

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 amending s. 215.555, F.S.; providing that specified losses
4 are excluded from the definition of the term "losses" as
5 used in certain provisions relating to the Florida
6 Hurricane Catastrophe Fund; providing for application of
7 the revisions made by this act to the term "losses";
8 amending s. 624.407, F.S.; revising the amount of surplus
9 funds required for domestic insurers applying for a
10 certificate of authority after a certain date; amending s.
11 624.408, F.S.; revising the minimum surplus that must be
12 maintained by certain insurers; authorizing the Office of
13 Insurance Regulation to reduce specified surplus
14 requirements under specified circumstances; amending s.
15 626.852, F.S.; providing an exemption from licensure as an
16 adjuster to certain persons who provide mortgage-related
17 claims adjusting services to certain institutions;
18 amending s. 626.854, F.S.; providing limitations on the
19 amount of compensation that may be received by a public
20 adjuster for a reopened or supplemental claim; providing
21 limitations on the amount of compensation that may be
22 received by a public adjuster for a claim; applying
23 specified provisions regulating the conduct of public
24 adjusters to condominium unit owners rather than to
25 condominium associations as is currently required;
26 providing statements that may be considered deceptive or
27 misleading if made in any public adjuster's advertisement
28 or solicitation; providing a definition for the term

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

57 | creating s. 626.70132, F.S.; requiring that notice of a
58 | claim, supplemental claim, or reopened claim be given to
59 | the insurer within a specified period after a windstorm or
60 | hurricane occurs; providing a definition for the terms
61 | "supplemental claim" or "reopened claim"; providing
62 | applicability; amending s. 627.062, F.S.; deleting
63 | obsolete provisions; prohibiting the Office of Insurance
64 | Regulation from, directly or indirectly, impeding the
65 | right of an insurer to acquire policyholders, advertise or
66 | appoint agents, or regulate agent commissions for property
67 | and casualty insurance; deleting obsolete provisions
68 | relating to legislation enacted during the 2003 Special
69 | Session D of the Legislature; revising provisions relating
70 | to the certifications that are required to be made under
71 | oath by certain officers or actuaries of an insurer
72 | regarding information that must accompany a rate filing;
73 | amending s. 627.0629, F.S.; revising legislative intent;
74 | deleting obsolete provisions; deleting a requirement that
75 | the Office of Insurance Regulation propose a method for
76 | establishing discounts, debits, credits, and other rate
77 | differentials for hurricane mitigation by a certain date;
78 | conforming provisions to changes made by the act; amending
79 | s. 627.4133, F.S.; authorizing an insurer to cancel
80 | policies after 45 days' notice if the Office of Insurance
81 | Regulation determines that the cancellation of policies is
82 | necessary to protect the interests of the public or
83 | policyholders; creating s. 627.43141, F.S.; providing
84 | definitions; requiring the delivery of a "Notice of Change

85 | in Policy Terms" under certain circumstances; specifying
86 | requirements for such notice; specifying actions
87 | constituting proof of notice; authorizing policy renewals
88 | to contain a change in policy terms; providing that
89 | receipt of payment by an insurer is deemed acceptance of
90 | new policy terms by an insured; providing that the
91 | original policy remains in effect until the occurrence of
92 | specified events if an insurer fails to provide notice;
93 | providing intent; amending s. 627.7011, F.S.; revising
94 | provisions relating to an insurer's payment of replacement
95 | costs without reservation or holdback of any depreciation
96 | in value if a loss occurs; requiring notice of the process
97 | in the insurance contract; amending s. 627.70131, F.S.;
98 | specifying application of certain time periods to initial,
99 | reopened, or supplemental property insurance claim notices
100 | and payments; providing legislative findings with respect
101 | to 2005 statutory changes relating to sinkhole insurance
102 | coverage and statutory changes in this act; providing
103 | legislative intent relating to sinkholes; amending s.
104 | 627.706, F.S.; authorizing an insurer to require an
105 | inspection of property before issuing sinkhole coverage;
106 | authorizing an insurer to limit coverage for catastrophic
107 | ground cover collapse and sinkhole loss to the principal
108 | building; revising definitions relating to sinkhole
109 | coverage; providing definitions relating to sinkhole
110 | coverage for the terms "neutral evaluation," "neutral
111 | evaluator," and "structural damage"; revising
112 | applicability of nonrenewals for sinkhole coverage;

113 placing a 3-year statute of repose on claims for sinkhole
114 coverage; repealing s. 627.7065, F.S., relating to the
115 establishment of a sinkhole database; amending s. 627.707,
116 F.S.; revising provisions relating to the investigation of
117 sinkholes by insurers; providing a time limitation for
118 demanding sinkhole testing by a policyholder and entering
119 into a contract for repairs; requiring payment for
120 analyses and services; allowing for reimbursement of
121 payment for analyses and services; requiring all repairs
122 to be completed within a certain time; providing
123 exceptions; prohibiting rebates to policyholders from
124 persons performing repairs; voiding coverage if a rebate
125 is received; requiring policyholders to refund rebates
126 from persons performing repairs to insurers; providing
127 criminal penalties applicable to persons performing
128 repairs who offer or policyholders who accept rebates;
129 limiting a policyholder's liability for reimbursement of
130 the costs related to certain analyses and services under
131 certain circumstances; amending s. 627.7073, F.S.;
132 revising provisions relating to sinkhole inspection
133 reports; requiring an insurer to file a neutral
134 evaluator's report and other specific information;
135 requiring the policyholder to file certain reports as a
136 precondition to accepting payment; requiring certain
137 filing and recording costs to be borne by a policyholder;
138 specifying that a policyholder's recording of a report
139 does not legally affect title or create certain causes of
140 action relating to real property; amending s. 627.7074,

141 F.S.; revising provisions relating to neutral evaluation
 142 of sinkhole insurance claims; requiring evaluation in
 143 order to make certain determinations; requiring that the
 144 neutral evaluator be allowed access to structures being
 145 evaluated; providing grounds for disqualifying an
 146 evaluator; allowing the Department of Financial Services
 147 to appoint an evaluator if the parties cannot come to
 148 agreement; revising the timeframes for scheduling a
 149 neutral evaluation conference; authorizing an evaluator to
 150 enlist another evaluator or other professionals; providing
 151 a time certain for issuing a report; revising provisions
 152 relating to compliance with the evaluator's
 153 recommendations; providing that the evaluator is an agent
 154 of the department for the purposes of immunity from suit;
 155 requiring the department to adopt rules; amending s.
 156 627.711, F.S.; allowing an insurer to independently verify
 157 mitigation forms from additional sources; amending s.
 158 631.54, F.S.; revising the definition of the term "covered
 159 claim" for purposes of the Florida Insurance Guaranty
 160 Association Act; providing severability; providing
 161 effective dates.

162
 163 Be It Enacted by the Legislature of the State of Florida:

164
 165 Section 1. Paragraph (d) of subsection (2) of section
 166 215.555, Florida Statutes, is amended to read:

167 215.555 Florida Hurricane Catastrophe Fund.—

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

169 (d) "Losses" means direct incurred losses under covered
 170 policies, including ~~which shall include losses for~~ additional
 171 living expenses not to exceed 40 percent of the insured value of
 172 a residential structure or its contents ~~and shall exclude loss~~
 173 ~~adjustment expenses.~~ The term "Losses" does not include:

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

176 2. Losses under liability coverages;

177 3. Property losses that are proximately caused by any
 178 peril other than a covered event, including, but not limited to,
 179 fire, theft, flood or rising water, or a windstorm that does not
 180 constitute a covered event;

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

184 5. Amounts paid to reimburse a policyholder for
 185 condominium association or homeowners' association loss
 186 assessments or under similar coverages for contractual
 187 liabilities;

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

190 7. Amounts in excess of the coverage limits under the
 191 covered policy; or

192 8. Allocated or unallocated loss adjustment expenses.

193 Section 2. The amendments made by this act to s. 215.555,
 194 Florida Statutes, apply first to the Florida Hurricane
 195 Catastrophe Fund reimbursement contract that takes effect on
 196 June 1, 2011.

197 Section 3. Section 624.407, Florida Statutes, is amended
 198 to read:

199 624.407 Surplus ~~Capital funds~~ required; new insurers.—

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

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

208 (b) For life insurers, 4 percent of the insurer's total
 209 liabilities;

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

213 (d) For all insurers other than life insurers and life and
 214 health insurers, 10 percent of the insurer's total liabilities;
 215 or

216 (e) Notwithstanding paragraph (a) or paragraph (d), for a
 217 domestic insurer that transacts residential property insurance
 218 and is:

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

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

225 (2) Notwithstanding subsection (1), a new insurer may not
 226 be required, but no insurer shall be required under this
 227 subsection to have surplus as to policyholders greater than \$100
 228 million.

229 (3)(2) The requirements of this section shall be based
 230 upon all the kinds of insurance actually transacted or to be
 231 transacted by the insurer in any and all areas in which it
 232 operates, whether or not only a portion of such kinds of
 233 insurance are ~~to be~~ transacted in this state.

234 (4)(3) As to surplus as to policyholders required for
 235 qualification to transact one or more kinds of insurance,
 236 domestic mutual insurers are governed by chapter 628, and
 237 domestic reciprocal insurers are governed by chapter 629.

238 (5)(4) For the purposes of this section, liabilities do
 239 ~~shall~~ not include liabilities required under s. 625.041(4). For
 240 purposes of computing minimum surplus as to policyholders
 241 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities
 242 required under s. 625.041(4).

243 (6)(5) The provisions of this section, as amended by
 244 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to
 245 insurers applying for a certificate of authority on or after
 246 October 1, 1989 ~~the effective date of this act~~.

247 Section 4. Section 624.408, Florida Statutes, is amended
 248 to read:

249 624.408 Surplus ~~as to policyholders~~ required; current new
 250 ~~and existing~~ insurers.-

251 (1)(a) To maintain a certificate of authority to transact
 252 any one kind or combinations of kinds of insurance, as defined

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253 in part V of this chapter, an insurer in this state must ~~shall~~
254 at all times maintain surplus as to policyholders at least ~~not~~
255 ~~less than~~ the greater of:

256 (a)1. Except as provided in paragraphs (e), (f), and (g)
257 subparagraph 5. and paragraph (b), \$1.5 million.

258 (b)2. For life insurers, 4 percent of the insurer's total
259 liabilities.

260 (c)3. For life and health insurers, 4 percent of the
261 insurer's total liabilities plus 6 percent of the insurer's
262 liabilities relative to health insurance.

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

266 (e)5. For property and casualty insurers, \$4 million,
267 except for property and casualty insurers authorized to
268 underwrite any line of residential property insurance.

269 (f)(b) For residential any property insurers not and
270 casualty insurer holding a certificate of authority before July
271 1, 2011 on December 1, 1993, \$15 million. the

272 (g) For residential property insurers holding a
273 certificate of authority before July 1, 2011, and until June 30,
274 2016, \$5 million; on or after July 1, 2016, and until June 30,
275 2021, \$10 million; on or after July 1, 2021, \$15 million.

276
277 The office may reduce the surplus requirement in paragraphs (f)
278 and (g) if the insurer is not writing new business, has premiums
279 in force of less than \$1 million per year in residential
280 property insurance, or is a mutual insurance company. following

281 ~~amounts apply instead of the \$4 million required by subparagraph~~
 282 ~~(a)5.:~~

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

285 ~~2. On December 31, 2002, and until December 30, 2003,~~
 286 ~~\$3.25 million.~~

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

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

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

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

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

300 Section 5. Subsection (7) is added to section 626.852,
 301 Florida Statutes, to read:

302 626.852 Scope of this part.—

303 (7) Notwithstanding any other provision of law, a person
 304 providing claims adjusting services solely to institutions
 305 servicing or guaranteeing mortgages shall be exempt from
 306 licensure as an adjuster for services provided to the mortgage
 307 institution with regards to policies covering the mortgaged
 308 properties.

309 Section 6. Effective June 1, 2011, section 626.854,
310 Florida Statutes, is amended to read:

311 626.854 "Public adjuster" defined; prohibitions.—The
312 Legislature finds that it is necessary for the protection of the
313 public to regulate public insurance adjusters and to prevent the
314 unauthorized practice of law.

315 (1) A "public adjuster" is any person, except a duly
316 licensed attorney at law as hereinafter in s. 626.860 provided,
317 who, for money, commission, or any other thing of value,
318 prepares, completes, or files an insurance claim form for an
319 insured or third-party claimant or who, for money, commission,
320 or any other thing of value, acts or aids in any manner on
321 behalf of an insured or third-party claimant in negotiating for
322 or effecting the settlement of a claim or claims for loss or
323 damage covered by an insurance contract or who advertises for
324 employment as an adjuster of such claims, and also includes any
325 person who, for money, commission, or any other thing of value,
326 solicits, investigates, or adjusts such claims on behalf of any
327 such public adjuster.

328 (2) This definition does not apply to:

329 (a) A licensed health care provider or employee thereof
330 who prepares or files a health insurance claim form on behalf of
331 a patient.

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

334 (3) A public adjuster may not give legal advice. A public
335 adjuster may not act on behalf of or aid any person in
336 negotiating or settling a claim relating to bodily injury,

337 death, or noneconomic damages.

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

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

346 (6) A public adjuster may not directly or indirectly
 347 through any other person or entity initiate contact or engage in
 348 face-to-face or telephonic solicitation or enter into a contract
 349 with any insured or claimant under an insurance policy until at
 350 least 48 hours after the occurrence of an event that may be the
 351 subject of a claim under the insurance policy unless contact is
 352 initiated by the insured or claimant.

353 (7) An insured or claimant may cancel a public adjuster's
 354 contract to adjust a claim without penalty or obligation within
 355 3 business days after the date on which the contract is executed
 356 or within 3 business days after the date on which the insured or
 357 claimant has notified the insurer of the claim, by phone or in
 358 writing, whichever is later. The public adjuster's contract
 359 shall disclose to the insured or claimant his or her right to
 360 cancel the contract and advise the insured or claimant that
 361 notice of cancellation must be submitted in writing and sent by
 362 certified mail, return receipt requested, or other form of
 363 mailing which provides proof thereof, to the public adjuster at
 364 the address specified in the contract; provided, during any

365 state of emergency as declared by the Governor and for a period
 366 of 1 year after the date of loss, the insured or claimant shall
 367 have 5 business days after the date on which the contract is
 368 executed to cancel a public adjuster's contract.

369 (8) It is an unfair and deceptive insurance trade practice
 370 pursuant to s. 626.9541 for a public adjuster or any other
 371 person to circulate or disseminate any advertisement,
 372 announcement, or statement containing any assertion,
 373 representation, or statement with respect to the business of
 374 insurance which is untrue, deceptive, or misleading.

375 (9) A public adjuster, a public adjuster apprentice, or
 376 any person or entity acting on behalf of a public adjuster or
 377 public adjuster apprentice may not give or offer to give a
 378 monetary loan or advance to a client or prospective client.

379 (10) A public adjuster, public adjuster apprentice, or any
 380 individual or entity acting on behalf of a public adjuster or
 381 public adjuster apprentice may not give or offer to give,
 382 directly or indirectly, any article of merchandise having a
 383 value in excess of \$25 to any individual for the purpose of
 384 advertising or as an inducement to entering into a contract with
 385 a public adjuster.

386 (11)(a) If a public adjuster enters into a contract with
 387 an insured or claimant to reopen a claim or ~~to~~ file a
 388 supplemental claim that seeks additional payments for a claim
 389 that has been previously paid in part or in full or settled by
 390 the insurer, the public adjuster may not charge, agree to, or
 391 accept any compensation, payment, commission, fee, or other
 392 thing of value based on a previous settlement or previous claim

393 | payments by the insurer for the same cause of loss. The charge,
 394 | compensation, payment, commission, fee, or other thing of value
 395 | may be based only on the claim payments or settlement obtained
 396 | through the work of the public adjuster after entering into the
 397 | contract with the insured or claimant. Compensation for the
 398 | reopened or supplemental claim may not exceed 20 percent of the
 399 | reopened or supplemental claim payment. The contracts described
 400 | in this paragraph are not subject to the limitations in
 401 | paragraph (b).

402 | (b) A public adjuster may not charge, agree to, or accept
 403 | any compensation, payment, commission, fee, or other thing of
 404 | value in excess of:

405 | 1. Ten percent of the amount of insurance claim payments
 406 | made by the insurer for claims based on events that are the
 407 | subject of a declaration of a state of emergency by the
 408 | Governor. This provision applies to claims made during the
 409 | period of 1 year after the declaration of emergency. After that
 410 | 1-year period, 20 percent of the amount of insurance claim
 411 | payments made by the insurer.

412 | 2. Twenty percent of the amount of ~~all other~~ insurance
 413 | claim payments made by the insurer for claims that are not based
 414 | on events that are the subject of a declaration of a state of
 415 | emergency by the Governor.

416 | (12) Each public adjuster shall provide to the claimant or
 417 | insured a written estimate of the loss to assist in the
 418 | submission of a proof of loss or any other claim for payment of
 419 | insurance proceeds. The public adjuster shall retain such
 420 | written estimate for at least 5 years and shall make such

421 estimate available to the claimant or insured and the department
 422 upon request.

423 (13) A public adjuster, public adjuster apprentice, or any
 424 person acting on behalf of a public adjuster or apprentice may
 425 not accept referrals of business from any person with whom the
 426 public adjuster conducts business if there is any form or manner
 427 of agreement to compensate the person, whether directly or
 428 indirectly, for referring business to the public adjuster. A
 429 public adjuster may not compensate any person, except for
 430 another public adjuster, whether directly or indirectly, for the
 431 principal purpose of referring business to the public adjuster.

432
 433 The provisions of subsections (5)-(13) apply only to residential
 434 property insurance policies and condominium unit owner
 435 ~~association~~ policies as defined in s. 718.111(11).

436 Section 7. Effective January 1, 2012, section 626.854,
 437 Florida Statutes, as amended by this act, is amended to read:

438 626.854 "Public adjuster" defined; prohibitions.—The
 439 Legislature finds that it is necessary for the protection of the
 440 public to regulate public insurance adjusters and to prevent the
 441 unauthorized practice of law.

442 (1) A "public adjuster" is any person, except a duly
 443 licensed attorney at law as exempted under hereinafter in s.
 444 626.860 ~~provided~~, who, for money, commission, or any other thing
 445 of value, prepares, completes, or files an insurance claim form
 446 for an insured or third-party claimant or who, for money,
 447 commission, or any other thing of value, acts ~~or aids in any~~
 448 ~~manner~~ on behalf of, or aids an insured or third-party claimant

449 | in negotiating for or effecting the settlement of a claim or
 450 | claims for loss or damage covered by an insurance contract or
 451 | who advertises for employment as an adjuster of such claims. The
 452 | term, ~~and~~ also includes any person who, for money, commission,
 453 | or any other thing of value, solicits, investigates, or adjusts
 454 | such claims on behalf of a ~~any such~~ public adjuster.

455 | (2) This definition does not apply to:

456 | (a) A licensed health care provider or employee thereof
 457 | who prepares or files a health insurance claim form on behalf of
 458 | a patient.

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

461 | (3) A public adjuster may not give legal advice or. ~~A~~
 462 | ~~public adjuster may not~~ act on behalf of or aid any person in
 463 | negotiating or settling a claim relating to bodily injury,
 464 | death, or noneconomic damages.

465 | (4) For purposes of this section, the term "insured"
 466 | includes only the policyholder and any beneficiaries named or
 467 | similarly identified in the policy.

468 | (5) A public adjuster may not directly or indirectly
 469 | through any other person or entity solicit an insured or
 470 | claimant by any means except on Monday through Saturday of each
 471 | week and only between the hours of 8 a.m. and 8 p.m. on those
 472 | days.

473 | (6) A public adjuster may not directly or indirectly
 474 | through any other person or entity initiate contact or engage in
 475 | face-to-face or telephonic solicitation or enter into a contract
 476 | with any insured or claimant under an insurance policy until at

477 | least 48 hours after the occurrence of an event that may be the
 478 | subject of a claim under the insurance policy unless contact is
 479 | initiated by the insured or claimant.

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

496 | (8) It is an unfair and deceptive insurance trade practice
 497 | pursuant to s. 626.9541 for a public adjuster or any other
 498 | person to circulate or disseminate any advertisement,
 499 | announcement, or statement containing any assertion,
 500 | representation, or statement with respect to the business of
 501 | insurance which is untrue, deceptive, or misleading.

502 | (a) The following statements, made in any public
 503 | adjuster's advertisement or solicitation, are considered
 504 | deceptive or misleading:

505 1. A statement or representation that invites an insured
506 policyholder to submit a claim when the policyholder does not
507 have covered damage to insured property.

508 2. A statement or representation that invites an insured
509 policyholder to submit a claim by offering monetary or other
510 valuable inducement.

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

514 4. A statement or representation, or use of a logo or
515 shield, that implies or could mistakenly be construed to imply
516 that the solicitation was issued or distributed by a
517 governmental agency or is sanctioned or endorsed by a
518 governmental agency.

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

526
527 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
528 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
529 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
530 MAY DISREGARD THIS ADVERTISEMENT."

531
532 (9) A public adjuster, a public adjuster apprentice, or

533 any person or entity acting on behalf of a public adjuster or
 534 public adjuster apprentice may not give or offer to give a
 535 monetary loan or advance to a client or prospective client.

536 (10) A public adjuster, public adjuster apprentice, or any
 537 individual or entity acting on behalf of a public adjuster or
 538 public adjuster apprentice may not give or offer to give,
 539 directly or indirectly, any article of merchandise having a
 540 value in excess of \$25 to any individual for the purpose of
 541 advertising or as an inducement to entering into a contract with
 542 a public adjuster.

543 (11) (a) If a public adjuster enters into a contract with
 544 an insured or claimant to reopen a claim or file a supplemental
 545 claim that seeks additional payments for a claim that has been
 546 previously paid in part or in full or settled by the insurer,
 547 the public adjuster may not charge, agree to, or accept any
 548 compensation, payment, commission, fee, or other thing of value
 549 based on a previous settlement or previous claim payments by the
 550 insurer for the same cause of loss. The charge, compensation,
 551 payment, commission, fee, or other thing of value may be based
 552 only on the claim payments or settlement obtained through the
 553 work of the public adjuster after entering into the contract
 554 with the insured or claimant. Compensation for the reopened or
 555 supplemental claim may not exceed 20 percent of the reopened or
 556 supplemental claim payment. The contracts described in this
 557 paragraph are not subject to the limitations in paragraph (b).

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

561 1. Ten percent of the amount of insurance claim payments
 562 made by the insurer for claims based on events that are the
 563 subject of a declaration of a state of emergency by the
 564 Governor. This provision applies to claims made during the
 565 period of 1 year after the declaration of emergency. After that
 566 1-year period, 20 percent of the amount of insurance claim
 567 payments made by the insurer.

568 2. Twenty percent of the amount of insurance claim
 569 payments made by the insurer for claims that are not based on
 570 events that are the subject of a declaration of a state of
 571 emergency by the Governor.

572 (12) Each public adjuster must ~~shall~~ provide to the
 573 claimant or insured a written estimate of the loss to assist in
 574 the submission of a proof of loss or any other claim for payment
 575 of insurance proceeds. The public adjuster shall retain such
 576 written estimate for at least 5 years and shall make the ~~such~~
 577 estimate available to the claimant or insured and the department
 578 upon request.

579 (13) A public adjuster, public adjuster apprentice, or any
 580 person acting on behalf of a public adjuster or apprentice may
 581 not accept referrals of business from any person with whom the
 582 public adjuster conducts business if there is any form or manner
 583 of agreement to compensate the person, ~~whether~~ directly or
 584 indirectly, for referring business to the public adjuster. A
 585 public adjuster may not compensate any person, except for
 586 another public adjuster, ~~whether~~ directly or indirectly, for the
 587 principal purpose of referring business to the public adjuster.

588 (14) A company employee adjuster, independent adjuster,

589 attorney, investigator, or other persons acting on behalf of an
590 insurer that needs access to an insured or claimant or to the
591 insured property that is the subject of a claim must provide at
592 least 48 hours' notice to the insured or claimant, public
593 adjuster, or legal representative before scheduling a meeting
594 with the claimant or an onsite inspection of the insured
595 property. The insured or claimant may deny access to the
596 property if the notice has not been provided. The insured or
597 claimant may waive the 48-hour notice.

598 (15) A public adjuster must ensure prompt notice of
599 property loss claims submitted to an insurer by or through a
600 public adjuster or on which a public adjuster represents the
601 insured at the time the claim or notice of loss is submitted to
602 the insurer. The public adjuster must ensure that notice is
603 given to the insurer, the public adjuster's contract is provided
604 to the insurer, the property is available for inspection of the
605 loss or damage by the insurer, and the insurer is given an
606 opportunity to interview the insured directly about the loss and
607 claim. The insurer must be allowed to obtain necessary
608 information to investigate and respond to the claim.

609 (a) The insurer may not exclude the public adjuster from
610 its in-person meetings with the insured. The insurer shall meet
611 or communicate with the public adjuster in an effort to reach
612 agreement as to the scope of the covered loss under the
613 insurance policy. This section does not impair the terms and
614 conditions of the insurance policy in effect at the time the
615 claim is filed.

616 (b) A public adjuster may not restrict or prevent an

617 insurer, company employee adjuster, independent adjuster,
618 attorney, investigator, or other person acting on behalf of the
619 insurer from having reasonable access at reasonable times to an
620 insured or claimant or to the insured property that is the
621 subject of a claim.

622 (c) A public adjuster may not act or fail to reasonably
623 act in any manner that obstructs or prevents an insurer or
624 insurer's adjuster from timely conducting an inspection of any
625 part of the insured property for which there is a claim for loss
626 or damage. The public adjuster representing the insured may be
627 present for the insurer's inspection, but if the unavailability
628 of the public adjuster otherwise delays the insurer's timely
629 inspection of the property, the public adjuster or the insured
630 must allow the insurer to have access to the property without
631 the participation or presence of the public adjuster or insured
632 in order to facilitate the insurer's prompt inspection of the
633 loss or damage.

634 (16) A licensed contractor under part I of chapter 489, or
635 a subcontractor, may not adjust a claim on behalf of an insured
636 unless licensed and compliant as a public adjuster under this
637 chapter. However, the contractor may discuss or explain a bid
638 for construction or repair of covered property with the
639 residential property owner who has suffered loss or damage
640 covered by a property insurance policy, or the insurer of such
641 property, if the contractor is doing so for the usual and
642 customary fees applicable to the work to be performed as stated
643 in the contract between the contractor and the insured.

644 (17) The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply

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645 only to residential property insurance policies and condominium
 646 unit owner policies as defined in s. 718.111(11).

647 Section 8. Effective June 1, 2011, section 626.70132,
 648 Florida Statutes, is created to read:

649 626.70132 Notice of windstorm or hurricane claim.—A claim,
 650 supplemental claim, or reopened claim under an insurance policy
 651 that provides personal lines residential coverage, as defined in
 652 s. 627.4025, for loss or damage caused by the peril of windstorm
 653 or hurricane is barred unless notice of the claim, supplemental
 654 claim, or reopened claim was given to the insurer in accordance
 655 with the terms of the policy within 3 years after the hurricane
 656 first made landfall or the windstorm caused the covered damage.
 657 For purposes of this section, the term "supplemental claim" or
 658 "reopened claim" means any additional claim for recovery from
 659 the insurer for losses from the same hurricane or windstorm
 660 which the insurer has previously adjusted pursuant to the
 661 initial claim. This section does not affect any applicable
 662 limitation on civil actions provided in s. 95.11 for claims,
 663 supplemental claims, or reopened claims timely filed under this
 664 section.

665 Section 9. Section 627.062, Florida Statutes, is amended
 666 to read:

667 627.062 Rate standards.—

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

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

672 (a) Insurers or rating organizations shall establish and

673 use rates, rating schedules, or rating manuals that ~~to~~ allow the
 674 insurer a reasonable rate of return on the ~~such~~ classes of
 675 insurance written in this state. A copy of rates, rating
 676 schedules, rating manuals, premium credits or discount
 677 schedules, and surcharge schedules, and changes thereto, must
 678 ~~shall~~ be filed with the office under one of the following
 679 procedures ~~except as provided in subparagraph 3.:~~

680 1. If the filing is made at least 90 days before the
 681 proposed effective date and ~~the filing~~ is not implemented during
 682 the office's review of the filing and any proceeding and
 683 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file
 684 and use" filing. In such case, the office shall finalize its
 685 review by issuance of a notice of intent to approve or a notice
 686 of intent to disapprove within 90 days after receipt of the
 687 filing. The notice of intent to approve and the notice of intent
 688 to disapprove constitute agency action for purposes of the
 689 Administrative Procedure Act. Requests for supporting
 690 information, requests for mathematical or mechanical
 691 corrections, or notification to the insurer by the office of its
 692 preliminary findings does ~~shall~~ not toll the 90-day period
 693 during any such proceedings and subsequent judicial review. The
 694 rate shall be deemed approved if the office does not issue a
 695 notice of intent to approve or a notice of intent to disapprove
 696 within 90 days after receipt of the filing.

697 2. If the filing is not made in accordance with ~~the~~
 698 ~~provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as
 699 soon as practicable, but within ~~no later than~~ 30 days after the
 700 effective date, and is ~~shall be~~ considered a "use and file"

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701 filing. An insurer making a "use and file" filing is potentially
702 subject to an order by the office to return to policyholders
703 those portions of rates found to be excessive, as provided in
704 paragraph (h).

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

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

717 1. Past and prospective loss experience within and without
718 this state.

719 2. Past and prospective expenses.

720 3. The degree of competition among insurers for the risk
721 insured.

722 4. Investment income reasonably expected by the insurer,
723 consistent with the insurer's investment practices, from
724 investable premiums anticipated in the filing, plus any other
725 expected income from currently invested assets representing the
726 amount expected on unearned premium reserves and loss reserves.
727 The commission may adopt rules using reasonable techniques of
728 actuarial science and economics to specify the manner in which

729 insurers ~~shall~~ calculate investment income attributable to ~~such~~
 730 classes of insurance written in this state and the manner in
 731 which ~~such~~ investment income is ~~shall be~~ used to calculate
 732 insurance rates. Such manner must ~~shall~~ contemplate allowances
 733 for an underwriting profit factor and full consideration of
 734 investment income which produce a reasonable rate of return;
 735 however, investment income from invested surplus may not be
 736 considered.

737 5. The reasonableness of the judgment reflected in the
 738 filing.

739 6. Dividends, savings, or unabsorbed premium deposits
 740 allowed or returned to Florida policyholders, members, or
 741 subscribers.

742 7. The adequacy of loss reserves.

743 8. The cost of reinsurance. The office may ~~shall~~ not
 744 disapprove a rate as excessive solely due to the insurer having
 745 obtained catastrophic reinsurance to cover the insurer's
 746 estimated 250-year probable maximum loss or any lower level of
 747 loss.

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

750 10. Conflagration and catastrophe hazards, if applicable.

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

755 12. A reasonable margin for underwriting profit and
 756 contingencies.

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

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

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

765 (d) If conflagration or catastrophe hazards are considered
 766 ~~given consideration~~ by an insurer in its rates or rating plan,
 767 including surcharges and discounts, the insurer shall establish
 768 a reserve for that portion of the premium allocated to such
 769 hazard and ~~shall~~ maintain the premium in a catastrophe reserve.
 770 ~~Any~~ Removal of such premiums from the reserve for purposes other
 771 than paying claims associated with a catastrophe or purchasing
 772 reinsurance for catastrophes must be approved by ~~shall be~~
 773 ~~subject to approval of~~ the office. Any ceding commission
 774 received by an insurer purchasing reinsurance for catastrophes
 775 must ~~shall~~ be placed in the catastrophe reserve.

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

780 1. Rates shall be deemed excessive if they are likely to
 781 produce a profit from Florida business which ~~that~~ is
 782 unreasonably high in relation to the risk involved in the class
 783 of business or if expenses are unreasonably high in relation to
 784 services rendered.

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

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

793 4. A rating plan, including discounts, credits, or
794 surcharges, shall be deemed unfairly discriminatory if it fails
795 to clearly and equitably reflect consideration of the
796 policyholder's participation in a risk management program
797 adopted pursuant to s. 627.0625.

798 5. A rate shall be deemed inadequate as to the premium
799 charged to a risk or group of risks if discounts or credits are
800 allowed which exceed a reasonable reflection of expense savings
801 and reasonably expected loss experience from the risk or group
802 of risks.

803 6. A rate shall be deemed unfairly discriminatory as to a
804 risk or group of risks if the application of premium discounts,
805 credits, or surcharges among such risks does not bear a
806 reasonable relationship to the expected loss and expense
807 experience among the various risks.

808 (f) In reviewing a rate filing, the office may require the
809 insurer to provide, at the insurer's expense, all information
810 necessary to evaluate the condition of the company and the
811 reasonableness of the filing according to the criteria
812 enumerated in this section.

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813 (g) The office may at any time review a rate, rating
814 schedule, rating manual, or rate change; the pertinent records
815 of the insurer; and market conditions. If the office finds on a
816 preliminary basis that a rate may be excessive, inadequate, or
817 unfairly discriminatory, the office shall initiate proceedings
818 to disapprove the rate and shall so notify the insurer. However,
819 the office may not disapprove as excessive any rate for which it
820 has given final approval or which has been deemed approved for a
821 ~~period of~~ 1 year after the effective date of the filing unless
822 the office finds that a material misrepresentation or material
823 error was made by the insurer or was contained in the filing.
824 Upon being ~~so~~ notified, the insurer or rating organization
825 shall, within 60 days, file with the office all information that
826 ~~which~~, in the belief of the insurer or organization, proves the
827 reasonableness, adequacy, and fairness of the rate or rate
828 change. The office shall issue a notice of intent to approve or
829 a notice of intent to disapprove pursuant to ~~the procedures of~~
830 paragraph (a) within 90 days after receipt of the insurer's
831 initial response. In such instances and in any administrative
832 proceeding relating to the legality of the rate, the insurer or
833 rating organization shall carry the burden of proof by a
834 preponderance of the evidence to show that the rate is not
835 excessive, inadequate, or unfairly discriminatory. After the
836 office notifies an insurer that a rate may be excessive,
837 inadequate, or unfairly discriminatory, unless the office
838 withdraws the notification, the insurer may ~~shall~~ not alter the
839 rate except to conform to ~~with~~ the office's notice until the
840 earlier of 120 days after the date the notification was provided

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841 or 180 days after the date of implementing ~~the implementation of~~
842 the rate. The office ~~may~~, subject to chapter 120, may disapprove
843 without the 60-day notification any rate increase filed by an
844 insurer within the prohibited time period or during the time
845 that the legality of the increased rate is being contested.

846 (h) ~~If in the event~~ the office finds that a rate or rate
847 change is excessive, inadequate, or unfairly discriminatory, the
848 office shall issue an order of disapproval specifying that a new
849 rate or rate schedule, which responds to the findings of the
850 office, be filed by the insurer. The office shall further order,
851 for any "use and file" filing made in accordance with
852 subparagraph (a)2., that premiums charged each policyholder
853 constituting the portion of the rate above that which was
854 actuarially justified be returned to the ~~such~~ policyholder in
855 the form of a credit or refund. If the office finds that an
856 insurer's rate or rate change is inadequate, the new rate or
857 rate schedule filed with the office in response to such a
858 finding is ~~shall be~~ applicable only to new or renewal business
859 of the insurer written on or after the effective date of the
860 responsive filing.

861 (i) Except as otherwise specifically provided in this
862 chapter, the office may ~~shall~~ not, directly or indirectly:

863 1. Prohibit any insurer, including any residual market
864 plan or joint underwriting association, from paying acquisition
865 costs based on the full amount of premium, as defined in s.
866 627.403, applicable to any policy, or prohibit any such insurer
867 from including the full amount of acquisition costs in a rate
868 filing; or—

869 2. Impede, abridge, or otherwise compromise an insurer's
 870 right to acquire policyholders, advertise, or appoint agents,
 871 including the calculation, manner, or amount of such agent
 872 commissions, if any, in property and casualty insurance.

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

876 (k)1. An insurer may make a separate filing limited solely
 877 to an adjustment of its rates for reinsurance or financing costs
 878 incurred in the purchase of reinsurance or financing products to
 879 replace or finance the payment of the amount covered by the
 880 Temporary Increase in Coverage Limits (TICL) portion of the
 881 Florida Hurricane Catastrophe Fund including replacement
 882 reinsurance for the TICL reductions made pursuant to s.
 883 215.555(17)(e); the actual cost paid due to the application of
 884 the TICL premium factor pursuant to s. 215.555(17)(f); and the
 885 actual cost paid due to the application of the cash build-up
 886 factor pursuant to s. 215.555(5)(b) if the insurer:

887 a. Elects to purchase financing products such as a
 888 liquidity instrument or line of credit, in which case the cost
 889 included in the filing for the liquidity instrument or line of
 890 credit may not result in a premium increase exceeding 3 percent
 891 for any individual policyholder. All costs contained in the
 892 filing may not result in an overall premium increase of more
 893 than 10 percent for any individual policyholder.

894 b. Includes in the filing a copy of all of its
 895 reinsurance, liquidity instrument, or line of credit contracts;
 896 proof of the billing or payment for the contracts; and the

897 calculation upon which the proposed rate change is based
 898 demonstrates that the costs meet the criteria of this section
 899 and are not loaded for expenses or profit for the insurer making
 900 the filing.

901 c. Includes no other changes to its rates in the filing.

902 d. Has not implemented a rate increase within the 6 months
 903 immediately preceding the filing.

904 e. Does not file for a rate increase under any other
 905 paragraph within 6 months after making a filing under this
 906 paragraph.

907 f. That purchases reinsurance or financing products from
 908 an affiliated company in compliance with this paragraph does so
 909 only if the costs for such reinsurance or financing products are
 910 charged at or below charges made for comparable coverage by
 911 nonaffiliated reinsurers or financial entities making such
 912 coverage or financing products available in this state.

913 2. An insurer may only make one filing in any 12-month
 914 period under this paragraph.

915 3. An insurer that elects to implement a rate change under
 916 this paragraph must file its rate filing with the office at
 917 least 45 days before the effective date of the rate change.
 918 After an insurer submits a complete filing that meets all of the
 919 requirements of this paragraph, the office has 45 days after the
 920 date of the filing to review the rate filing and determine if
 921 the rate is excessive, inadequate, or unfairly discriminatory.

922
 923 The provisions of this subsection do ~~shall~~ not apply to workers'
 924 compensation, and employer's liability insurance, and ~~to~~ motor

925 vehicle insurance.

926 (3) (a) For individual risks that are not rated in
 927 accordance with the insurer's rates, rating schedules, rating
 928 manuals, and underwriting rules filed with the office and that
 929 ~~which~~ have been submitted to the insurer for individual rating,
 930 the insurer must maintain documentation on each risk subject to
 931 individual risk rating. The documentation must identify the
 932 named insured and specify the characteristics and classification
 933 of the risk supporting the reason for the risk being
 934 individually risk rated, including any modifications to existing
 935 approved forms to be used on the risk. The insurer must maintain
 936 these records for ~~a period of~~ at least 5 years after the
 937 effective date of the policy.

938 (b) Individual risk rates and modifications to existing
 939 approved forms are not subject to this part or part II, except
 940 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
 941 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
 942 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
 943 627.4265, 627.427, and 627.428, but are subject to all other
 944 applicable provisions of this code and rules adopted thereunder.

945 (c) This subsection does not apply to private passenger
 946 motor vehicle insurance.

947 (d)1. The following categories or kinds of insurance and
 948 types of commercial lines risks are not subject to paragraph

949 (2) (a) or paragraph (2) (f):

- 950 a. Excess or umbrella.
- 951 b. Surety and fidelity.
- 952 c. Boiler and machinery and leakage and fire extinguishing

953 equipment.

954 d. Errors and omissions.

955 e. Directors and officers, employment practices, and
956 management liability.

957 f. Intellectual property and patent infringement
958 liability.

959 g. Advertising injury and Internet liability insurance.

960 h. Property risks rated under a highly protected risks
961 rating plan.

962 i. Any other commercial lines categories or kinds of
963 insurance or types of commercial lines risks that the office
964 determines should not be subject to paragraph (2) (a) or
965 paragraph (2) (f) because of the existence of a competitive
966 market for such insurance, similarity of such insurance to other
967 categories or kinds of insurance not subject to paragraph (2) (a)
968 or paragraph (2) (f), or to improve the general operational
969 efficiency of the office.

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

974 3. An insurer must notify the office of any changes to
975 rates for insurance and risks described in subparagraph 1.
976 within ~~no later than~~ 30 days after the effective date of the
977 change. The notice must include the name of the insurer, the
978 type or kind of insurance subject to rate change, total premium
979 written during the immediately preceding year by the insurer for
980 the type or kind of insurance subject to the rate change, and

981 the average statewide percentage change in rates. Underwriting
 982 files, premiums, losses, and expense statistics with regard to
 983 such insurance and risks ~~described in subparagraph 1.~~ written by
 984 an insurer must ~~shall~~ be maintained by the insurer and subject
 985 to examination by the office. Upon examination, the office
 986 ~~shall~~, in accordance with generally accepted and reasonable
 987 actuarial techniques, shall consider the rate factors in
 988 paragraphs (2) (b), (c), and (d) and the standards in paragraph
 989 (2) (e) to determine if the rate is excessive, inadequate, or
 990 unfairly discriminatory.

991 4. A rating organization must notify the office of any
 992 changes to loss cost for insurance and risks described in
 993 subparagraph 1. within ~~no later than~~ 30 days after the effective
 994 date of the change. The notice must include the name of the
 995 rating organization, the type or kind of insurance subject to a
 996 loss cost change, loss costs during the immediately preceding
 997 year for the type or kind of insurance subject to the loss cost
 998 change, and the average statewide percentage change in loss
 999 cost. Loss and exposure statistics with regard to risks
 1000 applicable to loss costs for a rating organization not subject
 1001 to paragraph (2) (a) or paragraph (2) (f) must ~~shall~~ be maintained
 1002 by the rating organization and are subject to examination by the
 1003 office. Upon examination, the office ~~shall~~, in accordance with
 1004 generally accepted and reasonable actuarial techniques, shall
 1005 consider the rate factors in paragraphs (2) (b)-(d) and the
 1006 standards in paragraph (2) (e) to determine if the rate is
 1007 excessive, inadequate, or unfairly discriminatory.

1008 5. In reviewing a rate, the office may require the insurer

1009 to provide, at the insurer's expense, all information necessary
 1010 to evaluate the condition of the company and the reasonableness
 1011 of the rate according to the applicable criteria described in
 1012 this section.

1013 (4) The establishment of any rate, rating classification,
 1014 rating plan or schedule, or variation thereof in violation of
 1015 part IX of chapter 626 is also in violation of this section. ~~In~~
 1016 ~~order to enhance the ability of consumers to compare premiums~~
 1017 ~~and to increase the accuracy and usefulness of rate-comparison~~
 1018 ~~information provided by the office to the public, the office~~
 1019 ~~shall develop a proposed standard rating territory plan to be~~
 1020 ~~used by all authorized property and casualty insurers for~~
 1021 ~~residential property insurance. In adopting the proposed plan,~~
 1022 ~~the office may consider geographical characteristics relevant to~~
 1023 ~~risk, county lines, major roadways, existing rating territories~~
 1024 ~~used by a significant segment of the market, and other relevant~~
 1025 ~~factors. Such plan shall be submitted to the President of the~~
 1026 ~~Senate and the Speaker of the House of Representatives by~~
 1027 ~~January 15, 2006. The plan may not be implemented unless~~
 1028 ~~authorized by further act of the Legislature.~~

1029 (5) With respect to a rate filing involving coverage of
 1030 the type for which the insurer is required to pay a
 1031 reimbursement premium to the Florida Hurricane Catastrophe Fund,
 1032 the insurer may fully recoup in its property insurance premiums
 1033 any reimbursement premiums paid to the ~~Florida Hurricane~~
 1034 ~~Catastrophe~~ fund, together with reasonable costs of other
 1035 reinsurance; however, ~~but~~ except as otherwise provided in this
 1036 section, the insurer may not recoup reinsurance costs that

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1037 duplicate coverage provided by the ~~Florida Hurricane Catastrophe~~
 1038 fund. An insurer may not recoup more than 1 year of
 1039 reimbursement premium at a time. Any under-recoupment from the
 1040 prior year may be added to the following year's reimbursement
 1041 premium, and any over-recoupment must ~~shall~~ be subtracted from
 1042 the following year's reimbursement premium.

1043 (6) (a) If an insurer requests an administrative hearing
 1044 pursuant to s. 120.57 related to a rate filing under this
 1045 section, the director of the Division of Administrative Hearings
 1046 shall expedite the hearing and assign an administrative law
 1047 judge who shall commence the hearing within 30 days after the
 1048 receipt of the formal request and ~~shall~~ enter a recommended
 1049 order within 30 days after the hearing or within 30 days after
 1050 receipt of the hearing transcript by the administrative law
 1051 judge, whichever is later. Each party shall have ~~be allowed~~ 10
 1052 days in which to submit written exceptions to the recommended
 1053 order. The office shall enter a final order within 30 days after
 1054 the entry of the recommended order. The provisions of this
 1055 paragraph may be waived upon stipulation of all parties.

1056 (b) Upon entry of a final order, the insurer may request a
 1057 expedited appellate review pursuant to the Florida Rules of
 1058 Appellate Procedure. It is the intent of the Legislature that
 1059 the First District Court of Appeal grant an insurer's request
 1060 for an expedited appellate review.

1061 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~
 1062 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~
 1063 control to the extent of any conflict with other provisions of
 1064 this section.

1065 (a)~~(b)~~ Any portion of a judgment entered or settlement
 1066 paid as a result of a statutory or common-law bad faith action
 1067 and any portion of a judgment entered which awards punitive
 1068 damages against an insurer may not be included in the insurer's
 1069 rate base, and shall not be used to justify a rate or rate
 1070 change. Any common-law bad faith action identified as such, any
 1071 portion of a settlement entered as a result of a statutory or
 1072 common-law action, or any portion of a settlement wherein an
 1073 insurer agrees to pay specific punitive damages may not be used
 1074 to justify a rate or rate change. The portion of the taxable
 1075 costs and attorney's fees which is identified as being related
 1076 to the bad faith and punitive damages ~~in these judgments and~~
 1077 ~~settlements~~ may not be included in the insurer's rate base and
 1078 used ~~may not be utilized~~ to justify a rate or rate change.

1079 (b)~~(c)~~ Upon reviewing a rate filing and determining
 1080 whether the rate is excessive, inadequate, or unfairly
 1081 discriminatory, the office shall consider, in accordance with
 1082 generally accepted and reasonable actuarial techniques, past and
 1083 present prospective loss experience, ~~either~~ using loss
 1084 experience solely for this state or giving greater credibility
 1085 to this state's loss data after applying actuarially sound
 1086 methods of assigning credibility to such data.

1087 (c)~~(d)~~ Rates shall be deemed excessive if, among other
 1088 standards established by this section, the rate structure
 1089 provides for replenishment of reserves or surpluses from
 1090 premiums when the replenishment is attributable to investment
 1091 losses.

1092 (d)~~(e)~~ The insurer must apply a discount or surcharge

1093 based on the health care provider's loss experience or ~~shall~~
 1094 establish an alternative method giving due consideration to the
 1095 provider's loss experience. The insurer must include in the
 1096 filing a copy of the surcharge or discount schedule or a
 1097 description of the alternative method used, and ~~must~~ provide a
 1098 copy ~~of such schedule or description~~, as approved by the office,
 1099 to policyholders at the time of renewal and to prospective
 1100 policyholders at the time of application for coverage.

1101 (e) ~~(f)~~ Each medical malpractice insurer must make a rate
 1102 filing under this section, sworn to by at least two executive
 1103 officers of the insurer, at least once each calendar year.

1104 ~~(8)(a)1. No later than 60 days after the effective date of~~
 1105 ~~medical malpractice legislation enacted during the 2003 Special~~
 1106 ~~Session D of the Florida Legislature, the office shall calculate~~
 1107 ~~a presumed factor that reflects the impact that the changes~~
 1108 ~~contained in such legislation will have on rates for medical~~
 1109 ~~malpractice insurance and shall issue a notice informing all~~
 1110 ~~insurers writing medical malpractice coverage of such presumed~~
 1111 ~~factor. In determining the presumed factor, the office shall use~~
 1112 ~~generally accepted actuarial techniques and standards provided~~
 1113 ~~in this section in determining the expected impact on losses,~~
 1114 ~~expenses, and investment income of the insurer. To the extent~~
 1115 ~~that the operation of a provision of medical malpractice~~
 1116 ~~legislation enacted during the 2003 Special Session D of the~~
 1117 ~~Florida Legislature is stayed pending a constitutional~~
 1118 ~~challenge, the impact of that provision shall not be included in~~
 1119 ~~the calculation of a presumed factor under this subparagraph.~~

1120 ~~2. No later than 60 days after the office issues its~~

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1121 ~~notice of the presumed rate change factor under subparagraph 1.,~~
1122 ~~each insurer writing medical malpractice coverage in this state~~
1123 ~~shall submit to the office a rate filing for medical malpractice~~
1124 ~~insurance, which will take effect no later than January 1, 2004,~~
1125 ~~and apply retroactively to policies issued or renewed on or~~
1126 ~~after the effective date of medical malpractice legislation~~
1127 ~~enacted during the 2003 Special Session D of the Florida~~
1128 ~~Legislature. Except as authorized under paragraph (b), the~~
1129 ~~filing shall reflect an overall rate reduction at least as great~~
1130 ~~as the presumed factor determined under subparagraph 1. With~~
1131 ~~respect to policies issued on or after the effective date of~~
1132 ~~such legislation and prior to the effective date of the rate~~
1133 ~~filing required by this subsection, the office shall order the~~
1134 ~~insurer to make a refund of the amount that was charged in~~
1135 ~~excess of the rate that is approved.~~

1136 ~~(b) Any insurer or rating organization that contends that~~
1137 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
1138 ~~or unfairly discriminatory shall separately state in its filing~~
1139 ~~the rate it contends is appropriate and shall state with~~
1140 ~~specificity the factors or data that it contends should be~~
1141 ~~considered in order to produce such appropriate rate. The~~
1142 ~~insurer or rating organization shall be permitted to use all of~~
1143 ~~the generally accepted actuarial techniques provided in this~~
1144 ~~section in making any filing pursuant to this subsection. The~~
1145 ~~office shall review each such exception and approve or~~
1146 ~~disapprove it prior to use. It shall be the insurer's burden to~~
1147 ~~actuarially justify any deviations from the rates required to be~~
1148 ~~filed under paragraph (a). The insurer making a filing under~~

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1149 ~~this paragraph shall include in the filing the expected impact~~
1150 ~~of medical malpractice legislation enacted during the 2003~~
1151 ~~Special Session D of the Florida Legislature on losses,~~
1152 ~~expenses, and rates.~~

1153 ~~(c) If any provision of medical malpractice legislation~~
1154 ~~enacted during the 2003 Special Session D of the Florida~~
1155 ~~Legislature is held invalid by a court of competent~~
1156 ~~jurisdiction, the office shall permit an adjustment of all~~
1157 ~~medical malpractice rates filed under this section to reflect~~
1158 ~~the impact of such holding on such rates so as to ensure that~~
1159 ~~the rates are not excessive, inadequate, or unfairly~~
1160 ~~discriminatory.~~

1161 ~~(d) Rates approved on or before July 1, 2003, for medical~~
1162 ~~malpractice insurance shall remain in effect until the effective~~
1163 ~~date of a new rate filing approved under this subsection.~~

1164 ~~(e) The calculation and notice by the office of the~~
1165 ~~presumed factor pursuant to paragraph (a) is not an order or~~
1166 ~~rule that is subject to chapter 120. If the office enters into a~~
1167 ~~contract with an independent consultant to assist the office in~~
1168 ~~calculating the presumed factor, such contract shall not be~~
1169 ~~subject to the competitive solicitation requirements of s.~~
1170 ~~287.057.~~

1171 (8)~~(9)~~ (a) The chief executive officer or chief financial
1172 officer of a property insurer and the chief actuary of a
1173 property insurer must certify under oath and subject to the
1174 penalty of perjury, on a form approved by the commission, the
1175 following information, which must accompany a rate filing:

1176 1. The signing officer and actuary have reviewed the rate

1177 filing;

1178 2. Based on the signing officer's and actuary's knowledge,
 1179 the rate filing does not contain any untrue statement of a
 1180 material fact or omit to state a material fact necessary ~~in~~
 1181 ~~order~~ to make the statements made, in light of the circumstances
 1182 under which such statements were made, not misleading;

1183 3. Based on the signing officer's and actuary's knowledge,
 1184 the information and other factors described in paragraph (2) (b),
 1185 including, but not limited to, investment income, fairly present
 1186 in all material respects the basis of the rate filing for the
 1187 periods presented in the filing; and

1188 4. Based on the signing officer's and actuary's knowledge,
 1189 the rate filing reflects all premium savings that are reasonably
 1190 expected to result from legislative enactments and are in
 1191 accordance with generally accepted and reasonable actuarial
 1192 techniques.

1193 (b) A signing officer or actuary who knowingly makes
 1194 ~~making~~ a false certification under this subsection commits a
 1195 violation of s. 626.9541(1)(e) and is subject to the penalties
 1196 under s. 626.9521.

1197 (c) Failure to provide such certification by the officer
 1198 and actuary shall result in the rate filing being disapproved
 1199 without prejudice to be refiled.

1200 (d) The certification made pursuant to paragraph (a) is
 1201 not rendered false if, after making the subject rate filing, the
 1202 insurer provides the office with additional or supplementary
 1203 information pursuant to a formal or informal request from the
 1204 office. However, the actuary primarily responsible for preparing

1205 and submitting the additional or supplementary information shall
 1206 certify the information consistent with the certification
 1207 required in paragraph (a) and the penalties in paragraph (b),
 1208 except that the chief executive officer or chief financial
 1209 officer or chief actuary is not required to certify to the
 1210 additional or supplementary information.

1211 (e)~~(d)~~ The commission may adopt rules and forms pursuant
 1212 ~~to ss. 120.536(1) and 120.54~~ to administer this subsection.

1213 (9)~~(10)~~ The burden is on the office to establish that
 1214 rates are excessive for personal lines residential coverage with
 1215 a dwelling replacement cost of \$1 million or more or for a
 1216 single condominium unit with a combined dwelling and contents
 1217 replacement cost of \$1 million or more. Upon request of the
 1218 office, the insurer shall provide ~~to the office~~ such loss and
 1219 expense information as the office reasonably needs to meet this
 1220 burden.

1221 (10)~~(11)~~ Any interest paid pursuant to s. 627.70131(5) may
 1222 not be included in the insurer's rate base and may not be used
 1223 to justify a rate or rate change.

1224 Section 10. Subsections (1) and (5) and paragraph (b) of
 1225 subsection (8) of section 627.0629, Florida Statutes, are
 1226 amended to read:

1227 627.0629 Residential property insurance; rate filings.—

1228 (1)~~(a)~~ It is the intent of the Legislature that insurers
 1229 ~~must~~ provide savings to consumers who install or implement
 1230 windstorm damage mitigation techniques, alterations, or
 1231 solutions to their properties to prevent windstorm losses. A
 1232 rate filing for residential property insurance must include

1233 actuarially reasonable discounts, credits, or other rate
 1234 differentials, or appropriate reductions in deductibles, for
 1235 properties on which fixtures or construction techniques
 1236 demonstrated to reduce the amount of loss in a windstorm have
 1237 been installed or implemented. The fixtures or construction
 1238 techniques must ~~shall~~ include, but not be limited to, fixtures
 1239 or construction techniques that ~~which~~ enhance roof strength,
 1240 roof covering performance, roof-to-wall strength, wall-to-floor-
 1241 to-foundation strength, opening protection, and window, door,
 1242 and skylight strength. Credits, discounts, or other rate
 1243 differentials, or appropriate reductions in deductibles, for
 1244 fixtures and construction techniques that ~~which~~ meet the minimum
 1245 requirements of the Florida Building Code must be included in
 1246 the rate filing. ~~All insurance companies must make a rate filing~~
 1247 ~~which includes the credits, discounts, or other rate~~
 1248 ~~differentials or reductions in deductibles by February 28, 2003.~~
 1249 ~~By July 1, 2007, the office shall reevaluate the discounts,~~
 1250 ~~credits, other rate differentials, and appropriate reductions in~~
 1251 ~~deductibles for fixtures and construction techniques that meet~~
 1252 ~~the minimum requirements of the Florida Building Code, based~~
 1253 ~~upon actual experience or any other loss relativity studies~~
 1254 ~~available to the office.~~ The office shall determine the
 1255 discounts, credits, other rate differentials, and appropriate
 1256 reductions in deductibles that reflect the full actuarial value
 1257 of such revaluation, which may be used by insurers in rate
 1258 filings.

1259 ~~(b) By February 1, 2011, the Office of Insurance~~
 1260 ~~Regulation, in consultation with the Department of Financial~~

1261 ~~Services and the Department of Community Affairs, shall develop~~
 1262 ~~and make publicly available a proposed method for insurers to~~
 1263 ~~establish discounts, credits, or other rate differentials for~~
 1264 ~~hurricane mitigation measures which directly correlate to the~~
 1265 ~~numerical rating assigned to a structure pursuant to the uniform~~
 1266 ~~home grading scale adopted by the Financial Services Commission~~
 1267 ~~pursuant to s. 215.55865, including any proposed changes to the~~
 1268 ~~uniform home grading scale. By October 1, 2011, the commission~~
 1269 ~~shall adopt rules requiring insurers to make rate filings for~~
 1270 ~~residential property insurance which revise insurers' discounts,~~
 1271 ~~credits, or other rate differentials for hurricane mitigation~~
 1272 ~~measures so that such rate differentials correlate directly to~~
 1273 ~~the uniform home grading scale. The rules may include such~~
 1274 ~~changes to the uniform home grading scale as the commission~~
 1275 ~~determines are necessary, and may specify the minimum required~~
 1276 ~~discounts, credits, or other rate differentials. Such rate~~
 1277 ~~differentials must be consistent with generally accepted~~
 1278 ~~actuarial principles and wind-loss mitigation studies. The rules~~
 1279 ~~shall allow a period of at least 2 years after the effective~~
 1280 ~~date of the revised mitigation discounts, credits, or other rate~~
 1281 ~~differentials for a property owner to obtain an inspection or~~
 1282 ~~otherwise qualify for the revised credit, during which time the~~
 1283 ~~insurer shall continue to apply the mitigation credit that was~~
 1284 ~~applied immediately prior to the effective date of the revised~~
 1285 ~~credit. Discounts, credits, and other rate differentials~~
 1286 ~~established for rate filings under this paragraph shall~~
 1287 ~~supersede, after adoption, the discounts, credits, and other~~
 1288 ~~rate differentials included in rate filings under paragraph (a).~~

1289 (5) In order to provide an appropriate transition period,
 1290 an insurer may, ~~in its sole discretion,~~ implement an approved
 1291 rate filing for residential property insurance over a period of
 1292 years. Such ~~An insurer electing to phase in its rate filing~~ must
 1293 provide an informational notice to the office setting out its
 1294 schedule for implementation of the phased-in rate filing. The ~~An~~
 1295 insurer may include in its rate the actual cost of private
 1296 market reinsurance that corresponds to available coverage of the
 1297 Temporary Increase in Coverage Limits, TICL, from the Florida
 1298 Hurricane Catastrophe Fund. The insurer may also include the
 1299 cost of reinsurance to replace the TICL reduction implemented
 1300 pursuant to s. 215.555(17)(d)9. However, this cost for
 1301 reinsurance may not include any expense or profit load or result
 1302 in a total annual base rate increase in excess of 10 percent.

1303 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
 1304 SOUNDNESS.—

1305 (b) To the extent ~~that~~ funds are provided for this purpose
 1306 in the General Appropriations Act, ~~the Legislature hereby~~
 1307 ~~authorizes~~ the establishment of a program to be administered by
 1308 the Citizens Property Insurance Corporation for homeowners
 1309 insured in the high-risk account is authorized.

1310 Section 11. Paragraph (b) of subsection (2) of section
 1311 627.4133, Florida Statutes, is amended to read:

1312 627.4133 Notice of cancellation, nonrenewal, or renewal
 1313 premium.—

1314 (2) With respect to any personal lines or commercial
 1315 residential property insurance policy, including, but not
 1316 limited to, any homeowner's, mobile home owner's, farmowner's,

1317 condominium association, condominium unit owner's, apartment
 1318 building, or other policy covering a residential structure or
 1319 its contents:

1320 (b) The insurer shall give the named insured written
 1321 notice of nonrenewal, cancellation, or termination at least 100
 1322 days before ~~prior to~~ the effective date of the nonrenewal,
 1323 cancellation, or termination. However, the insurer shall give at
 1324 least 100 days' written notice, or written notice by June 1,
 1325 whichever is earlier, for any nonrenewal, cancellation, or
 1326 termination that would be effective between June 1 and November
 1327 30. The notice must include the reason or reasons for the
 1328 nonrenewal, cancellation, or termination, except that:

1329 1. The insurer shall give the named insured written notice
 1330 of nonrenewal, cancellation, or termination at least 180 days
 1331 prior to the effective date of the nonrenewal, cancellation, or
 1332 termination for a named insured whose residential structure has
 1333 been insured by that insurer or an affiliated insurer for at
 1334 least a 5-year period immediately prior to the date of the
 1335 written notice.

1336 2. If ~~When~~ cancellation is for nonpayment of premium, at
 1337 least 10 days' written notice of cancellation accompanied by the
 1338 reason therefor must ~~shall~~ be given. As used in this
 1339 subparagraph, the term "nonpayment of premium" means failure of
 1340 the named insured to discharge when due ~~any of~~ her or his
 1341 obligations in connection with the payment of premiums on a
 1342 policy or any installment of such premium, whether the premium
 1343 is payable directly to the insurer or its agent or indirectly
 1344 under any premium finance plan or extension of credit, or

1345 failure to maintain membership in an organization if such
 1346 membership is a condition precedent to insurance coverage. The
 1347 term "Nonpayment of premium" also means the failure of a
 1348 financial institution to honor an insurance applicant's check
 1349 after delivery to a licensed agent for payment of a premium,
 1350 even if the agent has previously delivered or transferred the
 1351 premium to the insurer. If a dishonored check represents the
 1352 initial premium payment, the contract and all contractual
 1353 obligations are ~~shall be~~ void ab initio unless the nonpayment is
 1354 cured within the earlier of 5 days after actual notice by
 1355 certified mail is received by the applicant or 15 days after
 1356 notice is sent to the applicant by certified mail or registered
 1357 mail, and if the contract is void, any premium received by the
 1358 insurer from a third party must ~~shall~~ be refunded to that party
 1359 in full.

1360 3. If ~~When~~ such cancellation or termination occurs during
 1361 the first 90 days ~~during which~~ the insurance is in force and the
 1362 insurance is canceled or terminated for reasons other than
 1363 nonpayment of premium, at least 20 days' written notice of
 1364 cancellation or termination accompanied by the reason therefor
 1365 must ~~shall~~ be given unless ~~except where~~ there has been a
 1366 material misstatement or misrepresentation or failure to comply
 1367 with the underwriting requirements established by the insurer.

1368 4. The requirement for providing written notice ~~of~~
 1369 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective
 1370 between June 1 and November 30 does not apply to the following
 1371 situations, but the insurer remains subject to the requirement
 1372 to provide such notice at least 100 days before ~~prior to~~ the

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1373 effective date of nonrenewal:

1374 a. A policy that is nonrenewed due to a revision in the
 1375 coverage for sinkhole losses and catastrophic ground cover
 1376 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
 1377 ~~2007-1, Laws of Florida.~~

1378 b. A policy that is nonrenewed by Citizens Property
 1379 Insurance Corporation, pursuant to s. 627.351(6), for a policy
 1380 that has been assumed by an authorized insurer offering
 1381 replacement or renewal coverage to the policyholder.

1382
 1383 After the policy has been in effect for 90 days, the policy may
 1384 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there
 1385 has been a material misstatement, a nonpayment of premium, a
 1386 failure to comply with underwriting requirements established by
 1387 the insurer within 90 days after ~~of~~ the date of effectuation of
 1388 coverage, or a substantial change in the risk covered by the
 1389 policy or if ~~when~~ the cancellation is for all insureds under
 1390 such policies for a given class of insureds. This paragraph does
 1391 not apply to individually rated risks having a policy term of
 1392 less than 90 days.

1393 5. Notwithstanding any other provision of law, an insurer
 1394 may cancel or nonrenew a property insurance policy after at
 1395 least 45 days' notice if the office finds that the early
 1396 cancellation of some or all of the insurer's policies is
 1397 necessary to protect the best interests of the public or
 1398 policyholders and the office approves the insurer's plan for
 1399 early cancellation or nonrenewal of some or all of its policies.
 1400 The office may base such finding upon the financial condition of

1401 the insurer, lack of adequate reinsurance coverage for hurricane
 1402 risk, or other relevant factors. The office may condition its
 1403 finding on the consent of the insurer to be placed under
 1404 administrative supervision pursuant to s. 624.81 or to the
 1405 appointment of a receiver under chapter 631.

1406 Section 12. Section 627.43141, Florida Statutes, is
 1407 created to read:

1408 627.43141 Notice of change in policy terms.—

1409 (1) As used in this section, the term:

1410 (a) "Change in policy terms" means the modification,
 1411 addition, or deletion of any term, coverage, duty, or condition
 1412 from the previous policy. The correction of typographical or
 1413 scrivener's errors or the application of mandated legislative
 1414 changes is not a change in policy terms.

1415 (b) "Policy" means a written contract of personal lines
 1416 property and casualty insurance or a written agreement for
 1417 insurance, or the certificate of such insurance, by whatever
 1418 name called, and includes all clauses, riders, endorsements, and
 1419 papers that are a part of such policy. The term does not include
 1420 a binder as defined in s. 627.420 unless the duration of the
 1421 binder period exceeds 60 days.

1422 (c) "Renewal" means the issuance and delivery by an
 1423 insurer of a policy superseding at the end of the policy period
 1424 a policy previously issued and delivered by the same insurer or
 1425 the issuance and delivery of a certificate or notice extending
 1426 the term of a policy beyond its policy period or term. Any
 1427 policy that has a policy period or term of less than 6 months or
 1428 that does not have a fixed expiration date shall, for purposes

1429 of this section, be considered as written for successive policy
1430 periods or terms of 6 months.

1431 (2) A renewal policy may contain a change in policy terms.
1432 If a renewal policy does contains such change, the insurer must
1433 give the named insured written notice of the change, which must
1434 be enclosed along with the written notice of renewal premium
1435 required by ss. 627.4133 and 627.728. Such notice shall be
1436 entitled "Notice of Change in Policy Terms."

1437 (3) Although not required, proof of mailing or registered
1438 mailing through the United States Postal Service of the Notice
1439 of Change in Policy Terms to the named insured at the address
1440 shown in the policy is sufficient proof of notice.

1441 (4) Receipt of the premium payment for the renewal policy
1442 by the insurer is deemed to be acceptance of the new policy
1443 terms by the named insured.

1444 (5) If an insurer fails to provide the notice required in
1445 subsection (2), the original policy terms remain in effect until
1446 the next renewal and the proper service of the notice, or until
1447 the effective date of replacement coverage obtained by the named
1448 insured, whichever occurs first.

1449 (6) The intent of this section is to:

1450 (a) Allow an insurer to make a change in policy terms
1451 without nonrenewing those policyholders that the insurer wishes
1452 to continue insuring.

1453 (b) Alleviate concern and confusion to the policyholder
1454 caused by the required policy nonrenewal for the limited issue
1455 if an insurer intends to renew the insurance policy, but the new
1456 policy contains a change in policy terms.

1457 (c) Encourage policyholders to discuss their coverages
 1458 with their insurance agents.

1459 Section 13. Section 627.7011, Florida Statutes, is amended
 1460 to read:

1461 627.7011 Homeowners' policies; offer of replacement cost
 1462 coverage and law and ordinance coverage.-

1463 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
 1464 insurance policy ~~on or after October 1, 2005, or prior to the~~
 1465 ~~first renewal of a homeowner's insurance policy on or after~~
 1466 ~~October 1, 2005,~~ the insurer must offer each of the following:

1467 (a) A policy or endorsement providing that any loss that
 1468 ~~which~~ is repaired or replaced will be adjusted on the basis of
 1469 replacement costs to the dwelling not exceeding policy limits ~~as~~
 1470 ~~to the dwelling,~~ rather than actual cash value, but not
 1471 including costs necessary to meet applicable laws and ordinances
 1472 regulating the construction, use, or repair of any property or
 1473 requiring the tearing down of any property, including the costs
 1474 of removing debris.

1475 (b) A policy or endorsement providing that, subject to
 1476 other policy provisions, any loss that ~~which~~ is repaired or
 1477 replaced at any location will be adjusted on the basis of
 1478 replacement costs to the dwelling not exceeding policy limits ~~as~~
 1479 ~~to the dwelling,~~ rather than actual cash value, and also
 1480 including costs necessary to meet applicable laws and ordinances
 1481 regulating the construction, use, or repair of any property or
 1482 requiring the tearing down of any property, including the costs
 1483 of removing debris. ~~However, such~~ additional costs necessary to
 1484 meet applicable laws and ordinances may be limited to ~~either~~ 25

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1485 percent or 50 percent of the dwelling limit, as selected by the
 1486 policyholder, and such coverage applies ~~shall apply~~ only to
 1487 repairs of the damaged portion of the structure unless the total
 1488 damage to the structure exceeds 50 percent of the replacement
 1489 cost of the structure.

1490
 1491 An insurer is not required to make the offers required by this
 1492 subsection with respect to the issuance or renewal of a
 1493 homeowner's policy that contains the provisions specified in
 1494 paragraph (b) for law and ordinance coverage limited to 25
 1495 percent of the dwelling limit, except that the insurer must
 1496 offer the law and ordinance coverage limited to 50 percent of
 1497 the dwelling limit. This subsection does not prohibit the offer
 1498 of a guaranteed replacement cost policy.

1499 (2) Unless the insurer obtains the policyholder's written
 1500 refusal of the policies or endorsements specified in subsection
 1501 (1), any policy covering the dwelling is deemed to include the
 1502 law and ordinance coverage limited to 25 percent of the dwelling
 1503 limit. The rejection or selection of alternative coverage shall
 1504 be made on a form approved by the office. The form must ~~shall~~
 1505 fully advise the applicant of the nature of the coverage being
 1506 rejected. If this form is signed by a named insured, it is ~~will~~
 1507 ~~be~~ conclusively presumed that there was an informed, knowing
 1508 rejection of the coverage or election of the alternative
 1509 coverage on behalf of all insureds. Unless the policyholder
 1510 requests in writing the coverage specified in this section, it
 1511 need not be provided in or supplemental to any other policy that
 1512 renews, insures, extends, changes, supersedes, or replaces an

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1513 existing policy ~~if when~~ the policyholder has rejected the
1514 coverage specified in this section or has selected alternative
1515 coverage. The insurer must provide the ~~such~~ policyholder with
1516 notice of the availability of such coverage in a form approved
1517 by the office at least once every 3 years. The failure to
1518 provide such notice constitutes a violation of this code, but
1519 does not affect the coverage provided under the policy.

1520 (3) (a) In the event of a loss for which a dwelling is
1521 insured on the basis of replacement costs, the insurer initially
1522 must pay at least the actual cash value of the insured loss,
1523 less any applicable deductible. An insured shall subsequently
1524 enter into a contract for the performance of building and
1525 structural repairs. The insurer shall pay any remaining amounts
1526 incurred to perform such repairs as the work is performed. With
1527 the exception of incidental expenses to mitigate further damage,
1528 the insurer or any contractor or subcontractor may not require
1529 the policyholder to advance payment for such repairs or
1530 expenses. The insurer may waive the requirement for a contract
1531 as provided in this paragraph. An insured shall have a period of
1532 1 year after the date the insurer pays actual cash value to make
1533 a claim for replacement cost. If a total loss of a dwelling
1534 occurs, the insurer shall pay the replacement cost coverage
1535 without reservation or holdback of any depreciation in value,
1536 pursuant to s. 627.702.

1537 (b) In the event of a loss for which a ~~dwelling or~~
1538 personal property is insured on the basis of replacement costs,
1539 the insurer shall pay the replacement cost without reservation
1540 or holdback of any depreciation in value, whether or not the

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1541 insured replaces or repairs the ~~dwelling or~~ property.

1542 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed~~
 1543 ~~on or after October 1, 2005,~~ must include in bold type no
 1544 smaller than 18 points the following statement:

1545
 1546 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
 1547 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
 1548 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
 1549 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
 1550 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
 1551 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

1552
 1553 The intent of this subsection is to encourage policyholders to
 1554 purchase sufficient coverage to protect them in case events
 1555 excluded from the standard homeowners policy, such as law and
 1556 ordinance enforcement and flood, combine with covered events to
 1557 produce damage or loss to the insured property. The intent is
 1558 also to encourage policyholders to discuss these issues with
 1559 their insurance agent.

1560 (5) ~~Nothing in~~ This section does not: ~~shall be construed~~
 1561 ~~to~~

1562 (a) Apply to policies not considered to be "homeowners'
 1563 policies," as that term is commonly understood in the insurance
 1564 industry. ~~This section specifically does not~~

1565 (b) Apply to mobile home policies. ~~Nothing in this section~~

1566 (c) Limit ~~shall be construed as limiting~~ the ability of an
 1567 ~~any~~ insurer to reject or nonrenew any insured or applicant on
 1568 the grounds that the structure does not meet underwriting

1569 criteria applicable to replacement cost or law and ordinance
 1570 policies or for other lawful reasons.

1571 ~~(d)(6)~~ This section does not Prohibit an insurer from
 1572 limiting its liability under a policy or endorsement providing
 1573 that loss will be adjusted on the basis of replacement costs to
 1574 the lesser of:

1575 1.(a) The limit of liability shown on the policy
 1576 declarations page;

1577 ~~2.(b)~~ The reasonable and necessary cost to repair the
 1578 damaged, destroyed, or stolen covered property; or

1579 ~~3.(e)~~ The reasonable and necessary cost to replace the
 1580 damaged, destroyed, or stolen covered property.

1581 ~~(e)(7)~~ This section does not Prohibit an insurer from
 1582 exercising its right to repair damaged property in compliance
 1583 with its policy and s. 627.702(7).

1584 Section 14. Paragraph (a) of subsection (5) of section
 1585 627.70131, Florida Statutes, is amended to read:

1586 627.70131 Insurer's duty to acknowledge communications
 1587 regarding claims; investigation.-

1588 (5) (a) Within 90 days after an insurer receives notice of
 1589 an initial, reopened, or supplemental a property insurance claim
 1590 from a policyholder, the insurer shall pay or deny such claim or
 1591 a portion of the claim unless the failure to pay ~~such claim or a~~
 1592 ~~portion of the claim~~ is caused by factors beyond the control of
 1593 the insurer which reasonably prevent such payment. Any payment
 1594 of an initial or supplemental a claim or portion of such a claim
 1595 made paid 90 days after the insurer receives notice of the
 1596 claim, or made paid more than 15 days after there are no longer

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1597 factors beyond the control of the insurer which reasonably
1598 prevented such payment, whichever is later, bears ~~shall bear~~
1599 interest at the rate set forth in s. 55.03. Interest begins to
1600 accrue from the date the insurer receives notice of the claim.
1601 The provisions of this subsection may not be waived, voided, or
1602 nullified by the terms of the insurance policy. If there is a
1603 right to prejudgment interest, the insured shall select whether
1604 to receive prejudgment interest or interest under this
1605 subsection. Interest is payable when the claim or portion of the
1606 claim is paid. Failure to comply with this subsection
1607 constitutes a violation of this code. However, failure to comply
1608 with this subsection does ~~shall~~ not form the sole basis for a
1609 private cause of action.

1610 Section 15. The Legislature finds and declares:

1611 (1) There is a compelling state interest in maintaining a
1612 viable and orderly private-sector market for property insurance
1613 in this state. The lack of a viable and orderly property market
1614 reduces the availability of property insurance coverage to state
1615 residents, increases the cost of property insurance, and
1616 increases the state's reliance on a residual property insurance
1617 market and its potential for imposing assessments on
1618 policyholders throughout the state.

1619 (2) In 2005, the Legislature revised ss. 627.706-627.7074,
1620 Florida Statutes, to adopt certain geological or technical
1621 terms; to increase reliance on objective, scientific testing
1622 requirements; and generally to reduce the number of sinkhole
1623 claims and related disputes arising under prior law. The
1624 Legislature determined that since the enactment of these

1625 statutory revisions, both private-sector insurers and Citizens
 1626 Property Insurance Corporation have, nevertheless, continued to
 1627 experience high claims frequency and severity for sinkhole
 1628 insurance claims. In addition, many properties remain unrepaired
 1629 even after loss payments, which reduces the local property tax
 1630 base and adversely affects the real estate market. Therefore,
 1631 the Legislature finds that losses associated with sinkhole
 1632 claims adversely affect the public health, safety, and welfare
 1633 of this state and its citizens.

1634 (3) Pursuant to sections 16 through 20 of this act,
 1635 technical or scientific definitions adopted in the 2005
 1636 legislation are clarified to implement and advance the
 1637 Legislature's intended reduction of sinkhole claims and
 1638 disputes. Certain other revisions to ss. 627.706-627.7074,
 1639 Florida Statutes, are enacted to advance legislative intent to
 1640 rely on scientific or technical determinations relating to
 1641 sinkholes and sinkhole claims, reduce the number and cost of
 1642 disputes relating to sinkhole claims, and ensure that repairs
 1643 are made commensurate with the scientific and technical
 1644 determinations and insurance claims payments.

1645 Section 16. Section 627.706, Florida Statutes, is
 1646 reordered and amended to read:

1647 627.706 Sinkhole insurance; catastrophic ground cover
 1648 collapse; definitions.—

1649 (1) (a) Every insurer authorized to transact property
 1650 insurance in this state must ~~shall~~ provide coverage for a
 1651 catastrophic ground cover collapse.

1652 (b) The insurer ~~and~~ shall make available, for an

1653 appropriate additional premium, coverage for sinkhole losses on
 1654 any structure, including the contents of personal property
 1655 contained therein, to the extent provided in the form to which
 1656 the coverage attaches. The insurer may require an inspection of
 1657 the property before issuance of sinkhole loss coverage. A policy
 1658 for residential property insurance may include a deductible
 1659 amount applicable to sinkhole losses equal to 1 percent, 2
 1660 percent, 5 percent, or 10 percent of the policy dwelling limits,
 1661 with appropriate premium discounts offered with each deductible
 1662 amount.

1663 (c) The insurer may restrict catastrophic ground cover
 1664 collapse and sinkhole loss coverage to the principal building,
 1665 as defined in the applicable policy.

1666 (2) As used in ss. 627.706-627.7074, and as used in
 1667 connection with any policy providing coverage for a catastrophic
 1668 ground cover collapse or for sinkhole losses, the term:

1669 (a) "Catastrophic ground cover collapse" means geological
 1670 activity that results in all the following:

- 1671 1. The abrupt collapse of the ground cover;
- 1672 2. A depression in the ground cover clearly visible to the
 1673 naked eye;
- 1674 3. Structural damage to the covered building, including
 1675 the foundation; and
- 1676 4. The insured structure being condemned and ordered to be
 1677 vacated by the governmental agency authorized by law to issue
 1678 such an order for that structure.

1679
 1680 Contents coverage applies if there is a loss resulting from a

1681 catastrophic ground cover collapse. ~~Structural~~ Damage consisting
 1682 merely of the settling or cracking of a foundation, structure,
 1683 or building does not constitute a loss resulting from a
 1684 catastrophic ground cover collapse.

1685 (b) "Neutral evaluation" means the alternative dispute
 1686 resolution provided in s. 627.7074.

1687 (c) "Neutral evaluator" means a professional engineer or a
 1688 professional geologist who has completed a course of study in
 1689 alternative dispute resolution designed or approved by the
 1690 department for use in the neutral evaluation process and who is
 1691 determined to be fair and impartial.

1692 (d) ~~(b)~~ "Sinkhole" means a landform created by subsidence
 1693 of soil, sediment, or rock as underlying strata are dissolved by
 1694 groundwater. A sinkhole forms ~~may form~~ by collapse into
 1695 subterranean voids created by dissolution of limestone or
 1696 dolostone or by subsidence as these strata are dissolved.

1697 (e) ~~(e)~~ "Sinkhole loss" means structural damage to the
 1698 covered building, including the foundation, caused by sinkhole
 1699 activity. Contents coverage and additional living expenses ~~shall~~
 1700 apply only if there is structural damage to the covered building
 1701 caused by sinkhole activity.

1702 (f) ~~(d)~~ "Sinkhole activity" means settlement or systematic
 1703 weakening of the earth supporting ~~such~~ property only if the ~~when~~
 1704 ~~such~~ settlement or systematic weakening results from
 1705 contemporaneous movement or raveling of soils, sediments, or
 1706 rock materials into subterranean voids created by the effect of
 1707 water on a limestone or similar rock formation.

1708 (g) ~~(e)~~ "Professional engineer" means a person, as defined

1709 in s. 471.005, who has a bachelor's degree or higher in
 1710 engineering and has successfully completed at least five courses
 1711 in any combination of the following: geotechnical engineering,
 1712 structural engineering, soil mechanics, foundations, or geology
 1713 ~~with a specialty in the geotechnical engineering field.~~ A
 1714 professional engineer must also have ~~geotechnical~~ experience and
 1715 expertise in the identification of sinkhole activity as well as
 1716 other potential causes of structural damage ~~to the structure.~~

1717 (h) (f) "Professional geologist" means a person, as defined
 1718 in ~~by~~ s. 492.102, who has a bachelor's degree or higher in
 1719 geology or related earth science and ~~with expertise in the~~
 1720 ~~geology of Florida. A professional geologist must have~~
 1721 ~~geological~~ experience and expertise in the identification of
 1722 sinkhole activity as well as other potential geologic causes of
 1723 structural damage ~~to the structure.~~

1724 (i) "Structural damage" means a covered building has
 1725 experienced:

1726 1. Foundation displacement in excess of acceptable
 1727 variances or deflections as defined in ACI 117-90 or the Florida
 1728 Building Code and damage in the primary structural members or
 1729 primary structural systems that prevents them from supporting
 1730 the loads and forces they were designed to support as defined in
 1731 the Florida Building Code;

1732 2. Damage that results in stresses in a primary structural
 1733 member greater than one and one-third the nominal strength
 1734 allowed under the Florida Building Code for new buildings of
 1735 similar structure, purpose, or location;

1736 3. Listing, leaning, or buckling of the exterior load

1737 bearing walls or other vertical primary structural members to
 1738 such an extent that a plumb line passing through the center of
 1739 gravity does not fall inside the middle one-third of the base as
 1740 defined within the Florida Building Code;

1741 4. Damage that results in the building, or any portion
 1742 thereof, being likely to imminently collapse partially or
 1743 completely because of the movement or instability of the ground
 1744 within the influence zone of the supporting ground within the
 1745 sheer plane necessary for the purpose of supporting such
 1746 building as defined within the Florida Building Code; or

1747 5. Damage that qualifies as "substantial structural
 1748 damage" as defined in the Florida Building Code.

1749 ~~(3) On or before June 1, 2007, Every insurer authorized to~~
 1750 ~~transact property insurance in this state shall make a proper~~
 1751 ~~filing with the office for the purpose of extending the~~
 1752 ~~appropriate forms of property insurance to include coverage for~~
 1753 ~~catastrophic ground cover collapse or for sinkhole losses.~~
 1754 ~~coverage for catastrophic ground cover collapse may not go into~~
 1755 ~~effect until the effective date provided for in the filing~~
 1756 ~~approved by the office.~~

1757 (3)(4) Insurers offering policies that exclude coverage
 1758 for sinkhole losses must ~~shall~~ inform policyholders in bold type
 1759 of not less than 14 points as follows: "YOUR POLICY PROVIDES
 1760 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS
 1761 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,
 1762 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU
 1763 MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN
 1764 ADDITIONAL PREMIUM."

1765 (4)~~(5)~~ An insurer offering sinkhole coverage to
 1766 policyholders before or after the adoption of s. 30, chapter
 1767 2007-1, Laws of Florida, may nonrenew the policies of
 1768 policyholders maintaining sinkhole coverage ~~in Pasco County or~~
 1769 ~~Hernando County,~~ at the option of the insurer, and provide an
 1770 offer of coverage that ~~to such policyholders which~~ includes
 1771 catastrophic ground cover collapse and excludes sinkhole
 1772 coverage. Insurers acting in accordance with this subsection are
 1773 subject to the following requirements:

1774 (a) Policyholders must be notified that a nonrenewal is
 1775 for purposes of removing sinkhole coverage, and that the
 1776 policyholder is ~~still~~ being offered a policy that provides
 1777 coverage for catastrophic ground cover collapse.

1778 (b) Policyholders must be provided an actuarially
 1779 reasonable premium credit or discount for the removal of
 1780 sinkhole coverage and provision of only catastrophic ground
 1781 cover collapse.

1782 (c) Subject to the provisions of this subsection and the
 1783 insurer's approved underwriting or insurability guidelines, the
 1784 insurer shall provide each policyholder with the opportunity to
 1785 purchase an endorsement to his or her policy providing sinkhole
 1786 coverage and may require an inspection of the property before
 1787 issuance of a sinkhole coverage endorsement.

1788 (d) Section 624.4305 does not apply to nonrenewal notices
 1789 issued pursuant to this subsection.

1790 (5) Any claim, including, but not limited to, initial,
 1791 supplemental, and reopened claims under an insurance policy that
 1792 provides sinkhole coverage is barred unless notice of the claim

1793 was given to the insurer in accordance with the terms of the
 1794 policy within 3 years after the policyholder knew or reasonably
 1795 should have known about the sinkhole loss.

1796 Section 17. Section 627.7065, Florida Statutes, is
 1797 repealed.

1798 Section 18. Section 627.707, Florida Statutes, is amended
 1799 to read:

1800 627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by~~
 1801 ~~insurers; insurer payment; nonrenewals.~~—Upon receipt of a claim
 1802 for a sinkhole loss to a covered building, an insurer must meet
 1803 the following standards in investigating a claim:

1804 (1) The insurer must inspect ~~make an inspection of the~~
 1805 policyholder's insured's premises to determine if there is
 1806 structural ~~has been physical~~ damage that ~~to the structure which~~
 1807 may be the result of sinkhole activity.

1808 (2) If the insurer confirms that structural damage exists
 1809 but is unable to identify a valid cause of such damage or
 1810 discovers that such damage is consistent with sinkhole loss
 1811 ~~Following the insurer's initial inspection,~~ the insurer shall
 1812 engage a professional engineer or a professional geologist to
 1813 conduct testing as provided in s. 627.7072 to determine the
 1814 cause of the loss within a reasonable professional probability
 1815 and issue a report as provided in s. 627.7073, only if sinkhole
 1816 loss is covered under the policy. Except as provided in
 1817 subsections (4) and (6), the fees and costs of the professional
 1818 engineer or professional geologist shall be paid by the
 1819 insurer.÷

1820 ~~(a) The insurer is unable to identify a valid cause of the~~

1821 ~~damage or discovers damage to the structure which is consistent~~
 1822 ~~with sinkhole loss; or~~

1823 ~~(b) The policyholder demands testing in accordance with~~
 1824 ~~this section or s. 627.7072.~~

1825 (3) Following the initial inspection of the policyholder's
 1826 ~~insured~~ premises, the insurer shall provide written notice to
 1827 the policyholder disclosing the following information:

1828 (a) What the insurer has determined to be the cause of
 1829 damage, if the insurer has made such a determination.

1830 (b) A statement of the circumstances under which the
 1831 insurer is required to engage a professional engineer or a
 1832 professional geologist to verify or eliminate sinkhole loss and
 1833 to engage a professional engineer to make recommendations
 1834 regarding land and building stabilization and foundation repair.

1835 (c) A statement regarding the right of the policyholder to
 1836 request testing by a professional engineer or a professional
 1837 geologist, ~~and~~ and the circumstances under which the policyholder
 1838 may demand certain testing, and the circumstances under which
 1839 the policyholder may incur costs associated with testing.

1840 (4) (a) If the insurer determines that there is no sinkhole
 1841 loss, the insurer may deny the claim.

1842 (b) If coverage for sinkhole loss is available and ~~If the~~
 1843 ~~insurer denies the claim,~~ without performing testing under s.
 1844 627.7072, the policyholder may demand testing by the insurer
 1845 under s. 627.7072.

1846 1. The policyholder's demand for testing must be
 1847 communicated to the insurer in writing within 60 days after the
 1848 policyholder's receipt of the insurer's denial of the claim.

1849 2. The policyholder shall pay 50 percent of the actual
1850 costs of the analyses and services provided under ss. 627.7072
1851 and 627.7073 or \$2,500, whichever is less.

1852 3. The insurer shall reimburse the policyholder for the
1853 costs if the insurer obtains pursuant to s. 627.7073 written
1854 certification that there is sinkhole loss.

1855 ~~(5)(a) Subject to paragraph (b),~~ If a sinkhole loss is
1856 verified, the insurer shall pay to stabilize the land and
1857 building and repair the foundation in accordance with the
1858 recommendations of the professional engineer retained pursuant
1859 to subsection (2), as provided under s. 627.7073, and in
1860 ~~consultation~~ with notice to the policyholder, subject to the
1861 coverage and terms of the policy. The insurer shall pay for
1862 other repairs to the structure and contents in accordance with
1863 the terms of the policy.

1864 ~~(a)(b)~~ The insurer may limit its total claims payment to
1865 the actual cash value of the sinkhole loss, which does not
1866 include ~~including~~ underpinning or grouting or any other repair
1867 technique performed below the existing foundation of the
1868 building, until the policyholder enters into a contract for the
1869 performance of building stabilization or foundation repairs in
1870 accordance with the recommendations set forth in the insurer's
1871 report issued pursuant to s. 627.7073.

1872 (b) In order to prevent additional damage to the building
1873 or structure, the policyholder must enter into a contract for
1874 the performance of building stabilization or foundation repairs
1875 within 90 days after the insurance company confirms coverage for
1876 the sinkhole loss and notifies the policyholder of such

1877 confirmation. This time period is tolled if either party invokes
 1878 the neutral evaluation process and begins again 10 days after
 1879 the conclusion of the neutral evaluation process.

1880 (c) After the policyholder enters into the contract for
 1881 the performance of building stabilization or foundation repairs,
 1882 the insurer shall pay the amounts necessary to begin and perform
 1883 such repairs as the work is performed and the expenses are
 1884 incurred. The insurer may not require the policyholder to
 1885 advance payment for such repairs. If repair covered by a
 1886 personal lines residential property insurance policy has begun
 1887 and the professional engineer selected or approved by the
 1888 insurer determines that the repair cannot be completed within
 1889 the policy limits, the insurer must ~~either~~ complete the
 1890 professional engineer's recommended repair or tender the policy
 1891 limits to the policyholder without a reduction for the repair
 1892 expenses incurred.

1893 (d) The stabilization and all other repairs to the
 1894 structure and contents must be completed within 12 months after
 1895 entering into the contract for repairs described in paragraph
 1896 (b) unless:

1897 1. There is a mutual agreement between the insurer and the
 1898 policyholder;

1899 2. The claim is involved with the neutral evaluation
 1900 process;

1901 3. The claim is in litigation; or

1902 4. The claim is under appraisal or mediation.

1903 (e) ~~(e)~~ Upon the insurer's obtaining the written approval
 1904 of ~~the policyholder and any lienholder,~~ the insurer may make

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1905 payment directly to the persons selected by the policyholder to
1906 perform the land and building stabilization and foundation
1907 repairs. The decision by the insurer to make payment to such
1908 persons does not hold the insurer liable for the work performed.
1909 The policyholder may not accept a rebate from any person
1910 performing the repairs specified in this section. If a
1911 policyholder does receive a rebate, coverage is void and the
1912 policyholder must refund the amount of the rebate to the
1913 insurer. Any person making the repairs specified in this section
1914 who offers a rebate, or any policyholder who accepts a rebate
1915 for such repairs, commits insurance fraud, a felony of the third
1916 degree punishable as provided in s. 775.082, s. 775.083, or s.
1917 775.084.

1918 ~~(6) Except as provided in subsection (7), the fees and~~
1919 ~~costs of the professional engineer or the professional geologist~~
1920 ~~shall be paid by the insurer.~~

1921 (6)(7) If the insurer obtains, pursuant to s. 627.7073,
1922 written certification that there is no sinkhole loss or that the
1923 cause of the damage was not sinkhole activity, and if the
1924 policyholder has submitted the sinkhole claim without good faith
1925 grounds for submitting such claim, the policyholder shall
1926 reimburse the insurer for 50 percent of the actual costs of the
1927 analyses and services provided under ss. 627.7072 and 627.7073;
1928 however, a policyholder is not required to reimburse an insurer
1929 more than \$2,500 with respect to any claim. A policyholder is
1930 required to pay reimbursement under this subsection only if the
1931 policyholder requested the analysis and services provided under
1932 ss. 627.7072 and 627.7073 and the insurer, before prior to

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1933 ordering the analysis under s. 627.7072, informs the
 1934 policyholder in writing of the policyholder's potential
 1935 liability for reimbursement and gives the policyholder the
 1936 opportunity to withdraw the claim.

1937 ~~(7)(8)~~ An ~~no~~ insurer may not ~~shall~~ nonrenew any policy of
 1938 property insurance on the basis of filing of claims for sinkhole
 1939 ~~partial~~ loss if ~~caused by sinkhole damage or clay shrinkage as~~
 1940 ~~long as~~ the total of such payments does not exceed the ~~current~~
 1941 policy limits of coverage for the policy in effect on the date
 1942 of loss, for property damage to the covered building, as set
 1943 forth on the declarations page, and provided the insured has
 1944 repaired the structure in accordance with the engineering
 1945 recommendations made pursuant to subsection (2) upon which any
 1946 payment or policy proceeds were based.

1947 ~~(8)(9)~~ The insurer may engage a professional structural
 1948 engineer to make recommendations as to the repair of the
 1949 structure.

1950 Section 19. Section 627.7073, Florida Statutes, is amended
 1951 to read:

1952 627.7073 Sinkhole reports.—

1953 (1) Upon completion of testing as provided in s. 627.7072,
 1954 the professional engineer or professional geologist shall issue
 1955 a report and certification to the insurer and the policyholder
 1956 as provided in this section.

1957 (a) Sinkhole loss is verified if, based upon tests
 1958 performed in accordance with s. 627.7072, a professional
 1959 engineer or a professional geologist issues a written report and
 1960 certification stating:

1961 1. That structural damage to the covered building has been
 1962 identified within a reasonable professional probability.

1963 ~~2.1.~~ That the cause of the ~~actual physical and~~ structural
 1964 damage is sinkhole activity within a reasonable professional
 1965 probability.

1966 ~~3.2.~~ That the analyses conducted were of sufficient scope
 1967 to identify sinkhole activity as the cause of damage within a
 1968 reasonable professional probability.

1969 ~~4.3.~~ A description of the tests performed.

1970 ~~5.4.~~ A recommendation by the professional engineer of
 1971 methods for stabilizing the land and building and for making
 1972 repairs to the foundation.

1973 (b) If there is no structural damage or if sinkhole
 1974 activity is eliminated as the cause of such damage to the
 1975 covered building ~~structure~~, the professional engineer or
 1976 professional geologist shall issue a written report and
 1977 certification to the policyholder and the insurer stating:

1978 1. That there is no structural damage or the cause of such
 1979 ~~the~~ damage is not sinkhole activity within a reasonable
 1980 professional probability.

1981 2. That the analyses and tests conducted were of
 1982 sufficient scope to eliminate sinkhole activity as the cause of
 1983 the structural damage within a reasonable professional
 1984 probability.

1985 3. A statement of the cause of the structural damage
 1986 within a reasonable professional probability.

1987 4. A description of the tests performed.

1988 (c) The respective findings, opinions, and recommendations

1989 of the professional engineer or professional geologist as to the
 1990 cause of distress to the property and the findings, opinions,
 1991 and recommendations of the professional engineer as to land and
 1992 building stabilization and foundation repair shall be presumed
 1993 correct.

1994 (2)~~(a)~~ Any insurer that has paid a claim for a sinkhole
 1995 loss shall file a copy of the report and certification, prepared
 1996 pursuant to subsection (1), including the legal description of
 1997 the real property and the name of the property owner, the
 1998 neutral evaluator's report, if any, that indicates that sinkhole
 1999 activity caused the damage claimed, a copy of the certification
 2000 indicating that stabilization has been completed, if applicable,
 2001 and the amount of the payment, with the county clerk of court,
 2002 who shall record the report and certification. The insurer shall
 2003 bear the cost of filing and recording one or more reports and
 2004 certifications ~~the report and certification~~. There shall be no
 2005 cause of action or liability against an insurer for compliance
 2006 with this section.

2007 (a) The recording of the report and certification does
 2008 not:

2009 1. Constitute a lien, encumbrance, or restriction on the
 2010 title to the real property or constitute a defect in the title
 2011 to the real property;

2012 2. Create any cause of action or liability against any
 2013 grantor of the real property for breach of any warranty of good
 2014 title or warranty against encumbrances; or

2015 3. Create any cause of action or liability against any
 2016 title insurer that insures the title to the real property.

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2017 (b) As a precondition to accepting payment for a sinkhole
 2018 loss, the policyholder must file a copy of any report prepared
 2019 on behalf or at the request of the policyholder regarding the
 2020 insured property. The policyholder shall bear the cost of filing
 2021 and recording such sinkhole report. The recording of the report
 2022 does not:

2023 1. Constitute a lien, encumbrance, or restriction on the
 2024 title to the real property or constitute a defect in the title
 2025 to the real property;

2026 2. Create any cause of action or liability against any
 2027 grantor of the real property for breach of any warranty of good
 2028 title or warranty against encumbrances; or

2029 3. Create any cause of action or liability against any
 2030 title insurer that insures the title to the real property.

2031 (c) ~~(b)~~ The seller of real property upon which a sinkhole
 2032 claim has been made by the seller and paid by the insurer must
 2033 ~~shall~~ disclose to the buyer of such property that a claim has
 2034 been paid and whether or not the full amount of the proceeds
 2035 were used to repair the sinkhole damage.

2036 Section 20. Section 627.7074, Florida Statutes, is amended
 2037 to read:

2038 627.7074 Alternative procedure for resolution of disputed
 2039 sinkhole insurance claims.-

2040 ~~(1) As used in this section, the term:~~

2041 ~~(a) "Neutral evaluation" means the alternative dispute~~
 2042 ~~resolution provided for in this section.~~

2043 ~~(b) "Neutral evaluator" means a professional engineer or a~~
 2044 ~~professional geologist who has completed a course of study in~~

2045 ~~alternative dispute resolution designed or approved by the~~
 2046 ~~department for use in the neutral evaluation process, who is~~
 2047 ~~determined to be fair and impartial.~~

2048 (1) ~~(2)~~ ~~(a)~~ The department shall:

2049 (a) Certify and maintain a list of persons who are neutral
 2050 evaluators.

2051 ~~(b) The department shall~~ Prepare a consumer information
 2052 pamphlet for distribution by insurers to policyholders which
 2053 clearly describes the neutral evaluation process and includes
 2054 information ~~and forms~~ necessary for the policyholder to request
 2055 a neutral evaluation.

2056 (2) Neutral evaluation is available to either party if a
 2057 sinkhole report has been issued pursuant to s. 627.7073. At a
 2058 minimum, neutral evaluation must determine:

2059 (a) Causation;

2060 (b) All methods of stabilization and repair both above and
 2061 below ground;

2062 (c) The costs for stabilization and all repairs; and

2063 (d) Information necessary to carry out subsection (12).

2064 (3) Following the receipt of the report provided under s.
 2065 627.7073 or the denial of a claim for a sinkhole loss, the
 2066 insurer shall notify the policyholder of his or her right to
 2067 participate in the neutral evaluation program under this
 2068 section. Neutral evaluation supersedes the alternative dispute
 2069 resolution process under s. 627.7015, but does not invalidate
 2070 the appraisal clause of the insurance policy. The insurer shall
 2071 provide to the policyholder the consumer information pamphlet
 2072 prepared by the department pursuant to subsection (1)

2073 electronically or by United States mail ~~paragraph (2) (b).~~

2074 (4) Neutral evaluation is nonbinding, but mandatory if
 2075 requested by either party. A request for neutral evaluation may
 2076 be filed with the department by the policyholder or the insurer
 2077 on a form approved by the department. The request for neutral
 2078 evaluation must state the reason for the request and must
 2079 include an explanation of all the issues in dispute at the time
 2080 of the request. Filing a request for neutral evaluation tolls
 2081 the applicable time requirements for filing suit for ~~a period of~~
 2082 60 days following the conclusion of the neutral evaluation
 2083 process or the time prescribed in s. 95.11, whichever is later.

2084 (5) Neutral evaluation shall be conducted as an informal
 2085 process in which formal rules of evidence and procedure need not
 2086 be observed. A party to neutral evaluation is not required to
 2087 attend neutral evaluation if a representative of the party
 2088 attends and has the authority to make a binding decision on
 2089 behalf of the party. All parties shall participate in the
 2090 evaluation in good faith. The neutral evaluator must be allowed
 2091 reasonable access to the interior and exterior of insured
 2092 structures to be evaluated or for which a claim has been made.
 2093 Any reports initiated by the policyholder, or an agent of the
 2094 policyholder, confirming a sinkhole loss or disputing another
 2095 sinkhole report regarding insured structures must be provided to
 2096 the neutral evaluator before the evaluator's physical inspection
 2097 of the insured property.

2098 (6) The insurer shall pay the costs associated with the
 2099 neutral evaluation. However, if a party chooses to hire a court
 2100 reporter or stenographer to contemporaneously record and

2101 document the neutral evaluation, that party must bear such
 2102 costs.

2103 (7) Upon receipt of a request for neutral evaluation, the
 2104 department shall provide the parties a list of certified neutral
 2105 evaluators. ~~The parties shall mutually select a neutral~~
 2106 ~~evaluator from the list and promptly inform the department. If~~
 2107 ~~the parties cannot agree to a neutral evaluator within 10~~
 2108 ~~business days,~~ The department shall allow the parties to submit
 2109 requests to disqualify evaluators on the list for cause.

2110 (a) The department shall disqualify neutral evaluators for
 2111 cause based only on any of the following grounds:

2112 1. A familial relationship exists between the neutral
 2113 evaluator and either party or a representative of either party
 2114 within the third degree.

2115 2. The proposed neutral evaluator has, in a professional
 2116 capacity, previously represented either party or a
 2117 representative of either party, in the same or a substantially
 2118 related matter.

2119 3. The proposed neutral evaluator has, in a professional
 2120 capacity, represented another person in the same or a
 2121 substantially related matter and that person's interests are
 2122 materially adverse to the interests of the parties. The term
 2123 "substantially related matter" means participation by the
 2124 neutral evaluator on the same claim, property, or adjacent
 2125 property.

2126 4. The proposed neutral evaluator has, within the
 2127 preceding 5 years, worked as an employer or employee of any
 2128 party to the case.

2129 (b) The parties shall appoint a neutral evaluator from the
 2130 department list and promptly inform the department. If the
 2131 parties cannot agree to a neutral evaluator within 14 days, the
 2132 department shall appoint a neutral evaluator from the list of
 2133 certified neutral evaluators. The department shall allow each
 2134 party to disqualify two neutral evaluators without cause. Upon
 2135 selection or appointment, the department shall promptly refer
 2136 the request to the neutral evaluator.

2137 (c) Within 7 ~~5~~ business days after the referral, the
 2138 neutral evaluator shall notify the policyholder and the insurer
 2139 of the date, time, and place of the neutral evaluation
 2140 conference. The conference may be held by telephone, if feasible
 2141 and desirable. The neutral evaluator shall hold the ~~neutral~~
 2142 ~~evaluation~~ conference shall be held within 90 ~~45~~ days after the
 2143 receipt of the request by the department. Failure of the neutral
 2144 evaluator to hold the conference within 90 days does not
 2145 invalidate either party's right to neutral evaluation or to a
 2146 neutral evaluation conference held outside this timeframe.

2147 ~~(8) The department shall adopt rules of procedure for the~~
 2148 ~~neutral evaluation process.~~

2149 (8) ~~(9)~~ For policyholders not represented by an attorney, a
 2150 consumer affairs specialist of the department or an employee
 2151 designated as the primary contact for consumers on issues
 2152 relating to sinkholes under s. 20.121 shall be available for
 2153 consultation to the extent that he or she may lawfully do so.

2154 (9) ~~(10)~~ Evidence of an offer to settle a claim during the
 2155 neutral evaluation process, as well as any relevant conduct or
 2156 statements made in negotiations concerning the offer to settle a

2157 claim, is inadmissible to prove liability or absence of
 2158 liability for the claim or its value, except as provided in
 2159 subsection (14) ~~(13)~~.

2160 (10) ~~(11)~~ Regardless of when noticed, any court proceeding
 2161 related to the subject matter of the neutral evaluation shall be
 2162 stayed pending completion of the neutral evaluation and for 5
 2163 days after the filing of the neutral evaluator's report with the
 2164 court.

2165 (11) If, based upon his or her professional training and
 2166 credentials, a neutral evaluator is qualified to determine only
 2167 disputes relating to causation or method of repair, the
 2168 department shall allow the neutral evaluator to enlist the
 2169 assistance of another professional from the list of neutral
 2170 evaluators not previously stricken, who, based upon his or her
 2171 professional training and credentials, is able to provide an
 2172 opinion as to other disputed issues. A professional who would be
 2173 disqualified for any reason listed in subsection (7) must be
 2174 disqualified. The neutral evaluator may also use the services of
 2175 professional engineers and professional geologists who are not
 2176 certified as neutral evaluators, as well as licensed building
 2177 contractors, in order to ensure that all items in dispute are
 2178 addressed and the neutral evaluation can be completed. Any
 2179 professional engineer, professional geologist, or licensed
 2180 building contractor retained may be disqualified for any of the
 2181 reasons listed in subsection (7).

2182 (12) At ~~For matters that are not resolved by the parties~~
 2183 ~~at~~ the conclusion of the neutral evaluation, the neutral
 2184 evaluator shall prepare a report describing all matters that are

2185 the subject of the neutral evaluation, including whether,
 2186 ~~stating that~~ in his or her opinion the sinkhole loss has been
 2187 verified or eliminated within a reasonable degree of
 2188 professional probability and, if verified, whether the sinkhole
 2189 activity caused structural damage to the covered building, and
 2190 if so, the need for and estimated costs of stabilizing the land
 2191 and any covered ~~structures or~~ buildings and other appropriate
 2192 remediation or necessary building structural repairs due to the
 2193 sinkhole loss. The evaluator's report shall be sent to all
 2194 parties ~~in attendance at the neutral evaluation~~ and to the
 2195 department, within 14 days after completing the neutral
 2196 evaluation conference.

2197 (13) The recommendation of the neutral evaluator is not
 2198 binding on any party, and the parties retain access to the
 2199 court. The neutral evaluator's written recommendation is
 2200 admissible in any subsequent action or proceeding relating to
 2201 the claim or to the cause of action giving rise to the claim.

2202 (14) If the neutral evaluator ~~first~~ verifies the existence
 2203 of a sinkhole that caused structural damage and, ~~second,~~
 2204 recommends the need for and estimates costs of stabilizing the
 2205 land and any covered ~~structures or~~ buildings and other
 2206 appropriate remediation or building structural repairs, ~~which~~
 2207 ~~costs~~ exceed the amount that the insurer has offered to pay the
 2208 policyholder, the insurer is liable to the policyholder for up
 2209 to \$2,500 in attorney's fees for the attorney's participation in
 2210 the neutral evaluation process. For purposes of this subsection,
 2211 the term "offer to pay" means a written offer signed by the
 2212 insurer or its legal representative and delivered to the

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2213 | policyholder within 10 days after the insurer receives notice
 2214 | that a request for neutral evaluation has been made under this
 2215 | section.

2216 | (15) If the insurer timely agrees in writing to comply and
 2217 | timely complies with the recommendation of the neutral
 2218 | evaluator, but the policyholder declines to resolve the matter
 2219 | in accordance with the recommendation of the neutral evaluator
 2220 | pursuant to this section:

2221 | (a) The insurer is not liable for extracontractual damages
 2222 | related to a claim for a sinkhole loss but only as related to
 2223 | the issues determined by the neutral evaluation process. This
 2224 | section does not affect or impair claims for extracontractual
 2225 | damages unrelated to the issues determined by the neutral
 2226 | evaluation process contained in this section; and

2227 | (b) The insurer is not liable for attorney's fees under s.
 2228 | 627.428 or other provisions of the insurance code unless the
 2229 | policyholder obtains a judgment that is more favorable than the
 2230 | recommendation of the neutral evaluator.

2231 | (16) Neutral evaluators are deemed to be agents of the
 2232 | department and have immunity from suit as provided in s. 44.107.

2233 | (17) The department shall adopt rules of procedure for the
 2234 | neutral evaluation process.

2235 | Section 21. Subsection (8) of section 627.711, Florida
 2236 | Statutes, is amended to read:

2237 | 627.711 Notice of premium discounts for hurricane loss
 2238 | mitigation; uniform mitigation verification inspection form.—

2239 | (8) At its expense, the insurer may require that any
 2240 | uniform mitigation verification form provided by a policyholder,

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2241 policyholder's agent, ~~an~~ authorized mitigation inspector, or
 2242 inspection company be independently verified by an inspector, an
 2243 inspection company, or an independent third-party quality
 2244 assurance provider which does possess a quality assurance
 2245 program before ~~prior to~~ accepting the uniform mitigation
 2246 verification form as valid.

2247 Section 22. Subsection (3) of section 631.54, Florida
 2248 Statutes, is amended to read:

2249 631.54 Definitions.—As used in this part:

2250 (3) "Covered claim" means an unpaid claim, including one
 2251 of unearned premiums, which arises out of, and is within the
 2252 coverage, and not in excess of, the applicable limits of an
 2253 insurance policy to which this part applies, issued by an
 2254 insurer, if such insurer becomes an insolvent insurer and the
 2255 claimant or insured is a resident of this state at the time of
 2256 the insured event or the property from which the claim arises is
 2257 permanently located in this state. For entities other than
 2258 individuals, the residence of a claimant, insured, or
 2259 policyholder is the state in which the entity's principal place
 2260 of business is located at the time of the insured event. The
 2261 term does ~~"Covered claim" shall~~ not include:

2262 (a) Any amount due any reinsurer, insurer, insurance pool,
 2263 or underwriting association, sought directly or indirectly
 2264 through a third party, as subrogation, contribution,
 2265 indemnification, or otherwise; ~~or~~

2266 (b) Any claim that would otherwise be a covered claim
 2267 under this part that has been rejected by any other state
 2268 guaranty fund on the grounds that an insured's net worth is

2269 greater than that allowed under that state's guaranty law.
 2270 Member insurers shall have no right of subrogation,
 2271 contribution, indemnification, or otherwise, sought directly or
 2272 indirectly through a third party, against the insured of any
 2273 insolvent member; or

2274 (c) Any amount payable for a sinkhole loss other than
 2275 testing deemed appropriate by the association or payable for the
 2276 actual repair of the loss, except that the association may not
 2277 pay for attorney's fees or public adjuster's fees in connection
 2278 with a sinkhole loss or pay the policyholder. The association
 2279 may pay for actual repairs to the property, but is not liable
 2280 for amounts in excess of policy limits.

2281 Section 23. If any provision of this act, or the
 2282 application thereof to any person or circumstance is held
 2283 invalid, such invalidity shall not affect other provisions or
 2284 applications of this act which can be given effect without the
 2285 invalid provision or application. It is the express intent of
 2286 the Legislature to enact multiple important, but independent,
 2287 reforms to Florida law relating to sinkhole insurance coverage
 2288 and related claims. The Legislature further intends that the
 2289 multiple reforms in the act could and should be enforced if one
 2290 or more provisions are held invalid. To this end, the provisions
 2291 of this act are declared to be severable.

2292 Section 24. Except as otherwise expressly provided in this
 2293 act, this act shall take effect upon becoming a law.