

1 A bill to be entitled
 2 An act relating to insurance; amending s. 320.27,
 3 F.S.; exempting salvage motor vehicle dealers from
 4 having to carry certain types of insurance coverage
 5 under certain circumstances; amending s. 624.501,
 6 F.S.; conforming a cross-reference; amending s.
 7 624.610, F.S.; revising provisions specifying which
 8 insurers are not subject to certain filing
 9 requirements relating to reinsurance; amending s.
 10 626.261, F.S.; authorizing the Department of Financial
 11 Services to provide examinations in Spanish; providing
 12 for costs to be paid by applicants who request
 13 examinations in Spanish; providing a requirement with
 14 respect to whether an examination in Spanish should be
 15 allowed; amending s. 626.2815, F.S.; repealing limited
 16 exceptions to compliance with continuing education
 17 requirements as a condition precedent to certain
 18 appointments; amending s. 626.321, F.S.; revising
 19 provisions relating to limited licenses for travel
 20 insurance; providing that a full-time salaried
 21 employee of a licensed general lines agent or a
 22 business entity that offers travel planning services
 23 may be issued such license under certain
 24 circumstances; amending s. 626.753, F.S.; specifying
 25 circumstances constituting an unlawful rebate for crop
 26 hail or multiple-peril crop insurance; providing that
 27 agents engaging in commission sharing with certain
 28 associations under specified circumstances are

29 participating in a commission sharing violation;
 30 providing penalties; creating s. 626.8685, F.S.;
 31 exempting certain employees who conduct data entry
 32 from licensure as insurance adjusters under certain
 33 circumstances; defining the term "automated claims
 34 adjudication system" with respect to application of
 35 such exemption; prohibiting residents of Canada from
 36 licensure as nonresident independent adjusters under
 37 certain circumstances; amending s. 626.916, F.S.;
 38 revising the disclosure statement signed by an insured
 39 placing coverage in the surplus lines market; amending
 40 s. 626.9541, F.S.; providing an additional action that
 41 is a misrepresentation and false advertising of
 42 insurance policies; providing that specified acts
 43 constituting an unlawful rebate under certain
 44 circumstances meet the definition of unfair methods of
 45 competition and unfair or deceptive acts or practices;
 46 amending s. 627.351, F.S.; increasing the amount of
 47 surplus as to policyholders that certain insurers who
 48 are members of a plan to equitably apportion or share
 49 windstorm coverage may have in order to petition the
 50 Department of Financial Services to qualify as a
 51 limited apportionment company; requiring Citizens
 52 Property Insurance Corporation to offer certain
 53 policies; revising eligibility for insurance in
 54 Citizens Property Insurance Corporation; prescribing a
 55 10-day waiting period for applications for coverage
 56 for a new policy; authorizing exceptions; limiting

57 agent commissions on policy renewals; allowing an
 58 agent performance management program as a condition of
 59 appointment; specifying acceptable valuations for
 60 replacement costs; amending s. 627.7015, F.S.;
 61 revising provisions relating to alternative procedures
 62 for the resolution of disputed property insurance
 63 claims; amending s. 627.706, F.S.; providing for
 64 renewal of property insurance policies maintaining
 65 sinkhole coverage; amending s. 627.707, F.S.;
 66 providing a definition; amending s. 627.7295, F.S.;
 67 clarifying provisions relating to cancellation for
 68 nonpayment of premiums for motor vehicle insurance;
 69 allowing the cancellation of such policies under
 70 certain circumstances; amending s. 627.736, F.S.;
 71 specifying the interest rate applicable to the accrual
 72 of interest on overdue payments of personal injury
 73 protection benefits; amending s. 628.901, F.S.;
 74 providing definitions; amending s. 628.905, F.S.;
 75 expanding the kinds of insurance for which a captive
 76 insurer may seek licensure; limiting the risks that
 77 certain captive insurers may insure; specifying
 78 requirements and conditions relating to a captive
 79 insurer's authority to conduct business; requiring
 80 that before licensure certain captive insurers must
 81 file or submit to the Office of Insurance Regulation
 82 specified information, documents, and statements;
 83 requiring a captive insurance company to file specific
 84 evidence with the office relating to the financial

85 | condition and quality of management and operations of
 86 | the company; specifying certain fees to be paid by
 87 | captive insurance companies; authorizing a foreign or
 88 | alien captive insurance company to become a domestic
 89 | captive insurance company by complying with specified
 90 | requirements; authorizing the office to waive any
 91 | requirements for public hearings relating to the
 92 | redomestication of an alien captive insurance company;
 93 | creating s. 628.906, F.S.; requiring biographical
 94 | affidavits, background investigations, and fingerprint
 95 | cards for all officers and directors; providing
 96 | restrictions on officers and directors involved with
 97 | insolvent insurers under certain conditions; providing
 98 | restrictions on officers and directors that are found
 99 | guilty of, or have pleaded guilty or nolo contendere
 100 | to, any felony or crime involving moral turpitude,
 101 | including a crime of dishonesty or breach of trust;
 102 | amending s. 628.907, F.S.; revising capitalization
 103 | requirements for specified captive insurance
 104 | companies; requiring capital of specified captive
 105 | insurance companies to be held in certain forms;
 106 | requiring contributions to captive insurance companies
 107 | that are stock insurer corporations to be in a certain
 108 | form; authorizing the office to issue a captive
 109 | insurance company license conditioned upon certain
 110 | evidence relating to possession of specified capital;
 111 | authorizing revocation of a conditional license under
 112 | certain circumstances; authorizing the office to

113 | prescribe certain additional capital and net asset
 114 | requirements; requiring such additional requirements
 115 | relating to capital and net assets to be held in
 116 | specified forms; requiring dividends or distributions
 117 | of capital or surplus to meet certain conditions and
 118 | be approved by the office; requiring certain
 119 | irrevocable letters of credit to meet certain
 120 | standards; creating s. 628.908, F.S.; prohibiting the
 121 | issuance of a license to specified captive insurance
 122 | companies unless such companies possess and maintain
 123 | certain levels of unimpaired surplus; authorizing the
 124 | office to condition issuance of a captive insurance
 125 | company license upon the provision of certain evidence
 126 | relating to the possession of a minimum amount of
 127 | unimpaired surplus; authorizing revocation of a
 128 | conditional license under certain circumstances;
 129 | requiring dividends or distributions of capital or
 130 | surplus to meet certain conditions and be approved by
 131 | the office; requiring certain irrevocable letters of
 132 | credit to meet certain standards; amending s. 628.909,
 133 | F.S.; providing for applicability of certain statutory
 134 | provisions to specified captive insurers; creating s.
 135 | 628.910, F.S.; providing requirements, options, and
 136 | conditions relating to how a captive insurance company
 137 | may be incorporated or organized as a business;
 138 | amending s. 628.911, F.S.; providing reporting
 139 | requirements for specified captive insurance companies
 140 | and captive reinsurance companies; creating s.

141 628.912, F.S.; authorizing a captive reinsurance
 142 company to discount specified losses subject to
 143 certain conditions; amending s. 628.913, F.S.;
 144 authorizing a captive reinsurance company to apply to
 145 the office for licensure to write reinsurance covering
 146 property and casualty insurance or reinsurance
 147 contracts; authorizing the office to allow a captive
 148 reinsurance company to write reinsurance contracts
 149 covering risks in any state; specifying that a captive
 150 reinsurance company is subject to specified
 151 requirements and must meet specified conditions in
 152 order to conduct business in this state; creating s.
 153 628.914, F.S.; specifying requirements and conditions
 154 relating to the capitalization or maintenance of
 155 reserves by a captive reinsurance company; creating s.
 156 628.9141, F.S.; specifying requirements and conditions
 157 relating to the incorporation of a captive reinsurance
 158 company; creating s. 628.9142, F.S.; providing for the
 159 effect on reserves of certain actions taken by a
 160 captive insurance company relating to providing
 161 reinsurance for specified risks; creating s. 628.918,
 162 F.S.; requiring a specified percentage of a captive
 163 reinsurance company's assets to be managed by an asset
 164 manager domiciled in this state; creating s. 628.919,
 165 F.S.; authorizing the Financial Services Commission to
 166 adopt rules establishing certain standards for control
 167 of an unaffiliated business by a parent or affiliated
 168 company relating to coverage by a pure captive

169 insurance company; creating s. 628.920, F.S.;

170 requiring that a licensed captive insurance company

171 must be considered for issuance of a certificate of

172 authority as an insurer under certain circumstances;

173 amending s. 626.7491, F.S.; conforming a cross-

174 reference; repealing s. 628.903, F.S., relating to the

175 definition of the term "industrial insured captive

176 insurer," to conform to changes made by the act;

177 providing an effective date.

178

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

180

181 Section 1. Subsection (3) of section 320.27, Florida

182 Statutes, is amended to read:

183 320.27 Motor vehicle dealers.—

184 (3) APPLICATION AND FEE.—The application for the license

185 shall be in such form as may be prescribed by the department and

186 shall be subject to such rules with respect thereto as may be so

187 prescribed by it. Such application shall be verified by oath or

188 affirmation and shall contain a full statement of the name and

189 birth date of the person or persons applying therefor; the name

190 of the firm or copartnership, with the names and places of

191 residence of all members thereof, if such applicant is a firm or

192 copartnership; the names and places of residence of the

193 principal officers, if the applicant is a body corporate or

194 other artificial body; the name of the state under whose laws

195 the corporation is organized; the present and former place or

196 places of residence of the applicant; and prior business in

197 | which the applicant has been engaged and the location thereof.
 198 | Such application shall describe the exact location of the place
 199 | of business and shall state whether the place of business is
 200 | owned by the applicant and when acquired, or, if leased, a true
 201 | copy of the lease shall be attached to the application. The
 202 | applicant shall certify that the location provides an adequately
 203 | equipped office and is not a residence; that the location
 204 | affords sufficient unoccupied space upon and within which
 205 | adequately to store all motor vehicles offered and displayed for
 206 | sale; and that the location is a suitable place where the
 207 | applicant can in good faith carry on such business and keep and
 208 | maintain books, records, and files necessary to conduct such
 209 | business, which will be available at all reasonable hours to
 210 | inspection by the department or any of its inspectors or other
 211 | employees. The applicant shall certify that the business of a
 212 | motor vehicle dealer is the principal business which shall be
 213 | conducted at that location. Such application shall contain a
 214 | statement that the applicant is either franchised by a
 215 | manufacturer of motor vehicles, in which case the name of each
 216 | motor vehicle that the applicant is franchised to sell shall be
 217 | included, or an independent (nonfranchised) motor vehicle
 218 | dealer. Such application shall contain such other relevant
 219 | information as may be required by the department, including
 220 | evidence that the applicant is insured under a garage liability
 221 | insurance policy or a general liability insurance policy coupled
 222 | with a business automobile policy, which shall include, at a
 223 | minimum, \$25,000 combined single-limit liability coverage
 224 | including bodily injury and property damage protection and

225 \$10,000 personal injury protection. However, a salvage motor
 226 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
 227 from the requirements for garage liability insurance and
 228 personal injury protection insurance on those vehicles that
 229 cannot be legally operated on roads, highways, or streets in
 230 this state. Franchise dealers must submit a garage liability
 231 insurance policy, and all other dealers must submit a garage
 232 liability insurance policy or a general liability insurance
 233 policy coupled with a business automobile policy. Such policy
 234 shall be for the license period, and evidence of a new or
 235 continued policy shall be delivered to the department at the
 236 beginning of each license period. Upon making initial
 237 application, the applicant shall pay to the department a fee of
 238 \$300 in addition to any other fees now required by law; upon
 239 making a subsequent renewal application, the applicant shall pay
 240 to the department a fee of \$75 in addition to any other fees now
 241 required by law. Upon making an application for a change of
 242 location, the person shall pay a fee of \$50 in addition to any
 243 other fees now required by law. The department shall, in the
 244 case of every application for initial licensure, verify whether
 245 certain facts set forth in the application are true. Each
 246 applicant, general partner in the case of a partnership, or
 247 corporate officer and director in the case of a corporate
 248 applicant, must file a set of fingerprints with the department
 249 for the purpose of determining any prior criminal record or any
 250 outstanding warrants. The department shall submit the
 251 fingerprints to the Department of Law Enforcement for state
 252 processing and forwarding to the Federal Bureau of Investigation

253 | for federal processing. The actual cost of state and federal
 254 | processing shall be borne by the applicant and is in addition to
 255 | the fee for licensure. The department may issue a license to an
 256 | applicant pending the results of the fingerprint investigation,
 257 | which license is fully revocable if the department subsequently
 258 | determines that any facts set forth in the application are not
 259 | true or correctly represented.

260 | Section 2. Paragraph (b) of subsection (9) of section
 261 | 624.501, Florida Statutes, is amended to read:

262 | 624.501 Filing, license, appointment, and miscellaneous
 263 | fees.—The department, commission, or office, as appropriate,
 264 | shall collect in advance, and persons so served shall pay to it
 265 | in advance, fees, licenses, and miscellaneous charges as
 266 | follows:

267 | (9)

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

274 | Section 3. Paragraph (c) of subsection (11) of section
 275 | 624.610, Florida Statutes, is amended to read:

276 | 624.610 Reinsurance.—

277 | (11)

278 | (c) This subsection applies to cessions of directly
 279 | written risk or loss. This subsection does not apply to
 280 | contracts of facultative reinsurance or to any ceding insurer

281 that has a ~~with~~ surplus as to policyholders which ~~that~~ exceeds
 282 \$100 million as of the immediately preceding December 31. A
 283 ~~Additionally, any~~ ceding insurer otherwise subject to this
 284 section which had ~~with~~ less than \$500,000 in direct premiums
 285 written in this state during the preceding calendar year and no
 286 more than \$250,000 in direct premiums written in this state
 287 during the preceding calendar quarter, and which had fewer ~~or~~
 288 ~~with less~~ than 1,000 policyholders at the end of the preceding
 289 calendar year, is exempt from the requirements of this
 290 subsection. ~~However, any ceding insurer otherwise subject to~~
 291 ~~this section with more than \$250,000 in direct premiums written~~
 292 ~~in this state during the preceding calendar quarter is not~~
 293 ~~exempt from the requirements of this subsection.~~

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

296 626.261 Conduct of examination.-

297 (5) The department may provide licensure examinations in
 298 Spanish. Applicants requesting examination or reexamination in
 299 Spanish must bear the full cost of the department's development,
 300 preparation, administration, grading, and evaluation of the
 301 Spanish-language examination. When determining whether it is in
 302 the public interest to allow the examination to be translated
 303 into and administered in Spanish, the department shall consider
 304 the percentage of the population who speak Spanish.

305 Section 5. Paragraph (f) of subsection (3) of section
 306 626.2815, Florida Statutes, is amended to read:

307 626.2815 Continuing education required; application;
 308 exceptions; requirements; penalties.-

309 (3)

310 (f)1. ~~Except as provided in subparagraph 2.,~~ compliance

311 with continuing education requirements is a condition precedent

312 to the issuance, continuation, reinstatement, or renewal of any

313 appointment subject to this section.

314 ~~2.a. An appointing entity, except one that appoints~~

315 ~~individuals who are employees or exclusive independent~~

316 ~~contractors of the appointing entity, may not require, directly~~

317 ~~or indirectly, as a condition of such appointment or the~~

318 ~~continuation of such appointment, the taking of an approved~~

319 ~~course or program by any appointee or potential appointee that~~

320 ~~is not of the appointee's choosing.~~

321 ~~— b. Any entity created or existing pursuant to s. 627.351~~

322 ~~may require employees to take training of any type relevant to~~

323 ~~their employment but may not require appointees who are not~~

324 ~~employees to take any approved course or program unless the~~

325 ~~course or program deals solely with the appointing entity's~~

326 ~~internal procedures or products or with subjects substantially~~

327 ~~unique to the appointing entity.~~

328 Section 6. Paragraph (c) of subsection (1) of section

329 626.321, Florida Statutes, is amended to read:

330 626.321 Limited licenses.—

331 (1) The department shall issue to a qualified individual,

332 or a qualified individual or entity under paragraphs (c), (d),

333 (e), and (i), a license as agent authorized to transact a

334 limited class of business in any of the following categories:

335 (c) Travel insurance.—License covering only policies and

336 certificates of travel insurance, which are subject to review by

337 the office ~~under s. 624.605(1)(g)~~. Policies and certificates of
 338 travel insurance may provide coverage for risks incidental to
 339 travel, planned travel, or accommodations while traveling,
 340 including, but not limited to, accidental death and
 341 dismemberment of a traveler; trip or event cancellation,
 342 interruption, or delay; loss of or damage to personal effects or
 343 travel documents; damages to travel accommodations; baggage
 344 delay; emergency medical travel or evacuation of a traveler; or
 345 medical, surgical, and hospital expenses related to an illness
 346 or emergency of a traveler. ~~Any~~ Such policy or certificate may
 347 be issued for terms longer than 90 ~~60~~ days, but ~~each policy or~~
 348 ~~certificate~~, other than a policy or certificate providing
 349 coverage for air ambulatory services only, each policy or
 350 certificate must be limited to coverage for travel or use of
 351 accommodations of no longer than 90 ~~60~~ days. The license may be
 352 issued only:

353 1. To a full-time salaried employee of a common carrier or
 354 a full-time salaried employee or owner of a transportation
 355 ticket agency and may authorize the sale of such ticket policies
 356 only in connection with the sale of transportation tickets, or
 357 to the full-time salaried employee of such an agent. ~~No~~ Such
 358 policy may not ~~shall~~ be for a ~~duration of~~ more than 48 hours or
 359 more than ~~for~~ the duration of a specified one-way trip or round
 360 trip.

361 2. To an entity or individual that is:
 362 a. The developer of a timeshare plan that is the subject
 363 of an approved public offering statement under chapter 721;
 364 b. An exchange company operating an exchange program

365 approved under chapter 721;

366 c. A managing entity operating a timeshare plan approved
367 under chapter 721;

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

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

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

375 a. A license issued to a business entity that offers
376 travel planning services must encompass each office, branch
377 office, or place of business making use of the entity's business
378 name in order to offer, solicit, and sell insurance pursuant to
379 this paragraph.

380 b. The application for licensure must list the name,
381 address, and phone number for each office, branch office, or
382 place of business that is to be covered by the license. The
383 licensee shall notify the department of the name, address, and
384 phone number of any new location that is to be covered by the
385 license before the new office, branch office, or place of
386 business engages in the sale of insurance pursuant to this
387 paragraph. The licensee shall notify the department within 30
388 days after the closing or terminating of an office, branch
389 office, or place of business. Upon receipt of the notice, the
390 department shall delete the office, branch office, or place of
391 business from the license.

392 c. A licensed and appointed entity is directly responsible

393 and accountable for all acts of the licensee's employees and
 394 parties with whom the licensee has entered into a contractual
 395 agreement to offer travel insurance.

396
 397 A licensee shall require each individual ~~employee~~ who offers
 398 policies or certificates under this subparagraph to receive
 399 initial training from a general lines agent or an insurer
 400 authorized under chapter 624 to transact insurance within this
 401 state. For an entity applying for a license as a travel
 402 insurance agent, the fingerprinting requirement of this section
 403 applies only to the president, secretary, and treasurer and to
 404 any other officer or person who directs or controls the travel
 405 insurance operations of the entity.

406 Section 7. Subsection (3) of section 626.753, Florida
 407 Statutes, is amended to read:

408 626.753 Sharing commissions; penalty.—

409 (3) (a) A general lines agent may share commissions derived
 410 from the sale of crop hail or multiple-peril crop insurance with
 411 a production credit association organized under 12 U.S.C.A. ss.
 412 2071-2077 or a federal land bank association organized under
 413 U.S.C.A. ss. 2091-2098 if the association has specifically
 414 approved the insurance activity by its employees. The amount of
 415 commission to be shared shall be determined by the general lines
 416 agent and the company paying the commission.

417 (b) Any patronage dividend or other payment, discount, or
 418 credit provided to a member of a production credit association
 419 or federal land bank association, which dividend, payment,
 420 discount, or credit is directly or indirectly calculated on the

421 basis of the premium charged to that member for crop hail or
 422 multiple-peril crop insurance, constitutes an unlawful rebate in
 423 violation of ss. 626.572 and 626.9541(1)(h).

424 (c) Any agent who engages in commission sharing with a
 425 production credit association or federal land bank association,
 426 with the knowledge that the association provides patronage
 427 dividends or other payments, discounts, or credits that
 428 constitute unlawful rebates as described in this subsection, is
 429 deemed to be participating in the violation of this section.

430 Section 8. Effective January 1, 2013, section 626.8685,
 431 Florida Statutes, is created to read:

432 626.8685 Portable electronics insurance claims; exemption;
 433 licensure restriction.-

434 (1) This part does not apply to any individual who
 435 collects claims information from, or furnishes claims
 436 information to, insureds or claimants, and who conducts data
 437 entry, including entering data into an automated claims
 438 adjudication system, provided that the individual is an employee
 439 of a business entity licensed under this chapter, or its
 440 affiliate, and no more than 25 such persons are under the
 441 supervision of one licensed independent adjuster or licensed
 442 agent who is exempt from licensure pursuant to s. 626.862. For
 443 purposes of this subsection, the term "automated claims
 444 adjudication system" means a preprogrammed computer system
 445 designed for the collection, data entry, calculation, and final
 446 resolution of portable electronics insurance claims that:

447 (a) May be used only by a licensed independent adjuster,
 448 licensed agent, or supervised individual operating pursuant to

449 this subsection;

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

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

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

460 Section 9. Paragraph (b) of subsection (3) of section
 461 626.916, Florida Statutes, is amended to read:

462 626.916 Eligibility for export.—

463 (3)

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

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

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

470 3. The insured must sign a disclosure that substantially
 471 provides the following: "You are agreeing to place coverage in
 472 the surplus lines market. ~~Superior~~ Coverage may be available in
 473 the admitted market ~~and at a lesser cost~~. Persons insured by
 474 surplus lines carriers are not protected under the Florida
 475 Insurance Guaranty Act with respect to any right of recovery for
 476 the obligation of an insolvent unlicensed insurer." If the

477 notice is signed by the insured, the insured is presumed to have
 478 been informed and to know that other coverage may be available,
 479 and, with respect to the diligent-effort requirement under
 480 subsection (1), there is no liability on the part of, and no
 481 cause of action arises against, the retail agent presenting the
 482 form.

483 Section 10. Paragraphs (a) and (h) of subsection (1) of
 484 section 626.9541, Florida Statutes, are amended to read:

485 626.9541 Unfair methods of competition and unfair or
 486 deceptive acts or practices defined.—

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

490 (a) Misrepresentations and false advertising of insurance
 491 policies.—Knowingly making, issuing, circulating, or causing to
 492 be made, issued, or circulated, any estimate, illustration,
 493 circular, statement, sales presentation, omission, ~~or~~
 494 comparison, or certificate of insurance altered after being
 495 issued by an insurer as evidence of coverage under a property
 496 and casualty policy which:

497 1. Misrepresents the benefits, advantages, conditions, or
 498 terms of any insurance policy.

499 2. Misrepresents the dividends or share of the surplus to
 500 be received on any insurance policy.

501 3. Makes any false or misleading statements as to the
 502 dividends or share of surplus previously paid on any insurance
 503 policy.

504 4. Is misleading, or is a misrepresentation, as to the

505 financial condition of any person or as to the legal reserve
 506 system upon which any life insurer operates.

507 5. Uses any name or title of any insurance policy or class
 508 of insurance policies misrepresenting the true nature thereof.

509 6. Is a misrepresentation for the purpose of inducing, or
 510 tending to induce, the lapse, forfeiture, exchange, conversion,
 511 or surrender of any insurance policy.

512 7. Is a misrepresentation for the purpose of effecting a
 513 pledge or assignment of, or effecting a loan against, any
 514 insurance policy.

515 8. Misrepresents any insurance policy as being shares of
 516 stock or misrepresents ownership interest in the company.

517 9. Uses any advertisement that would mislead or otherwise
 518 cause a reasonable person to believe mistakenly that the state
 519 or the Federal Government is responsible for the insurance sales
 520 activities of any person or stands behind any person's credit or
 521 that any person, the state, or the Federal Government guarantees
 522 any returns on insurance products or is a source of payment of
 523 any insurance obligation of or sold by any person.

524 (h) Unlawful rebates.—

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

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

530 b. Paying, allowing, or giving, or offering to pay, allow,
 531 or give, directly or indirectly, as inducement to such insurance
 532 contract, any unlawful rebate of premiums payable on the

533 | contract, any special favor or advantage in the dividends or
 534 | other benefits thereon, or any valuable consideration or
 535 | inducement whatever not specified in the contract;

536 | c. Giving, selling, or purchasing, or offering to give,
 537 | sell, or purchase, as inducement to such insurance contract or
 538 | in connection therewith, any stocks, bonds, or other securities
 539 | of any insurance company or other corporation, association, or
 540 | partnership, or any dividends or profits accrued thereon, or
 541 | anything of value whatsoever not specified in the insurance
 542 | contract.

543 | 2. Nothing in paragraph (g) or subparagraph 1. of this
 544 | paragraph shall be construed as including within the definition
 545 | of discrimination or unlawful rebates:

546 | a. In the case of any contract of life insurance or life
 547 | annuity, paying bonuses to all policyholders or otherwise
 548 | abating their premiums in whole or in part out of surplus
 549 | accumulated from nonparticipating insurance; provided that any
 550 | such bonuses or abatement of premiums is fair and equitable to
 551 | all policyholders and for the best interests of the company and
 552 | its policyholders.

553 | b. In the case of life insurance policies issued on the
 554 | industrial debit plan, making allowance to policyholders who
 555 | have continuously for a specified period made premium payments
 556 | directly to an office of the insurer in an amount which fairly
 557 | represents the saving in collection expenses.

558 | c. Readjustment of the rate of premium for a group
 559 | insurance policy based on the loss or expense thereunder, at the
 560 | end of the first or any subsequent policy year of insurance

561 thereunder, which may be made retroactive only for such policy
 562 year.

563 d. Issuance of life insurance policies or annuity
 564 contracts at rates less than the usual rates of premiums for
 565 such policies or contracts, as group insurance or employee
 566 insurance as defined in this code.

567 e. Issuing life or disability insurance policies on a
 568 salary savings, bank draft, preauthorized check, payroll
 569 deduction, or other similar plan at a reduced rate reasonably
 570 related to the savings made by the use of such plan.

571 3.a. No title insurer, or any member, employee, attorney,
 572 agent, or agency thereof, shall pay, allow, or give, or offer to
 573 pay, allow, or give, directly or indirectly, as inducement to
 574 title insurance, or after such insurance has been effected, any
 575 rebate or abatement of the premium or any other charge or fee,
 576 or provide any special favor or advantage, or any monetary
 577 consideration or inducement whatever.

578 b. Nothing in this subparagraph shall be construed as
 579 prohibiting the payment of fees to attorneys at law duly
 580 licensed to practice law in the courts of this state, for
 581 professional services, or as prohibiting the payment of earned
 582 portions of the premium to duly appointed agents or agencies who
 583 actually perform services for the title insurer. Nothing in this
 584 subparagraph shall be construed as prohibiting a rebate or
 585 abatement of an attorney ~~attorney's~~ fee charged for professional
 586 services, or that portion of the premium that is not required to
 587 be retained by the insurer pursuant to s. 627.782(1), or any
 588 other agent charge or fee to the person responsible for paying

589 the premium, charge, or fee.

590 c. No insured named in a policy, or any other person
 591 directly or indirectly connected with the transaction involving
 592 the issuance of such policy, including, but not limited to, any
 593 mortgage broker, real estate broker, builder, or attorney, any
 594 employee, agent, agency, or representative thereof, or any other
 595 person whatsoever, shall knowingly receive or accept, directly
 596 or indirectly, any rebate or abatement of any portion of the
 597 title insurance premium or of any other charge or fee or any
 598 monetary consideration or inducement whatsoever, except as set
 599 forth in sub-subparagraph b.; provided, in no event shall any
 600 portion of the attorney ~~attorney's~~ fee, any portion of the
 601 premium that is not required to be retained by the insurer
 602 pursuant to s. 627.782(1), any agent charge or fee, or any other
 603 monetary consideration or inducement be paid directly or
 604 indirectly for the referral of title insurance business.

605 4. Providing a patronage dividend or other payment,
 606 discount, or credit to a member of a production credit
 607 association organized under 12 U.S.C.A. ss. 2071-2077 or a
 608 federal land bank association organized under 12 U.S.C.A. ss.
 609 2091-2098 constitutes an unlawful rebate if the dividend or
 610 other payment, discount, or credit is directly or indirectly
 611 calculated on the basis of the premium charged to that member
 612 for crop hail or multiple-peril crop insurance.

613 Section 11. Paragraph (b) of subsection (2) and paragraph
 614 (c) of subsection (6) of section 627.351, Florida Statutes, are
 615 amended and paragraphs (ff), (gg), and (hh) of subsection (6) of
 616 section 627.351 are created to read:

617 | 627.351 Insurance risk apportionment plans.—
 618 | (2) WINDSTORM INSURANCE RISK APPORTIONMENT.—
 619 | (b) The department shall require all insurers holding a
 620 | certificate of authority to transact property insurance on a
 621 | direct basis in this state, other than joint underwriting
 622 | associations and other entities formed pursuant to this section,
 623 | to provide windstorm coverage to applicants from areas
 624 | determined to be eligible pursuant to paragraph (c) who in good
 625 | faith are entitled to, but are unable to procure, such coverage
 626 | through ordinary means; or it shall adopt a reasonable plan or
 627 | plans for the equitable apportionment or sharing among such
 628 | insurers of windstorm coverage, which may include formation of
 629 | an association for this purpose. As used in this subsection, the
 630 | term "property insurance" means insurance on real or personal
 631 | property, as defined in s. 624.604, including insurance for
 632 | fire, industrial fire, allied lines, farmowners multiperil,
 633 | homeowners' multiperil, commercial multiperil, and mobile homes,
 634 | and including liability coverages on all such insurance, but
 635 | excluding inland marine as defined in s. 624.607(3) and
 636 | excluding vehicle insurance as defined in s. 624.605(1)(a) other
 637 | than insurance on mobile homes used as permanent dwellings. The
 638 | department shall adopt rules that provide a formula for the
 639 | recovery and repayment of any deferred assessments.

640 | 1. For the purpose of this section, properties eligible
 641 | for such windstorm coverage are defined as dwellings, buildings,
 642 | and other structures, including mobile homes which are used as
 643 | dwellings and which are tied down in compliance with mobile home
 644 | tie-down requirements prescribed by the Department of Highway

645 Safety and Motor Vehicles pursuant to s. 320.8325, and the
 646 contents of all such properties. An applicant or policyholder is
 647 eligible for coverage only if an offer of coverage cannot be
 648 obtained by or for the applicant or policyholder from an
 649 admitted insurer at approved rates.

650 2.a.(I) All insurers required to be members of such
 651 association shall participate in its writings, expenses, and
 652 losses. Surplus of the association shall be retained for the
 653 payment of claims and shall not be distributed to the member
 654 insurers. Such participation by member insurers shall be in the
 655 proportion that the net direct premiums of each member insurer
 656 written for property insurance in this state during the
 657 preceding calendar year bear to the aggregate net direct
 658 premiums for property insurance of all member insurers, as
 659 reduced by any credits for voluntary writings, in this state
 660 during the preceding calendar year. For the purposes of this
 661 subsection, the term "net direct premiums" means direct written
 662 premiums for property insurance, reduced by premium for
 663 liability coverage and for the following if included in allied
 664 lines: rain and hail on growing crops; livestock; association
 665 direct premiums booked; National Flood Insurance Program direct
 666 premiums; and similar deductions specifically authorized by the
 667 plan of operation and approved by the department. A member's
 668 participation shall begin on the first day of the calendar year
 669 following the year in which it is issued a certificate of
 670 authority to transact property insurance in the state and shall
 671 terminate 1 year after the end of the calendar year during which
 672 it no longer holds a certificate of authority to transact

673 | property insurance in the state. The commissioner, after review
 674 | of annual statements, other reports, and any other statistics
 675 | that the commissioner deems necessary, shall certify to the
 676 | association the aggregate direct premiums written for property
 677 | insurance in this state by all member insurers.

678 | (II) Effective July 1, 2002, the association shall operate
 679 | subject to the supervision and approval of a board of governors
 680 | who are the same individuals that have been appointed by the
 681 | Treasurer to serve on the board of governors of the Citizens
 682 | Property Insurance Corporation.

683 | (III) The plan of operation shall provide a formula
 684 | whereby a company voluntarily providing windstorm coverage in
 685 | affected areas will be relieved wholly or partially from
 686 | apportionment of a regular assessment pursuant to sub-sub-
 687 | subparagraph d.(I) or sub-sub-subparagraph d.(II).

688 | (IV) A company which is a member of a group of companies
 689 | under common management may elect to have its credits applied on
 690 | a group basis, and any company or group may elect to have its
 691 | credits applied to any other company or group.

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

695 | (VI) The plan of operation may also provide for the award
 696 | of credits, for a period not to exceed 3 years, from a regular
 697 | assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
 698 | subparagraph d.(II) as an incentive for taking policies out of
 699 | the Residential Property and Casualty Joint Underwriting
 700 | Association. In order to qualify for the exemption under this

701 sub-sub-subparagraph, the take-out plan must provide that at
 702 least 40 percent of the policies removed from the Residential
 703 Property and Casualty Joint Underwriting Association cover risks
 704 located in Miami-Dade, Broward, and Palm Beach Counties or at
 705 least 30 percent of the policies so removed cover risks located
 706 in Miami-Dade, Broward, and Palm Beach Counties and an
 707 additional 50 percent of the policies so removed cover risks
 708 located in other coastal counties, and must also provide that no
 709 more than 15 percent of the policies so removed may exclude
 710 windstorm coverage. With the approval of the department, the
 711 association may waive these geographic criteria for a take-out
 712 plan that removes at least the lesser of 100,000 Residential
 713 Property and Casualty Joint Underwriting Association policies or
 714 15 percent of the total number of Residential Property and
 715 Casualty Joint Underwriting Association policies, provided the
 716 governing board of the Residential Property and Casualty Joint
 717 Underwriting Association certifies that the take-out plan will
 718 materially reduce the Residential Property and Casualty Joint
 719 Underwriting Association's 100-year probable maximum loss from
 720 hurricanes. With the approval of the department, the board may
 721 extend such credits for an additional year if the insurer
 722 guarantees an additional year of renewability for all policies
 723 removed from the Residential Property and Casualty Joint
 724 Underwriting Association, or for 2 additional years if the
 725 insurer guarantees 2 additional years of renewability for all
 726 policies removed from the Residential Property and Casualty
 727 Joint Underwriting Association.

728 b. Assessments to pay deficits in the association under

729 | this subparagraph shall be included as an appropriate factor in
 730 | the making of rates as provided in s. 627.3512.

731 | c. The Legislature finds that the potential for unlimited
 732 | deficit assessments under this subparagraph may induce insurers
 733 | to attempt to reduce their writings in the voluntary market, and
 734 | that such actions would worsen the availability problems that
 735 | the association was created to remedy. It is the intent of the
 736 | Legislature that insurers remain fully responsible for paying
 737 | regular assessments and collecting emergency assessments for any
 738 | deficits of the association; however, it is also the intent of
 739 | the Legislature to provide a means by which assessment
 740 | liabilities may be amortized over a period of years.

741 | d.(I) When the deficit incurred in a particular calendar
 742 | year is 10 percent or less of the aggregate statewide direct
 743 | written premium for property insurance for the prior calendar
 744 | year for all member insurers, the association shall levy an
 745 | assessment on member insurers in an amount equal to the deficit.

746 | (II) When the deficit incurred in a particular calendar
 747 | year exceeds 10 percent of the aggregate statewide direct
 748 | written premium for property insurance for the prior calendar
 749 | year for all member insurers, the association shall levy an
 750 | assessment on member insurers in an amount equal to the greater
 751 | of 10 percent of the deficit or 10 percent of the aggregate
 752 | statewide direct written premium for property insurance for the
 753 | prior calendar year for member insurers. Any remaining deficit
 754 | shall be recovered through emergency assessments under sub-sub-
 755 | subparagraph (III).

756 | (III) Upon a determination by the board of directors that

757 a deficit exceeds the amount that will be recovered through
 758 regular assessments on member insurers, pursuant to sub-sub-
 759 subparagraph (I) or sub-sub-subparagraph (II), the board shall
 760 levy, after verification by the department, emergency
 761 assessments to be collected by member insurers and by
 762 underwriting associations created pursuant to this section which
 763 write property insurance, upon issuance or renewal of property
 764 insurance policies other than National Flood Insurance policies
 765 in the year or years following levy of the regular assessments.
 766 The amount of the emergency assessment collected in a particular
 767 year shall be a uniform percentage of that year's direct written
 768 premium for property insurance for all member insurers and
 769 underwriting associations, excluding National Flood Insurance
 770 policy premiums, as annually determined by the board and
 771 verified by the department. The department shall verify the
 772 arithmetic calculations involved in the board's determination
 773 within 30 days after receipt of the information on which the
 774 determination was based. Notwithstanding any other provision of
 775 law, each member insurer and each underwriting association
 776 created pursuant to this section shall collect emergency
 777 assessments from its policyholders without such obligation being
 778 affected by any credit, limitation, exemption, or deferment. The
 779 emergency assessments so collected shall be transferred directly
 780 to the association on a periodic basis as determined by the
 781 association. The aggregate amount of emergency assessments
 782 levied under this sub-sub-subparagraph in any calendar year may
 783 not exceed the greater of 10 percent of the amount needed to
 784 cover the original deficit, plus interest, fees, commissions,

785 required reserves, and other costs associated with financing of
 786 the original deficit, or 10 percent of the aggregate statewide
 787 direct written premium for property insurance written by member
 788 insurers and underwriting associations for the prior year, plus
 789 interest, fees, commissions, required reserves, and other costs
 790 associated with financing the original deficit. The board may
 791 pledge the proceeds of the emergency assessments under this sub-
 792 sub-subparagraph as the source of revenue for bonds, to retire
 793 any other debt incurred as a result of the deficit or events
 794 giving rise to the deficit, or in any other way that the board
 795 determines will efficiently recover the deficit. The emergency
 796 assessments under this sub-sub-subparagraph shall continue as
 797 long as any bonds issued or other indebtedness incurred with
 798 respect to a deficit for which the assessment was imposed remain
 799 outstanding, unless adequate provision has been made for the
 800 payment of such bonds or other indebtedness pursuant to the
 801 document governing such bonds or other indebtedness. Emergency
 802 assessments collected under this sub-sub-subparagraph are not
 803 part of an insurer's rates, are not premium, and are not subject
 804 to premium tax, fees, or commissions; however, failure to pay
 805 the emergency assessment shall be treated as failure to pay
 806 premium.

807 (IV) Each member insurer's share of the total regular
 808 assessments under sub-sub-subparagraph (I) or sub-sub-
 809 subparagraph (II) shall be in the proportion that the insurer's
 810 net direct premium for property insurance in this state, for the
 811 year preceding the assessment bears to the aggregate statewide
 812 net direct premium for property insurance of all member

813 insurers, as reduced by any credits for voluntary writings for
814 that year.

815 (V) If regular deficit assessments are made under sub-sub-
816 subparagraph (I) or sub-sub-subparagraph (II), or by the
817 Residential Property and Casualty Joint Underwriting Association
818 under sub-subparagraph (6)(b)3.a. or sub-subparagraph
819 (6)(b)3.b., the association shall levy upon the association's
820 policyholders, as part of its next rate filing, or by a separate
821 rate filing solely for this purpose, a market equalization
822 surcharge in a percentage equal to the total amount of such
823 regular assessments divided by the aggregate statewide direct
824 written premium for property insurance for member insurers for
825 the prior calendar year. Market equalization surcharges under
826 this sub-sub-subparagraph are not considered premium and are not
827 subject to commissions, fees, or premium taxes; however, failure
828 to pay a market equalization surcharge shall be treated as
829 failure to pay premium.

830 e. The governing body of any unit of local government, any
831 residents of which are insured under the plan, may issue bonds
832 as defined in s. 125.013 or s. 166.101 to fund an assistance
833 program, in conjunction with the association, for the purpose of
834 defraying deficits of the association. In order to avoid
835 needless and indiscriminate proliferation, duplication, and
836 fragmentation of such assistance programs, any unit of local
837 government, any residents of which are insured by the
838 association, may provide for the payment of losses, regardless
839 of whether or not the losses occurred within or outside of the
840 territorial jurisdiction of the local government. Revenue bonds

841 | may not be issued until validated pursuant to chapter 75, unless
 842 | a state of emergency is declared by executive order or
 843 | proclamation of the Governor pursuant to s. 252.36 making such
 844 | findings as are necessary to determine that it is in the best
 845 | interests of, and necessary for, the protection of the public
 846 | health, safety, and general welfare of residents of this state
 847 | and the protection and preservation of the economic stability of
 848 | insurers operating in this state, and declaring it an essential
 849 | public purpose to permit certain municipalities or counties to
 850 | issue bonds as will provide relief to claimants and
 851 | policyholders of the association and insurers responsible for
 852 | apportionment of plan losses. Any such unit of local government
 853 | may enter into such contracts with the association and with any
 854 | other entity created pursuant to this subsection as are
 855 | necessary to carry out this paragraph. Any bonds issued under
 856 | this sub-subparagraph shall be payable from and secured by
 857 | moneys received by the association from assessments under this
 858 | subparagraph, and assigned and pledged to or on behalf of the
 859 | unit of local government for the benefit of the holders of such
 860 | bonds. The funds, credit, property, and taxing power of the
 861 | state or of the unit of local government shall not be pledged
 862 | for the payment of such bonds. If any of the bonds remain unsold
 863 | 60 days after issuance, the department shall require all
 864 | insurers subject to assessment to purchase the bonds, which
 865 | shall be treated as admitted assets; each insurer shall be
 866 | required to purchase that percentage of the unsold portion of
 867 | the bond issue that equals the insurer's relative share of
 868 | assessment liability under this subsection. An insurer shall not

869 be required to purchase the bonds to the extent that the
 870 department determines that the purchase would endanger or impair
 871 the solvency of the insurer. The authority granted by this sub-
 872 subparagraph is additional to any bonding authority granted by
 873 subparagraph 6.

874 3. The plan shall also provide that any member with a
 875 surplus as to policyholders of \$25 ~~\$20~~ million or less writing
 876 25 percent or more of its total countrywide property insurance
 877 premiums in this state may petition the department, within the
 878 first 90 days of each calendar year, to qualify as a limited
 879 apportionment company. The apportionment of such a member
 880 company in any calendar year for which it is qualified shall not
 881 exceed its gross participation, which shall not be affected by
 882 the formula for voluntary writings. In no event shall a limited
 883 apportionment company be required to participate in any
 884 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
 885 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
 886 \$50 million after payment of available plan funds in any
 887 calendar year. However, a limited apportionment company shall
 888 collect from its policyholders any emergency assessment imposed
 889 under sub-sub-subparagraph 2.d.(III). The plan shall provide
 890 that, if the department determines that any regular assessment
 891 will result in an impairment of the surplus of a limited
 892 apportionment company, the department may direct that all or
 893 part of such assessment be deferred. However, there shall be no
 894 limitation or deferment of an emergency assessment to be
 895 collected from policyholders under sub-sub-subparagraph
 896 2.d.(III).

897 4. The plan shall provide for the deferment, in whole or
898 in part, of a regular assessment of a member insurer under sub-
899 sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but
900 not for an emergency assessment collected from policyholders
901 under sub-sub-subparagraph 2.d.(III), if, in the opinion of the
902 commissioner, payment of such regular assessment would endanger
903 or impair the solvency of the member insurer. In the event a
904 regular assessment against a member insurer is deferred in whole
905 or in part, the amount by which such assessment is deferred may
906 be assessed against the other member insurers in a manner
907 consistent with the basis for assessments set forth in sub-sub-
908 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

909 5.a. The plan of operation may include deductibles and
910 rules for classification of risks and rate modifications
911 consistent with the objective of providing and maintaining funds
912 sufficient to pay catastrophe losses.

913 b. It is the intent of the Legislature that the rates for
914 coverage provided by the association be actuarially sound and
915 not competitive with approved rates charged in the admitted
916 voluntary market such that the association functions as a
917 residual market mechanism to provide insurance only when the
918 insurance cannot be procured in the voluntary market. The plan
919 of operation shall provide a mechanism to assure that, beginning
920 no later than January 1, 1999, the rates charged by the
921 association for each line of business are reflective of approved
922 rates in the voluntary market for hurricane coverage for each
923 line of business in the various areas eligible for association
924 coverage.

PCS for CSHB 1101

ORIGINAL

2012

925 c. The association shall provide for windstorm coverage on
926 residential properties in limits up to \$10 million for
927 commercial lines residential risks and up to \$1 million for
928 personal lines residential risks. If coverage with the
929 association is sought for a residential risk valued in excess of
930 these limits, coverage shall be available to the risk up to the
931 replacement cost or actual cash value of the property, at the
932 option of the insured, if coverage for the risk cannot be
933 located in the authorized market. The association must accept a
934 commercial lines residential risk with limits above \$10 million
935 or a personal lines residential risk with limits above \$1
936 million if coverage is not available in the authorized market.
937 The association may write coverage above the limits specified in
938 this subparagraph with or without facultative or other
939 reinsurance coverage, as the association determines appropriate.

940 d. The plan of operation must provide objective criteria
941 and procedures, approved by the department, to be uniformly
942 applied for all applicants in determining whether an individual
943 risk is so hazardous as to be uninsurable. In making this
944 determination and in establishing the criteria and procedures,
945 the following shall be considered:

946 (I) Whether the likelihood of a loss for the individual
947 risk is substantially higher than for other risks of the same
948 class; and

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

952

953 The acceptance or rejection of a risk by the association
 954 pursuant to such criteria and procedures must be construed as
 955 the private placement of insurance, and the provisions of
 956 chapter 120 do not apply.

957 e. If the risk accepts an offer of coverage through the
 958 market assistance program or through a mechanism established by
 959 the association, either before the policy is issued by the
 960 association or during the first 30 days of coverage by the
 961 association, and the producing agent who submitted the
 962 application to the association is not currently appointed by the
 963 insurer, the insurer shall:

964 (I) Pay to the producing agent of record of the policy,
 965 for the first year, an amount that is the greater of the
 966 insurer's usual and customary commission for the type of policy
 967 written or a fee equal to the usual and customary commission of
 968 the association; or

969 (II) Offer to allow the producing agent of record of the
 970 policy to continue servicing the policy for a period of not less
 971 than 1 year and offer to pay the agent the greater of the
 972 insurer's or the association's usual and customary commission
 973 for the type of policy written.

974
 975 If the producing agent is unwilling or unable to accept
 976 appointment, the new insurer shall pay the agent in accordance
 977 with sub-sub-subparagraph (I). Subject to the provisions of s.
 978 627.3517, the policies issued by the association must provide
 979 that if the association obtains an offer from an authorized
 980 insurer to cover the risk at its approved rates under either a

981 standard policy including wind coverage or, if consistent with
 982 the insurer's underwriting rules as filed with the department, a
 983 basic policy including wind coverage, the risk is no longer
 984 eligible for coverage through the association. Upon termination
 985 of eligibility, the association shall provide written notice to
 986 the policyholder and agent of record stating that the
 987 association policy must be canceled as of 60 days after the date
 988 of the notice because of the offer of coverage from an
 989 authorized insurer. Other provisions of the insurance code
 990 relating to cancellation and notice of cancellation do not apply
 991 to actions under this sub-subparagraph.

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

996 (I) Pay to the producing agent of record of the
 997 association policy, for the first year, an amount that is the
 998 greater of the insurer's usual and customary commission for the
 999 type of policy written or a fee equal to the usual and customary
 1000 commission of the association; or

1001 (II) Offer to allow the producing agent of record of the
 1002 association policy to continue servicing the policy for a period
 1003 of not less than 1 year and offer to pay the agent the greater
 1004 of the insurer's or the association's usual and customary
 1005 commission for the type of policy written.

1006
 1007 If the producing agent is unwilling or unable to accept
 1008 appointment, the new insurer shall pay the agent in accordance

1009 with sub-sub-subparagraph (I).

1010 6.a. The plan of operation may authorize the formation of

1011 a private nonprofit corporation, a private nonprofit

1012 unincorporated association, a partnership, a trust, a limited

1013 liability company, or a nonprofit mutual company which may be

1014 empowered, among other things, to borrow money by issuing bonds

1015 or by incurring other indebtedness and to accumulate reserves or

1016 funds to be used for the payment of insured catastrophe losses.

1017 The plan may authorize all actions necessary to facilitate the

1018 issuance of bonds, including the pledging of assessments or

1019 other revenues.

1020 b. Any entity created under this subsection, or any entity

1021 formed for the purposes of this subsection, may sue and be sued,

1022 may borrow money; issue bonds, notes, or debt instruments;

1023 pledge or sell assessments, market equalization surcharges and

1024 other surcharges, rights, premiums, contractual rights,

1025 projected recoveries from the Florida Hurricane Catastrophe

1026 Fund, other reinsurance recoverables, and other assets as

1027 security for such bonds, notes, or debt instruments; enter into

1028 any contracts or agreements necessary or proper to accomplish

1029 such borrowings; and take other actions necessary to carry out

1030 the purposes of this subsection. The association may issue bonds

1031 or incur other indebtedness, or have bonds issued on its behalf

1032 by a unit of local government pursuant to subparagraph (6)(q)2.,

1033 in the absence of a hurricane or other weather-related event,

1034 upon a determination by the association subject to approval by

1035 the department that such action would enable it to efficiently

1036 meet the financial obligations of the association and that such

1037 financings are reasonably necessary to effectuate the
 1038 requirements of this subsection. Any such entity may accumulate
 1039 reserves and retain surpluses as of the end of any association
 1040 year to provide for the payment of losses incurred by the
 1041 association during that year or any future year. The association
 1042 shall incorporate and continue the plan of operation and
 1043 articles of agreement in effect on the effective date of chapter
 1044 76-96, Laws of Florida, to the extent that it is not
 1045 inconsistent with chapter 76-96, and as subsequently modified
 1046 consistent with chapter 76-96. The board of directors and
 1047 officers currently serving shall continue to serve until their
 1048 successors are duly qualified as provided under the plan. The
 1049 assets and obligations of the plan in effect immediately prior
 1050 to the effective date of chapter 76-96 shall be construed to be
 1051 the assets and obligations of the successor plan created herein.

1052 c. In recognition of s. 10, Art. I of the State
 1053 Constitution, prohibiting the impairment of obligations of
 1054 contracts, it is the intent of the Legislature that no action be
 1055 taken whose purpose is to impair any bond indenture or financing
 1056 agreement or any revenue source committed by contract to such
 1057 bond or other indebtedness issued or incurred by the association
 1058 or any other entity created under this subsection.

1059 7. On such coverage, an agent's remuneration shall be that
 1060 amount of money payable to the agent by the terms of his or her
 1061 contract with the company with which the business is placed.
 1062 However, no commission will be paid on that portion of the
 1063 premium which is in excess of the standard premium of that
 1064 company.

1065 8. Subject to approval by the department, the association
 1066 may establish different eligibility requirements and operational
 1067 procedures for any line or type of coverage for any specified
 1068 eligible area or portion of an eligible area if the board
 1069 determines that such changes to the eligibility requirements and
 1070 operational procedures are justified due to the voluntary market
 1071 being sufficiently stable and competitive in such area or for
 1072 such line or type of coverage and that consumers who, in good
 1073 faith, are unable to obtain insurance through the voluntary
 1074 market through ordinary methods would continue to have access to
 1075 coverage from the association. When coverage is sought in
 1076 connection with a real property transfer, such requirements and
 1077 procedures shall not provide for an effective date of coverage
 1078 later than the date of the closing of the transfer as
 1079 established by the transferor, the transferee, and, if
 1080 applicable, the lender.

1081 9. Notwithstanding any other provision of law:

1082 a. The pledge or sale of, the lien upon, and the security
 1083 interest in any rights, revenues, or other assets of the
 1084 association created or purported to be created pursuant to any
 1085 financing documents to secure any bonds or other indebtedness of
 1086 the association shall be and remain valid and enforceable,
 1087 notwithstanding the commencement of and during the continuation
 1088 of, and after, any rehabilitation, insolvency, liquidation,
 1089 bankruptcy, receivership, conservatorship, reorganization, or
 1090 similar proceeding against the association under the laws of
 1091 this state or any other applicable laws.

1092 b. No such proceeding shall relieve the association of its

1093 obligation, or otherwise affect its ability to perform its
 1094 obligation, to continue to collect, or levy and collect,
 1095 assessments, market equalization or other surcharges, projected
 1096 recoveries from the Florida Hurricane Catastrophe Fund,
 1097 reinsurance recoverables, or any other rights, revenues, or
 1098 other assets of the association pledged.

1099 c. Each such pledge or sale of, lien upon, and security
 1100 interest in, including the priority of such pledge, lien, or
 1101 security interest, any such assessments, emergency assessments,
 1102 market equalization or renewal surcharges, projected recoveries
 1103 from the Florida Hurricane Catastrophe Fund, reinsurance
 1104 recoverables, or other rights, revenues, or other assets which
 1105 are collected, or levied and collected, after the commencement
 1106 of and during the pendency of or after any such proceeding shall
 1107 continue unaffected by such proceeding.

1108 d. As used in this subsection, the term "financing
 1109 documents" means any agreement, instrument, or other document
 1110 now existing or hereafter created evidencing any bonds or other
 1111 indebtedness of the association or pursuant to which any such
 1112 bonds or other indebtedness has been or may be issued and
 1113 pursuant to which any rights, revenues, or other assets of the
 1114 association are pledged or sold to secure the repayment of such
 1115 bonds or indebtedness, together with the payment of interest on
 1116 such bonds or such indebtedness, or the payment of any other
 1117 obligation of the association related to such bonds or
 1118 indebtedness.

1119 e. Any such pledge or sale of assessments, revenues,
 1120 contract rights or other rights or assets of the association

1121 shall constitute a lien and security interest, or sale, as the
 1122 case may be, that is immediately effective and attaches to such
 1123 assessments, revenues, contract, or other rights or assets,
 1124 whether or not imposed or collected at the time the pledge or
 1125 sale is made. Any such pledge or sale is effective, valid,
 1126 binding, and enforceable against the association or other entity
 1127 making such pledge or sale, and valid and binding against and
 1128 superior to any competing claims or obligations owed to any
 1129 other person or entity, including policyholders in this state,
 1130 asserting rights in any such assessments, revenues, contract, or
 1131 other rights or assets to the extent set forth in and in
 1132 accordance with the terms of the pledge or sale contained in the
 1133 applicable financing documents, whether or not any such person
 1134 or entity has notice of such pledge or sale and without the need
 1135 for any physical delivery, recordation, filing, or other action.

1136 f. There shall be no liability on the part of, and no
 1137 cause of action of any nature shall arise against, any member
 1138 insurer or its agents or employees, agents or employees of the
 1139 association, members of the board of directors of the
 1140 association, or the department or its representatives, for any
 1141 action taken by them in the performance of their duties or
 1142 responsibilities under this subsection. Such immunity does not
 1143 apply to actions for breach of any contract or agreement
 1144 pertaining to insurance, or any willful tort.

1145 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1146 (c) The corporation's plan of operation:

1147 1. Must provide for adoption of residential property and
 1148 casualty insurance policy forms and commercial residential and

1149 nonresidential property insurance forms, which must be approved
 1150 by the office before use. The corporation shall adopt the
 1151 following policy forms:

1152 a. Standard personal lines policy forms that are
 1153 comprehensive multiperil policies providing full coverage of a
 1154 residential property equivalent to the coverage provided in the
 1155 private insurance market under an HO-3, HO-4, or HO-6 policy.

1156 b. Basic personal lines policy forms that are policies
 1157 similar to an HO-8 policy or a dwelling fire policy that provide
 1158 coverage meeting the requirements of the secondary mortgage
 1159 market, but which is more limited than the coverage under a
 1160 standard policy.

1161 c. Commercial lines residential and nonresidential policy
 1162 forms that are generally similar to the basic perils of full
 1163 coverage obtainable for commercial residential structures and
 1164 commercial nonresidential structures in the admitted voluntary
 1165 market.

1166 d. Personal lines and commercial lines residential
 1167 property insurance forms that cover the peril of wind only. The
 1168 forms are applicable only to residential properties located in
 1169 areas eligible for coverage under the coastal account referred
 1170 to in sub-subparagraph (b)2.a.

1171 e. Commercial lines nonresidential property insurance
 1172 forms that cover the peril of wind only. The forms are
 1173 applicable only to nonresidential properties located in areas
 1174 eligible for coverage under the coastal account referred to in
 1175 sub-subparagraph (b)2.a.

1176 f. The corporation may adopt variations of the policy

1177 forms listed in sub-subparagraphs a.-e. which contain more
 1178 restrictive coverage.

1179 g. Effective January 1, 2013, the corporation shall offer
 1180 a basic personal lines policy similar to an HO-8 policy.

1181 2. Must provide that the corporation adopt a program in
 1182 which the corporation and authorized insurers enter into quota
 1183 share primary insurance agreements for hurricane coverage, as
 1184 defined in s. 627.4025(2)(a), for eligible risks, and adopt
 1185 property insurance forms for eligible risks which cover the
 1186 peril of wind only.

1187 a. As used in this subsection, the term:

1188 (I) "Quota share primary insurance" means an arrangement
 1189 in which the primary hurricane coverage of an eligible risk is
 1190 provided in specified percentages by the corporation and an
 1191 authorized insurer. The corporation and authorized insurer are
 1192 each solely responsible for a specified percentage of hurricane
 1193 coverage of an eligible risk as set forth in a quota share
 1194 primary insurance agreement between the corporation and an
 1195 authorized insurer and the insurance contract. The
 1196 responsibility of the corporation or authorized insurer to pay
 1197 its specified percentage of hurricane losses of an eligible
 1198 risk, as set forth in the agreement, may not be altered by the
 1199 inability of the other party to pay its specified percentage of
 1200 losses. Eligible risks that are provided hurricane coverage
 1201 through a quota share primary insurance arrangement must be
 1202 provided policy forms that set forth the obligations of the
 1203 corporation and authorized insurer under the arrangement,
 1204 clearly specify the percentages of quota share primary insurance

1205 provided by the corporation and authorized insurer, and
 1206 conspicuously and clearly state that the authorized insurer and
 1207 the corporation may not be held responsible beyond their
 1208 specified percentage of coverage of hurricane losses.

1209 (II) "Eligible risks" means personal lines residential and
 1210 commercial lines residential risks that meet the underwriting
 1211 criteria of the corporation and are located in areas that were
 1212 eligible for coverage by the Florida Windstorm Underwriting
 1213 Association on January 1, 2002.

1214 b. The corporation may enter into quota share primary
 1215 insurance agreements with authorized insurers at corporation
 1216 coverage levels of 90 percent and 50 percent.

1217 c. If the corporation determines that additional coverage
 1218 levels are necessary to maximize participation in quota share
 1219 primary insurance agreements by authorized insurers, the
 1220 corporation may establish additional coverage levels. However,
 1221 the corporation's quota share primary insurance coverage level
 1222 may not exceed 90 percent.

1223 d. Any quota share primary insurance agreement entered
 1224 into between an authorized insurer and the corporation must
 1225 provide for a uniform specified percentage of coverage of
 1226 hurricane losses, by county or territory as set forth by the
 1227 corporation board, for all eligible risks of the authorized
 1228 insurer covered under the agreement.

1229 e. Any quota share primary insurance agreement entered
 1230 into between an authorized insurer and the corporation is
 1231 subject to review and approval by the office. However, such
 1232 agreement shall be authorized only as to insurance contracts

1233 entered into between an authorized insurer and an insured who is
 1234 already insured by the corporation for wind coverage.

1235 f. For all eligible risks covered under quota share
 1236 primary insurance agreements, the exposure and coverage levels
 1237 for both the corporation and authorized insurers shall be
 1238 reported by the corporation to the Florida Hurricane Catastrophe
 1239 Fund. For all policies of eligible risks covered under such
 1240 agreements, the corporation and the authorized insurer must
 1241 maintain complete and accurate records for the purpose of
 1242 exposure and loss reimbursement audits as required by fund
 1243 rules. The corporation and the authorized insurer shall each
 1244 maintain duplicate copies of policy declaration pages and
 1245 supporting claims documents.

1246 g. The corporation board shall establish in its plan of
 1247 operation standards for quota share agreements which ensure that
 1248 there is no discriminatory application among insurers as to the
 1249 terms of the agreements, pricing of the agreements, incentive
 1250 provisions if any, and consideration paid for servicing policies
 1251 or adjusting claims.

1252 h. The quota share primary insurance agreement between the
 1253 corporation and an authorized insurer must set forth the
 1254 specific terms under which coverage is provided, including, but
 1255 not limited to, the sale and servicing of policies issued under
 1256 the agreement by the insurance agent of the authorized insurer
 1257 producing the business, the reporting of information concerning
 1258 eligible risks, the payment of premium to the corporation, and
 1259 arrangements for the adjustment and payment of hurricane claims
 1260 incurred on eligible risks by the claims adjuster and personnel

1261 of the authorized insurer. Entering into a quota sharing
 1262 insurance agreement between the corporation and an authorized
 1263 insurer is voluntary and at the discretion of the authorized
 1264 insurer.

1265 3.a. May provide that the corporation may employ or
 1266 otherwise contract with individuals or other entities to provide
 1267 administrative or professional services that may be appropriate
 1268 to effectuate the plan. The corporation may borrow funds by
 1269 issuing bonds or by incurring other indebtedness, and shall have
 1270 other powers reasonably necessary to effectuate the requirements
 1271 of this subsection, including, without limitation, the power to
 1272 issue bonds and incur other indebtedness in order to refinance
 1273 outstanding bonds or other indebtedness. The corporation may
 1274 seek judicial validation of its bonds or other indebtedness
 1275 under chapter 75. The corporation may issue bonds or incur other
 1276 indebtedness, or have bonds issued on its behalf by a unit of
 1277 local government pursuant to subparagraph (q)2. in the absence
 1278 of a hurricane or other weather-related event, upon a
 1279 determination by the corporation, subject to approval by the
 1280 office, that such action would enable it to efficiently meet the
 1281 financial obligations of the corporation and that such
 1282 financings are reasonably necessary to effectuate the
 1283 requirements of this subsection. The corporation may take all
 1284 actions needed to facilitate tax-free status for such bonds or
 1285 indebtedness, including formation of trusts or other affiliated
 1286 entities. The corporation may pledge assessments, projected
 1287 recoveries from the Florida Hurricane Catastrophe Fund, other
 1288 reinsurance recoverables, market equalization and other

1289 | surcharges, and other funds available to the corporation as
 1290 | security for bonds or other indebtedness. In recognition of s.
 1291 | 10, Art. I of the State Constitution, prohibiting the impairment
 1292 | of obligations of contracts, it is the intent of the Legislature
 1293 | that no action be taken whose purpose is to impair any bond
 1294 | indenture or financing agreement or any revenue source committed
 1295 | by contract to such bond or other indebtedness.

1296 | b. To ensure that the corporation is operating in an
 1297 | efficient and economic manner while providing quality service to
 1298 | policyholders, applicants, and agents, the board shall
 1299 | commission an independent third-party consultant having
 1300 | expertise in insurance company management or insurance company
 1301 | management consulting to prepare a report and make
 1302 | recommendations on the relative costs and benefits of
 1303 | outsourcing various policy issuance and service functions to
 1304 | private servicing carriers or entities performing similar
 1305 | functions in the private market for a fee, rather than
 1306 | performing such functions in-house. In making such
 1307 | recommendations, the consultant shall consider how other
 1308 | residual markets, both in this state and around the country,
 1309 | outsource appropriate functions or use servicing carriers to
 1310 | better match expenses with revenues that fluctuate based on a
 1311 | widely varying policy count. The report must be completed by
 1312 | July 1, 2012. Upon receiving the report, the board shall develop
 1313 | a plan to implement the report and submit the plan for review,
 1314 | modification, and approval to the Financial Services Commission.
 1315 | Upon the commission's approval of the plan, the board shall
 1316 | begin implementing the plan by January 1, 2013.

1317 4. Must require that the corporation operate subject to
 1318 the supervision and approval of a board of governors consisting
 1319 of eight individuals who are residents of this state, from
 1320 different geographical areas of this state.

1321 a. The Governor, the Chief Financial Officer, the
 1322 President of the Senate, and the Speaker of the House of
 1323 Representatives shall each appoint two members of the board. At
 1324 least one of the two members appointed by each appointing
 1325 officer must have demonstrated expertise in insurance and is
 1326 deemed to be within the scope of the exemption provided in s.
 1327 112.313(7)(b). The Chief Financial Officer shall designate one
 1328 of the appointees as chair. All board members serve at the
 1329 pleasure of the appointing officer. All members of the board are
 1330 subject to removal at will by the officers who appointed them.
 1331 All board members, including the chair, must be appointed to
 1332 serve for 3-year terms beginning annually on a date designated
 1333 by the plan. However, for the first term beginning on or after
 1334 July 1, 2009, each appointing officer shall appoint one member
 1335 of the board for a 2-year term and one member for a 3-year term.
 1336 A board vacancy shall be filled for the unexpired term by the
 1337 appointing officer. The Chief Financial Officer shall appoint a
 1338 technical advisory group to provide information and advice to
 1339 the board in connection with the board's duties under this
 1340 subsection. The executive director and senior managers of the
 1341 corporation shall be engaged by the board and serve at the
 1342 pleasure of the board. Any executive director appointed on or
 1343 after July 1, 2006, is subject to confirmation by the Senate.
 1344 The executive director is responsible for employing other staff

1345 as the corporation may require, subject to review and
 1346 concurrence by the board.

1347 b. The board shall create a Market Accountability Advisory
 1348 Committee to assist the corporation in developing awareness of
 1349 its rates and its customer and agent service levels in
 1350 relationship to the voluntary market insurers writing similar
 1351 coverage.

1352 (I) The members of the advisory committee consist of the
 1353 following 11 persons, one of whom must be elected chair by the
 1354 members of the committee: four representatives, one appointed by
 1355 the Florida Association of Insurance Agents, one by the Florida
 1356 Association of Insurance and Financial Advisors, one by the
 1357 Professional Insurance Agents of Florida, and one by the Latin
 1358 American Association of Insurance Agencies; three
 1359 representatives appointed by the insurers with the three highest
 1360 voluntary market share of residential property insurance
 1361 business in the state; one representative from the Office of
 1362 Insurance Regulation; one consumer appointed by the board who is
 1363 insured by the corporation at the time of appointment to the
 1364 committee; one representative appointed by the Florida
 1365 Association of Realtors; and one representative appointed by the
 1366 Florida Bankers Association. All members shall be appointed to
 1367 3-year terms and may serve for consecutive terms.

1368 (II) The committee shall report to the corporation at each
 1369 board meeting on insurance market issues which may include rates
 1370 and rate competition with the voluntary market; service,
 1371 including policy issuance, claims processing, and general
 1372 responsiveness to policyholders, applicants, and agents; and

1373 matters relating to depopulation.

1374 5. Must provide a procedure for determining the

1375 eligibility of a risk for coverage, as follows:

1376 a. Subject to s. 627.3517, with respect to personal lines

1377 residential risks, if the risk is offered coverage from an

1378 authorized insurer at the insurer's approved rate under a

1379 standard policy including wind coverage or, if consistent with

1380 the insurer's underwriting rules as filed with the office, a

1381 basic policy including wind coverage, for a new application to

1382 the corporation for coverage, the risk is not eligible for any

1383 policy issued by the corporation unless the premium for coverage

1384 from the authorized insurer is more than 15 percent greater than

1385 the premium for comparable coverage from the corporation. If the

1386 risk is not able to obtain such offer, the risk is eligible for

1387 a standard policy including wind coverage or a basic policy

1388 including wind coverage issued by the corporation; however, if

1389 the risk could not be insured under a standard policy including

1390 wind coverage regardless of market conditions, the risk is

1391 eligible for a basic policy including wind coverage unless

1392 rejected under subparagraph 8. However, ~~a policyholder of the~~

1393 ~~corporation or~~ a policyholder removed from the corporation

1394 through an assumption agreement until the end of the assumption

1395 period remains eligible for coverage from the corporation

1396 regardless of any offer of coverage from an authorized insurer

1397 or surplus lines insurer. The corporation shall determine the

1398 type of policy to be provided on the basis of objective

1399 standards specified in the underwriting manual and based on

1400 generally accepted underwriting practices. Applicants seeking

1401 coverage with the corporation based on the premium requirements
 1402 in this sub-subparagraph must provide the corporation with a
 1403 sworn affidavit executed by one or more insurance agents, on a
 1404 form established by the corporation, attesting that the agents
 1405 have made their best efforts to obtain coverage for the risk
 1406 from at least three authorized insurers and have been unable to
 1407 find coverage meeting the premium requirements in this sub-
 1408 paragraph. The affidavit, which must document which authorized
 1409 insurers were contacted and the rate quoted by each authorized
 1410 insurer, must be submitted by the agent with the application for
 1411 coverage. Applicants seeking coverage with the corporation based
 1412 on an inability to obtain any offer of coverage from an
 1413 authorized insurer must provide the corporation with a sworn
 1414 affidavit executed by one or more insurance agents, on a form
 1415 established by the corporation, attesting that the agents have
 1416 made their best efforts to obtain coverage for the risk from at
 1417 least three authorized insurers, and have been unable to obtain
 1418 offers of coverage. The affidavit, which must document which
 1419 authorized insurers provided declinations of coverage, must be
 1420 submitted by the agent with the application for coverage.

1421 (I) If the risk accepts an offer of coverage through the
 1422 market assistance plan or through a mechanism established by the
 1423 corporation before a policy is issued to the risk by the
 1424 corporation ~~or during the first 30 days of coverage by the~~
 1425 ~~corporation~~, and the producing agent who submitted the
 1426 application to the plan or to the corporation is not currently
 1427 appointed by the insurer, the insurer shall:

1428 (A) Pay to the producing agent of record of the policy for

1429 the first year, an amount that is the greater of the insurer's
 1430 usual and customary commission for the type of policy written or
 1431 a fee equal to the usual and customary commission of the
 1432 corporation; or

1433 (B) Offer to allow the producing agent of record of the
 1434 policy to continue servicing the policy for at least 1 year and
 1435 offer to pay the agent the greater of the insurer's or the
 1436 corporation's usual and customary commission for the type of
 1437 policy written.

1438
 1439 If the producing agent is unwilling or unable to accept
 1440 appointment, the new insurer shall pay the agent in accordance
 1441 with sub-sub-sub-subparagraph (A).

1442 (II) If the corporation enters into a contractual
 1443 agreement for a take-out plan, the producing agent of record of
 1444 the corporation policy is entitled to retain any unearned
 1445 commission on the policy, and the insurer shall:

1446 (A) Pay to the producing agent of record, for the first
 1447 year, an amount that is the greater of the insurer's usual and
 1448 customary commission for the type of policy written or a fee
 1449 equal to the usual and customary commission of the corporation;
 1450 or

1451 (B) Offer to allow the producing agent of record to
 1452 continue servicing the policy for at least 1 year and offer to
 1453 pay the agent the greater of the insurer's or the corporation's
 1454 usual and customary commission for the type of policy written.

1455
 1456 If the producing agent is unwilling or unable to accept

1457 appointment, the new insurer shall pay the agent in accordance
 1458 with sub-sub-sub-subparagraph (A).

1459 b. With respect to commercial lines residential risks, for
 1460 a new application to the corporation for coverage, if the risk
 1461 is offered coverage under a policy including wind coverage from
 1462 an authorized insurer at its approved rate, the risk is not
 1463 eligible for a policy issued by the corporation unless the
 1464 premium for coverage from the authorized insurer is more than 15
 1465 percent greater than the premium for comparable coverage from
 1466 the corporation. If the risk is not able to obtain any such
 1467 offer, the risk is eligible for a policy including wind coverage
 1468 issued by the corporation. However, ~~a policyholder of the~~
 1469 ~~corporation or~~ a policyholder removed from the corporation
 1470 through an assumption agreement until the end of the assumption
 1471 period remains eligible for coverage from the corporation
 1472 regardless of an offer of coverage from an authorized insurer or
 1473 surplus lines insurer. Applicants seeking coverage with the
 1474 corporation based on the premium requirements in this sub-
 1475 subparagraph must provide the corporation with a sworn affidavit
 1476 executed by one or more insurance agents, on a form established
 1477 by the corporation, attesting that the agents have made their
 1478 best efforts to obtain coverage for the risk from at least three
 1479 authorized insurers and have been unable to find coverage
 1480 meeting the premium requirements in this sub-paragraph. The
 1481 affidavit, which must document which authorized insurers were
 1482 contacted and the rate quoted by each authorized insurer, must
 1483 be submitted by the agent with the application for coverage.
 1484 Applicants seeking coverage with the corporation based on an

1485 inability to obtain any offer of coverage from an authorized
 1486 insurer must provide the corporation with a sworn affidavit
 1487 executed by one or more insurance agents, on a form established
 1488 by the corporation, attesting that the agents have made their
 1489 best efforts to obtain coverage for the risk from at least three
 1490 authorized insurers, and have been unable to obtain offers of
 1491 coverage. The affidavit, which must document which authorized
 1492 insurers provided declinations of coverage, must be submitted by
 1493 the agent with the application for coverage.

1494 (I) If the risk accepts an offer of coverage through the
 1495 market assistance plan or through a mechanism established by the
 1496 corporation before a policy is issued to the risk by the
 1497 corporation ~~or during the first 30 days of coverage by the~~
 1498 ~~corporation~~, and the producing agent who submitted the
 1499 application to the plan or the corporation is not currently
 1500 appointed by the insurer, the insurer shall:

1501 (A) Pay to the producing agent of record of the policy,
 1502 for the first year, an amount that is the greater of the
 1503 insurer's usual and customary commission for the type of policy
 1504 written or a fee equal to the usual and customary commission of
 1505 the corporation; or

1506 (B) Offer to allow the producing agent of record of the
 1507 policy to continue servicing the policy for at least 1 year and
 1508 offer to pay the agent the greater of the insurer's or the
 1509 corporation's usual and customary commission for the type of
 1510 policy written.

1511
 1512 If the producing agent is unwilling or unable to accept

1513 appointment, the new insurer shall pay the agent in accordance
 1514 with sub-sub-sub-subparagraph (A).

1515 (II) If the corporation enters into a contractual
 1516 agreement for a take-out plan, the producing agent of record of
 1517 the corporation policy is entitled to retain any unearned
 1518 commission on the policy, and the insurer shall:

1519 (A) Pay to the producing agent of record, for the first
 1520 year, an amount that is the greater of the insurer's usual and
 1521 customary commission for the type of policy written or a fee
 1522 equal to the usual and customary commission of the corporation;
 1523 or

1524 (B) Offer to allow the producing agent of record to
 1525 continue servicing the policy for at least 1 year and offer to
 1526 pay the agent the greater of the insurer's or the corporation's
 1527 usual and customary commission for the type of policy written.

1528
 1529 If the producing agent is unwilling or unable to accept
 1530 appointment, the new insurer shall pay the agent in accordance
 1531 with sub-sub-sub-subparagraph (A).

1532 c. For purposes of determining comparable coverage under
 1533 sub-subparagraphs a. and b., the comparison must be based on
 1534 those forms and coverages that are reasonably comparable. The
 1535 corporation may rely on a determination of comparable coverage
 1536 and premium made by the producing agent who submits the
 1537 application to the corporation, made in the agent's capacity as
 1538 the corporation's agent. A comparison may be made solely of the
 1539 premium with respect to the main building or structure only on
 1540 the following basis: the same coverage A or other building

1541 limits; the same percentage hurricane deductible that applies on
 1542 an annual basis or that applies to each hurricane for commercial
 1543 residential property; the same percentage of ordinance and law
 1544 coverage, if the same limit is offered by both the corporation
 1545 and the authorized insurer; the same mitigation credits, to the
 1546 extent the same types of credits are offered both by the
 1547 corporation and the authorized insurer; the same method for loss
 1548 payment, such as replacement cost or actual cash value, if the
 1549 same method is offered both by the corporation and the
 1550 authorized insurer in accordance with underwriting rules; and
 1551 any other form or coverage that is reasonably comparable as
 1552 determined by the board. If an application is submitted to the
 1553 corporation for wind-only coverage in the coastal account, the
 1554 premium for the corporation's wind-only policy plus the premium
 1555 for the ex-wind policy that is offered by an authorized insurer
 1556 to the applicant must be compared to the premium for multiperil
 1557 coverage offered by an authorized insurer, subject to the
 1558 standards for comparison specified in this subparagraph. If the
 1559 corporation or the applicant requests from the authorized
 1560 insurer a breakdown of the premium of the offer by types of
 1561 coverage so that a comparison may be made by the corporation or
 1562 its agent and the authorized insurer refuses or is unable to
 1563 provide such information, the corporation may treat the offer as
 1564 not being an offer of coverage from an authorized insurer at the
 1565 insurer's approved rate.

1566 6. Must include rules for classifications of risks and
 1567 rates.

1568 7. Must provide that if premium and investment income for

1569 an account attributable to a particular calendar year are in
 1570 excess of projected losses and expenses for the account
 1571 attributable to that year, such excess shall be held in surplus
 1572 in the account. Such surplus must be available to defray
 1573 deficits in that account as to future years and used for that
 1574 purpose before assessing assessable insurers and assessable
 1575 insureds as to any calendar year.

1576 8. Must provide objective criteria and procedures to be
 1577 uniformly applied to all applicants in determining whether an
 1578 individual risk is so hazardous as to be uninsurable. In making
 1579 this determination and in establishing the criteria and
 1580 procedures, the following must be considered:

1581 a. Whether the likelihood of a loss for the individual
 1582 risk is substantially higher than for other risks of the same
 1583 class; and

1584 b. Whether the uncertainty associated with the individual
 1585 risk is such that an appropriate premium cannot be determined.

1586
 1587 The acceptance or rejection of a risk by the corporation shall
 1588 be construed as the private placement of insurance, and the
 1589 provisions of chapter 120 do not apply.

1590 9. Must provide that the corporation make its best efforts
 1591 to procure catastrophe reinsurance at reasonable rates, to cover
 1592 its projected 100-year probable maximum loss as determined by
 1593 the board of governors.

1594 10. The policies issued by the corporation must provide
 1595 that if the corporation or the market assistance plan obtains an
 1596 offer from an authorized insurer to cover the risk at its

1597 approved rates, the risk is no longer eligible for renewal
 1598 through the corporation, except as otherwise provided in this
 1599 subsection.

1600 11. Corporation policies and applications must include a
 1601 notice that the corporation policy could, under this section, be
 1602 replaced with a policy issued by an authorized insurer which
 1603 does not provide coverage identical to the coverage provided by
 1604 the corporation. The notice must also specify that acceptance of
 1605 corporation coverage creates a conclusive presumption that the
 1606 applicant or policyholder is aware of this potential.

1607 12. May establish, subject to approval by the office,
 1608 different eligibility requirements and operational procedures
 1609 for any line or type of coverage for any specified county or
 1610 area if the board determines that such changes are justified due
 1611 to the voluntary market being sufficiently stable and
 1612 competitive in such area or for such line or type of coverage
 1613 and that consumers who, in good faith, are unable to obtain
 1614 insurance through the voluntary market through ordinary methods
 1615 continue to have access to coverage from the corporation. If
 1616 coverage is sought in connection with a real property transfer,
 1617 the requirements and procedures may not provide an effective
 1618 date of coverage later than the date of the closing of the
 1619 transfer as established by the transferor, the transferee, and,
 1620 if applicable, the lender.

1621 13. Must provide that, with respect to the coastal
 1622 account, any assessable insurer with a surplus as to
 1623 policyholders of \$25 million or less writing 25 percent or more
 1624 of its total countrywide property insurance premiums in this

1625 state may petition the office, within the first 90 days of each
 1626 calendar year, to qualify as a limited apportionment company. A
 1627 regular assessment levied by the corporation on a limited
 1628 apportionment company for a deficit incurred by the corporation
 1629 for the coastal account may be paid to the corporation on a
 1630 monthly basis as the assessments are collected by the limited
 1631 apportionment company from its insureds pursuant to s. 627.3512,
 1632 but the regular assessment must be paid in full within 12 months
 1633 after being levied by the corporation. A limited apportionment
 1634 company shall collect from its policyholders any emergency
 1635 assessment imposed under sub-subparagraph (b)3.d. The plan must
 1636 provide that, if the office determines that any regular
 1637 assessment will result in an impairment of the surplus of a
 1638 limited apportionment company, the office may direct that all or
 1639 part of such assessment be deferred as provided in subparagraph
 1640 (q)4. However, an emergency assessment to be collected from
 1641 policyholders under sub-subparagraph (b)3.d. may not be limited
 1642 or deferred.

1643 14. Must provide that the corporation appoint as its
 1644 licensed agents only those agents who also hold an appointment
 1645 as defined in s. 626.015(3) with an insurer who at the time of
 1646 the agent's initial appointment by the corporation is authorized
 1647 to write and is actually writing personal lines residential
 1648 property coverage, commercial residential property coverage, or
 1649 commercial nonresidential property coverage within the state.

1650 15. Must provide a premium payment plan option to its
 1651 policyholders which, at a minimum, allows for quarterly and
 1652 semiannual payment of premiums. A monthly payment plan may, but

1653 is not required to, be offered.

1654 16. Must limit coverage on mobile homes or manufactured
 1655 homes built before 1994 to actual cash value of the dwelling
 1656 rather than replacement costs of the dwelling.

1657 17. May provide such limits of coverage as the board
 1658 determines, consistent with the requirements of this subsection.

1659 18. May require commercial property to meet specified
 1660 hurricane mitigation construction features as a condition of
 1661 eligibility for coverage.

1662 19. Must provide that new or renewal policies issued by
 1663 the corporation on or after January 1, 2012, which cover
 1664 sinkhole loss do not include coverage for any loss to
 1665 appurtenant structures, driveways, sidewalks, decks, or patios
 1666 that are directly or indirectly caused by sinkhole activity. The
 1667 corporation shall exclude such coverage using a notice of
 1668 coverage change, which may be included with the policy renewal,
 1669 and not by issuance of a notice of nonrenewal of the excluded
 1670 coverage upon renewal of the current policy.

1671 20. As of January 1, 2012, must require that the agent
 1672 obtain from an applicant for coverage from the corporation an
 1673 acknowledgement signed by the applicant, which includes, at a
 1674 minimum, the following statement:

1675 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE
 1676 AND ASSESSMENT LIABILITY:

1677 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
 1678 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
 1679 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,

1680 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
 1681 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
 1682 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
 1683 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
 1684 LEGISLATURE.

1685 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
 1686 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
 1687 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
 1688 FLORIDA LEGISLATURE.

1689 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
 1690 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
 1691 STATE OF FLORIDA.

1692 a. The corporation shall maintain, in electronic format or
 1693 otherwise, a copy of the applicant's signed acknowledgement and
 1694 provide a copy of the statement to the policyholder as part of
 1695 the first renewal after the effective date of this subparagraph.

1696 b. The signed acknowledgement form creates a conclusive
 1697 presumption that the policyholder understood and accepted his or
 1698 her potential surcharge and assessment liability as a
 1699 policyholder of the corporation.

1700 21. Must provide by January 1, 2013, that an applicant for
 1701 personal residential coverage for a new policy must register
 1702 their risk with the market assistance plan for a period of 10
 1703 days before an application for coverage can be submitted to the
 1704 corporation, during which time the market assistance plan shall
 1705 make such application available for review by general lines
 1706 agents and authorized property and casualty insurers. The

1707 corporation may allow coverage to be effective before the end of
 1708 the 10-day waiting period, for coverage issued in conjunction
 1709 with a real estate or financial closing.

1710 (ff) Until a line of business achieves actuarial soundness
 1711 under subparagraph (n)8., no agent is entitled to the payment of
 1712 commission on any additional policy premium resulting from a
 1713 rate increase under subparagraph(n)6. Nothing in this paragraph
 1714 shall limit the corporation's ability to establish a more
 1715 restrictive commission structure.

1716 (gg) The corporation may develop and implement an agent
 1717 performance management program as a condition of initial or
 1718 continuing appointment.

1719 (hh) In establishing replacement costs for coverage on a
 1720 dwelling insured by the corporation, the corporation must accept
 1721 a valuation from any of the following sources and must use the
 1722 lowest valuation as the insured value of the dwelling, provided
 1723 the valuation was completed within the 12 months prior to the
 1724 application or renewal date of coverage:

1725 a. A replacement cost valuation software which is
 1726 specifically designed for use in establishing insurance
 1727 replacement costs and which includes an itemized calculation of
 1728 the cost of reconstruction;

1729 b. A replacement cost valuation prepared by a certified or
 1730 licensed real estate appraiser under Part II of Chapter 475 that
 1731 is specifically formulated to establish insurance replacement
 1732 cost, rather than market value, and which includes an itemized
 1733 calculation of the cost of reconstruction; or

1734 c. A replacement cost valuation prepared by a general,

1735 building, or residential contractor licensed under s. 489.213;
 1736 or a professional engineer licensed under s. 471.015, which
 1737 includes an itemized calculation of the total price of
 1738 reconstruction.

1739 Section 12. Subsections (1), (2), (7), and (9) of section
 1740 627.7015, Florida Statutes, are amended to read:

1741 627.7015 Alternative procedure for resolution of disputed
 1742 property insurance claims.—

1743 (1) ~~PURPOSE AND SCOPE.~~—This section sets forth a
 1744 nonadversarial alternative dispute resolution procedure for a
 1745 mediated claim resolution conference prompted by the need for
 1746 effective, fair, and timely handling of property insurance
 1747 claims. There is a particular need for an informal,
 1748 nonthreatening forum for helping parties who elect this
 1749 procedure to resolve their claims disputes because most
 1750 homeowner's and commercial residential insurance policies
 1751 obligate policyholders insureds to participate in a potentially
 1752 expensive and time-consuming adversarial appraisal process
 1753 before ~~prior to~~ litigation. The procedure set forth in this
 1754 section is designed to bring the parties together for a mediated
 1755 claims settlement conference without any of the trappings or
 1756 drawbacks of an adversarial process. Before resorting to these
 1757 procedures, policyholders insureds and insurers are encouraged
 1758 to resolve claims as quickly and fairly as possible. This
 1759 section is available with respect to claims under personal lines
 1760 and commercial residential policies before ~~for all claimants and~~
 1761 ~~insurers prior to~~ commencing the appraisal process, or before
 1762 commencing litigation. Mediation may be requested only by the

1763 policyholder, as a first-party claimant, or the insurer. If
 1764 requested by the policyholder insured, participation by legal
 1765 counsel is ~~shall be~~ permitted. Mediation under this section is
 1766 also available to litigants referred to the department by a
 1767 county court or circuit court. This section does not apply to
 1768 commercial coverages, to private passenger motor vehicle
 1769 insurance coverages, or to disputes relating to liability
 1770 coverages in policies of property insurance.

1771 (2) At the time a first-party claim within the scope of
 1772 this section is filed by the policyholder, the insurer shall
 1773 notify the policyholder ~~all first-party claimants~~ of its ~~their~~
 1774 right to participate in the mediation program under this
 1775 section. The department shall prepare a consumer information
 1776 pamphlet for distribution to persons participating in mediation
 1777 ~~under this section.~~

1778 (7) If the insurer fails to comply with subsection (2) by
 1779 failing to notify a policyholder ~~first-party claimant~~ of its
 1780 right to participate in the mediation program under this section
 1781 or if the insurer requests the mediation, and the mediation
 1782 results are rejected by either party, the policyholder is
 1783 ~~insured shall~~ not be required to submit to or participate in any
 1784 contractual loss appraisal process of the property loss damage
 1785 as a precondition to legal action for breach of contract against
 1786 the insurer for its failure to pay the policyholder's claims
 1787 covered by the policy.

1788 (9) For purposes of this section, the term "claim" refers
 1789 to any dispute between an insurer and a policyholder ~~an insured~~
 1790 relating to a material issue of fact other than a dispute:

- 1791 (a) With respect to which the insurer has a reasonable
 1792 basis to suspect fraud;
- 1793 (b) Where, based on agreed-upon facts as to the cause of
 1794 loss, there is no coverage under the policy;
- 1795 (c) With respect to which the insurer has a reasonable
 1796 basis to believe that the policyholder ~~claimant~~ has
 1797 intentionally made a material misrepresentation of fact which is
 1798 relevant to the claim, and the entire request for payment of a
 1799 loss has been denied on the basis of the material
 1800 misrepresentation; ~~or~~
- 1801 (d) With respect to which the amount in controversy is
 1802 less than \$500, unless the parties agree to mediate a dispute
 1803 involving a lesser amount; or.
- 1804 (e) Where the notice of loss is reported to the insurer
 1805 more than 36 months after the declaration of a state of
 1806 emergency by the Governor in response to a hurricane that makes
 1807 landfall in this state.

1808 Section 13. Subsection (4) of section 627.706, Florida
 1809 Statutes, is amended to read:

1810 627.706 Sinkhole insurance; catastrophic ground cover
 1811 collapse; definitions.—

1812 (4) An insurer offering sinkhole coverage to policyholders
 1813 before or after the adoption of s. 30, chapter 2007-1, Laws of
 1814 Florida, may renew pursuant to s. 627.43141 or nonrenew the
 1815 policies of policyholders maintaining sinkhole coverage, at the
 1816 option of the insurer, and provide an offer of coverage or
 1817 renewal that includes catastrophic ground cover collapse and
 1818 excludes sinkhole coverage. Insurers acting in accordance with

1819 | this subsection are subject to the following requirements:

1820 | (a) Policyholders must be notified that the renewal or a
 1821 | nonrenewal is for purposes of removing sinkhole coverage, and
 1822 | that the policyholder is being offered a policy that provides
 1823 | coverage for catastrophic ground cover collapse.

1824 | (b) Policyholders must be provided an actuarially
 1825 | reasonable premium credit or discount for the removal of
 1826 | sinkhole coverage and provision of only catastrophic ground
 1827 | cover collapse.

1828 | (c) Subject to the provisions of this subsection and the
 1829 | insurer's approved underwriting or insurability guidelines, the
 1830 | insurer shall provide each policyholder with the opportunity to
 1831 | purchase an endorsement to his or her policy providing sinkhole
 1832 | coverage and may require an inspection of the property before
 1833 | issuance of a sinkhole coverage endorsement.

1834 | (d) Section 624.4305 does not apply to nonrenewal notices
 1835 | issued pursuant to this subsection.

1836 | Section 14. Paragraph (e) of subsection (5) of section
 1837 | 627.707, Florida Statutes, is amended to read and paragraph (f)
 1838 | is added to subsection (5) of section 627.707 to read:

1839 | 627.707 Investigation of sinkhole claims; insurer
 1840 | payment; nonrenewals.—Upon receipt of a claim for a sinkhole
 1841 | loss to a covered building, an insurer must meet the following
 1842 | standards in investigating a claim:

1843 | (5) If a sinkhole loss is verified, the insurer shall pay
 1844 | to stabilize the land and building and repair the foundation in
 1845 | accordance with the recommendations of the professional engineer
 1846 | retained pursuant to subsection (2), with notice to the

1847 policyholder, subject to the coverage and terms of the policy.
 1848 The insurer shall pay for other repairs to the structure and
 1849 contents in accordance with the terms of the policy. If a
 1850 covered building suffers a sinkhole loss or a catastrophic
 1851 ground cover collapse, the insured must repair such damage or
 1852 loss in accordance with the insurer's professional engineer's
 1853 recommended repairs. However, if the insurer's professional
 1854 engineer determines that the repair cannot be completed within
 1855 policy limits, the insurer must pay to complete the repairs
 1856 recommended by the insurer's professional engineer or tender the
 1857 policy limits to the policyholder.

1858 (e) Upon the insurer's obtaining the written approval of
 1859 any lienholder, the insurer may make payment directly to the
 1860 persons selected by the policyholder to perform the land and
 1861 building stabilization and foundation repairs. The decision by
 1862 the insurer to make payment to such persons does not hold the
 1863 insurer liable for the work performed. ~~The policyholder may not
 1864 accept a rebate from any person performing the repairs specified
 1865 in this section. If a policyholder does receive a rebate,
 1866 coverage is void and the policyholder must refund the amount of
 1867 the rebate to the insurer. Any person making the repairs
 1868 specified in this section who offers a rebate commits insurance
 1869 fraud punishable as a third degree felony as provided in s.
 1870 775.082, ~~s. 775.083~~, or ~~s. 775.084~~.~~

1871 (f) The policyholder may not accept a rebate from any
 1872 person performing the repairs specified in this section. If a
 1873 policyholder receives a rebate, coverage is void and the
 1874 policyholder must refund the amount of the rebate to the

1875 insurer. Any person performing the repairs specified in this
 1876 section who offers a rebate commits insurance fraud punishable
 1877 as a third degree felony as provided in s. 775.082, s. 775.083,
 1878 or s. 775.084. As used in this paragraph, the term "rebate"
 1879 means a remuneration, payment, gift, discount, or transfer of
 1880 any item of value to the policyholder by or on behalf of a
 1881 person performing the repairs specified in this section as an
 1882 incentive or inducement to obtain repairs performed by that
 1883 person.

1884 Section 15. Effective upon this act becoming a law,
 1885 subsection (4) of section 627.7295, Florida Statutes, is amended
 1886 to read:

1887 627.7295 Motor vehicle insurance contracts.—

1888 (4) ~~If subsection (7) does not apply,~~ The insurer may
 1889 cancel the policy in accordance with this code except that,
 1890 notwithstanding s. 627.728, an insurer may not cancel a new
 1891 policy or binder during the first 60 days immediately following
 1892 the effective date of the policy or binder ~~except~~ for nonpayment
 1893 of premium unless the reason for the cancellation is the
 1894 issuance of a check for the premium that is dishonored for any
 1895 reason or any other type of premium payment that was
 1896 subsequently determined to be rejected or invalid.

1897 Section 16. Effective upon this act becoming a law,
 1898 paragraph (d) of subsection (4) of section 627.736, Florida
 1899 Statutes, is amended to read:

1900 627.736 Required personal injury protection benefits;
 1901 exclusions; priority; claims.—

1902 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under

1903 ss. 627.730-627.7405 shall be primary, except that benefits
 1904 received under any workers' compensation law shall be credited
 1905 against the benefits provided by subsection (1) and shall be due
 1906 and payable as loss accrues, upon receipt of reasonable proof of
 1907 such loss and the amount of expenses and loss incurred which are
 1908 covered by the policy issued under ss. 627.730-627.7405. When
 1909 the Agency for Health Care Administration provides, pays, or
 1910 becomes liable for medical assistance under the Medicaid program
 1911 related to injury, sickness, disease, or death arising out of
 1912 the ownership, maintenance, or use of a motor vehicle, benefits
 1913 under ss. 627.730-627.7405 shall be subject to the provisions of
 1914 the Medicaid program.

1915 (d) All overdue payments shall bear simple interest at the
 1916 rate established under s. 55.03 or the rate established in the
 1917 insurance contract, whichever is greater, for the quarter year ~~year~~
 1918 in which the payment became overdue, calculated from the date
 1919 the insurer was furnished with written notice of the amount of
 1920 covered loss. Interest shall be due at the time payment of the
 1921 overdue claim is made.

1922 Section 17. Effective upon this act becoming a law,
 1923 section 628.901, Florida Statutes, is amended to read:

1924 628.901 Definitions "~~Captive insurer~~" defined. As used in
 1925 ~~For the purposes of this part, the term: except as provided in~~
 1926 ~~s. 628.903, a "captive insurer" is a domestic insurer~~
 1927 ~~established under part I to insure the risks of a specific~~
 1928 ~~corporation or group of corporations under common ownership~~
 1929 ~~owned by the corporation or corporations from which it accepts~~
 1930 ~~risk under a contract of insurance.~~

1931 (1) "Affiliated company" means a company in the same
 1932 corporate system as a parent, an industrial insured, or a member
 1933 organization by virtue of common ownership, control, operation,
 1934 or management.

1935 (2) "Captive insurance company" means a domestic insurer
 1936 established under this part. A captive insurance company
 1937 includes a pure captive insurance company, special purpose
 1938 captive insurance company, or industrial insured captive
 1939 insurance company formed and licensed under this part.

1940 (3) "Captive reinsurance company" means a reinsurance
 1941 company that is formed and licensed under this part and is
 1942 wholly owned by a qualifying reinsurance parent company. A
 1943 captive reinsurance company is a stock corporation and may not
 1944 directly insure risks. A captive reinsurance company may
 1945 reinsure only risks.

1946 (4) "Consolidated debt to total capital ratio" means the
 1947 ratio of the sum of all debts and hybrid capital instruments as
 1948 described in paragraph (a) to total capital as described in
 1949 paragraph (b).

1950 (a) Debts and hybrid capital instruments include, but are
 1951 not limited to, all borrowings from banks, all senior debt, all
 1952 subordinated debts, all trust preferred shares, and all other
 1953 hybrid capital instruments that are not included in the
 1954 determination of consolidated GAAP net worth issued and
 1955 outstanding.

1956 (b) Total capital consists of all debts and hybrid capital
 1957 instruments as described in paragraph (a) plus owners' equity
 1958 determined in accordance with GAAP for reporting to the United

1959 States Securities and Exchange Commission.
 1960 (5) "Consolidated GAAP net worth" means the consolidated
 1961 owners' equity determined in accordance with generally accepted
 1962 accounting principles for reporting to the United States
 1963 Securities and Exchange Commission.
 1964 (6) "Controlled unaffiliated business" means a company:
 1965 (a) That is not in the corporate system of a parent and
 1966 affiliated companies;
 1967 (b) That has an existing contractual relationship with a
 1968 parent or affiliated company; and
 1969 (c) Whose risks are managed by a captive insurance company
 1970 in accordance with s. 628.919.
 1971 (7) "GAAP" means generally accepted accounting principles.
 1972 (8) "Industrial insured" means an insured that:
 1973 (a) Has gross assets in excess of \$50 million;
 1974 (b) Procures insurance through the use of a full-time
 1975 employee of the insured who acts as an insurance manager or
 1976 buyer or through the services of a person licensed as a property
 1977 and casualty insurance agent, broker, or consultant in such
 1978 person's state of domicile;
 1979 (c) Has at least 100 full-time employees; and
 1980 (d) Pays annual premiums of at least \$200,000 for each
 1981 line of insurance purchased from the industrial insured captive
 1982 insurer or at least \$75,000 for any line of coverage in excess
 1983 of at least \$25 million in the annual aggregate. The purchase of
 1984 umbrella or general liability coverage in excess of \$25 million
 1985 in the annual aggregate shall be deemed to be the purchase of a
 1986 single line of insurance.

1987 (9) "Industrial insured captive insurance company" means a
 1988 captive insurance company that provides insurance only to the
 1989 industrial insureds that are its stockholders or members, and
 1990 affiliates thereof, or to the stockholders, and affiliates
 1991 thereof, of its parent corporation. An industrial insured
 1992 captive insurance company can also provide reinsurance to
 1993 insurers only on risks written by such insurers for the
 1994 industrial insureds that are the stockholders or members, and
 1995 affiliates thereof, of the industrial insured captive insurer,
 1996 or the stockholders, and affiliates thereof, of the parent
 1997 corporation of the industrial insured captive insurer.

1998 (10) "Office" means the Office of Insurance Regulation.

1999 (11) "Parent" means any corporation, limited liability
 2000 company, partnership, or individual that directly or indirectly
 2001 owns, controls, or holds with power to vote more than 50 percent
 2002 of the outstanding voting interests of a captive insurance
 2003 company.

2004 (12) "Pure captive insurance company" means a company that
 2005 insures risks of its parent, affiliated companies, controlled
 2006 unaffiliated businesses, or a combination thereof.

2007 (13) "Qualifying reinsurer parent company" means a
 2008 reinsurer which currently holds a certificate of authority,
 2009 letter of eligibility or is an accredited or a satisfactory non-
 2010 approved reinsurer in this state possessing a consolidated GAAP
 2011 net worth of at least \$500 million and a consolidated debt to
 2012 total capital ratio of not greater than 0.50.

2013 (14) "Special purpose captive insurance company" means a
 2014 captive insurance company that is formed or licensed under this

2015 chapter that does not meet the definition of any other type of
 2016 captive insurance company defined in this section.

2017 (15) "Treasury rates" means the United States Treasury
 2018 STRIPS asked yield as published in the Wall Street Journal as of
 2019 a balance sheet date.

2020 Section 18. Effective upon this act becoming a law,
 2021 section 628.905, Florida Statutes, is amended to read:

2022 628.905 Licensing; authority.—

2023 (1) A ~~Any~~ captive insurer, if ~~when~~ permitted by its
 2024 charter or articles of incorporation, may apply to the office
 2025 for a license to do any and all insurance authorized under the
 2026 insurance code, ~~provide commercial property, commercial~~
 2027 ~~easualty, and commercial marine insurance coverage~~ other than
 2028 workers' compensation and employer's liability, life, health,
 2029 personal motor vehicle, and personal residential property
 2030 insurance coverage, except that: ~~an industrial insured captive~~
 2031 ~~insurer may apply for a license to provide workers' compensation~~
 2032 ~~and employer's liability insurance as set forth in subsection~~
 2033 ~~(6).~~

2034 (a) A pure captive insurance company may not insure any
 2035 risks other than those of its parent, affiliated companies,
 2036 controlled unaffiliated businesses, or a combination thereof.

2037 (b) An industrial insured captive insurance company may
 2038 not insure any risks other than those of the industrial insureds
 2039 that comprise the industrial insured group and their affiliated
 2040 companies.

2041 (c) A special purpose captive insurance company may insure
 2042 only the risks of its parent.

2043 (d) A captive insurance company may not accept or cede
 2044 reinsurance except as provided in this part.

2045 (2) To conduct insurance business in this state, a ~~No~~
 2046 ~~captive insurer, other than an industrial insured captive~~
 2047 ~~insurer must:~~, shall insure or accept reinsurance on any risks
 2048 ~~other than those of its parent and affiliated companies.~~

2049 (a) Obtain from the office a license authorizing it to
 2050 conduct insurance business in this state;

2051 (b) Hold at least one board of directors' meeting each
 2052 year in this state;

2053 (c) Maintain its principal place of business in this
 2054 state; and

2055 (d) Appoint a resident registered agent to accept service
 2056 of process and to otherwise act on its behalf in this state. In
 2057 the case of a captive insurance company formed as a corporation
 2058 or a nonprofit corporation, if the registered agent cannot with
 2059 reasonable diligence be found at the registered office of the
 2060 captive insurance company, the Chief Financial Officer of this
 2061 state must be an agent of the captive insurance company upon
 2062 whom any process, notice, or demand may be served.

2063 (3) Before receiving a license, a captive insurance
 2064 company formed as a corporation or a nonprofit corporation must
 2065 file with the office a certified copy of its articles of
 2066 incorporation and bylaws, a statement under oath of its
 2067 president and secretary showing its financial condition, and any
 2068 other statements or documents required by the office. In
 2069 addition, an applicant captive insurance company must file with
 2070 the office evidence of:

2071 (a) The amount and liquidity of the proposed captive
 2072 insurance company's assets relative to the risks to be assumed;

2073 (b) The adequacy of the expertise, experience, and
 2074 character of the person or persons who will manage the company;

2075 (c) The overall soundness of the company's plan of
 2076 operation;

2077 (d) The adequacy of the loss prevention programs of the
 2078 company's parent, member organizations, or industrial insureds,
 2079 as applicable; and

2080 (e) Any other factors considered relevant by the office in
 2081 ascertaining whether the company will be able to meet its policy
 2082 obligations. ~~In addition to information otherwise required by~~
 2083 ~~this code, each applicant captive insurer shall file with the~~
 2084 ~~office evidence of the adequacy of the loss prevention program~~
 2085 ~~of its insureds.~~

2086 (4) A captive insurance company or captive reinsurance
 2087 company must pay to the office a nonrefundable fee of \$1,500 for
 2088 processing its application for license.

2089 (a) A captive insurance company or captive reinsurance
 2090 company must also pay an annual renewal fee of \$1,000.

2091 (b) The office may charge a fee of \$5 for any document
 2092 requiring certification of authenticity or the signature of the
 2093 commissioner or his or her designee. ~~An industrial insured~~
 2094 ~~captive insurer need not be incorporated in this state if it has~~
 2095 ~~been validly incorporated under the laws of another~~
 2096 ~~jurisdiction.~~

2097 (5) If the commissioner is satisfied that the documents
 2098 and statements filed by the captive insurance company comply

2099 with this chapter, the commissioner may grant a license
 2100 authorizing the company to conduct insurance business in this
 2101 state until the next succeeding March 1, at which time the
 2102 license may be renewed. ~~An industrial insured captive insurer is~~
 2103 ~~subject to all provisions of this part except as otherwise~~
 2104 ~~indicated.~~

2105 (6) Upon approval of the office, a foreign or alien
 2106 captive insurance company may become a domestic captive
 2107 insurance company by complying with all of the requirements of
 2108 law relative to the organization and licensing of a domestic
 2109 captive insurance company of the same or equivalent type in this
 2110 state and by filing with the Secretary of State its charter or
 2111 other organizational documents, together with any appropriate
 2112 amendments that have been adopted in accordance with the laws of
 2113 this state to bring the charter or other organizational
 2114 documents into compliance with the laws of this state, along
 2115 with a certificate of good standing issued by the office. The
 2116 captive insurance company is then entitled to the necessary or
 2117 appropriate certificates and licenses to continue transacting
 2118 business in this state and is subject to the authority and
 2119 jurisdiction of this state. In connection with this
 2120 redomestication, the office may waive any requirements for
 2121 public hearings. It is not necessary for a captive insurance
 2122 company redomesticating into this state to merge, consolidate,
 2123 transfer assets, or otherwise engage in any other
 2124 reorganization, other than as specified in this section. ~~An~~
 2125 ~~industrial insured captive insurer may not provide workers'~~
 2126 ~~compensation and employer's liability insurance except in excess~~

2127 ~~of at least \$25 million in the annual aggregate.~~

2128 (7) An industrial insured captive insurance company need
 2129 not be incorporated in this state if it has been validly
 2130 incorporated under the laws of another jurisdiction.

2131 Section 19. Effective upon this act becoming a law,
 2132 section 628.906, Florida Statutes, is created to read:

2133 628.906 Application requirements; restrictions on
 2134 eligibility of officers and directors.-

2135 (1) To evidence competence and trustworthiness of its
 2136 officers and directors, the application for a license to act as
 2137 a captive insurance company or captive reinsurance company shall
 2138 include, but not be limited to, background investigations,
 2139 biographical affidavits, and fingerprint cards for all officers
 2140 and directors. Fingerprints must be taken by a law enforcement
 2141 agency or other entity approved by the office, be accompanied by
 2142 the fingerprint processing fee specified in s. 624.501, and
 2143 processed in accordance with s. 624.34.

2144 (2) The office may deny, suspend, or revoke the license to
 2145 transact captive insurance or captive reinsurance in this state
 2146 if any person who was an officer or director of an insurer,
 2147 reinsurer, captive insurance company, captive reinsurance
 2148 company, financial institution, or financial services business
 2149 doing business in the United States, any state, or under the law
 2150 of any other country and who served in that capacity within the
 2151 2-year period prior to the date the insurer, reinsurer, captive
 2152 insurance company, captive reinsurance company, financial
 2153 institution, or financial services business became insolvent,
 2154 serves as an officer or director of a captive insurance company

2155 or officer or director of a captive reinsurance company licensed
 2156 in this state unless the officer or director demonstrates that
 2157 his or her personal actions or omissions were not a contributing
 2158 cause to the insolvency or unless the officer or director is
 2159 immediately removed from the captive insurance company or
 2160 captive reinsurance company.

2161 (3) The office may deny, suspend, or revoke the license to
 2162 transact insurance or reinsurance in this state of a captive
 2163 insurance company or captive reinsurance company if any officer
 2164 or director, any stockholder that owns 10 percent or more of the
 2165 outstanding voting securities of the captive insurance company
 2166 or captive reinsurance company, or incorporator has been found
 2167 guilty of, or has pleaded guilty or nolo contendere to, any
 2168 felony or crime involving moral turpitude, including a crime of
 2169 dishonesty or breach of trust, punishable by imprisonment of 1
 2170 year or more under the law of the United States or any state
 2171 thereof or under the law of any other country without regard to
 2172 whether a judgment of conviction has been entered by the court
 2173 having jurisdiction in such case. However, in the case of a
 2174 captive insurance company or captive reinsurance company
 2175 operating under a subsisting license, the captive insurance
 2176 company or captive reinsurance company shall remove any such
 2177 person immediately upon discovery of the conditions set forth in
 2178 this subsection when applicable to such person or upon the order
 2179 of the office, and the failure to so act shall be grounds for
 2180 revocation or suspension of the captive insurance company's or
 2181 captive reinsurance company's license.

2182 Section 20. Effective upon this act becoming a law,

2183 section 628.907, Florida Statutes, is amended to read:
 2184 628.907 Minimum capital and net assets requirements;
 2185 restriction on payment of dividends surplus.-
 2186 (1) A ~~No~~ captive insurer may not shall be issued a license
 2187 unless it possesses and thereafter maintains:
 2188 ~~(1)~~ unimpaired paid-in capital of:
 2189 (a) In the case of a pure captive insurance company, at
 2190 least \$100,000. ~~\$500,000;~~ and
 2191 (b) In the case of an industrial insured captive insurance
 2192 company incorporated as a stock insurer, at least \$200,000.
 2193 (c) In the case of a special purpose captive insurance
 2194 company, an amount determined by the office after giving due
 2195 consideration to the company's business plan, feasibility study,
 2196 and pro forma financial statements and projections, including
 2197 the nature of the risks to be insured.
 2198 (2) The office may not issue a license to a captive
 2199 insurance company incorporated as a nonprofit corporation unless
 2200 the company possesses and maintains unrestricted net assets of:
 2201 (a) In the case of a pure captive insurance company,
 2202 Unimpaired surplus of at least \$250,000.
 2203 (b) In the case of a special purpose captive insurance
 2204 company, an amount determined by the office after giving due
 2205 consideration to the company's business plan, feasibility study,
 2206 and pro forma financial statements and projections, including
 2207 the nature of the risks to be insured.
 2208 (3) Contributions to a captive insurance company
 2209 incorporated as a nonprofit corporation must be in the form of
 2210 cash, cash equivalent, or an irrevocable letter of credit issued

2211 by a bank chartered by this state or a member bank of the
 2212 Federal Reserve System with a branch office in this state, or as
 2213 approved by the office.

2214 (4) For purposes of this section, the office may issue a
 2215 license expressly conditioned upon the captive insurance company
 2216 providing to the office satisfactory evidence of possession of
 2217 the minimum required unimpaired paid-in capital. Until this
 2218 evidence is provided, the captive insurance company may not
 2219 issue any policy, assume any liability, or otherwise provide
 2220 coverage. The office may revoke the conditional license if
 2221 satisfactory evidence of the required capital is not provided
 2222 within a maximum period of time, not to exceed 1 year, to be
 2223 established by the office at the time the conditional license is
 2224 issued.

2225 (5) The office may prescribe additional capital or net
 2226 assets based upon the type, volume, and nature of insurance
 2227 business transacted. Contributions in connection with these
 2228 prescribed additional net assets or capital must be in the form
 2229 of:

2230 (a) Cash;

2231 (b) Cash equivalent;

2232 (c) An irrevocable letter of credit issued by a bank
 2233 chartered by this state or a member bank of the Federal Reserve
 2234 System with a branch office in this state, or as approved by the
 2235 office; or

2236 (d) Securities invested as provided in part II of chapter
 2237 625.

2238 (6) A captive insurance company may not pay a dividend out

2239 of, or other distribution with respect to, capital or surplus in
 2240 excess of the limitations set forth in this chapter without the
 2241 prior approval of the office. Approval of an ongoing plan for
 2242 the payment of dividends or other distributions must be
 2243 conditioned upon the retention, at the time of each payment, of
 2244 capital or surplus in excess of amounts specified by, or
 2245 determined in accordance with formulas approved by, the office.

2246 (7) An irrevocable letter of credit that is issued by a
 2247 financial institution other than a bank chartered by this state
 2248 or a member bank of the Federal Reserve System must meet the
 2249 same standards as an irrevocable letter of credit that has been
 2250 issued by a bank chartered by this state or a member bank of the
 2251 Federal Reserve System.

2252 Section 21. Effective upon this act becoming a law,
 2253 section 628.908, Florida Statutes, is created to read:

2254 628.908 Surplus requirements; restriction on payment of
 2255 dividends.—

2256 (1) The office may not issue a license to a captive
 2257 insurance company unless the company possesses and maintains
 2258 unimpaired surplus of:

2259 (a) In the case of a pure captive insurance company, at
 2260 least \$150,000.

2261 (b) In the case of an industrial insured captive insurance
 2262 company incorporated as a stock insurer, at least \$300,000.

2263 (c) In the case of an industrial insured captive insurance
 2264 company incorporated as a mutual insurer, at least \$500,000.

2265 (d) In the case of a special purpose captive insurance
 2266 company, an amount determined by the office after giving due

2267 consideration to the company's business plan, feasibility study,
 2268 and pro forma financial statements and projections, including
 2269 the nature of the risks to be insured.

2270 (2) For purposes of this section, the office may issue a
 2271 license expressly conditioned upon the captive insurance company
 2272 providing to the office satisfactory evidence of possession of
 2273 the minimum required unimpaired surplus. Until this evidence is
 2274 provided, the captive insurance company may not issue any
 2275 policy, assume any liability, or otherwise provide coverage. The
 2276 office may revoke the conditional license if satisfactory
 2277 evidence of the required surplus is not provided within a
 2278 maximum period of time, not to exceed 1 year, to be established
 2279 by the office at the time the conditional license is issued.

2280 (3) A captive insurance company may not pay a dividend out
 2281 of, or other distribution with respect to, capital or surplus in
 2282 excess of the limitations set forth in this chapter without the
 2283 prior approval of the office. Approval of an ongoing plan for
 2284 the payment of dividends or other distribution must be
 2285 conditioned upon the retention, at the time of each payment, of
 2286 capital or surplus in excess of amounts specified by, or
 2287 determined in accordance with formulas approved by, the office.

2288 (4) An irrevocable letter of credit that is issued by a
 2289 financial institution other than a bank chartered by this state
 2290 or a member bank of the Federal Reserve System must meet the
 2291 same standards as an irrevocable letter of credit that has been
 2292 issued by a bank chartered by this state or a member bank of the
 2293 Federal Reserve System.

2294 Section 22. Effective upon this act becoming a law,

2295 section 628.909, Florida Statutes, is amended to read:
 2296 628.909 Applicability of other laws.—
 2297 (1) The Florida Insurance Code does ~~shall~~ not apply to
 2298 captive insurers or industrial insured captive insurers except
 2299 as provided in this part and subsections (2) and (3).
 2300 (2) The following provisions of the Florida Insurance Code
 2301 ~~shall~~ apply to captive insurers who are not industrial insured
 2302 captive insurers to the extent that such provisions are not
 2303 inconsistent with this part:
 2304 (a) Chapter 624, except for ss. 624.407, 624.408,
 2305 624.4085, 624.40851, 624.4095, 624.425, and 624.426.
 2306 (b) Chapter 625, part II.
 2307 (c) Chapter 626, part IX.
 2308 (d) Sections 627.730-627.7405, when no-fault coverage is
 2309 provided.
 2310 (e) Chapter 628.
 2311 (3) The following provisions of the Florida Insurance Code
 2312 ~~shall~~ apply to industrial insured captive insurers to the extent
 2313 that such provisions are not inconsistent with this part:
 2314 (a) Chapter 624, except for ss. 624.407, 624.408,
 2315 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).
 2316 (b) Chapter 625, part II, if the industrial insured
 2317 captive insurer is incorporated in this state.
 2318 (c) Chapter 626, part IX.
 2319 (d) Sections 627.730-627.7405 when no-fault coverage is
 2320 provided.
 2321 (e) Chapter 628, except for ss. 628.341, 628.351, and
 2322 628.6018.

2323 Section 23. Effective upon this act becoming a law,
 2324 section 628.910, Florida Statutes, is created to read:
 2325 628.910 Incorporation options and requirements.—
 2326 (1) A pure captive insurance company may be:
 2327 (a) Incorporated as a stock insurer with its capital
 2328 divided into shares and held by the stockholders; or
 2329 (b) Incorporated as a public benefit, mutual benefit, or
 2330 religious nonprofit corporation with members in accordance with
 2331 the Florida Not For Profit Corporation Act.
 2332 (2) An industrial insured captive insurance company may
 2333 be:
 2334 (a) Incorporated as a stock insurer with its capital
 2335 divided into shares and held by the stockholders; or
 2336 (b) Incorporated as a mutual insurer without capital
 2337 stock, the governing body of which is elected by its members.
 2338 (3) A captive insurance company may not have fewer than
 2339 three incorporators of whom not fewer than two must be residents
 2340 of this state.
 2341 (4) In the case of a captive insurance company formed as a
 2342 corporation or a nonprofit corporation, before the articles of
 2343 incorporation are transmitted to the Secretary of State, the
 2344 incorporators shall file the articles of incorporation in
 2345 triplicate with the office. The office shall promptly examine
 2346 the articles of incorporation. If it finds that the articles of
 2347 incorporation conform to law, it shall endorse its approval on
 2348 each of the triplicate originals of the articles of
 2349 incorporation, retain one copy for its files, and return the
 2350 remaining copies to the incorporators for filing with the

2351 Department of State.

2352 (5) The articles of incorporation, the certificate issued
 2353 pursuant to this section, and the organization fees required by
 2354 the Florida Business Corporation Act or the Florida Not For
 2355 Profit Corporation Act, as applicable, must be transmitted to
 2356 the Secretary of State, who must record the articles of
 2357 incorporation and the certificate.

2358 (6) The capital stock of a captive insurance company
 2359 incorporated as a stock insurer must be issued at par value of
 2360 not less than \$1 or more than \$100 per share.

2361 (7) In the case of a captive insurance company formed as a
 2362 corporation or a nonprofit corporation, at least one of the
 2363 members of the board of directors of a captive insurance company
 2364 incorporated in this state must be a resident of this state.

2365 (8) A captive insurance company formed as a corporation or
 2366 a nonprofit corporation, pursuant to the provisions of this
 2367 chapter, has the privileges and is subject to the provisions of
 2368 the general corporation law, including the Florida Not For
 2369 Profit Corporation Act for nonprofit corporations, as
 2370 applicable, as well as the applicable provisions contained in
 2371 this chapter. If a conflict occurs between a provision of the
 2372 general corporation law, including the Florida Not For Profit
 2373 Corporation Act for nonprofit corporations, as applicable, and a
 2374 provision of this chapter, the latter controls. The provisions
 2375 of this title pertaining to mergers, consolidations,
 2376 conversions, mutualizations, and redomestications apply in
 2377 determining the procedures to be followed by a captive insurance
 2378 company in carrying out any of the transactions described in

2379 such provisions, except that the office may waive or modify the
 2380 requirements for public notice and hearing in accordance with
 2381 rules the office may adopt addressing categories of
 2382 transactions. If a notice of public hearing is required, but no
 2383 one requests a hearing, the office may cancel the hearing.

2384 (9) The articles of incorporation or bylaws of a captive
 2385 insurance company may authorize a quorum of a board of directors
 2386 to consist of no fewer than one-third of the fixed or prescribed
 2387 number of directors as provided for by the Florida Business
 2388 Corporation Act or the Florida Not For Profit Corporation Act.

2389 Section 24. Effective upon this act becoming a law,
 2390 section 628.911, Florida Statutes, is amended to read:

2391 628.911 Reports and statements.-

2392 (1) A captive insurance company may ~~insurer shall~~ not be
 2393 required to make any annual report except as provided in this
 2394 part section.

2395 (2) Annually no later than March 1, a captive insurance
 2396 company or a captive reinsurance company ~~insurer shall, within~~
 2397 ~~60 days after the end of its fiscal year and as often as the~~
 2398 ~~office may deem necessary,~~ submit to the office a report of its
 2399 financial condition verified by oath of two of its executive
 2400 officers. Except as provided in this part, a captive insurance
 2401 company or a captive reinsurance company must report using
 2402 generally accepted accounting principles, unless the office
 2403 approves the use of statutory accounting principles, with useful
 2404 or necessary modifications or adaptations required or approved
 2405 or accepted by the office for the type of insurance and kinds of
 2406 insurers to be reported upon, and as supplemented by additional

2407 information required by the office. The Financial Services
 2408 Commission may adopt by rule the form in which captive insurance
 2409 companies ~~insurers~~ shall report.

2410 (3) A captive insurance company may make written
 2411 application for filing the required report on a fiscal year end
 2412 that is consistent with the parent company's fiscal year. If an
 2413 alternative reporting date is granted, the annual report is due
 2414 60 days after the fiscal year end.

2415 Section 25. Effective upon this act becoming a law,
 2416 section 628.912, Florida Statutes, is created to read:

2417 628.912 Discounting of loss and loss adjustment expense
 2418 reserves.—

2419 (1) A captive reinsurance company may discount its loss
 2420 and loss adjustment expense reserves at treasury rates applied
 2421 to the applicable payments projected through the use of the
 2422 expected payment pattern associated with the reserves.

2423 (2) A captive reinsurance company must file annually an
 2424 actuarial opinion on loss and loss adjustment expense reserves
 2425 provided by an independent actuary. The actuary may not be an
 2426 employee of the captive reinsurance company or its affiliates.

2427 (3) The office may disallow the discounting of reserves if
 2428 a captive reinsurance company violates a provision of this part.

2429 Section 26. Effective upon this act becoming a law,
 2430 section 628.913, Florida Statutes, is amended to read:

2431 (Substantial rewording of section. See
 2432 s. 628.913, F.S., for present text.)

2433 628.913 Captive reinsurance companies.—

2434 (1) A captive reinsurance company, if permitted by its

2435 articles of incorporation or charter, may apply to the office
 2436 for a license to write reinsurance covering property and
 2437 casualty insurance or reinsurance contracts. A captive
 2438 reinsurance company authorized by the office may write
 2439 reinsurance contracts covering risks in any state; however, a
 2440 captive reinsurance company authorized by the office may not
 2441 directly insure risks.

2442 (2) To conduct business in this state, a captive
 2443 reinsurance company must:

2444 (a) Obtain from the office a license authorizing it to
 2445 conduct business as a captive reinsurance company in this state;

2446 (b) Hold at least one board of directors' meeting each
 2447 year in this state;

2448 (c) Maintain its principal place of business in this
 2449 state; and

2450 (d) Appoint a registered agent to accept service of
 2451 process and act otherwise on its behalf in this state.

2452 (3) Before receiving a license, a captive reinsurance
 2453 company must file with the office:

2454 (a) A certified copy of its charter and bylaws;

2455 (b) A statement under oath of its president and secretary
 2456 showing its financial condition; and

2457 (c) Other documents required by the office.

2458 (4) In addition to the information required by this
 2459 section, the captive reinsurance company must file with the
 2460 office evidence of:

2461 (a) The amount and liquidity of the captive reinsurance
 2462 company's assets relative to the risks to be assumed;

2463 (b) The adequacy of the expertise, experience, and
 2464 character of the person who manages the company;
 2465 (c) The overall soundness of the company's plan of
 2466 operation; and
 2467 (d) Other overall factors considered relevant by the
 2468 office in ascertaining if the company would be able to meet its
 2469 policy obligations.

2470 Section 27. Effective upon this act becoming a law,
 2471 section 628.914, Florida Statutes, is created to read:
 2472 628.914 Minimum capitalization or reserves for captive
 2473 reinsurance companies.-

2474 (1) The office may not issue a license to a captive
 2475 reinsurance company unless the company possesses and maintains
 2476 capital or unimpaired surplus of at least the greater of \$300
 2477 million or 10 percent of reserves. The surplus may be in the
 2478 form of cash or securities as permitted by part II of chapter
 2479 625.

2480 (2) The office may prescribe additional capital or surplus
 2481 based upon the type, volume, and nature of the insurance
 2482 business transacted.

2483 (3) A captive reinsurance company may not pay a dividend
 2484 out of, or other distribution with respect to, capital or
 2485 surplus in excess of the limitations without the prior approval
 2486 of the office. Approval of an ongoing plan for the payment of
 2487 dividends or other distributions must be conditioned upon the
 2488 retention, at the time of each payment, of capital or surplus in
 2489 excess of amounts specified by, or determined in accordance with
 2490 formulas approved by, the office.

2491 Section 28. Effective upon this act becoming a law,
 2492 section 628.9141, Florida Statutes, is created to read:

2493 628.9141 Incorporation of a captive reinsurance company.-

2494 (1) A captive reinsurance company must be incorporated as
 2495 a stock insurer with its capital divided into shares and held by
 2496 its shareholders.

2497 (2) A captive reinsurance company may not have fewer than
 2498 three incorporators of whom at least two must be residents of
 2499 this state.

2500 (3) Before the articles of incorporation are transmitted
 2501 to the Secretary of State, the incorporators must comply with
 2502 all the requirements of s. 628.091.

2503 (4) The capital stock of a captive reinsurance company
 2504 must be issued at par value of not less than \$1 or more than
 2505 \$100 per share.

2506 (5) At least one of the members of the board of directors
 2507 of a captive reinsurance company incorporated in this state must
 2508 be a resident of this state.

2509 Section 29. Effective upon this act becoming a law,
 2510 section 628.9142, Florida Statutes, is created to read:

2511 628.9142 Reinsurance; effect on reserves.-

2512 (1) A captive insurance company may provide reinsurance,
 2513 as authorized in this part, on risks ceded by any other insurer.

2514 (2) A captive insurance company may take credit for
 2515 reserves on risks or portions of risks ceded to authorized
 2516 insurers or reinsurers and unauthorized insurers or reinsurers
 2517 complying with s. 624.610. A captive insurer may not take credit
 2518 for reserves on risks or portions of risks ceded to an

2519 unauthorized insurer or reinsurer if the insurer or reinsurer is
 2520 not in compliance with s. 624.610.

2521 Section 30. Effective upon this act becoming a law,
 2522 section 628.918, Florida Statutes, is created to read:

2523 628.918 Management of assets of captive reinsurance
 2524 company.—At least 35 percent of the assets of a captive
 2525 reinsurance company must be managed by an asset manager
 2526 domiciled in this state.

2527 Section 31. Effective upon this act becoming a law,
 2528 section 628.919, Florida Statutes, is created to read:

2529 628.919 Standards to ensure risk management control by
 2530 parent company.—The Financial Services Commission shall adopt
 2531 rules establishing standards to ensure that a parent or
 2532 affiliated company is able to exercise control of the risk
 2533 management function of any controlled unaffiliated business to
 2534 be insured by the pure captive insurance company.

2535 Section 32. Effective upon this act becoming a law,
 2536 section 628.920, Florida Statutes, is created to read:

2537 628.920 Eligibility of licensed captive insurance company
 2538 for certificate of authority to act as insurer.—A licensed
 2539 captive insurance company that meets the necessary requirements
 2540 of this part imposed upon an insurer must be considered for
 2541 issuance of a certificate of authority to act as an insurer in
 2542 this state.

2543 Section 33. Effective upon this act becoming a law,
 2544 paragraph (e) of subsection (2) of section 626.7491, Florida
 2545 Statutes, is amended to read:

2546 626.7491 Business transacted with producer controlled

2547 property and casualty insurer.—

2548 (2) DEFINITIONS.—As used in this section:

2549 (e) "Licensed insurer" or "insurer" means any person,

2550 firm, association, or corporation licensed to transact a

2551 property or casualty insurance business in this state. The

2552 following are not licensed insurers for the purposes of this

2553 section:

2554 1. Any risk retention group as defined in:

2555 a. The Superfund Amendments Reauthorization Act of 1986,

2556 Pub. L. No. 99-499, 100 Stat. 1613 (1986);

2557 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq.

2558 (1982 and Supp. 1986); or

2559 c. Section 627.942(9).

2560 2. Any residual market pool or joint underwriting

2561 authority or association; and

2562 3. Any captive insurance company ~~insurer~~ as defined in s.

2563 628.901.

2564 Section 34. Effective upon this act becoming a law,

2565 Section 628.903, Florida Statutes, is repealed.

2566 Section 35. Except as otherwise expressly provided in this

2567 act, this act shall take effect July 1, 2012.