

1 A bill to be entitled
2 An act relating to the depopulation programs of Citizens
3 Property Insurance Corporation; amending s. 627.351, F.S.;
4 providing that eligible surplus lines insurers may
5 participate, in the same manner and on the same terms as
6 an authorized insurer, in depopulation, take-out, or keep-
7 out programs relating to policies removed from Citizens
8 Property Insurance Corporation; providing certain
9 exceptions, conditions, and requirements relating to such
10 participation by a surplus lines insurer in the
11 corporation's depopulation, take-out, or keep-out
12 programs; authorizing information from underwriting files
13 and confidential files to be released by the corporation
14 to specified entities that are considering writing or
15 underwriting risks insured by the corporation under
16 certain circumstances; specifying that only the
17 corporation's transfer of a policy file to an insurer, as
18 opposed to the transfer of any file, changes the file's
19 public record status; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraphs (q) and (x) of subsection (6) of
24 section 627.351, Florida Statutes, are amended to read:

25 627.351 Insurance risk apportionment plans.—

26 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

27 (q)1. The corporation shall certify to the office its
28 needs for annual assessments as to a particular calendar year,

29 | and for any interim assessments that it deems to be necessary to
30 | sustain operations as to a particular year pending the receipt
31 | of annual assessments. Upon verification, the office shall
32 | approve such certification, and the corporation shall levy such
33 | annual or interim assessments. Such assessments shall be
34 | prorated as provided in paragraph (b). The corporation shall
35 | take all reasonable and prudent steps necessary to collect the
36 | amount of assessment due from each assessable insurer,
37 | including, if prudent, filing suit to collect such assessment.
38 | If the corporation is unable to collect an assessment from any
39 | assessable insurer, the uncollected assessments shall be levied
40 | as an additional assessment against the assessable insurers and
41 | any assessable insurer required to pay an additional assessment
42 | as a result of such failure to pay shall have a cause of action
43 | against such nonpaying assessable insurer. Assessments shall be
44 | included as an appropriate factor in the making of rates. The
45 | failure of a surplus lines agent to collect and remit any
46 | regular or emergency assessment levied by the corporation is
47 | considered to be a violation of s. 626.936 and subjects the
48 | surplus lines agent to the penalties provided in that section.

49 | 2. The governing body of any unit of local government, any
50 | residents of which are insured by the corporation, may issue
51 | bonds as defined in s. 125.013 or s. 166.101 from time to time
52 | to fund an assistance program, in conjunction with the
53 | corporation, for the purpose of defraying deficits of the
54 | corporation. In order to avoid needless and indiscriminate
55 | proliferation, duplication, and fragmentation of such assistance
56 | programs, any unit of local government, any residents of which

57 | are insured by the corporation, may provide for the payment of
58 | losses, regardless of whether or not the losses occurred within
59 | or outside of the territorial jurisdiction of the local
60 | government. Revenue bonds under this subparagraph may not be
61 | issued until validated pursuant to chapter 75, unless a state of
62 | emergency is declared by executive order or proclamation of the
63 | Governor pursuant to s. 252.36 making such findings as are
64 | necessary to determine that it is in the best interests of, and
65 | necessary for, the protection of the public health, safety, and
66 | general welfare of residents of this state and declaring it an
67 | essential public purpose to permit certain municipalities or
68 | counties to issue such bonds as will permit relief to claimants
69 | and policyholders of the corporation. Any such unit of local
70 | government may enter into such contracts with the corporation
71 | and with any other entity created pursuant to this subsection as
72 | are necessary to carry out this paragraph. Any bonds issued
73 | under this subparagraph shall be payable from and secured by
74 | moneys received by the corporation from emergency assessments
75 | under sub-subparagraph (b)3.d., and assigned and pledged to or
76 | on behalf of the unit of local government for the benefit of the
77 | holders of such bonds. The funds, credit, property, and taxing
78 | power of the state or of the unit of local government shall not
79 | be pledged for the payment of such bonds.

80 | 3.a. The corporation shall adopt one or more programs
81 | subject to approval by the office for the reduction of both new
82 | and renewal writings in the corporation. Beginning January 1,
83 | 2008, any program the corporation adopts for the payment of
84 | bonuses to an insurer for each risk the insurer removes from the

85 corporation shall comply with s. 627.3511(2) and may not exceed
86 the amount referenced in s. 627.3511(2) for each risk removed.
87 The corporation may consider any prudent and not unfairly
88 discriminatory approach to reducing corporation writings, and
89 may adopt a credit against assessment liability or other
90 liability that provides an incentive for insurers to take risks
91 out of the corporation and to keep risks out of the corporation
92 by maintaining or increasing voluntary writings in counties or
93 areas in which corporation risks are highly concentrated and a
94 program to provide a formula under which an insurer voluntarily
95 taking risks out of the corporation by maintaining or increasing
96 voluntary writings will be relieved wholly or partially from
97 assessments under sub-subparagraphs (b)3.a. and b. However, any
98 "take-out bonus" or payment to an insurer must be conditioned on
99 the property being insured for at least 5 years by the insurer,
100 unless canceled or nonrenewed by the policyholder. If the policy
101 is canceled or nonrenewed by the policyholder before the end of
102 the 5-year period, the amount of the take-out bonus must be
103 prorated for the time period the policy was insured. When the
104 corporation enters into a contractual agreement for a take-out
105 plan, the producing agent of record of the corporation policy is
106 entitled to retain any unearned commission on such policy, and
107 the insurer shall either:

108 (I) Pay to the producing agent of record of the policy,
109 for the first year, an amount which is the greater of the
110 insurer's usual and customary commission for the type of policy
111 written or a policy fee equal to the usual and customary
112 commission of the corporation; or

113 (II) Offer to allow the producing agent of record of the
114 policy to continue servicing the policy for a period of not less
115 than 1 year and offer to pay the agent the insurer's usual and
116 customary commission for the type of policy written. If the
117 producing agent is unwilling or unable to accept appointment by
118 the new insurer, the new insurer shall pay the agent in
119 accordance with sub-sub-subparagraph (I).

120 b. Any credit or exemption from regular assessments
121 adopted under this subparagraph shall last no longer than the 3
122 years following the cancellation or expiration of the policy by
123 the corporation. With the approval of the office, the board may
124 extend such credits for an additional year if the insurer
125 guarantees an additional year of renewability for all policies
126 removed from the corporation, or for 2 additional years if the
127 insurer guarantees 2 additional years of renewability for all
128 policies so removed.

129 c. There shall be no credit, limitation, exemption, or
130 deferment from emergency assessments to be collected from
131 policyholders pursuant to sub-subparagraph (b)3.d.

132 d. Notwithstanding any other provision of law, for
133 purposes of a depopulation, take-out, or keep-out program
134 adopted by the corporation, including an initial or renewal
135 offer of coverage made to a policyholder removed from the
136 corporation pursuant to such program, an eligible surplus lines
137 insurer may participate in the program in the same manner and on
138 the same terms as an authorized insurer, except as provided
139 under this sub-subparagraph.

140 (I) To qualify for participation, the surplus lines

141 insurer must first obtain approval from the office for its
142 depopulation, take-out, or keep-out plan and then comply with
143 all of the corporation's requirements for the plan applicable to
144 admitted insurers and with all statutory provisions applicable
145 to the removal of policies from the corporation.

146 (II) In considering a surplus lines insurer's request for
147 approval for its plan, the office must determine that the
148 surplus lines insurer meets the following requirements:

149 (A) Maintains surplus of \$50 million on a company or
150 pooled basis;

151 (B) Maintains an A.M. Best Financial Strength Rating of A-
152 or better;

153 (C) Maintains reserves, surplus, reinsurance, and
154 reinsurance equivalents sufficient to cover the insurer's 100-
155 year probable maximum hurricane loss at least twice in a single
156 hurricane season, and submits such reinsurance to the office to
157 review for purposes of the take-out;

158 (D) Provides prominent notice to the policyholder before
159 the assumption of the policy that surplus lines policies are not
160 provided coverage by the Florida Insurance Guaranty Association,
161 an outline of any substantial differences in coverage between
162 the existing policy and the policy being offered to the insured,
163 and any additional notifications required by the office; and

164 (E) Provides similar policy coverage.

165
166 This sub-sub-subparagraph does not subject any surplus lines
167 insurer to requirements in addition to part VIII of chapter 626.
168 Surplus lines brokers making an offer of coverage under this

169 sub-subparagraph are not required to comply with s.
170 626.916(1) (a), (b), (c), and (e).

171 (III) In order to obtain approval for a plan, the surplus
172 lines insurer must file the following with the office:

173 (A) Information requested by the office to demonstrate
174 compliance with s. 624.404(3), including biographical
175 affidavits, fingerprints processed pursuant to s. 624.34, and
176 the results of a criminal history records checks for officers
177 and directors of the insurer and its parent or holding company;

178 (B) A service-of-process consent and agreement form
179 executed by the insurer;

180 (C) Proof that the insurer has been an eligible or
181 authorized insurer for not less than 3 years;

182 (D) A duly authenticated copy of the insurer's current
183 audited financial statement, in English, with all monetary
184 values therein expressed in United States dollars, at an
185 exchange rate then current and shown in the statement, in the
186 case of statements originally made in the currencies of other
187 countries, and with any additional information relative to the
188 insurer as the office may request;

189 (E) A complete certified copy of the latest official
190 financial statement required by the insurer's domiciliary state,
191 if different from sub-sub-sub-subparagraph (D); and

192 (F) A copy of the United States trust account agreement,
193 if applicable.

194
195 This sub-sub-subparagraph does not subject any surplus lines
196 insurer to requirements in addition to part VIII of chapter 626.

197 Surplus lines brokers making an offer of coverage under this
198 sub-subparagraph are not required to comply with s.
199 626.916(1)(a), (b), (c), and (e).

200 (IV) Within 10 days after the date of assumption, the
201 surplus lines insurer assuming policies from the corporation
202 must remit a special deposit equal to the unearned premium net
203 of unearned commissions on the assumed block of business to the
204 Department of Financial Services, Bureau of Collateral
205 Management. The surplus lines insurer must submit to the office
206 with the initial deposit an accounting of the policies assumed
207 and the amount of unearned premium for such policies along with
208 a sworn affidavit attesting to its accuracy by an officer of the
209 surplus lines insurer. Thereafter, the surplus lines insurer
210 must make a filing within 10 days after each calendar quarter,
211 attesting to the unearned premium in force for the previous
212 quarter on policies assumed from the corporation, and must
213 submit additional funds with that filing if the special deposit
214 is insufficient to cover the unearned premium on assumed
215 policies, or must receive a return of funds within 60 days if
216 the special deposit exceeds the amount of unearned premium
217 required for assumed policies. The special deposit is an asset
218 of the surplus lines insurer which is held by the department for
219 the benefit of state policyholders of the surplus lines insurer
220 in the event of the insolvency of the surplus lines insurer. If
221 an order of liquidation is entered in any state against the
222 surplus lines insurer, the department may use the special
223 deposit for payment of unearned premium or policy claims, return
224 all or part of the deposit to the domiciliary receiver, or use

225 the funds in accordance with any action authorized under part I
226 of chapter 631 or in compliance with any order of a court with
227 jurisdiction over the insolvency.

228 (V) Surplus lines brokers representing a surplus lines
229 insurer on a take-out program must obtain confirmation, in
230 written or e-mail form, from each producing agent in advance
231 stating that the agent is willing to participate in the take-out
232 program with the surplus lines insurer engaging in the take-out
233 program. The take-out program is also subject to s. 627.3517. If
234 a policyholder is selected for removal from the corporation by a
235 surplus lines insurer and an authorized insurer, the offer of
236 coverage from the authorized insurer shall be given priority by
237 the corporation.

238 4. The plan shall provide for the deferment, in whole or
239 in part, of the assessment of an assessable insurer, other than
240 an emergency assessment collected from policyholders pursuant to
241 sub-subparagraph (b)3.d., if the office finds that payment of
242 the assessment would endanger or impair the solvency of the
243 insurer. In the event an assessment against an assessable
244 insurer is deferred in whole or in part, the amount by which
245 such assessment is deferred may be assessed against the other
246 assessable insurers in a manner consistent with the basis for
247 assessments set forth in paragraph (b).

248 5. Effective July 1, 2007, in order to evaluate the costs
249 and benefits of approved take-out plans, if the corporation pays
250 a bonus or other payment to an insurer for an approved take-out
251 plan, it shall maintain a record of the address or such other
252 identifying information on the property or risk removed in order

253 to track if and when the property or risk is later insured by
 254 the corporation.

255 6. Any policy taken out, assumed, or removed from the
 256 corporation is, as of the effective date of the take-out,
 257 assumption, or removal, direct insurance issued by the insurer
 258 and not by the corporation, even if the corporation continues to
 259 service the policies. This subparagraph applies to policies of
 260 the corporation and not policies taken out, assumed, or removed
 261 from any other entity.

262 (x)1. The following records of the corporation are
 263 confidential and exempt from the provisions of s. 119.07(1) and
 264 s. 24(a), Art. I of the State Constitution:

265 a. Underwriting files, except that a policyholder or an
 266 applicant shall have access to his or her own underwriting
 267 files. Confidential and exempt underwriting file records may
 268 also be released to other governmental agencies upon written
 269 request and demonstration of need; such records held by the
 270 receiving agency remain confidential and exempt as provided
 271 herein.

272 b. Claims files, until termination of all litigation and
 273 settlement of all claims arising out of the same incident,
 274 although portions of the claims files may remain exempt, as
 275 otherwise provided by law. Confidential and exempt claims file
 276 records may be released to other governmental agencies upon
 277 written request and demonstration of need; such records held by
 278 the receiving agency remain confidential and exempt as provided
 279 herein.

280 c. Records obtained or generated by an internal auditor

281 pursuant to a routine audit, until the audit is completed, or if
282 the audit is conducted as part of an investigation, until the
283 investigation is closed or ceases to be active. An investigation
284 is considered "active" while the investigation is being
285 conducted with a reasonable, good faith belief that it could
286 lead to the filing of administrative, civil, or criminal
287 proceedings.

288 d. Matters reasonably encompassed in privileged attorney-
289 client communications.

290 e. Proprietary information licensed to the corporation
291 under contract and the contract provides for the confidentiality
292 of such proprietary information.

293 f. All information relating to the medical condition or
294 medical status of a corporation employee which is not relevant
295 to the employee's capacity to perform his or her duties, except
296 as otherwise provided in this paragraph. Information that is
297 exempt shall include, but is not limited to, information
298 relating to workers' compensation, insurance benefits, and
299 retirement or disability benefits.

300 g. Upon an employee's entrance into the employee
301 assistance program, a program to assist any employee who has a
302 behavioral or medical disorder, substance abuse problem, or
303 emotional difficulty which affects the employee's job
304 performance, all records relative to that participation shall be
305 confidential and exempt from the provisions of s. 119.07(1) and
306 s. 24(a), Art. I of the State Constitution, except as otherwise
307 provided in s. 112.0455(11).

308 h. Information relating to negotiations for financing,

309 reinsurance, depopulation, or contractual services, until the
310 conclusion of the negotiations.

311 i. Minutes of closed meetings regarding underwriting
312 files, and minutes of closed meetings regarding an open claims
313 file until termination of all litigation and settlement of all
314 claims with regard to that claim, except that information
315 otherwise confidential or exempt by law shall be redacted.

316 2. If an authorized insurer, reinsurance intermediary,
317 eligible surplus lines insurer, or entity that has filed an
318 application with the office for licensure as a property and
319 casualty insurer in this state is considering writing or
320 assisting in the underwriting of a risk insured by the
321 corporation, relevant information from both the underwriting
322 files and confidential claims files may be released to the
323 insurer, reinsurance intermediary, eligible surplus lines
324 insurer, or entity that has filed an application with the office
325 for licensure as a property and casualty insurer in this state
326 provided the recipient ~~insurer~~ agrees in writing, notarized and
327 under oath, to maintain the confidentiality of such files. If a
328 policy file is transferred to an insurer, that policy file is no
329 longer a public record because it is not held by an agency
330 subject to the provisions of the public records law.
331 Underwriting files and confidential claims files may also be
332 released to staff and the board of governors of the market
333 assistance plan established pursuant to s. 627.3515, who must
334 retain the confidentiality of such files, except such files may
335 be released to authorized insurers that are considering assuming
336 the risks to which the files apply, provided the insurer agrees

337 in writing, notarized and under oath, to maintain the
338 confidentiality of such files. Finally, the corporation or the
339 board or staff of the market assistance plan may make the
340 following information obtained from underwriting files and
341 confidential claims files available to licensed general lines
342 insurance agents: name, address, and telephone number of the
343 residential property owner or insured; location of the risk;
344 rating information; loss history; and policy type. The receiving
345 licensed general lines insurance agent must retain the
346 confidentiality of the information received.

347 3. A policyholder who has filed suit against the
348 corporation has the right to discover the contents of his or her
349 own claims file to the same extent that discovery of such
350 contents would be available from a private insurer in litigation
351 as provided by the Florida Rules of Civil Procedure, the Florida
352 Evidence Code, and other applicable law. Pursuant to subpoena, a
353 third party has the right to discover the contents of an
354 insured's or applicant's underwriting or claims file to the same
355 extent that discovery of such contents would be available from a
356 private insurer by subpoena as provided by the Florida Rules of
357 Civil Procedure, the Florida Evidence Code, and other applicable
358 law, and subject to any confidentiality protections requested by
359 the corporation and agreed to by the seeking party or ordered by
360 the court. The corporation may release confidential underwriting
361 and claims file contents and information as it deems necessary
362 and appropriate to underwrite or service insurance policies and
363 claims, subject to any confidentiality protections deemed
364 necessary and appropriate by the corporation.

365 4. Portions of meetings of the corporation are exempt from
366 the provisions of s. 286.011 and s. 24(b), Art. I of the State
367 Constitution wherein confidential underwriting files or
368 confidential open claims files are discussed. All portions of
369 corporation meetings which are closed to the public shall be
370 recorded by a court reporter. The court reporter shall record
371 the times of commencement and termination of the meeting, all
372 discussion and proceedings, the names of all persons present at
373 any time, and the names of all persons speaking. No portion of
374 any closed meeting shall be off the record. Subject to the
375 provisions hereof and s. 119.07(1)(d)-(f), the court reporter's
376 notes of any closed meeting shall be retained by the corporation
377 for a minimum of 5 years. A copy of the transcript, less any
378 exempt matters, of any closed meeting wherein claims are
379 discussed shall become public as to individual claims after
380 settlement of the claim.

381 Section 2. This act shall take effect upon becoming a law.