

1 A bill to be entitled
2 An act relating to insurance; creating s. 489.147,
3 F.S.; providing definitions; prohibiting certain
4 practices by contractors; providing for disciplinary
5 proceedings; providing that the acts of any persons on
6 behalf of a contractor are considered the acts of a
7 contractor; providing that certain acts constitute
8 unlicensed contracting; providing penalties;
9 prohibiting a contractor from executing a contract
10 with a residential property owner for a roofing repair
11 or replacement unless certain notice is included;
12 authorizing the residential property owner to void the
13 contract within a specified timeframe when such notice
14 is not included; amending s. 624.316, F.S.;
15 authorizing the Office of Insurance Regulation to
16 examine insurer affiliates; amending s. 624.318, F.S.;
17 requiring insurer affiliates to provide certain items
18 and information to the office during examination or
19 investigation; amending s. 624.424, F.S.; requiring
20 property insurers, effective a certain date, to
21 include certain data regarding closed claims in their
22 annual reports to the office; requiring specified
23 insurers to provide the office with certain
24 information under certain circumstances; requiring the
25 office to consider certain costs in determining

26 | whether payments made by an insurer to an affiliate
27 | are fair and reasonable; amending s. 626.7451, F.S;
28 | requiring managing general agents to enter into
29 | specified contracts with insurers even when the
30 | managing general agents control, or are controlled by,
31 | the insurers; amending s. 626.7452, F.S.; providing
32 | that a managing general agent may be examined as if it
33 | were the insurer even if the managing general agent
34 | solely represents a single domestic insurer; amending
35 | s. 626.854, F.S.; prohibiting certain acts by
36 | specified licensed contractors and their
37 | subcontractors; providing construction; prohibiting
38 | certain acts by a public adjuster, public adjuster
39 | apprentice, and certain other persons; providing that
40 | certain acts constitute unlicensed practice of public
41 | adjusting; providing penalties; amending s. 627.351,
42 | F.S.; revising a procedure that the plan of operation
43 | of Citizens Property Insurance Corporation must
44 | provide; requiring the corporation to include the
45 | costs of catastrophe reinsurance to its projected 100-
46 | year probable maximum loss in its rate calculations
47 | even if the corporation does not purchase such
48 | reinsurance; deleting obsolete language relating to
49 | the corporation's rate filings; requiring the
50 | corporation to annually implement a rate increase that

51 does not exceed a certain percent for specified years;
52 requiring the corporation's budget allocations for
53 salaries for the corporation's employees, all employee
54 raises exceeding 10 percent, and an employee
55 compensation plan for the corporation to be approved
56 by the corporation's board of governors; amending s.
57 627.3518, F.S.; conforming a cross-reference; amending
58 s. 627.428, F.S.; requiring a suit arising under a
59 property insurance policy to be modified and awarded
60 as provided by specified provisions of law under
61 certain circumstances; providing that, for an award of
62 attorney fees for a claim under a property insurance
63 policy, the application of a contingency risk
64 multiplier may be considered only if certain factors
65 have been met; providing such factors; amending s.
66 627.7011, F.S.; requiring written acceptance of actual
67 cash value coverage in a homeowner's policy; requiring
68 a specific statement in a certain homeowner's policy;
69 requiring notice of availability of certain coverage
70 in a homeowner's policy; amending s. 627.70132, F.S.;
71 revising the definitions of the terms "supplemental
72 claim" and "reopened claim" to include all perils;
73 providing that claims and reopened claims under
74 certain property insurance policies for loss or damage
75 caused by perils are barred unless notice is given

76 | within a specified timeframe; revising the timeframe
77 | for notice for loss or damage caused by windstorm or
78 | hurricane; providing date of loss for weather-related
79 | events; providing circumstances under which
80 | supplemental claims are not barred; providing
81 | construction; amending s. 627.7015, F.S.; conforming a
82 | provision to changes made by the act; creating s.
83 | 627.70152, F.S.; providing applicability; providing
84 | definitions; providing duties of a claimant; requiring
85 | written notice to be provided to an insurer before a
86 | suit is filed under an insurance policy; requiring
87 | certain information to be included in the notice;
88 | requiring notice to be served within specified time
89 | limits; requiring an insurer to provide a response to
90 | the notice within specified timeframe; providing for
91 | tolling of time if appropriate; requiring an insurer
92 | to have a procedure for the prompt investigation,
93 | review, and evaluation of a dispute stated in the
94 | notice and to investigate each claim in the notice in
95 | accordance with the Florida Insurance Code; requiring
96 | an insurer to provide a response to the notice within
97 | a specified timeframe; requiring a court to dismiss
98 | without prejudice a claimant's suit under certain
99 | circumstances; providing that the notice and
100 | documentation are admissible as evidence only in

101 specified proceedings; providing construction;
 102 providing calculations and awards of attorney fees and
 103 costs under certain circumstances; prohibiting a court
 104 from awarding attorney fees to a claimant under
 105 certain circumstances; providing for tolling of time
 106 for notices of supplemental and reopened claims under
 107 a specified circumstance; amending s. 628.801, F.S.;
 108 authorizing the office to request information from an
 109 insurer or its affiliates as reasonably necessary;
 110 authorizing the office to obtain certain staff to
 111 conduct an examination at an insurer's expense;
 112 requiring insurers to pay examination expenses; giving
 113 the office the authority to examine all affiliates of
 114 an insurer as reasonably necessary to ascertain the
 115 insurer's financial condition; prohibiting an
 116 examination of an insurer's affiliate from extending
 117 to specified investors under certain circumstances;
 118 providing an effective date.

119

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

121

122 Section 1. Section 489.147, Florida Statutes, is created
 123 to read:

124 489.147 Prohibited property insurance practices.-

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

126 (a) "Prohibited advertisement" means any written or
127 electronic communication that encourages, instructs, or induces
128 a consumer to contact a contractor or public adjuster for the
129 purpose of making an insurance claim for roof damage. The term
130 includes, but is not limited to, door hangers, business cards,
131 magnets, flyers, pamphlets, and e-mails.

132 (b) "Soliciting" means contacting:

133 1. In person;

134 2. By electronic means, including, but not limited to, e-
135 mail, telephone, and any other real-time communication directed
136 to a specific person; or

137 3. By delivery to a specific person.

138 (2) A contractor may not directly or indirectly engage in
139 any of the following practices:

140 (a) Soliciting a residential property owner by means of a
141 prohibited advertisement.

142 (b) Offering to a residential property owner a rebate,
143 gift, gift card, cash, coupon, waiver of any insurance
144 deductible, or any other thing of value in exchange for:

145 1. Allowing the contractor to conduct an inspection of the
146 residential property owner's roof; or

147 2. Making an insurance claim for damage to the residential
148 property owner's roof.

149 (c) Offering, delivering, receiving, or accepting any
150 compensation, inducement, or reward, for the referral of any

151 services for which property insurance proceeds are payable.
152 Payment by the residential property owner or insurance company
153 to a contractor for roofing services rendered does not
154 constitute compensation for a referral.

155 (d) Interpreting policy provisions or advising an insured
156 regarding coverages or duties under the insured's property
157 insurance policy or adjusting a property insurance claim on
158 behalf of the insured, unless the contractor holds a license as
159 a public adjuster pursuant to part VI of chapter 626.

160 (e) Providing an insured with an agreement authorizing
161 repairs without providing a good faith estimate of the itemized
162 and detailed cost of services and materials for repairs
163 undertaken pursuant to a property insurance claim. A contractor
164 does not violate this paragraph if, as a result of the process
165 of the insurer adjusting a claim, the actual cost of repairs
166 differs from the initial estimate.

167 (3) A contractor who violates this section is subject to
168 disciplinary proceedings as set forth in s. 489.129. A
169 contractor may receive up to a \$10,000 fine for each violation
170 of this section.

171 (4) For the purposes of this section:

172 (a) The acts of any person on behalf of a contractor,
173 including, but not limited to, the acts of a compensated
174 employee or a nonemployee who is compensated for soliciting,
175 shall be considered the actions of the contractor.

176 (b) An unlicensed person who engages in an act prohibited
 177 by this section is guilty of unlicensed contracting and is
 178 subject to the penalties set forth in s. 489.13. Notwithstanding
 179 s. 489.13(3), an unlicensed person who violates this section may
 180 be fined up to \$10,000 for each violation.

181 (5) A contractor may not execute a contract with a
 182 residential property owner to repair or replace a roof without
 183 including a notice that the contractor may not engage in the
 184 practices set forth in paragraph (2)(b). If the contractor fails
 185 to include such notice, the residential property owner may void
 186 the contract within 10 days after executing it.

187 Section 2. Paragraph (a) of subsection (2) of section
 188 624.316, Florida Statutes, is amended to read:

189 624.316 Examination of insurers.—

190 (2) (a) Except as provided in paragraph (f), the office may
 191 examine each insurer, including affiliates, as often as may be
 192 warranted for the protection of the policyholders and in the
 193 public interest, and shall examine each domestic insurer not
 194 less frequently than once every 5 years. The examination shall
 195 cover the preceding 5 fiscal years of the insurer and shall be
 196 commenced within 12 months after the end of the most recent
 197 fiscal year being covered by the examination. The examination
 198 may cover any period of the insurer's operations since the last
 199 previous examination. The examination may include examination of
 200 events subsequent to the end of the most recent fiscal year and

201 the events of any prior period that affect the present financial
 202 condition of the insurer.

203 Section 3. Subsection (2) of section 624.318, Florida
 204 Statutes, is amended to read:

205 624.318 Conduct of examination or investigation; access to
 206 records; correction of accounts; appraisals.—

207 (2) Every person, including an affiliate, being examined
 208 or investigated, and its officers, attorneys, employees, agents,
 209 and representatives, shall make freely available to the
 210 department or office or its examiners or investigators the
 211 accounts, records, documents, files, information, assets, and
 212 matters in their possession or control relating to the subject
 213 of the examination or investigation. An agent who provides other
 214 products or services or maintains customer information not
 215 related to insurance must maintain records relating to insurance
 216 products and transactions separately if necessary to give the
 217 department or office access to such records. If records relating
 218 to the insurance transactions are maintained by an agent on
 219 premises owned or operated by a third party, the agent and the
 220 third party must provide access to the records by the department
 221 or office.

222 Section 4. Subsection (11) of section 624.424, Florida
 223 Statutes, is renumbered as subsection (12), and a new subsection
 224 (11) and subsection (13) are added to that section, to read:

225 624.424 Annual statement and other information.—

226 (11) Beginning January 1, 2022, each authorized insurer or
227 insurer group issuing personal lines or commercial lines
228 residential property insurance policies in this state shall file
229 with the office on an annual basis in conjunction with the
230 statements required by paragraph (1)(a) a supplemental report on
231 an individual and group basis for closed claims. The report must
232 be on a form prescribed by the commission and must include the
233 following information for each claim closed, excluding liability
234 only claims, within the reporting period in this state:

235 (a) The unique claim identification number.
236 (b) The type of policy.
237 (c) The zip code of the property where the claim occurred.
238 (d) The county where the claim occurred.
239 (e) The date of loss.
240 (f) The peril or type of loss, including information
241 about:

242 1. The types of vendors used for mitigation, repair, or
243 replacement; and

244 2. The names of vendors used, if known.

245 (g) The date the claim was reported to insurer.

246 (h) The initial date the claim was closed, including
247 information about whether the claim was closed with or without
248 payment.

249 (i) The date the claim was most recently reopened, if
250 applicable.

251 (j) The date a supplemental claim was filed, if
252 applicable.

253 (k) The date the claim was most recently closed, if
254 different from the initial date the claim was closed.

255 (l) The name of the public adjuster on the claim, if any.

256 (m) The Florida Bar number and name of the attorney for
257 the claimant, if any.

258 (n) The total indemnity paid by the insurer.

259 (o) The total loss adjustment expenses paid by the
260 insurer.

261 (p) The amount paid for claimant's attorney fees, if any.

262 (q) The amount paid in costs for claimant's attorney's
263 expenses, including, but not limited to, expert witness fees.

264 (r) The contingency risk multiplier, if any, that the
265 claimant's attorney requested to be applied in calculating the
266 attorney fees awarded to the claimant's attorney.

267 (s) The contingency risk multiplier, if any, that a court
268 applied in calculating the attorney fees awarded to the
269 claimant's attorney.

270 (t) Any other information deemed necessary by the
271 commission to provide the office with the ability to track
272 litigation and claims trends occurring in the property market.

273 (13) Each insurer doing business in this state which pays
274 a fee, commission, or other financial consideration or payment
275 to any affiliate directly or indirectly is required upon request

276 to provide to the office any information the office deems
277 necessary. The fee, commission, or other financial consideration
278 or payment to any affiliate must be fair and reasonable. In
279 determining whether the fee, commission, or other financial
280 consideration or payment is fair and reasonable, the office
281 shall consider, among other things, the actual cost of the
282 service being provided.

283 Section 5. Subsection (6) of section 626.7451, Florida
284 Statutes, is amended to read:

285 626.7451 Managing general agents; required contract
286 provisions.—No person acting in the capacity of a managing
287 general agent shall place business with an insurer unless there
288 is in force a written contract between the parties which sets
289 forth the responsibility for a particular function, specifies
290 the division of responsibilities, and contains the following
291 minimum provisions:

292 (6) The contract shall specify appropriate underwriting
293 guidelines, including:

- 294 (a) The maximum annual premium volume.
295 (b) The basis of the rates to be charged.
296 (c) The types of risks which may be written.
297 (d) Maximum limits of liability.
298 (e) Applicable exclusions.
299 (f) Territorial limitations.
300 (g) Policy cancellation provisions.

301 (h) The maximum policy period.

302

303 ~~This subsection shall not apply when the managing general agent~~
 304 ~~is a controlled or controlling person.~~

305

306 For the purposes of this section and ss. 626.7453 and 626.7454,
 307 the term "controlling person" or "controlling" has the meaning
 308 set forth in s. 625.012(5)(b)1., and the term "controlled
 309 person" or "controlled" has the meaning set forth in s.
 310 625.012(5)(b)2.

311 Section 6. Section 626.7452, Florida Statutes, is amended
 312 to read:

313 626.7452 Managing general agents; examination authority.—
 314 The acts of the managing general agent are considered to be the
 315 acts of the insurer on whose behalf it is acting. A managing
 316 general agent may be examined as if it were the insurer ~~except~~
 317 ~~in the case where the managing general agent solely represents a~~
 318 ~~single domestic insurer.~~

319 Section 7. Subsection (15) of section 626.854, Florida
 320 Statutes, is amended, and subsection (20) is added to that
 321 section, to read:

322 626.854 "Public adjuster" defined; prohibitions.—The
 323 legislature finds that it is necessary for the protection of the
 324 public to regulate public insurance adjusters and to prevent the
 325 unauthorized practice of law.

326 (15) A licensed contractor under part I of chapter 489, or
327 a subcontractor of such licensee, may not advertise, solicit,
328 offer to handle, handle, or perform public adjuster services as
329 provided in subsection (1) ~~adjust a claim on behalf of an~~
330 ~~insured~~ unless licensed and compliant as a public adjuster under
331 this chapter. The prohibition against solicitation does not
332 preclude a contractor from suggesting or otherwise recommending
333 to a consumer that the consumer consider contacting his or her
334 insurer to determine if the proposed repair is covered under the
335 consumer's insurance policy, except as it relates to
336 solicitation prohibited in s. 489.147. In addition ~~However~~, the
337 contractor may discuss or explain a bid for construction or
338 repair of covered property with the residential property owner
339 who has suffered loss or damage covered by a property insurance
340 policy, or the insurer of such property, if the contractor is
341 doing so for the usual and customary fees applicable to the work
342 to be performed as stated in the contract between the contractor
343 and the insured.

344 (20) (a) Any following act by a public adjuster, a public
345 adjuster apprentice, or a person acting on behalf of a public
346 adjuster or public adjuster apprentice is prohibited and shall
347 result in discipline as applicable under part VI of this
348 chapter:

349 1. Offering to a residential property owner a rebate,
350 gift, gift card, cash, coupon, waiver of any insurance

351 deductible, or any other thing of value in exchange for:

352 a. Allowing a contractor, a public adjuster, a public
353 adjuster apprentice, or a person acting on behalf of a public
354 adjuster or public adjuster apprentice to conduct an inspection
355 of the residential property owner's roof; or

356 b. Making an insurance claim for damage to the residential
357 property owner's roof.

358 2. Offering, delivering, receiving, or accepting any
359 compensation, inducement, or reward for the referral of any
360 services for which property insurance proceeds would be used for
361 roofing repairs or replacement.

362 (b) Notwithstanding the fine set forth in s. 626.8698, a
363 public adjuster or public adjuster apprentice may be subject to
364 a fine not to exceed \$10,000 per act for a violation of this
365 subsection.

366 (c) A person who engages in an act prohibited by this
367 subsection and who is not a public adjuster or a public adjuster
368 apprentice, or is not otherwise exempt from licensure, is guilty
369 of the unlicensed practice of public adjusting and may be:

370 1. Subject to all applicable penalties set forth in part
371 VI of this chapter.

372 2. Notwithstanding subparagraph 1., subject to a fine not
373 to exceed \$10,000 per act for a violation of this subsection.

374 Section 8. Paragraphs (c) and (n) of subsection (6) of
375 section 627.351, Florida Statutes, are amended, and paragraph

376 (jj) is added to subsection (6) of that section, to read:
 377 627.351 Insurance risk apportionment plans.—
 378 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
 379 (c) The corporation's plan of operation:
 380 1. Must provide for adoption of residential property and
 381 casualty insurance policy forms and commercial residential and
 382 nonresidential property insurance forms, which must be approved
 383 by the office before use. The corporation shall adopt the
 384 following policy forms:
 385 a. Standard personal lines policy forms that are
 386 comprehensive multiperil policies providing full coverage of a
 387 residential property equivalent to the coverage provided in the
 388 private insurance market under an HO-3, HO-4, or HO-6 policy.
 389 b. Basic personal lines policy forms that are policies
 390 similar to an HO-8 policy or a dwelling fire policy that provide
 391 coverage meeting the requirements of the secondary mortgage
 392 market, but which is more limited than the coverage under a
 393 standard policy.
 394 c. Commercial lines residential and nonresidential policy
 395 forms that are generally similar to the basic perils of full
 396 coverage obtainable for commercial residential structures and
 397 commercial nonresidential structures in the admitted voluntary
 398 market.
 399 d. Personal lines and commercial lines residential
 400 property insurance forms that cover the peril of wind only. The

401 forms are applicable only to residential properties located in
402 areas eligible for coverage under the coastal account referred
403 to in sub-subparagraph (b)2.a.

404 e. Commercial lines nonresidential property insurance
405 forms that cover the peril of wind only. The forms are
406 applicable only to nonresidential properties located in areas
407 eligible for coverage under the coastal account referred to in
408 sub-subparagraph (b)2.a.

409 f. The corporation may adopt variations of the policy
410 forms listed in sub-subparagraphs a.-e. which contain more
411 restrictive coverage.

412 g. Effective January 1, 2013, the corporation shall offer
413 a basic personal lines policy similar to an HO-8 policy with
414 dwelling repair based on common construction materials and
415 methods.

416 2. Must provide that the corporation adopt a program in
417 which the corporation and authorized insurers enter into quota
418 share primary insurance agreements for hurricane coverage, as
419 defined in s. 627.4025(2)(a), for eligible risks, and adopt
420 property insurance forms for eligible risks which cover the
421 peril of wind only.

422 a. As used in this subsection, the term:

423 (I) "Quota share primary insurance" means an arrangement
424 in which the primary hurricane coverage of an eligible risk is
425 provided in specified percentages by the corporation and an

426 authorized insurer. The corporation and authorized insurer are
427 each solely responsible for a specified percentage of hurricane
428 coverage of an eligible risk as set forth in a quota share
429 primary insurance agreement between the corporation and an
430 authorized insurer and the insurance contract. The
431 responsibility of the corporation or authorized insurer to pay
432 its specified percentage of hurricane losses of an eligible
433 risk, as set forth in the agreement, may not be altered by the
434 inability of the other party to pay its specified percentage of
435 losses. Eligible risks that are provided hurricane coverage
436 through a quota share primary insurance arrangement must be
437 provided policy forms that set forth the obligations of the
438 corporation and authorized insurer under the arrangement,
439 clearly specify the percentages of quota share primary insurance
440 provided by the corporation and authorized insurer, and
441 conspicuously and clearly state that the authorized insurer and
442 the corporation may not be held responsible beyond their
443 specified percentage of coverage of hurricane losses.

444 (II) "Eligible risks" means personal lines residential and
445 commercial lines residential risks that meet the underwriting
446 criteria of the corporation and are located in areas that were
447 eligible for coverage by the Florida Windstorm Underwriting
448 Association on January 1, 2002.

449 b. The corporation may enter into quota share primary
450 insurance agreements with authorized insurers at corporation

451 coverage levels of 90 percent and 50 percent.

452 c. If the corporation determines that additional coverage
453 levels are necessary to maximize participation in quota share
454 primary insurance agreements by authorized insurers, the
455 corporation may establish additional coverage levels. However,
456 the corporation's quota share primary insurance coverage level
457 may not exceed 90 percent.

458 d. Any quota share primary insurance agreement entered
459 into between an authorized insurer and the corporation must
460 provide for a uniform specified percentage of coverage of
461 hurricane losses, by county or territory as set forth by the
462 corporation board, for all eligible risks of the authorized
463 insurer covered under the agreement.

464 e. Any quota share primary insurance agreement entered
465 into between an authorized insurer and the corporation is
466 subject to review and approval by the office. However, such
467 agreement shall be authorized only as to insurance contracts
468 entered into between an authorized insurer and an insured who is
469 already insured by the corporation for wind coverage.

470 f. For all eligible risks covered under quota share
471 primary insurance agreements, the exposure and coverage levels
472 for both the corporation and authorized insurers shall be
473 reported by the corporation to the Florida Hurricane Catastrophe
474 Fund. For all policies of eligible risks covered under such
475 agreements, the corporation and the authorized insurer must

476 maintain complete and accurate records for the purpose of
477 exposure and loss reimbursement audits as required by fund
478 rules. The corporation and the authorized insurer shall each
479 maintain duplicate copies of policy declaration pages and
480 supporting claims documents.

481 g. The corporation board shall establish in its plan of
482 operation standards for quota share agreements which ensure that
483 there is no discriminatory application among insurers as to the
484 terms of the agreements, pricing of the agreements, incentive
485 provisions if any, and consideration paid for servicing policies
486 or adjusting claims.

487 h. The quota share primary insurance agreement between the
488 corporation and an authorized insurer must set forth the
489 specific terms under which coverage is provided, including, but
490 not limited to, the sale and servicing of policies issued under
491 the agreement by the insurance agent of the authorized insurer
492 producing the business, the reporting of information concerning
493 eligible risks, the payment of premium to the corporation, and
494 arrangements for the adjustment and payment of hurricane claims
495 incurred on eligible risks by the claims adjuster and personnel
496 of the authorized insurer. Entering into a quota sharing
497 insurance agreement between the corporation and an authorized
498 insurer is voluntary and at the discretion of the authorized
499 insurer.

500 3. May provide that the corporation may employ or

501 otherwise contract with individuals or other entities to provide
502 administrative or professional services that may be appropriate
503 to effectuate the plan. The corporation may borrow funds by
504 issuing bonds or by incurring other indebtedness, and shall have
505 other powers reasonably necessary to effectuate the requirements
506 of this subsection, including, without limitation, the power to
507 issue bonds and incur other indebtedness in order to refinance
508 outstanding bonds or other indebtedness. The corporation may
509 seek judicial validation of its bonds or other indebtedness
510 under chapter 75. The corporation may issue bonds or incur other
511 indebtedness, or have bonds issued on its behalf by a unit of
512 local government pursuant to subparagraph (q)2. in the absence
513 of a hurricane or other weather-related event, upon a
514 determination by the corporation, subject to approval by the
515 office, that such action would enable it to efficiently meet the
516 financial obligations of the corporation and that such
517 financings are reasonably necessary to effectuate the
518 requirements of this subsection. The corporation may take all
519 actions needed to facilitate tax-free status for such bonds or
520 indebtedness, including formation of trusts or other affiliated
521 entities. The corporation may pledge assessments, projected
522 recoveries from the Florida Hurricane Catastrophe Fund, other
523 reinsurance recoverables, policyholder surcharges and other
524 surcharges, and other funds available to the corporation as
525 security for bonds or other indebtedness. In recognition of s.

526 10, Art. I of the State Constitution, prohibiting the impairment
527 of obligations of contracts, it is the intent of the Legislature
528 that no action be taken whose purpose is to impair any bond
529 indenture or financing agreement or any revenue source committed
530 by contract to such bond or other indebtedness.

531 4. Must require that the corporation operate subject to
532 the supervision and approval of a board of governors consisting
533 of nine individuals who are residents of this state and who are
534 from different geographical areas of the state, one of whom is
535 appointed by the Governor and serves solely to advocate on
536 behalf of the consumer. The appointment of a consumer
537 representative by the Governor is deemed to be within the scope
538 of the exemption provided in s. 112.313(7)(b) and is in addition
539 to the appointments authorized under sub-subparagraph a.

540 a. The Governor, the Chief Financial Officer, the
541 President of the Senate, and the Speaker of the House of
542 Representatives shall each appoint two members of the board. At
543 least one of the two members appointed by each appointing
544 officer must have demonstrated expertise in insurance and be
545 deemed to be within the scope of the exemption provided in s.
546 112.313(7)(b). The Chief Financial Officer shall designate one
547 of the appointees as chair. All board members serve at the
548 pleasure of the appointing officer. All members of the board are
549 subject to removal at will by the officers who appointed them.
550 All board members, including the chair, must be appointed to

551 | serve for 3-year terms beginning annually on a date designated
552 | by the plan. However, for the first term beginning on or after
553 | July 1, 2009, each appointing officer shall appoint one member
554 | of the board for a 2-year term and one member for a 3-year term.
555 | A board vacancy shall be filled for the unexpired term by the
556 | appointing officer. The Chief Financial Officer shall appoint a
557 | technical advisory group to provide information and advice to
558 | the board in connection with the board's duties under this
559 | subsection. The executive director and senior managers of the
560 | corporation shall be engaged by the board and serve at the
561 | pleasure of the board. Any executive director appointed on or
562 | after July 1, 2006, is subject to confirmation by the Senate.
563 | The executive director is responsible for employing other staff
564 | as the corporation may require, subject to review and
565 | concurrence by the board.

566 | b. The board shall create a Market Accountability Advisory
567 | Committee to assist the corporation in developing awareness of
568 | its rates and its customer and agent service levels in
569 | relationship to the voluntary market insurers writing similar
570 | coverage.

571 | (I) The members of the advisory committee consist of the
572 | following 11 persons, one of whom must be elected chair by the
573 | members of the committee: four representatives, one appointed by
574 | the Florida Association of Insurance Agents, one by the Florida
575 | Association of Insurance and Financial Advisors, one by the

576 Professional Insurance Agents of Florida, and one by the Latin
577 American Association of Insurance Agencies; three
578 representatives appointed by the insurers with the three highest
579 voluntary market share of residential property insurance
580 business in the state; one representative from the Office of
581 Insurance Regulation; one consumer appointed by the board who is
582 insured by the corporation at the time of appointment to the
583 committee; one representative appointed by the Florida
584 Association of Realtors; and one representative appointed by the
585 Florida Bankers Association. All members shall be appointed to
586 3-year terms and may serve for consecutive terms.

587 (II) The committee shall report to the corporation at each
588 board meeting on insurance market issues which may include rates
589 and rate competition with the voluntary market; service,
590 including policy issuance, claims processing, and general
591 responsiveness to policyholders, applicants, and agents; and
592 matters relating to depopulation.

593 5. Must provide a procedure for determining the
594 eligibility of a risk for coverage, as follows:

595 a. Subject to s. 627.3517, with respect to personal lines
596 residential risks, if the risk is offered coverage from an
597 authorized insurer at the insurer's approved rate under a
598 standard policy including wind coverage or, if consistent with
599 the insurer's underwriting rules as filed with the office, a
600 basic policy including wind coverage, for a new application to

601 the corporation for coverage, the risk is not eligible for any
602 policy issued by the corporation unless the premium for coverage
603 from the authorized insurer is more than 20 ~~15~~ percent greater
604 than the premium for comparable coverage from the corporation.
605 Whenever an offer of coverage for a personal lines residential
606 risk is received for a policyholder of the corporation at
607 renewal from an authorized insurer, if the offer is equal to or
608 less than the corporation's renewal premium for comparable
609 coverage, the risk is not eligible for coverage with the
610 corporation. If the risk is not able to obtain such offer, the
611 risk is eligible for a standard policy including wind coverage
612 or a basic policy including wind coverage issued by the
613 corporation; however, if the risk could not be insured under a
614 standard policy including wind coverage regardless of market
615 conditions, the risk is eligible for a basic policy including
616 wind coverage unless rejected under subparagraph 8. However, a
617 policyholder removed from the corporation through an assumption
618 agreement remains eligible for coverage from the corporation
619 until the end of the assumption period. The corporation shall
620 determine the type of policy to be provided on the basis of
621 objective standards specified in the underwriting manual and
622 based on generally accepted underwriting practices.

623 (I) If the risk accepts an offer of coverage through the
624 market assistance plan or through a mechanism established by the
625 corporation other than a plan established by s. 627.3518, before

626 a policy is issued to the risk by the corporation or during the
627 first 30 days of coverage by the corporation, and the producing
628 agent who submitted the application to the plan or to the
629 corporation is not currently appointed by the insurer, the
630 insurer shall:

631 (A) Pay to the producing agent of record of the policy for
632 the first year, an amount that is the greater of the insurer's
633 usual and customary commission for the type of policy written or
634 a fee equal to the usual and customary commission of the
635 corporation; or

636 (B) Offer to allow the producing agent of record of the
637 policy to continue servicing the policy for at least 1 year and
638 offer to pay the agent the greater of the insurer's or the
639 corporation's usual and customary commission for the type of
640 policy written.

641
642 If the producing agent is unwilling or unable to accept
643 appointment, the new insurer shall pay the agent in accordance
644 with sub-sub-sub-subparagraph (A).

645 (II) If the corporation enters into a contractual
646 agreement for a take-out plan, the producing agent of record of
647 the corporation policy is entitled to retain any unearned
648 commission on the policy, and the insurer shall:

649 (A) Pay to the producing agent of record, for the first
650 year, an amount that is the greater of the insurer's usual and

651 customary commission for the type of policy written or a fee
652 equal to the usual and customary commission of the corporation;
653 or

654 (B) Offer to allow the producing agent of record to
655 continue servicing the policy for at least 1 year and offer to
656 pay the agent the greater of the insurer's or the corporation's
657 usual and customary commission for the type of policy written.

658

659 If the producing agent is unwilling or unable to accept
660 appointment, the new insurer shall pay the agent in accordance
661 with sub-sub-sub-subparagraph (A).

662 b. With respect to commercial lines residential risks, for
663 a new application to the corporation for coverage, if the risk
664 is offered coverage under a policy including wind coverage from
665 an authorized insurer at its approved rate, the risk is not
666 eligible for a policy issued by the corporation unless the
667 premium for coverage from the authorized insurer is more than 15
668 percent greater than the premium for comparable coverage from
669 the corporation. Whenever an offer of coverage for a commercial
670 lines residential risk is received for a policyholder of the
671 corporation at renewal from an authorized insurer, if the offer
672 is equal to or less than the corporation's renewal premium for
673 comparable coverage, the risk is not eligible for coverage with
674 the corporation. If the risk is not able to obtain any such
675 offer, the risk is eligible for a policy including wind coverage

676 issued by the corporation. However, a policyholder removed from
677 the corporation through an assumption agreement remains eligible
678 for coverage from the corporation until the end of the
679 assumption period.

680 (I) If the risk accepts an offer of coverage through the
681 market assistance plan or through a mechanism established by the
682 corporation other than a plan established by s. 627.3518, before
683 a policy is issued to the risk by the corporation or during the
684 first 30 days of coverage by the corporation, and the producing
685 agent who submitted the application to the plan or the
686 corporation is not currently appointed by the insurer, the
687 insurer shall:

688 (A) Pay to the producing agent of record of the policy,
689 for the first year, an amount that is the greater of the
690 insurer's usual and customary commission for the type of policy
691 written or a fee equal to the usual and customary commission of
692 the corporation; or

693 (B) Offer to allow the producing agent of record of the
694 policy to continue servicing the policy for at least 1 year and
695 offer to pay the agent the greater of the insurer's or the
696 corporation's usual and customary commission for the type of
697 policy written.

698
699 If the producing agent is unwilling or unable to accept
700 appointment, the new insurer shall pay the agent in accordance

701 with sub-sub-sub-subparagraph (A).

702 (II) If the corporation enters into a contractual
703 agreement for a take-out plan, the producing agent of record of
704 the corporation policy is entitled to retain any unearned
705 commission on the policy, and the insurer shall:

706 (A) Pay to the producing agent of record, for the first
707 year, an amount that is the greater of the insurer's usual and
708 customary commission for the type of policy written or a fee
709 equal to the usual and customary commission of the corporation;
710 or

711 (B) Offer to allow the producing agent of record to
712 continue servicing the policy for at least 1 year and offer to
713 pay the agent the greater of the insurer's or the corporation's
714 usual and customary commission for the type of policy written.

715

716 If the producing agent is unwilling or unable to accept
717 appointment, the new insurer shall pay the agent in accordance
718 with sub-sub-sub-subparagraph (A).

719 c. For purposes of determining comparable coverage under
720 sub-subparagraphs a. and b., the comparison must be based on
721 those forms and coverages that are reasonably comparable. The
722 corporation may rely on a determination of comparable coverage
723 and premium made by the producing agent who submits the
724 application to the corporation, made in the agent's capacity as
725 the corporation's agent. A comparison may be made solely of the

726 premium with respect to the main building or structure only on
727 the following basis: the same coverage A or other building
728 limits; the same percentage hurricane deductible that applies on
729 an annual basis or that applies to each hurricane for commercial
730 residential property; the same percentage of ordinance and law
731 coverage, if the same limit is offered by both the corporation
732 and the authorized insurer; the same mitigation credits, to the
733 extent the same types of credits are offered both by the
734 corporation and the authorized insurer; the same method for loss
735 payment, such as replacement cost or actual cash value, if the
736 same method is offered both by the corporation and the
737 authorized insurer in accordance with underwriting rules; and
738 any other form or coverage that is reasonably comparable as
739 determined by the board. If an application is submitted to the
740 corporation for wind-only coverage in the coastal account, the
741 premium for the corporation's wind-only policy plus the premium
742 for the ex-wind policy that is offered by an authorized insurer
743 to the applicant must be compared to the premium for multiperil
744 coverage offered by an authorized insurer, subject to the
745 standards for comparison specified in this subparagraph. If the
746 corporation or the applicant requests from the authorized
747 insurer a breakdown of the premium of the offer by types of
748 coverage so that a comparison may be made by the corporation or
749 its agent and the authorized insurer refuses or is unable to
750 provide such information, the corporation may treat the offer as

751 not being an offer of coverage from an authorized insurer at the
752 insurer's approved rate.

753 6. Must include rules for classifications of risks and
754 rates.

755 7. Must provide that if premium and investment income for
756 an account attributable to a particular calendar year are in
757 excess of projected losses and expenses for the account
758 attributable to that year, such excess shall be held in surplus
759 in the account. Such surplus must be available to defray
760 deficits in that account as to future years and used for that
761 purpose before assessing assessable insurers and assessable
762 insureds as to any calendar year.

763 8. Must provide objective criteria and procedures to be
764 uniformly applied to all applicants in determining whether an
765 individual risk is so hazardous as to be uninsurable. In making
766 this determination and in establishing the criteria and
767 procedures, the following must be considered:

768 a. 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 b. Whether the uncertainty associated with the individual
772 risk is such that an appropriate premium cannot be determined.

773

774 The acceptance or rejection of a risk by the corporation shall
775 be construed as the private placement of insurance, and the

776 provisions of chapter 120 do not apply.

777 9. Must provide that the corporation make its best efforts
778 to procure catastrophe reinsurance at reasonable rates, to cover
779 its projected 100-year probable maximum loss as determined by
780 the board of governors. If catastrophe reinsurance is not
781 available at reasonable rates, the corporation need not purchase
782 it, but the corporation shall include the costs of reinsurance
783 to cover its projected 100-year probable maximum loss in its
784 rate calculations even if it does not purchase catastrophe
785 reinsurance.

786 10. The policies issued by the corporation must provide
787 that if the corporation or the market assistance plan obtains an
788 offer from an authorized insurer to cover the risk at its
789 approved rates, the risk is no longer eligible for renewal
790 through the corporation, except as otherwise provided in this
791 subsection.

792 11. Corporation policies and applications must include a
793 notice that the corporation policy could, under this section, be
794 replaced with a policy issued by an authorized insurer which
795 does not provide coverage identical to the coverage provided by
796 the corporation. The notice must also specify that acceptance of
797 corporation coverage creates a conclusive presumption that the
798 applicant or policyholder is aware of this potential.

799 12. May establish, subject to approval by the office,
800 different eligibility requirements and operational procedures

801 for any line or type of coverage for any specified county or
802 area if the board determines that such changes are justified due
803 to the voluntary market being sufficiently stable and
804 competitive in such area or for such line or type of coverage
805 and that consumers who, in good faith, are unable to obtain
806 insurance through the voluntary market through ordinary methods
807 continue to have access to coverage from the corporation. If
808 coverage is sought in connection with a real property transfer,
809 the requirements and procedures may not provide an effective
810 date of coverage later than the date of the closing of the
811 transfer as established by the transferor, the transferee, and,
812 if applicable, the lender.

813 13. Must provide that, with respect to the coastal
814 account, any assessable insurer with a surplus as to
815 policyholders of \$25 million or less writing 25 percent or more
816 of its total countrywide property insurance premiums in this
817 state may petition the office, within the first 90 days of each
818 calendar year, to qualify as a limited apportionment company. A
819 regular assessment levied by the corporation on a limited
820 apportionment company for a deficit incurred by the corporation
821 for the coastal account may be paid to the corporation on a
822 monthly basis as the assessments are collected by the limited
823 apportionment company from its insureds, but a limited
824 apportionment company must begin collecting the regular
825 assessments not later than 90 days after the regular assessments

826 are levied by the corporation, and the regular assessments must
827 be paid in full within 15 months after being levied by the
828 corporation. A limited apportionment company shall collect from
829 its policyholders any emergency assessment imposed under sub-
830 subparagraph (b)3.d. The plan must provide that, if the office
831 determines that any regular assessment will result in an
832 impairment of the surplus of a limited apportionment company,
833 the office may direct that all or part of such assessment be
834 deferred as provided in subparagraph (q)4. However, an emergency
835 assessment to be collected from policyholders under sub-
836 subparagraph (b)3.d. may not be limited or deferred.

837 14. Must provide that the corporation appoint as its
838 licensed agents only those agents who throughout such
839 appointments also hold an appointment as defined in s. 626.015
840 by an insurer who is authorized to write and is actually writing
841 or renewing personal lines residential property coverage,
842 commercial residential property coverage, or commercial
843 nonresidential property coverage within the state.

844 15. Must provide a premium payment plan option to its
845 policyholders which, at a minimum, allows for quarterly and
846 semiannual payment of premiums. A monthly payment plan may, but
847 is not required to, be offered.

848 16. Must limit coverage on mobile homes or manufactured
849 homes built before 1994 to actual cash value of the dwelling
850 rather than replacement costs of the dwelling.

851 17. Must provide coverage for manufactured or mobile home
 852 dwellings. Such coverage must also include the following
 853 attached structures:

854 a. Screened enclosures that are aluminum framed or
 855 screened enclosures that are not covered by the same or
 856 substantially the same materials as those of the primary
 857 dwelling;

858 b. Carports that are aluminum or carports that are not
 859 covered by the same or substantially the same materials as those
 860 of the primary dwelling; and

861 c. Patios that have a roof covering that is constructed of
 862 materials that are not the same or substantially the same
 863 materials as those of the primary dwelling.

864
 865 The corporation shall make available a policy for mobile homes
 866 or manufactured homes for a minimum insured value of at least
 867 \$3,000.

868 18. May provide such limits of coverage as the board
 869 determines, consistent with the requirements of this subsection.

870 19. May require commercial property to meet specified
 871 hurricane mitigation construction features as a condition of
 872 eligibility for coverage.

873 20. Must provide that new or renewal policies issued by
 874 the corporation on or after January 1, 2012, which cover
 875 sinkhole loss do not include coverage for any loss to

876 appurtenant structures, driveways, sidewalks, decks, or patios
877 that are directly or indirectly caused by sinkhole activity. The
878 corporation shall exclude such coverage using a notice of
879 coverage change, which may be included with the policy renewal,
880 and not by issuance of a notice of nonrenewal of the excluded
881 coverage upon renewal of the current policy.

882 21. As of January 1, 2012, must require that the agent
883 obtain from an applicant for coverage from the corporation an
884 acknowledgment signed by the applicant, which includes, at a
885 minimum, the following statement:

886
887 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
888 AND ASSESSMENT LIABILITY:
889

890 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
891 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
892 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
893 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
894 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
895 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
896 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
897 LEGISLATURE.

898 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER
899 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,
900 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO

901 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN
902 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE
903 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES
904 ARE REGULATED AND APPROVED BY THE STATE.

905 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
906 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
907 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
908 FLORIDA LEGISLATURE.

909 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
910 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
911 STATE OF FLORIDA.

912

913 a. The corporation shall maintain, in electronic format or
914 otherwise, a copy of the applicant's signed acknowledgment and
915 provide a copy of the statement to the policyholder as part of
916 the first renewal after the effective date of this subparagraph.

917 b. The signed acknowledgment form creates a conclusive
918 presumption that the policyholder understood and accepted his or
919 her potential surcharge and assessment liability as a
920 policyholder of the corporation.

921 (n)1. Rates for coverage provided by the corporation must
922 be actuarially sound and subject to s. 627.062, except as
923 otherwise provided in this paragraph. The corporation shall file
924 its recommended rates with the office at least annually. The
925 corporation shall provide any additional information regarding

926 the rates which the office requires. The office shall consider
927 the recommendations of the board and issue a final order
928 establishing the rates for the corporation within 45 days after
929 the recommended rates are filed. The corporation may not pursue
930 an administrative challenge or judicial review of the final
931 order of the office.

932 2. In addition to the rates otherwise determined pursuant
933 to this paragraph, the corporation shall impose and collect an
934 amount equal to the premium tax provided in s. 624.509 to
935 augment the financial resources of the corporation.

936 3. After the public hurricane loss-projection model under
937 s. 627.06281 has been found to be accurate and reliable by the
938 Florida Commission on Hurricane Loss Projection Methodology, the
939 model shall be considered when establishing the windstorm
940 portion of the corporation's rates. The corporation may use the
941 public model results in combination with the results of private
942 models to calculate rates for the windstorm portion of the
943 corporation's rates. This subparagraph does not require or allow
944 the corporation to adopt rates lower than the rates otherwise
945 required or allowed by this paragraph.

946 ~~4. The rate filings for the corporation which were~~
947 ~~approved by the office and took effect January 1, 2007, are~~
948 ~~rescinded, except for those rates that were lowered. As soon as~~
949 ~~possible, the corporation shall begin using the lower rates that~~
950 ~~were in effect on December 31, 2006, and provide refunds to~~

951 ~~policyholders who paid higher rates as a result of that rate~~
952 ~~filing. The rates in effect on December 31, 2006, remain in~~
953 ~~effect for the 2007 and 2008 calendar years except for any rate~~
954 ~~change that results in a lower rate. The next rate change that~~
955 ~~may increase rates shall take effect pursuant to a new rate~~
956 ~~filing recommended by the corporation and established by the~~
957 ~~office, subject to this paragraph.~~

958 ~~4.5. Beginning on July 15, 2009, and annually thereafter,~~
959 The corporation must make a recommended actuarially sound rate
960 filing for each personal and commercial line of business it
961 writes, ~~to be effective no earlier than January 1, 2010.~~

962 ~~5.6. Beginning on or after January 1, 2010, and~~
963 Notwithstanding the board's recommended rates and the office's
964 final order regarding the corporation's filed rates under
965 subparagraph 1., the corporation shall annually implement a rate
966 increase which, except for sinkhole coverage, does not exceed
967 the following 10 percent for any single policy issued by the
968 corporation, excluding coverage changes and surcharges:

- 969 a. Eleven percent for 2022.
970 b. Twelve percent for 2023.
971 c. Thirteen percent for 2024.
972 d. Fourteen percent for 2025.
973 e. Fifteen percent for 2026 and all subsequent years.

974 ~~6.7.~~ The corporation may also implement an increase to
975 reflect the effect on the corporation of the cash buildup factor

976 pursuant to s. 215.555(5)(b).

977 ~~7.8.~~ The corporation's implementation of rates as
978 prescribed in subparagraph 5. ~~6.~~ shall cease for any line of
979 business written by the corporation upon the corporation's
980 implementation of actuarially sound rates. Thereafter, the
981 corporation shall annually make a recommended actuarially sound
982 rate filing for each commercial and personal line of business
983 the corporation writes.

984 (jj) The corporation's budget allocations for the
985 compensation of all corporation employees and any proposed raise
986 for an individual employee exceeding 10 percent of that
987 employee's current salary must be approved by the board of
988 governors. The corporation must have an overall employee
989 compensation plan approved by the board of governors.

990 Section 9. Subsection (5) of section 627.3518, Florida
991 Statutes, is amended to read:

992 627.3518 Citizens Property Insurance Corporation
993 policyholder eligibility clearinghouse program.—The purpose of
994 this section is to provide a framework for the corporation to
995 implement a clearinghouse program by January 1, 2014.

996 (5) Notwithstanding s. 627.3517, any applicant for new
997 coverage from the corporation is not eligible for coverage from
998 the corporation if provided an offer of coverage from an
999 authorized insurer through the program at a premium that is at
1000 or below the eligibility threshold established in s.

1001 627.351(6)(c)5.a. Whenever an offer of coverage for a personal
1002 lines risk is received for a policyholder of the corporation at
1003 renewal from an authorized insurer through the program, if the
1004 offer is equal to or less than the corporation's renewal premium
1005 for comparable coverage, the risk is not eligible for coverage
1006 with the corporation. In the event an offer of coverage for a
1007 new applicant is received from an authorized insurer through the
1008 program, and the premium offered exceeds the eligibility
1009 threshold contained in s. 627.351(6)(c)5.a., the applicant or
1010 insured may elect to accept such coverage, or may elect to
1011 accept or continue coverage with the corporation. In the event
1012 an offer of coverage for a personal lines risk is received from
1013 an authorized insurer at renewal through the program, and the
1014 premium offered is more than the corporation's renewal premium
1015 for comparable coverage, the insured may elect to accept such
1016 coverage, or may elect to accept or continue coverage with the
1017 corporation. Section 627.351(6)(c)5.a.(I) does not apply to an
1018 offer of coverage from an authorized insurer obtained through
1019 the program. An applicant for coverage from the corporation who
1020 was declared ineligible for coverage at renewal by the
1021 corporation in the previous 36 months due to an offer of
1022 coverage pursuant to this subsection shall be considered a
1023 renewal under this section if the corporation determines that
1024 the authorized insurer making the offer of coverage pursuant to
1025 this subsection continues to insure the applicant and increased

1026 | the rate on the policy in excess of the increase allowed for the
 1027 | corporation under s. 627.351(6)(n)5. ~~s. 627.351(6)(n)6.~~

1028 | Section 10. Subsection (1) of section 627.428, Florida
 1029 | Statutes, is amended, and subsection (4) is added to that
 1030 | section, to read:

1031 | 627.428 Attorney fees.—

1032 | (1) Upon the rendition of a judgment or decree by any of
 1033 | the courts of this state against an insurer and in favor of any
 1034 | named or omnibus insured or the named beneficiary under a policy
 1035 | or contract executed by the insurer, the trial court or, in the
 1036 | event of an appeal in which the insured or beneficiary prevails,
 1037 | the appellate court shall adjudge or decree against the insurer
 1038 | and in favor of the insured or beneficiary a reasonable sum as
 1039 | fees or compensation for the insured's or beneficiary's attorney
 1040 | prosecuting the suit in which the recovery is had. In a suit
 1041 | arising under a residential or commercial property insurance
 1042 | policy not brought by an assignee, the amount of reasonable
 1043 | attorney fees under this subsection shall be modified and
 1044 | awarded as provided in s. 57.105 or s. 627.70152.

1045 | (4) In an award of attorney fees under this section for a
 1046 | claim arising under a property insurance policy, upon the
 1047 | request of an insured a court may apply a contingency risk
 1048 | multiplier in rare and exceptional circumstances as determined
 1049 | by the court based on a written finding that at least one of the
 1050 | following factors has been met:

1051 (a) The type of property insurance claim in dispute is
1052 complex in nature and uncommon in occurrence.

1053 (b) The property insurer has denied that the insured is
1054 entitled to coverage for the claim that is in dispute.

1055 (c) The insured cannot find competent counsel within a
1056 reasonable distance from the location of the property that is
1057 the subject of the claim. At a minimum, reasonable distance
1058 includes the counties contiguous to the county where the
1059 property that is the subject of the claim is located.

1060 (d) The difference between the insurer's initial offer and
1061 the insured's initial demand for damages to settle the loss was
1062 at least \$5,000 or at least 15 percent of the difference,
1063 whichever is greater, and the insured recovered more than the
1064 initial offer.

1065 (e) The amount of damages that the insured recovered for
1066 the claim exceeded the insurer's initial offer by at least 200
1067 percent.

1068 Section 11. Paragraph (c) of subsection (4) of section
1069 627.7011, Florida Statutes, is redesignated as paragraph (d),
1070 and a new paragraph (c) is added to that subsection, to read:

1071 627.7011 Homeowners' policies; offer of replacement cost
1072 coverage and law and ordinance coverage.—

1073 (4)

1074 (c) An insurer that issues a homeowner's insurance policy
1075 or schedule providing that any loss that is repaired or replaced

1076 will be adjusted on the basis of actual cash value must:

1077 1. Provide a policyholder with a form, approved by the
1078 office, that the policyholder must sign at the initial policy or
1079 schedule issuance, and must fully advise the policyholder of the
1080 nature of the coverage being accepted if the policyholder
1081 chooses to purchase a policy providing actual cash value
1082 coverage. The signed form creates the conclusive presumption
1083 that there was an informed, knowing acceptance of actual cash
1084 value coverage and rejection of replacement cost coverage.

1085 2. Include with the policy or schedule providing actual
1086 cash value coverage at the initial issuance and every renewal,
1087 in bold type no smaller than 18 points, the following statement:

1088
1089 "YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR HOME THAT
1090 PROVIDES THAT ANY LOSS THAT IS REPAIRED OR REPLACED WILL BE
1091 ADJUSTED ON THE BASIS OF ACTUAL CASH VALUE. THIS MEANS THAT
1092 DEPRECIATION IN THE VALUE OF YOUR LOST OR DAMAGED PROPERTY WILL
1093 BE CONSIDERED IN DETERMINING WHAT THE INSURER PAYS YOU FOR YOUR
1094 LOSS OR DAMAGE. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY
1095 SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR PROPERTY. PLEASE
1096 DISCUSS WITH YOUR INSURANCE AGENT."

1097
1098 3. At least once every 3 years, provide a policyholder who
1099 has a policy or schedule providing actual cash value coverage
1100 with notice, on a form approved by the office, that replacement

1101 cost coverage is available.

1102 Section 12. Section 627.70132, Florida Statutes, is
1103 amended to read:

1104 627.70132 Notice of property insurance ~~windstorm or~~
1105 ~~hurricane~~ claim.—

1106 (1) As used in this section, the term:

1107 (a) "Reopened claim" means a claim that an insurer has
1108 previously closed, but that has been reopened upon an insured's
1109 request for additional costs for loss or damage previously
1110 disclosed to the insurer.

1111 (b) "Supplemental claim" means a claim for additional loss
1112 or damage from the same peril which the insurer has previously
1113 adjusted discovered while completing repairs or replacement
1114 pursuant to an open claim for which timely notice was previously
1115 provided to the insurer.

1116 (2) A claim or reopened claim, but not a supplemental
1117 claim, or reopened claim under an insurance policy that provides
1118 property insurance, as defined in s. 624.604, including a
1119 property insurance policy issued by an eligible surplus lines
1120 insurer, for loss or damage caused by any the peril of windstorm
1121 or hurricane is barred unless notice of the claim, supplemental
1122 claim, or reopened claim was given to the insurer in accordance
1123 with the terms of the policy within 2 3 years after the date of
1124 loss hurricane first made landfall or the windstorm caused the
1125 covered damage.

1126 (3) For claims resulting from hurricanes, tornadoes,
 1127 windstorms, severe rain, or other weather-related events that
 1128 are tracked by weather services and media, the date of loss is
 1129 the date that the hurricane made landfall, or the tornado,
 1130 windstorm, severe rain, or other weather-related event is
 1131 verified by the National Oceanic and Atmospheric Administration
 1132 or another disinterested verifiable third party to have
 1133 occurred, in the location of the property that is the subject of
 1134 the claim ~~For purposes of this section, the term "supplemental~~
 1135 ~~claim" or "reopened claim" means any additional claim for~~
 1136 ~~recovery from the insurer for losses from the same peril~~
 1137 ~~hurricane or windstorm which the insurer has previously adjusted~~
 1138 ~~pursuant to the initial claim.~~

1139 (4) A supplemental claim is not barred as long as notice
 1140 of that claim is given to the insurer while the claim to which
 1141 the supplemental claim is related remains open.

1142 (5) For the purposes of this section, a claim that an
 1143 insurer has closed without providing an insured with the total
 1144 amount due for the loss or damage is not considered a closed
 1145 claim.

1146 (6) This section does not affect any applicable limitation
 1147 on civil actions provided in s. 95.11 for claims, supplemental
 1148 claims, or reopened claims timely filed under this section.

1149 Section 13. Paragraph (e) of subsection (9) of section
 1150 627.7015, Florida Statutes, is amended to read:

1151 627.7015 Alternative procedure for resolution of disputed
1152 property insurance claims.—

1153 (9) For purposes of this section, the term "claim" refers
1154 to any dispute between an insurer and a policyholder relating to
1155 a material issue of fact other than a dispute:

1156 (e) With respect to a ~~windstorm or hurricane~~ loss that
1157 does not comply with s. 627.70132.

1158 Section 14. Section 627.70152, Florida Statutes, is
1159 created to read:

1160 627.70152 Suits arising under a property insurance
1161 policy.—

1162 (1) APPLICATION.—This section applies exclusively to all
1163 suits arising under a residential or commercial property
1164 insurance policy not brought by an assignee which is issued or
1165 renewed on or after July 1, 2021.

1166 (2) DEFINITIONS.—As used in this section, the term:

1167 (a) "Claimant" means an insured who is filing suit under a
1168 residential or commercial property insurance policy.

1169 (b) "Disputed amount" means the difference between the
1170 claimant's presuit settlement demand, not including attorney
1171 fees and costs listed in the demand, and the insurer's presuit
1172 settlement offer, not including attorney fees and costs, if part
1173 of the offer.

1174 (c) "Judgment obtained" means damages recovered, if any,
1175 but does not include any amount awarded for attorney fees,

1176 costs, or interest.

1177 (d) "Presuit settlement demand" means the demand made by
1178 the claimant in the written notice of intent to initiate
1179 litigation as required by paragraph (3)(e). The demand must
1180 include the amount of reasonable and necessary attorney fees and
1181 costs incurred by the claimant, to be calculated by multiplying
1182 the number of hours actually worked on the claim, by the
1183 claimant's attorney as of the date of the notice by a reasonable
1184 hourly rate.

1185 (e) "Presuit settlement offer" means the offer made by the
1186 insurer in its written response to the notice as required by
1187 subsection (4).

1188 (3) CLAIMANT DUTIES AND NOTICE.—A claimant must timely:

1189 (a) Cooperate with the insurer in the claim investigation.

1190 (b) Provide the insurer with requested records and
1191 documents related to any services that have been provided.

1192 (c) Provide the insurer with accurate and up-to-date
1193 estimates of the scope of work needed to be performed, including
1194 supplemental or additional repairs, if required.

1195 (d) Allow the insurer to inspect, photograph, or evaluate,
1196 in a reasonable manner and at a reasonable time, the property
1197 that is the subject of the claim.

1198 (e) As a condition precedent to filing a suit under a
1199 property insurance policy, provide the department with written
1200 notice of intent to initiate litigation on a form provided by

1201 the department. Such notice must be given at least 10 business
1202 days before filing suit under the policy, but may not be given
1203 before the 90-day period under s. 627.70131 has expired or the
1204 insurer has denied coverage, whichever is earlier. Notice to the
1205 insurer must be provided by the department to the e-mail address
1206 designated by the insurer under s. 624.422. The notice must
1207 state with specificity all of the following information:

1208 1. That the notice is provided pursuant to this section.

1209 2. The alleged acts or omissions of the insurer giving
1210 rise to the suit, which may include a denial of coverage.

1211 3. If provided by an attorney or other representative,
1212 that a copy of the notice was provided to the claimant.

1213 4. If the notice is provided following a denial of
1214 coverage, an estimate of damages, if known.

1215 5. If the notice is provided following acts or omissions
1216 by the insurer other than denial of coverage, both of the
1217 following:

1218 a. The presuit settlement demand, which must itemize the
1219 damages, attorney fees, and costs.

1220 b. The disputed amount.

1221
1222 Documentation to support the information provided in this
1223 paragraph may be provided along with the notice to the insurer.

1224 (f) Serve a notice of intent to initiate litigation within
1225 the time limits provided in s. 95.11. However, the notice is not

1226 required if the suit is a counterclaim. Service of a notice
 1227 tolls the time limits provided in s. 95.11 for 10 business days
 1228 if such time limits will expire before the end of the 10-day
 1229 notice period.

1230 (4) INSURER DUTIES.—An insurer must have a procedure for
 1231 the prompt investigation, review, and evaluation of the dispute
 1232 stated in the notice and must investigate each claim contained
 1233 in the notice in accordance with the Florida Insurance Code.
 1234 An insurer must respond in writing within 10 business days after
 1235 receiving the notice specified in subsection (3).

1236 (a) If an insurer is responding to a notice served on the
 1237 insurer following a denial of coverage by the insurer, the
 1238 insurer must respond by:

- 1239 1. Accepting coverage;
- 1240 2. Continuing to deny coverage; or
- 1241 3. Asserting the right to reinspect the damaged property.

1242 If the insurer responds by asserting the right to reinspect the
 1243 damaged property, it has 14 business days after the response
 1244 asserting that right, to reinspect the property and accept or
 1245 continue to deny coverage. If the insurer continues to deny
 1246 coverage, the claimant may file suit without providing
 1247 additional notice to the insurer.

1248 (b) If an insurer is responding to a notice provided to
 1249 the insurer alleging an act or omission by the insurer other
 1250 than a denial of coverage, the insurer must respond by making a

1251 settlement offer or requiring the claimant to participate in
1252 appraisal or another method of alternative dispute resolution.
1253 The time limits provided in s. 95.11 are tolled as long as
1254 appraisal or other alternative dispute resolution is ongoing.
1255 However, if the appraisal or alternative dispute resolution has
1256 not been concluded within 90 days after the expiration of the
1257 10-day notice of intent to initiate litigation specified in
1258 subsection (3), the claimant or claimant's attorney may
1259 immediately file suit without providing the insurer additional
1260 notice.

1261 (5) DISMISSAL OF SUIT.—A court must dismiss without
1262 prejudice any claimant's suit relating to a claim for which a
1263 notice of intent to initiate litigation is given as required by
1264 this section if such suit is commenced before the expiration of
1265 the 10-day notice period.

1266 (6) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice
1267 provided pursuant to subsection (3) and, if applicable, the
1268 documentation to support the information provided in the notice:

1269 (a) Are admissible as evidence only in a proceeding
1270 regarding attorney fees.

1271 (b) Do not limit the evidence of attorney fees or costs,
1272 damages, or loss which may be offered at trial.

1273 (c) Do not relieve any obligation that an insured or
1274 assignee has to give notice under any other provision of law.

1275 (7) ATTORNEY FEES.—

1276 (a) In a suit arising under a residential or commercial
1277 property insurance policy not brought by an assignee, the amount
1278 of reasonable attorney fees and costs under s. 627.428(1) shall
1279 be calculated and awarded as follows:

1280 1. If the difference between the judgment obtained by the
1281 claimant and the presuit settlement offer, excluding reasonable
1282 attorney fees and costs, is less than 20 percent of the disputed
1283 amount, each party pays its own attorney fees and costs and a
1284 claimant may not be awarded attorney fees under s. 627.428(1).

1285 2. If the difference between the judgment obtained by the
1286 claimant and the presuit settlement offer, excluding reasonable
1287 attorney fees and costs, is at least 20 percent but less than 50
1288 percent of the disputed amount, the insurer pays the claimant's
1289 attorney fees and costs under s. 627.428(1) equal to the
1290 percentage of the disputed amount obtained times the total
1291 attorney fees and costs.

1292 3. If the difference between the judgment obtained by the
1293 claimant and the presuit settlement offer, excluding reasonable
1294 attorney fees and costs, is at least 50 percent of the disputed
1295 amount, the insurer pays the claimant's full attorney fees and
1296 costs under s. 627.428(1).

1297 (b) In a suit arising under a residential or commercial
1298 property insurance policy not brought by an assignee, if a court
1299 dismisses a claimant's suit pursuant to subsection (5), the
1300 court may not award to the claimant any incurred attorney fees

1301 for services rendered before the dismissal of the suit.

1302 (8) SUPPLEMENTAL OR REOPENED CLAIMS.—The timeframes for
1303 giving notice of supplemental or reopened claims set forth in s.
1304 627.70132 are tolled during litigation that is brought pursuant
1305 to this section.

1306 Section 15. Subsection (3) of section 628.801, Florida
1307 Statutes, is amended to read:

1308 628.801 Insurance holding companies; registration;
1309 regulation.—

1310 (3) In addition to the powers which the office has under
1311 ~~Effective January 1, 2015, pursuant to~~ chapter 624 relating to
1312 the examination of insurers, the office may examine any insurer
1313 registered under this section and its affiliates to ascertain
1314 the financial condition of the insurer, including the enterprise
1315 risk to the insurer by the ultimate controlling party, or by any
1316 entity or combination of entities within the insurance holding
1317 company system, or by the insurance holding company system on a
1318 consolidated basis.

1319 (a) The office may require any insurer registered under
1320 this section to produce such records, books, or other
1321 information and papers in the possession of the insurer or its
1322 affiliates as are reasonably necessary.

1323 (b) The office may retain at the registered insurer's
1324 expense such attorneys, actuaries, accountants and other experts
1325 not otherwise a part of the office's staff as shall be

1326 reasonably necessary to assist in the conduct of the examination
1327 under this subsection. Any persons so retained shall be under
1328 the direction and control of the office and shall act in a
1329 purely advisory capacity.

1330 (c) Each registered insurer producing for examination
1331 records, books, and papers pursuant to this subsection is liable
1332 for and shall pay the expense of examination in accordance with
1333 s. 624.320.

1334 (d) The office shall have the power to examine the
1335 affiliates of the registered insurer. The scope of the
1336 examination of an insurer's affiliates under this subsection
1337 must be limited to information reasonably necessary. An
1338 examination of an insurer's affiliate under this section, unless
1339 reasonably necessary to ascertain the financial condition of the
1340 insurer, may not extend to the passive investors of affiliates
1341 in the holding company system which do not provide services
1342 directly or indirectly to the insurer or have direct or indirect
1343 relationships with the insurer.

1344 Section 16. This act shall take effect July 1, 2021.