

1                   A bill to be entitled  
2           An act relating to insurance; amending s. 320.27,  
3           F.S.; exempting salvage motor vehicle dealers from  
4           having to carry certain types of insurance coverage  
5           under certain circumstances; amending s. 624.501,  
6           F.S.; conforming a cross-reference; amending s.  
7           624.610, F.S.; revising provisions specifying which  
8           insurers are not subject to certain filing  
9           requirements relating to reinsurance; amending s.  
10          626.261, F.S.; authorizing the Department of Financial  
11          Services to provide examinations in Spanish; providing  
12          for costs to be paid by applicants who request  
13          examinations in Spanish; providing a requirement with  
14          respect to whether an examination in Spanish should be  
15          allowed; amending s. 626.321, F.S.; revising  
16          provisions relating to limited licenses for travel  
17          insurance; providing that a full-time salaried  
18          employee of a licensed general lines agent or a  
19          business entity that offers travel planning services  
20          may be issued such license under certain  
21          circumstances; amending s. 626.753, F.S.; specifying  
22          circumstances constituting an unlawful rebate for crop  
23          hail or multiple-peril crop insurance; providing that  
24          agents engaging in commission sharing with certain  
25          associations under specified circumstances are  
26          participating in a commission sharing violation;  
27          providing penalties; creating s. 626.8685, F.S.;  
28          exempting certain employees who conduct data entry

29 | from licensure as insurance adjusters under certain  
30 | circumstances; defining the term "automated claims  
31 | adjudication system" with respect to application of  
32 | such exemption; prohibiting residents of Canada from  
33 | licensure as nonresident independent adjusters under  
34 | certain circumstances; amending s. 626.916, F.S.;  
35 | revising the disclosure statement signed by an insured  
36 | placing coverage in the surplus lines market; amending  
37 | s. 626.9541, F.S.; providing that specified acts  
38 | constituting an unlawful rebate under certain  
39 | circumstances meet the definition of unfair methods of  
40 | competition and unfair or deceptive acts or practices;  
41 | amending s. 627.351, F.S.; increasing the amount of  
42 | surplus as to policyholders that certain insurers who  
43 | are members of a plan to equitably apportion or share  
44 | windstorm coverage may have in order to petition the  
45 | Department of Financial Services to qualify as a  
46 | limited apportionment company; amending s. 627.7015,  
47 | F.S.; revising provisions relating to alternative  
48 | procedures for the resolution of disputed property  
49 | insurance claims; amending s. 627.706, F.S.; providing  
50 | for renewal of property insurance policies maintaining  
51 | sinkhole coverage; amending s. 627.7295, F.S.;  
52 | clarifying provisions relating to cancellation for  
53 | nonpayment of premiums for motor vehicle insurance;  
54 | allowing the cancellation of such policies under  
55 | certain circumstances; amending s. 627.736, F.S.;  
56 | specifying the interest rate applicable to the accrual

57 of interest on overdue payments of personal injury  
 58 protection benefits; providing effective dates.

59

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

61

62 Section 1. Subsection (3) of section 320.27, Florida  
 63 Statutes, is amended to read:

64 320.27 Motor vehicle dealers.—

65 (3) APPLICATION AND FEE.—The application for the license  
 66 shall be in such form as may be prescribed by the department and  
 67 shall be subject to such rules with respect thereto as may be so  
 68 prescribed by it. Such application shall be verified by oath or  
 69 affirmation and shall contain a full statement of the name and  
 70 birth date of the person or persons applying therefor; the name  
 71 of the firm or copartnership, with the names and places of  
 72 residence of all members thereof, if such applicant is a firm or  
 73 copartnership; the names and places of residence of the  
 74 principal officers, if the applicant is a body corporate or  
 75 other artificial body; the name of the state under whose laws  
 76 the corporation is organized; the present and former place or  
 77 places of residence of the applicant; and prior business in  
 78 which the applicant has been engaged and the location thereof.  
 79 Such application shall describe the exact location of the place  
 80 of business and shall state whether the place of business is  
 81 owned by the applicant and when acquired, or, if leased, a true  
 82 copy of the lease shall be attached to the application. The  
 83 applicant shall certify that the location provides an adequately  
 84 equipped office and is not a residence; that the location

CS/HB 1101

2012

85 affords sufficient unoccupied space upon and within which  
86 adequately to store all motor vehicles offered and displayed for  
87 sale; and that the location is a suitable place where the  
88 applicant can in good faith carry on such business and keep and  
89 maintain books, records, and files necessary to conduct such  
90 business, which will be available at all reasonable hours to  
91 inspection by the department or any of its inspectors or other  
92 employees. The applicant shall certify that the business of a  
93 motor vehicle dealer is the principal business which shall be  
94 conducted at that location. Such application shall contain a  
95 statement that the applicant is either franchised by a  
96 manufacturer of motor vehicles, in which case the name of each  
97 motor vehicle that the applicant is franchised to sell shall be  
98 included, or an independent (nonfranchised) motor vehicle  
99 dealer. Such application shall contain such other relevant  
100 information as may be required by the department, including  
101 evidence that the applicant is insured under a garage liability  
102 insurance policy or a general liability insurance policy coupled  
103 with a business automobile policy, which shall include, at a  
104 minimum, \$25,000 combined single-limit liability coverage  
105 including bodily injury and property damage protection and  
106 \$10,000 personal injury protection. However, a salvage motor  
107 vehicle dealer as defined in subparagraph (1)(c)5. is exempt  
108 from the requirements for garage liability insurance and  
109 personal injury protection insurance on those vehicles that have  
110 been issued a certificate of destruction and cannot be operated  
111 legally on state roads, highways, or streets. Franchise dealers  
112 must submit a garage liability insurance policy, and all other

CS/HB 1101

2012

113 | dealers must submit a garage liability insurance policy or a  
114 | general liability insurance policy coupled with a business  
115 | automobile policy. Such policy shall be for the license period,  
116 | and evidence of a new or continued policy shall be delivered to  
117 | the department at the beginning of each license period. Upon  
118 | making initial application, the applicant shall pay to the  
119 | department a fee of \$300 in addition to any other fees now  
120 | required by law; upon making a subsequent renewal application,  
121 | the applicant shall pay to the department a fee of \$75 in  
122 | addition to any other fees now required by law. Upon making an  
123 | application for a change of location, the person shall pay a fee  
124 | of \$50 in addition to any other fees now required by law. The  
125 | department shall, in the case of every application for initial  
126 | licensure, verify whether certain facts set forth in the  
127 | application are true. Each applicant, general partner in the  
128 | case of a partnership, or corporate officer and director in the  
129 | case of a corporate applicant, must file a set of fingerprints  
130 | with the department for the purpose of determining any prior  
131 | criminal record or any outstanding warrants. The department  
132 | shall submit the fingerprints to the Department of Law  
133 | Enforcement for state processing and forwarding to the Federal  
134 | Bureau of Investigation for federal processing. The actual cost  
135 | of state and federal processing shall be borne by the applicant  
136 | and is in addition to the fee for licensure. The department may  
137 | issue a license to an applicant pending the results of the  
138 | fingerprint investigation, which license is fully revocable if  
139 | the department subsequently determines that any facts set forth  
140 | in the application are not true or correctly represented.

Page 5 of 40

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1101-01-c1

CS/HB 1101

2012

141 Section 2. Paragraph (b) of subsection (9) of section  
 142 624.501, Florida Statutes, is amended to read:

143 624.501 Filing, license, appointment, and miscellaneous  
 144 fees.—The department, commission, or office, as appropriate,  
 145 shall collect in advance, and persons so served shall pay to it  
 146 in advance, fees, licenses, and miscellaneous charges as  
 147 follows:

148 (9)

149 (b) For all limited appointments as agent, as provided ~~for~~  
 150 in s. 626.321(1)(c) and (d) ~~626.321(1)(d)~~, the agent's original  
 151 appointment and biennial renewal or continuation thereof for  
 152 each insurer is ~~shall be~~ equal to the number of offices, branch  
 153 offices, or places of business covered by the license multiplied  
 154 by the fees set forth in paragraph (a).

155 Section 3. Paragraph (c) of subsection (11) of section  
 156 624.610, Florida Statutes, is amended to read:

157 624.610 Reinsurance.—

158 (11)

159 (c) This subsection applies to cessions of directly  
 160 written risk or loss. This subsection does not apply to  
 161 contracts of facultative reinsurance or to any ceding insurer  
 162 that has a with surplus as to policyholders which ~~that~~ exceeds  
 163 \$100 million as of the immediately preceding December 31. A  
 164 ~~Additionally, any~~ ceding insurer otherwise subject to this  
 165 section which had with less than \$500,000 in direct premiums  
 166 written in this state during the preceding calendar year and no  
 167 more than \$250,000 in direct premiums written in this state  
 168 during the preceding calendar quarter, and which had fewer ~~or~~

169 ~~with less than 1,000 policyholders at the end of the preceding~~  
 170 ~~calendar year, is exempt from the requirements of this~~  
 171 ~~subsection. However, any ceding insurer otherwise subject to~~  
 172 ~~this section with more than \$250,000 in direct premiums written~~  
 173 ~~in this state during the preceding calendar quarter is not~~  
 174 ~~exempt from the requirements of this subsection.~~

175 Section 4. Subsection (5) is added to section 626.261,  
 176 Florida Statutes, to read:

177 626.261 Conduct of examination.—

178 (5) The department may provide licensure examinations in  
 179 Spanish. Applicants requesting examination or reexamination in  
 180 Spanish must bear the full cost of the department's development,  
 181 preparation, administration, grading, and evaluation of the  
 182 Spanish-language examination. When determining whether it is in  
 183 the public interest to allow the examination to be translated  
 184 into and administered in Spanish, the department shall consider  
 185 the percentage of the population who speak Spanish.

186 Section 5. Paragraph (c) of subsection (1) of section  
 187 626.321, Florida Statutes, is amended to read:

188 626.321 Limited licenses.—

189 (1) The department shall issue to a qualified individual,  
 190 or a qualified individual or entity under paragraphs (c), (d),  
 191 (e), and (i), a license as agent authorized to transact a  
 192 limited class of business in any of the following categories:

193 (c) Travel insurance.—License covering only policies and  
 194 certificates of travel insurance, which are subject to review by  
 195 the office ~~under s. 624.605(1)(g)~~. Policies and certificates of  
 196 travel insurance may provide coverage for risks incidental to

197 | travel, planned travel, or accommodations while traveling,  
 198 | including, but not limited to, accidental death and  
 199 | dismemberment of a traveler; trip or event cancellation,  
 200 | interruption, or delay; loss of or damage to personal effects or  
 201 | travel documents; damages to travel accommodations; baggage  
 202 | delay; emergency medical travel or evacuation of a traveler; or  
 203 | medical, surgical, and hospital expenses related to an illness  
 204 | or emergency of a traveler. ~~Any~~ Such policy or certificate may  
 205 | be issued for terms longer than 90 ~~60~~ days, but ~~each policy or~~  
 206 | ~~certificate~~, other than a policy or certificate providing  
 207 | coverage for air ambulatory services only, each policy or  
 208 | certificate must be limited to coverage for travel or use of  
 209 | accommodations of no longer than 90 ~~60~~ days. The license may be  
 210 | issued only:

211 |       1. To a full-time salaried employee of a common carrier or  
 212 | a full-time salaried employee or owner of a transportation  
 213 | ticket agency and may authorize the sale of such ticket policies  
 214 | only in connection with the sale of transportation tickets, or  
 215 | to the full-time salaried employee of such an agent. ~~No~~ Such  
 216 | policy may not ~~shall~~ be for a ~~duration of~~ more than 48 hours or  
 217 | more than ~~for~~ the duration of a specified one-way trip or round  
 218 | trip.

219 |       2. To an entity or individual that is:

220 |       a. The developer of a timeshare plan that is the subject  
 221 | of an approved public offering statement under chapter 721;

222 |       b. An exchange company operating an exchange program  
 223 | approved under chapter 721;

224 |       c. A managing entity operating a timeshare plan approved



225 under chapter 721;

226 d. A seller of travel as defined in chapter 559; or

227 e. A subsidiary or affiliate of any of the entities  
228 described in sub-subparagraphs a.-d.

229 3. To a full-time salaried employee of a licensed general  
230 lines agent or a business entity that offers travel planning  
231 services if insurance sales activities authorized by the license  
232 are in connection with, and incidental to, travel.

233 a. A license issued to a business entity that offers  
234 travel planning services must encompass each office, branch  
235 office, or place of business making use of the entity's business  
236 name in order to offer, solicit, and sell insurance pursuant to  
237 this paragraph.

238 b. The application for licensure must list the name,  
239 address, and phone number for each office, branch office, or  
240 place of business that is to be covered by the license. The  
241 licensee shall notify the department of the name, address, and  
242 phone number of any new location that is to be covered by the  
243 license before the new office, branch office, or place of  
244 business engages in the sale of insurance pursuant to this  
245 paragraph. The licensee shall notify the department within 30  
246 days after the closing or terminating of an office, branch  
247 office, or place of business. Upon receipt of the notice, the  
248 department shall delete the office, branch office, or place of  
249 business from the license.

250 c. A licensed and appointed entity is directly responsible  
251 and accountable for all acts of the licensee's employees and  
252 parties with whom the licensee has entered into a contractual

253 agreement to offer travel insurance.

254  
 255 A licensee shall require each individual ~~employee~~ who offers  
 256 policies or certificates under this subparagraph to receive  
 257 initial training from a general lines agent or an insurer  
 258 authorized under chapter 624 to transact insurance within this  
 259 state. For an entity applying for a license as a travel  
 260 insurance agent, the fingerprinting requirement of this section  
 261 applies only to the president, secretary, and treasurer and to  
 262 any other officer or person who directs or controls the travel  
 263 insurance operations of the entity.

264 Section 6. Subsection (3) of section 626.753, Florida  
 265 Statutes, is amended to read:

266 626.753 Sharing commissions; penalty.—

267 (3) (a) A general lines agent may share commissions derived  
 268 from the sale of crop hail or multiple-peril crop insurance with  
 269 a production credit association organized under 12 U.S.C.A. ss.  
 270 2071-2077 or a federal land bank association organized under  
 271 U.S.C.A. ss. 2091-2098 if the association has specifically  
 272 approved the insurance activity by its employees. The amount of  
 273 commission to be shared shall be determined by the general lines  
 274 agent and the company paying the commission.

275 (b) Any patronage dividend or other payment, discount, or  
 276 credit provided to a member of a production credit association  
 277 or federal land bank association, which dividend, payment,  
 278 discount, or credit is directly or indirectly calculated on the  
 279 basis of the premium charged to that member for crop hail or  
 280 multiple-peril crop insurance, constitutes an unlawful rebate in

CS/HB 1101

2012

281 violation of ss. 626.572 and 626.9541(1)(h).

282 (c) Any agent who engages in commission sharing with a  
 283 production credit association or federal land bank association,  
 284 with the knowledge that the association provides patronage  
 285 dividends or other payments, discounts, or credits that  
 286 constitute unlawful rebates as described in this subsection, is  
 287 deemed to be participating in the violation of this section.

288 Section 7. Section 626.8685, Florida Statutes, is created  
 289 to read:

290 626.8685 Portable electronics insurance claims; exemption;  
 291 licensure restriction.-

292 (1) This part does not apply to any individual who  
 293 collects claims information from, or furnishes claims  
 294 information to, insureds or claimants, and who conducts data  
 295 entry, including entering data into an automated claims  
 296 adjudication system, provided that the individual is an employee  
 297 of a business entity licensed under this chapter, or its  
 298 affiliate, and no more than 25 such persons are under the  
 299 supervision of one licensed independent adjuster or licensed  
 300 agent who is exempt from licensure pursuant to s. 626.862. For  
 301 purposes of this subsection, the term "automated claims  
 302 adjudication system" means a preprogrammed computer system  
 303 designed for the collection, data entry, calculation, and final  
 304 resolution of portable electronics insurance claims that:

305 (a) May be used only by a licensed independent adjuster,  
 306 licensed agent, or supervised individual operating pursuant to  
 307 this subsection;

308 (b) Must comply with all claims payment requirements of

309 the insurance code; and

310 (c) Must be certified as compliant with this subsection by  
 311 a licensed independent adjuster that is an officer of a licensed  
 312 business entity under this chapter.

313 (2) Notwithstanding any other provision of law, a resident  
 314 of Canada may not be licensed as a nonresident independent  
 315 adjuster for purposes of adjusting portable electronics  
 316 insurance claims unless the person has successfully obtained an  
 317 adjuster's license in another state.

318 Section 8. Paragraph (b) of subsection (3) of section  
 319 626.916, Florida Statutes, is amended to read:

320 626.916 Eligibility for export.—

321 (3)

322 (b) Paragraphs (1)(a)-(d) do not apply to classes of  
 323 insurance which are subject to s. 627.062(3)(d)1. These classes  
 324 may be exportable under the following conditions:

325 1. The insurance must be placed only by or through a  
 326 surplus lines agent licensed in this state;

327 2. The insurer must be made eligible under s. 626.918; and

328 3. The insured must sign a disclosure that substantially  
 329 provides the following: "You are agreeing to place coverage in  
 330 the surplus lines market. ~~Superior~~ Coverage may be available in  
 331 the admitted market ~~and at a lesser cost~~. Persons insured by  
 332 surplus lines carriers are not protected under the Florida  
 333 Insurance Guaranty Act with respect to any right of recovery for  
 334 the obligation of an insolvent unlicensed insurer." If the  
 335 notice is signed by the insured, the insured is presumed to have  
 336 been informed and to know that other coverage may be available,

337 and, with respect to the diligent-effort requirement under  
 338 subsection (1), there is no liability on the part of, and no  
 339 cause of action arises against, the retail agent presenting the  
 340 form.

341 Section 9. Paragraph (h) of subsection (1) of section  
 342 626.9541, Florida Statutes, is amended to read:

343 626.9541 Unfair methods of competition and unfair or  
 344 deceptive acts or practices defined.—

345 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
 346 ACTS.—The following are defined as unfair methods of competition  
 347 and unfair or deceptive acts or practices:

348 (h) Unlawful rebates.—

349 1. Except as otherwise expressly provided by law, or in an  
 350 applicable filing with the office, knowingly:

351 a. Permitting, or offering to make, or making, any  
 352 contract or agreement as to such contract other than as plainly  
 353 expressed in the insurance contract issued thereon;

354 b. Paying, allowing, or giving, or offering to pay, allow,  
 355 or give, directly or indirectly, as inducement to such insurance  
 356 contract, any unlawful rebate of premiums payable on the  
 357 contract, any special favor or advantage in the dividends or  
 358 other benefits thereon, or any valuable consideration or  
 359 inducement whatever not specified in the contract;

360 c. Giving, selling, or purchasing, or offering to give,  
 361 sell, or purchase, as inducement to such insurance contract or  
 362 in connection therewith, any stocks, bonds, or other securities  
 363 of any insurance company or other corporation, association, or  
 364 partnership, or any dividends or profits accrued thereon, or

365 anything of value whatsoever not specified in the insurance  
366 contract.

367 2. Nothing in paragraph (g) or subparagraph 1. of this  
368 paragraph shall be construed as including within the definition  
369 of discrimination or unlawful rebates:

370 a. In the case of any contract of life insurance or life  
371 annuity, paying bonuses to all policyholders or otherwise  
372 abating their premiums in whole or in part out of surplus  
373 accumulated from nonparticipating insurance; provided that any  
374 such bonuses or abatement of premiums is fair and equitable to  
375 all policyholders and for the best interests of the company and  
376 its policyholders.

377 b. In the case of life insurance policies issued on the  
378 industrial debit plan, making allowance to policyholders who  
379 have continuously for a specified period made premium payments  
380 directly to an office of the insurer in an amount which fairly  
381 represents the saving in collection expenses.

382 c. Readjustment of the rate of premium for a group  
383 insurance policy based on the loss or expense thereunder, at the  
384 end of the first or any subsequent policy year of insurance  
385 thereunder, which may be made retroactive only for such policy  
386 year.

387 d. Issuance of life insurance policies or annuity  
388 contracts at rates less than the usual rates of premiums for  
389 such policies or contracts, as group insurance or employee  
390 insurance as defined in this code.

391 e. Issuing life or disability insurance policies on a  
392 salary savings, bank draft, preauthorized check, payroll

393 deduction, or other similar plan at a reduced rate reasonably  
 394 related to the savings made by the use of such plan.

395 3.a. No title insurer, or any member, employee, attorney,  
 396 agent, or agency thereof, shall pay, allow, or give, or offer to  
 397 pay, allow, or give, directly or indirectly, as inducement to  
 398 title insurance, or after such insurance has been effected, any  
 399 rebate or abatement of the premium or any other charge or fee,  
 400 or provide any special favor or advantage, or any monetary  
 401 consideration or inducement whatever.

402 b. Nothing in this subparagraph shall be construed as  
 403 prohibiting the payment of fees to attorneys at law duly  
 404 licensed to practice law in the courts of this state, for  
 405 professional services, or as prohibiting the payment of earned  
 406 portions of the premium to duly appointed agents or agencies who  
 407 actually perform services for the title insurer. Nothing in this  
 408 subparagraph shall be construed as prohibiting a rebate or  
 409 abatement of an attorney ~~attorney's~~ fee charged for professional  
 410 services, or that portion of the premium that is not required to  
 411 be retained by the insurer pursuant to s. 627.782(1), or any  
 412 other agent charge or fee to the person responsible for paying  
 413 the premium, charge, or fee.

414 c. No insured named in a policy, or any other person  
 415 directly or indirectly connected with the transaction involving  
 416 the issuance of such policy, including, but not limited to, any  
 417 mortgage broker, real estate broker, builder, or attorney, any  
 418 employee, agent, agency, or representative thereof, or any other  
 419 person whatsoever, shall knowingly receive or accept, directly  
 420 or indirectly, any rebate or abatement of any portion of the

421 title insurance premium or of any other charge or fee or any  
 422 monetary consideration or inducement whatsoever, except as set  
 423 forth in sub-subparagraph b.; provided, in no event shall any  
 424 portion of the attorney ~~attorney's~~ fee, any portion of the  
 425 premium that is not required to be retained by the insurer  
 426 pursuant to s. 627.782(1), any agent charge or fee, or any other  
 427 monetary consideration or inducement be paid directly or  
 428 indirectly for the referral of title insurance business.

429 4. Providing a patronage dividend or other payment,  
 430 discount, or credit to a member of a production credit  
 431 association organized under 12 U.S.C.A. ss. 2071-2077 or a  
 432 federal land bank association organized under 12 U.S.C.A. ss.  
 433 2091-2098 constitutes an unlawful rebate if the dividend or  
 434 other payment, discount, or credit is directly or indirectly  
 435 calculated on the basis of the premium charged to that member  
 436 for crop hail or multiple-peril crop insurance.

437 Section 10. Paragraph (b) of subsection (2) of section  
 438 627.351, Florida Statutes, is amended to read:

439 627.351 Insurance risk apportionment plans.—

440 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

441 (b) The department shall require all insurers holding a  
 442 certificate of authority to transact property insurance on a  
 443 direct basis in this state, other than joint underwriting  
 444 associations and other entities formed pursuant to this section,  
 445 to provide windstorm coverage to applicants from areas  
 446 determined to be eligible pursuant to paragraph (c) who in good  
 447 faith are entitled to, but are unable to procure, such coverage  
 448 through ordinary means; or it shall adopt a reasonable plan or



449 plans for the equitable apportionment or sharing among such  
450 insurers of windstorm coverage, which may include formation of  
451 an association for this purpose. As used in this subsection, the  
452 term "property insurance" means insurance on real or personal  
453 property, as defined in s. 624.604, including insurance for  
454 fire, industrial fire, allied lines, farmowners multiperil,  
455 homeowners' multiperil, commercial multiperil, and mobile homes,  
456 and including liability coverages on all such insurance, but  
457 excluding inland marine as defined in s. 624.607(3) and  
458 excluding vehicle insurance as defined in s. 624.605(1)(a) other  
459 than insurance on mobile homes used as permanent dwellings. The  
460 department shall adopt rules that provide a formula for the  
461 recovery and repayment of any deferred assessments.

462 1. For the purpose of this section, properties eligible  
463 for such windstorm coverage are defined as dwellings, buildings,  
464 and other structures, including mobile homes which are used as  
465 dwellings and which are tied down in compliance with mobile home  
466 tie-down requirements prescribed by the Department of Highway  
467 Safety and Motor Vehicles pursuant to s. 320.8325, and the  
468 contents of all such properties. An applicant or policyholder is  
469 eligible for coverage only if an offer of coverage cannot be  
470 obtained by or for the applicant or policyholder from an  
471 admitted insurer at approved rates.

472 2.a.(I) All insurers required to be members of such  
473 association shall participate in its writings, expenses, and  
474 losses. Surplus of the association shall be retained for the  
475 payment of claims and shall not be distributed to the member  
476 insurers. Such participation by member insurers shall be in the

CS/HB 1101

2012

477 | proportion that the net direct premiums of each member insurer  
478 | written for property insurance in this state during the  
479 | preceding calendar year bear to the aggregate net direct  
480 | premiums for property insurance of all member insurers, as  
481 | reduced by any credits for voluntary writings, in this state  
482 | during the preceding calendar year. For the purposes of this  
483 | subsection, the term "net direct premiums" means direct written  
484 | premiums for property insurance, reduced by premium for  
485 | liability coverage and for the following if included in allied  
486 | lines: rain and hail on growing crops; livestock; association  
487 | direct premiums booked; National Flood Insurance Program direct  
488 | premiums; and similar deductions specifically authorized by the  
489 | plan of operation and approved by the department. A member's  
490 | participation shall begin on the first day of the calendar year  
491 | following the year in which it is issued a certificate of  
492 | authority to transact property insurance in the state and shall  
493 | terminate 1 year after the end of the calendar year during which  
494 | it no longer holds a certificate of authority to transact  
495 | property insurance in the state. The commissioner, after review  
496 | of annual statements, other reports, and any other statistics  
497 | that the commissioner deems necessary, shall certify to the  
498 | association the aggregate direct premiums written for property  
499 | insurance in this state by all member insurers.

500 |       (II) Effective July 1, 2002, the association shall operate  
501 | subject to the supervision and approval of a board of governors  
502 | who are the same individuals that have been appointed by the  
503 | Treasurer to serve on the board of governors of the Citizens  
504 | Property Insurance Corporation.

505 (III) The plan of operation shall provide a formula  
 506 whereby a company voluntarily providing windstorm coverage in  
 507 affected areas will be relieved wholly or partially from  
 508 apportionment of a regular assessment pursuant to sub-sub-  
 509 subparagraph d.(I) or sub-sub-subparagraph d.(II).

510 (IV) A company which is a member of a group of companies  
 511 under common management may elect to have its credits applied on  
 512 a group basis, and any company or group may elect to have its  
 513 credits applied to any other company or group.

514 (V) There shall be no credits or relief from apportionment  
 515 to a company for emergency assessments collected from its  
 516 policyholders under sub-sub-subparagraph d.(III).

517 (VI) The plan of operation may also provide for the award  
 518 of credits, for a period not to exceed 3 years, from a regular  
 519 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-  
 520 subparagraph d.(II) as an incentive for taking policies out of  
 521 the Residential Property and Casualty Joint Underwriting  
 522 Association. In order to qualify for the exemption under this  
 523 sub-sub-subparagraph, the take-out plan must provide that at  
 524 least 40 percent of the policies removed from the Residential  
 525 Property and Casualty Joint Underwriting Association cover risks  
 526 located in Miami-Dade, Broward, and Palm Beach Counties or at  
 527 least 30 percent of the policies so removed cover risks located  
 528 in Miami-Dade, Broward, and Palm Beach Counties and an  
 529 additional 50 percent of the policies so removed cover risks  
 530 located in other coastal counties, and must also provide that no  
 531 more than 15 percent of the policies so removed may exclude  
 532 windstorm coverage. With the approval of the department, the

533 association may waive these geographic criteria for a take-out  
534 plan that removes at least the lesser of 100,000 Residential  
535 Property and Casualty Joint Underwriting Association policies or  
536 15 percent of the total number of Residential Property and  
537 Casualty Joint Underwriting Association policies, provided the  
538 governing board of the Residential Property and Casualty Joint  
539 Underwriting Association certifies that the take-out plan will  
540 materially reduce the Residential Property and Casualty Joint  
541 Underwriting Association's 100-year probable maximum loss from  
542 hurricanes. With the approval of the department, the board may  
543 extend such credits for an additional year if the insurer  
544 guarantees an additional year of renewability for all policies  
545 removed from the Residential Property and Casualty Joint  
546 Underwriting Association, or for 2 additional years if the  
547 insurer guarantees 2 additional years of renewability for all  
548 policies removed from the Residential Property and Casualty  
549 Joint Underwriting Association.

550 b. Assessments to pay deficits in the association under  
551 this subparagraph shall be included as an appropriate factor in  
552 the making of rates as provided in s. 627.3512.

553 c. The Legislature finds that the potential for unlimited  
554 deficit assessments under this subparagraph may induce insurers  
555 to attempt to reduce their writings in the voluntary market, and  
556 that such actions would worsen the availability problems that  
557 the association was created to remedy. It is the intent of the  
558 Legislature that insurers remain fully responsible for paying  
559 regular assessments and collecting emergency assessments for any  
560 deficits of the association; however, it is also the intent of

561 the Legislature to provide a means by which assessment  
562 liabilities may be amortized over a period of years.

563 d.(I) When the deficit incurred in a particular calendar  
564 year is 10 percent or less of the aggregate statewide direct  
565 written premium for property insurance for the prior calendar  
566 year for all member insurers, the association shall levy an  
567 assessment on member insurers in an amount equal to the deficit.

568 (II) When the deficit incurred in a particular calendar  
569 year exceeds 10 percent of the aggregate statewide direct  
570 written premium for property insurance for the prior calendar  
571 year for all member insurers, the association shall levy an  
572 assessment on member insurers in an amount equal to the greater  
573 of 10 percent of the deficit or 10 percent of the aggregate  
574 statewide direct written premium for property insurance for the  
575 prior calendar year for member insurers. Any remaining deficit  
576 shall be recovered through emergency assessments under sub-sub-  
577 subparagraph (III).

578 (III) Upon a determination by the board of directors that  
579 a deficit exceeds the amount that will be recovered through  
580 regular assessments on member insurers, pursuant to sub-sub-  
581 subparagraph (I) or sub-sub-subparagraph (II), the board shall  
582 levy, after verification by the department, emergency  
583 assessments to be collected by member insurers and by  
584 underwriting associations created pursuant to this section which  
585 write property insurance, upon issuance or renewal of property  
586 insurance policies other than National Flood Insurance policies  
587 in the year or years following levy of the regular assessments.  
588 The amount of the emergency assessment collected in a particular

CS/HB 1101

2012

589 | year shall be a uniform percentage of that year's direct written  
590 | premium for property insurance for all member insurers and  
591 | underwriting associations, excluding National Flood Insurance  
592 | policy premiums, as annually determined by the board and  
593 | verified by the department. The department shall verify the  
594 | arithmetic calculations involved in the board's determination  
595 | within 30 days after receipt of the information on which the  
596 | determination was based. Notwithstanding any other provision of  
597 | law, each member insurer and each underwriting association  
598 | created pursuant to this section shall collect emergency  
599 | assessments from its policyholders without such obligation being  
600 | affected by any credit, limitation, exemption, or deferment. The  
601 | emergency assessments so collected shall be transferred directly  
602 | to the association on a periodic basis as determined by the  
603 | association. The aggregate amount of emergency assessments  
604 | levied under this sub-sub-subparagraph in any calendar year may  
605 | not exceed the greater of 10 percent of the amount needed to  
606 | cover the original deficit, plus interest, fees, commissions,  
607 | required reserves, and other costs associated with financing of  
608 | the original deficit, or 10 percent of the aggregate statewide  
609 | direct written premium for property insurance written by member  
610 | insurers and underwriting associations for the prior year, plus  
611 | interest, fees, commissions, required reserves, and other costs  
612 | associated with financing the original deficit. The board may  
613 | pledge the proceeds of the emergency assessments under this sub-  
614 | sub-subparagraph as the source of revenue for bonds, to retire  
615 | any other debt incurred as a result of the deficit or events  
616 | giving rise to the deficit, or in any other way that the board

617 determines will efficiently recover the deficit. The emergency  
 618 assessments under this sub-sub-subparagraph shall continue as  
 619 long as any bonds issued or other indebtedness incurred with  
 620 respect to a deficit for which the assessment was imposed remain  
 621 outstanding, unless adequate provision has been made for the  
 622 payment of such bonds or other indebtedness pursuant to the  
 623 document governing such bonds or other indebtedness. Emergency  
 624 assessments collected under this sub-sub-subparagraph are not  
 625 part of an insurer's rates, are not premium, and are not subject  
 626 to premium tax, fees, or commissions; however, failure to pay  
 627 the emergency assessment shall be treated as failure to pay  
 628 premium.

629 (IV) Each member insurer's share of the total regular  
 630 assessments under sub-sub-subparagraph (I) or sub-sub-  
 631 subparagraph (II) shall be in the proportion that the insurer's  
 632 net direct premium for property insurance in this state, for the  
 633 year preceding the assessment bears to the aggregate statewide  
 634 net direct premium for property insurance of all member  
 635 insurers, as reduced by any credits for voluntary writings for  
 636 that year.

637 (V) If regular deficit assessments are made under sub-sub-  
 638 subparagraph (I) or sub-sub-subparagraph (II), or by the  
 639 Residential Property and Casualty Joint Underwriting Association  
 640 under sub-subparagraph (6)(b)3.a. or sub-subparagraph  
 641 (6)(b)3.b., the association shall levy upon the association's  
 642 policyholders, as part of its next rate filing, or by a separate  
 643 rate filing solely for this purpose, a market equalization  
 644 surcharge in a percentage equal to the total amount of such

645 regular assessments divided by the aggregate statewide direct  
646 written premium for property insurance for member insurers for  
647 the prior calendar year. Market equalization surcharges under  
648 this sub-sub-subparagraph are not considered premium and are not  
649 subject to commissions, fees, or premium taxes; however, failure  
650 to pay a market equalization surcharge shall be treated as  
651 failure to pay premium.

652 e. The governing body of any unit of local government, any  
653 residents of which are insured under the plan, may issue bonds  
654 as defined in s. 125.013 or s. 166.101 to fund an assistance  
655 program, in conjunction with the association, for the purpose of  
656 defraying deficits of the association. In order to avoid  
657 needless and indiscriminate proliferation, duplication, and  
658 fragmentation of such assistance programs, any unit of local  
659 government, any residents of which are insured by the  
660 association, may provide for the payment of losses, regardless  
661 of whether or not the losses occurred within or outside of the  
662 territorial jurisdiction of the local government. Revenue bonds  
663 may not be issued until validated pursuant to chapter 75, unless  
664 a state of emergency is declared by executive order or  
665 proclamation of the Governor pursuant to s. 252.36 making such  
666 findings as are necessary to determine that it is in the best  
667 interests of, and necessary for, the protection of the public  
668 health, safety, and general welfare of residents of this state  
669 and the protection and preservation of the economic stability of  
670 insurers operating in this state, and declaring it an essential  
671 public purpose to permit certain municipalities or counties to  
672 issue bonds as will provide relief to claimants and



CS/HB 1101

2012

673 | policyholders of the association and insurers responsible for  
674 | apportionment of plan losses. Any such unit of local government  
675 | may enter into such contracts with the association and with any  
676 | other entity created pursuant to this subsection as are  
677 | necessary to carry out this paragraph. Any bonds issued under  
678 | this sub-subparagraph shall be payable from and secured by  
679 | moneys received by the association from assessments under this  
680 | subparagraph, and assigned and pledged to or on behalf of the  
681 | unit of local government for the benefit of the holders of such  
682 | bonds. The funds, credit, property, and taxing power of the  
683 | state or of the unit of local government shall not be pledged  
684 | for the payment of such bonds. If any of the bonds remain unsold  
685 | 60 days after issuance, the department shall require all  
686 | insurers subject to assessment to purchase the bonds, which  
687 | shall be treated as admitted assets; each insurer shall be  
688 | required to purchase that percentage of the unsold portion of  
689 | the bond issue that equals the insurer's relative share of  
690 | assessment liability under this subsection. An insurer shall not  
691 | be required to purchase the bonds to the extent that the  
692 | department determines that the purchase would endanger or impair  
693 | the solvency of the insurer. The authority granted by this sub-  
694 | subparagraph is additional to any bonding authority granted by  
695 | subparagraph 6.

696 |         3. The plan shall also provide that any member with a  
697 | surplus as to policyholders of \$25 ~~\$20~~ million or less writing  
698 | 25 percent or more of its total countrywide property insurance  
699 | premiums in this state may petition the department, within the  
700 | first 90 days of each calendar year, to qualify as a limited

CS/HB 1101

2012

701 | apportionment company. The apportionment of such a member  
702 | company in any calendar year for which it is qualified shall not  
703 | exceed its gross participation, which shall not be affected by  
704 | the formula for voluntary writings. In no event shall a limited  
705 | apportionment company be required to participate in any  
706 | apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)  
707 | or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds  
708 | \$50 million after payment of available plan funds in any  
709 | calendar year. However, a limited apportionment company shall  
710 | collect from its policyholders any emergency assessment imposed  
711 | under sub-sub-subparagraph 2.d.(III). The plan shall provide  
712 | that, if the department determines that any regular assessment  
713 | will result in an impairment of the surplus of a limited  
714 | apportionment company, the department may direct that all or  
715 | part of such assessment be deferred. However, there shall be no  
716 | limitation or deferment of an emergency assessment to be  
717 | collected from policyholders under sub-sub-subparagraph  
718 | 2.d.(III).

719 |         4. The plan shall provide for the deferment, in whole or  
720 | in part, of a regular assessment of a member insurer under sub-  
721 | sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but  
722 | not for an emergency assessment collected from policyholders  
723 | under sub-sub-subparagraph 2.d.(III), if, in the opinion of the  
724 | commissioner, payment of such regular assessment would endanger  
725 | or impair the solvency of the member insurer. In the event a  
726 | regular assessment against a member insurer is deferred in whole  
727 | or in part, the amount by which such assessment is deferred may  
728 | be assessed against the other member insurers in a manner

729 consistent with the basis for assessments set forth in sub-sub-  
730 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

731 5.a. The plan of operation may include deductibles and  
732 rules for classification of risks and rate modifications  
733 consistent with the objective of providing and maintaining funds  
734 sufficient to pay catastrophe losses.

735 b. It is the intent of the Legislature that the rates for  
736 coverage provided by the association be actuarially sound and  
737 not competitive with approved rates charged in the admitted  
738 voluntary market such that the association functions as a  
739 residual market mechanism to provide insurance only when the  
740 insurance cannot be procured in the voluntary market. The plan  
741 of operation shall provide a mechanism to assure that, beginning  
742 no later than January 1, 1999, the rates charged by the  
743 association for each line of business are reflective of approved  
744 rates in the voluntary market for hurricane coverage for each  
745 line of business in the various areas eligible for association  
746 coverage.

747 c. The association shall provide for windstorm coverage on  
748 residential properties in limits up to \$10 million for  
749 commercial lines residential risks and up to \$1 million for  
750 personal lines residential risks. If coverage with the  
751 association is sought for a residential risk valued in excess of  
752 these limits, coverage shall be available to the risk up to the  
753 replacement cost or actual cash value of the property, at the  
754 option of the insured, if coverage for the risk cannot be  
755 located in the authorized market. The association must accept a  
756 commercial lines residential risk with limits above \$10 million

757 or a personal lines residential risk with limits above \$1  
758 million if coverage is not available in the authorized market.  
759 The association may write coverage above the limits specified in  
760 this subparagraph with or without facultative or other  
761 reinsurance coverage, as the association determines appropriate.

762 d. The plan of operation must provide objective criteria  
763 and procedures, approved by the department, to be uniformly  
764 applied for all applicants in determining whether an individual  
765 risk is so hazardous as to be uninsurable. In making this  
766 determination and in establishing the criteria and procedures,  
767 the following shall be considered:

768 (I) Whether the likelihood of a loss for the individual  
769 risk is substantially higher than for other risks of the same  
770 class; and

771 (II) Whether the uncertainty associated with the  
772 individual risk is such that an appropriate premium cannot be  
773 determined.

774  
775 The acceptance or rejection of a risk by the association  
776 pursuant to such criteria and procedures must be construed as  
777 the private placement of insurance, and the provisions of  
778 chapter 120 do not apply.

779 e. If the risk accepts an offer of coverage through the  
780 market assistance program or through a mechanism established by  
781 the association, either before the policy is issued by the  
782 association or during the first 30 days of coverage by the  
783 association, and the producing agent who submitted the  
784 application to the association is not currently appointed by the

785 insurer, the insurer shall:

786 (I) Pay to the producing agent of record of the policy,  
 787 for the first year, an amount that is the greater of the  
 788 insurer's usual and customary commission for the type of policy  
 789 written or a fee equal to the usual and customary commission of  
 790 the association; or

791 (II) Offer to allow the producing agent of record of the  
 792 policy to continue servicing the policy for a period of not less  
 793 than 1 year and offer to pay the agent the greater of the  
 794 insurer's or the association's usual and customary commission  
 795 for the type of policy written.

796  
 797 If the producing agent is unwilling or unable to accept  
 798 appointment, the new insurer shall pay the agent in accordance  
 799 with sub-sub-subparagraph (I). Subject to the provisions of s.  
 800 627.3517, the policies issued by the association must provide  
 801 that if the association obtains an offer from an authorized  
 802 insurer to cover the risk at its approved rates under either a  
 803 standard policy including wind coverage or, if consistent with  
 804 the insurer's underwriting rules as filed with the department, a  
 805 basic policy including wind coverage, the risk is no longer  
 806 eligible for coverage through the association. Upon termination  
 807 of eligibility, the association shall provide written notice to  
 808 the policyholder and agent of record stating that the  
 809 association policy must be canceled as of 60 days after the date  
 810 of the notice because of the offer of coverage from an  
 811 authorized insurer. Other provisions of the insurance code  
 812 relating to cancellation and notice of cancellation do not apply

813 to actions under this sub-subparagraph.

814 f. When the association enters into a contractual  
 815 agreement for a take-out plan, the producing agent of record of  
 816 the association policy is entitled to retain any unearned  
 817 commission on the policy, and the insurer shall:

818 (I) Pay to the producing agent of record of the  
 819 association policy, for the first year, an amount that is the  
 820 greater of the insurer's usual and customary commission for the  
 821 type of policy written or a fee equal to the usual and customary  
 822 commission of the association; or

823 (II) Offer to allow the producing agent of record of the  
 824 association policy to continue servicing the policy for a period  
 825 of not less than 1 year and offer to pay the agent the greater  
 826 of the insurer's or the association's usual and customary  
 827 commission for the type of policy written.

828  
 829 If the producing agent is unwilling or unable to accept  
 830 appointment, the new insurer shall pay the agent in accordance  
 831 with sub-sub-subparagraph (I).

832 6.a. The plan of operation may authorize the formation of  
 833 a private nonprofit corporation, a private nonprofit  
 834 unincorporated association, a partnership, a trust, a limited  
 835 liability company, or a nonprofit mutual company which may be  
 836 empowered, among other things, to borrow money by issuing bonds  
 837 or by incurring other indebtedness and to accumulate reserves or  
 838 funds to be used for the payment of insured catastrophe losses.  
 839 The plan may authorize all actions necessary to facilitate the  
 840 issuance of bonds, including the pledging of assessments or

CS/HB 1101

2012

841 other revenues.

842 b. Any entity created under this subsection, or any entity  
843 formed for the purposes of this subsection, may sue and be sued,  
844 may borrow money; issue bonds, notes, or debt instruments;  
845 pledge or sell assessments, market equalization surcharges and  
846 other surcharges, rights, premiums, contractual rights,  
847 projected recoveries from the Florida Hurricane Catastrophe  
848 Fund, other reinsurance recoverables, and other assets as  
849 security for such bonds, notes, or debt instruments; enter into  
850 any contracts or agreements necessary or proper to accomplish  
851 such borrowings; and take other actions necessary to carry out  
852 the purposes of this subsection. The association may issue bonds  
853 or incur other indebtedness, or have bonds issued on its behalf  
854 by a unit of local government pursuant to subparagraph (6)(q)2.,  
855 in the absence of a hurricane or other weather-related event,  
856 upon a determination by the association subject to approval by  
857 the department that such action would enable it to efficiently  
858 meet the financial obligations of the association and that such  
859 financings are reasonably necessary to effectuate the  
860 requirements of this subsection. Any such entity may accumulate  
861 reserves and retain surpluses as of the end of any association  
862 year to provide for the payment of losses incurred by the  
863 association during that year or any future year. The association  
864 shall incorporate and continue the plan of operation and  
865 articles of agreement in effect on the effective date of chapter  
866 76-96, Laws of Florida, to the extent that it is not  
867 inconsistent with chapter 76-96, and as subsequently modified  
868 consistent with chapter 76-96. The board of directors and

CS/HB 1101

2012

869 officers currently serving shall continue to serve until their  
870 successors are duly qualified as provided under the plan. The  
871 assets and obligations of the plan in effect immediately prior  
872 to the effective date of chapter 76-96 shall be construed to be  
873 the assets and obligations of the successor plan created herein.

874 c. In recognition of s. 10, Art. I of the State  
875 Constitution, prohibiting the impairment of obligations of  
876 contracts, it is the intent of the Legislature that no action be  
877 taken whose purpose is to impair any bond indenture or financing  
878 agreement or any revenue source committed by contract to such  
879 bond or other indebtedness issued or incurred by the association  
880 or any other entity created under this subsection.

881 7. On such coverage, an agent's remuneration shall be that  
882 amount of money payable to the agent by the terms of his or her  
883 contract with the company with which the business is placed.  
884 However, no commission will be paid on that portion of the  
885 premium which is in excess of the standard premium of that  
886 company.

887 8. Subject to approval by the department, the association  
888 may establish different eligibility requirements and operational  
889 procedures for any line or type of coverage for any specified  
890 eligible area or portion of an eligible area if the board  
891 determines that such changes to the eligibility requirements and  
892 operational procedures are justified due to the voluntary market  
893 being sufficiently stable and competitive in such area or for  
894 such line or type of coverage and that consumers who, in good  
895 faith, are unable to obtain insurance through the voluntary  
896 market through ordinary methods would continue to have access to



897 coverage from the association. When coverage is sought in  
898 connection with a real property transfer, such requirements and  
899 procedures shall not provide for an effective date of coverage  
900 later than the date of the closing of the transfer as  
901 established by the transferor, the transferee, and, if  
902 applicable, the lender.

903 9. Notwithstanding any other provision of law:

904 a. The pledge or sale of, the lien upon, and the security  
905 interest in any rights, revenues, or other assets of the  
906 association created or purported to be created pursuant to any  
907 financing documents to secure any bonds or other indebtedness of  
908 the association shall be and remain valid and enforceable,  
909 notwithstanding the commencement of and during the continuation  
910 of, and after, any rehabilitation, insolvency, liquidation,  
911 bankruptcy, receivership, conservatorship, reorganization, or  
912 similar proceeding against the association under the laws of  
913 this state or any other applicable laws.

914 b. No such proceeding shall relieve the association of its  
915 obligation, or otherwise affect its ability to perform its  
916 obligation, to continue to collect, or levy and collect,  
917 assessments, market equalization or other surcharges, projected  
918 recoveries from the Florida Hurricane Catastrophe Fund,  
919 reinsurance recoverables, or any other rights, revenues, or  
920 other assets of the association pledged.

921 c. Each such pledge or sale of, lien upon, and security  
922 interest in, including the priority of such pledge, lien, or  
923 security interest, any such assessments, emergency assessments,  
924 market equalization or renewal surcharges, projected recoveries

925 from the Florida Hurricane Catastrophe Fund, reinsurance  
926 recoverables, or other rights, revenues, or other assets which  
927 are collected, or levied and collected, after the commencement  
928 of and during the pendency of or after any such proceeding shall  
929 continue unaffected by such proceeding.

930 d. As used in this subsection, the term "financing  
931 documents" means any agreement, instrument, or other document  
932 now existing or hereafter created evidencing any bonds or other  
933 indebtedness of the association or pursuant to which any such  
934 bonds or other indebtedness has been or may be issued and  
935 pursuant to which any rights, revenues, or other assets of the  
936 association are pledged or sold to secure the repayment of such  
937 bonds or indebtedness, together with the payment of interest on  
938 such bonds or such indebtedness, or the payment of any other  
939 obligation of the association related to such bonds or  
940 indebtedness.

941 e. Any such pledge or sale of assessments, revenues,  
942 contract rights or other rights or assets of the association  
943 shall constitute a lien and security interest, or sale, as the  
944 case may be, that is immediately effective and attaches to such  
945 assessments, revenues, contract, or other rights or assets,  
946 whether or not imposed or collected at the time the pledge or  
947 sale is made. Any such pledge or sale is effective, valid,  
948 binding, and enforceable against the association or other entity  
949 making such pledge or sale, and valid and binding against and  
950 superior to any competing claims or obligations owed to any  
951 other person or entity, including policyholders in this state,  
952 asserting rights in any such assessments, revenues, contract, or

953 | other rights or assets to the extent set forth in and in  
 954 | accordance with the terms of the pledge or sale contained in the  
 955 | applicable financing documents, whether or not any such person  
 956 | or entity has notice of such pledge or sale and without the need  
 957 | for any physical delivery, recordation, filing, or other action.

958 |       f. There shall be no liability on the part of, and no  
 959 | cause of action of any nature shall arise against, any member  
 960 | insurer or its agents or employees, agents or employees of the  
 961 | association, members of the board of directors of the  
 962 | association, or the department or its representatives, for any  
 963 | action taken by them in the performance of their duties or  
 964 | responsibilities under this subsection. Such immunity does not  
 965 | apply to actions for breach of any contract or agreement  
 966 | pertaining to insurance, or any willful tort.

967 |       Section 11. Subsections (1), (2), (7), and (9) of section  
 968 | 627.7015, Florida Statutes, are amended to read:

969 |       627.7015 Alternative procedure for resolution of disputed  
 970 | property insurance claims.—

971 |       (1) ~~PURPOSE AND SCOPE.~~—This section sets forth a  
 972 | nonadversarial alternative dispute resolution procedure for a  
 973 | mediated claim resolution conference prompted by the need for  
 974 | effective, fair, and timely handling of property insurance  
 975 | claims. There is a particular need for an informal,  
 976 | nonthreatening forum for helping parties who elect this  
 977 | procedure to resolve their claims disputes because most  
 978 | homeowner's and commercial residential insurance policies  
 979 | obligate policyholders ~~insureds~~ to participate in a potentially  
 980 | expensive and time-consuming adversarial appraisal process

981 before ~~prior to~~ litigation. The procedure set forth in this  
 982 section is designed to bring the parties together for a mediated  
 983 claims settlement conference without any of the trappings or  
 984 drawbacks of an adversarial process. Before resorting to these  
 985 procedures, policyholders insureds and insurers are encouraged  
 986 to resolve claims as quickly and fairly as possible. This  
 987 section is available with respect to claims under personal lines  
 988 and commercial residential policies before ~~for all claimants and~~  
 989 ~~insurers prior to~~ commencing the appraisal process, or before  
 990 commencing litigation. Mediation may be requested only by the  
 991 policyholder, as a first-party claimant, or the insurer. If  
 992 requested by the policyholder insured, participation by legal  
 993 counsel is ~~shall be~~ permitted. Mediation under this section is  
 994 also available to litigants referred to the department by a  
 995 county court or circuit court. This section does not apply to  
 996 commercial coverages, to private passenger motor vehicle  
 997 insurance coverages, or to disputes relating to liability  
 998 coverages in policies of property insurance.

999 (2) At the time a first-party claim within the scope of  
 1000 this section is filed by the policyholder, the insurer shall  
 1001 notify the policyholder ~~all first-party claimants~~ of its ~~their~~  
 1002 right to participate in the mediation program under this  
 1003 section. The department shall prepare a consumer information  
 1004 pamphlet for distribution to persons participating in mediation  
 1005 ~~under this section.~~

1006 (7) If the insurer fails to comply with subsection (2) by  
 1007 failing to notify a policyholder ~~first-party claimant~~ of its  
 1008 right to participate in the mediation program under this section

CS/HB 1101

2012

1009 or if the insurer requests the mediation, and the mediation  
 1010 results are rejected by either party, the policyholder is  
 1011 ~~insured shall~~ not be required to submit to or participate in any  
 1012 contractual loss appraisal process of the property loss damage  
 1013 as a precondition to legal action for breach of contract against  
 1014 the insurer for its failure to pay the policyholder's claims  
 1015 covered by the policy.

1016 (9) For purposes of this section, the term "claim" refers  
 1017 to any dispute between an insurer and a policyholder ~~an insured~~  
 1018 relating to a material issue of fact other than a dispute:

1019 (a) With respect to which the insurer has a reasonable  
 1020 basis to suspect fraud;

1021 (b) Where, based on agreed-upon facts as to the cause of  
 1022 loss, there is no coverage under the policy;

1023 (c) With respect to which the insurer has a reasonable  
 1024 basis to believe that the policyholder ~~claimant~~ has  
 1025 intentionally made a material misrepresentation of fact which is  
 1026 relevant to the claim, and the entire request for payment of a  
 1027 loss has been denied on the basis of the material  
 1028 misrepresentation; ~~or~~

1029 (d) With respect to which the amount in controversy is  
 1030 less than \$500, unless the parties agree to mediate a dispute  
 1031 involving a lesser amount; or.

1032 (e) Where the notice of loss is reported to the insurer  
 1033 more than 36 months after the declaration of a state of  
 1034 emergency by the Governor in response to a hurricane that makes  
 1035 landfall in this state.

1036 Section 12. Subsection (4) of section 627.706, Florida

1037 Statutes, is amended to read:

1038       627.706 Sinkhole insurance; catastrophic ground cover  
1039 collapse; definitions.—

1040       (4) An insurer offering sinkhole coverage to policyholders  
1041 before or after the adoption of s. 30, chapter 2007-1, Laws of  
1042 Florida, may renew pursuant to s. 627.43141 or nonrenew the  
1043 policies of policyholders maintaining sinkhole coverage, at the  
1044 option of the insurer, and provide an offer of coverage or  
1045 renewal that includes catastrophic ground cover collapse and  
1046 excludes sinkhole coverage. Insurers acting in accordance with  
1047 this subsection are subject to the following requirements:

1048       (a) Policyholders must be notified that the renewal or a  
1049 nonrenewal is for purposes of removing sinkhole coverage, and  
1050 that the policyholder is being offered a policy that provides  
1051 coverage for catastrophic ground cover collapse.

1052       (b) Policyholders must be provided an actuarially  
1053 reasonable premium credit or discount for the removal of  
1054 sinkhole coverage and provision of only catastrophic ground  
1055 cover collapse.

1056       (c) Subject to the provisions of this subsection and the  
1057 insurer's approved underwriting or insurability guidelines, the  
1058 insurer shall provide each policyholder with the opportunity to  
1059 purchase an endorsement to his or her policy providing sinkhole  
1060 coverage and may require an inspection of the property before  
1061 issuance of a sinkhole coverage endorsement.

1062       (d) Section 624.4305 does not apply to nonrenewal notices  
1063 issued pursuant to this subsection.

1064       Section 13. Effective upon this act becoming a law,

CS/HB 1101

2012

1065 subsection (4) of section 627.7295, Florida Statutes, is amended  
 1066 to read:

1067 627.7295 Motor vehicle insurance contracts.—

1068 (4) ~~If subsection (7) does not apply,~~ The insurer may  
 1069 cancel the policy in accordance with this code except that,  
 1070 notwithstanding s. 627.728, an insurer may not cancel a new  
 1071 policy or binder during the first 60 days immediately following  
 1072 the effective date of the policy or binder ~~except~~ for nonpayment  
 1073 of premium unless the reason for the cancellation is the  
 1074 issuance of a check for the premium that is dishonored for any  
 1075 reason or any other type of premium payment that was  
 1076 subsequently determined to be rejected or invalid.

1077 Section 14. Effective upon this act becoming a law,  
 1078 paragraph (d) of subsection (4) of section 627.736, Florida  
 1079 Statutes, is amended to read:

1080 627.736 Required personal injury protection benefits;  
 1081 exclusions; priority; claims.—

1082 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under  
 1083 ss. 627.730-627.7405 shall be primary, except that benefits  
 1084 received under any workers' compensation law shall be credited  
 1085 against the benefits provided by subsection (1) and shall be due  
 1086 and payable as loss accrues, upon receipt of reasonable proof of  
 1087 such loss and the amount of expenses and loss incurred which are  
 1088 covered by the policy issued under ss. 627.730-627.7405. When  
 1089 the Agency for Health Care Administration provides, pays, or  
 1090 becomes liable for medical assistance under the Medicaid program  
 1091 related to injury, sickness, disease, or death arising out of  
 1092 the ownership, maintenance, or use of a motor vehicle, benefits

CS/HB 1101

2012

1093 | under ss. 627.730-627.7405 shall be subject to the provisions of  
1094 | the Medicaid program.

1095 |       (d) All overdue payments shall bear simple interest at the  
1096 | rate established under s. 55.03 or the rate established in the  
1097 | insurance contract, whichever is greater, for the quarter ~~year~~  
1098 | in which the payment became overdue, calculated from the date  
1099 | the insurer was furnished with written notice of the amount of  
1100 | covered loss. Interest shall be due at the time payment of the  
1101 | overdue claim is made.

1102 |       Section 15. Except as otherwise expressly provided in this  
1103 | act, this act shall take effect July 1, 2012.