

By the Committee on Banking and Insurance; and Senator Richter

597-02859-12

20121620c1

1                   A bill to be entitled  
2           An act relating to insurance; amending s. 320.27,  
3           F.S.; providing that a salvage motor vehicle dealer is  
4           not required to carry certain insurance on vehicles  
5           that have been issued a certificate of destruction;  
6           amending s. 624.501, F.S.; conforming a cross-  
7           reference; amending s. 624.610, F.S.; revising  
8           provisions specifying which insurers are not subject  
9           to certain filing requirements relating to  
10          reinsurance; amending s. 626.261, F.S.; authorizing  
11          the Department of Financial Services to provide  
12          examinations in Spanish; amending s. 626.321, F.S.;  
13          revising provisions relating to limited licenses for  
14          travel insurance; providing that a full-time salaried  
15          employee of a licensed general lines agent or a  
16          business entity that offers travel planning services  
17          may be issued such license under certain  
18          circumstances; amending s. 626.753, F.S., relating to  
19          the sharing of commissions; prohibiting certain  
20          rebates; creating s. 626.8675, F.S.; providing that  
21          provisions relating to insurance adjusters do not  
22          apply to individuals who conduct data entry into an  
23          automated claims adjustment system for portable  
24          electronics insurance claims; amending s. 627.351,  
25          F.S.; increasing the amount of surplus required for an  
26          association to qualify as a limited apportionment  
27          company; creating s. 627.6011, F.S.; providing that  
28          mandatory health benefits apply only to certain health  
29          benefit plans; amending s. 627.7015, F.S.; revising

597-02859-12

20121620c1

30 provisions relating to alternative procedures for the  
31 resolution of disputed property insurance claims;  
32 amending s. 627.7295, F.S.; revising provisions  
33 relating to cancellation for nonpayment of premiums  
34 for motor vehicle insurance; amending s. 627.736,  
35 F.S.; clarifying provisions relating to the amount of  
36 interest on overdue payments for personal injury  
37 protection benefits; providing effective dates.

38  
39 Be It Enacted by the Legislature of the State of Florida:

40  
41 Section 1. Subsection (3) of section 320.27, Florida  
42 Statutes, is amended to read:

43 320.27 Motor vehicle dealers.—

44 (3) APPLICATION AND FEE.—The application for the license  
45 shall be in such form as may be prescribed by the department and  
46 shall be subject to such rules with respect thereto as may be so  
47 prescribed by it. Such application shall be verified by oath or  
48 affirmation and shall contain a full statement of the name and  
49 birth date of the person or persons applying therefor; the name  
50 of the firm or copartnership, with the names and places of  
51 residence of all members thereof, if such applicant is a firm or  
52 copartnership; the names and places of residence of the  
53 principal officers, if the applicant is a body corporate or  
54 other artificial body; the name of the state under whose laws  
55 the corporation is organized; the present and former place or  
56 places of residence of the applicant; and prior business in  
57 which the applicant has been engaged and the location thereof.  
58 Such application shall describe the exact location of the place

597-02859-12

20121620c1

59 of business and shall state whether the place of business is  
60 owned by the applicant and when acquired, or, if leased, a true  
61 copy of the lease shall be attached to the application. The  
62 applicant shall certify that the location provides an adequately  
63 equipped office and is not a residence; that the location  
64 affords sufficient unoccupied space upon and within which  
65 adequately to store all motor vehicles offered and displayed for  
66 sale; and that the location is a suitable place where the  
67 applicant can in good faith carry on such business and keep and  
68 maintain books, records, and files necessary to conduct such  
69 business, which will be available at all reasonable hours to  
70 inspection by the department or any of its inspectors or other  
71 employees. The applicant shall certify that the business of a  
72 motor vehicle dealer is the principal business which shall be  
73 conducted at that location. Such application shall contain a  
74 statement that the applicant is either franchised by a  
75 manufacturer of motor vehicles, in which case the name of each  
76 motor vehicle that the applicant is franchised to sell shall be  
77 included, or an independent (nonfranchised) motor vehicle  
78 dealer. Such application shall contain such other relevant  
79 information as may be required by the department, including  
80 evidence that the applicant is insured under a garage liability  
81 insurance policy or a general liability insurance policy coupled  
82 with a business automobile policy, which shall include, at a  
83 minimum, \$25,000 combined single-limit liability coverage  
84 including bodily injury and property damage protection and  
85 \$10,000 personal injury protection. However, a salvage motor  
86 vehicle dealer as defined in subparagraph (1)(c)5. is exempt  
87 from the requirements for garage liability insurance and

597-02859-12

20121620c1

88 personal injury protection insurance on those vehicles that have  
89 been issued a certificate of destruction and cannot be operated  
90 legally on state roads, highways, or streets. Franchise dealers  
91 must submit a garage liability insurance policy, and all other  
92 dealers must submit a garage liability insurance policy or a  
93 general liability insurance policy coupled with a business  
94 automobile policy. Such policy shall be for the license period,  
95 and evidence of a new or continued policy shall be delivered to  
96 the department at the beginning of each license period. Upon  
97 making initial application, the applicant shall pay to the  
98 department a fee of \$300 in addition to any other fees now  
99 required by law; upon making a subsequent renewal application,  
100 the applicant shall pay to the department a fee of \$75 in  
101 addition to any other fees now required by law. Upon making an  
102 application for a change of location, the person shall pay a fee  
103 of \$50 in addition to any other fees now required by law. The  
104 department shall, in the case of every application for initial  
105 licensure, verify whether certain facts set forth in the  
106 application are true. Each applicant, general partner in the  
107 case of a partnership, or corporate officer and director in the  
108 case of a corporate applicant, must file a set of fingerprints  
109 with the department for the purpose of determining any prior  
110 criminal record or any outstanding warrants. The department  
111 shall submit the fingerprints to the Department of Law  
112 Enforcement for state processing and forwarding to the Federal  
113 Bureau of Investigation for federal processing. The actual cost  
114 of state and federal processing shall be borne by the applicant  
115 and is in addition to the fee for licensure. The department may  
116 issue a license to an applicant pending the results of the

597-02859-12

20121620c1

117 fingerprint investigation, which license is fully revocable if  
118 the department subsequently determines that any facts set forth  
119 in the application are not true or correctly represented.

120 Section 2. Paragraph (b) of subsection (9) of section  
121 624.501, Florida Statutes, is amended to read:

122 624.501 Filing, license, appointment, and miscellaneous  
123 fees.—The department, commission, or office, as appropriate,  
124 shall collect in advance, and persons so served shall pay to it  
125 in advance, fees, licenses, and miscellaneous charges as  
126 follows:

127 (9)

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

134 Section 3. Paragraph (c) of subsection (11) of section  
135 624.610, Florida Statutes, is amended to read:

136 624.610 Reinsurance.—

137 (11)

138 (c) This subsection applies to cessions of directly written  
139 risk or loss. This subsection does not apply to contracts of  
140 facultative reinsurance or to any ceding insurer that has a ~~with~~  
141 surplus as to policyholders which ~~that~~ exceeds \$100 million as  
142 of the immediately preceding December 31. A ~~Additionally,~~ ~~any~~  
143 ceding insurer otherwise subject to this section which had ~~with~~  
144 less than \$500,000 in direct premiums written in this state  
145 during the preceding calendar year and no more than \$250,000 in

597-02859-12

20121620c1

146 direct premiums written in this state during the preceding  
147 calendar quarter, or which had fewer ~~with less~~ than 1,000  
148 policyholders at the end of the preceding calendar year, is  
149 exempt from ~~the requirements of~~ this subsection. ~~However, any~~  
150 ~~ceding insurer otherwise subject to this section with more than~~  
151 ~~\$250,000 in direct premiums written in this state during the~~  
152 ~~preceding calendar quarter is not exempt from the requirements~~  
153 ~~of this subsection.~~

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

156 626.261 Conduct of examination.—

157 (5) The department may provide licensure examinations in  
158 Spanish. Applicants requesting examination or reexamination in  
159 Spanish must bear the full cost of the department's development,  
160 preparation, administration, grading, and evaluation of the  
161 Spanish-language examination. When determining whether it is in  
162 the public interest to allow the examination to be translated  
163 into and administered in Spanish, the department shall consider  
164 the percentage of the population who speak Spanish.

165 Section 5. Paragraph (c) of subsection (1) of section  
166 626.321, Florida Statutes, is amended to read:

167 626.321 Limited licenses.—

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

172 (c) *Travel insurance.*—License covering only policies and  
173 certificates of travel insurance, which are subject to review by  
174 the office ~~under s. 624.605(1)(g)~~. Policies and certificates of

597-02859-12

20121620c1

175 travel insurance may provide coverage for risks incidental to  
176 travel, planned travel, or accommodations while traveling,  
177 including, but not limited to, accidental death and  
178 dismemberment of a traveler; trip or event cancellation,  
179 interruption, or delay; loss of or damage to personal effects or  
180 travel documents; damages to travel accommodations; baggage  
181 delay; emergency medical travel or evacuation of a traveler; or  
182 medical, surgical, and hospital expenses related to an illness  
183 or emergency of a traveler. ~~Any~~ Such policy or certificate may  
184 be issued for terms longer than 90 ~~60~~ days, but ~~each policy or~~  
185 ~~certificate~~, other than a policy or certificate providing  
186 coverage for air ambulatory services only, each policy or  
187 certificate must be limited to coverage for travel or use of  
188 accommodations of no longer than 90 ~~60~~ days. The license may be  
189 issued only:

190 1. To a full-time salaried employee of a common carrier or  
191 a full-time salaried employee or owner of a transportation  
192 ticket agency and may authorize the sale of such ticket policies  
193 only in connection with the sale of transportation tickets, or  
194 to the full-time salaried employee of such an agent. ~~No~~ Such  
195 policy may not shall be for ~~a duration of~~ more than 48 hours or  
196 more than for the duration of a specified one-way trip or round  
197 trip.

198 2. To an entity or individual that is:

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

201 b. An exchange company operating an exchange program  
202 approved under chapter 721;

203 c. A managing entity operating a timeshare plan approved

597-02859-12

20121620c1

204 under chapter 721;

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

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

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

212 a. A license issued to a business entity that offers travel  
213 planning services must encompass each office, branch office, or  
214 place of business making use of the entity's business name in  
215 order to offer, solicit, and sell insurance pursuant to this  
216 paragraph.

217 b. The application for licensure must list the name,  
218 address, and phone number for each office, branch office, or  
219 place of business that is to be covered by the license. The  
220 licensee shall notify the department of the name, address, and  
221 phone number of any new location that is to be covered by the  
222 license before the new office, branch office, or place of  
223 business engages in the sale of insurance pursuant to this  
224 paragraph. The licensee shall notify the department within 30  
225 days after the closing or terminating of an office, branch  
226 office, or place of business. Upon receipt of the notice, the  
227 department shall delete the office, branch office, or place of  
228 business from the license.

229 c. A licensed and appointed entity is directly responsible  
230 and accountable for all acts of the licensee's employees and  
231 parties with whom the licensee has entered into a contractual  
232 agreement to offer travel insurance.



597-02859-12

20121620c1

233

234 A licensee shall require each individual ~~employee~~ who offers  
235 policies or certificates under subparagraph 2. or subparagraph  
236 3. ~~this subparagraph~~ to receive initial training from a general  
237 lines agent or an insurer authorized under chapter 624 to  
238 transact insurance within this state. For an entity applying for  
239 a license as a travel insurance agent, the fingerprinting  
240 requirement of this section applies only to the president,  
241 secretary, and treasurer and to any other officer or person who  
242 directs or controls the travel insurance operations of the  
243 entity.

244 Section 6. Present subsection (4) of section 626.753,  
245 Florida Statutes, is renumbered as subsection (6), and new  
246 subsections (4) and (5) are added to that section to read:

247 626.753 Sharing commissions; penalty.-

248 (4) Any patronage dividend or other payment, discount, or  
249 credit provided to a member of a production credit association  
250 or federal land bank association which is directly or indirectly  
251 calculated on the basis of the premium charged to that member  
252 for crop hail or multiple-peril crop insurance is an unlawful  
253 rebate in violation of ss. 626.572 and 626.9541(1)(h).

254 (5) An agent who engages in commission sharing with a  
255 production credit association or federal land bank association,  
256 and who has knowledge that the association provides patronage  
257 dividends or other payments, discounts, or credits that  
258 constitute unlawful rebates as described in subsection (4), is  
259 participating in a violation of this section.

260 Section 7. Section 626.8675, Florida Statutes, is created  
261 to read:

597-02859-12

20121620c1

262 626.8675 Portable electronics insurance claims employee  
263 exemption.-

264 (1) This part does not apply to individuals who collect  
265 claims information from, or furnish claims information to,  
266 insureds or claimants, and who conduct data entry, including  
267 entering data into an automated claims adjudication system, if  
268 such individuals are employees of a business entity licensed  
269 under this chapter, or its affiliate, where up to 25 such  
270 individuals are under the supervision of a licensed independent  
271 adjuster or licensed agent who is exempt from licensure pursuant  
272 to s. 626.862. For purposes of this section, "automated claims  
273 adjudication system" means a preprogrammed computer system  
274 designed for the collection, data entry, calculation, and final  
275 resolution of portable electronics insurance claims that:

276 (a) May be used only by a licensed independent adjuster,  
277 licensed agent, or supervised individual operating pursuant to  
278 this section;

279 (b) Must comply with all claims payment requirements of the  
280 insurance code; and

281 (c) Must be certified as compliant with this section by a  
282 licensed independent adjuster who is an officer of a licensed  
283 business entity under this chapter.

284 (2) Notwithstanding any other provision of law, a resident  
285 of Canada may not be licensed as a nonresident independent  
286 adjuster for purposes of adjusting portable electronics  
287 insurance claims unless that person has successfully obtained an  
288 adjuster license in another state.

289 Section 8. Paragraph (b) of subsection (2) of section  
290 627.351, Florida Statutes, is amended to read:

597-02859-12

20121620c1

291 627.351 Insurance risk apportionment plans.—

292 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

293 (b) The department shall require all insurers holding a  
294 certificate of authority to transact property insurance on a  
295 direct basis in this state, other than joint underwriting  
296 associations and other entities formed pursuant to this section,  
297 to provide windstorm coverage to applicants from areas  
298 determined to be eligible pursuant to paragraph (c) who in good  
299 faith are entitled to, but are unable to procure, such coverage  
300 through ordinary means; or it shall adopt a reasonable plan or  
301 plans for the equitable apportionment or sharing among such  
302 insurers of windstorm coverage, which may include formation of  
303 an association for this purpose. As used in this subsection, the  
304 term "property insurance" means insurance on real or personal  
305 property, as defined in s. 624.604, including insurance for  
306 fire, industrial fire, allied lines, farmowners multiperil,  
307 homeowners' multiperil, commercial multiperil, and mobile homes,  
308 and including liability coverages on all such insurance, but  
309 excluding inland marine as defined in s. 624.607(3) and  
310 excluding vehicle insurance as defined in s. 624.605(1)(a) other  
311 than insurance on mobile homes used as permanent dwellings. The  
312 department shall adopt rules that provide a formula for the  
313 recovery and repayment of any deferred assessments.

314 1. For the purpose of this section, properties eligible for  
315 such windstorm coverage are defined as dwellings, buildings, and  
316 other structures, including mobile homes which are used as  
317 dwellings and which are tied down in compliance with mobile home  
318 tie-down requirements prescribed by the Department of Highway  
319 Safety and Motor Vehicles pursuant to s. 320.8325, and the

597-02859-12

20121620c1

320 contents of all such properties. An applicant or policyholder is  
321 eligible for coverage only if an offer of coverage cannot be  
322 obtained by or for the applicant or policyholder from an  
323 admitted insurer at approved rates.

324 2.a.(I) All insurers required to be members of such  
325 association shall participate in its writings, expenses, and  
326 losses. Surplus of the association shall be retained for the  
327 payment of claims and shall not be distributed to the member  
328 insurers. Such participation by member insurers shall be in the  
329 proportion that the net direct premiums of each member insurer  
330 written for property insurance in this state during the  
331 preceding calendar year bear to the aggregate net direct  
332 premiums for property insurance of all member insurers, as  
333 reduced by any credits for voluntary writings, in this state  
334 during the preceding calendar year. For the purposes of this  
335 subsection, the term "net direct premiums" means direct written  
336 premiums for property insurance, reduced by premium for  
337 liability coverage and for the following if included in allied  
338 lines: rain and hail on growing crops; livestock; association  
339 direct premiums booked; National Flood Insurance Program direct  
340 premiums; and similar deductions specifically authorized by the  
341 plan of operation and approved by the department. A member's  
342 participation shall begin on the first day of the calendar year  
343 following the year in which it is issued a certificate of  
344 authority to transact property insurance in the state and shall  
345 terminate 1 year after the end of the calendar year during which  
346 it no longer holds a certificate of authority to transact  
347 property insurance in the state. The commissioner, after review  
348 of annual statements, other reports, and any other statistics

597-02859-12

20121620c1

349 that the commissioner deems necessary, shall certify to the  
350 association the aggregate direct premiums written for property  
351 insurance in this state by all member insurers.

352 (II) Effective July 1, 2002, the association shall operate  
353 subject to the supervision and approval of a board of governors  
354 who are the same individuals that have been appointed by the  
355 Treasurer to serve on the board of governors of the Citizens  
356 Property Insurance Corporation.

357 (III) The plan of operation shall provide a formula whereby  
358 a company voluntarily providing windstorm coverage in affected  
359 areas will be relieved wholly or partially from apportionment of  
360 a regular assessment pursuant to sub-sub-subparagraph d.(I) or  
361 sub-sub-subparagraph d.(II).

362 (IV) A company which is a member of a group of companies  
363 under common management may elect to have its credits applied on  
364 a group basis, and any company or group may elect to have its  
365 credits applied to any other company or group.

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

369 (VI) The plan of operation may also provide for the award  
370 of credits, for a period not to exceed 3 years, from a regular  
371 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-  
372 subparagraph d.(II) as an incentive for taking policies out of  
373 the Residential Property and Casualty Joint Underwriting  
374 Association. In order to qualify for the exemption under this  
375 sub-sub-subparagraph, the take-out plan must provide that at  
376 least 40 percent of the policies removed from the Residential  
377 Property and Casualty Joint Underwriting Association cover risks

597-02859-12

20121620c1

378 located in Miami-Dade, Broward, and Palm Beach Counties or at  
379 least 30 percent of the policies so removed cover risks located  
380 in Miami-Dade, Broward, and Palm Beach Counties and an  
381 additional 50 percent of the policies so removed cover risks  
382 located in other coastal counties, and must also provide that no  
383 more than 15 percent of the policies so removed may exclude  
384 windstorm coverage. With the approval of the department, the  
385 association may waive these geographic criteria for a take-out  
386 plan that removes at least the lesser of 100,000 Residential  
387 Property and Casualty Joint Underwriting Association policies or  
388 15 percent of the total number of Residential Property and  
389 Casualty Joint Underwriting Association policies, provided the  
390 governing board of the Residential Property and Casualty Joint  
391 Underwriting Association certifies that the take-out plan will  
392 materially reduce the Residential Property and Casualty Joint  
393 Underwriting Association's 100-year probable maximum loss from  
394 hurricanes. With the approval of the department, the board may  
395 extend such credits for an additional year if the insurer  
396 guarantees an additional year of renewability for all policies  
397 removed from the Residential Property and Casualty Joint  
398 Underwriting Association, or for 2 additional years if the  
399 insurer guarantees 2 additional years of renewability for all  
400 policies removed from the Residential Property and Casualty  
401 Joint Underwriting Association.

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

405       c. The Legislature finds that the potential for unlimited  
406 deficit assessments under this subparagraph may induce insurers

597-02859-12

20121620c1

407 to attempt to reduce their writings in the voluntary market, and  
408 that such actions would worsen the availability problems that  
409 the association was created to remedy. It is the intent of the  
410 Legislature that insurers remain fully responsible for paying  
411 regular assessments and collecting emergency assessments for any  
412 deficits of the association; however, it is also the intent of  
413 the Legislature to provide a means by which assessment  
414 liabilities may be amortized over a period of years.

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

420 (II) When the deficit incurred in a particular calendar  
421 year exceeds 10 percent of the aggregate statewide direct  
422 written premium for property insurance for the prior calendar  
423 year for all member insurers, the association shall levy an  
424 assessment on member insurers in an amount equal to the greater  
425 of 10 percent of the deficit or 10 percent of the aggregate  
426 statewide direct written premium for property insurance for the  
427 prior calendar year for member insurers. Any remaining deficit  
428 shall be recovered through emergency assessments under sub-sub-  
429 subparagraph (III).

430 (III) Upon a determination by the board of directors that a  
431 deficit exceeds the amount that will be recovered through  
432 regular assessments on member insurers, pursuant to sub-sub-  
433 subparagraph (I) or sub-sub-subparagraph (II), the board shall  
434 levy, after verification by the department, emergency  
435 assessments to be collected by member insurers and by

597-02859-12

20121620c1

436 underwriting associations created pursuant to this section which  
437 write property insurance, upon issuance or renewal of property  
438 insurance policies other than National Flood Insurance policies  
439 in the year or years following levy of the regular assessments.  
440 The amount of the emergency assessment collected in a particular  
441 year shall be a uniform percentage of that year's direct written  
442 premium for property insurance for all member insurers and  
443 underwriting associations, excluding National Flood Insurance  
444 policy premiums, as annually determined by the board and  
445 verified by the department. The department shall verify the  
446 arithmetic calculations involved in the board's determination  
447 within 30 days after receipt of the information on which the  
448 determination was based. Notwithstanding any other provision of  
449 law, each member insurer and each underwriting association  
450 created pursuant to this section shall collect emergency  
451 assessments from its policyholders without such obligation being  
452 affected by any credit, limitation, exemption, or deferment. The  
453 emergency assessments so collected shall be transferred directly  
454 to the association on a periodic basis as determined by the  
455 association. The aggregate amount of emergency assessments  
456 levied under this sub-sub-subparagraph in any calendar year may  
457 not exceed the greater of 10 percent of the amount needed to  
458 cover the original deficit, plus interest, fees, commissions,  
459 required reserves, and other costs associated with financing of  
460 the original deficit, or 10 percent of the aggregate statewide  
461 direct written premium for property insurance written by member  
462 insurers and underwriting associations for the prior year, plus  
463 interest, fees, commissions, required reserves, and other costs  
464 associated with financing the original deficit. The board may



597-02859-12

20121620c1

465 pledge the proceeds of the emergency assessments under this sub-  
466 sub-subparagraph as the source of revenue for bonds, to retire  
467 any other debt incurred as a result of the deficit or events  
468 giving rise to the deficit, or in any other way that the board  
469 determines will efficiently recover the deficit. The emergency  
470 assessments under this sub-sub-subparagraph shall continue as  
471 long as any bonds issued or other indebtedness incurred with  
472 respect to a deficit for which the assessment was imposed remain  
473 outstanding, unless adequate provision has been made for the  
474 payment of such bonds or other indebtedness pursuant to the  
475 document governing such bonds or other indebtedness. Emergency  
476 assessments collected under this sub-sub-subparagraph are not  
477 part of an insurer's rates, are not premium, and are not subject  
478 to premium tax, fees, or commissions; however, failure to pay  
479 the emergency assessment shall be treated as failure to pay  
480 premium.

481 (IV) Each member insurer's share of the total regular  
482 assessments under sub-sub-subparagraph (I) or sub-sub-  
483 subparagraph (II) shall be in the proportion that the insurer's  
484 net direct premium for property insurance in this state, for the  
485 year preceding the assessment bears to the aggregate statewide  
486 net direct premium for property insurance of all member  
487 insurers, as reduced by any credits for voluntary writings for  
488 that year.

489 (V) If regular deficit assessments are made under sub-sub-  
490 subparagraph (I) or sub-sub-subparagraph (II), or by the  
491 Residential Property and Casualty Joint Underwriting Association  
492 under sub-subparagraph (6) (b) 3.a. ~~or sub-subparagraph~~  
493 ~~(6) (b) 3.b.~~, the association shall levy upon the association's

597-02859-12

20121620c1

494 policyholders, as part of its next rate filing, or by a separate  
495 rate filing solely for this purpose, a market equalization  
496 surcharge in a percentage equal to the total amount of such  
497 regular assessments divided by the aggregate statewide direct  
498 written premium for property insurance for member insurers for  
499 the prior calendar year. Market equalization surcharges under  
500 this sub-sub-subparagraph are not considered premium and are not  
501 subject to commissions, fees, or premium taxes; however, failure  
502 to pay a market equalization surcharge shall be treated as  
503 failure to pay premium.

504 e. The governing body of any unit of local government, any  
505 residents of which are insured under the plan, may issue bonds  
506 as defined in s. 125.013 or s. 166.101 to fund an assistance  
507 program, in conjunction with the association, for the purpose of  
508 defraying deficits of the association. In order to avoid  
509 needless and indiscriminate proliferation, duplication, and  
510 fragmentation of such assistance programs, any unit of local  
511 government, any residents of which are insured by the  
512 association, may provide for the payment of losses, regardless  
513 of whether or not the losses occurred within or outside of the  
514 territorial jurisdiction of the local government. Revenue bonds  
515 may not be issued until validated pursuant to chapter 75, unless  
516 a state of emergency is declared by executive order or  
517 proclamation of the Governor pursuant to s. 252.36 making such  
518 findings as are necessary to determine that it is in the best  
519 interests of, and necessary for, the protection of the public  
520 health, safety, and general welfare of residents of this state  
521 and the protection and preservation of the economic stability of  
522 insurers operating in this state, and declaring it an essential

597-02859-12

20121620c1

523 public purpose to permit certain municipalities or counties to  
524 issue bonds as will provide relief to claimants and  
525 policyholders of the association and insurers responsible for  
526 apportionment of plan losses. Any such unit of local government  
527 may enter into such contracts with the association and with any  
528 other entity created pursuant to this subsection as are  
529 necessary to carry out this paragraph. Any bonds issued under  
530 this sub-subparagraph shall be payable from and secured by  
531 moneys received by the association from assessments under this  
532 subparagraph, and assigned and pledged to or on behalf of the  
533 unit of local government for the benefit of the holders of such  
534 bonds. The funds, credit, property, and taxing power of the  
535 state or of the unit of local government shall not be pledged  
536 for the payment of such bonds. If any of the bonds remain unsold  
537 60 days after issuance, the department shall require all  
538 insurers subject to assessment to purchase the bonds, which  
539 shall be treated as admitted assets; each insurer shall be  
540 required to purchase that percentage of the unsold portion of  
541 the bond issue that equals the insurer's relative share of  
542 assessment liability under this subsection. An insurer shall not  
543 be required to purchase the bonds to the extent that the  
544 department determines that the purchase would endanger or impair  
545 the solvency of the insurer. The authority granted by this sub-  
546 subparagraph is additional to any bonding authority granted by  
547 subparagraph 6.

548 3. The plan shall also provide that any member with a  
549 surplus as to policyholders of \$25 ~~\$20~~ million or less writing  
550 25 percent or more of its total countrywide property insurance  
551 premiums in this state may petition the department, within the

597-02859-12

20121620c1

552 first 90 days of each calendar year, to qualify as a limited  
553 apportionment company. The apportionment of such a member  
554 company in any calendar year for which it is qualified shall not  
555 exceed its gross participation, which shall not be affected by  
556 the formula for voluntary writings. In no event shall a limited  
557 apportionment company be required to participate in any  
558 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)  
559 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds  
560 \$50 million after payment of available plan funds in any  
561 calendar year. However, a limited apportionment company shall  
562 collect from its policyholders any emergency assessment imposed  
563 under sub-sub-subparagraph 2.d.(III). The plan shall provide  
564 that, if the department determines that any regular assessment  
565 will result in an impairment of the surplus of a limited  
566 apportionment company, the department may direct that all or  
567 part of such assessment be deferred. However, there shall be no  
568 limitation or deferment of an emergency assessment to be  
569 collected from policyholders under sub-sub-subparagraph  
570 2.d.(III).

571 4. The plan shall provide for the deferment, in whole or in  
572 part, of a regular assessment of a member insurer under sub-sub-  
573 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not  
574 for an emergency assessment collected from policyholders under  
575 sub-sub-subparagraph 2.d.(III), if, in the opinion of the  
576 commissioner, payment of such regular assessment would endanger  
577 or impair the solvency of the member insurer. In the event a  
578 regular assessment against a member insurer is deferred in whole  
579 or in part, the amount by which such assessment is deferred may  
580 be assessed against the other member insurers in a manner

597-02859-12

20121620c1

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

583 5.a. The plan of operation may include deductibles and  
584 rules for classification of risks and rate modifications  
585 consistent with the objective of providing and maintaining funds  
586 sufficient to pay catastrophe losses.

587 b. It is the intent of the Legislature that the rates for  
588 coverage provided by the association be actuarially sound and  
589 not competitive with approved rates charged in the admitted  
590 voluntary market such that the association functions as a  
591 residual market mechanism to provide insurance only when the  
592 insurance cannot be procured in the voluntary market. The plan  
593 of operation shall provide a mechanism to assure that, beginning  
594 no later than January 1, 1999, the rates charged by the  
595 association for each line of business are reflective of approved  
596 rates in the voluntary market for hurricane coverage for each  
597 line of business in the various areas eligible for association  
598 coverage.

599 c. The association shall provide for windstorm coverage on  
600 residential properties in limits up to \$10 million for  
601 commercial lines residential risks and up to \$1 million for  
602 personal lines residential risks. If coverage with the  
603 association is sought for a residential risk valued in excess of  
604 these limits, coverage shall be available to the risk up to the  
605 replacement cost or actual cash value of the property, at the  
606 option of the insured, if coverage for the risk cannot be  
607 located in the authorized market. The association must accept a  
608 commercial lines residential risk with limits above \$10 million  
609 or a personal lines residential risk with limits above \$1

597-02859-12

20121620c1

610 million if coverage is not available in the authorized market.  
611 The association may write coverage above the limits specified in  
612 this subparagraph with or without facultative or other  
613 reinsurance coverage, as the association determines appropriate.

614 d. The plan of operation must provide objective criteria  
615 and procedures, approved by the department, to be uniformly  
616 applied for all applicants in determining whether an individual  
617 risk is so hazardous as to be uninsurable. In making this  
618 determination and in establishing the criteria and procedures,  
619 the following shall be considered:

620 (I) Whether the likelihood of a loss for the individual  
621 risk is substantially higher than for other risks of the same  
622 class; and

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

625  
626 The acceptance or rejection of a risk by the association  
627 pursuant to such criteria and procedures must be construed as  
628 the private placement of insurance, and the provisions of  
629 chapter 120 do not apply.

630 e. If the risk accepts an offer of coverage through the  
631 market assistance program or through a mechanism established by  
632 the association, either before the policy is issued by the  
633 association or during the first 30 days of coverage by the  
634 association, and the producing agent who submitted the  
635 application to the association is not currently appointed by the  
636 insurer, the insurer shall:

637 (I) Pay to the producing agent of record of the policy, for  
638 the first year, an amount that is the greater of the insurer's

597-02859-12

20121620c1

639 usual and customary commission for the type of policy written or  
640 a fee equal to the usual and customary commission of the  
641 association; or

642 (II) Offer to allow the producing agent of record of the  
643 policy to continue servicing the policy for a period of not less  
644 than 1 year and offer to pay the agent the greater of the  
645 insurer's or the association's usual and customary commission  
646 for the type of policy written.

647

648 If the producing agent is unwilling or unable to accept  
649 appointment, the new insurer shall pay the agent in accordance  
650 with sub-sub-subparagraph (I). Subject to the provisions of s.  
651 627.3517, the policies issued by the association must provide  
652 that if the association obtains an offer from an authorized  
653 insurer to cover the risk at its approved rates under either a  
654 standard policy including wind coverage or, if consistent with  
655 the insurer's underwriting rules as filed with the department, a  
656 basic policy including wind coverage, the risk is no longer  
657 eligible for coverage through the association. Upon termination  
658 of eligibility, the association shall provide written notice to  
659 the policyholder and agent of record stating that the  
660 association policy must be canceled as of 60 days after the date  
661 of the notice because of the offer of coverage from an  
662 authorized insurer. Other provisions of the insurance code  
663 relating to cancellation and notice of cancellation do not apply  
664 to actions under this sub-subparagraph.

665 f. When the association enters into a contractual agreement  
666 for a take-out plan, the producing agent of record of the  
667 association policy is entitled to retain any unearned commission

597-02859-12

20121620c1

668 on the policy, and the insurer shall:

669 (I) Pay to the producing agent of record of the association  
670 policy, for the first year, an amount that is the greater of the  
671 insurer's usual and customary commission for the type of policy  
672 written or a fee equal to the usual and customary commission of  
673 the association; or

674 (II) Offer to allow the producing agent of record of the  
675 association policy to continue servicing the policy for a period  
676 of not less than 1 year and offer to pay the agent the greater  
677 of the insurer's or the association's usual and customary  
678 commission for the type of policy written.

679

680 If the producing agent is unwilling or unable to accept  
681 appointment, the new insurer shall pay the agent in accordance  
682 with sub-sub-subparagraph (I).

683 6.a. The plan of operation may authorize the formation of a  
684 private nonprofit corporation, a private nonprofit  
685 unincorporated association, a partnership, a trust, a limited  
686 liability company, or a nonprofit mutual company which may be  
687 empowered, among other things, to borrow money by issuing bonds  
688 or by incurring other indebtedness and to accumulate reserves or  
689 funds to be used for the payment of insured catastrophe losses.  
690 The plan may authorize all actions necessary to facilitate the  
691 issuance of bonds, including the pledging of assessments or  
692 other revenues.

693 b. Any entity created under this subsection, or any entity  
694 formed for the purposes of this subsection, may sue and be sued,  
695 may borrow money; issue bonds, notes, or debt instruments;  
696 pledge or sell assessments, market equalization surcharges and



597-02859-12

20121620c1

697 other surcharges, rights, premiums, contractual rights,  
698 projected recoveries from the Florida Hurricane Catastrophe  
699 Fund, other reinsurance recoverables, and other assets as  
700 security for such bonds, notes, or debt instruments; enter into  
701 any contracts or agreements necessary or proper to accomplish  
702 such borrowings; and take other actions necessary to carry out  
703 the purposes of this subsection. The association may issue bonds  
704 or incur other indebtedness, or have bonds issued on its behalf  
705 by a unit of local government pursuant to subparagraph (6)(q)2.,  
706 in the absence of a hurricane or other weather-related event,  
707 upon a determination by the association subject to approval by  
708 the department that such action would enable it to efficiently  
709 meet the financial obligations of the association and that such  
710 financings are reasonably necessary to effectuate the  
711 requirements of this subsection. Any such entity may accumulate  
712 reserves and retain surpluses as of the end of any association  
713 year to provide for the payment of losses incurred by the  
714 association during that year or any future year. The association  
715 shall incorporate and continue the plan of operation and  
716 articles of agreement in effect on the effective date of chapter  
717 76-96, Laws of Florida, to the extent that it is not  
718 inconsistent with chapter 76-96, and as subsequently modified  
719 consistent with chapter 76-96. The board of directors and  
720 officers currently serving shall continue to serve until their  
721 successors are duly qualified as provided under the plan. The  
722 assets and obligations of the plan in effect immediately prior  
723 to the effective date of chapter 76-96 shall be construed to be  
724 the assets and obligations of the successor plan created herein.

725 c. In recognition of s. 10, Art. I of the State

597-02859-12

20121620c1

726 Constitution, prohibiting the impairment of obligations of  
727 contracts, it is the intent of the Legislature that no action be  
728 taken whose purpose is to impair any bond indenture or financing  
729 agreement or any revenue source committed by contract to such  
730 bond or other indebtedness issued or incurred by the association  
731 or any other entity created under this subsection.

732 7. On such coverage, an agent's remuneration shall be that  
733 amount of money payable to the agent by the terms of his or her  
734 contract with the company with which the business is placed.  
735 However, no commission will be paid on that portion of the  
736 premium which is in excess of the standard premium of that  
737 company.

738 8. Subject to approval by the department, the association  
739 may establish different eligibility requirements and operational  
740 procedures for any line or type of coverage for any specified  
741 eligible area or portion of an eligible area if the board  
742 determines that such changes to the eligibility requirements and  
743 operational procedures are justified due to the voluntary market  
744 being sufficiently stable and competitive in such area or for  
745 such line or type of coverage and that consumers who, in good  
746 faith, are unable to obtain insurance through the voluntary  
747 market through ordinary methods would continue to have access to  
748 coverage from the association. When coverage is sought in  
749 connection with a real property transfer, such requirements and  
750 procedures shall not provide for an effective date of coverage  
751 later than the date of the closing of the transfer as  
752 established by the transferor, the transferee, and, if  
753 applicable, the lender.

754 9. Notwithstanding any other provision of law:

597-02859-12

20121620c1

755           a. The pledge or sale of, the lien upon, and the security  
756 interest in any rights, revenues, or other assets of the  
757 association created or purported to be created pursuant to any  
758 financing documents to secure any bonds or other indebtedness of  
759 the association shall be and remain valid and enforceable,  
760 notwithstanding the commencement of and during the continuation  
761 of, and after, any rehabilitation, insolvency, liquidation,  
762 bankruptcy, receivership, conservatorship, reorganization, or  
763 similar proceeding against the association under the laws of  
764 this state or any other applicable laws.

765           b. No such proceeding shall relieve the association of its  
766 obligation, or otherwise affect its ability to perform its  
767 obligation, to continue to collect, or levy and collect,  
768 assessments, market equalization or other surcharges, projected  
769 recoveries from the Florida Hurricane Catastrophe Fund,  
770 reinsurance recoverables, or any other rights, revenues, or  
771 other assets of the association pledged.

772           c. Each such pledge or sale of, lien upon, and security  
773 interest in, including the priority of such pledge, lien, or  
774 security interest, any such assessments, emergency assessments,  
775 market equalization or renewal surcharges, projected recoveries  
776 from the Florida Hurricane Catastrophe Fund, reinsurance  
777 recoverables, or other rights, revenues, or other assets which  
778 are collected, or levied and collected, after the commencement  
779 of and during the pendency of or after any such proceeding shall  
780 continue unaffected by such proceeding.

781           d. As used in this subsection, the term "financing  
782 documents" means any agreement, instrument, or other document  
783 now existing or hereafter created evidencing any bonds or other

597-02859-12

20121620c1

784 indebtedness of the association or pursuant to which any such  
785 bonds or other indebtedness has been or may be issued and  
786 pursuant to which any rights, revenues, or other assets of the  
787 association are pledged or sold to secure the repayment of such  
788 bonds or indebtedness, together with the payment of interest on  
789 such bonds or such indebtedness, or the payment of any other  
790 obligation of the association related to such bonds or  
791 indebtedness.

792 e. Any such pledge or sale of assessments, revenues,  
793 contract rights or other rights or assets of the association  
794 shall constitute a lien and security interest, or sale, as the  
795 case may be, that is immediately effective and attaches to such  
796 assessments, revenues, contract, or other rights or assets,  
797 whether or not imposed or collected at the time the pledge or  
798 sale is made. Any such pledge or sale is effective, valid,  
799 binding, and enforceable against the association or other entity  
800 making such pledge or sale, and valid and binding against and  
801 superior to any competing claims or obligations owed to any  
802 other person or entity, including policyholders in this state,  
803 asserting rights in any such assessments, revenues, contract, or  
804 other rights or assets to the extent set forth in and in  
805 accordance with the terms of the pledge or sale contained in the  
806 applicable financing documents, whether or not any such person  
807 or entity has notice of such pledge or sale and without the need  
808 for any physical delivery, recordation, filing, or other action.

809 f. There shall be no liability on the part of, and no cause  
810 of action of any nature shall arise against, any member insurer  
811 or its agents or employees, agents or employees of the  
812 association, members of the board of directors of the

597-02859-12

20121620c1

813 association, or the department or its representatives, for any  
814 action taken by them in the performance of their duties or  
815 responsibilities under this subsection. Such immunity does not  
816 apply to actions for breach of any contract or agreement  
817 pertaining to insurance, or any willful tort.

818 Section 9. Section 627.6011, Florida Statutes, is created  
819 to read:

820 627.6011 Mandated coverages.—Mandatory health benefits  
821 regulated under this chapter which must be covered by an insurer  
822 are intended to apply only to the type of health benefit plan  
823 defined in s. 627.6699(3), issued in any market, unless  
824 specifically designated otherwise. For purposes of this section,  
825 the term "mandatory health benefits" means those benefits set  
826 forth in ss. 627.6401-627.64193 and any cross-references to  
827 these sections, and any other mandatory treatment or health  
828 coverages or benefits enacted on or after July 1, 2012.

829 Section 10. Subsections (1), (2), (7), and (9) of section  
830 627.7015, Florida Statutes, are amended to read:

831 627.7015 Alternative procedure for resolution of disputed  
832 property insurance claims.—

833 (1) ~~PURPOSE AND SCOPE.~~—This section sets forth a  
834 nonadversarial alternative dispute resolution procedure for a  
835 mediated claim resolution conference prompted by the need for  
836 effective, fair, and timely handling of property insurance  
837 claims. There is a particular need for an informal,  
838 nonthreatening forum for helping parties who elect this  
839 procedure to resolve their claims disputes because most  
840 homeowner's and commercial residential insurance policies  
841 obligate policyholders ~~insureds~~ to participate in a potentially

597-02859-12

20121620c1

842 expensive and time-consuming adversarial appraisal process  
843 before ~~prior to~~ litigation. The procedure set forth in this  
844 section is designed to bring the parties together for a mediated  
845 claims settlement conference without any of the trappings or  
846 drawbacks of an adversarial process. Before resorting to these  
847 procedures, policyholders insureds and insurers are encouraged  
848 to resolve claims as quickly and fairly as possible. This  
849 section is available with respect to claims under personal lines  
850 and commercial residential policies before ~~for all claimants and~~  
851 ~~insurers prior to~~ commencing the appraisal process, or before  
852 commencing litigation. Mediation may be requested only by the  
853 policyholder, as a first-party claimant, or the insurer. If  
854 requested by the policyholder insured, participation by legal  
855 counsel or any other person having relevant information is ~~shall~~  
856 ~~be~~ permitted. Mediation under this section is also available to  
857 litigants referred to the department by a county court or  
858 circuit court. This section does not apply to commercial  
859 coverages, to private passenger motor vehicle insurance  
860 coverages, or to disputes relating to liability coverages in  
861 policies of property insurance.

862 (2) At the time a first-party claim within the scope of  
863 this section is filed by the policyholder, the insurer shall  
864 notify the policyholder ~~all first-party claimants~~ of its ~~their~~  
865 right to participate in the mediation program under this  
866 section. The department shall prepare a consumer information  
867 pamphlet for distribution to persons participating in mediation  
868 ~~under this section.~~

869 (7) If the insurer fails to comply with subsection (2) by  
870 failing to notify a policyholder ~~first-party claimant~~ of its

597-02859-12

20121620c1

871 right to participate in the mediation program under this section  
872 or if the insurer requests the mediation, and the mediation  
873 results are rejected by either party, the policyholder is  
874 ~~insured shall~~ not be required to submit to or participate in any  
875 contractual loss appraisal process of the property loss damage  
876 as a precondition to legal action for breach of contract against  
877 the insurer for its failure to pay the policyholder's claims  
878 covered by the policy.

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

882 (a) With respect to which the insurer has a reasonable  
883 basis to suspect fraud;

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

886 (c) With respect to which the insurer has a reasonable  
887 basis to believe that the policyholder ~~claimant~~ has  
888 intentionally made a material misrepresentation of fact which is  
889 relevant to the claim, and the entire request for payment of a  
890 loss has been denied on the basis of the material  
891 misrepresentation; ~~or~~

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

895 (e) Where the notice of loss is reported to the insurer  
896 more than 36 months after the declaration of a state of  
897 emergency by the Governor in response to a hurricane that makes  
898 landfall in this state.

899 Section 11. Effective upon this act becoming a law,

597-02859-12

20121620c1

900 subsection (4) of section 627.7295, Florida Statutes, is amended  
901 to read:

902 627.7295 Motor vehicle insurance contracts.—

903 (4) ~~If subsection (7) does not apply,~~ The insurer may  
904 cancel the policy in accordance with this code except that,  
905 notwithstanding s. 627.728, an insurer may not cancel a new  
906 policy or binder during the first 60 days immediately following  
907 the effective date of the policy or binder ~~except~~ for nonpayment  
908 of premium unless the reason for the cancellation is the  
909 issuance of a check for the premium that is dishonored for any  
910 reason or any other type of premium payment that was  
911 subsequently determined to be rejected or invalid.

912 Section 12. Effective upon this act becoming a law,  
913 paragraph (d) of subsection (4) of section 627.736, Florida  
914 Statutes, is amended to read:

915 627.736 Required personal injury protection benefits;  
916 exclusions; priority; claims.—

917 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under  
918 ss. 627.730-627.7405 shall be primary, except that benefits  
919 received under any workers' compensation law shall be credited  
920 against the benefits provided by subsection (1) and shall be due  
921 and payable as loss accrues, upon receipt of reasonable proof of  
922 such loss and the amount of expenses and loss incurred which are  
923 covered by the policy issued under ss. 627.730-627.7405. When  
924 the Agency for Health Care Administration provides, pays, or  
925 becomes liable for medical assistance under the Medicaid program  
926 related to injury, sickness, disease, or death arising out of  
927 the ownership, maintenance, or use of a motor vehicle, benefits  
928 under ss. 627.730-627.7405 shall be subject to the provisions of



597-02859-12

20121620c1

929 the Medicaid program.

930 (d) All overdue payments ~~shall~~ bear simple interest fixed  
931 at the rate established under s. 55.03 or the rate established  
932 in the insurance contract, whichever is greater, in effect on  
933 the date ~~for the year in which~~ the payment became overdue,  
934 calculated from the date the insurer was furnished with written  
935 notice of the amount of covered loss. Interest is ~~shall be~~ due  
936 at the time payment of the overdue claim is made.

937 Section 13. Except as otherwise expressly provided in this  
938 act and except for this section, which shall take effect upon  
939 this act becoming a law, this act shall take effect July 1,  
940 2012.