

By the Committee on Banking and Insurance; and Senator Richter

597-02016-11

2011408c1

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 amending s. 215.555, F.S.; revising the definition of
4 "losses," relating to the Florida Hurricane
5 Catastrophe Fund, to exclude certain losses; providing
6 applicability; amending s. 624.407, F.S.; revising the
7 amount of surplus funds required for domestic insurers
8 applying for a certificate of authority after a
9 certain date; amending s. 624.408, F.S.; revising the
10 minimum surplus that must be maintained by certain
11 insurers; authorizing the Office of Insurance
12 Regulation to reduce the surplus requirement under
13 specified circumstances; amending s. 624.4095, F.S.;
14 excluding certain premiums for federal multiple-peril
15 crop insurance from calculations for an insurer's
16 gross writing ratio; requiring insurers to disclose
17 the gross written premiums for federal multiple-peril
18 crop insurance in a financial statement; amending s.
19 624.424, F.S.; revising the frequency that an insurer
20 may use the same accountant or partner to prepare an
21 annual audited financial report; amending s. 626.854,
22 F.S.; providing limitations on the amount of
23 compensation that may be received by a public adjuster
24 for a reopened or supplemental claim; providing
25 statements that may be considered deceptive or
26 misleading if made in any public adjuster's
27 advertisement or solicitation; providing a definition
28 for the term "written advertisement"; requiring that a
29 disclaimer be included in any public adjuster's

597-02016-11

2011408c1

30 written advertisement; providing requirements for such
31 disclaimer; requiring certain persons who act on
32 behalf of an insurer to provide notice to the insurer,
33 claimant, public adjuster, or legal representative for
34 an onsite inspection of the insured property;
35 authorizing the insured or claimant to deny access to
36 the property if notice is not provided; requiring the
37 public adjuster to ensure prompt notice of certain
38 property loss claims; providing that an insurer be
39 allowed to interview the insured directly about the
40 loss claim; prohibiting the insurer from obstructing
41 or preventing the public adjuster from communicating
42 with the insured; requiring that the insurer
43 communicate with the public adjuster in an effort to
44 reach an agreement as to the scope of the covered loss
45 under the insurance policy; prohibiting a public
46 adjuster from restricting or preventing persons acting
47 on behalf of the insured from having reasonable access
48 to the insured or the insured's property; prohibiting
49 a public adjuster from restricting or preventing the
50 insured's adjuster from having reasonable access to or
51 inspecting the insured's property; authorizing the
52 insured's adjuster to be present for the inspection;
53 prohibiting a licensed contractor or subcontractor
54 from adjusting a claim on behalf of an insured if such
55 contractor or subcontractor is not a licensed public
56 adjuster; providing an exception; amending s.
57 626.8651, F.S.; requiring that a public adjuster
58 apprentice complete a minimum number of hours of

597-02016-11

2011408c1

59 continuing education to qualify for licensure;
60 amending s. 626.8796, F.S.; providing requirements for
61 a public adjuster contract; creating s. 626.70132,
62 F.S.; requiring that notice of a claim, supplemental
63 claim, or reopened claim be given to the insurer
64 within a specified period after a windstorm or
65 hurricane occurs; providing a definition for the terms
66 "supplemental claim" or "reopened claim"; providing
67 applicability; repealing s. 624.0613(4), F.S.,
68 relating to the requirement that the consumer advocate
69 for the Chief Financial Officer prepare an annual
70 report card for each personal residential property
71 insurer; amending s. 627.062, F.S.; requiring that the
72 office issue an approval rather than a notice of
73 intent to approve following its approval of a file and
74 use filing; deleting an obsolete provision;
75 prohibiting the Office of Insurance Regulation from,
76 directly or indirectly, impeding the right of an
77 insurer to acquire policyholders, advertise or appoint
78 agents, or regulate agent commissions; revising the
79 information that must be included in a rate filing
80 relating to certain reinsurance or financing products;
81 deleting a provision that prohibited an insurer from
82 making certain rate filings within a certain period of
83 time after a rate increase; deleting a provision
84 prohibiting an insurer from filing for a rate increase
85 within 6 months after it makes certain rate filings;
86 deleting obsolete provisions relating to legislation
87 enacted during the 2003 Special Session D of the

597-02016-11

2011408c1

88 Legislature; amending s. 627.0629, F.S.; providing
89 legislative intent that insurers provide consumers
90 with accurate pricing signals for alterations in order
91 to minimize losses, but that mitigation discounts not
92 result in a loss of income for the insurer; requiring
93 rate filings for residential property insurance to
94 include actuarially reasonable debits that provide
95 proper pricing; providing for an increase in base
96 rates if mitigation discounts exceed the aggregate
97 reduction in expected losses; deleting obsolete
98 provisions; deleting a requirement that the Office of
99 Insurance Regulation propose a method for establishing
100 discounts, debits, credits, and other rate
101 differentials for hurricane mitigation by a certain
102 date; requiring the Financial Services Commission to
103 adopt rules relating to such debits by a certain date;
104 deleting a provision that prohibits an insurer from
105 including an expense or profit load in the cost of
106 reinsurance to replace the Temporary Increase in
107 Coverage Limits; conforming provisions to changes made
108 by the act; amending s. 627.351, F.S.; renaming the
109 "high-risk account" as the "coastal account"; revising
110 the conditions under which the Citizens policyholder
111 surcharge may be imposed; providing that members of
112 the Citizens Property Insurance Corporation Board of
113 Governors are not prohibited from practicing in a
114 certain profession if not prohibited by law or
115 ordinance; prohibiting board members from voting on
116 certain measures; deleting a requirement that the

597-02016-11

2011408c1

117 board reduce the boundaries of certain high-risk areas
118 eligible for wind-only coverages under certain
119 circumstances; amending s. 627.3511, F.S.; conforming
120 provisions to changes made by the act; amending s.
121 627.4133, F.S.; revising the requirements for
122 providing an insured with notice of nonrenewal,
123 cancellation, or termination of personal lines or
124 commercial residential property insurance; authorizing
125 an insurer to cancel policies after 45 days' notice if
126 the Office of Insurance Regulation determines that the
127 cancellation of policies is necessary to protect the
128 interests of the public or policyholders; authorizing
129 the Office of Insurance Regulation to place an insurer
130 under administrative supervision or appoint a receiver
131 upon the consent of the insurer under certain
132 circumstances; creating s. 627.43141, F.S.; providing
133 definitions; requiring the delivery of a "Notice of
134 Change in Policy Terms" under certain circumstances;
135 specifying requirements for such notice; specifying
136 actions constituting proof of notice; authorizing
137 policy renewals to contain a change in policy terms;
138 providing that receipt of payment by an insurer is
139 deemed acceptance of new policy terms by an insured;
140 providing that the original policy remains in effect
141 until the occurrence of specified events if an insurer
142 fails to provide notice; providing intent; amending s.
143 627.7011, F.S.; requiring the insurer to pay the
144 actual cash value of an insured loss for a dwelling,
145 less any applicable deductible; requiring a

597-02016-11

2011408c1

146 policyholder to enter into a contract for the
147 performance of building and structural repairs unless
148 waived by the insurer; restricting insurers and
149 contractors from requiring advance payments for
150 repairs and expenses; authorizing an insurer to limit
151 the initial payment for personal property to the
152 actual cash value of the property to be replaced and
153 to require the insured to provide receipts for
154 purchases; requiring the insurer to provide notice of
155 this process in the insurance contract; prohibiting an
156 insurer from requiring the insured to advance payment;
157 amending s. 627.70131, F.S.; specifying application of
158 certain time periods to initial or supplemental
159 property insurance claim notices and payments;
160 providing legislative findings with respect to 2005
161 statutory changes relating to sinkhole insurance
162 coverage and statutory changes in this act; amending
163 s. 627.706, F.S.; authorizing an insurer to limit
164 coverage for catastrophic ground cover collapse to the
165 principal building and to have discretion to provide
166 additional coverage; allowing the deductible to
167 include costs relating to an investigation of whether
168 sinkhole activity is present; revising definitions;
169 defining the term "structural damage"; providing an
170 insurer with discretion to provide a policyholder with
171 an opportunity to purchase an endorsement to sinkhole
172 coverage; placing a 2-year statute of repose on claims
173 for sinkhole coverage; amending s. 627.7061, F.S.;

174 conforming provisions to changes made by the act;

597-02016-11

2011408c1

175 repealing s. 627.7065, F.S., relating to the
176 establishment of a sinkhole database; amending s.
177 627.707, F.S.; revising provisions relating to the
178 investigation of sinkholes by insurers; deleting a
179 requirement that the insurer provide a policyholder
180 with a statement regarding testing for sinkhole
181 activity; providing a time limitation for demanding
182 sinkhole testing by a policyholder and entering into a
183 contract for repairs; requiring all repairs to be
184 completed within a certain time; providing exceptions;
185 providing a criminal penalty on a policyholder for
186 accepting rebates from persons performing repairs;
187 amending s. 627.7073, F.S.; revising provisions
188 relating to inspection reports; providing that the
189 presumption that the report is correct shifts the
190 burden of proof; revising the reports that an insurer
191 must file with the clerk of the court; requiring the
192 policyholder to file certain reports as a precondition
193 to accepting payment; amending s. 627.7074, F.S.;
194 revising provisions relating to neutral evaluation;
195 requiring evaluation in order to make certain
196 determinations; requiring that the neutral evaluator
197 be allowed access to structures being evaluated;
198 providing grounds for disqualifying an evaluator;
199 allowing the Department of Financial Services to
200 appoint an evaluator if the parties cannot come to
201 agreement; revising the timeframes for scheduling a
202 neutral evaluation conference; authorizing an
203 evaluator to enlist another evaluator or other

597-02016-11

2011408c1

204 professionals; providing a time certain for issuing a
 205 report; providing that certain information is
 206 confidential; revising provisions relating to
 207 compliance with the evaluator's recommendations;
 208 providing that the evaluator is an agent of the
 209 department for the purposes of immunity from suit;
 210 requiring the department to adopt rules; amending s.
 211 627.712, F.S.; conforming provisions to changes made
 212 by the act; providing effective dates.

213

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

215

216 Section 1. Effective June 1, 2011, paragraph (d) of
 217 subsection (2) of section 215.555, Florida Statutes, is amended
 218 to read

219 215.555 Florida Hurricane Catastrophe Fund.—

220 (2) DEFINITIONS.—As used in this section:

221 (d) "Losses" means all ~~direct~~ incurred losses under covered
 222 policies, including ~~which shall include losses for~~ additional
 223 living expenses not to exceed 40 percent of the insured value of
 224 a residential structure or its contents and amounts paid as fees
 225 on behalf of or inuring to the benefit of a policyholder ~~shall~~
 226 ~~exclude loss adjustment expenses.~~ The term "Losses" does not
 227 include:

228 1. Losses for fair rental value, loss of rent or rental
 229 income, or business interruption losses;

230 2. Losses under liability coverages;

231 3. Property losses that are proximately caused by any peril
 232 other than a covered event, including, but not limited to, fire,

597-02016-11

2011408c1

233 theft, flood or rising water, or windstorm that does not
 234 constitute a covered event;

235 4. Amounts paid as the result of a voluntary expansion of
 236 coverage by the insurer, including, but not limited to, a waiver
 237 of an applicable deductible;

238 5. Amounts paid to reimburse a policyholder for condominium
 239 association or homeowners' association loss assessments or under
 240 similar coverages for contractual liabilities;

241 6. Amounts paid as bad faith awards, punitive damage
 242 awards, or other court-imposed fines, sanctions, or penalties;

243 7. Amounts in excess of the coverage limits under the
 244 covered policy; or

245 8. Allocated or unallocated loss adjustment expenses.

246 Section 2. The amendment to s. 215.555, Florida Statutes,
 247 made by this act applies first to the Florida Hurricane
 248 Catastrophe Fund reimbursement contract that takes effect June
 249 1, 2011.

250 Section 3. Section 624.407, Florida Statutes, is amended to
 251 read:

252 624.407 Surplus Capital funds required; new insurers.—

253 (1) To receive authority to transact any one kind or
 254 combinations of kinds of insurance, as defined in part V of this
 255 chapter, an insurer applying for its original certificate of
 256 authority in this state after November 10, 1993, ~~the effective~~
 257 ~~date of this section~~ shall possess surplus funds as to
 258 policyholders at least ~~not less than~~ the greater of:

259 (a) ~~Five million dollars~~ For a property and casualty
 260 insurer, \$5 million, or \$2.5 million for any other insurer;

261 (b) For life insurers, 4 percent of the insurer's total

597-02016-11

2011408c1

262 liabilities;

263 (c) For life and health insurers, 4 percent of the
264 insurer's total liabilities, plus 6 percent of the insurer's
265 liabilities relative to health insurance; ~~or~~

266 (d) For all insurers other than life insurers and life and
267 health insurers, 10 percent of the insurer's total liabilities;
268 or

269 (e) Notwithstanding paragraph (a) or paragraph (d), for a
270 domestic insurer that transacts residential property insurance
271 and is:

272 1. Not a wholly owned subsidiary of an insurer domiciled in
273 any other state, \$15 million.

274 2. however, a domestic insurer that transacts residential
275 property insurance and is A wholly owned subsidiary of an
276 insurer domiciled in any other state, shall possess surplus as
277 to policyholders of at least \$50 million.

278 (3) Notwithstanding subsections (1) and (2), a new insurer
279 may not be required, but no insurer shall be required under this
280 subsection to have surplus as to policyholders greater than \$100
281 million.

282 (4)-(2) The requirements of this section shall be based upon
283 all the kinds of insurance actually transacted or to be
284 transacted by the insurer in any and all areas in which it
285 operates, whether or not only a portion of such kinds of
286 insurance are ~~to be~~ transacted in this state.

287 (5)-(3) As to surplus funds as to policyholders required for
288 qualification to transact one or more kinds of insurance,
289 domestic mutual insurers are governed by chapter 628, and
290 domestic reciprocal insurers are governed by chapter 629.

597-02016-11

2011408c1

291 (6)~~(4)~~ For the purposes of this section, liabilities do
292 ~~shall~~ not include liabilities required under s. 625.041(4). For
293 purposes of computing minimum surplus funds as to policyholders
294 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities
295 required under s. 625.041(4).

296 (7)~~(5)~~ The provisions of this section, as amended by
297 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to
298 insurers applying for a certificate of authority on or after
299 October 1, 1989 ~~the effective date of this act~~.

300 Section 4. Section 624.408, Florida Statutes, is amended to
301 read:

302 624.408 Surplus funds ~~as to policyholders~~ required; current
303 ~~new and existing~~ insurers.—

304 (1)~~(a)~~ To maintain a certificate of authority to transact
305 any one kind or combinations of kinds of insurance, as defined
306 in part V of this chapter, an insurer in this state must ~~shall~~
307 at all times maintain surplus funds as to policyholders at least
308 ~~not less than~~ the greater of:

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

311 (b)~~2.~~ For life insurers, 4 percent of the insurer's total
312 liabilities.~~†~~

313 (c)~~3.~~ For life and health insurers, 4 percent of the
314 insurer's total liabilities plus 6 percent of the insurer's
315 liabilities relative to health insurance.~~†~~~~or~~

316 (d)~~4.~~ For all insurers other than mortgage guaranty
317 insurers, life insurers, and life and health insurers, 10
318 percent of the insurer's total liabilities.

319 (e)~~5.~~ For property and casualty insurers, \$4 million,

597-02016-11

2011408c1

320 except for property and casualty insurers authorized to
321 underwrite any line of residential property insurance.

322 (f) ~~(b)~~ For residential ~~any~~ property insurers not ~~and~~
323 casualty insurer holding a certificate of authority before July
324 1, 2011 ~~on December 1, 1993,~~ \$15 million. ~~the~~

325 (g) For residential property insurers holding a certificate
326 of authority before July 1, 2011, and until June 30, 2016, \$5
327 million; on or after July 1, 2016, and until June 30, 2021, \$10
328 million; on or after July 1, 2021, \$15 million. The office may
329 reduce this surplus requirement if the insurer is not writing
330 new business, has premiums in force of less than \$1 million per
331 year in residential property insurance, or is a mutual insurance
332 company. ~~following amounts apply instead of the \$4 million~~
333 ~~required by subparagraph (a)5.:~~

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

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

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

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

341 (2) For purposes of this section, liabilities ~~do shall~~ not
342 include liabilities required under s. 625.041(4). For purposes
343 of computing minimum surplus as to policyholders pursuant to s.
344 625.305(1), liabilities ~~shall~~ include liabilities required under
345 s. 625.041(4).

346 (3) This section does not require an ~~No~~ insurer ~~shall be~~
347 ~~required under this section~~ to have surplus as to policyholders
348 greater than \$100 million.

597-02016-11

2011408c1

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

351 Section 5. Subsection (7) is added to section 624.4095,
352 Florida Statutes, to read:

353 624.4095 Premiums written; restrictions.—

354 (7) For the purposes of this section and ss. 624.407 and
355 624.408, with respect to capital and surplus requirements, gross
356 written premiums for federal multiple-peril crop insurance which
357 are ceded to the Federal Crop Insurance Corporation or
358 authorized reinsurers may not be included in the calculation of
359 an insurer's gross writing ratio. The liabilities for ceded
360 reinsurance premiums payable for federal multiple-peril crop
361 insurance ceded to the Federal Crop Insurance Corporation and
362 authorized reinsurers shall be netted against the asset for
363 amounts recoverable from reinsurers. Each insurer that writes
364 other insurance products together with federal multiple-peril
365 crop insurance must disclose in the notes to its annual and
366 quarterly financial statements, or in a supplement to those
367 statements, the gross written premiums for federal multiple-
368 peril crop insurance.

369 Section 6. Paragraph (d) of subsection (8) of section
370 624.424, Florida Statutes, is amended to read:

371 624.424 Annual statement and other information.—

372 (8)

373 (d) An insurer may not use the same accountant or partner
374 of an accounting firm responsible for preparing the report
375 required by this subsection for more than 5 ~~7~~ consecutive years.
376 Following this period, the insurer may not use such accountant
377 or partner for a period of 5 ~~2~~ years, but may use another

597-02016-11

2011408c1

378 accountant or partner of the same firm. An insurer may request
379 the office to waive this prohibition based upon an unusual
380 hardship to the insurer and a determination that the accountant
381 is exercising independent judgment that is not unduly influenced
382 by the insurer considering such factors as the number of
383 partners, expertise of the partners or the number of insurance
384 clients of the accounting firm; the premium volume of the
385 insurer; and the number of jurisdictions in which the insurer
386 transacts business.

387 Section 7. Effective June 1, 2011, subsection (11) of
388 section 626.854, Florida Statutes, is amended to read:

389 626.854 "Public adjuster" defined; prohibitions.—The
390 Legislature finds that it is necessary for the protection of the
391 public to regulate public insurance adjusters and to prevent the
392 unauthorized practice of law.

393 (11) (a) If a public adjuster enters into a contract with an
394 insured or claimant to reopen a claim or ~~to~~ file a supplemental
395 claim that seeks additional payments for a claim that has been
396 previously paid in part or in full or settled by the insurer,
397 the public adjuster may not charge, agree to, or accept any
398 compensation, payment, commission, fee, or other thing of value
399 based on a previous settlement or previous claim payments by the
400 insurer for the same cause of loss. The charge, compensation,
401 payment, commission, fee, or other thing of value must ~~may~~ be
402 based only on the claim payments or settlement obtained through
403 the work of the public adjuster after entering into the contract
404 with the insured or claimant. Compensation for the reopened or
405 supplemental claim may not exceed 20 percent of the reopened or
406 supplemental claim payment. The contracts described in this

597-02016-11

2011408c1

407 paragraph are not subject to the limitations in paragraph (b).

408 (b) A public adjuster may not charge, agree to, or accept
409 any compensation, payment, commission, fee, or other thing of
410 value in excess of:

411 1. Ten percent of the amount of insurance claim payments
412 made by the insurer for claims based on events that are the
413 subject of a declaration of a state of emergency by the
414 Governor. This provision applies to claims made during the
415 ~~period of 1 year~~ after the declaration of emergency. After that
416 year, the limitations in subparagraph 2. apply.

417 2. Twenty percent of the amount of ~~all other~~ insurance
418 claim payments made by the insurer for claims that are not based
419 on events that are the subject of a declaration of a state of
420 emergency by the Governor.

421
422 The provisions of subsections (5)-(13) apply only to residential
423 property insurance policies and condominium association policies
424 as defined in s. 718.111(11).

425 Section 8. Effective January 1, 2012, section 626.854,
426 Florida Statutes, as amended by this act, is amended to read:

427 626.854 "Public adjuster" defined; prohibitions.—The
428 Legislature finds that it is necessary for the protection of the
429 public to regulate public insurance adjusters and to prevent the
430 unauthorized practice of law.

431 (1) A "public adjuster" is any person, except a duly
432 licensed attorney at law as exempted under hereinafter in s.
433 626.860 ~~provided~~, who, for money, commission, or any other thing
434 of value, prepares, completes, or files an insurance claim form
435 for an insured or third-party claimant or who, for money,

597-02016-11

2011408c1

436 commission, or any other thing of value, acts ~~or aids in any~~
437 ~~manner~~ on behalf of, or aids an insured or third-party claimant
438 in negotiating for or effecting the settlement of a claim or
439 claims for loss or damage covered by an insurance contract or
440 who advertises for employment as an adjuster of such claims. The
441 term, ~~and~~ also includes any person who, for money, commission,
442 or any other thing of value, solicits, investigates, or adjusts
443 such claims on behalf of a ~~any such~~ public adjuster.

444 (2) This definition does not apply to:

445 (a) A licensed health care provider or employee thereof who
446 prepares or files a health insurance claim form on behalf of a
447 patient.

448 (b) A person who files a health claim on behalf of another
449 and does so without compensation.

450 (3) A public adjuster may not give legal advice or. ~~A~~
451 ~~public adjuster may not~~ act on behalf of or aid any person in
452 negotiating or settling a claim relating to bodily injury,
453 death, or noneconomic damages.

454 (4) For purposes of this section, the term "insured"
455 includes only the policyholder and any beneficiaries named or
456 similarly identified in the policy.

457 (5) A public adjuster may not directly or indirectly
458 through any other person or entity solicit an insured or
459 claimant by any means except on Monday through Saturday of each
460 week and only between the hours of 8 a.m. and 8 p.m. on those
461 days.

462 (6) A public adjuster may not directly or indirectly
463 through any other person or entity initiate contact or engage in
464 face-to-face or telephonic solicitation or enter into a contract

597-02016-11

2011408c1

465 with any insured or claimant under an insurance policy until at
466 least 48 hours after the occurrence of an event that may be the
467 subject of a claim under the insurance policy unless contact is
468 initiated by the insured or claimant.

469 (7) An insured or claimant may cancel a public adjuster's
470 contract to adjust a claim without penalty or obligation within
471 3 business days after the date on which the contract is executed
472 or within 3 business days after the date on which the insured or
473 claimant has notified the insurer of the claim, by phone or in
474 writing, whichever is later. The public adjuster's contract must
475 ~~shall~~ disclose to the insured or claimant his or her right to
476 cancel the contract and advise the insured or claimant that
477 notice of cancellation must be submitted in writing and sent by
478 certified mail, return receipt requested, or other form of
479 mailing that ~~which~~ provides proof thereof, to the public
480 adjuster at the address specified in the contract; provided,
481 during any state of emergency as declared by the Governor and
482 ~~for a period of~~ 1 year after the date of loss, the insured or
483 claimant has ~~shall have~~ 5 business days after the date on which
484 the contract is executed to cancel a public adjuster's contract.

485 (8) It is an unfair and deceptive insurance trade practice
486 pursuant to s. 626.9541 for a public adjuster or any other
487 person to circulate or disseminate any advertisement,
488 announcement, or statement containing any assertion,
489 representation, or statement with respect to the business of
490 insurance which is untrue, deceptive, or misleading.

491 (a) The following statements, made in any public adjuster's
492 advertisement or solicitation, are considered deceptive or
493 misleading:

597-02016-11

2011408c1

494 1. A statement or representation that invites an insured
495 policyholder to submit a claim when the policyholder does not
496 have covered damage to insured property.

497 2. A statement or representation that invites an insured
498 policyholder to submit a claim by offering monetary or other
499 valuable inducement.

500 3. A statement or representation that invites an insured
501 policyholder to submit a claim by stating that there is "no
502 risk" to the policyholder by submitting such claim.

503 4. A statement or representation, or use of a logo or
504 shield, that implies or could mistakenly be construed to imply
505 that the solicitation was issued or distributed by a
506 governmental agency or is sanctioned or endorsed by a
507 governmental agency.

508 (b) For purposes of this paragraph, the term "written
509 advertisement" includes only newspapers, magazines, flyers, and
510 bulk mailers. The following disclaimer, which is not required to
511 be printed on standard size business cards, must be added in
512 bold print and capital letters in typeface no smaller than the
513 typeface of the body of the text to all written advertisements
514 by a public adjuster:

515 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
516 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
517 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
518 MAY DISREGARD THIS ADVERTISEMENT."

519
520 (9) A public adjuster, a public adjuster apprentice, or any
521 person or entity acting on behalf of a public adjuster or public
522 adjuster apprentice may not give or offer to give a monetary

597-02016-11

2011408c1

523 loan or advance to a client or prospective client.

524 (10) A public adjuster, public adjuster apprentice, or any
525 individual or entity acting on behalf of a public adjuster or
526 public adjuster apprentice may not give or offer to give,
527 directly or indirectly, any article of merchandise having a
528 value in excess of \$25 to any individual for the purpose of
529 advertising or as an inducement to entering into a contract with
530 a public adjuster.

531 (11) (a) If a public adjuster enters into a contract with an
532 insured or claimant to reopen a claim or file a supplemental
533 claim that seeks additional payments for a claim that has been
534 previously paid in part or in full or settled by the insurer,
535 the public adjuster may not charge, agree to, or accept any
536 compensation, payment, commission, fee, or other thing of value
537 based on a previous settlement or previous claim payments by the
538 insurer for the same cause of loss. The charge, compensation,
539 payment, commission, fee, or other thing of value must be based
540 only on the claim payments or settlement obtained through the
541 work of the public adjuster after entering into the contract
542 with the insured or claimant. Compensation for the reopened or
543 supplemental claim may not exceed 20 percent of the reopened or
544 supplemental claim payment. The contracts described in this
545 paragraph are not subject to the limitations in paragraph (b).

546 (b) A public adjuster may not charge, agree to, or accept
547 any compensation, payment, commission, fee, or other thing of
548 value in excess of:

549 1. Ten percent of the amount of insurance claim payments
550 made by the insurer for claims based on events that are the
551 subject of a declaration of a state of emergency by the

597-02016-11

2011408c1

552 Governor. This provision applies to claims made during the year
553 after the declaration of emergency. After that year, the
554 limitations in subparagraph 2. apply.

555 2. Twenty percent of the amount of insurance claim payments
556 made by the insurer for claims that are not based on events that
557 are the subject of a declaration of a state of emergency by the
558 Governor.

559 (12) Each public adjuster must ~~shall~~ provide to the
560 claimant or insured a written estimate of the loss to assist in
561 the submission of a proof of loss or any other claim for payment
562 of insurance proceeds. The public adjuster shall retain such
563 written estimate for at least 5 years and shall make the ~~such~~
564 estimate available to the claimant or insured and the department
565 upon request.

566 (13) A public adjuster, public adjuster apprentice, or any
567 person acting on behalf of a public adjuster or apprentice may
568 not accept referrals of business from any person with whom the
569 public adjuster conducts business if there is any form or manner
570 of agreement to compensate the person, ~~whether~~ directly or
571 indirectly, for referring business to the public adjuster. A
572 public adjuster may not compensate any person, except for
573 another public adjuster, ~~whether~~ directly or indirectly, for the
574 principal purpose of referring business to the public adjuster.

575 (14) A company employee adjuster, independent adjuster,
576 attorney, investigator, or other persons acting on behalf of an
577 insurer that needs access to an insured or claimant or to the
578 insured property that is the subject of a claim must provide at
579 least 48 hours' notice to the insured or claimant, public
580 adjuster, or legal representative before scheduling a meeting

597-02016-11

2011408c1

581 with the claimant or an onsite inspection of the insured
582 property. The insured or claimant may deny access to the
583 property if the notice has not been provided. The insured or
584 claimant may waive the 48-hour notice.

585 (15) A public adjuster must ensure prompt notice of
586 property loss claims submitted to an insurer by or through a
587 public adjuster or on which a public adjuster represents the
588 insured at the time the claim or notice of loss is submitted to
589 the insurer. The public adjuster must ensure that notice is
590 given to the insurer, the public adjuster's contract is provided
591 to the insurer, the property is available for inspection of the
592 loss or damage by the insurer, and the insurer is given an
593 opportunity to interview the insured directly about the loss and
594 claim. The insurer must be allowed to obtain necessary
595 information to investigate and respond to the claim.

596 (a) The insurer may not exclude the public adjuster from
597 its in-person meetings with the insured. The insurer shall meet
598 or communicate with the public adjuster in an effort to reach
599 agreement as to the scope of the covered loss under the
600 insurance policy. This section does not impair the terms and
601 conditions of the insurance policy in effect at the time the
602 claim is filed.

603 (b) A public adjuster may not restrict or prevent an
604 insurer, company employee adjuster, independent adjuster,
605 attorney, investigator, or other person acting on behalf of the
606 insurer from having reasonable access at reasonable times to an
607 insured or claimant or to the insured property that is the
608 subject of a claim.

609 (c) A public adjuster may not act or fail to reasonably act

597-02016-11

2011408c1

610 in any manner that obstructs or prevents an insurer or insurer's
611 adjuster from timely conducting an inspection of any part of the
612 insured property for which there is a claim for loss or damage.
613 The public adjuster representing the insured may be present for
614 the insurer's inspection, but if the unavailability of the
615 public adjuster otherwise delays the insurer's timely inspection
616 of the property, the public adjuster or the insured must allow
617 the insurer to have access to the property without the
618 participation or presence of the public adjuster or insured in
619 order to facilitate the insurer's prompt inspection of the loss
620 or damage.

621 (16) A licensed contractor under part I of chapter 489, or
622 a subcontractor, may not adjust a claim on behalf of an insured
623 unless licensed and compliant as a public adjuster under this
624 chapter. However, the contractor may discuss or explain a bid
625 for construction or repair of covered property with the
626 residential property owner who has suffered loss or damage
627 covered by a property insurance policy, or the insurer of such
628 property, if the contractor is doing so for the usual and
629 customary fees applicable to the work to be performed as stated
630 in the contract between the contractor and the insured.

631 (17) The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply
632 only to residential property insurance policies and condominium
633 unit owner ~~association~~ policies as defined in s. 718.111(11).

634 Section 9. Effective January 1, 2012, subsection (6) of
635 section 626.8651, Florida Statutes, is amended to read:

636 626.8651 Public adjuster apprentice license;
637 qualifications.-

638 (6) To qualify for licensure as a public adjuster, a public

597-02016-11

2011408c1

639 adjuster apprentice must ~~shall~~ complete: ~~at~~

640 (a) A minimum of 100 hours of employment per month for 12
641 months of employment under the supervision of a licensed and
642 appointed all-lines public adjuster ~~in order to qualify for~~
643 ~~licensure as a public adjuster.~~ The department may adopt rules
644 that establish standards for such employment requirements.

645 (b) A minimum of 8 hours of continuing education specific
646 to the practice of a public adjuster, 2 hours of which must
647 relate to ethics. The continuing education must be designed to
648 inform the licensee about the current insurance laws of this
649 state for the purpose of enabling him or her to engage in
650 business as an insurance adjuster fairly and without injury to
651 the public and to adjust all claims in accordance with the
652 insurance contract and the laws of this state.

653 Section 10. Effective January 1, 2012, section 626.8796,
654 Florida Statutes, is amended to read:

655 626.8796 Public adjuster contracts; fraud statement.—

656 (1) All contracts for public adjuster services must be in
657 writing and ~~must~~ prominently display the following statement on
658 the contract: "Pursuant to s. 817.234, Florida Statutes, any
659 person who, with the intent to injure, defraud, or deceive an
660 ~~any~~ insurer or insured, prepares, presents, or causes to be
661 presented a proof of loss or estimate of cost or repair of
662 damaged property in support of a claim under an insurance policy
663 knowing that the proof of loss or estimate of claim or repairs
664 contains ~~any~~ false, incomplete, or misleading information
665 concerning any fact or thing material to the claim commits a
666 felony of the third degree, punishable as provided in s.
667 775.082, s. 775.083, or s. 775.084, Florida Statutes."

597-02016-11

2011408c1

668 (2) A public adjuster contract must contain the full name,
669 permanent business address, and license number of the public
670 adjuster; the full name of the public adjusting firm; and the
671 insured's full name and street address, together with a brief
672 description of the loss. The contract must state the percentage
673 of compensation for the public adjuster's services; the type of
674 claim, including an emergency claim, nonemergency claim, or
675 supplemental claim; the signatures of the public adjuster and
676 all named insureds; and the signature date. If all of the named
677 insureds signatures are not available, the public adjuster must
678 submit an affidavit signed by the available named insureds
679 attesting that they have authority to enter into the contract
680 and settle all claim issues on behalf of the named insureds. An
681 unaltered copy of the executed contract must be remitted to the
682 insurer within 30 days after execution.

683 Section 11. Effective June 1, 2011, section 626.70132,
684 Florida Statutes, is created to read:

685 626.70132 Notice of windstorm or hurricane claim.—A claim,
686 supplemental claim, or reopened claim under an insurance policy
687 that provides personal lines residential coverage, as defined in
688 s. 627.4025, for loss or damage caused by the peril of windstorm
689 or hurricane is barred unless notice of the claim, supplemental
690 claim, or reopened claim was given to the insurer in accordance
691 with the terms of the policy within 3 years after the hurricane
692 first made landfall or the windstorm caused the covered damage.
693 For purposes of this section, the term "supplemental claim" or
694 "reopened claim" means any additional claim for recovery from
695 the insurer for losses from the same hurricane or windstorm
696 which the insurer has previously adjusted pursuant to the

597-02016-11

2011408c1

697 initial claim. This section does not affect any applicable
698 limitation on civil actions provided in s. 95.11 for claims,
699 supplemental claims, or reopened claims timely filed under this
700 section.

701 Section 12. Subsection (4) of section 627.0613, Florida
702 Statutes, is repealed.

703 Section 13. Section 627.062, Florida Statutes, is amended
704 to read:

705 627.062 Rate standards.—

706 (1) The rates for all classes of insurance to which the
707 provisions of this part are applicable may ~~shall~~ not be
708 excessive, inadequate, or unfairly discriminatory.

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

710 (a) Insurers or rating organizations shall establish and
711 use rates, rating schedules, or rating manuals that ~~to~~ allow the
712 insurer a reasonable rate of return on the ~~such~~ classes of
713 insurance written in this state. A copy of rates, rating
714 schedules, rating manuals, premium credits or discount
715 schedules, and surcharge schedules, and changes thereto, must
716 ~~shall~~ be filed with the office under one of the following
717 procedures ~~except as provided in subparagraph 3.:~~

718 1. If the filing is made at least 90 days before the
719 proposed effective date and ~~the filing~~ is not implemented during
720 the office's review of the filing and any proceeding and
721 judicial review, ~~then~~ is ~~shall be~~ considered a "file
722 and use" filing. In such case, the office shall finalize its
723 review by issuance of an approval ~~a notice of intent to approve~~
724 or a notice of intent to disapprove within 90 days after receipt
725 of the filing. The approval ~~notice of intent to approve~~ and the

597-02016-11

2011408c1

726 notice of intent to disapprove constitute agency action for
727 purposes of the Administrative Procedure Act. Requests for
728 supporting information, requests for mathematical or mechanical
729 corrections, or notification to the insurer by the office of its
730 preliminary findings does ~~shall~~ not toll the 90-day period
731 during any such proceedings and subsequent judicial review. The
732 rate shall be deemed approved if the office does not issue an
733 approval ~~a notice of intent to approve~~ or a notice of intent to
734 disapprove within 90 days after receipt of the filing.

735 2. If the filing is not made in accordance with ~~the~~
736 ~~provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as
737 soon as practicable, but within ~~no later than~~ 30 days after the
738 effective date, and is ~~shall be~~ considered a "use and file"
739 filing. An insurer making a "use and file" filing is potentially
740 subject to an order by the office to return to policyholders
741 those portions of rates found to be excessive, as provided in
742 paragraph (h).

743 ~~3. For all property insurance filings made or submitted~~
744 ~~after January 25, 2007, but before December 31, 2010, an insurer~~
745 ~~seeking a rate that is greater than the rate most recently~~
746 ~~approved by the office shall make a "file and use" filing. For~~
747 ~~purposes of this subparagraph, motor vehicle collision and~~
748 ~~comprehensive coverages are not considered to be property~~
749 ~~coverages.~~

750 (b) Upon receiving a rate filing, the office shall review
751 the ~~rate~~ filing to determine if a rate is excessive, inadequate,
752 or unfairly discriminatory. In making that determination, the
753 office shall, in accordance with generally accepted and
754 reasonable actuarial techniques, consider the following factors:

597-02016-11

2011408c1

755 1. Past and prospective loss experience within and without
756 this state.

757 2. Past and prospective expenses.

758 3. The degree of competition among insurers for the risk
759 insured.

760 4. Investment income reasonably expected by the insurer,
761 consistent with the insurer's investment practices, from
762 investable premiums anticipated in the filing, plus any other
763 expected income from currently invested assets representing the
764 amount expected on unearned premium reserves and loss reserves.
765 The commission may adopt rules using reasonable techniques of
766 actuarial science and economics to specify the manner in which
767 insurers ~~shall~~ calculate investment income attributable to ~~such~~
768 classes of insurance written in this state and the manner in
769 which ~~such~~ investment income is ~~shall be~~ used to calculate
770 insurance rates. Such manner must ~~shall~~ contemplate allowances
771 for an underwriting profit factor and full consideration of
772 investment income which produce a reasonable rate of return;
773 however, investment income from invested surplus may not be
774 considered.

775 5. The reasonableness of the judgment reflected in the
776 filing.

777 6. Dividends, savings, or unabsorbed premium deposits
778 allowed or returned to Florida policyholders, members, or
779 subscribers.

780 7. The adequacy of loss reserves.

781 8. The cost of reinsurance. The office may ~~shall~~ not
782 disapprove a rate as excessive solely due to the insurer having
783 obtained catastrophic reinsurance to cover the insurer's

597-02016-11

2011408c1

784 estimated 250-year probable maximum loss or any lower level of
785 loss.

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

788 10. Conflagration and catastrophe hazards, if applicable.

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

793 12. A reasonable margin for underwriting profit and
794 contingencies.

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

796 14. Other relevant factors that affect ~~which impact upon~~
797 the frequency or severity of claims or ~~upon~~ expenses.

798 (c) In the case of fire insurance rates, consideration must
799 ~~shall~~ be given to the availability of water supplies and the
800 experience of the fire insurance business during a period of not
801 less than the most recent 5-year period for which such
802 experience is available.

803 (d) If conflagration or catastrophe hazards are considered
804 ~~given consideration~~ by an insurer in its rates or rating plan,
805 including surcharges and discounts, the insurer shall establish
806 a reserve for that portion of the premium allocated to such
807 hazard and ~~shall~~ maintain the premium in a catastrophe reserve.
808 ~~Any~~ Removal of such premiums from the reserve for purposes other
809 than paying claims associated with a catastrophe or purchasing
810 reinsurance for catastrophes must be approved by ~~shall be~~
811 ~~subject to approval of~~ the office. Any ceding commission
812 received by an insurer purchasing reinsurance for catastrophes

597-02016-11

2011408c1

813 must ~~shall~~ be placed in the catastrophe reserve.

814 (e) After consideration of the rate factors provided in
815 paragraphs (b), (c), and (d), the office may find a rate ~~may be~~
816 ~~found by the office~~ to be excessive, inadequate, or unfairly
817 discriminatory based upon the following standards:

818 1. Rates shall be deemed excessive if they are likely to
819 produce a profit from Florida business which ~~that~~ is
820 unreasonably high in relation to the risk involved in the class
821 of business or if expenses are unreasonably high in relation to
822 services rendered.

823 2. Rates shall be deemed excessive if, among other things,
824 the rate structure established by a stock insurance company
825 provides for replenishment of surpluses from premiums, if ~~when~~
826 the replenishment is attributable to investment losses.

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

831 4. A rating plan, including discounts, credits, or
832 surcharges, shall be deemed unfairly discriminatory if it fails
833 to clearly and equitably reflect consideration of the
834 policyholder's participation in a risk management program
835 adopted pursuant to s. 627.0625.

836 5. A rate shall be deemed inadequate as to the premium
837 charged to a risk or group of risks if discounts or credits are
838 allowed which exceed a reasonable reflection of expense savings
839 and reasonably expected loss experience from the risk or group
840 of risks.

841 6. A rate shall be deemed unfairly discriminatory as to a

597-02016-11

2011408c1

842 risk or group of risks if the application of premium discounts,
843 credits, or surcharges among such risks does not bear a
844 reasonable relationship to the expected loss and expense
845 experience among the various risks.

846 (f) In reviewing a rate filing, the office may require the
847 insurer to provide, at the insurer's expense, all information
848 necessary to evaluate the condition of the company and the
849 reasonableness of the filing according to the criteria
850 enumerated in this section.

851 (g) The office may at any time review a rate, rating
852 schedule, rating manual, or rate change; the pertinent records
853 of the insurer; and market conditions. If the office finds on a
854 preliminary basis that a rate may be excessive, inadequate, or
855 unfairly discriminatory, the office shall initiate proceedings
856 to disapprove the rate and shall so notify the insurer. However,
857 the office may not disapprove as excessive any rate for which it
858 has given final approval or which has been deemed approved for a
859 ~~period of~~ 1 year after the effective date of the filing unless
860 the office finds that a material misrepresentation or material
861 error was made by the insurer or was contained in the filing.
862 Upon being ~~so~~ notified, the insurer or rating organization
863 shall, within 60 days, file with the office all information that
864 ~~which,~~ in the belief of the insurer or organization, proves the
865 reasonableness, adequacy, and fairness of the rate or rate
866 change. The office shall issue an approval ~~a notice of intent to~~
867 ~~approve~~ or a notice of intent to disapprove pursuant to ~~the~~
868 ~~procedures of~~ paragraph (a) within 90 days after receipt of the
869 insurer's initial response. In such instances and in any
870 administrative proceeding relating to the legality of the rate,

597-02016-11

2011408c1

871 the insurer or rating organization shall carry the burden of
872 proof by a preponderance of the evidence to show that the rate
873 is not excessive, inadequate, or unfairly discriminatory. After
874 the office notifies an insurer that a rate may be excessive,
875 inadequate, or unfairly discriminatory, unless the office
876 withdraws the notification, the insurer may ~~shall~~ not alter the
877 rate except to conform to ~~with~~ the office's notice until the
878 earlier of 120 days after the date the notification was provided
879 or 180 days after the date of implementing ~~the implementation of~~
880 the rate. The office ~~may~~, subject to chapter 120, may disapprove
881 without the 60-day notification any rate increase filed by an
882 insurer within the prohibited time period or during the time
883 that the legality of the increased rate is being contested.

884 (h) If ~~In the event~~ the office finds that a rate or rate
885 change is excessive, inadequate, or unfairly discriminatory, the
886 office shall issue an order of disapproval specifying that a new
887 rate or rate schedule, which responds to the findings of the
888 office, be filed by the insurer. The office shall further order,
889 for any "use and file" filing made in accordance with
890 subparagraph (a)2., that premiums charged each policyholder
891 constituting the portion of the rate above that which was
892 actuarially justified be returned to the ~~such~~ policyholder in
893 the form of a credit or refund. If the office finds that an
894 insurer's rate or rate change is inadequate, the new rate or
895 rate schedule filed with the office in response to such a
896 finding is ~~shall be~~ applicable only to new or renewal business
897 of the insurer written on or after the effective date of the
898 responsive filing.

899 (i) Except as otherwise specifically provided in this

597-02016-11

2011408c1

900 chapter, the office may ~~shall~~ not, directly or indirectly:

901 1. Prohibit any insurer, including any residual market plan
902 or joint underwriting association, from paying acquisition costs
903 based on the full amount of premium, as defined in s. 627.403,
904 applicable to any policy, or prohibit any such insurer from
905 including the full amount of acquisition costs in a rate filing;
906 or-

907 2. Impede, abridge, or otherwise compromise an insurer's
908 right to acquire policyholders, advertise, or appoint agents,
909 including the calculation, manner, or amount of such agent
910 commissions, if any.

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

914 (k)1. An insurer may make a separate filing limited solely
915 to an adjustment of its rates for reinsurance or financing costs
916 incurred in the purchase of reinsurance or financing products to
917 replace or finance the payment of the amount covered by the
918 Temporary Increase in Coverage Limits (TICL) portion of the
919 Florida Hurricane Catastrophe Fund including replacement
920 reinsurance for the TICL reductions made pursuant to s.
921 215.555(17)(e); the actual cost paid due to the application of
922 the TICL premium factor pursuant to s. 215.555(17)(f); and the
923 actual cost paid due to the application of the cash build-up
924 factor pursuant to s. 215.555(5)(b) if the insurer:

925 a. Elects to purchase financing products such as a
926 liquidity instrument or line of credit, in which case the cost
927 included in ~~the~~ filing for the liquidity instrument or line of
928 credit may not result in a premium increase exceeding 3 percent

597-02016-11

2011408c1

929 for any individual policyholder. All costs contained in the
930 filing may not result in an overall premium increase of more
931 than 10 percent for any individual policyholder.

932 b. An insurer that makes a separate filing relating to
933 reinsurance or financing products must include ~~Includes in the~~
934 ~~filing~~ a copy of all of its reinsurance, liquidity instrument,
935 or line of credit contracts; proof of the billing or payment for
936 the contracts; and the calculation upon which the proposed rate
937 change is based demonstrating ~~demonstrates~~ that the costs meet
938 the criteria of this section and ~~are not loaded for expenses or~~
939 ~~profit for the insurer making the filing.~~

940 ~~e. Includes no other changes to its rates in the filing.~~

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

943 ~~e. Does not file for a rate increase under any other~~
944 ~~paragraph within 6 months after making a filing under this~~
945 ~~paragraph.~~

946 ~~c.f.~~ An insurer that purchases reinsurance or financing
947 products from an affiliated company may make a separate filing
948 ~~in compliance with this paragraph does so~~ only if the costs for
949 such reinsurance or financing products are charged at or below
950 charges made for comparable coverage by nonaffiliated reinsurers
951 or financial entities making such coverage or financing products
952 available in this state.

953 2. An insurer may ~~only~~ make only one filing per ~~in any~~ 12-
954 month period under this paragraph.

955 3. An insurer that elects to implement a rate change under
956 this paragraph must file its rate filing with the office at
957 least 45 days before the effective date of the rate change.

597-02016-11

2011408c1

958 After an insurer submits a complete filing that meets all of the
959 requirements of this paragraph, the office has 45 days after the
960 date of the filing to review the rate filing and determine if
961 the rate is excessive, inadequate, or unfairly discriminatory.

962

963 The provisions of this subsection do ~~shall~~ not apply to workers'
964 compensation, and employer's liability insurance, and ~~to~~ motor
965 vehicle insurance.

966 (3) (a) For individual risks that are not rated in
967 accordance with the insurer's rates, rating schedules, rating
968 manuals, and underwriting rules filed with the office and that
969 ~~which~~ have been submitted to the insurer for individual rating,
970 the insurer must maintain documentation on each risk subject to
971 individual risk rating. The documentation must identify the
972 named insured and specify the characteristics and classification
973 of the risk supporting the reason for the risk being
974 individually risk rated, including any modifications to existing
975 approved forms to be used on the risk. The insurer must maintain
976 these records for ~~a period of~~ at least 5 years after the
977 effective date of the policy.

978 (b) Individual risk rates and modifications to existing
979 approved forms are not subject to this part or part II, except
980 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
981 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
982 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
983 627.4265, 627.427, and 627.428, but are subject to all other
984 applicable provisions of this code and rules adopted thereunder.

985 (c) This subsection does not apply to private passenger
986 motor vehicle insurance.

597-02016-11

2011408c1

987 (d)1. The following categories or kinds of insurance and
988 types of commercial lines risks are not subject to paragraph
989 (2) (a) or paragraph (2) (f):

990 a. Excess or umbrella.

991 b. Surety and fidelity.

992 c. Boiler and machinery and leakage and fire extinguishing
993 equipment.

994 d. Errors and omissions.

995 e. Directors and officers, employment practices, and
996 management liability.

997 f. Intellectual property and patent infringement liability.

998 g. Advertising injury and Internet liability insurance.

999 h. Property risks rated under a highly protected risks
1000 rating plan.

1001 i. Any other commercial lines categories or kinds of
1002 insurance or types of commercial lines risks that the office
1003 determines should not be subject to paragraph (2) (a) or
1004 paragraph (2) (f) because of the existence of a competitive
1005 market for such insurance, similarity of such insurance to other
1006 categories or kinds of insurance not subject to paragraph (2) (a)
1007 or paragraph (2) (f), or to improve the general operational
1008 efficiency of the office.

1009 2. Insurers or rating organizations shall establish and use
1010 rates, rating schedules, or rating manuals to allow the insurer
1011 a reasonable rate of return on insurance and risks described in
1012 subparagraph 1. which are written in this state.

1013 3. An insurer must notify the office of any changes to
1014 rates for insurance and risks described in subparagraph 1.
1015 within ~~no later than~~ 30 days after the effective date of the

597-02016-11

2011408c1

1016 change. The notice must include the name of the insurer, the
1017 type or kind of insurance subject to rate change, total premium
1018 written during the immediately preceding year by the insurer for
1019 the type or kind of insurance subject to the rate change, and
1020 the average statewide percentage change in rates. Underwriting
1021 files, premiums, losses, and expense statistics with regard to
1022 such insurance and risks ~~described in subparagraph 1.~~ written by
1023 an insurer must ~~shall~~ be maintained by the insurer and subject
1024 to examination by the office. Upon examination, the office
1025 ~~shall~~, in accordance with generally accepted and reasonable
1026 actuarial techniques, shall consider the rate factors in
1027 paragraphs (2) (b), (c), and (d) and the standards in paragraph
1028 (2) (e) to determine if the rate is excessive, inadequate, or
1029 unfairly discriminatory.

1030 4. A rating organization must notify the office of any
1031 changes to loss cost for insurance and risks described in
1032 subparagraph 1. within ~~no later than~~ 30 days after the effective
1033 date of the change. The notice must include the name of the
1034 rating organization, the type or kind of insurance subject to a
1035 loss cost change, loss costs during the immediately preceding
1036 year for the type or kind of insurance subject to the loss cost
1037 change, and the average statewide percentage change in loss
1038 cost. Loss and exposure statistics with regard to risks
1039 applicable to loss costs for a rating organization not subject
1040 to paragraph (2) (a) or paragraph (2) (f) must ~~shall~~ be maintained
1041 by the rating organization and are subject to examination by the
1042 office. Upon examination, the office ~~shall~~, in accordance with
1043 generally accepted and reasonable actuarial techniques, shall
1044 consider the rate factors in paragraphs (2) (b)-(d) and the

597-02016-11

2011408c1

1045 standards in paragraph (2)(e) to determine if the rate is
1046 excessive, inadequate, or unfairly discriminatory.

1047 5. In reviewing a rate, the office may require the insurer
1048 to provide, at the insurer's expense, all information necessary
1049 to evaluate the condition of the company and the reasonableness
1050 of the rate according to the applicable criteria described in
1051 this section.

1052 (4) The establishment of any rate, rating classification,
1053 rating plan or schedule, or variation thereof in violation of
1054 part IX of chapter 626 is also in violation of this section. ~~In
1055 order to enhance the ability of consumers to compare premiums
1056 and to increase the accuracy and usefulness of rate-comparison
1057 information provided by the office to the public, the office
1058 shall develop a proposed standard rating territory plan to be
1059 used by all authorized property and casualty insurers for
1060 residential property insurance. In adopting the proposed plan,
1061 the office may consider geographical characteristics relevant to
1062 risk, county lines, major roadways, existing rating territories
1063 used by a significant segment of the market, and other relevant
1064 factors. Such plan shall be submitted to the President of the
1065 Senate and the Speaker of the House of Representatives by
1066 January 15, 2006. The plan may not be implemented unless
1067 authorized by further act of the Legislature.~~

1068 (5) With respect to a rate filing involving coverage of the
1069 type for which the insurer is required to pay a reimbursement
1070 premium to the Florida Hurricane Catastrophe Fund, the insurer
1071 may fully recoup in its property insurance premiums any
1072 reimbursement premiums paid to the ~~Florida Hurricane Catastrophe~~
1073 fund, together with reasonable costs of other reinsurance;

597-02016-11

2011408c1

1074 however, ~~but~~ except as otherwise provided in this section, the
1075 insurer may not recoup reinsurance costs that duplicate coverage
1076 provided by the ~~Florida Hurricane Catastrophe~~ fund. An insurer
1077 may not recoup more than 1 year of reimbursement premium at a
1078 time. Any under-recoupment from the prior year may be added to
1079 the following year's reimbursement premium, and any over-
1080 recoupment must ~~shall~~ be subtracted from the following year's
1081 reimbursement premium.

1082 (6) (a) If an insurer requests an administrative hearing
1083 pursuant to s. 120.57 related to a rate filing under this
1084 section, the director of the Division of Administrative Hearings
1085 shall expedite the hearing and assign an administrative law
1086 judge who shall commence the hearing within 30 days after the
1087 receipt of the formal request and ~~shall~~ enter a recommended
1088 order within 30 days after the hearing or within 30 days after
1089 receipt of the hearing transcript by the administrative law
1090 judge, whichever is later. Each party shall have ~~be allowed~~ 10
1091 days in which to submit written exceptions to the recommended
1092 order. The office shall enter a final order within 30 days after
1093 the entry of the recommended order. The provisions of this
1094 paragraph may be waived upon stipulation of all parties.

1095 (b) Upon entry of a final order, the insurer may request a
1096 expedited appellate review pursuant to the Florida Rules of
1097 Appellate Procedure. It is the intent of the Legislature that
1098 the First District Court of Appeal grant an insurer's request
1099 for an expedited appellate review.

1100 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~
1101 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~
1102 control to the extent of any conflict with other provisions of

597-02016-11

2011408c1

1103 this section.

1104 (a)~~(b)~~ Any portion of a judgment entered or settlement paid
1105 as a result of a statutory or common-law bad faith action and
1106 any portion of a judgment entered which awards punitive damages
1107 against an insurer may not be included in the insurer's rate
1108 base, and ~~shall not be~~ used to justify a rate or rate change.
1109 Any common-law bad faith action identified as such, any portion
1110 of a settlement entered as a result of a statutory or common-law
1111 action, or any portion of a settlement wherein an insurer agrees
1112 to pay specific punitive damages may not be used to justify a
1113 rate or rate change. The portion of the taxable costs and
1114 attorney's fees which is identified as being related to the bad
1115 faith and punitive damages ~~in these judgments and settlements~~
1116 may not be included in the insurer's rate base and used ~~may not~~
1117 ~~be utilized~~ to justify a rate or rate change.

1118 (b)~~(e)~~ Upon reviewing a rate filing and determining whether
1119 the rate is excessive, inadequate, or unfairly discriminatory,
1120 the office shall consider, in accordance with generally accepted
1121 and reasonable actuarial techniques, past and present
1122 prospective loss experience, ~~either~~ using loss experience solely
1123 for this state or giving greater credibility to this state's
1124 loss data after applying actuarially sound methods of assigning
1125 credibility to such data.

1126 (c)~~(d)~~ Rates shall be deemed excessive if, among other
1127 standards established by this section, the rate structure
1128 provides for replenishment of reserves or surpluses from
1129 premiums when the replenishment is attributable to investment
1130 losses.

1131 (d)~~(e)~~ The insurer must apply a discount or surcharge based

597-02016-11

2011408c1

1132 on the health care provider's loss experience or shall establish
1133 an alternative method giving due consideration to the provider's
1134 loss experience. The insurer must include in the filing a copy
1135 of the surcharge or discount schedule or a description of the
1136 alternative method used, and ~~must~~ provide a copy ~~of such~~
1137 ~~schedule or description~~, as approved by the office, to
1138 policyholders at the time of renewal and to prospective
1139 policyholders at the time of application for coverage.

1140 (e) ~~(f)~~ Each medical malpractice insurer must make a rate
1141 filing under this section, sworn to by at least two executive
1142 officers of the insurer, at least once each calendar year.

1143 ~~(8)(a)1. No later than 60 days after the effective date of~~
1144 ~~medical malpractice legislation enacted during the 2003 Special~~
1145 ~~Session D of the Florida Legislature, the office shall calculate~~
1146 ~~a presumed factor that reflects the impact that the changes~~
1147 ~~contained in such legislation will have on rates for medical~~
1148 ~~malpractice insurance and shall issue a notice informing all~~
1149 ~~insurers writing medical malpractice coverage of such presumed~~
1150 ~~factor. In determining the presumed factor, the office shall use~~
1151 ~~generally accepted actuarial techniques and standards provided~~
1152 ~~in this section in determining the expected impact on losses,~~
1153 ~~expenses, and investment income of the insurer. To the extent~~
1154 ~~that the operation of a provision of medical malpractice~~
1155 ~~legislation enacted during the 2003 Special Session D of the~~
1156 ~~Florida Legislature is stayed pending a constitutional~~
1157 ~~challenge, the impact of that provision shall not be included in~~
1158 ~~the calculation of a presumed factor under this subparagraph.~~

1159 ~~2. No later than 60 days after the office issues its notice~~
1160 ~~of the presumed rate change factor under subparagraph 1., each~~

597-02016-11

2011408c1

1161 ~~insurer writing medical malpractice coverage in this state shall~~
1162 ~~submit to the office a rate filing for medical malpractice~~
1163 ~~insurance, which will take effect no later than January 1, 2004,~~
1164 ~~and apply retroactively to policies issued or renewed on or~~
1165 ~~after the effective date of medical malpractice legislation~~
1166 ~~enacted during the 2003 Special Session D of the Florida~~
1167 ~~Legislature. Except as authorized under paragraph (b), the~~
1168 ~~filing shall reflect an overall rate reduction at least as great~~
1169 ~~as the presumed factor determined under subparagraph 1. With~~
1170 ~~respect to policies issued on or after the effective date of~~
1171 ~~such legislation and prior to the effective date of the rate~~
1172 ~~filing required by this subsection, the office shall order the~~
1173 ~~insurer to make a refund of the amount that was charged in~~
1174 ~~excess of the rate that is approved.~~

1175 ~~(b) Any insurer or rating organization that contends that~~
1176 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
1177 ~~or unfairly discriminatory shall separately state in its filing~~
1178 ~~the rate it contends is appropriate and shall state with~~
1179 ~~specificity the factors or data that it contends should be~~
1180 ~~considered in order to produce such appropriate rate. The~~
1181 ~~insurer or rating organization shall be permitted to use all of~~
1182 ~~the generally accepted actuarial techniques provided in this~~
1183 ~~section in making any filing pursuant to this subsection. The~~
1184 ~~office shall review each such exception and approve or~~
1185 ~~disapprove it prior to use. It shall be the insurer's burden to~~
1186 ~~actuarially justify any deviations from the rates required to be~~
1187 ~~filed under paragraph (a). The insurer making a filing under~~
1188 ~~this paragraph shall include in the filing the expected impact~~
1189 ~~of medical malpractice legislation enacted during the 2003~~

597-02016-11

2011408c1

1190 ~~Special Session D of the Florida Legislature on losses,~~
1191 ~~expenses, and rates.~~

1192 ~~(c) If any provision of medical malpractice legislation~~
1193 ~~enacted during the 2003 Special Session D of the Florida~~
1194 ~~Legislature is held invalid by a court of competent~~
1195 ~~jurisdiction, the office shall permit an adjustment of all~~
1196 ~~medical malpractice rates filed under this section to reflect~~
1197 ~~the impact of such holding on such rates so as to ensure that~~
1198 ~~the rates are not excessive, inadequate, or unfairly~~
1199 ~~discriminatory.~~

1200 ~~(d) Rates approved on or before July 1, 2003, for medical~~
1201 ~~malpractice insurance shall remain in effect until the effective~~
1202 ~~date of a new rate filing approved under this subsection.~~

1203 ~~(e) The calculation and notice by the office of the~~
1204 ~~presumed factor pursuant to paragraph (a) is not an order or~~
1205 ~~rule that is subject to chapter 120. If the office enters into a~~
1206 ~~contract with an independent consultant to assist the office in~~
1207 ~~calculating the presumed factor, such contract shall not be~~
1208 ~~subject to the competitive solicitation requirements of s.~~
1209 ~~287.057.~~

1210 (8) ~~(9)~~ (a) The chief executive officer or chief financial
1211 officer of a property insurer and the chief actuary of a
1212 property insurer must certify under oath and subject to the
1213 penalty of perjury, on a form approved by the commission, the
1214 following information, which must accompany a rate filing:

1215 1. The signing officer and actuary have reviewed the rate
1216 filing;

1217 2. Based on the signing officer's and actuary's knowledge,
1218 the rate filing does not contain any untrue statement of a

597-02016-11

2011408c1

1219 material fact or omit to state a material fact necessary ~~in~~
1220 ~~order~~ to make the statements made, in light of the circumstances
1221 under which such statements were made, not misleading;

1222 3. Based on the signing officer's and actuary's knowledge,
1223 the information and other factors described in paragraph (2) (b),
1224 including, but not limited to, investment income, fairly present
1225 in all material respects the basis of the rate filing for the
1226 periods presented in the filing; and

1227 4. Based on the signing officer's and actuary's knowledge,
1228 the rate filing reflects all premium savings that are reasonably
1229 expected to result from legislative enactments and are in
1230 accordance with generally accepted and reasonable actuarial
1231 techniques.

1232 (b) A signing officer or actuary who knowingly makes ~~making~~
1233 a false certification under this subsection commits a violation
1234 of s. 626.9541(1) (e) and is subject to the penalties under s.
1235 626.9521.

1236 (c) Failure to provide such certification by the officer
1237 and actuary shall result in the rate filing being disapproved
1238 without prejudice to be refiled.

1239 (d) A certification made pursuant to paragraph (a) is not
1240 rendered false if, after making the subject rate filing, the
1241 insurer provides the office with additional or supplementary
1242 information pursuant to a formal or informal request from the
1243 office.

1244 ~~(e)-(d)~~ The commission may adopt rules and forms ~~pursuant to~~
1245 ~~ss. 120.536(1) and 120.54~~ to administer this subsection.

1246 ~~(9)-(10)~~ The burden is on the office to establish that rates
1247 are excessive for personal lines residential coverage with a

597-02016-11

2011408c1

1248 dwelling replacement cost of \$1 million or more or for a single
1249 condominium unit with a combined dwelling and contents
1250 replacement cost of \$1 million or more. Upon request of the
1251 office, the insurer shall provide ~~to the office~~ such loss and
1252 expense information as the office reasonably needs to meet this
1253 burden.

1254 ~~(10)(11)~~ Any interest paid pursuant to s. 627.70131(5) may
1255 not be included in the insurer's rate base and may not be used
1256 to justify a rate or rate change.

1257 Section 14. Subsections (1) and (5) and paragraph (b) of
1258 subsection (8) of section 627.0629, Florida Statutes, are
1259 amended to read:

1260 627.0629 Residential property insurance; rate filings.—

1261 (1)~~(a)~~ It is the intent of the Legislature that insurers
1262 ~~must~~ provide the most accurate pricing signals available in
1263 order savings to encourage consumers to ~~who~~ install or implement
1264 windstorm damage mitigation techniques, alterations, or
1265 solutions to their properties to prevent windstorm losses. It is
1266 also the intent of the Legislature that implementation of
1267 mitigation discounts not result in a loss of income to the
1268 insurers granting the discounts, so that the aggregate of such
1269 discounts not exceed the aggregate of the expected reduction in
1270 loss attributable to the mitigation efforts for which discounts
1271 are granted. A rate filing for residential property insurance
1272 must include actuarially reasonable discounts, credits, debits,
1273 or other rate differentials, or appropriate reductions in
1274 deductibles, which provide the proper pricing for all
1275 properties. The rate filing must take into account the presence
1276 or absence of ~~on which~~ fixtures or construction techniques

597-02016-11

2011408c1

1277 demonstrated to reduce the amount of loss in a windstorm which
1278 have been installed or implemented. The fixtures or construction
1279 techniques must ~~shall~~ include, but not be limited to, fixtures
1280 or construction techniques that ~~which~~ enhance roof strength,
1281 roof covering performance, roof-to-wall strength, wall-to-floor-
1282 to-foundation strength, opening protection, and window, door,
1283 and skylight strength. Credits, debits, discounts, or other rate
1284 differentials, or appropriate reductions or increases in
1285 deductibles, which recognize the presence or absence of ~~for~~
1286 fixtures and construction techniques that ~~which~~ meet the minimum
1287 requirements of the Florida Building Code must be included in
1288 the rate filing. If an insurer demonstrates that the aggregate
1289 of its mitigation discounts results in a reduction to revenue
1290 which exceeds the reduction of the aggregate loss that is
1291 expected to result from the mitigation, the insurer may recover
1292 the lost revenue through an increase in its base rates. ~~All~~
1293 ~~insurance companies must make a rate filing which includes the~~
1294 ~~credits, discounts, or other rate differentials or reductions in~~
1295 ~~deductibles by February 28, 2003. By July 1, 2007, the office~~
1296 ~~shall reevaluate the discounts, credits, other rate~~
1297 ~~differentials, and appropriate reductions in deductibles for~~
1298 ~~fixtures and construction techniques that meet the minimum~~
1299 ~~requirements of the Florida Building Code, based upon actual~~
1300 ~~experience or any other loss relativity studies available to the~~
1301 ~~office.~~ The office shall determine the discounts, credits,
1302 debits, other rate differentials, and appropriate reductions or
1303 increases in deductibles that reflect the full actuarial value
1304 of such revaluation, which may be used by insurers in rate
1305 filings.

597-02016-11

2011408c1

1306 ~~(b) By February 1, 2011, the Office of Insurance~~
1307 ~~Regulation, in consultation with the Department of Financial~~
1308 ~~Services and the Department of Community Affairs, shall develop~~
1309 ~~and make publicly available a proposed method for insurers to~~
1310 ~~establish discounts, credits, or other rate differentials for~~
1311 ~~hurricane mitigation measures which directly correlate to the~~
1312 ~~numerical rating assigned to a structure pursuant to the uniform~~
1313 ~~home grading scale adopted by the Financial Services Commission~~
1314 ~~pursuant to s. 215.55865, including any proposed changes to the~~
1315 ~~uniform home grading scale. By October 1, 2011, the commission~~
1316 ~~shall adopt rules requiring insurers to make rate filings for~~
1317 ~~residential property insurance which revise insurers' discounts,~~
1318 ~~credits, or other rate differentials for hurricane mitigation~~
1319 ~~measures so that such rate differentials correlate directly to~~
1320 ~~the uniform home grading scale. The rules may include such~~
1321 ~~changes to the uniform home grading scale as the commission~~
1322 ~~determines are necessary, and may specify the minimum required~~
1323 ~~discounts, credits, or other rate differentials. Such rate~~
1324 ~~differentials must be consistent with generally accepted~~
1325 ~~actuarial principles and wind loss mitigation studies. The rules~~
1326 ~~shall allow a period of at least 2 years after the effective~~
1327 ~~date of the revised mitigation discounts, credits, or other rate~~
1328 ~~differentials for a property owner to obtain an inspection or~~
1329 ~~otherwise qualify for the revised credit, during which time the~~
1330 ~~insurer shall continue to apply the mitigation credit that was~~
1331 ~~applied immediately prior to the effective date of the revised~~
1332 ~~credit. Discounts, credits, and other rate differentials~~
1333 ~~established for rate filings under this paragraph shall~~
1334 ~~supersede, after adoption, the discounts, credits, and other~~

597-02016-11

2011408c1

1335 ~~rate differentials included in rate filings under paragraph (a).~~

1336 (5) In order to provide an appropriate transition period,
1337 an insurer may, ~~in its sole discretion,~~ implement an approved
1338 rate filing for residential property insurance over a period of
1339 years. Such ~~An insurer electing to phase in its rate filing~~ must
1340 provide an informational notice to the office setting out its
1341 schedule for implementation of the phased-in rate filing. The ~~An~~
1342 insurer may include in its rate the actual cost of private
1343 market reinsurance that corresponds to available coverage of the
1344 Temporary Increase in Coverage Limits, TICL, from the Florida
1345 Hurricane Catastrophe Fund. The insurer may also include the
1346 cost of reinsurance to replace the TICL reduction implemented
1347 pursuant to s. 215.555(17)(d)9. However, this cost ~~for~~
1348 ~~reinsurance~~ may not ~~include any expense or profit load or result~~
1349 in a total annual base rate increase in excess of 10 percent.

1350 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
1351 SOUNDNESS.—

1352 (b) To the extent ~~that~~ funds are provided for this purpose
1353 in the General Appropriations Act, ~~the Legislature hereby~~
1354 ~~authorizes~~ the establishment of a program to be administered by
1355 the Citizens Property Insurance Corporation for homeowners
1356 insured in the coastal high-risk account is authorized.

1357 Section 15. Paragraphs (b), (c), (d), (v), and (y) of
1358 subsection (6) of section 627.351, Florida Statutes, are amended
1359 to read:

1360 627.351 Insurance risk apportionment plans.—

1361 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1362 (b)1. All insurers authorized to write one or more subject
1363 lines of business in this state are subject to assessment by the

597-02016-11

2011408c1

1364 corporation and, for the purposes of this subsection, are
1365 referred to collectively as "assessable insurers." Insurers
1366 writing one or more subject lines of business in this state
1367 pursuant to part VIII of chapter 626 are not assessable
1368 insurers, but insureds who procure one or more subject lines of
1369 business in this state pursuant to part VIII of chapter 626 are
1370 subject to assessment by the corporation and are referred to
1371 collectively as "assessable insureds." An ~~authorized~~ insurer's
1372 assessment liability begins ~~shall begin~~ on the first day of the
1373 calendar year following the year in which the insurer was issued
1374 a certificate of authority to transact insurance for subject
1375 lines of business in this state and terminates ~~shall terminate~~ 1
1376 year after the end of the first calendar year during which the
1377 insurer no longer holds a certificate of authority to transact
1378 insurance for subject lines of business in this state.

1379 2.a. All revenues, assets, liabilities, losses, and
1380 expenses of the corporation shall be divided into three separate
1381 accounts as follows:

1382 (I) A personal lines account for personal residential
1383 policies issued by the corporation, or issued by the Residential
1384 Property and Casualty Joint Underwriting Association and renewed
1385 by the corporation, which provides ~~that provide~~ comprehensive,
1386 multiperil coverage on risks that are not located in areas
1387 eligible for coverage by ~~in~~ the Florida Windstorm Underwriting
1388 Association as those areas were defined on January 1, 2002, and
1389 for ~~such~~ policies that do not provide coverage for the peril of
1390 wind on risks that are located in such areas;

1391 (II) A commercial lines account for commercial residential
1392 and commercial nonresidential policies issued by the

597-02016-11

2011408c1

1393 corporation, or issued by the Residential Property and Casualty
1394 Joint Underwriting Association and renewed by the corporation,
1395 which provides ~~that provide~~ coverage for basic property perils
1396 on risks that are not located in areas eligible for coverage by
1397 ~~in~~ the Florida Windstorm Underwriting Association as those areas
1398 were defined on January 1, 2002, and for ~~such~~ policies that do
1399 not provide coverage for the peril of wind on risks that are
1400 located in such areas; and

1401 (III) A coastal ~~high-risk~~ account for personal residential
1402 policies and commercial residential and commercial
1403 nonresidential property policies issued by the corporation, or
1404 transferred to the corporation, which provides ~~that provide~~
1405 coverage for the peril of wind on risks that are located in
1406 areas eligible for coverage by ~~in~~ the Florida Windstorm
1407 Underwriting Association as those areas were defined on January
1408 1, 2002. The corporation may offer policies that provide
1409 multiperil coverage and the corporation shall continue to offer
1410 policies that provide coverage only for the peril of wind for
1411 risks located in areas eligible for coverage in the coastal
1412 ~~high-risk~~ account. In issuing multiperil coverage, the
1413 corporation may use its approved policy forms and rates for the
1414 personal lines account. An applicant or insured who is eligible
1415 to purchase a multiperil policy from the corporation may
1416 purchase a multiperil policy from an authorized insurer without
1417 prejudice to the applicant's or insured's eligibility to
1418 prospectively purchase a policy that provides coverage only for
1419 the peril of wind from the corporation. An applicant or insured
1420 who is eligible for a corporation policy that provides coverage
1421 only for the peril of wind may elect to purchase or retain such

597-02016-11

2011408c1

1422 policy and also purchase or retain coverage excluding wind from
1423 an authorized insurer without prejudice to the applicant's or
1424 insured's eligibility to prospectively purchase a policy that
1425 provides multiperil coverage from the corporation. It is the
1426 goal of the Legislature that there ~~would~~ be an overall average
1427 savings of 10 percent or more for a policyholder who currently
1428 has a wind-only policy with the corporation, and an ex-wind
1429 policy with a voluntary insurer or the corporation, and who ~~then~~
1430 obtains a multiperil policy from the corporation. It is the
1431 intent of the Legislature that the offer of multiperil coverage
1432 in the coastal high-risk account be made and implemented in a
1433 manner that does not adversely affect the tax-exempt status of
1434 the corporation or creditworthiness of or security for currently
1435 outstanding financing obligations or credit facilities of the
1436 coastal high-risk account, the personal lines account, or the
1437 commercial lines account. The coastal high-risk account must
1438 also include quota share primary insurance under subparagraph
1439 (c)2. The area eligible for coverage under the coastal high-risk
1440 account also includes the area within Port Canaveral, which is
1441 bordered on the south by the City of Cape Canaveral, bordered on
1442 the west by the Banana River, and bordered on the north by
1443 Federal Government property.

1444 b. The three separate accounts must be maintained as long
1445 as financing obligations entered into by the Florida Windstorm
1446 Underwriting Association or Residential Property and Casualty
1447 Joint Underwriting Association are outstanding, in accordance
1448 with the terms of the corresponding financing documents. If ~~When~~
1449 the financing obligations are no longer outstanding, ~~in~~
1450 ~~accordance with the terms of the corresponding financing~~

597-02016-11

2011408c1

1451 ~~documents,~~ the corporation may use a single account for all
1452 revenues, assets, liabilities, losses, and expenses of the
1453 corporation. Consistent with ~~the requirement of~~ this
1454 subparagraph and prudent investment policies that minimize the
1455 cost of carrying debt, the board shall exercise its best efforts
1456 to retire existing debt or ~~to~~ obtain the approval of necessary
1457 parties to amend the terms of existing debt, so as to structure
1458 the most efficient plan to consolidate the three separate
1459 accounts into a single account.

1460 c. Creditors of the Residential Property and Casualty Joint
1461 Underwriting Association and ~~of~~ the accounts specified in sub-
1462 sub-subparagraphs a.(I) and (II) may have a claim against, and
1463 recourse to, those ~~the~~ accounts ~~referred to in sub-sub-~~
1464 ~~subparagraphs a.(I) and (II) and shall have~~ no claim against, or
1465 recourse to, the account referred to in sub-sub-subparagraph
1466 a.(III). Creditors of the Florida Windstorm Underwriting
1467 Association ~~shall~~ have a claim against, and recourse to, the
1468 account referred to in sub-sub-subparagraph a.(III) and ~~shall~~
1469 ~~have~~ no claim against, or recourse to, the accounts referred to
1470 in sub-sub-subparagraphs a.(I) and (II).

1471 d. Revenues, assets, liabilities, losses, and expenses not
1472 attributable to particular accounts shall be prorated among the
1473 accounts.

1474 e. The Legislature finds that the revenues of the
1475 corporation are revenues that are necessary to meet the
1476 requirements set forth in documents authorizing the issuance of
1477 bonds under this subsection.

1478 f. No part of the income of the corporation may inure to
1479 the benefit of any private person.

597-02016-11

2011408c1

1480 3. With respect to a deficit in an account:

1481 a. After accounting for the ~~Citizens~~ policyholder surcharge
1482 imposed under sub-subparagraph h. i., ~~if when~~ the remaining
1483 projected deficit incurred in a particular calendar year:

1484 (I) Is not greater than 6 percent of the aggregate
1485 statewide direct written premium for the subject lines of
1486 business for the prior calendar year, the entire deficit shall
1487 be recovered through regular assessments of assessable insurers
1488 under paragraph (q) and assessable insureds.

1489 (II) ~~b. After accounting for the Citizens policyholder~~
1490 ~~surcharge imposed under sub-subparagraph i., when the remaining~~
1491 ~~projected deficit incurred in a particular calendar year Exceeds~~
1492 6 percent of the aggregate statewide direct written premium for
1493 the subject lines of business for the prior calendar year, the
1494 corporation shall levy regular assessments on assessable
1495 insurers under paragraph (q) and on assessable insureds in an
1496 amount equal to the greater of 6 percent of the deficit or 6
1497 percent of the aggregate statewide direct written premium for
1498 the subject lines of business for the prior calendar year. Any
1499 remaining deficit shall be recovered through emergency
1500 assessments under sub-subparagraph c. d.

1501 b.e. Each assessable insurer's share of the amount being
1502 assessed under sub-subparagraph a. must ~~or sub-subparagraph b.~~
1503 ~~shall~~ be in the proportion that the assessable insurer's direct
1504 written premium for the subject lines of business for the year
1505 preceding the assessment bears to the aggregate statewide direct
1506 written premium for the subject lines of business for that year.
1507 The applicable assessment percentage ~~applicable to each~~
1508 ~~assessable insured~~ is the ratio of the amount being assessed

597-02016-11

2011408c1

1509 under sub-subparagraph a. ~~or sub-subparagraph b.~~ to the
 1510 aggregate statewide direct written premium for the subject lines
 1511 of business for the prior year. Assessments levied by the
 1512 corporation on assessable insurers under sub-subparagraphs a.
 1513 and b. must ~~shall~~ be paid as required by the corporation's plan
 1514 of operation and paragraph (q) . ~~Assessments levied by the~~
 1515 ~~corporation on assessable insureds under sub-subparagraphs a.~~
 1516 ~~and b. shall be~~ collected by the surplus lines agent at the time
 1517 the surplus lines agent collects the surplus lines tax required
 1518 by s. 626.932, and shall be paid to the Florida Surplus Lines
 1519 Service Office at the time the surplus lines agent pays the
 1520 surplus lines tax to that ~~the Florida Surplus Lines Service~~
 1521 ~~office.~~ Upon receipt of regular assessments from surplus lines
 1522 agents, the Florida Surplus Lines Service Office shall transfer
 1523 the assessments directly to the corporation as determined by the
 1524 corporation.

1525 c.d. ~~Upon a determination by the board of governors that a~~
 1526 ~~deficit in an account exceeds the amount that will be recovered~~
 1527 ~~through regular assessments under sub-subparagraph a. or sub-~~
 1528 ~~paragraph b., plus the amount that is expected to be~~
 1529 ~~recovered through surcharges under sub-subparagraph h. i., as to~~
 1530 ~~the remaining projected deficit the board shall levy, after~~
 1531 ~~verification by the office, shall levy~~ emergency assessments,
 1532 for as many years as necessary to cover the deficits, to be
 1533 collected by assessable insurers and the corporation and
 1534 collected from assessable insureds upon issuance or renewal of
 1535 policies for subject lines of business, excluding National Flood
 1536 Insurance policies. The amount ~~of the emergency assessment~~
 1537 collected in a particular year must ~~shall~~ be a uniform

597-02016-11

2011408c1

1538 percentage of that year's direct written premium for subject
1539 lines of business and all accounts of the corporation, excluding
1540 National Flood Insurance Program policy premiums, as annually
1541 determined by the board and verified by the office. The office
1542 shall verify the arithmetic calculations involved in the board's
1543 determination within 30 days after receipt of the information on
1544 which the determination was based. Notwithstanding any other
1545 provision of law, the corporation and each assessable insurer
1546 that writes subject lines of business shall collect emergency
1547 assessments from its policyholders without such obligation being
1548 affected by any credit, limitation, exemption, or deferment.
1549 Emergency assessments levied by the corporation on assessable
1550 insureds shall be collected by the surplus lines agent at the
1551 time the surplus lines agent collects the surplus lines tax
1552 required by s. 626.932 and ~~shall be~~ paid to the Florida Surplus
1553 Lines Service Office at the time the surplus lines agent pays
1554 the surplus lines tax to that ~~the Florida Surplus Lines Service~~
1555 ~~office.~~ The emergency assessments ~~so~~ collected shall be
1556 transferred directly to the corporation on a periodic basis as
1557 determined by the corporation and ~~shall be~~ held by the
1558 corporation solely in the applicable account. The aggregate
1559 amount of emergency assessments levied for an account under this
1560 sub-subparagraph in any calendar year may, ~~at the discretion of~~
1561 ~~the board of governors,~~ be less than but may not exceed the
1562 greater of 10 percent of the amount needed to cover the deficit,
1563 plus interest, fees, commissions, required reserves, and other
1564 costs associated with financing ~~of~~ the original deficit, or 10
1565 percent of the aggregate statewide direct written premium for
1566 subject lines of business and ~~for~~ all accounts of the

597-02016-11

2011408c1

1567 corporation for the prior year, plus interest, fees,
1568 commissions, required reserves, and other costs associated with
1569 financing the deficit.

1570 d.e. The corporation may pledge the proceeds of
1571 assessments, projected recoveries from the Florida Hurricane
1572 Catastrophe Fund, other insurance and reinsurance recoverables,
1573 policyholder surcharges and other surcharges, and other funds
1574 available to the corporation as the source of revenue for and to
1575 secure bonds issued under paragraph (q), bonds or other
1576 indebtedness issued under subparagraph (c)3., or lines of credit
1577 or other financing mechanisms issued or created under this
1578 subsection, or to retire any other debt incurred as a result of
1579 deficits or events giving rise to deficits, or in any other way
1580 that the board determines will efficiently recover such
1581 deficits. The purpose of the lines of credit or other financing
1582 mechanisms is to provide additional resources to assist the
1583 corporation in covering claims and expenses attributable to a
1584 catastrophe. As used in this subsection, the term "assessments"
1585 includes regular assessments under sub-subparagraph a., ~~sub-~~
1586 ~~subparagraph b.,~~ or subparagraph (q)1. and emergency assessments
1587 under sub-subparagraph d. Emergency assessments collected under
1588 sub-subparagraph d. are not part of an insurer's rates, are not
1589 premium, and are not subject to premium tax, fees, or
1590 commissions; however, failure to pay the emergency assessment
1591 shall be treated as failure to pay premium. The emergency
1592 assessments under sub-subparagraph c. ~~d.~~ shall continue as long
1593 as any bonds issued or other indebtedness incurred with respect
1594 to a deficit for which the assessment was imposed remain
1595 outstanding, unless adequate provision has been made for the

597-02016-11

2011408c1

1596 payment of such bonds or other indebtedness pursuant to the
1597 documents governing such bonds or ~~other~~ indebtedness.

1598 ~~e.f.~~ As used in this subsection for purposes of any deficit
1599 incurred on or after January 25, 2007, the term "subject lines
1600 of business" means insurance written by assessable insurers or
1601 procured by assessable insureds for all property and casualty
1602 lines of business in this state, but not including workers'
1603 compensation or medical malpractice. As used in this ~~the~~ sub-
1604 subparagraph, the term "property and casualty lines of business"
1605 includes all lines of business identified on Form 2, Exhibit of
1606 Premiums and Losses, in the annual statement required of
1607 authorized insurers under ~~by~~ s. 624.424 and any rule adopted
1608 under this section, except for those lines identified as
1609 accident and health insurance and except for policies written
1610 under the National Flood Insurance Program or the Federal Crop
1611 Insurance Program. For purposes of this sub-subparagraph, the
1612 term "workers' compensation" includes both workers' compensation
1613 insurance and excess workers' compensation insurance.

1614 ~~f.g.~~ The Florida Surplus Lines Service Office shall
1615 determine annually the aggregate statewide written premium in
1616 subject lines of business procured by assessable insureds and
1617 ~~shall~~ report that information to the corporation in a form and
1618 at a time the corporation specifies to ensure that the
1619 corporation can meet the requirements of this subsection and the
1620 corporation's financing obligations.

1621 ~~g.h.~~ The Florida Surplus Lines Service Office shall verify
1622 the proper application by surplus lines agents of assessment
1623 percentages for regular assessments and emergency assessments
1624 levied under this subparagraph on assessable insureds and ~~shall~~

597-02016-11

2011408c1

1625 assist the corporation in ensuring the accurate, timely
1626 collection and payment of assessments by surplus lines agents as
1627 required by the corporation.

1628 ~~h.i.~~ If a deficit is incurred in any account in 2008 or
1629 thereafter, the board of governors shall levy a ~~Citizens~~
1630 policyholder surcharge against all policyholders of the
1631 corporation. ~~for a 12-month period, which~~

1632 (I) The surcharge shall be levied ~~collected at the time of~~
1633 ~~issuance or renewal of a policy,~~ as a uniform percentage of the
1634 premium for the policy of up to 15 percent of such premium,
1635 which funds shall be used to offset the deficit.

1636 (II) The surcharge is payable upon cancellation or
1637 termination of the policy, upon renewal of the policy, or upon
1638 issuance of a new policy by the corporation within the first 12
1639 months after the date of the levy or the period of time
1640 necessary to fully collect the surcharge amount.

1641 (III) The corporation may not levy any regular assessments
1642 under paragraph (q) pursuant to sub-subparagraph a. or sub-
1643 subparagraph b. with respect to a particular year's deficit
1644 until the corporation has first levied the full amount of the
1645 surcharge authorized by this sub-subparagraph.

1646 (IV) The surcharge is ~~Citizens policyholder surcharges~~
1647 ~~under this sub-subparagraph~~ are not considered premium and is
1648 ~~are~~ not subject to commissions, fees, or premium taxes. However,
1649 failure to pay the surcharge ~~such surcharges~~ shall be treated as
1650 failure to pay premium.

1651 ~~i.j.~~ If the amount of any assessments or surcharges
1652 collected from corporation policyholders, assessable insurers or
1653 their policyholders, or assessable insureds exceeds the amount

597-02016-11

2011408c1

1654 of the deficits, such excess amounts shall be remitted to and
1655 retained by the corporation in a reserve to be used by the
1656 corporation, as determined by the board of governors and
1657 approved by the office, to pay claims or reduce any past,
1658 present, or future plan-year deficits or to reduce outstanding
1659 debt.

1660 (c) The corporation's plan of operation ~~of the corporation:~~

1661 1. Must provide for adoption of residential property and
1662 casualty insurance policy forms and commercial residential and
1663 nonresidential property insurance forms, which ~~forms~~ must be
1664 approved by the office before ~~prior to~~ use. The corporation
1665 shall adopt the following policy forms:

1666 a. Standard personal lines policy forms that are
1667 comprehensive multiperil policies providing full coverage of a
1668 residential property equivalent to the coverage provided in the
1669 private insurance market under an HO-3, HO-4, or HO-6 policy.

1670 b. Basic personal lines policy forms that are policies
1671 similar to an HO-8 policy or a dwelling fire policy that provide
1672 coverage meeting the requirements of the secondary mortgage
1673 market, but which ~~coverage~~ is more limited than the coverage
1674 under a standard policy.

1675 c. Commercial lines residential and nonresidential policy
1676 forms that are generally similar to the basic perils of full
1677 coverage obtainable for commercial residential structures and
1678 commercial nonresidential structures in the admitted voluntary
1679 market.

1680 d. Personal lines and commercial lines residential property
1681 insurance forms that cover the peril of wind only. The forms are
1682 applicable only to residential properties located in areas

597-02016-11

2011408c1

1683 eligible for coverage under the coastal ~~high-risk~~ account
1684 referred to in sub-subparagraph (b)2.a.

1685 e. Commercial lines nonresidential property insurance forms
1686 that cover the peril of wind only. The forms are applicable only
1687 to nonresidential properties located in areas eligible for
1688 coverage under the coastal ~~high-risk~~ account referred to in sub-
1689 subparagraph (b)2.a.

1690 f. The corporation may adopt variations of the policy forms
1691 listed in sub-subparagraphs a.-e. which ~~that~~ contain more
1692 restrictive coverage.

1693 ~~2.a.~~ Must provide that the corporation adopt a program in
1694 which the corporation and authorized insurers enter into quota
1695 share primary insurance agreements for hurricane coverage, as
1696 defined in s. 627.4025(2)(a), for eligible risks, and adopt
1697 property insurance forms for eligible risks which cover the
1698 peril of wind only.

1699 a. As used in this subsection, the term:

1700 (I) "Quota share primary insurance" means an arrangement in
1701 which the primary hurricane coverage of an eligible risk is
1702 provided in specified percentages by the corporation and an
1703 authorized insurer. The corporation and authorized insurer are
1704 each solely responsible for a specified percentage of hurricane
1705 coverage of an eligible risk as set forth in a quota share
1706 primary insurance agreement between the corporation and an
1707 authorized insurer and the insurance contract. The
1708 responsibility of the corporation or authorized insurer to pay
1709 its specified percentage of hurricane losses of an eligible
1710 risk, as set forth in the ~~quota share primary insurance~~
1711 agreement, may not be altered by the inability of the other

597-02016-11

2011408c1

1712 party ~~to the agreement~~ to pay its specified percentage of
1713 ~~hurricane~~ losses. Eligible risks that are provided hurricane
1714 coverage through a quota share primary insurance arrangement
1715 must be provided policy forms that set forth the obligations of
1716 the corporation and authorized insurer under the arrangement,
1717 clearly specify the percentages of quota share primary insurance
1718 provided by the corporation and authorized insurer, and
1719 conspicuously and clearly state that ~~neither~~ the authorized
1720 insurer and ~~nor~~ the corporation may not be held responsible
1721 beyond their ~~its~~ specified percentage of coverage of hurricane
1722 losses.

1723 (II) "Eligible risks" means personal lines residential and
1724 commercial lines residential risks that meet the underwriting
1725 criteria of the corporation and are located in areas that were
1726 eligible for coverage by the Florida Windstorm Underwriting
1727 Association on January 1, 2002.

1728 b. The corporation may enter into quota share primary
1729 insurance agreements with authorized insurers at corporation
1730 coverage levels of 90 percent and 50 percent.

1731 c. If the corporation determines that additional coverage
1732 levels are necessary to maximize participation in quota share
1733 primary insurance agreements by authorized insurers, the
1734 corporation may establish additional coverage levels. However,
1735 the corporation's quota share primary insurance coverage level
1736 may not exceed 90 percent.

1737 d. Any quota share primary insurance agreement entered into
1738 between an authorized insurer and the corporation must provide
1739 for a uniform specified percentage of coverage of hurricane
1740 losses, by county or territory as set forth by the corporation

597-02016-11

2011408c1

1741 board, for all eligible risks of the authorized insurer covered
1742 under the ~~quota share primary insurance~~ agreement.

1743 e. Any quota share primary insurance agreement entered into
1744 between an authorized insurer and the corporation is subject to
1745 review and approval by the office. However, such agreement shall
1746 be authorized only as to insurance contracts entered into
1747 between an authorized insurer and an insured who is already
1748 insured by the corporation for wind coverage.

1749 f. For all eligible risks covered under quota share primary
1750 insurance agreements, the exposure and coverage levels for both
1751 the corporation and authorized insurers shall be reported by the
1752 corporation to the Florida Hurricane Catastrophe Fund. For all
1753 policies of eligible risks covered under such ~~quota share~~
1754 ~~primary insurance~~ agreements, the corporation and the authorized
1755 insurer must ~~shall~~ maintain complete and accurate records for
1756 the purpose of exposure and loss reimbursement audits as
1757 required by ~~Florida Hurricane Catastrophe~~ fund rules. The
1758 corporation and the authorized insurer shall each maintain
1759 duplicate copies of policy declaration pages and supporting
1760 claims documents.

1761 g. The corporation board shall establish in its plan of
1762 operation standards for quota share agreements which ensure that
1763 there is no discriminatory application among insurers as to the
1764 terms of the ~~quota share~~ agreements, pricing of the ~~quota share~~
1765 agreements, incentive provisions if any, and consideration paid
1766 for servicing policies or adjusting claims.

1767 h. The quota share primary insurance agreement between the
1768 corporation and an authorized insurer must set forth the
1769 specific terms under which coverage is provided, including, but

597-02016-11

2011408c1

1770 not limited to, the sale and servicing of policies issued under
1771 the agreement by the insurance agent of the authorized insurer
1772 producing the business, the reporting of information concerning
1773 eligible risks, the payment of premium to the corporation, and
1774 arrangements for the adjustment and payment of hurricane claims
1775 incurred on eligible risks by the claims adjuster and personnel
1776 of the authorized insurer. Entering into a quota sharing
1777 insurance agreement between the corporation and an authorized
1778 insurer is ~~shall be~~ voluntary and at the discretion of the
1779 authorized insurer.

1780 3. May provide that the corporation may employ or otherwise
1781 contract with individuals or other entities to provide
1782 administrative or professional services that may be appropriate
1783 to effectuate the plan. The corporation may ~~shall have the power~~
1784 ~~to~~ borrow funds, by issuing bonds or by incurring other
1785 indebtedness, and shall have other powers reasonably necessary
1786 to effectuate the requirements of this subsection, including,
1787 without limitation, the power to issue bonds and incur other
1788 indebtedness in order to refinance outstanding bonds or other
1789 indebtedness. The corporation ~~may, but is not required to,~~ seek
1790 judicial validation of its bonds or other indebtedness under
1791 chapter 75. The corporation may issue bonds or incur other
1792 indebtedness, or have bonds issued on its behalf by a unit of
1793 local government pursuant to subparagraph (q)2.7 in the absence
1794 of a hurricane or other weather-related event, upon a
1795 determination by the corporation, subject to approval by the
1796 office, that such action would enable it to efficiently meet the
1797 financial obligations of the corporation and that such
1798 financings are reasonably necessary to effectuate the

597-02016-11

2011408c1

1799 requirements of this subsection. The corporation may ~~is~~
1800 ~~authorized to~~ take all actions needed to facilitate tax-free
1801 status for ~~any~~ such bonds or indebtedness, including formation
1802 of trusts or other affiliated entities. The corporation may
1803 ~~shall have the authority to~~ pledge assessments, projected
1804 recoveries from the Florida Hurricane Catastrophe Fund, other
1805 reinsurance recoverables, market equalization and other
1806 surcharges, and other funds available to the corporation as
1807 security for bonds or other indebtedness. In recognition of s.
1808 10, Art. I of the State Constitution, prohibiting the impairment
1809 of obligations of contracts, it is the intent of the Legislature
1810 that no action be taken whose purpose is to impair any bond
1811 indenture or financing agreement or any revenue source committed
1812 by contract to such bond or other indebtedness.

1813 4.~~a.~~ Must require that the corporation operate subject to
1814 the supervision and approval of a board of governors consisting
1815 of eight individuals who are residents of this state, from
1816 different geographical areas of this state.

1817 a. The Governor, the Chief Financial Officer, the President
1818 of the Senate, and the Speaker of the House of Representatives
1819 shall each appoint two members of the board. At least one of the
1820 two members appointed by each appointing officer must have
1821 demonstrated expertise in insurance, and is deemed to be within
1822 the scope of the exemption provided in s. 112.313(7)(b). The
1823 Chief Financial Officer shall designate one of the appointees as
1824 chair. All board members serve at the pleasure of the appointing
1825 officer. All members of the board ~~of governors~~ are subject to
1826 removal at will by the officers who appointed them. All board
1827 members, including the chair, must be appointed to serve for 3-

597-02016-11

2011408c1

1828 year terms beginning annually on a date designated by the plan.
1829 However, for the first term beginning on or after July 1, 2009,
1830 each appointing officer shall appoint one member of the board
1831 for a 2-year term and one member for a 3-year term. A ~~Any~~ board
1832 vacancy shall be filled for the unexpired term by the appointing
1833 officer. The Chief Financial Officer shall appoint a technical
1834 advisory group to provide information and advice to the board ~~of~~
1835 ~~governors~~ in connection with the board's duties under this
1836 subsection. The executive director and senior managers of the
1837 corporation shall be engaged by the board and serve at the
1838 pleasure of the board. Any executive director appointed on or
1839 after July 1, 2006, is subject to confirmation by the Senate.
1840 The executive director is responsible for employing other staff
1841 as the corporation may require, subject to review and
1842 concurrence by the board.

1843 b. The board shall create a Market Accountability Advisory
1844 Committee to assist the corporation in developing awareness of
1845 its rates and its customer and agent service levels in
1846 relationship to the voluntary market insurers writing similar
1847 coverage.

1848 (I) The members of the advisory committee ~~shall~~ consist of
1849 the following 11 persons, one of whom must be elected chair by
1850 the members of the committee: four representatives, one
1851 appointed by the Florida Association of Insurance Agents, one by
1852 the Florida Association of Insurance and Financial Advisors, one
1853 by the Professional Insurance Agents of Florida, and one by the
1854 Latin American Association of Insurance Agencies; three
1855 representatives appointed by the insurers with the three highest
1856 voluntary market share of residential property insurance

597-02016-11

2011408c1

1857 business in the state; one representative from the Office of
1858 Insurance Regulation; one consumer appointed by the board who is
1859 insured by the corporation at the time of appointment to the
1860 committee; one representative appointed by the Florida
1861 Association of Realtors; and one representative appointed by the
1862 Florida Bankers Association. All members shall be appointed to
1863 ~~must serve for~~ 3-year terms and may serve for consecutive terms.

1864 (II) The committee shall report to the corporation at each
1865 board meeting on insurance market issues which may include rates
1866 and rate competition with the voluntary market; service,
1867 including policy issuance, claims processing, and general
1868 responsiveness to policyholders, applicants, and agents; and
1869 matters relating to depopulation.

1870 5. Must provide a procedure for determining the eligibility
1871 of a risk for coverage, as follows:

1872 a. Subject to ~~the provisions of~~ s. 627.3517, with respect
1873 to personal lines residential risks, if the risk is offered
1874 coverage from an authorized insurer at the insurer's approved
1875 rate under ~~either~~ a standard policy including wind coverage or,
1876 if consistent with the insurer's underwriting rules as filed
1877 with the office, a basic policy including wind coverage, for a
1878 new application to the corporation for coverage, the risk is not
1879 eligible for any policy issued by the corporation unless the
1880 premium for coverage from the authorized insurer is more than 15
1881 percent greater than the premium for comparable coverage from
1882 the corporation. If the risk is not able to obtain ~~any~~ such
1883 offer, the risk is eligible for ~~either~~ a standard policy
1884 including wind coverage or a basic policy including wind
1885 coverage issued by the corporation; however, if the risk could

597-02016-11

2011408c1

1886 not be insured under a standard policy including wind coverage
1887 regardless of market conditions, the risk is ~~shall be~~ eligible
1888 for a basic policy including wind coverage unless rejected under
1889 subparagraph 8. However, ~~with regard to~~ a policyholder of the
1890 corporation or a policyholder removed from the corporation
1891 through an assumption agreement until the end of the assumption
1892 period, ~~the policyholder~~ remains eligible for coverage from the
1893 corporation regardless of any offer of coverage from an
1894 authorized insurer or surplus lines insurer. The corporation
1895 shall determine the type of policy to be provided on the basis
1896 of objective standards specified in the underwriting manual and
1897 based on generally accepted underwriting practices.

1898 (I) If the risk accepts an offer of coverage through the
1899 market assistance plan or ~~an offer of coverage~~ through a
1900 mechanism established by the corporation before a policy is
1901 issued to the risk by the corporation or during the first 30
1902 days of coverage by the corporation, and the producing agent who
1903 submitted the application to the plan or to the corporation is
1904 not currently appointed by the insurer, the insurer shall:

1905 (A) Pay to the producing agent of record of the policy, ~~r~~ for
1906 the first year, an amount that is the greater of the insurer's
1907 usual and customary commission for the type of policy written or
1908 a fee equal to the usual and customary commission of the
1909 corporation; or

1910 (B) Offer to allow the producing agent of record of the
1911 policy to continue servicing the policy for at least ~~a period of~~
1912 ~~not less than~~ 1 year and offer to pay the agent the greater of
1913 the insurer's or the corporation's usual and customary
1914 commission for the type of policy written.

597-02016-11

2011408c1

1915

1916 If the producing agent is unwilling or unable to accept
1917 appointment, the new insurer shall pay the agent in accordance
1918 with sub-sub-sub-subparagraph (A).

1919 (II) If ~~When~~ the corporation enters into a contractual
1920 agreement for a take-out plan, the producing agent of record of
1921 the corporation policy is entitled to retain any unearned
1922 commission on the policy, and the insurer shall:

1923 (A) Pay to the producing agent of record ~~of the corporation~~
1924 ~~policy~~, for the first year, an amount that is the greater of the
1925 insurer's usual and customary commission for the type of policy
1926 written or a fee equal to the usual and customary commission of
1927 the corporation; or

1928 (B) Offer to allow the producing agent of record ~~of the~~
1929 ~~corporation policy~~ to continue servicing the policy for at least
1930 ~~a period of not less than~~ 1 year and offer to pay the agent the
1931 greater of the insurer's or the corporation's usual and
1932 customary commission for the type of policy written.

1933

1934 If the producing agent is unwilling or unable to accept
1935 appointment, the new insurer shall pay the agent in accordance
1936 with sub-sub-sub-subparagraph (A).

1937 b. With respect to commercial lines residential risks, for
1938 a new application to the corporation for coverage, if the risk
1939 is offered coverage under a policy including wind coverage from
1940 an authorized insurer at its approved rate, the risk is not
1941 eligible for a ~~any~~ policy issued by the corporation unless the
1942 premium for coverage from the authorized insurer is more than 15
1943 percent greater than the premium for comparable coverage from

597-02016-11

2011408c1

1944 the corporation. If the risk is not able to obtain any such
1945 offer, the risk is eligible for a policy including wind coverage
1946 issued by the corporation. However, ~~with regard to~~ a
1947 policyholder of the corporation or a policyholder removed from
1948 the corporation through an assumption agreement until the end of
1949 the assumption period, ~~the policyholder~~ remains eligible for
1950 coverage from the corporation regardless of an ~~any~~ offer of
1951 coverage from an authorized insurer or surplus lines insurer.

1952 (I) If the risk accepts an offer of coverage through the
1953 market assistance plan or ~~an offer of coverage~~ through a
1954 mechanism established by the corporation before a policy is
1955 issued to the risk by the corporation or during the first 30
1956 days of coverage by the corporation, and the producing agent who
1957 submitted the application to the plan or the corporation is not
1958 currently appointed by the insurer, the insurer shall:

1959 (A) Pay to the producing agent of record of the policy, for
1960 the first year, an amount that is the greater of the insurer's
1961 usual and customary commission for the type of policy written or
1962 a fee equal to the usual and customary commission of the
1963 corporation; or

1964 (B) Offer to allow the producing agent of record of the
1965 policy to continue servicing the policy for at least ~~a period of~~
1966 ~~not less than~~ 1 year and offer to pay the agent the greater of
1967 the insurer's or the corporation's usual and customary
1968 commission for the type of policy written.

1969
1970 If the producing agent is unwilling or unable to accept
1971 appointment, the new insurer shall pay the agent in accordance
1972 with sub-sub-sub-subparagraph (A).

597-02016-11

2011408c1

1973 (II) If ~~When~~ the corporation enters into a contractual
1974 agreement for a take-out plan, the producing agent of record of
1975 the corporation policy is entitled to retain any unearned
1976 commission on the policy, and the insurer shall:

1977 (A) Pay to the producing agent of record ~~of the corporation~~
1978 policy, for the first year, an amount that is the greater of the
1979 insurer's usual and customary commission for the type of policy
1980 written or a fee equal to the usual and customary commission of
1981 the corporation; or

1982 (B) Offer to allow the producing agent of record ~~of the~~
1983 ~~corporation policy~~ to continue servicing the policy for at least
1984 ~~a period of not less than~~ 1 year and offer to pay the agent the
1985 greater of the insurer's or the corporation's usual and
1986 customary commission for the type of policy written.

1987
1988 If the producing agent is unwilling or unable to accept
1989 appointment, the new insurer shall pay the agent in accordance
1990 with sub-sub-sub-subparagraph (A).

1991 c. For purposes of determining comparable coverage under
1992 sub-subparagraphs a. and b., the comparison must ~~shall~~ be based
1993 on those forms and coverages that are reasonably comparable. The
1994 corporation may rely on a determination of comparable coverage
1995 and premium made by the producing agent who submits the
1996 application to the corporation, made in the agent's capacity as
1997 the corporation's agent. A comparison may be made solely of the
1998 premium with respect to the main building or structure only on
1999 the following basis: the same coverage A or other building
2000 limits; the same percentage hurricane deductible that applies on
2001 an annual basis or that applies to each hurricane for commercial

597-02016-11

2011408c1

2002 residential property; the same percentage of ordinance and law
2003 coverage, if the same limit is offered by both the corporation
2004 and the authorized insurer; the same mitigation credits, to the
2005 extent the same types of credits are offered both by the
2006 corporation and the authorized insurer; the same method for loss
2007 payment, such as replacement cost or actual cash value, if the
2008 same method is offered both by the corporation and the
2009 authorized insurer in accordance with underwriting rules; and
2010 any other form or coverage that is reasonably comparable as
2011 determined by the board. If an application is submitted to the
2012 corporation for wind-only coverage in the coastal ~~high-risk~~
2013 account, the premium for the corporation's wind-only policy plus
2014 the premium for the ex-wind policy that is offered by an
2015 authorized insurer to the applicant must ~~shall~~ be compared to
2016 the premium for multiperil coverage offered by an authorized
2017 insurer, subject to the standards for comparison specified in
2018 this subparagraph. If the corporation or the applicant requests
2019 from the authorized insurer a breakdown of the premium of the
2020 offer by types of coverage so that a comparison may be made by
2021 the corporation or its agent and the authorized insurer refuses
2022 or is unable to provide such information, the corporation may
2023 treat the offer as not being an offer of coverage from an
2024 authorized insurer at the insurer's approved rate.

2025 6. Must include rules for classifications of risks and
2026 rates ~~therefor~~.

2027 7. Must provide that if premium and investment income for
2028 an account attributable to a particular calendar year are in
2029 excess of projected losses and expenses for the account
2030 attributable to that year, such excess shall be held in surplus

597-02016-11

2011408c1

2031 in the account. Such surplus must ~~shall~~ be available to defray
2032 deficits in that account as to future years and ~~shall be~~ used
2033 for that purpose before ~~prior to~~ assessing assessable insurers
2034 and assessable insureds as to any calendar year.

2035 8. Must provide objective criteria and procedures to be
2036 uniformly applied to ~~for~~ all applicants in determining whether
2037 an individual risk is so hazardous as to be uninsurable. In
2038 making this determination and in establishing the criteria and
2039 procedures, the following must ~~shall~~ be considered:

2040 a. Whether the likelihood of a loss for the individual risk
2041 is substantially higher than for other risks of the same class;
2042 and

2043 b. Whether the uncertainty associated with the individual
2044 risk is such that an appropriate premium cannot be determined.

2045
2046 The acceptance or rejection of a risk by the corporation shall
2047 be construed as the private placement of insurance, and the
2048 provisions of chapter 120 do ~~shall~~ not apply.

2049 9. Must provide that the corporation ~~shall~~ make its best
2050 efforts to procure catastrophe reinsurance at reasonable rates,
2051 to cover its projected 100-year probable maximum loss as
2052 determined by the board of governors.

2053 10. The policies issued by the corporation must provide
2054 that, if the corporation or the market assistance plan obtains
2055 an offer from an authorized insurer to cover the risk at its
2056 approved rates, the risk is no longer eligible for renewal
2057 through the corporation, except as otherwise provided in this
2058 subsection.

2059 11. Corporation policies and applications must include a

597-02016-11

2011408c1

2060 notice that the corporation policy could, under this section, be
2061 replaced with a policy issued by an authorized insurer which
2062 ~~that~~ does not provide coverage identical to the coverage
2063 provided by the corporation. The notice must ~~shall~~ also specify
2064 that acceptance of corporation coverage creates a conclusive
2065 presumption that the applicant or policyholder is aware of this
2066 potential.

2067 12. May establish, subject to approval by the office,
2068 different eligibility requirements and operational procedures
2069 for any line or type of coverage for any specified county or
2070 area if the board determines that such changes ~~to the~~
2071 ~~eligibility requirements and operational procedures~~ are
2072 justified due to the voluntary market being sufficiently stable
2073 and competitive in such area or for such line or type of
2074 coverage and that consumers who, in good faith, are unable to
2075 obtain insurance through the voluntary market through ordinary
2076 methods ~~would~~ continue to have access to coverage from the
2077 corporation. If ~~When~~ coverage is sought in connection with a
2078 real property transfer, the ~~such~~ requirements and procedures may
2079 ~~shall~~ not provide ~~for~~ an effective date of coverage later than
2080 the date of the closing of the transfer as established by the
2081 transferor, the transferee, and, if applicable, the lender.

2082 13. Must provide that, with respect to the coastal ~~high-~~
2083 ~~risk~~ account, any assessable insurer with a surplus as to
2084 policyholders of \$25 million or less writing 25 percent or more
2085 of its total countrywide property insurance premiums in this
2086 state may petition the office, within the first 90 days of each
2087 calendar year, to qualify as a limited apportionment company. A
2088 regular assessment levied by the corporation on a limited

597-02016-11

2011408c1

2089 apportionment company for a deficit incurred by the corporation
2090 for the coastal ~~high-risk~~ account ~~in 2006 or thereafter~~ may be
2091 paid to the corporation on a monthly basis as the assessments
2092 are collected by the limited apportionment company from its
2093 insureds pursuant to s. 627.3512, but the regular assessment
2094 must be paid in full within 12 months after being levied by the
2095 corporation. A limited apportionment company shall collect from
2096 its policyholders any emergency assessment imposed under sub-
2097 subparagraph (b)3.d. The plan must ~~shall~~ provide that, if the
2098 office determines that any regular assessment will result in an
2099 impairment of the surplus of a limited apportionment company,
2100 the office may direct that all or part of such assessment be
2101 deferred as provided in subparagraph (q)4. However, ~~there shall~~
2102 ~~be no limitation or deferment of~~ an emergency assessment to be
2103 collected from policyholders under sub-subparagraph (b)3.d. may
2104 not be limited or deferred.

2105 14. Must provide that the corporation appoint as its
2106 licensed agents only those agents who also hold an appointment
2107 as defined in s. 626.015(3) with an insurer who at the time of
2108 the agent's initial appointment by the corporation is authorized
2109 to write and is actually writing personal lines residential
2110 property coverage, commercial residential property coverage, or
2111 commercial nonresidential property coverage within the state.

2112 15. Must provide, ~~by July 1, 2007,~~ a premium payment plan
2113 option to its policyholders which, allows at a minimum, allows
2114 for quarterly and semiannual payment of premiums. A monthly
2115 payment plan may, but is not required to, be offered.

2116 16. Must limit coverage on mobile homes or manufactured
2117 homes built before ~~prior to~~ 1994 to actual cash value of the

597-02016-11

2011408c1

2118 dwelling rather than replacement costs of the dwelling.

2119 17. May provide such limits of coverage as the board
2120 determines, consistent with the requirements of this subsection.

2121 18. May require commercial property to meet specified
2122 hurricane mitigation construction features as a condition of
2123 eligibility for coverage.

2124 (d)1. All prospective employees for senior management
2125 positions, as defined by the plan of operation, are subject to
2126 background checks as a prerequisite for employment. The office
2127 shall conduct the background checks ~~on such prospective~~
2128 ~~employees~~ pursuant to ss. 624.34, 624.404(3), and 628.261.

2129 2. On or before July 1 of each year, employees of the
2130 corporation must ~~are required to~~ sign and submit a statement
2131 attesting that they do not have a conflict of interest, as
2132 defined in part III of chapter 112. As a condition of
2133 employment, all prospective employees must ~~are required to~~ sign
2134 and submit to the corporation a conflict-of-interest statement.

2135 3. Senior managers and members of the board of governors
2136 are subject to ~~the provisions of~~ part III of chapter 112,
2137 including, but not limited to, the code of ethics and public
2138 disclosure and reporting of financial interests, pursuant to s.
2139 112.3145. Notwithstanding s. 112.3143(2), a board member may not
2140 vote on any measure that would inure to his or her special
2141 private gain or loss; that he or she knows would inure to the
2142 special private gain or loss of any principal by whom he or she
2143 is retained or to the parent organization or subsidiary of a
2144 corporate principal by which he or she is retained, other than
2145 an agency as defined in s. 112.312; or that he or she knows
2146 would inure to the special private gain or loss of a relative or

597-02016-11

2011408c1

2147 business associate of the public officer. Before the vote is
2148 taken, such member shall publicly state to the assembly the
2149 nature of his or her interest in the matter from which he or she
2150 is abstaining from voting and, within 15 days after the vote
2151 occurs, disclose the nature of his or her interest as a public
2152 record in a memorandum filed with the person responsible for
2153 recording the minutes of the meeting, who shall incorporate the
2154 memorandum in the minutes. Senior managers and board members are
2155 also required to file such disclosures with the Commission on
2156 Ethics and the Office of Insurance Regulation. The executive
2157 director of the corporation or his or her designee shall notify
2158 each existing and newly appointed ~~and existing~~ appointed member
2159 of the board of governors and senior managers of their duty to
2160 comply with the reporting requirements of part III of chapter
2161 112. At least quarterly, the executive director or his or her
2162 designee shall submit to the Commission on Ethics a list of
2163 names of the senior managers and members of the board of
2164 governors who are subject to the public disclosure requirements
2165 under s. 112.3145.

2166 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other
2167 provision of law, an employee or board member may not knowingly
2168 accept, directly or indirectly, any gift or expenditure from a
2169 person or entity, or an employee or representative of such
2170 person or entity, which ~~that~~ has a contractual relationship with
2171 the corporation or who is under consideration for a contract. An
2172 employee or board member who fails to comply with subparagraph
2173 3. or this subparagraph is subject to penalties provided under
2174 ss. 112.317 and 112.3173.

2175 5. Any senior manager of the corporation who is employed on

597-02016-11

2011408c1

2176 or after January 1, 2007, regardless of the date of hire, who
2177 subsequently retires or terminates employment is prohibited from
2178 representing another person or entity before the corporation for
2179 2 years after retirement or termination of employment from the
2180 corporation.

2181 6. Any senior manager of the corporation who is employed on
2182 or after January 1, 2007, regardless of the date of hire, who
2183 subsequently retires or terminates employment is prohibited from
2184 having any employment or contractual relationship for 2 years
2185 with an insurer that has entered into a take-out bonus agreement
2186 with the corporation.

2187 (v)1. Effective July 1, 2002, policies of the Residential
2188 Property and Casualty Joint Underwriting Association ~~shall~~
2189 become policies of the corporation. All obligations, rights,
2190 assets and liabilities of the ~~Residential Property and Casualty~~
2191 ~~Joint Underwriting~~ association, including bonds, note and debt
2192 obligations, and the financing documents pertaining to them
2193 become those of the corporation as of July 1, 2002. The
2194 corporation is not required to issue endorsements or
2195 certificates of assumption to insureds during the remaining term
2196 of in-force transferred policies.

2197 2. Effective July 1, 2002, policies of the Florida
2198 Windstorm Underwriting Association are transferred to the
2199 corporation and ~~shall~~ become policies of the corporation. All
2200 obligations, rights, assets, and liabilities of the ~~Florida~~
2201 ~~Windstorm Underwriting~~ association, including bonds, note and
2202 debt obligations, and the financing documents pertaining to them
2203 are transferred to and assumed by the corporation on July 1,
2204 2002. The corporation is not required to issue endorsements or

597-02016-11

2011408c1

2205 certificates of assumption to insureds during the remaining term
2206 of in-force transferred policies.

2207 3. The Florida Windstorm Underwriting Association and the
2208 Residential Property and Casualty Joint Underwriting Association
2209 shall take all actions necessary ~~as may be proper~~ to further
2210 evidence the transfers and ~~shall~~ provide the documents and
2211 instruments of further assurance as may reasonably be requested
2212 by the corporation for that purpose. The corporation shall
2213 execute assumptions and instruments as the trustees or other
2214 parties to the financing documents of the Florida Windstorm
2215 Underwriting Association or the Residential Property and
2216 Casualty Joint Underwriting Association may reasonably request
2217 to further evidence the transfers and assumptions, which
2218 transfers and assumptions, however, are effective on the date
2219 provided under this paragraph whether or not, and regardless of
2220 the date on which, the assumptions or instruments are executed
2221 by the corporation. Subject to the relevant financing documents
2222 pertaining to their outstanding bonds, notes, indebtedness, or
2223 other financing obligations, the moneys, investments,
2224 receivables, choses in action, and other intangibles of the
2225 Florida Windstorm Underwriting Association shall be credited to
2226 the coastal ~~high-risk~~ account of the corporation, and those of
2227 the personal lines residential coverage account and the
2228 commercial lines residential coverage account of the Residential
2229 Property and Casualty Joint Underwriting Association shall be
2230 credited to the personal lines account and the commercial lines
2231 account, respectively, of the corporation.

2232 4. Effective July 1, 2002, a new applicant for property
2233 insurance coverage who would otherwise have been eligible for

597-02016-11

2011408c1

2234 coverage in the Florida Windstorm Underwriting Association is
2235 eligible for coverage from the corporation as provided in this
2236 subsection.

2237 5. The transfer of all policies, obligations, rights,
2238 assets, and liabilities from the Florida Windstorm Underwriting
2239 Association to the corporation and the renaming of the
2240 Residential Property and Casualty Joint Underwriting Association
2241 as the corporation does not ~~shall in no way~~ affect the coverage
2242 with respect to covered policies as defined in s. 215.555(2)(c)
2243 provided to these entities by the Florida Hurricane Catastrophe
2244 Fund. The coverage provided by the ~~Florida Hurricane Catastrophe~~
2245 fund to the Florida Windstorm Underwriting Association based on
2246 its exposures as of June 30, 2002, and each June 30 thereafter
2247 shall be redesignated as coverage for the coastal high-risk
2248 account of the corporation. Notwithstanding any other provision
2249 of law, the coverage provided by the ~~Florida Hurricane~~
2250 ~~Catastrophe~~ fund to the Residential Property and Casualty Joint
2251 Underwriting Association based on its exposures as of June 30,
2252 2002, and each June 30 thereafter shall be transferred to the
2253 personal lines account and the commercial lines account of the
2254 corporation. Notwithstanding any other provision of law, the
2255 coastal high-risk account shall be treated, for all Florida
2256 Hurricane Catastrophe Fund purposes, as if it were a separate
2257 participating insurer with its own exposures, reimbursement
2258 premium, and loss reimbursement. Likewise, the personal lines
2259 and commercial lines accounts shall be viewed together, for all
2260 ~~Florida Hurricane Catastrophe~~ fund purposes, as if the two
2261 accounts were one and represent a single, separate participating
2262 insurer with its own exposures, reimbursement premium, and loss

597-02016-11

2011408c1

2263 reimbursement. The coverage provided by the ~~Florida Hurricane~~
2264 ~~Catastrophe~~ fund to the corporation shall constitute and operate
2265 as a full transfer of coverage from the Florida Windstorm
2266 Underwriting Association and Residential Property and Casualty
2267 Joint Underwriting to the corporation.

2268 (y) It is the intent of the Legislature that the amendments
2269 to this subsection enacted in 2002 should, over time, reduce the
2270 probable maximum windstorm losses in the residual markets and
2271 ~~should reduce~~ the potential assessments to be levied on property
2272 insurers and policyholders statewide. In furtherance of this
2273 intent, ÷

2274 ~~1.~~ the board shall, on or before February 1 of each year,
2275 provide a report to the President of the Senate and the Speaker
2276 of the House of Representatives showing the reduction or
2277 increase in the 100-year probable maximum loss attributable to
2278 wind-only coverages and the quota share program under this
2279 subsection combined, as compared to the benchmark 100-year
2280 probable maximum loss of the Florida Windstorm Underwriting
2281 Association. For purposes of this paragraph, the benchmark 100-
2282 year probable maximum loss of the Florida Windstorm Underwriting
2283 Association is ~~shall be~~ the calculation dated February 2001 and
2284 based on November 30, 2000, exposures. In order to ensure
2285 comparability of data, the board shall use the same methods for
2286 calculating its probable maximum loss as were used to calculate
2287 the benchmark probable maximum loss.

2288 ~~2. Beginning December 1, 2010, if the report under~~
2289 ~~subparagraph 1. for any year indicates that the 100-year~~
2290 ~~probable maximum loss attributable to wind-only coverages and~~
2291 ~~the quota share program combined does not reflect a reduction of~~

597-02016-11

2011408c1

2292 ~~at least 25 percent from the benchmark, the board shall reduce~~
2293 ~~the boundaries of the high-risk area eligible for wind-only~~
2294 ~~coverages under this subsection in a manner calculated to reduce~~
2295 ~~such probable maximum loss to an amount at least 25 percent~~
2296 ~~below the benchmark.~~

2297 ~~3. Beginning February 1, 2015, if the report under~~
2298 ~~subparagraph 1. for any year indicates that the 100-year~~
2299 ~~probable maximum loss attributable to wind-only coverages and~~
2300 ~~the quota share program combined does not reflect a reduction of~~
2301 ~~at least 50 percent from the benchmark, the boundaries of the~~
2302 ~~high-risk area eligible for wind-only coverages under this~~
2303 ~~subsection shall be reduced by the elimination of any area that~~
2304 ~~is not seaward of a line 1,000 feet inland from the Intracoastal~~
2305 ~~Waterway.~~

2306 Section 16. Paragraph (a) of subsection (5) of section
2307 627.3511, Florida Statutes, is amended to read:

2308 627.3511 Depopulation of Citizens Property Insurance
2309 Corporation.—

2310 (5) APPLICABILITY.—

2311 (a) The take-out bonus provided by subsection (2) and the
2312 exemption from assessment provided by paragraph (3)(a) apply
2313 only if the corporation policy is replaced by ~~either~~ a standard
2314 policy including wind coverage or, if consistent with the
2315 insurer's underwriting rules ~~as~~ filed with the office, a basic
2316 policy including wind coverage; however, for ~~with respect to~~
2317 risks located in areas where coverage through the coastal high-
2318 ~~risk~~ account of the corporation is available, the replacement
2319 policy need not provide wind coverage. The insurer must renew
2320 the replacement policy at approved rates on substantially

597-02016-11

2011408c1

2321 similar terms for four additional 1-year terms, unless canceled
2322 or not renewed by the policyholder. If an insurer assumes the
2323 corporation's obligations for a policy, it must issue a
2324 replacement policy for a 1-year term upon expiration of the
2325 corporation policy and must renew the replacement policy at
2326 approved rates on substantially similar terms for four
2327 additional 1-year terms, unless canceled or not renewed by the
2328 policyholder. For each replacement policy canceled or nonrenewed
2329 by the insurer for any reason during the 5-year coverage period
2330 ~~required by this paragraph~~, the insurer must remove from the
2331 corporation one additional policy covering a risk similar to the
2332 risk covered by the canceled or nonrenewed policy. In addition
2333 ~~to these requirements~~, the corporation must place the bonus
2334 moneys in escrow for ~~a period of~~ 5 years; such moneys may be
2335 released from escrow only to pay claims. If the policy is
2336 canceled or nonrenewed before the end of the 5-year period, the
2337 amount of the take-out bonus must be prorated for the time
2338 period the policy was insured. A take-out bonus provided by
2339 subsection (2) or subsection (6) is ~~shall not be considered~~
2340 premium income for purposes of taxes and assessments under the
2341 Florida Insurance Code and ~~shall~~ remain the property of the
2342 corporation, subject to the prior security interest of the
2343 insurer under the escrow agreement until it is released from
2344 escrow; ~~and~~ after it is released from escrow it is ~~shall be~~
2345 considered an asset of the insurer and credited to the insurer's
2346 capital and surplus.

2347 Section 17. Paragraph (b) of subsection (2) of section
2348 627.4133, Florida Statutes, is amended to read:

2349 627.4133 Notice of cancellation, nonrenewal, or renewal

597-02016-11

2011408c1

2350 premium.—

2351 (2) With respect to any personal lines or commercial
2352 residential property insurance policy, including, but not
2353 limited to, any homeowner's, mobile home owner's, farmowner's,
2354 condominium association, condominium unit owner's, apartment
2355 building, or other policy covering a residential structure or
2356 its contents:

2357 (b) The insurer shall give the named insured written notice
2358 of nonrenewal, cancellation, or termination at least 90 ~~100~~ days
2359 before ~~prior to~~ the effective date of the nonrenewal,
2360 cancellation, or termination. ~~However, the insurer shall give at~~
2361 ~~least 100 days' written notice, or written notice by June 1,~~
2362 ~~whichever is earlier, for any nonrenewal, cancellation, or~~
2363 ~~termination that would be effective between June 1 and November~~
2364 ~~30. The notice must include the reason or reasons for the~~
2365 ~~nonrenewal, cancellation, or termination, except that:~~

2366 1. ~~The insurer shall give the named insured written notice~~
2367 ~~of nonrenewal, cancellation, or termination at least 180 days~~
2368 ~~prior to the effective date of the nonrenewal, cancellation, or~~
2369 ~~termination for a named insured whose residential structure has~~
2370 ~~been insured by that insurer or an affiliated insurer for at~~
2371 ~~least a 5-year period immediately prior to the date of the~~
2372 ~~written notice.~~

2373 1.2. ~~If~~ When cancellation is for nonpayment of premium, at
2374 least 10 days' written notice of cancellation accompanied by the
2375 reason therefor must ~~shall~~ be given. As used in this
2376 subparagraph, the term "nonpayment of premium" means failure of
2377 the named insured to discharge when due ~~any of~~ her or his
2378 obligations in connection with the payment of premiums on a

597-02016-11

2011408c1

2379 policy or any installment of such premium, whether the premium
2380 is payable directly to the insurer or its agent or indirectly
2381 under any premium finance plan or extension of credit, or
2382 failure to maintain membership in an organization if such
2383 membership is a condition precedent to insurance coverage. The
2384 term "~~Nonpayment of premium~~" also means the failure of a
2385 financial institution to honor an insurance applicant's check
2386 after delivery to a licensed agent for payment of a premium,
2387 even if the agent has previously delivered or transferred the
2388 premium to the insurer. If a dishonored check represents the
2389 initial premium payment, the contract and all contractual
2390 obligations are ~~shall be~~ void ab initio unless the nonpayment is
2391 cured within the earlier of 5 days after actual notice by
2392 certified mail is received by the applicant or 15 days after
2393 notice is sent to the applicant by certified mail or registered
2394 mail, and if the contract is void, any premium received by the
2395 insurer from a third party must ~~shall~~ be refunded to that party
2396 in full.

2397 ~~2.3.~~ 2.3. ~~If when~~ such cancellation or termination occurs during
2398 the first 90 days ~~during which~~ the insurance is in force and the
2399 insurance is canceled or terminated for reasons other than
2400 nonpayment of premium, at least 20 days' written notice of
2401 cancellation or termination accompanied by the reason therefor
2402 must ~~shall~~ be given unless ~~except where~~ there has been a
2403 material misstatement or misrepresentation or failure to comply
2404 with the underwriting requirements established by the insurer.

2405 ~~3.4.~~ 3.4. The requirement for providing written notice ~~of~~
2406 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective
2407 between June 1 and November 30 does not apply to the following

597-02016-11

2011408c1

2408 situations, but the insurer remains subject to the requirement
2409 to provide such notice at least 100 days before ~~prior to~~ the
2410 effective date of nonrenewal:

2411 a. A policy that is nonrenewed due to a revision in the
2412 coverage for sinkhole losses and catastrophic ground cover
2413 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
2414 ~~2007-1, Laws of Florida.~~

2415 b. A policy that is nonrenewed by Citizens Property
2416 Insurance Corporation, pursuant to s. 627.351(6), for a policy
2417 that has been assumed by an authorized insurer offering
2418 replacement ~~or renewal~~ coverage to the policyholder is exempt
2419 from the notice requirements of paragraph (a) and this
2420 paragraph. In such cases, the corporation must give the named
2421 insured written notice of nonrenewal at least 45 days before the
2422 effective date of the nonrenewal.

2423
2424 After the policy has been in effect for 90 days, the policy may
2425 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there
2426 has been a material misstatement, a nonpayment of premium, a
2427 failure to comply with underwriting requirements established by
2428 the insurer within 90 days after ~~of~~ the date of effectuation of
2429 coverage, or a substantial change in the risk covered by the
2430 policy or if ~~when~~ the cancellation is for all insureds under
2431 such policies for a given class of insureds. This paragraph does
2432 not apply to individually rated risks having a policy term of
2433 less than 90 days.

2434 4. Notwithstanding any other provision of law, an insurer
2435 may cancel or nonrenew a property insurance policy after at
2436 least 45 days' notice if the office finds that the early

597-02016-11

2011408c1

2437 cancellation of some or all of the insurer's policies is
2438 necessary to protect the best interests of the public or
2439 policyholders and the office approves the insurer's plan for
2440 early cancellation or nonrenewal of some or all of its policies.
2441 The office may base such finding upon the financial condition of
2442 the insurer, lack of adequate reinsurance coverage for hurricane
2443 risk, or other relevant factors. The office may condition its
2444 finding on the consent of the insurer to be placed under
2445 administrative supervision pursuant to s. 624.81 or to the
2446 appointment of a receiver under chapter 631.

2447 Section 18. Section 627.43141, Florida Statutes, is created
2448 to read:

2449 627.43141 Notice of change in policy terms.-

2450 (1) As used in this section, the term:

2451 (a) "Change in policy terms" means the modification,
2452 addition, or deletion of any term, coverage, duty, or condition
2453 from the previous policy. The correction of typographical or
2454 scrivener's errors or the application of mandated legislative
2455 changes is not a change in policy terms.

2456 (b) "Policy" means a written contract or written agreement
2457 for personal lines property and casualty insurance, or the
2458 certificate of such insurance, by whatever name called, and
2459 includes all clauses, riders, endorsements, and papers that are
2460 a part of such policy. The term does not include a binder as
2461 defined in s. 627.420 unless the duration of the binder period
2462 exceeds 60 days.

2463 (c) "Renewal" means the issuance and delivery by an insurer
2464 of a policy superseding at the end of the policy period a policy
2465 previously issued and delivered by the same insurer or the

597-02016-11

2011408c1

2466 issuance and delivery of a certificate or notice extending the
2467 term of a policy beyond its policy period or term. Any policy
2468 that has a policy period or term of less than 6 months or that
2469 does not have a fixed expiration date shall, for purposes of
2470 this section, be considered as written for successive policy
2471 periods or terms of 6 months.

2472 (2) A renewal policy may contain a change in policy terms.
2473 If a renewal policy does contains such change, the insurer must
2474 give the named insured written notice of the change, which must
2475 be enclosed along with the written notice of renewal premium
2476 required by ss. 627.4133 and 627.728. Such notice shall be
2477 entitled "Notice of Change in Policy Terms."

2478 (3) Although not required, proof of mailing or registered
2479 mailing through the United States Postal Service of the Notice
2480 of Change in Policy Terms to the named insured at the address
2481 shown in the policy is sufficient proof of notice.

2482 (4) Receipt of the premium payment for the renewal policy
2483 by the insurer is deemed to be acceptance of the new policy
2484 terms by the named insured.

2485 (5) If an insurer fails to provide the notice required in
2486 subsection (2), the original policy terms remain in effect until
2487 the next renewal and the proper service of the notice, or until
2488 the effective date of replacement coverage obtained by the named
2489 insured, whichever occurs first.

2490 (6) The intent of this section is to:

2491 (a) Allow an insurer to make a change in policy terms
2492 without nonrenewing those policyholders that the insurer wishes
2493 to continue insuring.

2494 (b) Alleviate concern and confusion to the policyholder

597-02016-11

2011408c1

2495 caused by the required policy nonrenewal for the limited issue
2496 if an insurer intends to renew the insurance policy, but the new
2497 policy contains a change in policy terms.

2498 (c) Encourage policyholders to discuss their coverages with
2499 their insurance agents.

2500 Section 19. Section 627.7011, Florida Statutes, is amended
2501 to read:

2502 627.7011 Homeowners' policies; offer of replacement cost
2503 coverage and law and ordinance coverage.—

2504 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
2505 insurance policy ~~on or after October 1, 2005, or prior to the~~
2506 ~~first renewal of a homeowner's insurance policy on or after~~
2507 ~~October 1, 2005,~~ the insurer must offer each of the following:

2508 (a) A policy or endorsement providing that any loss that
2509 ~~which~~ is repaired or replaced will be adjusted on the basis of
2510 replacement costs to the dwelling not exceeding policy limits ~~as~~
2511 ~~to the dwelling,~~ rather than actual cash value, but not
2512 including costs necessary to meet applicable laws and ordinances
2513 regulating the construction, use, or repair of any property or
2514 requiring the tearing down of any property, including the costs
2515 of removing debris.

2516 (b) A policy or endorsement providing that, subject to
2517 other policy provisions, any loss that ~~which~~ is repaired or
2518 replaced at any location will be adjusted on the basis of
2519 replacement costs to the dwelling not exceeding policy limits ~~as~~
2520 ~~to the dwelling,~~ rather than actual cash value, and also
2521 including costs necessary to meet applicable laws and ordinances
2522 regulating the construction, use, or repair of any property or
2523 requiring the tearing down of any property, including the costs

597-02016-11

2011408c1

2524 of removing debris.† However, ~~such~~ additional costs necessary to
2525 meet applicable laws and ordinances may be limited to ~~either~~ 25
2526 percent or 50 percent of the dwelling limit, as selected by the
2527 policyholder, and such coverage applies ~~shall apply~~ only to
2528 repairs of the damaged portion of the structure unless the total
2529 damage to the structure exceeds 50 percent of the replacement
2530 cost of the structure.

2531
2532 An insurer is not required to make the offers required by this
2533 subsection with respect to the issuance or renewal of a
2534 homeowner's policy that contains the provisions specified in
2535 paragraph (b) for law and ordinance coverage limited to 25
2536 percent of the dwelling limit, except that the insurer must
2537 offer the law and ordinance coverage limited to 50 percent of
2538 the dwelling limit. This subsection does not prohibit the offer
2539 of a guaranteed replacement cost policy.

2540 (2) Unless the insurer obtains the policyholder's written
2541 refusal of the policies or endorsements specified in subsection
2542 (1), any policy covering the dwelling is deemed to include the
2543 law and ordinance coverage limited to 25 percent of the dwelling
2544 limit. The rejection or selection of alternative coverage shall
2545 be made on a form approved by the office. The form must ~~shall~~
2546 fully advise the applicant of the nature of the coverage being
2547 rejected. If this form is signed by a named insured, it is ~~will~~
2548 ~~be~~ conclusively presumed that there was an informed, knowing
2549 rejection of the coverage or election of the alternative
2550 coverage on behalf of all insureds. Unless the policyholder
2551 requests in writing the coverage specified in this section, it
2552 need not be provided in or supplemental to any other policy that

597-02016-11

2011408c1

2553 renews, insures, extends, changes, supersedes, or replaces an
2554 existing policy ~~if when~~ the policyholder has rejected the
2555 coverage specified in this section or has selected alternative
2556 coverage. The insurer must provide the ~~such~~ policyholder with
2557 notice of the availability of such coverage in a form approved
2558 by the office at least once every 3 years. The failure to
2559 provide such notice constitutes a violation of this code, but
2560 does not affect the coverage provided under the policy.

2561 (3) In the event of a loss for which a dwelling or personal
2562 property is insured on the basis of replacement costs:

2563 (a) For a dwelling, the insurer must initially pay at least
2564 the actual cash value of the insured loss, less any applicable
2565 deductible. To receive payment from an insurer for replacement
2566 costs, the policyholder must enter into a contract for the
2567 performance of building and structural repairs, unless the
2568 requirement for a contract is waived by the insurer. The insurer
2569 shall pay any remaining amounts necessary to perform such
2570 repairs as work is performed and expenses are incurred. The
2571 insurer or any contractor or subcontractor may not require the
2572 policyholder to advance payment for such repairs or expenses,
2573 with the exception of incidental expenses to mitigate further
2574 damage. If a total loss of a dwelling occurs, the insurer shall
2575 pay the replacement cost coverage without reservation or
2576 holdback of any depreciation in value, pursuant to s. 627.702.

2577 (b) For personal property, the insurer may limit the
2578 initial payment to the actual cash value of the personal
2579 property to be replaced. An insurer may require an insured to
2580 provide receipts for the purchase of the property financed by
2581 the initial payment and use such receipts to make the next

597-02016-11

2011408c1

2582 payment requested by the insured for the replacement of insured
2583 property, and continue this process until the insured remits all
2584 receipts up to the policy limits for replacement costs. The
2585 insurer must provide clear notice of this process in the
2586 insurance contract. The insurer may not require the policyholder
2587 to advance payment for the replaced property, ~~the insurer shall~~
2588 ~~pay the replacement cost without reservation or holdback of any~~
2589 ~~depreciation in value, whether or not the insured replaces or~~
2590 ~~repairs the dwelling or property.~~

2591 (4) ~~A~~ Any homeowner's insurance policy ~~issued or renewed on~~
2592 ~~or after October 1, 2005,~~ must include in bold type no smaller
2593 than 18 points the following statement:

2594
2595 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
2596 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
2597 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
2598 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
2599 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
2600 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."
2601

2602 The intent of this subsection is to encourage policyholders to
2603 purchase sufficient coverage to protect them in case events
2604 excluded from the standard homeowners policy, such as law and
2605 ordinance enforcement and flood, combine with covered events to
2606 produce damage or loss to the insured property. The intent is
2607 also to encourage policyholders to discuss these issues with
2608 their insurance agent.

2609 (5) ~~Nothing in~~ This section does not: ~~shall be construed to~~
2610 (a) Apply to policies not considered to be "homeowners'

597-02016-11

2011408c1

2611 policies," as that term is commonly understood in the insurance
2612 industry. ~~This section specifically does not~~

2613 (b) Apply to mobile home policies. ~~Nothing in this section~~

2614 (c) Limit shall be construed as limiting the ability of an
2615 ~~any~~ insurer to reject or nonrenew any insured or applicant on
2616 the grounds that the structure does not meet underwriting
2617 criteria applicable to replacement cost or law and ordinance
2618 policies or for other lawful reasons.

2619 (d) ~~(6) This section does not~~ Prohibit an insurer from
2620 limiting its liability under a policy or endorsement providing
2621 that loss will be adjusted on the basis of replacement costs to
2622 the lesser of:

2623 1. ~~(a)~~ The limit of liability shown on the policy
2624 declarations page;

2625 2. ~~(b)~~ The reasonable and necessary cost to repair the
2626 damaged, destroyed, or stolen covered property; or

2627 3. ~~(e)~~ The reasonable and necessary cost to replace the
2628 damaged, destroyed, or stolen covered property.

2629 (e) ~~(7) This section does not~~ Prohibit an insurer from
2630 exercising its right to repair damaged property in compliance
2631 with its policy and s. 627.702(7).

2632 Section 20. Paragraph (a) of subsection (5) of section
2633 627.70131, Florida Statutes, is amended to read:

2634 627.70131 Insurer's duty to acknowledge communications
2635 regarding claims; investigation.-

2636 (5) (a) Within 90 days after an insurer receives notice of
2637 an initial, reopened, or supplemental ~~a~~ property insurance claim
2638 from a policyholder, the insurer shall pay or deny such claim or
2639 a portion of the claim unless the failure to pay ~~such claim or a~~

597-02016-11

2011408c1

2640 ~~portion of the claim~~ is caused by factors beyond the control of
2641 the insurer which reasonably prevent such payment. Any payment
2642 of an initial or supplemental a claim or portion of such a claim
2643 made ~~paid~~ 90 days after the insurer receives notice of the
2644 claim, or made ~~paid~~ more than 15 days after there are no longer
2645 factors beyond the control of the insurer which reasonably
2646 prevented such payment, whichever is later, bears ~~shall bear~~
2647 interest at the rate set forth in s. 55.03. Interest begins to
2648 accrue from the date the insurer receives notice of the claim.
2649 The provisions of this subsection may not be waived, voided, or
2650 nullified by the terms of the insurance policy. If there is a
2651 right to prejudgment interest, the insured shall select whether
2652 to receive prejudgment interest or interest under this
2653 subsection. Interest is payable when the claim or portion of the
2654 claim is paid. Failure to comply with this subsection
2655 constitutes a violation of this code. However, failure to comply
2656 with this subsection does ~~shall~~ not form the sole basis for a
2657 private cause of action.

2658 Section 21. The Legislature finds and declares:

2659 (1) There is a compelling state interest in maintaining a
2660 viable and orderly private-sector market for property insurance
2661 in this state. The lack of a viable and orderly property market
2662 reduces the availability of property insurance coverage to state
2663 residents, increases the cost of property insurance, and
2664 increases the state's reliance on a residual property insurance
2665 market and its potential for imposing assessments on
2666 policyholders throughout the state.

2667 (2) In 2005, the Legislature revised ss. 627.706-627.7074,
2668 Florida Statutes, to adopt certain geological or technical

597-02016-11

2011408c1

2669 terms; to increase reliance on objective, scientific testing
2670 requirements; and generally to reduce the number of sinkhole
2671 claims and related disputes arising under prior law. The
2672 Legislature determined that since the enactment of these
2673 statutory revisions, both private-sector insurers and Citizens
2674 Property Insurance Corporation have, nevertheless, continued to
2675 experience high claims frequency and severity for sinkhole
2676 insurance claims. In addition, many properties remain unrepaired
2677 even after loss payments, which reduces the local property tax
2678 base and adversely affects the real estate market. Therefore,
2679 the Legislature finds that losses associated with sinkhole
2680 claims adversely affect the public health, safety, and welfare
2681 of this state and its citizens.

2682 (3) Pursuant to sections 19 through 24 of this act,
2683 technical or scientific definitions adopted in the 2005
2684 legislation are clarified to implement and advance the
2685 Legislature's intended reduction of sinkhole claims and
2686 disputes. The legal presumption intended by the Legislature is
2687 clarified to reduce disputes and litigation associated with the
2688 technical reviews associated with sinkhole claims. Certain other
2689 revisions to ss. 627.706-627.7074, Florida Statutes, are enacted
2690 to advance legislative intent to rely on scientific or technical
2691 determinations relating to sinkholes and sinkhole claims, reduce
2692 the number and cost of disputes relating to sinkhole claims, and
2693 ensure that repairs are made commensurate with the scientific
2694 and technical determinations and insurance claims payments.

2695 Section 22. Section 627.706, Florida Statutes, is reordered
2696 and amended to read:

2697 627.706 Sinkhole insurance; catastrophic ground cover

597-02016-11

2011408c1

2698 collapse; definitions.-

2699 (1) Every insurer authorized to transact residential
2700 property insurance, as described in s. 627.4025, in this state
2701 must ~~shall~~ provide coverage for a catastrophic ground cover
2702 collapse. However, the insurer may restrict such coverage to the
2703 principal building, as defined in the applicable policy. The
2704 insurer may ~~and shall~~ make available, for an appropriate
2705 additional premium, coverage for sinkhole losses on any
2706 structure, including the contents of personal property contained
2707 therein, to the extent provided in the form to which the
2708 coverage attaches. A policy for residential property insurance
2709 may include a deductible amount applicable to sinkhole losses,
2710 including any expenses incurred by an insurer investigating
2711 whether sinkhole activity is present. The deductible may be
2712 equal to 1 percent, 2 percent, 5 percent, or 10 percent of the
2713 policy dwelling limits, with appropriate premium discounts
2714 offered with each deductible amount.

2715 (2) As used in ss. 627.706-627.7074, and as used in
2716 connection with any policy providing coverage for a catastrophic
2717 ground cover collapse or for sinkhole losses, the term:

2718 (a) "Catastrophic ground cover collapse" means geological
2719 activity that results in all the following:

- 2720 1. The abrupt collapse of the ground cover;
- 2721 2. A depression in the ground cover clearly visible to the
2722 naked eye;
- 2723 3. Structural damage to the covered building, including the
2724 foundation; and
- 2725 4. The insured structure being condemned and ordered to be
2726 vacated by the governmental agency authorized by law to issue

597-02016-11

2011408c1

2727 such an order for that structure.

2728
2729 Contents coverage applies if there is a loss resulting from a
2730 catastrophic ground cover collapse. ~~Structural~~ Damage consisting
2731 merely of the settling or cracking of a foundation, structure,
2732 or building does not constitute a loss resulting from a
2733 catastrophic ground cover collapse.

2734 (b) "Neutral evaluation" means the alternative dispute
2735 resolution provided in s. 627.7074.

2736 (c) "Neutral evaluator" means a professional engineer or a
2737 professional geologist who has completed a course of study in
2738 alternative dispute resolution designed or approved by the
2739 department for use in the neutral evaluation process and who is
2740 determined to be fair and impartial.

2741 (f) ~~(b)~~ "Sinkhole" means a landform created by subsidence of
2742 soil, sediment, or rock as underlying strata are dissolved by
2743 groundwater. A sinkhole forms ~~may form~~ by collapse into
2744 subterranean voids created by dissolution of limestone or
2745 dolostone or by subsidence as these strata are dissolved.

2746 (h) ~~(e)~~ "Sinkhole loss" means structural damage to the
2747 covered building, including the foundation, caused by sinkhole
2748 activity. Contents coverage and additional living expenses ~~shall~~
2749 apply only if there is structural damage to the covered building
2750 caused by sinkhole activity.

2751 (g) ~~(d)~~ "Sinkhole activity" means settlement or systematic
2752 weakening of the earth supporting ~~such~~ property only if the ~~when~~
2753 ~~such~~ settlement or systematic weakening results from
2754 contemporary movement or raveling of soils, sediments, or rock
2755 materials into subterranean voids created by the effect of water

597-02016-11

2011408c1

2756 on a limestone or similar rock formation.

2757 (d)~~(e)~~ "Professional engineer" means a person, as defined
2758 in s. 471.005, who has a bachelor's degree or higher in
2759 engineering and has successfully completed at least five courses
2760 in any combination of the following: geotechnical engineering,
2761 structural engineering, soil mechanics, foundations, or geology
2762 ~~with a specialty in the geotechnical engineering field.~~ A
2763 professional engineer must also have ~~geotechnical~~ experience and
2764 expertise in the identification of sinkhole activity as well as
2765 other potential causes of structural damage ~~to the structure.~~

2766 (e)~~(f)~~ "Professional geologist" means a person, as defined
2767 in ~~by~~ s. 492.102, who has a bachelor's degree or higher in
2768 geology or related earth science and ~~with expertise in the~~
2769 ~~geology of Florida. A professional geologist must have~~
2770 ~~geological~~ experience and expertise in the identification of
2771 sinkhole activity as well as other potential geologic causes of
2772 structural damage ~~to the structure.~~

2773 (i) "Structural damage" means:

2774 1. A covered building that suffers foundation movement
2775 outside an acceptable variance under the applicable building
2776 code;

2777 2. Damage to a covered building, including the foundation,
2778 which prevents the primary structural members or primary
2779 structural systems from supporting the loads and forces they
2780 were designed to support; and

2781 3. As may be further defined by the applicable policy.

2782 ~~(3) On or before June 1, 2007, Every insurer authorized to~~
2783 ~~transact property insurance in this state shall make a proper~~
2784 ~~filing with the office for the purpose of extending the~~

597-02016-11

2011408c1

2785 ~~appropriate forms of property insurance to include coverage for~~
2786 ~~catastrophic ground cover collapse or for sinkhole losses.~~
2787 ~~coverage for catastrophic ground cover collapse may not go into~~
2788 ~~effect until the effective date provided for in the filing~~
2789 ~~approved by the office.~~

2790 (3)~~(4)~~ Insurers offering policies that exclude coverage for
2791 sinkhole losses must ~~shall~~ inform policyholders in bold type of
2792 not less than 14 points as follows: "YOUR POLICY PROVIDES
2793 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS
2794 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,
2795 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. ~~YOU~~
2796 ~~MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN~~
2797 ~~ADDITIONAL PREMIUM."~~

2798 (4)~~(5)~~ An insurer offering sinkhole coverage to
2799 policyholders before or after the adoption of s. 30, chapter
2800 2007-1, Laws of Florida, may nonrenew the policies of
2801 policyholders maintaining sinkhole coverage ~~in Pasco County or~~
2802 ~~Hernando County,~~ at the option of the insurer, and provide an
2803 offer of coverage that ~~to such policyholders which~~ includes
2804 catastrophic ground cover collapse and excludes sinkhole
2805 coverage. Insurers acting in accordance with this subsection are
2806 subject to the following requirements:

2807 (a) Policyholders must be notified that a nonrenewal is for
2808 purposes of removing sinkhole coverage, and that the
2809 policyholder is ~~still~~ being offered a policy that provides
2810 coverage for catastrophic ground cover collapse.

2811 (b) Policyholders must be provided an actuarially
2812 reasonable premium credit or discount for the removal of
2813 sinkhole coverage and provision of only catastrophic ground

597-02016-11

2011408c1

2814 cover collapse.

2815 (c) Subject to the provisions of this subsection and the
2816 insurer's approved underwriting or insurability guidelines, the
2817 insurer may ~~shall~~ provide each policyholder with the opportunity
2818 to purchase an endorsement to his or her policy providing
2819 sinkhole coverage and may require an inspection of the property
2820 before issuance of a sinkhole coverage endorsement.

2821 (d) Section 624.4305 does not apply to nonrenewal notices
2822 issued pursuant to this subsection.

2823 (5) Any claim, including, but not limited to, initial,
2824 supplemental, and reopened claims under an insurance policy that
2825 provides sinkhole coverage is barred unless notice of the claim
2826 was given to the insurer in accordance with the terms of the
2827 policy within 2 years after the policyholder knew or reasonably
2828 should have known about the sinkhole loss.

2829 Section 23. Section 627.7061, Florida Statutes, is amended
2830 to read:

2831 627.7061 Coverage inquiries.—Inquiries about coverage on a
2832 property insurance contract are not claim activity, unless an
2833 actual claim is filed by the policyholder which insured that
2834 results in a company investigation of the claim.

2835 Section 24. Section 627.7065, Florida Statutes, is
2836 repealed.

2837 Section 25. Section 627.707, Florida Statutes, is amended
2838 to read:

2839 627.707 ~~Standards for~~ Investigation of sinkhole claims by
2840 policyholders insurers; insurer payment; nonrenewals.—Upon
2841 receipt of a claim for a sinkhole loss to a covered building, an
2842 insurer must meet the following standards in investigating a

597-02016-11

2011408c1

2843 claim:

2844 (1) The insurer must inspect ~~make an inspection of~~ the
2845 policyholder's insured's premises to determine if there is
2846 structural ~~has been physical~~ damage that ~~to the structure which~~
2847 may be the result of sinkhole activity.

2848 (2) If the insurer confirms that structural damage exists
2849 but is unable to identify a valid cause of such damage or
2850 discovers that such damage is consistent with sinkhole loss
2851 ~~Following the insurer's initial inspection,~~ the insurer shall
2852 engage a professional engineer or a professional geologist to
2853 conduct testing as provided in s. 627.7072 to determine the
2854 cause of the loss within a reasonable professional probability
2855 and issue a report as provided in s. 627.7073, only if sinkhole
2856 loss is covered under the policy. Except as provided in
2857 subsection (6), the fees and costs of the professional engineer
2858 or professional geologist shall be paid by the insurer.†

2859 ~~(a) The insurer is unable to identify a valid cause of the~~
2860 ~~damage or discovers damage to the structure which is consistent~~
2861 ~~with sinkhole loss; or~~

2862 ~~(b) The policyholder demands testing in accordance with~~
2863 ~~this section or s. 627.7072.~~

2864 (3) Following the initial inspection of the policyholder's
2865 ~~insured~~ premises, the insurer shall provide written notice to
2866 the policyholder disclosing the following information:

2867 (a) What the insurer has determined to be the cause of
2868 damage, if the insurer has made such a determination.

2869 (b) A statement of the circumstances under which the
2870 insurer is required to engage a professional engineer or a
2871 professional geologist to verify or eliminate sinkhole loss and

597-02016-11

2011408c1

2872 to engage a professional engineer to make recommendations
2873 regarding land and building stabilization and foundation repair.

2874 ~~(c) A statement regarding the right of the policyholder to~~
2875 ~~request testing by a professional engineer or a professional~~
2876 ~~geologist and the circumstances under which the policyholder may~~
2877 ~~demand certain testing.~~

2878 (4) If the insurer determines that there is no sinkhole
2879 loss, the insurer may deny the claim. If coverage for sinkhole
2880 loss is available and ~~If the insurer denies the claim on such~~
2881 basis, without performing testing under s. 627.7072, the
2882 policyholder may demand testing by the insurer ~~under s.~~
2883 ~~627.7072.~~ The policyholder's demand for testing must be
2884 communicated to the insurer in writing within 60 days after the
2885 policyholder's receipt of the insurer's denial of the claim.

2886 (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is
2887 verified, the insurer shall pay to stabilize the land and
2888 building and repair the foundation in accordance with the
2889 recommendations of the professional engineer retained pursuant
2890 to subsection (2), ~~as provided under s. 627.7073, and in~~
2891 ~~consultation~~ with notice to the policyholder, subject to the
2892 coverage and terms of the policy. The insurer shall pay for
2893 other repairs to the structure and contents in accordance with
2894 the terms of the policy.

2895 ~~(a) (b)~~ The insurer may limit its total claims payment to
2896 the actual cash value of the sinkhole loss, which does not
2897 include ~~including~~ underpinning or grouting or any other repair
2898 technique performed below the existing foundation of the
2899 building, until the policyholder enters into a contract for the
2900 performance of building stabilization or foundation repairs in

597-02016-11

2011408c1

2901 accordance with the recommendations set forth in the insurer's
2902 report issued pursuant to s. 627.7073.

2903 (b) In order to prevent additional damage to the building
2904 or structure, the policyholder must enter into a contract for
2905 the performance of building stabilization or foundation repairs
2906 within 90 days after the insurance company confirms coverage for
2907 the sinkhole loss and notifies the policyholder of such
2908 confirmation. This time period is tolled if either party invokes
2909 the neutral evaluation process.

2910 (c) After the policyholder enters into the contract for the
2911 performance of building stabilization or foundation repairs, the
2912 insurer shall pay the amounts necessary to begin and perform
2913 such repairs as the work is performed and the expenses are
2914 incurred. The insurer may not require the policyholder to
2915 advance payment for such repairs. If repair covered by a
2916 personal lines residential property insurance policy has begun
2917 and the professional engineer selected or approved by the
2918 insurer determines that the repair cannot be completed within
2919 the policy limits, the insurer must ~~either~~ complete the
2920 professional engineer's recommended repair or tender the policy
2921 limits to the policyholder without a reduction for the repair
2922 expenses incurred.

2923 (d) The stabilization and all other repairs to the
2924 structure and contents must be completed within 12 months after
2925 entering into the contract for repairs described in paragraph
2926 (b) unless:

2927 1. There is a mutual agreement between the insurer and the
2928 policyholder;

2929 2. The claim is involved with the neutral evaluation

597-02016-11

2011408c1

2930 process;

2931 3. The claim is in litigation; or

2932 4. The claim is under appraisal.

2933 ~~(e)-(e)~~ Upon the insurer's obtaining the written approval of
2934 ~~the policyholder and any lienholder,~~ the insurer may make
2935 payment directly to the persons selected by the policyholder to
2936 perform the land and building stabilization and foundation
2937 repairs. The decision by the insurer to make payment to such
2938 persons does not hold the insurer liable for the work performed.
2939 The policyholder may not accept a rebate from any person
2940 performing the repairs specified in this section. If a
2941 policyholder does receive a rebate, coverage is void and the
2942 policyholder must refund the amount of the rebate to the
2943 insurer. Any person making the repairs specified in this section
2944 who offers a rebate, or any policyholder who accepts a rebate
2945 for such repairs, commits insurance fraud punishable as a third
2946 degree felony as provided in s. 775.082, s. 775.083, or s.
2947 775.084.

2948 ~~(6) Except as provided in subsection (7), the fees and~~
2949 ~~costs of the professional engineer or the professional geologist~~
2950 ~~shall be paid by the insurer.~~

2951 ~~(6)-(7)~~ If the insurer obtains, pursuant to s. 627.7073,
2952 written certification that there is no sinkhole loss ~~or that the~~
2953 ~~cause of the damage was not sinkhole activity, and if the~~
2954 ~~policyholder has submitted the sinkhole claim without good faith~~
2955 ~~grounds for submitting such claim,~~ the policyholder shall
2956 reimburse the insurer for 50 percent of the actual costs of the
2957 analyses and services provided under ss. 627.7072 and 627.7073;
2958 however, a policyholder is not required to reimburse an insurer

597-02016-11

2011408c1

2959 more than the deductible or \$2,500, whichever is greater, with
2960 respect to any claim. A policyholder is required to pay
2961 reimbursement under this subsection only if the policyholder
2962 requested the testing and report provided pursuant to ss.
2963 627.7072 and 627.7073 and the insurer, before ~~prior to~~ ordering
2964 the analysis under s. 627.7072, informs the policyholder in
2965 writing of the policyholder's potential liability for
2966 reimbursement and gives the policyholder the opportunity to
2967 withdraw the claim.

2968 (7)-(8) An ~~no~~ insurer may not ~~shall~~ nonrenew any policy of
2969 property insurance on the basis of filing of claims for partial
2970 loss caused by sinkhole damage or clay shrinkage ~~if as long as~~
2971 the total of such payments does not equal or exceed the current
2972 policy limits of coverage for the policy in effect on the date
2973 of loss, for property damage to the covered building, as set
2974 forth on the declarations page, or if ~~and provided~~ the
2975 policyholder insured has repaired the structure in accordance
2976 with the engineering recommendations made pursuant to subsection
2977 (2) upon which any payment or policy proceeds were based. If the
2978 insurer pays such limits, it may nonrenew the policy.

2979 (8)-(9) The insurer may engage a professional structural
2980 engineer to make recommendations as to the repair of the
2981 structure.

2982 Section 26. Section 627.7073, Florida Statutes, is amended
2983 to read:

2984 627.7073 Sinkhole reports.—

2985 (1) Upon completion of testing as provided in s. 627.7072,
2986 the professional engineer or professional geologist shall issue
2987 a report and certification to the insurer and the policyholder

597-02016-11

2011408c1

2988 as provided in this section.

2989 (a) Sinkhole loss is verified if, based upon tests
2990 performed in accordance with s. 627.7072, a professional
2991 engineer or a professional geologist issues a written report and
2992 certification stating:

2993 1. That structural damage to the covered building has been
2994 identified within a reasonable professional probability.

2995 ~~2.1.~~ That the cause of the ~~actual physical and~~ structural
2996 damage is sinkhole activity within a reasonable professional
2997 probability.

2998 ~~3.2.~~ That the analyses conducted were of sufficient scope
2999 to identify sinkhole activity as the cause of damage within a
3000 reasonable professional probability.

3001 ~~4.3.~~ A description of the tests performed.

3002 ~~5.4.~~ A recommendation by the professional engineer of
3003 methods for stabilizing the land and building and for making
3004 repairs to the foundation.

3005 (b) If there is no structural damage or if sinkhole
3006 activity is eliminated as the cause of such damage to the
3007 covered building structure, the professional engineer or
3008 professional geologist shall issue a written report and
3009 certification to the policyholder and the insurer stating:

3010 1. That there is no structural damage or the cause of such
3011 ~~the~~ damage is not sinkhole activity within a reasonable
3012 professional probability.

3013 2. That the analyses and tests conducted were of sufficient
3014 scope to eliminate sinkhole activity as the cause of the
3015 structural damage within a reasonable professional probability.

3016 3. A statement of the cause of the structural damage within

597-02016-11

2011408c1

3017 a reasonable professional probability.

3018 4. A description of the tests performed.

3019 (c) The respective findings, opinions, and recommendations
3020 of the professional engineer or professional geologist as to the
3021 cause of distress to the property and the findings, opinions,
3022 and recommendations of the insurer's professional engineer as to
3023 land and building stabilization and foundation repair set forth
3024 by s. 627.7072 shall be presumed correct, which presumption
3025 shifts the burden of proof in accordance with s. 90.302(2). The
3026 presumption of correctness is based upon public policy concerns
3027 regarding the affordability of sinkhole coverage, consistency in
3028 claims handling, and a reduction in the number of disputed
3029 sinkhole claims.

3030 (2)~~(a)~~ An ~~Any~~ insurer that has paid a claim for a sinkhole
3031 loss shall file a copy of the report and certification, prepared
3032 pursuant to subsection (1), including the legal description of
3033 the real property and the name of the property owner, the
3034 neutral evaluator's report, if any, which indicates that
3035 sinkhole activity caused the damage claimed, a copy of the
3036 certification indicating that stabilization has been completed,
3037 if applicable, and the amount of the payment, with the county
3038 clerk of court, who shall record the report and certification.
3039 The insurer shall bear the cost of filing and recording one or
3040 more reports and certifications ~~the report and certification.~~
3041 There shall be no cause of action or liability against an
3042 insurer for compliance with this section.

3043 (a) The recording of the report and certification does not:

3044 1. Constitute a lien, encumbrance, or restriction on the
3045 title to the real property or constitute a defect in the title

597-02016-11

2011408c1

3046 to the real property;

3047 2. Create any cause of action or liability against any
3048 grantor of the real property for breach of any warranty of good
3049 title or warranty against encumbrances; or

3050 3. Create any cause of action or liability against any
3051 title insurer that insures the title to the real property.

3052 (b) As a precondition to accepting payment for a sinkhole
3053 loss, the policyholder must file a copy of any sinkhole report
3054 regarding the insured property which was prepared on behalf or
3055 at the request of the policyholder. The policyholder shall bear
3056 the cost of filing and recording the sinkhole report. The
3057 recording of the report does not:

3058 1. Constitute a lien, encumbrance, or restriction on the
3059 title to the real property or constitute a defect in the title
3060 to the real property;

3061 2. Create any cause of action or liability against any
3062 grantor of the real property for breach of any warranty of good
3063 title or warranty against encumbrances; or

3064 3. Create any cause of action or liability against a title
3065 insurer that insures the title to the real property.

3066 (c) ~~(b)~~ The seller of real property upon which a sinkhole
3067 claim has been made by the seller and paid by the insurer must
3068 ~~shall~~ disclose to the buyer of such property, before the
3069 closing, that a claim has been paid and whether or not the full
3070 amount of the proceeds were used to repair the sinkhole damage.

3071 Section 27. Section 627.7074, Florida Statutes, is amended
3072 to read:

3073 627.7074 Alternative procedure for resolution of disputed
3074 sinkhole insurance claims.-

597-02016-11

2011408c1

3075 ~~(1) As used in this section, the term:~~
3076 ~~(a) "Neutral evaluation" means the alternative dispute~~
3077 ~~resolution provided for in this section.~~
3078 ~~(b) "Neutral evaluator" means a professional engineer or a~~
3079 ~~professional geologist who has completed a course of study in~~
3080 ~~alternative dispute resolution designed or approved by the~~
3081 ~~department for use in the neutral evaluation process, who is~~
3082 ~~determined to be fair and impartial.~~
3083 (1) (2) (a) The department shall:
3084 (a) Certify and maintain a list of persons who are neutral
3085 evaluators.
3086 (b) The department shall Prepare a consumer information
3087 pamphlet for distribution by insurers to policyholders which
3088 clearly describes the neutral evaluation process and includes
3089 information and forms necessary for the policyholder to request
3090 a neutral evaluation.
3091 (2) Neutral evaluation is available to either party if a
3092 sinkhole report has been issued pursuant to s. 627.7073. At a
3093 minimum, neutral evaluation must determine:
3094 (a) Causation;
3095 (b) All methods of stabilization and repair both above and
3096 below ground;
3097 (c) The costs for stabilization and all repairs; and
3098 (d) Information necessary to carry out subsection (12).
3099 (3) Following the receipt of the report provided under s.
3100 627.7073 or the denial of a claim for a sinkhole loss, the
3101 insurer shall notify the policyholder of his or her right to
3102 participate in the neutral evaluation program under this
3103 section. Neutral evaluation supersedes the alternative dispute

597-02016-11

2011408c1

3104 resolution process under s. 627.7015, but does not invalidate
3105 the appraisal clause of the insurance policy. The insurer shall
3106 provide to the policyholder the consumer information pamphlet
3107 prepared by the department pursuant to subsection (1)
3108 electronically or by United States mail ~~paragraph (2)(b)~~.

3109 (4) Neutral evaluation is nonbinding, but mandatory if
3110 requested by either party. A request for neutral evaluation may
3111 be filed with the department by the policyholder or the insurer
3112 on a form approved by the department. The request for neutral
3113 evaluation must state the reason for the request and must
3114 include an explanation of all the issues in dispute at the time
3115 of the request. Filing a request for neutral evaluation tolls
3116 the applicable time requirements for filing suit for ~~a period of~~
3117 60 days following the conclusion of the neutral evaluation
3118 process or the time prescribed in s. 95.11, whichever is later.

3119 (5) Neutral evaluation shall be conducted as an informal
3120 process in which formal rules of evidence and procedure need not
3121 be observed. A party to neutral evaluation is not required to
3122 attend neutral evaluation if a representative of the party
3123 attends and has the authority to make a binding decision on
3124 behalf of the party. All parties shall participate in the
3125 evaluation in good faith. The neutral evaluator must be allowed
3126 reasonable access to the interior and exterior of insured
3127 structures to be evaluated or for which a claim has been made.
3128 Any reports initiated by the policyholder, or an agent of the
3129 policyholder, confirming a sinkhole loss or disputing another
3130 sinkhole report regarding insured structures must be provided to
3131 the neutral evaluator before the evaluator's physical inspection
3132 of the insured property.

597-02016-11

2011408c1

3133 (6) The insurer shall pay reasonable ~~the~~ costs associated
3134 with the neutral evaluation. However, if a party chooses to hire
3135 a court reporter or stenographer to contemporaneously record and
3136 document the neutral evaluation, that party must bear such
3137 costs.

3138 (7) Upon receipt of a request for neutral evaluation, the
3139 department shall provide the parties a list of certified neutral
3140 evaluators. ~~The parties shall mutually select a neutral~~
3141 ~~evaluator from the list and promptly inform the department. If~~
3142 ~~the parties cannot agree to a neutral evaluator within 10~~
3143 ~~business days,~~ The department shall allow the parties to submit
3144 requests to disqualify evaluators on the list for cause.

3145 (a) The department shall disqualify neutral evaluators for
3146 cause based only on any of the following grounds:

3147 1. A familial relationship exists between the neutral
3148 evaluator and either party or a representative of either party
3149 within the third degree.

3150 2. The proposed neutral evaluator has, in a professional
3151 capacity, previously represented either party or a
3152 representative of either party, in the same or a substantially
3153 related matter.

3154 3. The proposed neutral evaluator has, in a professional
3155 capacity, represented another person in the same or a
3156 substantially related matter and that person's interests are
3157 materially adverse to the interests of the parties. The term
3158 "substantially related matter" means participation by the
3159 neutral evaluator on the same claim, property, or adjacent
3160 property.

3161 4. The proposed neutral evaluator has, within the preceding

597-02016-11

2011408c1

3162 5 years, worked as an employer or employee of any party to the
3163 case.

3164 (b) The parties shall appoint a neutral evaluator from the
3165 department list and promptly inform the department. If the
3166 parties cannot agree to a neutral evaluator within 14 days, the
3167 department shall appoint a neutral evaluator from the list of
3168 certified neutral evaluators. The department shall allow each
3169 party to disqualify two neutral evaluators without cause. Upon
3170 selection or appointment, the department shall promptly refer
3171 the request to the neutral evaluator.

3172 (c) Within 14 5 business days after the referral, the
3173 neutral evaluator shall notify the policyholder and the insurer
3174 of the date, time, and place of the neutral evaluation
3175 conference. The conference may be held by telephone, if feasible
3176 and desirable. The neutral evaluator shall make reasonable
3177 efforts to hold the neutral evaluation conference shall be held
3178 within 90 45 days after the receipt of the request by the
3179 department. Failure of the neutral evaluator to hold the
3180 conference within 90 days does not invalidate either party's
3181 right to neutral evaluation or to a neutral evaluation
3182 conference held outside this timeframe.

3183 ~~(8) The department shall adopt rules of procedure for the~~
3184 ~~neutral evaluation process.~~

3185 ~~(8)(9)~~ For policyholders not represented by an attorney, a
3186 consumer affairs specialist of the department or an employee
3187 designated as the primary contact for consumers on issues
3188 relating to sinkholes under s. 20.121 shall be available for
3189 consultation to the extent that he or she may lawfully do so.

3190 ~~(9)(10)~~ Evidence of an offer to settle a claim during the

597-02016-11

2011408c1

3191 neutral evaluation process, as well as any relevant conduct or
3192 statements made in negotiations concerning the offer to settle a
3193 claim, is inadmissible to prove liability or absence of
3194 liability for the claim or its value, except as provided in
3195 subsection (14) ~~(13)~~.

3196 (10) ~~(11)~~ Regardless of when noticed, any court proceeding
3197 related to the subject matter of the neutral evaluation shall be
3198 stayed pending completion of the neutral evaluation and for 5
3199 days after the filing of the neutral evaluator's report with the
3200 court.

3201 (11) If, based upon his or her professional training and
3202 credentials, a neutral evaluator is qualified to determine only
3203 disputes relating to causation or method of repair, the
3204 department shall allow the neutral evaluator to enlist the
3205 assistance of another professional from the neutral evaluators
3206 list not previously stricken, who, based upon his or her
3207 professional training and credentials, is able to provide an
3208 opinion as to other disputed issues. A professional who would be
3209 disqualified for any reason listed in subsection (7) must be
3210 disqualified. The neutral evaluator may also use the services of
3211 professional engineers and professional geologists who are not
3212 certified as neutral evaluators, as well as licensed building
3213 contractors, in order to ensure that all items in dispute are
3214 addressed and the neutral evaluation can be completed. Any
3215 professional engineer, professional geologist, or licensed
3216 building contractor retained may be disqualified for any of the
3217 reasons listed in subsection (7). The neutral evaluator may
3218 request the entity that performed the investigation pursuant to
3219 s. 627.7072 perform such additional and reasonable testing as

597-02016-11

2011408c1

3220 deemed necessary in the professional opinion of the neutral
3221 evaluator.

3222 (12) ~~At For matters that are not resolved by the parties at~~
3223 the conclusion of the neutral evaluation, the neutral evaluator
3224 shall prepare a report describing all matters that are the
3225 subject of the neutral evaluation, including whether, stating
3226 ~~that~~ in his or her opinion, the sinkhole loss has been verified
3227 or eliminated within a reasonable degree of professional
3228 probability and, if verified, whether the sinkhole activity
3229 caused structural damage to the covered building, and if so, the
3230 need for and estimated costs of stabilizing the land and any
3231 covered structures or buildings and other appropriate
3232 remediation or necessary building structural repairs due to the
3233 sinkhole loss. The evaluator's report shall be sent to all
3234 parties ~~in attendance at the neutral evaluation~~ and to the
3235 department, within 14 days after completing the neutral
3236 evaluation conference.

3237 (13) The recommendation of the neutral evaluator is not
3238 binding on any party, and the parties retain access to the
3239 court. The neutral evaluator's written recommendation, oral
3240 testimony, and full report shall be admitted ~~is admissible~~ in
3241 any ~~subsequent~~ action, litigation, or proceeding relating to the
3242 claim or to the cause of action giving rise to the claim.
3243 However, oral or written statements or nonverbal conduct
3244 intended to make an assertion made by a party or neutral
3245 evaluator during the course of neutral evaluation, other than
3246 those statements or conduct expressly required to be admitted by
3247 this subsection, are confidential and may not be disclosed to a
3248 person other than a party to neutral evaluation or a party's

597-02016-11

2011408c1

3249 counsel.

3250 (14) If the neutral evaluator ~~first~~ verifies the existence
3251 of a sinkhole that caused structural damage and,~~second,~~
3252 recommends the need for and estimates costs of stabilizing the
3253 land and any covered ~~structures or~~ buildings and other
3254 appropriate remediation or building structural repairs, which
3255 ~~costs~~ exceed the amount that the insurer estimates as necessary
3256 to stabilize and repair, and the insurer refuses to comply with
3257 the neutral evaluator's findings and recommendations ~~has offered~~
3258 ~~to pay the policyholder,~~ the insurer is liable to the
3259 policyholder for up to \$2,500 in attorney's fees for the
3260 attorney's participation in the neutral evaluation process. ~~For~~
3261 ~~purposes of this subsection, the term "offer to pay" means a~~
3262 ~~written offer signed by the insurer or its legal representative~~
3263 ~~and delivered to the policyholder within 10 days after the~~
3264 ~~insurer receives notice that a request for neutral evaluation~~
3265 ~~has been made under this section.~~

3266 (15) If the insurer timely agrees in writing to comply and
3267 timely complies with the recommendation of the neutral
3268 evaluator, but the policyholder declines to resolve the matter
3269 in accordance with the recommendation of the neutral evaluator
3270 pursuant to this section:

3271 (a) The insurer is not liable for extracontractual damages
3272 related to a claim for a sinkhole loss but only as related to
3273 the issues determined by the neutral evaluation process. This
3274 section does not affect or impair claims for extracontractual
3275 damages unrelated to the issues determined by the neutral
3276 evaluation process contained in this section; and

3277 (b) The actions of the insurer are not a confession of

597-02016-11

2011408c1

3278 judgment or admission of liability, and the insurer is not
3279 liable for attorney's fees under s. 627.428 or other provisions
3280 of the insurance code unless the policyholder obtains a judgment
3281 that is more favorable than the recommendation of the neutral
3282 evaluator.

3283 (16) If the insurer agrees to comply with the neutral
3284 evaluator's report, payments shall be made in accordance with
3285 the terms and conditions of the applicable insurance policy
3286 pursuant to s. 627.707(5).

3287 (17) Neutral evaluators are deemed to be agents of the
3288 department and have immunity from suit as provided in s. 44.107.

3289 (18) The department shall adopt rules of procedure for the
3290 neutral evaluation process.

3291 Section 28. Subsection (1) of section 627.712, Florida
3292 Statutes, is amended to read:

3293 627.712 Residential windstorm coverage required;
3294 availability of exclusions for windstorm or contents.—

3295 (1) An insurer issuing a residential property insurance
3296 policy must provide windstorm coverage. Except as provided in
3297 paragraph (2)(c), this section does not apply ~~with respect~~ to
3298 risks that are eligible for wind-only coverage from Citizens
3299 Property Insurance Corporation under s. 627.351(6), and ~~with~~
3300 ~~respect to~~ risks that are not eligible for coverage from
3301 Citizens Property Insurance Corporation under s. 627.351(6)(a)3.
3302 or 5. A risk ineligible for ~~Citizens~~ coverage by the corporation
3303 under s. 627.351(6)(a)3. or 5. is exempt from ~~the requirements~~
3304 ~~of~~ this section only if the risk is located within the
3305 boundaries of the coastal ~~high-risk~~ account of the corporation.

3306 Section 29. Except as otherwise expressly provided in this

597-02016-11

2011408c1

3307 act and except for this section, which shall take effect June 1,
3308 2011, this act shall take effect July 1, 2011.