

1 A bill to be entitled
2 An act relating to property and casualty insurance;
3 amending s. 95.11, F.S.; providing a statute of
4 limitations for breach of a property insurance contract;
5 specifying the time for commencement of a statute of
6 limitations for breach of a property insurance contract;
7 amending s. 215.555, F.S.; providing that specified losses
8 are excluded from the definition of the term "losses" as
9 used in certain provisions relating to the Florida
10 Hurricane Catastrophe Fund; providing for application of
11 the revisions made by this act to the term "losses";
12 amending s. 215.5595, F.S.; authorizing an insurer to
13 renegotiate the terms of a surplus note issued before a
14 certain date; amending s. 624.407, F.S.; revising the
15 amount of surplus funds required for domestic insurers
16 applying for a certificate of authority after a certain
17 date; amending s. 624.408, F.S.; revising the minimum
18 surplus that must be maintained by certain insurers;
19 authorizing the Office of Insurance Regulation to reduce
20 specified surplus requirements under specified
21 circumstances; amending s. 626.852, F.S.; providing an
22 exemption from licensure as an adjuster to certain persons
23 who provide mortgage-related claims adjusting services to
24 certain institutions; providing an exception to the
25 exemption; amending s. 626.854, F.S.; providing
26 limitations on the amount of compensation that may be
27 received by a public adjuster for a reopened or
28 supplemental claim; providing limitations on the amount of

29 compensation that may be received by a public adjuster for
30 a claim; applying specified provisions regulating the
31 conduct of public adjusters to condominium unit owners
32 rather than to condominium associations as is currently
33 required; providing statements that may be considered
34 deceptive or misleading if made in any public adjuster's
35 advertisement or solicitation; providing a definition for
36 the term "written advertisement"; requiring that a
37 disclaimer be included in any public adjuster's written
38 advertisement; providing requirements for such disclaimer;
39 requiring certain persons who act on behalf of an insurer
40 to provide notice to the insurer, claimant, public
41 adjuster, or legal representative for an onsite inspection
42 of the insured property; authorizing the insured or
43 claimant to deny access to the property if notice is not
44 provided; requiring the public adjuster to ensure prompt
45 notice of certain property loss claims; providing that an
46 insurer be allowed to interview the insured directly about
47 the loss claim; prohibiting the insurer from excluding the
48 public adjuster from the insurer's meetings with the
49 insured; requiring that the insurer communicate with the
50 public adjuster in an effort to reach an agreement as to
51 the scope of the covered loss under the insurance policy;
52 prohibiting a public adjuster from restricting or
53 preventing persons acting on behalf of the insurer from
54 having reasonable access to the insured or the insured's
55 property; prohibiting a public adjuster from unreasonably
56 obstructing or preventing the insurer's adjuster from

57 | timely conducting an inspection of the insured's property;
58 | authorizing the insured's adjuster to be present for the
59 | inspection; providing an exception to such authorization
60 | under certain circumstances; prohibiting a licensed
61 | contractor or subcontractor from adjusting a claim on
62 | behalf of an insured if such contractor or subcontractor
63 | is not a licensed public adjuster; providing an exception;
64 | creating s. 626.70132, F.S.; requiring that notice of a
65 | claim, supplemental claim, or reopened claim be given to
66 | the insurer within a specified period after the date of
67 | loss; providing a definition for the terms "supplemental
68 | claim" or "reopened claim"; providing applicability;
69 | amending s. 627.062, F.S.; extending the expiration date
70 | for making a "file and use" filing; deleting an obsolete
71 | provision; prohibiting the Office of Insurance Regulation
72 | from, directly or indirectly, impeding the right of an
73 | insurer to acquire policyholders, advertise or appoint
74 | agents, or regulate agent commissions for property and
75 | casualty insurance; revising the costs that may be
76 | included in a rate filing; revising the overall premium
77 | increase for a rate filing; revising the information that
78 | must be included in a rate filing relating to reinsurance;
79 | deleting a provision prohibiting an insurer from
80 | implementing a rate increase within 6 months before it
81 | makes certain rate filings; deleting a provision
82 | prohibiting an insurer from filing for a rate increase
83 | within 6 months after it makes certain rate filings;
84 | deleting obsolete provisions relating to legislation

85 enacted during the 2003 Special Session D of the
86 Legislature; revising provisions relating to the
87 certifications that are required to be made under oath by
88 certain officers or actuaries of an insurer regarding
89 information that must accompany a rate filing; amending s.
90 627.06281, F.S.; providing limitations relating to the
91 fees charged for use of the public hurricane model;
92 providing an exception to the fees; amending s. 627.0629,
93 F.S.; revising legislative intent; deleting obsolete
94 provisions; deleting a requirement that the Office of
95 Insurance Regulation propose a method for establishing
96 discounts, debits, credits, and other rate differentials
97 for hurricane mitigation by a certain date; conforming
98 provisions to changes made by the act; amending s.
99 627.4133, F.S.; reducing the amount of time that a prior
100 notice must provide to specified policyholders before a
101 nonrenewal, cancellation, or termination becomes
102 effective; authorizing an insurer to cancel policies after
103 45 days' notice if the Office of Insurance Regulation
104 determines that the cancellation of policies is necessary
105 to protect the interests of the public or policyholders;
106 creating s. 627.43141, F.S.; providing definitions;
107 requiring the delivery of a "Notice of Change in Policy
108 Terms" under certain circumstances; specifying
109 requirements for such notice; specifying actions
110 constituting proof of notice; authorizing policy renewals
111 to contain a change in policy terms; providing that
112 receipt of payment by an insurer is deemed acceptance of

113 new policy terms by an insured; providing that the
114 original policy remains in effect until the occurrence of
115 specified events if an insurer fails to provide notice;
116 providing intent; amending s. 627.7011, F.S.; revising
117 provisions relating to an insurer's payment of replacement
118 costs without reservation or holdback of any depreciation
119 in value if a loss occurs; amending s. 627.70131, F.S.;
120 specifying application of certain time periods to initial,
121 reopened, or supplemental property insurance claim notices
122 and payments; providing legislative findings with respect
123 to 2005 statutory changes relating to sinkhole insurance
124 coverage and statutory changes in this act; providing
125 legislative intent relating to sinkholes; amending s.
126 627.706, F.S.; authorizing an insurer to require an
127 inspection of property before issuing sinkhole coverage;
128 authorizing an insurer to limit coverage for catastrophic
129 ground cover collapse and sinkhole loss to the principal
130 building; revising definitions relating to sinkhole
131 coverage; providing definitions relating to sinkhole
132 coverage for the terms "neutral evaluation," "neutral
133 evaluator," and "structural damage"; revising
134 applicability of nonrenewals for sinkhole coverage;
135 placing a 4-year statute of repose on claims for sinkhole
136 coverage; repealing s. 627.7065, F.S., relating to the
137 establishment of a sinkhole database; amending s. 627.707,
138 F.S.; revising provisions relating to the investigation of
139 sinkholes by insurers; providing a time limitation for
140 demanding sinkhole testing by a policyholder and entering

141 into a contract for repairs; requiring payment for
142 analyses and services; allowing for reimbursement of
143 payment for analyses and services; requiring all repairs
144 to be completed within a certain time; providing
145 exceptions; prohibiting rebates to policyholders from
146 persons performing repairs; voiding coverage if a rebate
147 is received; requiring policyholders to refund rebates
148 from persons performing repairs to insurers; providing
149 criminal penalties applicable to persons performing
150 repairs who offer or policyholders who accept rebates;
151 limiting a policyholder's liability for reimbursement of
152 the costs related to certain analyses and services under
153 certain circumstances; amending s. 627.7073, F.S.;
154 revising provisions relating to sinkhole inspection
155 reports; requiring an insurer to file a neutral
156 evaluator's report and other specific information;
157 requiring the policyholder to file certain reports as a
158 precondition to accepting payment; requiring certain
159 filing and recording costs to be borne by a policyholder;
160 specifying that a policyholder's recording of a report
161 does not legally affect title or create certain causes of
162 action relating to real property; amending s. 627.7074,
163 F.S.; revising provisions relating to neutral evaluation
164 of sinkhole insurance claims; requiring evaluation in
165 order to make certain determinations; requiring that the
166 neutral evaluator be allowed access to structures being
167 evaluated; providing grounds for disqualifying an
168 evaluator; allowing the Department of Financial Services

169 to appoint an evaluator if the parties cannot come to
 170 agreement; revising the timeframes for scheduling a
 171 neutral evaluation conference; authorizing an evaluator to
 172 enlist another evaluator or other professionals; providing
 173 a time certain for issuing a report; revising provisions
 174 relating to compliance with the evaluator's
 175 recommendations; providing that the evaluator is an agent
 176 of the department for the purposes of immunity from suit;
 177 requiring the department to adopt rules; amending s.
 178 627.711, F.S.; allowing an insurer to independently verify
 179 mitigation forms from additional sources; amending s.
 180 631.54, F.S.; revising the definition of the term "covered
 181 claim" for purposes of the Florida Insurance Guaranty
 182 Association Act; providing severability; providing
 183 effective dates.

184
 185 Be It Enacted by the Legislature of the State of Florida:

186
 187 Section 1. Subsection (11) is added to section 95.11,
 188 Florida Statutes, to read:

189 95.11 Limitations other than for the recovery of real
 190 property.—Actions other than for recovery of real property shall
 191 be commenced as follows:

192 (11) WITHIN SIX YEARS.—Notwithstanding paragraph (2) (b),
 193 an action for breach of a property insurance contract, with the
 194 period running from the date of loss.

195 Section 2. Paragraph (d) of subsection (2) of section
 196 215.555, Florida Statutes, is amended to read:

197 215.555 Florida Hurricane Catastrophe Fund.—
 198 (2) DEFINITIONS.—As used in this section:
 199 (d) "Losses" means direct incurred losses under covered
 200 policies, including ~~which shall include losses for~~ additional
 201 living expenses not to exceed 40 percent of the insured value of
 202 a residential structure or its contents ~~and shall exclude loss~~
 203 ~~adjustment expenses.~~ The term "Losses" does not include:
 204 1. Losses for fair rental value, loss of rent or rental
 205 income, or business interruption losses;—
 206 2. Losses under liability coverages;
 207 3. Property losses that are proximately caused by any
 208 peril other than a covered event, including, but not limited to,
 209 fire, theft, flood or rising water, or a windstorm that does not
 210 constitute a covered event;
 211 4. Amounts paid as the result of a voluntary expansion of
 212 coverage by the insurer, including, but not limited to, a waiver
 213 of an applicable deductible;
 214 5. Amounts paid to reimburse a policyholder for
 215 condominium association or homeowners' association loss
 216 assessments or under similar coverages for contractual
 217 liabilities;
 218 6. Amounts paid as bad faith awards, punitive damage
 219 awards, or other court-imposed fines, sanctions, or penalties;
 220 7. Amounts in excess of the coverage limits under the
 221 covered policy; or
 222 8. Allocated or unallocated loss adjustment expenses.
 223 Section 3. The amendments made by this act to s. 215.555,
 224 Florida Statutes, apply first to the Florida Hurricane

225 Catastrophe Fund reimbursement contract that takes effect on
 226 June 1, 2011.

227 Section 4. Subsection (12) is added to section 215.5595,
 228 Florida Statutes, to read:

229 215.5595 Insurance Capital Build-Up Incentive Program.—

230 (12) The insurer may request that the board renegotiate
 231 the terms of any surplus note that was issued under this section
 232 before January 1, 2011. The request must be submitted to the
 233 board by January 1, 2012. If the insurer agrees to accelerate
 234 the payment period of the note by at least 5 years, the board
 235 must agree to exempt the insurer from the premium-to-surplus
 236 ratios required under paragraph (2) (d). If the insurer agrees to
 237 an acceleration of the payment period for less than 5 years, the
 238 board may, after consultation with the Office of Insurance
 239 Regulation, agree to an appropriate revision of the premium-to-
 240 surplus ratios required under paragraph (2) (d) for the remaining
 241 term of the note if the revised ratios are not lower than a
 242 minimum writing ratio of net premium to surplus of at least 1 to
 243 1 and, alternatively, a minimum writing ratio of gross premium
 244 to surplus of at least 3 to 1.

245 Section 5. Section 624.407, Florida Statutes, is amended
 246 to read:

247 624.407 Surplus ~~Capital funds~~ required; new insurers.—

248 (1) To receive authority to transact any one kind or
 249 combinations of kinds of insurance, as defined in part V of this
 250 chapter, an insurer applying for its original certificate of
 251 authority in this state after November 10, 1993, ~~the effective~~
 252 ~~date of this section~~ shall possess surplus as to policyholders

253 | at least ~~not less than~~ the greater of:

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

256 | (b) For life insurers, 4 percent of the insurer's total
257 | liabilities;

258 | (c) For life and health insurers, 4 percent of the
259 | insurer's total liabilities, plus 6 percent of the insurer's
260 | liabilities relative to health insurance; ~~or~~

261 | (d) For all insurers other than life insurers and life and
262 | health insurers, 10 percent of the insurer's total liabilities;
263 | or

264 | (e) Notwithstanding paragraph (a) or paragraph (d), for a
265 | domestic insurer that transacts residential property insurance
266 | and is:

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

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

273 | (2) Notwithstanding subsection (1), a new insurer may not
274 | be required, but no insurer shall be required under this
275 | subsection to have surplus as to policyholders greater than \$100
276 | million.

277 | (3)~~(2)~~ The requirements of this section shall be based
278 | upon all the kinds of insurance actually transacted or to be
279 | transacted by the insurer in any and all areas in which it
280 | operates, whether or not only a portion of such kinds of

281 insurance are ~~to be~~ transacted in this state.

282 ~~(4)(3)~~ As to surplus as to policyholders required for
 283 qualification to transact one or more kinds of insurance,
 284 domestic mutual insurers are governed by chapter 628, and
 285 domestic reciprocal insurers are governed by chapter 629.

286 ~~(5)(4)~~ For the purposes of this section, liabilities do
 287 ~~shall~~ not include liabilities required under s. 625.041(4). For
 288 purposes of computing minimum surplus as to policyholders
 289 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities
 290 required under s. 625.041(4).

291 ~~(6)(5)~~ The provisions of this section, as amended by
 292 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to
 293 insurers applying for a certificate of authority on or after
 294 October 1, 1989 ~~the effective date of this act~~.

295 Section 6. Section 624.408, Florida Statutes, is amended
 296 to read:

297 624.408 Surplus ~~as to policyholders~~ required; current new
 298 ~~and existing~~ insurers.-

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

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

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

308 ~~(c)3.~~ For life and health insurers, 4 percent of the

309 insurer's total liabilities plus 6 percent of the insurer's
 310 liabilities relative to health insurance.~~;~~ ~~or~~

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

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

317 (f)(b) For residential any property insurers not and
 318 easualty insurer holding a certificate of authority before July
 319 1, 2011 ~~on December 1, 1993,~~ \$15 million. ~~the~~

320 (g) For residential property insurers holding a
 321 certificate of authority before July 1, 2011, and until June 30,
 322 2016, \$5 million; on or after July 1, 2016, and until June 30,
 323 2021, \$10 million; on or after July 1, 2021, \$15 million.

324
 325 The office may reduce the surplus requirement in paragraphs (f)
 326 and (g) if the insurer is not writing new business, has premiums
 327 in force of less than \$1 million per year in residential
 328 property insurance, or is a mutual insurance company. following
 329 amounts apply instead of the \$4 million required by subparagraph
 330 (a)5.:

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

333 ~~2. On December 31, 2002, and until December 30, 2003,~~
 334 ~~\$3.25 million.~~

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

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

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

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

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

348 Section 7. Subsection (7) is added to section 626.852,
 349 Florida Statutes, to read:

350 626.852 Scope of this part.—

351 (7) Notwithstanding any other provision of law, a person
 352 providing claims adjusting services solely to institutions
 353 servicing or guaranteeing mortgages shall be exempt from
 354 licensure as an adjuster for services provided to the mortgage
 355 institution with regards to policies covering the mortgaged
 356 properties. This exemption does not apply to any person
 357 providing insurance or property repair or preservation services
 358 or to any affiliate of such persons.

359 Section 8. Effective June 1, 2011, section 626.854,
 360 Florida Statutes, is amended to read:

361 626.854 "Public adjuster" defined; prohibitions.—The
 362 Legislature finds that it is necessary for the protection of the
 363 public to regulate public insurance adjusters and to prevent the
 364 unauthorized practice of law.

365 (1) A "public adjuster" is any person, except a duly
 366 licensed attorney at law as hereinafter in s. 626.860 provided,
 367 who, for money, commission, or any other thing of value,
 368 prepares, completes, or files an insurance claim form for an
 369 insured or third-party claimant or who, for money, commission,
 370 or any other thing of value, acts or aids in any manner on
 371 behalf of an insured or third-party claimant in negotiating for
 372 or effecting the settlement of a claim or claims for loss or
 373 damage covered by an insurance contract or who advertises for
 374 employment as an adjuster of such claims, and also includes any
 375 person who, for money, commission, or any other thing of value,
 376 solicits, investigates, or adjusts such claims on behalf of any
 377 such public adjuster.

378 (2) This definition does not apply to:

379 (a) A licensed health care provider or employee thereof
 380 who prepares or files a health insurance claim form on behalf of
 381 a patient.

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

384 (3) A public adjuster may not give legal advice. A public
 385 adjuster may not act on behalf of or aid any person in
 386 negotiating or settling a claim relating to bodily injury,
 387 death, or noneconomic damages.

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

391 (5) A public adjuster may not directly or indirectly
 392 through any other person or entity solicit an insured or

CS/CS/HB 803

2011

393 claimant by any means except on Monday through Saturday of each
394 week and only between the hours of 8 a.m. and 8 p.m. on those
395 days.

396 (6) A public adjuster may not directly or indirectly
397 through any other person or entity initiate contact or engage in
398 face-to-face or telephonic solicitation or enter into a contract
399 with any insured or claimant under an insurance policy until at
400 least 48 hours after the occurrence of an event that may be the
401 subject of a claim under the insurance policy unless contact is
402 initiated by the insured or claimant.

403 (7) An insured or claimant may cancel a public adjuster's
404 contract to adjust a claim without penalty or obligation within
405 3 business days after the date on which the contract is executed
406 or within 3 business days after the date on which the insured or
407 claimant has notified the insurer of the claim, by phone or in
408 writing, whichever is later. The public adjuster's contract
409 shall disclose to the insured or claimant his or her right to
410 cancel the contract and advise the insured or claimant that
411 notice of cancellation must be submitted in writing and sent by
412 certified mail, return receipt requested, or other form of
413 mailing which provides proof thereof, to the public adjuster at
414 the address specified in the contract; provided, during any
415 state of emergency as declared by the Governor and for a period
416 of 1 year after the date of loss, the insured or claimant shall
417 have 5 business days after the date on which the contract is
418 executed to cancel a public adjuster's contract.

419 (8) It is an unfair and deceptive insurance trade practice
420 pursuant to s. 626.9541 for a public adjuster or any other

CS/CS/HB 803

2011

421 person to circulate or disseminate any advertisement,
422 announcement, or statement containing any assertion,
423 representation, or statement with respect to the business of
424 insurance which is untrue, deceptive, or misleading.

425 (9) A public adjuster, a public adjuster apprentice, or
426 any person or entity acting on behalf of a public adjuster or
427 public adjuster apprentice may not give or offer to give a
428 monetary loan or advance to a client or prospective client.

429 (10) A public adjuster, public adjuster apprentice, or any
430 individual or entity acting on behalf of a public adjuster or
431 public adjuster apprentice may not give or offer to give,
432 directly or indirectly, any article of merchandise having a
433 value in excess of \$25 to any individual for the purpose of
434 advertising or as an inducement to entering into a contract with
435 a public adjuster.

436 (11) (a) If a public adjuster enters into a contract with
437 an insured or claimant to reopen a claim or ~~to~~ file a
438 supplemental claim that seeks additional payments for a claim
439 that has been previously paid in part or in full or settled by
440 the insurer, the public adjuster may not charge, agree to, or
441 accept any compensation, payment, commission, fee, or other
442 thing of value based on a previous settlement or previous claim
443 payments by the insurer for the same cause of loss. The charge,
444 compensation, payment, commission, fee, or other thing of value
445 may be based only on the claim payments or settlement obtained
446 through the work of the public adjuster after entering into the
447 contract with the insured or claimant. Compensation for the
448 reopened or supplemental claim may not exceed 20 percent of the

449 reopened or supplemental claim payment. The contracts described
 450 in this paragraph are not subject to the limitations in
 451 paragraph (b).

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

455 1. Ten percent of the amount of insurance claim payments
 456 made by the insurer for claims based on events that are the
 457 subject of a declaration of a state of emergency by the
 458 Governor. This provision applies to claims made during the
 459 period of 1 year after the declaration of emergency. After that
 460 1-year period, 20 percent of the amount of insurance claim
 461 payments made by the insurer.

462 2. Twenty percent of the amount of ~~all other~~ insurance
 463 claim payments made by the insurer for claims that are not based
 464 on events that are the subject of a declaration of a state of
 465 emergency by the Governor.

466 (12) Each public adjuster shall provide to the claimant or
 467 insured a written estimate of the loss to assist in the
 468 submission of a proof of loss or any other claim for payment of
 469 insurance proceeds. The public adjuster shall retain such
 470 written estimate for at least 5 years and shall make such
 471 estimate available to the claimant or insured and the department
 472 upon request.

473 (13) A public adjuster, public adjuster apprentice, or any
 474 person acting on behalf of a public adjuster or apprentice may
 475 not accept referrals of business from any person with whom the
 476 public adjuster conducts business if there is any form or manner

477 of agreement to compensate the person, whether directly or
 478 indirectly, for referring business to the public adjuster. A
 479 public adjuster may not compensate any person, except for
 480 another public adjuster, whether directly or indirectly, for the
 481 principal purpose of referring business to the public adjuster.

482
 483 The provisions of subsections (5)-(13) apply only to residential
 484 property insurance policies and condominium unit owner
 485 ~~association~~ policies as defined in s. 718.111(11).

486 Section 9. Effective January 1, 2012, section 626.854,
 487 Florida Statutes, as amended by this act, is amended to read:

488 626.854 "Public adjuster" defined; prohibitions.—The
 489 Legislature finds that it is necessary for the protection of the
 490 public to regulate public insurance adjusters and to prevent the
 491 unauthorized practice of law.

492 (1) A "public adjuster" is any person, except a duly
 493 licensed attorney at law as exempted under ~~hereinafter in~~ s.
 494 626.860 ~~provided~~, who, for money, commission, or any other thing
 495 of value, prepares, completes, or files an insurance claim form
 496 for an insured or third-party claimant or who, for money,
 497 commission, or any other thing of value, acts ~~or aids in any~~
 498 ~~manner~~ on behalf of, or aids an insured or third-party claimant
 499 in negotiating for or effecting the settlement of a claim or
 500 claims for loss or damage covered by an insurance contract or
 501 who advertises for employment as an adjuster of such claims. The
 502 term, ~~and~~ also includes any person who, for money, commission,
 503 or any other thing of value, solicits, investigates, or adjusts
 504 such claims on behalf of a ~~any such~~ public adjuster.

505 (2) This definition does not apply to:

506 (a) A licensed health care provider or employee thereof
507 who prepares or files a health insurance claim form on behalf of
508 a patient.

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

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

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

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

523 (6) A public adjuster may not directly or indirectly
524 through any other person or entity initiate contact or engage in
525 face-to-face or telephonic solicitation or enter into a contract
526 with any insured or claimant under an insurance policy until at
527 least 48 hours after the occurrence of an event that may be the
528 subject of a claim under the insurance policy unless contact is
529 initiated by the insured or claimant.

530 (7) An insured or claimant may cancel a public adjuster's
531 contract to adjust a claim without penalty or obligation within
532 3 business days after the date on which the contract is executed

CS/CS/HB 803

2011

533 or within 3 business days after the date on which the insured or
534 claimant has notified the insurer of the claim, by phone or in
535 writing, whichever is later. The public adjuster's contract must
536 ~~shall~~ disclose to the insured or claimant his or her right to
537 cancel the contract and advise the insured or claimant that
538 notice of cancellation must be submitted in writing and sent by
539 certified mail, return receipt requested, or other form of
540 mailing that ~~which~~ provides proof thereof, to the public
541 adjuster at the address specified in the contract; provided,
542 during any state of emergency as declared by the Governor and
543 for ~~a period of~~ 1 year after the date of loss, the insured or
544 claimant has ~~shall have~~ 5 business days after the date on which
545 the contract is executed to cancel a public adjuster's contract.

546 (8) It is an unfair and deceptive insurance trade practice
547 pursuant to s. 626.9541 for a public adjuster or any other
548 person to circulate or disseminate any advertisement,
549 announcement, or statement containing any assertion,
550 representation, or statement with respect to the business of
551 insurance which is untrue, deceptive, or misleading.

552 (a) The following statements, made in any public
553 adjuster's advertisement or solicitation, are considered
554 deceptive or misleading:

555 1. A statement or representation that invites an insured
556 policyholder to submit a claim when the policyholder does not
557 have covered damage to insured property.

558 2. A statement or representation that invites an insured
559 policyholder to submit a claim by offering monetary or other
560 valuable inducement.

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

564 4. A statement or representation, or use of a logo or
565 shield, that implies or could mistakenly be construed to imply
566 that the solicitation was issued or distributed by a
567 governmental agency or is sanctioned or endorsed by a
568 governmental agency.

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

576
577 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
578 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
579 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
580 MAY DISREGARD THIS ADVERTISEMENT."

581
582 (9) A public adjuster, a public adjuster apprentice, or
583 any person or entity acting on behalf of a public adjuster or
584 public adjuster apprentice may not give or offer to give a
585 monetary loan or advance to a client or prospective client.

586 (10) A public adjuster, public adjuster apprentice, or any
587 individual or entity acting on behalf of a public adjuster or
588 public adjuster apprentice may not give or offer to give,

589 directly or indirectly, any article of merchandise having a
590 value in excess of \$25 to any individual for the purpose of
591 advertising or as an inducement to entering into a contract with
592 a public adjuster.

593 (11) (a) If a public adjuster enters into a contract with
594 an insured or claimant to reopen a claim or file a supplemental
595 claim that seeks additional payments for a claim that has been
596 previously paid in part or in full or settled by the insurer,
597 the public adjuster may not charge, agree to, or accept any
598 compensation, payment, commission, fee, or other thing of value
599 based on a previous settlement or previous claim payments by the
600 insurer for the same cause of loss. The charge, compensation,
601 payment, commission, fee, or other thing of value may be based
602 only on the claim payments or settlement obtained through the
603 work of the public adjuster after entering into the contract
604 with the insured or claimant. Compensation for the reopened or
605 supplemental claim may not exceed 20 percent of the reopened or
606 supplemental claim payment. The contracts described in this
607 paragraph are not subject to the limitations in paragraph (b).

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

611 1. Ten percent of the amount of insurance claim payments
612 made by the insurer for claims based on events that are the
613 subject of a declaration of a state of emergency by the
614 Governor. This provision applies to claims made during the
615 period of 1 year after the declaration of emergency. After that
616 1-year period, 20 percent of the amount of insurance claim

617 payments made by the insurer.

618 2. Twenty percent of the amount of insurance claim
 619 payments made by the insurer for claims that are not based on
 620 events that are the subject of a declaration of a state of
 621 emergency by the Governor.

622 (12) Each public adjuster must ~~shall~~ provide to the
 623 claimant or insured a written estimate of the loss to assist in
 624 the submission of a proof of loss or any other claim for payment
 625 of insurance proceeds. The public adjuster shall retain such
 626 written estimate for at least 5 years and shall make the ~~such~~
 627 estimate available to the claimant or insured and the department
 628 upon request.

629 (13) A public adjuster, public adjuster apprentice, or any
 630 person acting on behalf of a public adjuster or apprentice may
 631 not accept referrals of business from any person with whom the
 632 public adjuster conducts business if there is any form or manner
 633 of agreement to compensate the person, ~~whether~~ directly or
 634 indirectly, for referring business to the public adjuster. A
 635 public adjuster may not compensate any person, except for
 636 another public adjuster, ~~whether~~ directly or indirectly, for the
 637 principal purpose of referring business to the public adjuster.

638 (14) A company employee adjuster, independent adjuster,
 639 attorney, investigator, or other persons acting on behalf of an
 640 insurer that needs access to an insured or claimant or to the
 641 insured property that is the subject of a claim must provide at
 642 least 48 hours' notice to the insured or claimant, public
 643 adjuster, or legal representative before scheduling a meeting
 644 with the claimant or an onsite inspection of the insured

645 property. The insured or claimant may deny access to the
646 property if the notice has not been provided. The insured or
647 claimant may waive the 48-hour notice.

648 (15) A public adjuster must ensure prompt notice of
649 property loss claims submitted to an insurer by or through a
650 public adjuster or on which a public adjuster represents the
651 insured at the time the claim or notice of loss is submitted to
652 the insurer. The public adjuster must ensure that notice is
653 given to the insurer, the public adjuster's contract is provided
654 to the insurer, the property is available for inspection of the
655 loss or damage by the insurer, and the insurer is given an
656 opportunity to interview the insured directly about the loss and
657 claim. The insurer must be allowed to obtain necessary
658 information to investigate and respond to the claim.

659 (a) The insurer may not exclude the public adjuster from
660 its in-person meetings with the insured. The insurer shall meet
661 or communicate with the public adjuster in an effort to reach
662 agreement as to the scope of the covered loss under the
663 insurance policy. This section does not impair the terms and
664 conditions of the insurance policy in effect at the time the
665 claim is filed.

666 (b) A public adjuster may not restrict or prevent an
667 insurer, company employee adjuster, independent adjuster,
668 attorney, investigator, or other person acting on behalf of the
669 insurer from having reasonable access at reasonable times to an
670 insured or claimant or to the insured property that is the
671 subject of a claim.

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

CS/CS/HB 803

2011

673 act in any manner that obstructs or prevents an insurer or
674 insurer's adjuster from timely conducting an inspection of any
675 part of the insured property for which there is a claim for loss
676 or damage. The public adjuster representing the insured may be
677 present for the insurer's inspection, but if the unavailability
678 of the public adjuster otherwise delays the insurer's timely
679 inspection of the property, the public adjuster or the insured
680 must allow the insurer to have access to the property without
681 the participation or presence of the public adjuster or insured
682 in order to facilitate the insurer's prompt inspection of the
683 loss or damage.

684 (16) A licensed contractor under part I of chapter 489, or
685 a subcontractor, may not adjust a claim on behalf of an insured
686 unless licensed and compliant as a public adjuster under this
687 chapter. However, the contractor may discuss or explain a bid
688 for construction or repair of covered property with the
689 residential property owner who has suffered loss or damage
690 covered by a property insurance policy, or the insurer of such
691 property, if the contractor is doing so for the usual and
692 customary fees applicable to the work to be performed as stated
693 in the contract between the contractor and the insured.

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

697 Section 10. Effective June 1, 2011, section 626.70132,
698 Florida Statutes, is created to read:

699 626.70132 Notice of property insurance claim.—Except as
700 provided in s. 627.706(5), a claim, supplemental claim, or

701 reopened claim under an insurance policy that provides property
 702 insurance, as defined in s. 624.604, is barred unless notice of
 703 the claim, supplemental claim, or reopened claim was given to
 704 the insurer in accordance with the terms of the policy within 4
 705 years after the date of loss that caused the covered damage. For
 706 purposes of this section, the term "supplemental claim" or
 707 "reopened claim" means any additional claim for recovery from
 708 the insurer for losses from the same peril which the insurer has
 709 previously adjusted pursuant to the initial claim. This section
 710 does not affect any applicable limitation on civil actions
 711 provided in s. 95.11 for claims, supplemental claims, or
 712 reopened claims timely filed under this section.

713 Section 11. Section 627.062, Florida Statutes, is amended
 714 to read:

715 627.062 Rate standards.—

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

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

720 (a) Insurers or rating organizations shall establish and
 721 use rates, rating schedules, or rating manuals that ~~to~~ allow the
 722 insurer a reasonable rate of return on the ~~such~~ classes of
 723 insurance written in this state. A copy of rates, rating
 724 schedules, rating manuals, premium credits or discount
 725 schedules, and surcharge schedules, and changes thereto, must
 726 ~~shall~~ be filed with the office under one of the following
 727 procedures ~~except as provided in subparagraph 3.:~~

728 1. If the filing is made at least 90 days before the

CS/CS/HB 803

2011

729 proposed effective date and ~~the filing~~ is not implemented during
730 the office's review of the filing and any proceeding and
731 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file
732 and use" filing. In such case, the office shall finalize its
733 review by issuance of a notice of intent to approve or a notice
734 of intent to disapprove within 90 days after receipt of the
735 filing. The notice of intent to approve and the notice of intent
736 to disapprove constitute agency action for purposes of the
737 Administrative Procedure Act. Requests for supporting
738 information, requests for mathematical or mechanical
739 corrections, or notification to the insurer by the office of its
740 preliminary findings does ~~shall~~ not toll the 90-day period
741 during any such proceedings and subsequent judicial review. The
742 rate shall be deemed approved if the office does not issue a
743 notice of intent to approve or a notice of intent to disapprove
744 within 90 days after receipt of the filing.

745 2. If the filing is not made in accordance with ~~the~~
746 ~~provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as
747 soon as practicable, but within ~~no later than~~ 30 days after the
748 effective date, and is ~~shall be~~ considered a "use and file"
749 filing. An insurer making a "use and file" filing is potentially
750 subject to an order by the office to return to policyholders
751 those portions of rates found to be excessive, as provided in
752 paragraph (h).

753 3. For all property insurance filings made or submitted
754 after January 25, 2007, but before May 1, 2012 ~~December 31,~~
755 ~~2010~~, an insurer seeking a rate that is greater than the rate
756 most recently approved by the office shall make a "file and use"

CS/CS/HB 803

2011

757 filing. For purposes of this subparagraph, motor vehicle
758 collision and comprehensive coverages are not considered to be
759 property coverages.

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

765 1. Past and prospective loss experience within and without
766 this state.

767 2. Past and prospective expenses.

768 3. The degree of competition among insurers for the risk
769 insured.

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

785 5. The reasonableness of the judgment reflected in the
786 filing.

787 6. Dividends, savings, or unabsorbed premium deposits
788 allowed or returned to Florida policyholders, members, or
789 subscribers.

790 7. The adequacy of loss reserves.

791 8. The cost of reinsurance. The office may ~~shall~~ not
792 disapprove a rate as excessive solely due to the insurer having
793 obtained catastrophic reinsurance to cover the insurer's
794 estimated 250-year probable maximum loss or any lower level of
795 loss.

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

798 10. Conflagration and catastrophe hazards, if applicable.

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

803 12. A reasonable margin for underwriting profit and
804 contingencies.

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

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

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

813 (d) If conflagration or catastrophe hazards are considered
814 ~~given consideration~~ by an insurer in its rates or rating plan,
815 including surcharges and discounts, the insurer shall establish
816 a reserve for that portion of the premium allocated to such
817 hazard and ~~shall~~ maintain the premium in a catastrophe reserve.
818 ~~Any~~ Removal of such premiums from the reserve for purposes other
819 than paying claims associated with a catastrophe or purchasing
820 reinsurance for catastrophes must be approved by ~~shall be~~
821 ~~subject to approval of~~ the office. Any ceding commission
822 received by an insurer purchasing reinsurance for catastrophes
823 must ~~shall~~ be placed in the catastrophe reserve.

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

828 1. Rates shall be deemed excessive if they are likely to
829 produce a profit from Florida business which ~~that~~ is
830 unreasonably high in relation to the risk involved in the class
831 of business or if expenses are unreasonably high in relation to
832 services rendered.

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

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

841 4. A rating plan, including discounts, credits, or
842 surcharges, shall be deemed unfairly discriminatory if it fails
843 to clearly and equitably reflect consideration of the
844 policyholder's participation in a risk management program
845 adopted pursuant to s. 627.0625.

846 5. A rate shall be deemed inadequate as to the premium
847 charged to a risk or group of risks if discounts or credits are
848 allowed which exceed a reasonable reflection of expense savings
849 and reasonably expected loss experience from the risk or group
850 of risks.

851 6. A rate shall be deemed unfairly discriminatory as to a
852 risk or group of risks if the application of premium discounts,
853 credits, or surcharges among such risks does not bear a
854 reasonable relationship to the expected loss and expense
855 experience among the various risks.

856 (f) In reviewing a rate filing, the office may require the
857 insurer to provide, at the insurer's expense, all information
858 necessary to evaluate the condition of the company and the
859 reasonableness of the filing according to the criteria
860 enumerated in this section.

861 (g) The office may at any time review a rate, rating
862 schedule, rating manual, or rate change; the pertinent records
863 of the insurer; and market conditions. If the office finds on a
864 preliminary basis that a rate may be excessive, inadequate, or
865 unfairly discriminatory, the office shall initiate proceedings
866 to disapprove the rate and shall so notify the insurer. However,
867 the office may not disapprove as excessive any rate for which it
868 has given final approval or which has been deemed approved for a

CS/CS/HB 803

2011

869 ~~period of~~ 1 year after the effective date of the filing unless
870 the office finds that a material misrepresentation or material
871 error was made by the insurer or was contained in the filing.
872 Upon being ~~so~~ notified, the insurer or rating organization
873 shall, within 60 days, file with the office all information that
874 ~~which~~, in the belief of the insurer or organization, proves the
875 reasonableness, adequacy, and fairness of the rate or rate
876 change. The office shall issue a notice of intent to approve or
877 a notice of intent to disapprove pursuant to ~~the procedures of~~
878 paragraph (a) within 90 days after receipt of the insurer's
879 initial response. In such instances and in any administrative
880 proceeding relating to the legality of the rate, the insurer or
881 rating organization shall carry the burden of proof by a
882 preponderance of the evidence to show that the rate is not
883 excessive, inadequate, or unfairly discriminatory. After the
884 office notifies an insurer that a rate may be excessive,
885 inadequate, or unfairly discriminatory, unless the office
886 withdraws the notification, the insurer may ~~shall~~ not alter the
887 rate except to conform to ~~with~~ the office's notice until the
888 earlier of 120 days after the date the notification was provided
889 or 180 days after the date of implementing ~~the implementation of~~
890 the rate. The office ~~may~~, subject to chapter 120, may disapprove
891 without the 60-day notification any rate increase filed by an
892 insurer within the prohibited time period or during the time
893 that the legality of the increased rate is being contested.

894 (h) ~~If in the event~~ the office finds that a rate or rate
895 change is excessive, inadequate, or unfairly discriminatory, the
896 office shall issue an order of disapproval specifying that a new

897 | rate or rate schedule, which responds to the findings of the
 898 | office, be filed by the insurer. The office shall further order,
 899 | for any "use and file" filing made in accordance with
 900 | subparagraph (a)2., that premiums charged each policyholder
 901 | constituting the portion of the rate above that which was
 902 | actuarially justified be returned to the ~~such~~ policyholder in
 903 | the form of a credit or refund. If the office finds that an
 904 | insurer's rate or rate change is inadequate, the new rate or
 905 | rate schedule filed with the office in response to such a
 906 | finding is ~~shall be~~ applicable only to new or renewal business
 907 | of the insurer written on or after the effective date of the
 908 | responsive filing.

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

911 | 1. Prohibit any insurer, including any residual market
 912 | plan or joint underwriting association, from paying acquisition
 913 | costs based on the full amount of premium, as defined in s.
 914 | 627.403, applicable to any policy, or prohibit any such insurer
 915 | from including the full amount of acquisition costs in a rate
 916 | filing; or-

917 | 2. Impede, abridge, or otherwise compromise an insurer's
 918 | right to acquire policyholders, advertise, or appoint agents,
 919 | including the calculation, manner, or amount of such agent
 920 | commissions, if any, in property and casualty insurance.

921 | (j) With respect to residential property insurance rate
 922 | filings, the rate filing must account for mitigation measures
 923 | undertaken by policyholders to reduce hurricane losses.

924 | (k)1. A residential property ~~An~~ insurer may make a

925 separate filing limited solely to an adjustment of its rates for
 926 reinsurance, the cost of financing products used as a
 927 replacement for reinsurance, ~~or~~ financing costs incurred in the
 928 purchase of reinsurance, ~~or financing products to replace or~~
 929 ~~finance the payment of the amount covered by the Temporary~~
 930 ~~Increase in Coverage Limits (TICL) portion of the Florida~~
 931 ~~Hurricane Catastrophe Fund including replacement reinsurance for~~
 932 ~~the TICL reductions made pursuant to s. 215.555(17)(e); the~~
 933 ~~actual cost paid due to the application of the TICL premium~~
 934 ~~factor pursuant to s. 215.555(17)(f);~~ and the actual cost paid
 935 due to the application of the cash build-up factor pursuant to
 936 s. 215.555(5)(b) if the insurer:

937 a. Elects to purchase financing products such as a
 938 liquidity instrument or line of credit, in which case the cost
 939 included in ~~the~~ filing for the liquidity instrument or line of
 940 credit may not result in a premium increase exceeding 3 percent
 941 for any individual policyholder. All costs contained in the
 942 filing may not result in an overall premium increase of more
 943 than 15 ~~10~~ percent for any individual policyholder.

944 b. Includes in the filing a copy of all of its
 945 reinsurance, liquidity instrument, or line of credit contracts;
 946 proof of the billing or payment for the contracts; and the
 947 calculation upon which the proposed rate change is based
 948 demonstrating ~~demonstrates~~ that the costs meet the criteria of
 949 this section and are ~~not loaded for expenses or profit for the~~
 950 ~~insurer making the filing.~~

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

952 ~~d. Has not implemented a rate increase within the 6 months~~

953 ~~immediately preceding the filing.~~

954 ~~e. Does not file for a rate increase under any other~~
 955 ~~paragraph within 6 months after making a filing under this~~
 956 ~~paragraph.~~

957 2.f. An insurer that purchases reinsurance or financing
 958 products from an affiliated company may make a separate filing
 959 ~~in compliance with this paragraph does so~~ only if the costs for
 960 such reinsurance or financing products are charged at or below
 961 charges made for comparable coverage by nonaffiliated reinsurers
 962 or financial entities making such coverage or financing products
 963 available in this state.

964 3.2. An insurer may ~~only~~ make only one filing per ~~in any~~
 965 12-month period under this paragraph.

966 4.3. An insurer that elects to implement a rate change
 967 under this paragraph must file its rate filing with the office
 968 at least 45 days before the effective date of the rate change.
 969 After an insurer submits a complete filing that meets all of the
 970 requirements of this paragraph, the office has 45 days after the
 971 date of the filing to review the rate filing and determine if
 972 the rate is excessive, inadequate, or unfairly discriminatory.

973
 974 ~~The provisions of~~ This subsection does ~~shall~~ not apply to
 975 workers' compensation, ~~and~~ employer's liability insurance, and
 976 ~~to~~ motor vehicle insurance.

977 (3) (a) For individual risks that are not rated in
 978 accordance with the insurer's rates, rating schedules, rating
 979 manuals, and underwriting rules filed with the office and that
 980 ~~which~~ have been submitted to the insurer for individual rating,

981 the insurer must maintain documentation on each risk subject to
 982 individual risk rating. The documentation must identify the
 983 named insured and specify the characteristics and classification
 984 of the risk supporting the reason for the risk being
 985 individually risk rated, including any modifications to existing
 986 approved forms to be used on the risk. The insurer must maintain
 987 these records for ~~a period of~~ at least 5 years after the
 988 effective date of the policy.

989 (b) Individual risk rates and modifications to existing
 990 approved forms are not subject to this part or part II, except
 991 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
 992 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
 993 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
 994 627.4265, 627.427, and 627.428, but are subject to all other
 995 applicable provisions of this code and rules adopted thereunder.

996 (c) This subsection does not apply to private passenger
 997 motor vehicle insurance.

998 (d)1. The following categories or kinds of insurance and
 999 types of commercial lines risks are not subject to paragraph
 1000 (2) (a) or paragraph (2) (f):

- 1001 a. Excess or umbrella.
- 1002 b. Surety and fidelity.
- 1003 c. Boiler and machinery and leakage and fire extinguishing
 1004 equipment.
- 1005 d. Errors and omissions.
- 1006 e. Directors and officers, employment practices, and
 1007 management liability.
- 1008 f. Intellectual property and patent infringement

1009 liability.

1010 g. Advertising injury and Internet liability insurance.

1011 h. Property risks rated under a highly protected risks

1012 rating plan.

1013 i. Any other commercial lines categories or kinds of

1014 insurance or types of commercial lines risks that the office

1015 determines should not be subject to paragraph (2) (a) or

1016 paragraph (2) (f) because of the existence of a competitive

1017 market for such insurance, similarity of such insurance to other

1018 categories or kinds of insurance not subject to paragraph (2) (a)

1019 or paragraph (2) (f), or to improve the general operational

1020 efficiency of the office.

1021 2. Insurers or rating organizations shall establish and

1022 use rates, rating schedules, or rating manuals to allow the

1023 insurer a reasonable rate of return on insurance and risks

1024 described in subparagraph 1. which are written in this state.

1025 3. An insurer must notify the office of any changes to

1026 rates for insurance and risks described in subparagraph 1.

1027 within ~~no later than~~ 30 days after the effective date of the

1028 change. The notice must include the name of the insurer, the

1029 type or kind of insurance subject to rate change, total premium

1030 written during the immediately preceding year by the insurer for

1031 the type or kind of insurance subject to the rate change, and

1032 the average statewide percentage change in rates. Underwriting

1033 files, premiums, losses, and expense statistics with regard to

1034 such insurance and risks ~~described in subparagraph 1.~~ written by

1035 an insurer must ~~shall~~ be maintained by the insurer and subject

1036 to examination by the office. Upon examination, the office

1037 ~~shall~~, in accordance with generally accepted and reasonable
 1038 actuarial techniques, shall consider the rate factors in
 1039 paragraphs (2) (b), (c), and (d) and the standards in paragraph
 1040 (2) (e) to determine if the rate is excessive, inadequate, or
 1041 unfairly discriminatory.

1042 4. A rating organization must notify the office of any
 1043 changes to loss cost for insurance and risks described in
 1044 subparagraph 1. within ~~no later than~~ 30 days after the effective
 1045 date of the change. The notice must include the name of the
 1046 rating organization, the type or kind of insurance subject to a
 1047 loss cost change, loss costs during the immediately preceding
 1048 year for the type or kind of insurance subject to the loss cost
 1049 change, and the average statewide percentage change in loss
 1050 cost. Loss and exposure statistics with regard to risks
 1051 applicable to loss costs for a rating organization not subject
 1052 to paragraph (2) (a) or paragraph (2) (f) must ~~shall~~ be maintained
 1053 by the rating organization and are subject to examination by the
 1054 office. Upon examination, the office ~~shall~~, in accordance with
 1055 generally accepted and reasonable actuarial techniques, shall
 1056 consider the rate factors in paragraphs (2) (b)-(d) and the
 1057 standards in paragraph (2) (e) to determine if the rate is
 1058 excessive, inadequate, or unfairly discriminatory.

1059 5. In reviewing a rate, the office may require the insurer
 1060 to provide, at the insurer's expense, all information necessary
 1061 to evaluate the condition of the company and the reasonableness
 1062 of the rate according to the applicable criteria described in
 1063 this section.

1064 (4) The establishment of any rate, rating classification,

1065 rating plan or schedule, or variation thereof in violation of
 1066 part IX of chapter 626 is also in violation of this section. ~~In~~
 1067 ~~order to enhance the ability of consumers to compare premiums~~
 1068 ~~and to increase the accuracy and usefulness of rate comparison~~
 1069 ~~information provided by the office to the public, the office~~
 1070 ~~shall develop a proposed standard rating territory plan to be~~
 1071 ~~used by all authorized property and casualty insurers for~~
 1072 ~~residential property insurance. In adopting the proposed plan,~~
 1073 ~~the office may consider geographical characteristics relevant to~~
 1074 ~~risk, county lines, major roadways, existing rating territories~~
 1075 ~~used by a significant segment of the market, and other relevant~~
 1076 ~~factors. Such plan shall be submitted to the President of the~~
 1077 ~~Senate and the Speaker of the House of Representatives by~~
 1078 ~~January 15, 2006. The plan may not be implemented unless~~
 1079 ~~authorized by further act of the Legislature.~~

1080 (5) With respect to a rate filing involving coverage of
 1081 the type for which the insurer is required to pay a
 1082 reimbursement premium to the Florida Hurricane Catastrophe Fund,
 1083 the insurer may fully recoup in its property insurance premiums
 1084 any reimbursement premiums paid to the ~~Florida Hurricane~~
 1085 ~~Catastrophe~~ fund, together with reasonable costs of other
 1086 reinsurance; however, ~~but~~ except as otherwise provided in this
 1087 section, the insurer may not recoup reinsurance costs that
 1088 duplicate coverage provided by the ~~Florida Hurricane Catastrophe~~
 1089 fund. An insurer may not recoup more than 1 year of
 1090 reimbursement premium at a time. Any under-recoupment from the
 1091 prior year may be added to the following year's reimbursement
 1092 premium, and any over-recoupment must ~~shall~~ be subtracted from

1093 the following year's reimbursement premium.

1094 (6) (a) If an insurer requests an administrative hearing
 1095 pursuant to s. 120.57 related to a rate filing under this
 1096 section, the director of the Division of Administrative Hearings
 1097 shall expedite the hearing and assign an administrative law
 1098 judge who shall commence the hearing within 30 days after the
 1099 receipt of the formal request and ~~shall~~ enter a recommended
 1100 order within 30 days after the hearing or within 30 days after
 1101 receipt of the hearing transcript by the administrative law
 1102 judge, whichever is later. Each party shall have ~~be allowed~~ 10
 1103 days in which to submit written exceptions to the recommended
 1104 order. The office shall enter a final order within 30 days after
 1105 the entry of the recommended order. The provisions of this
 1106 paragraph may be waived upon stipulation of all parties.

1107 (b) Upon entry of a final order, the insurer may request a
 1108 expedited appellate review pursuant to the Florida Rules of
 1109 Appellate Procedure. It is the intent of the Legislature that
 1110 the First District Court of Appeal grant an insurer's request
 1111 for an expedited appellate review.

1112 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~
 1113 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~
 1114 control to the extent of any conflict with other provisions of
 1115 this section.

1116 (a) ~~(b)~~ Any portion of a judgment entered or settlement
 1117 paid as a result of a statutory or common-law bad faith action
 1118 and any portion of a judgment entered which awards punitive
 1119 damages against an insurer may not be included in the insurer's
 1120 rate base, and ~~shall not be~~ used to justify a rate or rate

1121 change. Any common-law bad faith action identified as such, any
 1122 portion of a settlement entered as a result of a statutory or
 1123 common-law action, or any portion of a settlement wherein an
 1124 insurer agrees to pay specific punitive damages may not be used
 1125 to justify a rate or rate change. The portion of the taxable
 1126 costs and attorney's fees which is identified as being related
 1127 to the bad faith and punitive damages ~~in these judgments and~~
 1128 ~~settlements~~ may not be included in the insurer's rate base and
 1129 used ~~may not be utilized~~ to justify a rate or rate change.

1130 (b) ~~(e)~~ Upon reviewing a rate filing and determining
 1131 whether the rate is excessive, inadequate, or unfairly
 1132 discriminatory, the office shall consider, in accordance with
 1133 generally accepted and reasonable actuarial techniques, past and
 1134 present prospective loss experience, ~~either~~ using loss
 1135 experience solely for this state or giving greater credibility
 1136 to this state's loss data after applying actuarially sound
 1137 methods of assigning credibility to such data.

1138 (c) ~~(d)~~ Rates shall be deemed excessive if, among other
 1139 standards established by this section, the rate structure
 1140 provides for replenishment of reserves or surpluses from
 1141 premiums when the replenishment is attributable to investment
 1142 losses.

1143 (d) ~~(e)~~ The insurer must apply a discount or surcharge
 1144 based on the health care provider's loss experience or ~~shall~~
 1145 establish an alternative method giving due consideration to the
 1146 provider's loss experience. The insurer must include in the
 1147 filing a copy of the surcharge or discount schedule or a
 1148 description of the alternative method used, and ~~must~~ provide a

CS/CS/HB 803

2011

1149 | ~~copy of such schedule or description,~~ as approved by the office,
1150 | to policyholders at the time of renewal and to prospective
1151 | policyholders at the time of application for coverage.

1152 | (e)~~(f)~~ Each medical malpractice insurer must make a rate
1153 | filing under this section, sworn to by at least two executive
1154 | officers of the insurer, at least once each calendar year.

1155 | ~~(8)(a)1. No later than 60 days after the effective date of~~
1156 | ~~medical malpractice legislation enacted during the 2003 Special~~
1157 | ~~Session D of the Florida Legislature, the office shall calculate~~
1158 | ~~a presumed factor that reflects the impact that the changes~~
1159 | ~~contained in such legislation will have on rates for medical~~
1160 | ~~malpractice insurance and shall issue a notice informing all~~
1161 | ~~insurers writing medical malpractice coverage of such presumed~~
1162 | ~~factor. In determining the presumed factor, the office shall use~~
1163 | ~~generally accepted actuarial techniques and standards provided~~
1164 | ~~in this section in determining the expected impact on losses,~~
1165 | ~~expenses, and investment income of the insurer. To the extent~~
1166 | ~~that the operation of a provision of medical malpractice~~
1167 | ~~legislation enacted during the 2003 Special Session D of the~~
1168 | ~~Florida Legislature is stayed pending a constitutional~~
1169 | ~~challenge, the impact of that provision shall not be included in~~
1170 | ~~the calculation of a presumed factor under this subparagraph.~~

1171 | ~~2. No later than 60 days after the office issues its~~
1172 | ~~notice of the presumed rate change factor under subparagraph 1.,~~
1173 | ~~each insurer writing medical malpractice coverage in this state~~
1174 | ~~shall submit to the office a rate filing for medical malpractice~~
1175 | ~~insurance, which will take effect no later than January 1, 2004,~~
1176 | ~~and apply retroactively to policies issued or renewed on or~~

CS/CS/HB 803

2011

1177 ~~after the effective date of medical malpractice legislation~~
1178 ~~enacted during the 2003 Special Session D of the Florida~~
1179 ~~Legislature. Except as authorized under paragraph (b), the~~
1180 ~~filing shall reflect an overall rate reduction at least as great~~
1181 ~~as the presumed factor determined under subparagraph 1. With~~
1182 ~~respect to policies issued on or after the effective date of~~
1183 ~~such legislation and prior to the effective date of the rate~~
1184 ~~filing required by this subsection, the office shall order the~~
1185 ~~insurer to make a refund of the amount that was charged in~~
1186 ~~excess of the rate that is approved.~~

1187 ~~(b) Any insurer or rating organization that contends that~~
1188 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~
1189 ~~or unfairly discriminatory shall separately state in its filing~~
1190 ~~the rate it contends is appropriate and shall state with~~
1191 ~~specificity the factors or data that it contends should be~~
1192 ~~considered in order to produce such appropriate rate. The~~
1193 ~~insurer or rating organization shall be permitted to use all of~~
1194 ~~the generally accepted actuarial techniques provided in this~~
1195 ~~section in making any filing pursuant to this subsection. The~~
1196 ~~office shall review each such exception and approve or~~
1197 ~~disapprove it prior to use. It shall be the insurer's burden to~~
1198 ~~actuarially justify any deviations from the rates required to be~~
1199 ~~filed under paragraph (a). The insurer making a filing under~~
1200 ~~this paragraph shall include in the filing the expected impact~~
1201 ~~of medical malpractice legislation enacted during the 2003~~
1202 ~~Special Session D of the Florida Legislature on losses,~~
1203 ~~expenses, and rates.~~

1204 ~~(c) If any provision of medical malpractice legislation~~

1205 ~~enacted during the 2003 Special Session D of the Florida~~
 1206 ~~Legislature is held invalid by a court of competent~~
 1207 ~~jurisdiction, the office shall permit an adjustment of all~~
 1208 ~~medical malpractice rates filed under this section to reflect~~
 1209 ~~the impact of such holding on such rates so as to ensure that~~
 1210 ~~the rates are not excessive, inadequate, or unfairly~~
 1211 ~~discriminatory.~~

1212 ~~(d) Rates approved on or before July 1, 2003, for medical~~
 1213 ~~malpractice insurance shall remain in effect until the effective~~
 1214 ~~date of a new rate filing approved under this subsection.~~

1215 ~~(e) The calculation and notice by the office of the~~
 1216 ~~presumed factor pursuant to paragraph (a) is not an order or~~
 1217 ~~rule that is subject to chapter 120. If the office enters into a~~
 1218 ~~contract with an independent consultant to assist the office in~~
 1219 ~~calculating the presumed factor, such contract shall not be~~
 1220 ~~subject to the competitive solicitation requirements of s.~~
 1221 ~~287.057.~~

1222 (8)~~(9)~~ (a) The chief executive officer or chief financial
 1223 officer of a property insurer and the chief actuary of a
 1224 property insurer must certify under oath and subject to the
 1225 penalty of perjury, on a form approved by the commission, the
 1226 following information, which must accompany a rate filing:

1227 1. The signing officer and actuary have reviewed the rate
 1228 filing;

1229 2. Based on the signing officer's and actuary's knowledge,
 1230 the rate filing does not contain any untrue statement of a
 1231 material fact or omit to state a material fact necessary ~~in~~
 1232 ~~order~~ to make the statements made, in light of the circumstances

1233 under which such statements were made, not misleading;

1234 3. Based on the signing officer's and actuary's knowledge,
 1235 the information and other factors described in paragraph (2) (b),
 1236 including, but not limited to, investment income, fairly present
 1237 in all material respects the basis of the rate filing for the
 1238 periods presented in the filing; and

1239 4. Based on the signing officer's and actuary's knowledge,
 1240 the rate filing reflects all premium savings that are reasonably
 1241 expected to result from legislative enactments and are in
 1242 accordance with generally accepted and reasonable actuarial
 1243 techniques.

1244 (b) A signing officer or actuary who knowingly makes
 1245 ~~making~~ a false certification under this subsection commits a
 1246 violation of s. 626.9541(1) (e) and is subject to the penalties
 1247 under s. 626.9521.

1248 (c) Failure to provide such certification by the officer
 1249 and actuary shall result in the rate filing being disapproved
 1250 without prejudice to be refiled.

1251 (d) The certification made pursuant to paragraph (a) is
 1252 not rendered false if, after making the subject rate filing, the
 1253 insurer provides the office with additional or supplementary
 1254 information pursuant to a formal or informal request from the
 1255 office. However, the actuary primarily responsible for preparing
 1256 and submitting the additional or supplementary information shall
 1257 certify the information consistent with the certification
 1258 required in paragraph (a) and the penalties in paragraph (b),
 1259 except that the chief executive officer or chief financial
 1260 officer or chief actuary is not required to certify to the

1261 additional or supplementary information.

1262 (e)~~(d)~~ The commission may adopt rules and forms pursuant
 1263 ~~to ss. 120.536(1) and 120.54~~ to administer this subsection.

1264 (9)~~(10)~~ The burden is on the office to establish that
 1265 rates are excessive for personal lines residential coverage with
 1266 a dwelling replacement cost of \$1 million or more or for a
 1267 single condominium unit with a combined dwelling and contents
 1268 replacement cost of \$1 million or more. Upon request of the
 1269 office, the insurer shall provide ~~to the office~~ such loss and
 1270 expense information as the office reasonably needs to meet this
 1271 burden.

1272 (10)~~(11)~~ Any interest paid pursuant to s. 627.70131(5) may
 1273 not be included in the insurer's rate base and may not be used
 1274 to justify a rate or rate change.

1275 Section 12. Paragraph (b) of subsection (3) of section
 1276 627.06281, Florida Statutes, is amended to read:

1277 627.06281 Public hurricane loss projection model;
 1278 reporting of data by insurers.—

1279 (3)

1280 (b) The fees charged for private sector access and use of
 1281 the model shall be the reasonable costs associated with the
 1282 operation and maintenance of the model. Such fees do not apply
 1283 to access and use of the model by the office. ~~By January 1,~~
 1284 ~~2009, the office shall establish by rule a fee schedule for~~
 1285 ~~access to and the use of the model. The fee schedule must be~~
 1286 ~~reasonably calculated to cover only the actual costs of~~
 1287 ~~providing access to and the use of the model.~~

1288 Section 13. Subsections (1) and (5) and paragraph (b) of

1289 subsection (8) of section 627.0629, Florida Statutes, are
 1290 amended to read:
 1291 627.0629 Residential property insurance; rate filings.—
 1292 (1)~~(a)~~ It is the intent of the Legislature that insurers
 1293 ~~must~~ provide savings to consumers who install or implement
 1294 windstorm damage mitigation techniques, alterations, or
 1295 solutions to their properties to prevent windstorm losses. A
 1296 rate filing for residential property insurance must include
 1297 actuarially reasonable discounts, credits, or other rate
 1298 differentials, or appropriate reductions in deductibles, for
 1299 properties on which fixtures or construction techniques
 1300 demonstrated to reduce the amount of loss in a windstorm have
 1301 been installed or implemented. The fixtures or construction
 1302 techniques must ~~shall~~ include, but not be limited to, fixtures
 1303 or construction techniques that ~~which~~ enhance roof strength,
 1304 roof covering performance, roof-to-wall strength, wall-to-floor-
 1305 to-foundation strength, opening protection, and window, door,
 1306 and skylight strength. Credits, discounts, or other rate
 1307 differentials, or appropriate reductions in deductibles, for
 1308 fixtures and construction techniques that ~~which~~ meet the minimum
 1309 requirements of the Florida Building Code must be included in
 1310 the rate filing. ~~All insurance companies must make a rate filing~~
 1311 ~~which includes the credits, discounts, or other rate~~
 1312 ~~differentials or reductions in deductibles by February 28, 2003.~~
 1313 ~~By July 1, 2007, the office shall reevaluate the discounts,~~
 1314 ~~credits, other rate differentials, and appropriate reductions in~~
 1315 ~~deductibles for fixtures and construction techniques that meet~~
 1316 ~~the minimum requirements of the Florida Building Code, based~~

1317 ~~upon actual experience or any other loss relativity studies~~
1318 ~~available to the office.~~ The office shall determine the
1319 discounts, credits, other rate differentials, and appropriate
1320 reductions in deductibles that reflect the full actuarial value
1321 of such revaluation, which may be used by insurers in rate
1322 filings.

1323 ~~(b) By February 1, 2011, the Office of Insurance~~
1324 ~~Regulation, in consultation with the Department of Financial~~
1325 ~~Services and the Department of Community Affairs, shall develop~~
1326 ~~and make publicly available a proposed method for insurers to~~
1327 ~~establish discounts, credits, or other rate differentials for~~
1328 ~~hurricane mitigation measures which directly correlate to the~~
1329 ~~numerical rating assigned to a structure pursuant to the uniform~~
1330 ~~home grading scale adopted by the Financial Services Commission~~
1331 ~~pursuant to s. 215.55865, including any proposed changes to the~~
1332 ~~uniform home grading scale. By October 1, 2011, the commission~~
1333 ~~shall adopt rules requiring insurers to make rate filings for~~
1334 ~~residential property insurance which revise insurers' discounts,~~
1335 ~~credits, or other rate differentials for hurricane mitigation~~
1336 ~~measures so that such rate differentials correlate directly to~~
1337 ~~the uniform home grading scale. The rules may include such~~
1338 ~~changes to the uniform home grading scale as the commission~~
1339 ~~determines are necessary, and may specify the minimum required~~
1340 ~~discounts, credits, or other rate differentials. Such rate~~
1341 ~~differentials must be consistent with generally accepted~~
1342 ~~actuarial principles and wind-loss mitigation studies. The rules~~
1343 ~~shall allow a period of at least 2 years after the effective~~
1344 ~~date of the revised mitigation discounts, credits, or other rate~~

1345 ~~differentials for a property owner to obtain an inspection or~~
 1346 ~~otherwise qualify for the revised credit, during which time the~~
 1347 ~~insurer shall continue to apply the mitigation credit that was~~
 1348 ~~applied immediately prior to the effective date of the revised~~
 1349 ~~credit. Discounts, credits, and other rate differentials~~
 1350 ~~established for rate filings under this paragraph shall~~
 1351 ~~supersede, after adoption, the discounts, credits, and other~~
 1352 ~~rate differentials included in rate filings under paragraph (a).~~

1353 (5) In order to provide an appropriate transition period,
 1354 an insurer may, ~~in its sole discretion,~~ implement an approved
 1355 rate filing for residential property insurance over a period of
 1356 years. Such ~~An insurer electing to phase in its rate filing~~ must
 1357 provide an informational notice to the office setting out its
 1358 schedule for implementation of the phased-in rate filing. The ~~An~~
 1359 insurer may include in its rate the actual cost of private
 1360 market reinsurance that corresponds to available coverage of the
 1361 Temporary Increase in Coverage Limits, TICL, from the Florida
 1362 Hurricane Catastrophe Fund. The insurer may also include the
 1363 cost of reinsurance to replace the TICL reduction implemented
 1364 pursuant to s. 215.555(17)(d)9. However, this cost for
 1365 reinsurance may not include any expense or profit load or result
 1366 in a total annual base rate increase in excess of 10 percent.

1367 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
 1368 SOUNDNESS.—

1369 (b) To the extent ~~that~~ funds are provided for this purpose
 1370 in the General Appropriations Act, ~~the Legislature hereby~~
 1371 ~~authorizes~~ the establishment of a program to be administered by
 1372 the Citizens Property Insurance Corporation for homeowners

CS/CS/HB 803

2011

1373 insured in the high-risk account is authorized.

1374 Section 14. Paragraph (b) of subsection (2) of section
1375 627.4133, Florida Statutes, is amended to read:

1376 627.4133 Notice of cancellation, nonrenewal, or renewal
1377 premium.—

1378 (2) With respect to any personal lines or commercial
1379 residential property insurance policy, including, but not
1380 limited to, any homeowner's, mobile home owner's, farmowner's,
1381 condominium association, condominium unit owner's, apartment
1382 building, or other policy covering a residential structure or
1383 its contents:

1384 (b) The insurer shall give the named insured written
1385 notice of nonrenewal, cancellation, or termination at least 100
1386 days before ~~prior to~~ the effective date of the nonrenewal,
1387 cancellation, or termination. However, the insurer shall give at
1388 least 100 days' written notice, or written notice by June 1,
1389 whichever is earlier, for any nonrenewal, cancellation, or
1390 termination that would be effective between June 1 and November
1391 30. The notice must include the reason or reasons for the
1392 nonrenewal, cancellation, or termination, except that:

1393 1. The insurer shall give the named insured written notice
1394 of nonrenewal, cancellation, or termination at least 120 ~~180~~
1395 days prior to the effective date of the nonrenewal,
1396 cancellation, or termination for a named insured whose
1397 residential structure has been insured by that insurer or an
1398 affiliated insurer for at least a 5-year period immediately
1399 prior to the date of the written notice.

1400 2. If ~~When~~ cancellation is for nonpayment of premium, at

CS/CS/HB 803

2011

1401 least 10 days' written notice of cancellation accompanied by the
 1402 reason therefor must ~~shall~~ be given. As used in this
 1403 subparagraph, the term "nonpayment of premium" means failure of
 1404 the named insured to discharge when due ~~any of~~ her or his
 1405 obligations in connection with the payment of premiums on a
 1406 policy or any installment of such premium, whether the premium
 1407 is payable directly to the insurer or its agent or indirectly
 1408 under any premium finance plan or extension of credit, or
 1409 failure to maintain membership in an organization if such
 1410 membership is a condition precedent to insurance coverage. The
 1411 term "Nonpayment of premium" also means the failure of a
 1412 financial institution to honor an insurance applicant's check
 1413 after delivery to a licensed agent for payment of a premium,
 1414 even if the agent has previously delivered or transferred the
 1415 premium to the insurer. If a dishonored check represents the
 1416 initial premium payment, the contract and all contractual
 1417 obligations are ~~shall be~~ void ab initio unless the nonpayment is
 1418 cured within the earlier of 5 days after actual notice by
 1419 certified mail is received by the applicant or 15 days after
 1420 notice is sent to the applicant by certified mail or registered
 1421 mail, and if the contract is void, any premium received by the
 1422 insurer from a third party must ~~shall~~ be refunded to that party
 1423 in full.

1424 3. If ~~When~~ such cancellation or termination occurs during
 1425 the first 90 days ~~during which~~ the insurance is in force and the
 1426 insurance is canceled or terminated for reasons other than
 1427 nonpayment of premium, at least 20 days' written notice of
 1428 cancellation or termination accompanied by the reason therefor

CS/CS/HB 803

2011

1429 must ~~shall~~ be given unless ~~except where~~ there has been a
 1430 material misstatement or misrepresentation or failure to comply
 1431 with the underwriting requirements established by the insurer.

1432 4. The requirement for providing written notice ~~of~~
 1433 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective
 1434 between June 1 and November 30 does not apply to the following
 1435 situations, but the insurer remains subject to the requirement
 1436 to provide such notice at least 100 days before ~~prior to~~ the
 1437 effective date of nonrenewal:

1438 a. A policy that is nonrenewed due to a revision in the
 1439 coverage for sinkhole losses and catastrophic ground cover
 1440 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~
 1441 ~~2007-1, Laws of Florida.~~

1442 b. A policy that is nonrenewed by Citizens Property
 1443 Insurance Corporation, pursuant to s. 627.351(6), for a policy
 1444 that has been assumed by an authorized insurer offering
 1445 replacement or renewal coverage to the policyholder.

1446
 1447 After the policy has been in effect for 90 days, the policy may
 1448 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there
 1449 has been a material misstatement, a nonpayment of premium, a
 1450 failure to comply with underwriting requirements established by
 1451 the insurer within 90 days after ~~of~~ the date of effectuation of
 1452 coverage, or a substantial change in the risk covered by the
 1453 policy or if ~~when~~ the cancellation is for all insureds under
 1454 such policies for a given class of insureds. This paragraph does
 1455 not apply to individually rated risks having a policy term of
 1456 less than 90 days.

1457 5. Notwithstanding any other provision of law, an insurer
1458 may cancel or nonrenew a property insurance policy after at
1459 least 45 days' notice if the office finds that the early
1460 cancellation of some or all of the insurer's policies is
1461 necessary to protect the best interests of the public or
1462 policyholders and the office approves the insurer's plan for
1463 early cancellation or nonrenewal of some or all of its policies.
1464 The office may base such finding upon the financial condition of
1465 the insurer, lack of adequate reinsurance coverage for hurricane
1466 risk, or other relevant factors. The office may condition its
1467 finding on the consent of the insurer to be placed under
1468 administrative supervision pursuant to s. 624.81 or to the
1469 appointment of a receiver under chapter 631.

1470 Section 15. Section 627.43141, Florida Statutes, is
1471 created to read:

1472 627.43141 Notice of change in policy terms.—

1473 (1) As used in this section, the term:

1474 (a) "Change in policy terms" means the modification,
1475 addition, or deletion of any term, coverage, duty, or condition
1476 from the previous policy. The correction of typographical or
1477 scrivener's errors or the application of mandated legislative
1478 changes is not a change in policy terms.

1479 (b) "Policy" means a written contract of personal lines
1480 property and casualty insurance or a written agreement for
1481 insurance, or the certificate of such insurance, by whatever
1482 name called, and includes all clauses, riders, endorsements, and
1483 papers that are a part of such policy. The term does not include
1484 a binder as defined in s. 627.420 unless the duration of the

1485 binder period exceeds 60 days.

1486 (c) "Renewal" means the issuance and delivery by an
1487 insurer of a policy superseding at the end of the policy period
1488 a policy previously issued and delivered by the same insurer or
1489 the issuance and delivery of a certificate or notice extending
1490 the term of a policy beyond its policy period or term. Any
1491 policy that has a policy period or term of less than 6 months or
1492 that does not have a fixed expiration date shall, for purposes
1493 of this section, be considered as written for successive policy
1494 periods or terms of 6 months.

1495 (2) A renewal policy may contain a change in policy terms.
1496 If a renewal policy does contains such change, the insurer must
1497 give the named insured written notice of the change, which must
1498 be enclosed along with the written notice of renewal premium
1499 required by ss. 627.4133 and 627.728. Such notice shall be
1500 entitled "Notice of Change in Policy Terms."

1501 (3) Although not required, proof of mailing or registered
1502 mailing through the United States Postal Service of the Notice
1503 of Change in Policy Terms to the named insured at the address
1504 shown in the policy is sufficient proof of notice.

1505 (4) Receipt of the premium payment for the renewal policy
1506 by the insurer is deemed to be acceptance of the new policy
1507 terms by the named insured.

1508 (5) If an insurer fails to provide the notice required in
1509 subsection (2), the original policy terms remain in effect until
1510 the next renewal and the proper service of the notice, or until
1511 the effective date of replacement coverage obtained by the named
1512 insured, whichever occurs first.

1513 (6) The intent of this section is to:

1514 (a) Allow an insurer to make a change in policy terms
 1515 without nonrenewing those policyholders that the insurer wishes
 1516 to continue insuring.

1517 (b) Alleviate concern and confusion to the policyholder
 1518 caused by the required policy nonrenewal for the limited issue
 1519 if an insurer intends to renew the insurance policy, but the new
 1520 policy contains a change in policy terms.

1521 (c) Encourage policyholders to discuss their coverages
 1522 with their insurance agents.

1523 Section 16. Section 627.7011, Florida Statutes, is amended
 1524 to read:

1525 627.7011 Homeowners' policies; offer of replacement cost
 1526 coverage and law and ordinance coverage.—

1527 (1) Before ~~Prior to~~ issuing or renewing a homeowner's
 1528 insurance policy ~~on or after October 1, 2005, or prior to the~~
 1529 ~~first renewal of a homeowner's insurance policy on or after~~
 1530 ~~October 1, 2005,~~ the insurer must offer each of the following:

1531 (a) A policy or endorsement providing that any loss that
 1532 ~~which~~ is repaired or replaced will be adjusted on the basis of
 1533 replacement costs to the dwelling not exceeding policy limits ~~as~~
 1534 ~~to the dwelling,~~ rather than actual cash value, but not
 1535 including costs necessary to meet applicable laws and ordinances
 1536 regulating the construction, use, or repair of any property or
 1537 requiring the tearing down of any property, including the costs
 1538 of removing debris.

1539 (b) A policy or endorsement providing that, subject to
 1540 other policy provisions, any loss that ~~which~~ is repaired or

1541 replaced at any location will be adjusted on the basis of
 1542 replacement costs to the dwelling not exceeding policy limits ~~as~~
 1543 ~~to the dwelling~~, rather than actual cash value, and also
 1544 including costs necessary to meet applicable laws and ordinances
 1545 regulating the construction, use, or repair of any property or
 1546 requiring the tearing down of any property, including the costs
 1547 of removing debris. ~~+~~ However, ~~such~~ additional costs necessary to
 1548 meet applicable laws and ordinances may be limited to ~~either~~ 25
 1549 percent or 50 percent of the dwelling limit, as selected by the
 1550 policyholder, and such coverage applies ~~shall apply~~ only to
 1551 repairs of the damaged portion of the structure unless the total
 1552 damage to the structure exceeds 50 percent of the replacement
 1553 cost of the structure.

1554
 1555 An insurer is not required to make the offers required by this
 1556 subsection with respect to the issuance or renewal of a
 1557 homeowner's policy that contains the provisions specified in
 1558 paragraph (b) for law and ordinance coverage limited to 25
 1559 percent of the dwelling limit, except that the insurer must
 1560 offer the law and ordinance coverage limited to 50 percent of
 1561 the dwelling limit. This subsection does not prohibit the offer
 1562 of a guaranteed replacement cost policy.

1563 (2) Unless the insurer obtains the policyholder's written
 1564 refusal of the policies or endorsements specified in subsection
 1565 (1), any policy covering the dwelling is deemed to include the
 1566 law and ordinance coverage limited to 25 percent of the dwelling
 1567 limit. The rejection or selection of alternative coverage shall
 1568 be made on a form approved by the office. The form must ~~shall~~

1569 fully advise the applicant of the nature of the coverage being
 1570 rejected. If this form is signed by a named insured, it ~~is will~~
 1571 ~~be~~ conclusively presumed that there was an informed, knowing
 1572 rejection of the coverage or election of the alternative
 1573 coverage on behalf of all insureds. Unless the policyholder
 1574 requests in writing the coverage specified in this section, it
 1575 need not be provided in or supplemental to any other policy that
 1576 renews, insures, extends, changes, supersedes, or replaces an
 1577 existing policy if ~~when~~ the policyholder has rejected the
 1578 coverage specified in this section or has selected alternative
 1579 coverage. The insurer must provide the ~~such~~ policyholder with
 1580 notice of the availability of such coverage in a form approved
 1581 by the office at least once every 3 years. The failure to
 1582 provide such notice constitutes a violation of this code, but
 1583 does not affect the coverage provided under the policy.

1584 (3) (a) In the event of a loss for which a dwelling is
 1585 insured on the basis of replacement costs, the insurer initially
 1586 must pay at least the actual cash value of the insured loss,
 1587 less any applicable deductible. An insured shall subsequently
 1588 enter into a contract for the performance of building and
 1589 structural repairs. The insurer shall pay any remaining amounts
 1590 incurred to perform such repairs as the work is performed. With
 1591 the exception of incidental expenses to mitigate further damage,
 1592 the insurer or any contractor or subcontractor may not require
 1593 the policyholder to advance payment for such repairs or
 1594 expenses. The insurer may waive the requirement for a contract
 1595 as provided in this paragraph. An insured shall have a period of
 1596 1 year after the date the insurer pays actual cash value to make

CS/CS/HB 803

2011

1597 a claim for replacement cost. If a total loss of a dwelling
 1598 occurs, the insurer shall pay the replacement cost coverage
 1599 without reservation or holdback of any depreciation in value,
 1600 pursuant to s. 627.702.

1601 (b) In the event of a loss for which a ~~dwelling or~~
 1602 personal property is insured on the basis of replacement costs,
 1603 the insurer shall pay the replacement cost without reservation
 1604 or holdback of any depreciation in value, whether or not the
 1605 insured replaces or repairs the ~~dwelling or~~ property.

1606 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed~~
 1607 ~~on or after October 1, 2005,~~ must include in bold type no
 1608 smaller than 18 points the following statement:

1610 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
 1611 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
 1612 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
 1613 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS
 1614 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
 1615 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."
 1616

1617 The intent of this subsection is to encourage policyholders to
 1618 purchase sufficient coverage to protect them in case events
 1619 excluded from the standard homeowners policy, such as law and
 1620 ordinance enforcement and flood, combine with covered events to
 1621 produce damage or loss to the insured property. The intent is
 1622 also to encourage policyholders to discuss these issues with
 1623 their insurance agent.

1624 (5) ~~Nothing in~~ This section does not: ~~shall be construed~~

1625 ~~to~~

1626 (a) Apply to policies not considered to be "homeowners'

1627 policies," as that term is commonly understood in the insurance

1628 industry. ~~This section specifically does not~~

1629 (b) Apply to mobile home policies. ~~Nothing in this section~~

1630 (c) ~~Limit shall be construed as limiting~~ the ability of an

1631 ~~any~~ insurer to reject or nonrenew any insured or applicant on

1632 the grounds that the structure does not meet underwriting

1633 criteria applicable to replacement cost or law and ordinance

1634 policies or for other lawful reasons.

1635 (d) ~~(6)~~ ~~This section does not~~ Prohibit an insurer from

1636 limiting its liability under a policy or endorsement providing

1637 that loss will be adjusted on the basis of replacement costs to

1638 the lesser of:

1639 1. ~~(a)~~ The limit of liability shown on the policy

1640 declarations page;

1641 2. ~~(b)~~ The reasonable and necessary cost to repair the

1642 damaged, destroyed, or stolen covered property; or

1643 3. ~~(e)~~ The reasonable and necessary cost to replace the

1644 damaged, destroyed, or stolen covered property.

1645 (e) ~~(7)~~ ~~This section does not~~ Prohibit an insurer from

1646 exercising its right to repair damaged property in compliance

1647 with its policy and s. 627.702(7).

1648 Section 17. Paragraph (a) of subsection (5) of section

1649 627.70131, Florida Statutes, is amended to read:

1650 627.70131 Insurer's duty to acknowledge communications

1651 regarding claims; investigation.—

1652 (5) (a) Within 90 days after an insurer receives notice of

CS/CS/HB 803

2011

1653 an initial, reopened, or supplemental a property insurance claim
 1654 from a policyholder, the insurer shall pay or deny such claim or
 1655 a portion of the claim unless the failure to pay ~~such claim or a~~
 1656 ~~portion of the claim~~ is caused by factors beyond the control of
 1657 the insurer which reasonably prevent such payment. Any payment
 1658 of an initial or supplemental a claim or portion of such a claim
 1659 made ~~paid~~ 90 days after the insurer receives notice of the
 1660 claim, or made ~~paid~~ more than 15 days after there are no longer
 1661 factors beyond the control of the insurer which reasonably
 1662 prevented such payment, whichever is later, bears ~~shall bear~~
 1663 interest at the rate set forth in s. 55.03. Interest begins to
 1664 accrue from the date the insurer receives notice of the claim.
 1665 The provisions of this subsection may not be waived, voided, or
 1666 nullified by the terms of the insurance policy. If there is a
 1667 right to prejudgment interest, the insured shall select whether
 1668 to receive prejudgment interest or interest under this
 1669 subsection. Interest is payable when the claim or portion of the
 1670 claim is paid. Failure to comply with this subsection
 1671 constitutes a violation of this code. However, failure to comply
 1672 with this subsection does ~~shall~~ not form the sole basis for a
 1673 private cause of action.

1674 Section 18. The Legislature finds and declares:

1675 (1) There is a compelling state interest in maintaining a
 1676 viable and orderly private-sector market for property insurance
 1677 in this state. The lack of a viable and orderly property market
 1678 reduces the availability of property insurance coverage to state
 1679 residents, increases the cost of property insurance, and
 1680 increases the state's reliance on a residual property insurance

1681 market and its potential for imposing assessments on
1682 policyholders throughout the state.

1683 (2) In 2005, the Legislature revised ss. 627.706-627.7074,
1684 Florida Statutes, to adopt certain geological or technical
1685 terms; to increase reliance on objective, scientific testing
1686 requirements; and generally to reduce the number of sinkhole
1687 claims and related disputes arising under prior law. The
1688 Legislature determined that since the enactment of these
1689 statutory revisions, both private-sector insurers and Citizens
1690 Property Insurance Corporation have, nevertheless, continued to
1691 experience high claims frequency and severity for sinkhole
1692 insurance claims. In addition, many properties remain unrepaired
1693 even after loss payments, which reduces the local property tax
1694 base and adversely affects the real estate market. Therefore,
1695 the Legislature finds that losses associated with sinkhole
1696 claims adversely affect the public health, safety, and welfare
1697 of this state and its citizens.

1698 (3) Pursuant to sections 19 through 23 of this act,
1699 technical or scientific definitions adopted in the 2005
1700 legislation are clarified to implement and advance the
1701 Legislature's intended reduction of sinkhole claims and
1702 disputes. Certain other revisions to ss. 627.706-627.7074,
1703 Florida Statutes, are enacted to advance legislative intent to
1704 rely on scientific or technical determinations relating to
1705 sinkholes and sinkhole claims, reduce the number and cost of
1706 disputes relating to sinkhole claims, and ensure that repairs
1707 are made commensurate with the scientific and technical
1708 determinations and insurance claims payments.

1709 Section 19. Section 627.706, Florida Statutes, is amended
 1710 to read:

1711 627.706 Sinkhole insurance; catastrophic ground cover
 1712 collapse; definitions.—

1713 (1) (a) Every insurer authorized to transact property
 1714 insurance in this state must ~~shall~~ provide coverage for a
 1715 catastrophic ground cover collapse.

1716 (b) The insurer ~~and~~ shall make available, for an
 1717 appropriate additional premium, coverage for sinkhole losses on
 1718 any structure, including the contents of personal property
 1719 contained therein, to the extent provided in the form to which
 1720 the coverage attaches. The insurer may require an inspection of
 1721 the property before issuance of sinkhole loss coverage. A policy
 1722 for residential property insurance may include a deductible
 1723 amount applicable to sinkhole losses equal to 1 percent, 2
 1724 percent, 5 percent, or 10 percent of the policy dwelling limits,
 1725 with appropriate premium discounts offered with each deductible
 1726 amount.

1727 (c) The insurer may restrict catastrophic ground cover
 1728 collapse and sinkhole loss coverage to the principal building,
 1729 as defined in the applicable policy.

1730 (2) As used in ss. 627.706-627.7074, and as used in
 1731 connection with any policy providing coverage for a catastrophic
 1732 ground cover collapse or for sinkhole losses, the term:

1733 (a) "Catastrophic ground cover collapse" means geological
 1734 activity that results in all the following:

- 1735 1. The abrupt collapse of the ground cover;
- 1736 2. A depression in the ground cover clearly visible to the

1737 naked eye;

1738 3. Structural damage to the covered building, including
1739 the foundation; and

1740 4. The insured structure being condemned and ordered to be
1741 vacated by the governmental agency authorized by law to issue
1742 such an order for that structure.

1743
1744 Contents coverage applies if there is a loss resulting from a
1745 catastrophic ground cover collapse. ~~Structural~~ Damage consisting
1746 merely of the settling or cracking of a foundation, structure,
1747 or building does not constitute a loss resulting from a
1748 catastrophic ground cover collapse.

1749 (b) "Neutral evaluation" means the alternative dispute
1750 resolution provided in s. 627.7074.

1751 (c) "Neutral evaluator" means a professional engineer or a
1752 professional geologist who has completed a course of study in
1753 alternative dispute resolution designed or approved by the
1754 department for use in the neutral evaluation process and who is
1755 determined to be fair and impartial.

1756 (d)(e) "Professional engineer" means a person, as defined
1757 in s. 471.005, who has a bachelor's degree or higher in
1758 engineering and has successfully completed at least five courses
1759 in any combination of the following: geotechnical engineering,
1760 structural engineering, soil mechanics, foundations, or geology
1761 with a specialty in the geotechnical engineering field. A
1762 professional engineer must also have ~~geotechnical~~ experience and
1763 expertise in the identification of sinkhole activity as well as
1764 other potential causes of structural damage ~~to the structure.~~

1765 (e)~~(f)~~ "Professional geologist" means a person, as defined
 1766 in ~~by~~ s. 492.102, who has a bachelor's degree or higher in
 1767 geology or related earth science and ~~with expertise in the~~
 1768 ~~geology of Florida. A professional geologist must have~~
 1769 ~~geological~~ experience and expertise in the identification of
 1770 sinkhole activity as well as other potential geologic causes of
 1771 structural damage ~~to the structure.~~

1772 (f)~~(b)~~ "Sinkhole" means a landform created by subsidence
 1773 of soil, sediment, or rock as underlying strata are dissolved by
 1774 groundwater. A sinkhole forms ~~may form~~ by collapse into
 1775 subterranean voids created by dissolution of limestone or
 1776 dolostone or by subsidence as these strata are dissolved.

1777 (g)~~(e)~~ "Sinkhole loss" means structural damage to the
 1778 covered building, including the foundation, caused by sinkhole
 1779 activity. Contents coverage and additional living expenses ~~shall~~
 1780 apply only if there is structural damage to the covered building
 1781 caused by sinkhole activity.

1782 (h)~~(d)~~ "Sinkhole activity" means settlement or systematic
 1783 weakening of the earth supporting ~~such~~ property only if the ~~when~~
 1784 ~~such~~ settlement or systematic weakening results from
 1785 contemporaneous movement or raveling of soils, sediments, or
 1786 rock materials into subterranean voids created by the effect of
 1787 water on a limestone or similar rock formation.

1788 (i) "Structural damage" means a covered building has
 1789 experienced:

- 1790 1. Foundation displacement in excess of acceptable
- 1791 variances or deflections as defined in ACI 117-90 or the Florida
- 1792 Building Code and damage in the primary structural members or

1793 primary structural systems that prevents them from supporting
 1794 the loads and forces they were designed to support as defined in
 1795 the Florida Building Code;

1796 2. Damage that results in stresses in a primary structural
 1797 member greater than one and one-third the nominal strength
 1798 allowed under the Florida Building Code for new buildings of
 1799 similar structure, purpose, or location;

1800 3. Listing, leaning, or buckling of the exterior load
 1801 bearing walls or other vertical primary structural members to
 1802 such an extent that a plumb line passing through the center of
 1803 gravity does not fall inside the middle one-third of the base as
 1804 defined within the Florida Building Code;

1805 4. Damage that results in the building, or any portion
 1806 thereof, being likely to imminently collapse partially or
 1807 completely because of the movement or instability of the ground
 1808 within the influence zone of the supporting ground within the
 1809 sheer plane necessary for the purpose of supporting such
 1810 building as defined within the Florida Building Code; or

1811 5. Damage that qualifies as "substantial structural
 1812 damage" as defined in the Florida Building Code.

1813 ~~(3) On or before June 1, 2007, Every insurer authorized to~~
 1814 ~~transact property insurance in this state shall make a proper~~
 1815 ~~filing with the office for the purpose of extending the~~
 1816 ~~appropriate forms of property insurance to include coverage for~~
 1817 ~~catastrophic ground cover collapse or for sinkhole losses.~~
 1818 ~~coverage for catastrophic ground cover collapse may not go into~~
 1819 ~~effect until the effective date provided for in the filing~~
 1820 ~~approved by the office.~~

1821 (3)~~(4)~~ Insurers offering policies that exclude coverage
 1822 for sinkhole losses must ~~shall~~ inform policyholders in bold type
 1823 of not less than 14 points as follows: "YOUR POLICY PROVIDES
 1824 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS
 1825 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,
 1826 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU
 1827 MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN
 1828 ADDITIONAL PREMIUM."

1829 (4)~~(5)~~ An insurer offering sinkhole coverage to
 1830 policyholders before or after the adoption of s. 30, chapter
 1831 2007-1, Laws of Florida, may nonrenew the policies of
 1832 policyholders maintaining sinkhole coverage ~~in Pasco County or~~
 1833 ~~Hernando County,~~ at the option of the insurer, and provide an
 1834 offer of coverage that ~~to such policyholders which~~ includes
 1835 catastrophic ground cover collapse and excludes sinkhole
 1836 coverage. Insurers acting in accordance with this subsection are
 1837 subject to the following requirements:

1838 (a) Policyholders must be notified that a nonrenewal is
 1839 for purposes of removing sinkhole coverage, and that the
 1840 policyholder is ~~still~~ being offered a policy that provides
 1841 coverage for catastrophic ground cover collapse.

1842 (b) Policyholders must be provided an actuarially
 1843 reasonable premium credit or discount for the removal of
 1844 sinkhole coverage and provision of only catastrophic ground
 1845 cover collapse.

1846 (c) Subject to the provisions of this subsection and the
 1847 insurer's approved underwriting or insurability guidelines, the
 1848 insurer shall provide each policyholder with the opportunity to

1849 purchase an endorsement to his or her policy providing sinkhole
 1850 coverage and may require an inspection of the property before
 1851 issuance of a sinkhole coverage endorsement.

1852 (d) Section 624.4305 does not apply to nonrenewal notices
 1853 issued pursuant to this subsection.

1854 (5) Any claim, including, but not limited to, initial,
 1855 supplemental, and reopened claims under an insurance policy that
 1856 provides sinkhole coverage is barred unless notice of the claim
 1857 was given to the insurer in accordance with the terms of the
 1858 policy within 4 years after the policyholder knew or reasonably
 1859 should have known about the sinkhole loss.

1860 Section 20. Section 627.7065, Florida Statutes, is
 1861 repealed.

1862 Section 21. Section 627.707, Florida Statutes, is amended
 1863 to read:

1864 627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by~~
 1865 ~~insurers; insurer payment;~~ nonrenewals.—Upon receipt of a claim
 1866 for a sinkhole loss to a covered building, an insurer must meet
 1867 the following standards in investigating a claim:

1868 (1) The insurer must inspect ~~make an inspection of the~~
 1869 policyholder's insured's premises to determine if there is
 1870 structural ~~has been physical~~ damage that ~~to the structure which~~
 1871 may be the result of sinkhole activity.

1872 (2) If the insurer confirms that structural damage exists
 1873 but is unable to identify a valid cause of such damage or
 1874 discovers that such damage is consistent with sinkhole loss
 1875 ~~Following the insurer's initial inspection,~~ the insurer shall
 1876 engage a professional engineer or a professional geologist to

1877 | conduct testing as provided in s. 627.7072 to determine the
 1878 | cause of the loss within a reasonable professional probability
 1879 | and issue a report as provided in s. 627.7073, only if sinkhole
 1880 | loss is covered under the policy. Except as provided in
 1881 | subsections (4) and (6), the fees and costs of the professional
 1882 | engineer or professional geologist shall be paid by the
 1883 | insurer.+

1884 | ~~(a) The insurer is unable to identify a valid cause of the~~
 1885 | ~~damage or discovers damage to the structure which is consistent~~
 1886 | ~~with sinkhole loss; or~~

1887 | ~~(b) The policyholder demands testing in accordance with~~
 1888 | ~~this section or s. 627.7072.~~

1889 | (3) Following the initial inspection of the policyholder's
 1890 | ~~insured~~ premises, the insurer shall provide written notice to
 1891 | the policyholder disclosing the following information:

1892 | (a) What the insurer has determined to be the cause of
 1893 | damage, if the insurer has made such a determination.

1894 | (b) A statement of the circumstances under which the
 1895 | insurer is required to engage a professional engineer or a
 1896 | professional geologist to verify or eliminate sinkhole loss and
 1897 | to engage a professional engineer to make recommendations
 1898 | regarding land and building stabilization and foundation repair.

1899 | (c) A statement regarding the right of the policyholder to
 1900 | request testing by a professional engineer or a professional
 1901 | geologist, and the circumstances under which the policyholder
 1902 | may demand certain testing, and the circumstances under which
 1903 | the policyholder may incur costs associated with testing.

1904 | (4) (a) If the insurer determines that there is no sinkhole

1905 loss, the insurer may deny the claim.

1906 (b) If coverage for sinkhole loss is available and ~~If the~~
 1907 insurer denies the claim, without performing testing under s.
 1908 627.7072, the policyholder may demand testing by the insurer
 1909 under s. 627.7072.

1910 1. The policyholder's demand for testing must be
 1911 communicated to the insurer in writing within 60 days after the
 1912 policyholder's receipt of the insurer's denial of the claim.

1913 2. The policyholder shall pay 50 percent of the actual
 1914 costs of the analyses and services provided under ss. 627.7072
 1915 and 627.7073 or \$2,500, whichever is less.

1916 3. The insurer shall reimburse the policyholder for the
 1917 costs if the insurer obtains pursuant to s. 627.7073 written
 1918 certification that there is sinkhole loss.

1919 ~~(5)(a) Subject to paragraph (b),~~ If a sinkhole loss is
 1920 verified, the insurer shall pay to stabilize the land and
 1921 building and repair the foundation in accordance with the
 1922 recommendations of the professional engineer retained pursuant
 1923 to subsection (2), as provided under s. 627.7073, and in
 1924 ~~consultation~~ with notice to the policyholder, subject to the
 1925 coverage and terms of the policy. The insurer shall pay for
 1926 other repairs to the structure and contents in accordance with
 1927 the terms of the policy.

1928 ~~(a)(b)~~ The insurer may limit its total claims payment to
 1929 the actual cash value of the sinkhole loss, which does not
 1930 include including underpinning or grouting or any other repair
 1931 technique performed below the existing foundation of the
 1932 building, until the policyholder enters into a contract for the

1933 | performance of building stabilization or foundation repairs in
 1934 | accordance with the recommendations set forth in the insurer's
 1935 | report issued pursuant to s. 627.7073.

1936 | (b) In order to prevent additional damage to the building
 1937 | or structure, the policyholder must enter into a contract for
 1938 | the performance of building stabilization or foundation repairs
 1939 | within 90 days after the insurance company confirms coverage for
 1940 | the sinkhole loss and notifies the policyholder of such
 1941 | confirmation. This time period is tolled if either party invokes
 1942 | the neutral evaluation process and begins again 10 days after
 1943 | the conclusion of the neutral evaluation process.

1944 | (c) After the policyholder enters into the contract for
 1945 | the performance of building stabilization or foundation repairs,
 1946 | the insurer shall pay the amounts necessary to begin and perform
 1947 | such repairs as the work is performed and the expenses are
 1948 | incurred. The insurer may not require the policyholder to
 1949 | advance payment for such repairs. If repair covered by a
 1950 | personal lines residential property insurance policy has begun
 1951 | and the professional engineer selected or approved by the
 1952 | insurer determines that the repair cannot be completed within
 1953 | the policy limits, the insurer must ~~either~~ complete the
 1954 | professional engineer's recommended repair or tender the policy
 1955 | limits to the policyholder without a reduction for the repair
 1956 | expenses incurred.

1957 | (d) The stabilization and all other repairs to the
 1958 | structure and contents must be completed within 12 months after
 1959 | entering into the contract for repairs described in paragraph
 1960 | (b) unless:

1961 1. There is a mutual agreement between the insurer and the
 1962 policyholder;

1963 2. The claim is involved with the neutral evaluation
 1964 process;

1965 3. The claim is in litigation; or

1966 4. The claim is under appraisal or mediation.

1967 ~~(e)~~ (e) Upon the insurer's obtaining the written approval
 1968 of ~~the policyholder~~ and any lienholder, the insurer may make
 1969 payment directly to the persons selected by the policyholder to
 1970 perform the land and building stabilization and foundation
 1971 repairs. The decision by the insurer to make payment to such
 1972 persons does not hold the insurer liable for the work performed.
 1973 The policyholder may not accept a rebate from any person
 1974 performing the repairs specified in this section. If a
 1975 policyholder does receive a rebate, coverage is void and the
 1976 policyholder must refund the amount of the rebate to the
 1977 insurer. Any person making the repairs specified in this section
 1978 who offers a rebate, or any policyholder who accepts a rebate
 1979 for such repairs, commits insurance fraud, a felony of the third
 1980 degree punishable as provided in s. 775.082, s. 775.083, or s.
 1981 775.084.

1982 ~~(6) Except as provided in subsection (7), the fees and~~
 1983 ~~costs of the professional engineer or the professional geologist~~
 1984 ~~shall be paid by the insurer.~~

1985 ~~(6)~~ (7) If the insurer obtains, pursuant to s. 627.7073,
 1986 written certification that there is no sinkhole loss or that the
 1987 cause of the damage was not sinkhole activity, and if the
 1988 policyholder has submitted the sinkhole claim without good faith

1989 grounds for submitting such claim, the policyholder shall
 1990 reimburse the insurer for 50 percent of the actual costs of the
 1991 analyses and services provided under ss. 627.7072 and 627.7073;
 1992 however, a policyholder is not required to reimburse an insurer
 1993 more than \$2,500 with respect to any claim. A policyholder is
 1994 required to pay reimbursement under this subsection only if the
 1995 policyholder requested the analysis and services provided under
 1996 ss. 627.7072 and 627.7073 and the insurer, before ~~prior to~~
 1997 ordering the analysis under s. 627.7072, informs the
 1998 policyholder in writing of the policyholder's potential
 1999 liability for reimbursement and gives the policyholder the
 2000 opportunity to withdraw the claim.

2001 (7)-(8) ~~An~~ No insurer may not ~~shall~~ nonrenew any policy of
 2002 property insurance on the basis of filing of claims for sinkhole
 2003 ~~partial loss if caused by sinkhole damage or clay shrinkage as~~
 2004 ~~long as~~ the total of such payments does not exceed the ~~current~~
 2005 policy limits of coverage for the policy in effect on the date
 2006 of loss, for property damage to the covered building, as set
 2007 forth on the declarations page, and provided the insured has
 2008 repaired the structure in accordance with the engineering
 2009 recommendations made pursuant to subsection (2) upon which any
 2010 payment or policy proceeds were based.

2011 (8)-(9) The insurer may engage a professional structural
 2012 engineer to make recommendations as to the repair of the
 2013 structure.

2014 Section 22. Section 627.7073, Florida Statutes, is amended
 2015 to read:

2016 627.7073 Sinkhole reports.—

2017 (1) Upon completion of testing as provided in s. 627.7072,
 2018 the professional engineer or professional geologist shall issue
 2019 a report and certification to the insurer and the policyholder
 2020 as provided in this section.

2021 (a) Sinkhole loss is verified if, based upon tests
 2022 performed in accordance with s. 627.7072, a professional
 2023 engineer or a professional geologist issues a written report and
 2024 certification stating:

2025 1. That structural damage to the covered building has been
 2026 identified within a reasonable professional probability.

2027 ~~2.1.~~ That the cause of the ~~actual physical and~~ structural
 2028 damage is sinkhole activity within a reasonable professional
 2029 probability.

2030 ~~3.2.~~ That the analyses conducted were of sufficient scope
 2031 to identify sinkhole activity as the cause of damage within a
 2032 reasonable professional probability.

2033 ~~4.3.~~ A description of the tests performed.

2034 ~~5.4.~~ A recommendation by the professional engineer of
 2035 methods for stabilizing the land and building and for making
 2036 repairs to the foundation.

2037 (b) If there is no structural damage or if sinkhole
 2038 activity is eliminated as the cause of such damage to the
 2039 covered building ~~structure~~, the professional engineer or
 2040 professional geologist shall issue a written report and
 2041 certification to the policyholder and the insurer stating:

2042 1. That there is no structural damage or the cause of such
 2043 ~~the~~ damage is not sinkhole activity within a reasonable
 2044 professional probability.

2045 2. That the analyses and tests conducted were of
 2046 sufficient scope to eliminate sinkhole activity as the cause of
 2047 the structural damage within a reasonable professional
 2048 probability.

2049 3. A statement of the cause of the structural damage
 2050 within a reasonable professional probability.

2051 4. A description of the tests performed.

2052 (c) The respective findings, opinions, and recommendations
 2053 of the professional engineer or professional geologist as to the
 2054 cause of distress to the property and the findings, opinions,
 2055 and recommendations of the professional engineer as to land and
 2056 building stabilization and foundation repair shall be presumed
 2057 correct.

2058 (2)~~(a)~~ Any insurer that has paid a claim for a sinkhole
 2059 loss shall file a copy of the report and certification, prepared
 2060 pursuant to subsection (1), including the legal description of
 2061 the real property and the name of the property owner, the
 2062 neutral evaluator's report, if any, that indicates that sinkhole
 2063 activity caused the damage claimed, a copy of the certification
 2064 indicating that stabilization has been completed, if applicable,
 2065 and the amount of the payment, with the county clerk of court,
 2066 who shall record the report and certification. The insurer shall
 2067 bear the cost of filing and recording one or more reports and
 2068 certifications ~~the report and certification~~. There shall be no
 2069 cause of action or liability against an insurer for compliance
 2070 with this section.

2071 (a) The recording of the report and certification does
 2072 not:

CS/CS/HB 803

2011

2073 1. Constitute a lien, encumbrance, or restriction on the
 2074 title to the real property or constitute a defect in the title
 2075 to the real property;

2076 2. Create any cause of action or liability against any
 2077 grantor of the real property for breach of any warranty of good
 2078 title or warranty against encumbrances; or

2079 3. Create any cause of action or liability against any
 2080 title insurer that insures the title to the real property.

2081 (b) As a precondition to accepting payment for a sinkhole
 2082 loss, the policyholder must file a copy of any report prepared
 2083 on behalf or at the request of the policyholder regarding the
 2084 insured property. The policyholder shall bear the cost of filing
 2085 and recording such sinkhole report. The recording of the report
 2086 does not:

2087 1. Constitute a lien, encumbrance, or restriction on the
 2088 title to the real property or constitute a defect in the title
 2089 to the real property;

2090 2. Create any cause of action or liability against any
 2091 grantor of the real property for breach of any warranty of good
 2092 title or warranty against encumbrances; or

2093 3. Create any cause of action or liability against any
 2094 title insurer that insures the title to the real property.

2095 (c)-(b) The seller of real property upon which a sinkhole
 2096 claim has been made by the seller and paid by the insurer must
 2097 ~~shall~~ disclose to the buyer of such property that a claim has
 2098 been paid and whether or not the full amount of the proceeds
 2099 were used to repair the sinkhole damage.

2100 Section 23. Section 627.7074, Florida Statutes, is amended

2101 to read:

2102 627.7074 Alternative procedure for resolution of disputed

2103 sinkhole insurance claims.-

2104 ~~(1) As used in this section, the term:~~

2105 ~~(a) "Neutral evaluation" means the alternative dispute~~

2106 ~~resolution provided for in this section.~~

2107 ~~(b) "Neutral evaluator" means a professional engineer or a~~

2108 ~~professional geologist who has completed a course of study in~~

2109 ~~alternative dispute resolution designed or approved by the~~

2110 ~~department for use in the neutral evaluation process, who is~~

2111 ~~determined to be fair and impartial.~~

2112 (1)(2)(a) The department shall:

2113 (a) Certify and maintain a list of persons who are neutral

2114 evaluators.

2115 ~~(b) The department shall~~ Prepare a consumer information

2116 pamphlet for distribution by insurers to policyholders which

2117 clearly describes the neutral evaluation process and includes

2118 information ~~and forms~~ necessary for the policyholder to request

2119 a neutral evaluation.

2120 (2) Neutral evaluation is available to either party if a

2121 sinkhole report has been issued pursuant to s. 627.7073. At a

2122 minimum, neutral evaluation must determine:

2123 (a) Causation;

2124 (b) All methods of stabilization and repair both above and

2125 below ground;

2126 (c) The costs for stabilization and all repairs; and

2127 (d) Information necessary to carry out subsection (12).

2128 (3) Following the receipt of the report provided under s.

2129 | 627.7073 or the denial of a claim for a sinkhole loss, the
 2130 | insurer shall notify the policyholder of his or her right to
 2131 | participate in the neutral evaluation program under this
 2132 | section. Neutral evaluation supersedes the alternative dispute
 2133 | resolution process under s. 627.7015, but does not invalidate
 2134 | the appraisal clause of the insurance policy. The insurer shall
 2135 | provide to the policyholder the consumer information pamphlet
 2136 | prepared by the department pursuant to subsection (1)
 2137 | electronically or by United States mail ~~paragraph (2) (b).~~

2138 | (4) Neutral evaluation is nonbinding, but mandatory if
 2139 | requested by either party. A request for neutral evaluation may
 2140 | be filed with the department by the policyholder or the insurer
 2141 | on a form approved by the department. The request for neutral
 2142 | evaluation must state the reason for the request and must
 2143 | include an explanation of all the issues in dispute at the time
 2144 | of the request. Filing a request for neutral evaluation tolls
 2145 | the applicable time requirements for filing suit for ~~a period of~~
 2146 | 60 days following the conclusion of the neutral evaluation
 2147 | process or the time prescribed in s. 95.11, whichever is later.

2148 | (5) Neutral evaluation shall be conducted as an informal
 2149 | process in which formal rules of evidence and procedure need not
 2150 | be observed. A party to neutral evaluation is not required to
 2151 | attend neutral evaluation if a representative of the party
 2152 | attends and has the authority to make a binding decision on
 2153 | behalf of the party. All parties shall participate in the
 2154 | evaluation in good faith. The neutral evaluator must be allowed
 2155 | reasonable access to the interior and exterior of insured
 2156 | structures to be evaluated or for which a claim has been made.

2157 Any reports initiated by the policyholder, or an agent of the
 2158 policyholder, confirming a sinkhole loss or disputing another
 2159 sinkhole report regarding insured structures must be provided to
 2160 the neutral evaluator before the evaluator's physical inspection
 2161 of the insured property.

2162 (6) The insurer shall pay the costs associated with the
 2163 neutral evaluation. However, if a party chooses to hire a court
 2164 reporter or stenographer to contemporaneously record and
 2165 document the neutral evaluation, that party must bear such
 2166 costs.

2167 (7) Upon receipt of a request for neutral evaluation, the
 2168 department shall provide the parties a list of certified neutral
 2169 evaluators. ~~The parties shall mutually select a neutral~~
 2170 ~~evaluator from the list and promptly inform the department. If~~
 2171 ~~the parties cannot agree to a neutral evaluator within 10~~
 2172 ~~business days,~~ The department shall allow the parties to submit
 2173 requests to disqualify evaluators on the list for cause.

2174 (a) The department shall disqualify neutral evaluators for
 2175 cause based only on any of the following grounds:

2176 1. A familial relationship exists between the neutral
 2177 evaluator and either party or a representative of either party
 2178 within the third degree.

2179 2. The proposed neutral evaluator has, in a professional
 2180 capacity, previously represented either party or a
 2181 representative of either party, in the same or a substantially
 2182 related matter.

2183 3. The proposed neutral evaluator has, in a professional
 2184 capacity, represented another person in the same or a

2185 substantially related matter and that person's interests are
 2186 materially adverse to the interests of the parties. The term
 2187 "substantially related matter" means participation by the
 2188 neutral evaluator on the same claim, property, or adjacent
 2189 property.

2190 4. The proposed neutral evaluator has, within the
 2191 preceding 5 years, worked as an employer or employee of any
 2192 party to the case.

2193 (b) The parties shall appoint a neutral evaluator from the
 2194 department list and promptly inform the department. If the
 2195 parties cannot agree to a neutral evaluator within 14 days, the
 2196 department shall appoint a neutral evaluator from the list of
 2197 certified neutral evaluators. The department shall allow each
 2198 party to disqualify two neutral evaluators without cause. Upon
 2199 selection or appointment, the department shall promptly refer
 2200 the request to the neutral evaluator.

2201 (c) Within ~~7~~ 5 business days after the referral, the
 2202 neutral evaluator shall notify the policyholder and the insurer
 2203 of the date, time, and place of the neutral evaluation
 2204 conference. The conference may be held by telephone, if feasible
 2205 and desirable. The neutral evaluator shall hold the ~~neutral~~
 2206 ~~evaluation~~ conference ~~shall be held~~ within 90 ~~45~~ days after the
 2207 receipt of the request by the department. Failure of the neutral
 2208 evaluator to hold the conference within 90 days does not
 2209 invalidate either party's right to neutral evaluation or to a
 2210 neutral evaluation conference held outside this timeframe.

2211 ~~(8) The department shall adopt rules of procedure for the~~
 2212 ~~neutral evaluation process.~~

2213 (8)~~(9)~~ For policyholders not represented by an attorney, a
 2214 consumer affairs specialist of the department or an employee
 2215 designated as the primary contact for consumers on issues
 2216 relating to sinkholes under s. 20.121 shall be available for
 2217 consultation to the extent that he or she may lawfully do so.

2218 (9)~~(10)~~ Evidence of an offer to settle a claim during the
 2219 neutral evaluation process, as well as any relevant conduct or
 2220 statements made in negotiations concerning the offer to settle a
 2221 claim, is inadmissible to prove liability or absence of
 2222 liability for the claim or its value, except as provided in
 2223 subsection (14) ~~(13)~~.

2224 (10)~~(11)~~ Regardless of when noticed, any court proceeding
 2225 related to the subject matter of the neutral evaluation shall be
 2226 stayed pending completion of the neutral evaluation and for 5
 2227 days after the filing of the neutral evaluator's report with the
 2228 court.

2229 (11) If, based upon his or her professional training and
 2230 credentials, a neutral evaluator is qualified to determine only
 2231 disputes relating to causation or method of repair, the
 2232 department shall allow the neutral evaluator to enlist the
 2233 assistance of another professional from the list of neutral
 2234 evaluators not previously stricken, who, based upon his or her
 2235 professional training and credentials, is able to provide an
 2236 opinion as to other disputed issues. A professional who would be
 2237 disqualified for any reason listed in subsection (7) must be
 2238 disqualified. The neutral evaluator may also use the services of
 2239 professional engineers and professional geologists who are not
 2240 certified as neutral evaluators, as well as licensed building

2241 contractors, in order to ensure that all items in dispute are
 2242 addressed and the neutral evaluation can be completed. Any
 2243 professional engineer, professional geologist, or licensed
 2244 building contractor retained may be disqualified for any of the
 2245 reasons listed in subsection (7).

2246 (12) ~~At For matters that are not resolved by the parties~~
 2247 ~~at~~ the conclusion of the neutral evaluation, the neutral
 2248 evaluator shall prepare a report describing all matters that are
 2249 the subject of the neutral evaluation, including whether,
 2250 ~~stating that~~ in his or her opinion the sinkhole loss has been
 2251 verified or eliminated within a reasonable degree of
 2252 professional probability and, if verified, whether the sinkhole
 2253 activity caused structural damage to the covered building, and
 2254 if so, the need for and estimated costs of stabilizing the land
 2255 and any covered ~~structures or~~ buildings and other appropriate
 2256 remediation or necessary building structural repairs due to the
 2257 sinkhole loss. The evaluator's report shall be sent to all
 2258 parties ~~in attendance at the neutral evaluation~~ and to the
 2259 department, within 14 days after completing the neutral
 2260 evaluation conference.

2261 (13) The recommendation of the neutral evaluator is not
 2262 binding on any party, and the parties retain access to the
 2263 court. The neutral evaluator's written recommendation is
 2264 admissible in any subsequent action or proceeding relating to
 2265 the claim or to the cause of action giving rise to the claim.

2266 (14) If the neutral evaluator ~~first~~ verifies the existence
 2267 of a sinkhole that caused structural damage and, ~~second,~~
 2268 recommends the need for and estimates costs of stabilizing the

CS/CS/HB 803

2011

2269 land and any covered ~~structures or~~ buildings and other
2270 appropriate remediation or building ~~structural~~ repairs, which
2271 ~~costs~~ exceed the amount that the insurer has offered to pay the
2272 policyholder, the insurer is liable to the policyholder for up
2273 to \$2,500 in attorney's fees for the attorney's participation in
2274 the neutral evaluation process. For purposes of this subsection,
2275 the term "offer to pay" means a written offer signed by the
2276 insurer or its legal representative and delivered to the
2277 policyholder within 10 days after the insurer receives notice
2278 that a request for neutral evaluation has been made under this
2279 section.

2280 (15) If the insurer timely agrees in writing to comply and
2281 timely complies with the recommendation of the neutral
2282 evaluator, but the policyholder declines to resolve the matter
2283 in accordance with the recommendation of the neutral evaluator
2284 pursuant to this section:

2285 (a) The insurer is not liable for extracontractual damages
2286 related to a claim for a sinkhole loss but only as related to
2287 the issues determined by the neutral evaluation process. This
2288 section does not affect or impair claims for extracontractual
2289 damages unrelated to the issues determined by the neutral
2290 evaluation process contained in this section; and

2291 (b) The insurer is not liable for attorney's fees under s.
2292 627.428 or other provisions of the insurance code unless the
2293 policyholder obtains a judgment that is more favorable than the
2294 recommendation of the neutral evaluator.

2295 (16) Neutral evaluators are deemed to be agents of the
2296 department and have immunity from suit as provided in s. 44.107.

2297 (17) The department shall adopt rules of procedure for the
 2298 neutral evaluation process.

2299 Section 24. Subsection (8) of section 627.711, Florida
 2300 Statutes, is amended to read:

2301 627.711 Notice of premium discounts for hurricane loss
 2302 mitigation; uniform mitigation verification inspection form.—

2303 (8) At its expense, the insurer may require that any
 2304 uniform mitigation verification form provided by a policyholder,
 2305 policyholder's agent, ~~an~~ authorized mitigation inspector, or
 2306 inspection company be independently verified by an inspector, an
 2307 inspection company, or an independent third-party quality
 2308 assurance provider which does possess a quality assurance
 2309 program before ~~prior to~~ accepting the uniform mitigation
 2310 verification form as valid.

2311 Section 25. Subsection (3) of section 631.54, Florida
 2312 Statutes, is amended to read:

2313 631.54 Definitions.—As used in this part:

2314 (3) "Covered claim" means an unpaid claim, including one
 2315 of unearned premiums, which arises out of, and is within the
 2316 coverage, and not in excess of, the applicable limits of an
 2317 insurance policy to which this part applies, issued by an
 2318 insurer, if such insurer becomes an insolvent insurer and the
 2319 claimant or insured is a resident of this state at the time of
 2320 the insured event or the property from which the claim arises is
 2321 permanently located in this state. For entities other than
 2322 individuals, the residence of a claimant, insured, or
 2323 policyholder is the state in which the entity's principal place
 2324 of business is located at the time of the insured event. The

2325 term does ~~"Covered claim" shall~~ not include:

2326 (a) Any amount due any reinsurer, insurer, insurance pool,
 2327 or underwriting association, sought directly or indirectly
 2328 through a third party, as subrogation, contribution,
 2329 indemnification, or otherwise; ~~or~~

2330 (b) Any claim that would otherwise be a covered claim
 2331 under this part that has been rejected by any other state
 2332 guaranty fund on the grounds that an insured's net worth is
 2333 greater than that allowed under that state's guaranty law.
 2334 Member insurers shall have no right of subrogation,
 2335 contribution, indemnification, or otherwise, sought directly or
 2336 indirectly through a third party, against the insured of any
 2337 insolvent member; or

2338 (c) Any amount payable for a sinkhole loss other than
 2339 testing deemed appropriate by the association or payable for the
 2340 actual repair of the loss, except that the association may not
 2341 pay for attorney's fees or public adjuster's fees in connection
 2342 with a sinkhole loss or pay the policyholder. The association
 2343 may pay for actual repairs to the property, but is not liable
 2344 for amounts in excess of policy limits.

2345 Section 26. If any provision of this act, or the
 2346 application thereof to any person or circumstance is held
 2347 invalid, such invalidity shall not affect other provisions or
 2348 applications of this act which can be given effect without the
 2349 invalid provision or application. It is the express intent of
 2350 the Legislature to enact multiple important, but independent,
 2351 reforms to Florida law relating to sinkhole insurance coverage
 2352 and related claims. The Legislature further intends that the

CS/CS/HB 803

2011

2353 multiple reforms in the act could and should be enforced if one
2354 or more provisions are held invalid. To this end, the provisions
2355 of this act are declared to be severable.

2356 Section 27. Except as otherwise expressly provided in this
2357 act, this act shall take effect upon becoming a law.