum
992 requirements of the Florida Building Code, based upon actual
993 experience or any other loss relativity studies available to the
994 office. The office shall determine the discounts, credits,
995 debits, other rate differentials, and appropriate reductions or
996 increases in deductibles that reflect the full actuarial value
997 of such revaluation, which may be used by insurers in rate
998 filings.

999 (b) By February 1, 2011, the Office of Insurance
1000 Regulation, in consultation with the Department of Financial
1001 Services and the Department of Community Affairs, shall develop
1002 and make publicly available a proposed method for insurers to
1003 establish discounts, credits, debits, or other rate
1004 differentials for hurricane mitigation measures which directly
1005 correlate to the numerical rating assigned to a structure
1006 pursuant to the uniform home grading scale adopted by the
1007 Financial Services Commission pursuant to s. 215.55865,
1008 including any proposed changes to the uniform home grading
1009 scale. By October 1, 2011, the commission shall adopt rules
1010 requiring insurers to make rate filings for residential property
1011 insurance which revise insurers' discounts, credits, debits, or
1012 other rate differentials for hurricane mitigation measures so
1013 that such rate differentials correlate directly to the uniform
1014 home grading scale. The rules may include such changes to the
1015 uniform home grading scale as the commission determines are

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1016 necessary, and may specify the minimum required discounts,
1017 credits, or other rate differentials. Such rate differentials
1018 must be consistent with generally accepted actuarial principles
1019 and wind-loss mitigation studies. The rules must ~~shall~~ allow a
1020 period of at least 2 years after the effective date of the
1021 revised mitigation discounts, credits, debits, or other rate
1022 differentials for a property owner to obtain an inspection or
1023 otherwise qualify for the revised credit or debit, during which
1024 time the insurer must ~~shall~~ continue to apply the mitigation
1025 credit or debit that was applied immediately before ~~prior to~~ the
1026 effective date of the revised credit. Discounts, credits,
1027 debits, and other rate differentials established for rate
1028 filings under this paragraph shall supersede, after adoption,
1029 the discounts, credits, and other rate differentials included in
1030 rate filings under paragraph (a).

1031 (2)(a) A rate filing for residential property insurance
1032 made on or before the implementation of paragraph (b) may
1033 include rate factors that reflect the manner in which building
1034 code enforcement in a particular jurisdiction addresses the risk
1035 of wind damage. ~~+~~ However, such a rate filing must also provide
1036 for variations from such rate factors on an individual basis
1037 based on an inspection of a particular structure by a licensed
1038 home inspector, which inspection may be at the cost of the
1039 insured.

1040 (b) A rate filing for residential property insurance made
1041 more than 150 days after approval by the office of a building
1042 code rating factor plan submitted by a statewide rating
1043 organization shall include positive and negative rate factors
1044 that reflect the manner in which building code enforcement in a

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1045 particular jurisdiction addresses risk of wind damage. The rate
1046 filing shall include variations from standard rate factors on an
1047 individual basis based on inspection of a particular structure
1048 by a licensed home inspector. If an inspection is requested by
1049 the insured, the insurer may require the insured to pay the
1050 reasonable cost of the inspection. This paragraph applies to
1051 structures constructed or renovated after the implementation of
1052 this paragraph.

1053 (c) The premium notice shall specify the amount by which
1054 the rate has been adjusted as a result of this subsection and
1055 shall also specify the maximum possible positive and negative
1056 adjustments that are approved for use by the insurer under this
1057 subsection.

1058 (3) A rate filing ~~made on or after July 1, 1995,~~ for mobile
1059 home owner's insurance must include appropriate discounts,
1060 credits, or other rate differentials for mobile homes
1061 constructed to comply with American Society of Civil Engineers
1062 Standard ANSI/ASCE 7-88, adopted by the United States Department
1063 of Housing and Urban Development on July 13, 1994, and that also
1064 comply with all applicable tie-down requirements provided by
1065 state law.

1066 (4) The Legislature finds that separate consideration and
1067 notice of hurricane insurance premiums will assist consumers by
1068 providing greater assurance that hurricane premiums are lawful
1069 and by providing more complete information regarding the
1070 components of property insurance premiums. ~~Effective January 1,~~
1071 ~~1997,~~ A rate filing for residential property insurance shall be
1072 separated into two components, rates for hurricane coverage and
1073 rates for all other coverages. A premium notice reflecting a

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1074 rate implemented on the basis of such a filing shall separately
1075 indicate the premium for hurricane coverage and the premium for
1076 all other coverages.

1077 (5) In order to provide an appropriate transition period,
1078 an insurer may, in its sole discretion, implement an approved
1079 rate filing for residential property insurance over a period of
1080 years. An insurer electing to phase in its rate filing must
1081 provide an informational notice to the office setting out its
1082 schedule for implementation of the phased-in rate filing. An
1083 insurer may include in its rate the actual cost of private
1084 market reinsurance that corresponds to available coverage of the
1085 Temporary Increase in Coverage Limits, TICL, from the Florida
1086 Hurricane Catastrophe Fund. The insurer may also include the
1087 cost of reinsurance to replace the TICL reduction implemented
1088 pursuant to s. 215.555(17)(d)9. However, this cost for
1089 reinsurance may not ~~include any expense or profit load or~~ result
1090 in a total annual base rate increase in excess of 10 percent.

1091 (6) Any rate filing that is based in whole or part on data
1092 from a computer model may not exceed 15 percent unless there is
1093 a public hearing.

1094 (7) An insurer may implement appropriate discounts or other
1095 rate differentials of up to 10 percent of the annual premium to
1096 mobile home owners who provide to the insurer evidence of a
1097 current inspection of tie-downs for the mobile home, certifying
1098 that the tie-downs have been properly installed and are in good
1099 condition.

1100 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
1101 SOUNDNESS.—

1102 (a) It is the intent of the Legislature to provide a

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1103 program whereby homeowners may obtain an evaluation of the wind
1104 resistance of their homes with respect to preventing damage from
1105 hurricanes, together with a recommendation of reasonable steps
1106 that may be taken to upgrade their homes to better withstand
1107 hurricane force winds.

1108 (b) To the extent that funds are provided for this purpose
1109 in the General Appropriations Act, the Legislature hereby
1110 authorizes the establishment of a program to be administered by
1111 the Citizens Property Insurance Corporation for homeowners
1112 insured in the high-risk account.

1113 (c) The program shall provide grants to homeowners, for the
1114 purpose of providing homeowner applicants with funds to conduct
1115 an evaluation of the integrity of their homes with respect to
1116 withstanding hurricane force winds, recommendations to retrofit
1117 the homes to better withstand damage from such winds, and the
1118 estimated cost to make the recommended retrofits.

1119 (d) The Department of Community Affairs shall establish by
1120 rule standards to govern the quality of the evaluation, the
1121 quality of the recommendations for retrofitting, the eligibility
1122 of the persons conducting the evaluation, and the selection of
1123 applicants under the program. In establishing the rule, the
1124 Department of Community Affairs shall consult with the advisory
1125 committee to minimize the possibility of fraud or abuse in the
1126 evaluation and retrofitting process, and to ensure that funds
1127 spent by homeowners acting on the recommendations achieve
1128 positive results.

1129 (e) The Citizens Property Insurance Corporation shall
1130 identify areas of this state with the greatest wind risk to
1131 residential properties and recommend annually to the Department

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1132 of Community Affairs priority target areas for such evaluations
1133 and inclusion with the associated residential construction
1134 mitigation program.

1135 (9) A property insurance rate filing that includes any
1136 adjustments related to premiums paid to the Florida Hurricane
1137 Catastrophe Fund must include a complete calculation of the
1138 insurer's catastrophe load, and the information in the filing
1139 may not be limited solely to recovery of moneys paid to the
1140 fund.

1141 Section 7. Subsection (2) of section 627.4133, Florida
1142 Statutes, is amended to read:

1143 627.4133 Notice of cancellation, nonrenewal, or renewal
1144 premium.—

1145 (2) With respect to any personal lines or commercial
1146 residential property insurance policy, including, but not
1147 limited to, any homeowner's, mobile home owner's, farmowner's,
1148 condominium association, condominium unit owner's, apartment
1149 building, or other policy covering a residential structure or
1150 its contents:

1151 (a) The insurer shall give the named insured at least 45
1152 days' advance written notice of the renewal premium.

1153 (b) The insurer shall give the named insured written notice
1154 of nonrenewal, cancellation, or termination at least 100 days
1155 before ~~prior to~~ the effective date of the nonrenewal,
1156 cancellation, or termination. However, the insurer shall give at
1157 least 100 days' written notice, or written notice by June 1,
1158 whichever is earlier, for any nonrenewal, cancellation, or
1159 termination that would be effective between June 1 and November
1160 30. The notice must include the reason or reasons for the

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1161 nonrenewal, cancellation, or termination, except that:

1162 1. The insurer must ~~shall~~ give the named insured written
1163 notice of nonrenewal, cancellation, or termination at least 180
1164 days before ~~prior to~~ the effective date of the nonrenewal,
1165 cancellation, or termination for a named insured whose
1166 residential structure has been insured by that insurer or an
1167 affiliated insurer for at least a 5-year period immediately
1168 prior to the date of the written notice.

1169 2. When cancellation is for nonpayment of premium, at least
1170 10 days' written notice of cancellation accompanied by the
1171 reason therefor must ~~shall~~ be given. As used in this
1172 subparagraph, the term "nonpayment of premium" means failure of
1173 the named insured to discharge when due any of her or his
1174 obligations in connection with the payment of premiums on a
1175 policy or any installment of such premium, whether the premium
1176 is payable directly to the insurer or its agent or indirectly
1177 under any premium finance plan or extension of credit, or
1178 failure to maintain membership in an organization if such
1179 membership is a condition precedent to insurance coverage.
1180 "Nonpayment of premium" also means the failure of a financial
1181 institution to honor an insurance applicant's check after
1182 delivery to a licensed agent for payment of a premium, even if
1183 the agent has previously delivered or transferred the premium to
1184 the insurer. If a dishonored check represents the initial
1185 premium payment, the contract and all contractual obligations
1186 are ~~shall be~~ void ab initio unless the nonpayment is cured
1187 within the earlier of 5 days after actual notice by certified
1188 mail is received by the applicant or 15 days after notice is
1189 sent to the applicant by certified mail or registered mail, and

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1190 if the contract is void, any premium received by the insurer
1191 from a third party must ~~shall~~ be refunded to that party in full.

1192 3. When such cancellation or termination occurs during the
1193 first 90 days during which the insurance is in force and the
1194 insurance is canceled or terminated for reasons other than
1195 nonpayment of premium, at least 20 days' written notice of
1196 cancellation or termination accompanied by the reason therefor
1197 must ~~shall~~ be given except if ~~where~~ there has been a material
1198 misstatement or misrepresentation or failure to comply with the
1199 underwriting requirements established by the insurer.

1200 4. The requirement for providing written notice of
1201 nonrenewal by June 1 of any nonrenewal that would be effective
1202 between June 1 and November 30 does not apply to the following
1203 situations, but the insurer remains subject to the requirement
1204 to provide such notice at least 100 days before ~~prior to~~ the
1205 effective date of nonrenewal:

1206 a. A policy that is nonrenewed due to a revision in the
1207 coverage for sinkhole losses and catastrophic ground cover
1208 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
1209 ~~2007-1, Laws of Florida.~~

1210 b. A policy that is nonrenewed by Citizens Property
1211 Insurance Corporation, pursuant to s. 627.351(6), for a policy
1212 that has been assumed by an authorized insurer offering
1213 replacement or renewal coverage to the policyholder.

1214

1215 After the policy has been in effect for 90 days, the policy may
1216 ~~shall~~ not be canceled by the insurer except if ~~when~~ there has
1217 been a material misstatement, a nonpayment of premium, a failure
1218 to comply with underwriting requirements established by the

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1219 insurer within 90 days of the date of effectuation of coverage,
1220 or a substantial change in the risk covered by the policy or if
1221 ~~when~~ the cancellation is for all insureds under such policies
1222 for a given class of insureds. This paragraph does not apply to
1223 individually rated risks having a policy term of less than 90
1224 days.

1225 5. Notwithstanding any other provision of law, an insurer
1226 may cancel or nonrenew a property insurance policy upon a
1227 minimum of 45 days' notice if the office finds that the early
1228 cancellation of some or all of the insurer's policies is
1229 necessary to protect the best interests of the public or
1230 policyholders and the office approves the insurer's plan for
1231 early cancellation or nonrenewal of some or all of its policies.
1232 The office may base such a finding upon the financial condition
1233 of the insurer, lack of adequate reinsurance coverage for
1234 hurricane risk, or other relevant factors. The office may
1235 condition its finding on the consent of the insurer to be placed
1236 in administrative supervision pursuant to s. 624.81 or consent
1237 to the appointment of a receiver under chapter 631.

1238 (c) If the insurer fails to provide the notice required by
1239 this subsection, other than the 10-day notice, the coverage
1240 provided to the named insured shall remain in effect until the
1241 effective date of replacement coverage or until the expiration
1242 of a period of days after the notice is given equal to the
1243 required notice period, whichever occurs first. The premium for
1244 the coverage shall remain the same during any such extension
1245 period except that, in the event of failure to provide notice of
1246 nonrenewal, if the rate filing then in effect would have
1247 resulted in a premium reduction, the premium during such

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1248 extension must ~~shall~~ be calculated based on the later rate
1249 filing.

1250 (d)1. Upon a declaration of an emergency pursuant to s.
1251 252.36 and the filing of an order by the Commissioner of
1252 Insurance Regulation, an insurer may not cancel or nonrenew a
1253 personal residential or commercial residential property
1254 insurance policy covering a dwelling or residential property
1255 located in this state which has been damaged as a result of a
1256 hurricane or wind loss that is the subject of the declaration of
1257 emergency for a period of 90 days after the dwelling or
1258 residential property has been repaired. A structure is deemed to
1259 be repaired when substantially completed and restored to the
1260 extent that it is insurable by another authorized insurer that
1261 is writing policies in this state.

1262 2. However, an insurer or agent may cancel or nonrenew such
1263 a policy before ~~prior to~~ the repair of the dwelling or
1264 residential property:

1265 a. Upon 10 days' notice for nonpayment of premium; or

1266 b. Upon 45 days' notice:

1267 (I) For a material misstatement or fraud related to the
1268 claim;

1269 (II) If the insurer determines that the insured has
1270 unreasonably caused a delay in the repair of the dwelling; or

1271 (III) If the insurer has paid policy limits.

1272 3. If the insurer elects to nonrenew a policy covering a
1273 property that has been damaged, the insurer shall provide at
1274 least 90 days' notice to the insured that the insurer intends to
1275 nonrenew the policy 90 days after the dwelling or residential
1276 property has been repaired. Nothing in this paragraph shall

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1277 prevent the insurer from canceling or nonrenewing the policy 90
1278 days after the repairs are complete for the same reasons the
1279 insurer would otherwise have canceled or nonrenewed the policy
1280 but for the limitations of subparagraph 1. The Financial
1281 Services Commission may adopt rules, and the Commissioner of
1282 Insurance Regulation may issue orders, necessary to implement
1283 this paragraph.

1284 4. This paragraph ~~shall~~ also applies ~~apply~~ to personal
1285 residential and commercial residential policies covering
1286 property that was damaged as the result of Tropical Storm
1287 Bonnie, Hurricane Charley, Hurricane Frances, Hurricane Ivan, or
1288 Hurricane Jeanne.

1289 (e) If any cancellation or nonrenewal of a policy subject
1290 to this subsection is to take effect during the duration of a
1291 hurricane as defined in s. 627.4025(2)(c), the effective date of
1292 such cancellation or nonrenewal is extended until the end of the
1293 duration of such hurricane. The insurer may collect premium at
1294 the prior rates or the rates then in effect for the period of
1295 time for which coverage is extended. This paragraph does not
1296 apply to any property with respect to which replacement coverage
1297 has been obtained and which is in effect for a claim occurring
1298 during the duration of the hurricane.

1299 Section 8. Section 627.7011, Florida Statutes, is amended
1300 to read:

1301 627.7011 Homeowners' policies; offer of replacement cost
1302 coverage and law and ordinance coverage.—

1303 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
1304 insurance policy ~~on or after October 1, 2005, or prior to the~~
1305 ~~first renewal of a homeowner's insurance policy on or after~~

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1306 ~~October 1, 2005~~, the insurer must offer each of the following:

1307 (a) A policy or endorsement providing that any loss which
1308 is repaired or replaced will be adjusted on the basis of
1309 replacement costs not exceeding policy limits as to the
1310 dwelling, rather than actual cash value, but not including costs
1311 necessary to meet applicable laws and ordinances regulating the
1312 construction, use, or repair of any property or requiring the
1313 tearing down of any property, including the costs of removing
1314 debris.

1315 (b) A policy or endorsement providing that, subject to
1316 other policy provisions, any loss which is repaired or replaced
1317 at any location will be adjusted on the basis of replacement
1318 costs not exceeding policy limits as to the dwelling, rather
1319 than actual cash value, and also including costs necessary to
1320 meet applicable laws and ordinances regulating the construction,
1321 use, or repair of any property or requiring the tearing down of
1322 any property, including the costs of removing debris. + However,
1323 such additional costs necessary to meet applicable laws and
1324 ordinances may be limited to either 25 percent or 50 percent of
1325 the dwelling limit, as selected by the policyholder, and such
1326 coverage shall apply only to repairs of the damaged portion of
1327 the structure unless the total damage to the structure exceeds
1328 50 percent of the replacement cost of the structure.

1329
1330 An insurer is not required to make the offers required by this
1331 subsection with respect to the issuance or renewal of a
1332 homeowner's policy that contains the provisions specified in
1333 paragraph (b) for law and ordinance coverage limited to 25
1334 percent of the dwelling limit, except that the insurer must

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1335 offer the law and ordinance coverage limited to 50 percent of
1336 the dwelling limit. This subsection does not prohibit the offer
1337 of a guaranteed replacement cost policy.

1338 (2) Unless the insurer obtains the policyholder's written
1339 refusal of the policies or endorsements specified in subsection
1340 (1), any policy covering the dwelling is deemed to include the
1341 law and ordinance coverage limited to 25 percent of the dwelling
1342 limit. The rejection or selection of alternative coverage shall
1343 be made on a form approved by the office. The form shall fully
1344 advise the applicant of the nature of the coverage being
1345 rejected. If this form is signed by a named insured, it will be
1346 conclusively presumed that there was an informed, knowing
1347 rejection of the coverage or election of the alternative
1348 coverage on behalf of all insureds. Unless the policyholder
1349 requests in writing the coverage specified in this section, it
1350 need not be provided in or supplemental to any other policy that
1351 renews, insures, extends, changes, supersedes, or replaces an
1352 existing policy when the policyholder has rejected the coverage
1353 specified in this section or has selected alternative coverage.
1354 The insurer must provide such policyholder with notice of the
1355 availability of such coverage in a form approved by the office
1356 at least once every 3 years. The failure to provide such notice
1357 constitutes a violation of this code, but does not affect the
1358 coverage provided under the policy.

1359 (3) (a) ~~If In the event of~~ a loss occurs for which a
1360 dwelling ~~or personal property~~ is insured on the basis of
1361 replacement costs, the insurer initially must ~~shall~~ pay at least
1362 the actual cash value of the loss, and must pay the replacement
1363 ~~cost without~~ reservation or holdback of any depreciation in

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1364 value if the insured executes a contract to replace or repair,
1365 ~~whether or not the insured replaces or repairs~~ the dwelling or
1366 property. The insurer must explain this process clearly in its
1367 contract.

1368 (b) If a loss occurs for which personal property is insured
1369 on the basis of replacement costs, the insurer may limit its
1370 initial payment to the greater of the actual cash value or 50
1371 percent of the replacement cost value and must pay the
1372 reservation or holdback upon the insured providing a receipt for
1373 the replaced property. The insurer must explain this process
1374 clearly in its contract.

1375 (4) ~~A Any~~ homeowner's insurance policy ~~issued or renewed on~~
1376 ~~or after October 1, 2005,~~ must include in bold type no smaller
1377 than 18 points the following statement:

1378

1379 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
1380 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
1381 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
1382 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
1383 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
1384 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

1385 The intent of this subsection is to encourage policyholders to
1386 purchase sufficient coverage to protect them in case events
1387 excluded from the standard homeowners policy, such as law and
1388 ordinance enforcement and flood, combine with covered events to
1389 produce damage or loss to the insured property. The intent is
1390 also to encourage policyholders to discuss these issues with
1391 their insurance agent.

1392 (5) ~~Nothing in This section does not shall be construed to~~

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1393 apply to policies not considered to be "homeowners' policies,"
 1394 as that term is commonly understood in the insurance industry.
 1395 This section specifically does not apply to mobile home
 1396 policies. ~~Nothing in~~ This section does not limit ~~shall be~~
 1397 ~~construed as limiting~~ the ability of any insurer to reject or
 1398 nonrenew any insured or applicant on the grounds that the
 1399 structure does not meet underwriting criteria applicable to
 1400 replacement cost or law and ordinance policies or for other
 1401 lawful reasons.

1402 (6) This section does not prohibit an insurer from limiting
 1403 its liability under a policy or endorsement providing that loss
 1404 will be adjusted on the basis of replacement costs to the lesser
 1405 of:

1406 (a) The limit of liability shown on the policy declarations
 1407 page;

1408 (b) The reasonable and necessary cost to repair the
 1409 damaged, destroyed, or stolen covered property; or

1410 (c) The reasonable and necessary cost to replace the
 1411 damaged, destroyed, or stolen covered property.

1412 (7) This section does not prohibit an insurer from
 1413 exercising its right to repair damaged property in compliance
 1414 with its policy and s. 627.702(7).

1415 Section 9. Section 627.7015, Florida Statutes, is amended
 1416 to read:

1417 627.7015 Alternative procedure for resolution of disputed
 1418 property insurance claims.—

1419 (1) ~~PURPOSE AND SCOPE.~~ This section sets forth a
 1420 nonadversarial alternative dispute resolution procedure for a
 1421 mediated claim resolution conference prompted by the need for

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1422 effective, fair, and timely handling of property insurance
1423 claims. There is a particular need for an informal,
1424 nonthreatening forum for helping parties who elect this
1425 procedure to resolve their claims disputes because most
1426 homeowner's and commercial residential insurance policies
1427 obligate insureds to participate in a potentially expensive and
1428 time-consuming adversarial appraisal process before ~~prior to~~
1429 litigation. The procedure set forth in this section is designed
1430 to bring the parties together for a mediated claims settlement
1431 conference without any of the trappings or drawbacks of an
1432 adversarial process. Before resorting to these procedures,
1433 insureds and insurers are encouraged to resolve claims as
1434 quickly and fairly as possible. This section is available with
1435 respect to claims under personal lines and commercial
1436 residential policies for all claimants and insurers prior to
1437 commencing the appraisal process, or commencing litigation. If
1438 requested by the insured, participation by legal counsel shall
1439 be permitted. Mediation under this section is also available to
1440 litigants referred to the department by a county court or
1441 circuit court. This section does not apply to commercial
1442 coverages, to private passenger motor vehicle insurance
1443 coverages, or to disputes relating to liability coverages in
1444 policies of property insurance.

1445 (2) At the time a first-party claim dispute within the
1446 scope of this section is filed, the insurer shall notify all
1447 first-party claimants of their right to participate in the
1448 mediation program under this section. The department shall
1449 prepare a statement or information relating to the mediation
1450 program which an insurer must include in the notice. The content

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1451 of the statement or information must be adopted by rule of the
1452 department consumer information pamphlet for distribution to
1453 persons participating in mediation under this section.

1454 (3) The costs of mediation shall be reasonable, and the
1455 insurer shall bear all of the cost of conducting mediation
1456 conferences, except as otherwise provided in this section. If an
1457 insured fails to appear at the conference, the conference shall
1458 be rescheduled upon the insured's payment of the costs of a
1459 rescheduled conference. If the insurer fails to appear at the
1460 conference, the insurer shall pay the insured's actual cash
1461 expenses incurred in attending the conference if the insurer's
1462 failure to attend was not due to a good cause acceptable to the
1463 department. An insurer will be deemed to have failed to appear
1464 if the insurer's representative lacks authority to settle the
1465 full value of the claim. The insurer shall incur an additional
1466 fee for a rescheduled conference necessitated by the insurer's
1467 failure to appear at a scheduled conference. The fees assessed
1468 by the administrator shall include a charge necessary to defray
1469 the expenses of the department related to its duties under this
1470 section and shall be deposited in the Insurance Regulatory Trust
1471 Fund.

1472 (4) In a dispute over the cost to replace or repair insured
1473 property, the insurer and insured shall each provide
1474 documentation to the mediator which supports his or her estimate
1475 to repair or replace the property. The documentation must be
1476 provided before the beginning of the mediation conference. The
1477 insurer's documentation must include its reports or other
1478 evidence relating to the loss and show that the insurer's
1479 estimates were created in compliance with s. 626.9744(3). The

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1480 insured must submit quotes obtained from licensed contractors in
1481 the local market area, retail price quotes for products and
1482 materials, or other documentation specific to the loss which
1483 clearly documents the actual cost to repair or replace the
1484 property.

1485 ~~(5)~~(4) The department shall adopt by rule a property
1486 insurance mediation program to be administered by the department
1487 or its designee. The department may also adopt special rules
1488 that ~~which~~ are applicable in cases of an emergency within the
1489 state. The rules shall be modeled after practices and procedures
1490 set forth in mediation rules of procedure adopted by the Supreme
1491 Court. The rules shall provide for:

1492 (a) Reasonable requirement for processing and scheduling of
1493 requests for mediation.

1494 (b) Qualifications of mediators as provided in s. 627.745
1495 and in the Florida Rules of Certified and Court Appointed
1496 Mediators, and for such other individuals as are qualified by
1497 education, training, or experience as the department determines
1498 to be appropriate.

1499 (c) Provisions governing who may attend mediation
1500 conferences.

1501 (d) Selection of mediators.

1502 (e) Criteria for the conduct of mediation conferences.

1503 (f) Right to legal counsel.

1504 (g) The types of documentation required to be submitted
1505 during the mediation process.

1506 ~~(6)~~(5) All statements made and documents produced at a
1507 mediation conference shall be deemed to be settlement
1508 negotiations in anticipation of litigation within the scope of

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1509 s. 90.408. All parties to the mediation must negotiate in good
1510 faith and must have the authority to immediately settle the
1511 claim. Mediators are deemed to be agents of the department and
1512 shall have the immunity from suit provided in s. 44.107.

1513 (7)~~(6)~~ Mediation is nonbinding.~~7~~ However, if a written
1514 settlement is reached, the insured has 3 business days within
1515 which the insured may rescind the settlement unless the insured
1516 has cashed or deposited any check or draft disbursed to the
1517 insured for the disputed matters as a result of the conference.
1518 If a settlement agreement is reached and is not rescinded, it
1519 shall be binding and act as a release of all specific claims
1520 that were presented in that mediation conference.

1521 (8)~~(7)~~ If the insurer fails to comply with subsection (2)
1522 by failing to notify a first-party claimant of its right to
1523 participate in the mediation program under this section or if
1524 the insurer requests the mediation, and the mediation results
1525 are rejected by either party, the insured may ~~shall~~ not be
1526 required to submit to or participate in any contractual loss
1527 appraisal process of the property loss damage as a precondition
1528 to legal action for breach of contract against the insurer for
1529 its failure to pay the policyholder's claims covered by the
1530 policy.

1531 (9)~~(8)~~ The department may designate an entity or person to
1532 serve as administrator to carry out any of the provisions of
1533 this section and may take this action by means of a written
1534 contract or agreement.

1535 (10)~~(9)~~ As used in ~~For purposes of~~ this section, the term
1536 "claim dispute" refers to any dispute between an insurer and an
1537 insured relating to a material issue of fact other than a

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1538 dispute:

1539 (a) With respect to which the insurer has a reasonable
1540 basis to suspect fraud;1541 (b) Where, based on agreed-upon facts as to the cause of
1542 loss, there is no coverage under the policy;1543 (c) With respect to which the insurer has a reasonable
1544 basis to believe that the claimant has intentionally made a
1545 material misrepresentation of fact which is relevant to the
1546 claim, and the entire request for payment of a loss has been
1547 denied on the basis of the material misrepresentation; ~~or~~1548 (d) With respect to which the amount in controversy is less
1549 than \$500, unless the parties agree to mediate a dispute
1550 involving a lesser amount; or-1551 (e) With respect to which the date of loss occurred more
1552 than 5 years before the request for mediation, unless the
1553 parties agree to mediate a dispute involving a longer period.1554 Section 10. Subsection (1) of section 631.011, Florida
1555 Statutes, is amended to read:1556 631.011 Definitions.—For the purpose of this part, the
1557 term:1558 (1) "Affiliate" means any entity that ~~which~~ exercises
1559 control over or is controlled by the insurer, directly or
1560 indirectly through:

1561 (a) Equity ownership of voting securities;

1562 (b) Common managerial control; ~~or~~1563 (c) Collusive participation by the management of the
1564 insurer and affiliate in the management of the insurer or the
1565 affiliate; or-1566 (d) Retailing, brokering, administering, or underwriting

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1567 insurance policies on behalf of the insurer, including, without
1568 limitation, managing general agents, claims administrators,
1569 third-party administrators, retail agents, premium finance
1570 managers, billing services agents, or any other entity of
1571 similar function and participation in the collection, retention,
1572 or disbursement of insurance premiums.

1573 Section 11. Section 631.021, Florida Statutes, is amended
1574 to read:

1575 631.021 Jurisdiction of delinquency proceeding; venue;
1576 change of venue; exclusiveness of remedy; appeal.—

1577 (1) The circuit court has ~~shall have~~ original jurisdiction
1578 of any delinquency proceeding under this chapter, and any court
1579 with jurisdiction is authorized to make all necessary or proper
1580 orders to carry out the purposes of this chapter. Any
1581 delinquency proceeding in this chapter is in equity.

1582 (2) The venue of a delinquency proceeding or summary
1583 proceeding against a domestic, foreign, or alien insurer is
1584 ~~shall be~~ in the Circuit Court of Leon County. The Circuit Court
1585 of Leon County is also the venue for any collateral actions
1586 against an insurer's affiliate, including, but not limited to,
1587 voidable or fraudulent transfers made by an insurer or
1588 affiliate; actions that constitute a breach of fiduciary duty by
1589 an officer, director, or agent; or misreporting or
1590 misrepresenting what is property, funds, or assets of the
1591 insurer, including premium and unearned commissions.

1592 (3) A delinquency proceeding pursuant to this chapter
1593 constitutes the sole and exclusive method of liquidating,
1594 rehabilitating, reorganizing, or conserving an insurer. A ~~No~~
1595 court may not ~~shall~~ entertain a petition for the commencement of

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1596 such a proceeding unless the petition has been filed in the name
1597 of the state on the relation of the department. The Florida
1598 Insurance Guaranty Association, Incorporated, the Florida
1599 Workers' Compensation Insurance Guaranty Association,
1600 Incorporated, and the Florida Life and Health Guaranty
1601 Association, Incorporated, shall be given reasonable written
1602 notice by the department of all hearings which pertain to an
1603 adjudication of insolvency of a member insurer.

1604 (4) An appeal shall lie to the District Court of Appeal,
1605 First District, from an order granting or refusing
1606 rehabilitation, liquidation, or conservation and from every
1607 order in a delinquency proceeding having the character of a
1608 final order as to the particular portion of the proceeding
1609 embraced therein.

1610 (5) A ~~No~~ service of process against the department in its
1611 capacity as receiver is not ~~shall be~~ effective unless served
1612 upon a person designated by the receiver and filed with the
1613 circuit court having jurisdiction over the delinquency
1614 proceeding. The designated person shall refuse to accept service
1615 if acceptance would violate a stay against legal proceedings
1616 involving an insurer that is the subject of delinquency
1617 proceedings or would violate any orders of the circuit court
1618 governing a delinquency proceeding. The person denied service
1619 may petition the circuit court having jurisdiction over the
1620 delinquency proceeding for relief from the receiver's refusal to
1621 accept service. This subsection shall be strictly construed, and
1622 any purported service on the receiver or the department which
1623 ~~that~~ is not in accordance with this subsection is ~~shall be null~~
1624 and void.

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1625 (6) The domiciliary court acquiring jurisdiction over
1626 persons subject to this chapter may exercise exclusive
1627 jurisdiction to the exclusion of all other courts, except as
1628 limited by the provisions of this chapter. Upon the issuance of
1629 an order of conservation, rehabilitation, or liquidation, the
1630 Circuit Court of Leon County shall have exclusive jurisdiction
1631 with respect to assets or property of any insurer subject to
1632 such proceedings and claims against said insurer's assets or
1633 property. Further, the Circuit Court of Leon County has
1634 exclusive jurisdiction to determine and identify the funds,
1635 assets, and property belonging to an entity placed in
1636 receivership under this chapter. Funds, assets, and property
1637 under this section include, but are not limited to, premiums,
1638 unearned commissions or other unearned agent compensation, and
1639 transfers deemed to be fraudulent or voidable made by an insurer
1640 or affiliate. This exclusive jurisdiction preempts the
1641 jurisdiction of federal courts, including bankruptcy courts, if
1642 the funds, assets, or property of the entity placed in
1643 receivership under this chapter is disputed or is at issue.

1644 Section 12. Section 631.025, Florida Statutes, is amended
1645 to read:

1646 631.025 Persons subject to this part.—Delinquency
1647 proceedings authorized by this part may be initiated against any
1648 insurer, as defined in s. 631.011(15), if the statutory grounds
1649 are present as to that insurer, and the court may exercise
1650 exclusive jurisdiction over any affiliate, as defined in s.
1651 631.011, or any person required to cooperate with the department
1652 and office pursuant to s. 631.391 and over all persons made
1653 subject to the court's jurisdiction by other provisions of law.

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1654 In addition to insurers and affiliates, the court also retains
1655 exclusive jurisdiction over the following categories of ~~Such~~
1656 ~~persons include, but are not limited to:~~

1657 (1) A person transacting, or that has transacted, insurance
1658 business in or from this state and against whom claims arising
1659 from that business may exist now or in the future.

1660 (2) A person purporting to transact an insurance business
1661 in this state and any person who acts as an insurer, transacts
1662 insurance, or otherwise engages in insurance activities in or
1663 from this state, with or without a certificate of authority or
1664 proper authority from the department or office, against whom
1665 claims arising from that business may exist now or in the
1666 future.

1667 (3) An insurer with policyholders resident in this state.

1668 (4) An affiliate of an insurer that files for bankruptcy
1669 relief during the 6 months immediately preceding the
1670 commencement of the affiliated insurer's delinquency proceedings
1671 or any time after the affiliated insurer's delinquency
1672 proceedings.

1673 ~~(5)-(4)~~ All other persons organized or in the process of
1674 organizing with the intent to transact an insurance business in
1675 this state.

1676 Section 13. This act shall take effect July 1, 2010.