

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 among applicants who request examinations in
13 Spanish; providing requirements with respect to
14 whether an examination in Spanish should be allowed in
15 a particular county; amending s. 626.321, F.S.;
16 revising provisions relating to limited licenses for
17 travel insurance; providing that a full-time salaried
18 employee of a licensed general lines agent or a
19 business entity that offers travel planning services
20 may be issued such license under certain
21 circumstances; amending s. 626.753, F.S.; specifying
22 circumstances for unlawful rebate for crop hail or
23 multiple-peril crop insurance; providing for a
24 violation for sharing commissions; creating s.
25 626.8685, F.S.; exempting certain employees who
26 conduct data entry from licensure as insurance
27 adjusters under certain circumstances; defining the
28 term "automated claims adjudication system" with

29 | respect to application of such exemption; prohibiting
 30 | residents of Canada from licensure as nonresident
 31 | independent adjusters under certain circumstances;
 32 | amending s. 626.916, F.S.; revising the disclosure
 33 | statement signed by an insured placing coverage in the
 34 | surplus lines market; amending s. 626.9541, F.S.;
 35 | providing an additional practice meeting the
 36 | definition of unfair methods of competition and unfair
 37 | or deceptive acts or practices; amending s. 627.351,
 38 | F.S.; increasing the amount of surplus as to
 39 | policyholders that certain insurers who are members of
 40 | a plan to equitably apportion or share windstorm
 41 | coverage may have in order to petition the Department
 42 | of Financial Services to qualify as a limited
 43 | apportionment company; amending s. 627.43141, F.S.;
 44 | clarifying provisions relating to changing policy
 45 | terms in a renewal policy; amending s. 627.7015, F.S.;
 46 | revising provisions relating to alternative procedures
 47 | for the resolution of disputed property insurance
 48 | claims; amending s. 627.7295, F.S.; clarifying
 49 | provisions relating to cancellation for nonpayment of
 50 | premiums for motor vehicle insurance; allowing the
 51 | cancellation of such policies under certain
 52 | circumstances; amending s. 627.736, F.S.; specifying
 53 | the interest rate applicable to the accrual of
 54 | interest on overdue payments of personal injury
 55 | protection benefits; providing an effective date.
 56 |

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

58

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

61 320.27 Motor vehicle dealers.—

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

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

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

V

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

138 Section 2. Paragraph (b) of subsection (9) of section
 139 624.501, Florida Statutes, is amended to read:

140 624.501 Filing, license, appointment, and miscellaneous

141 fees.—The department, commission, or office, as appropriate,
 142 shall collect in advance, and persons so served shall pay to it
 143 in advance, fees, licenses, and miscellaneous charges as
 144 follows:

145 (9)

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

152 Section 3. Paragraph (c) of subsection (11) of section
 153 624.610, Florida Statutes, is amended to read:

154 624.610 Reinsurance.—

155 (11)

156 (c) This subsection applies to cessions of directly
 157 written risk or loss. This subsection does not apply to
 158 contracts of facultative reinsurance or to any ceding insurer
 159 that has a with surplus as to policyholders which ~~that~~ exceeds
 160 \$100 million as of the immediately preceding December 31. A
 161 ~~Additionally, any~~ ceding insurer otherwise subject to this
 162 section which had with less than \$500,000 in direct premiums
 163 written in this state during the preceding calendar year and no
 164 more than \$250,000 in direct premiums written in this state
 165 during the preceding calendar quarter, and ~~or~~ which had with
 166 less than 1,000 policyholders at the end of the preceding
 167 calendar year, is exempt from ~~the requirements of this~~
 168 subsection. ~~However, any ceding insurer otherwise subject to~~

169 ~~this section with more than \$250,000 in direct premiums written~~
 170 ~~in this state during the preceding calendar quarter is not~~
 171 ~~exempt from the requirements of this subsection.~~

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

174 626.261 Conduct of examination.—

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

183 Section 5. Paragraph (c) of subsection (1) of section
 184 626.321, Florida Statutes, is amended to read:

185 626.321 Limited licenses.—

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

190 (c) Travel insurance.—License covering only policies and
 191 certificates of travel insurance, which are subject to review by
 192 the office ~~under s. 624.605(1)(g)~~. Policies and certificates of
 193 travel insurance may provide coverage for risks incidental to
 194 travel, planned travel, or accommodations while traveling,
 195 including, but not limited to, accidental death and
 196 dismemberment of a traveler; trip or event cancellation,

197 interruption, or delay; loss of or damage to personal effects or
 198 travel documents; damages to travel accommodations; baggage
 199 delay; emergency medical travel or evacuation of a traveler; or
 200 medical, surgical, and hospital expenses related to an illness
 201 or emergency of a traveler. ~~Any~~ Such policy or certificate may
 202 be issued for terms longer than 90 ~~60~~ days, but ~~each policy or~~
 203 ~~certificate~~, other than a policy or certificate providing
 204 coverage for air ambulatory services only, each policy or
 205 certificate must be limited to coverage for travel or use of
 206 accommodations of no longer than 90 ~~60~~ days. The license may be
 207 issued only:

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

216 2. To an entity or individual that is:
 217 a. The developer of a timeshare plan that is the subject
 218 of an approved public offering statement under chapter 721;
 219 b. An exchange company operating an exchange program
 220 approved under chapter 721;
 221 c. A managing entity operating a timeshare plan approved
 222 under chapter 721;
 223 d. A seller of travel as defined in chapter 559; or
 224 e. A subsidiary or affiliate of any of the entities

225 described in sub-subparagraphs a.-d.

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

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

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

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

251
 252 A licensee shall require each individual ~~employee~~ who offers

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

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

263 626.753 Sharing commissions; penalty.—

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

272 (b) Any patronage dividend or other payment, discount, or
 273 credit provided to a member of a production credit association
 274 or federal land bank association, which dividend, payment,
 275 discount, or credit is directly or indirectly calculated on the
 276 basis of the premium charged to that member for crop hail or
 277 multiple-peril crop insurance, constitutes an unlawful rebate in
 278 violation of ss. 626.572 and 626.9541 (1) (h).

279 (c) Any agent who engages in commission sharing with a
 280 production credit association or federal land bank association,

281 with the knowledge that the association provides patronage
 282 dividends or other payments, discounts, or credits that
 283 constitute unlawful rebates as described in the subsection, is
 284 deemed to participating in the violation of this section.

285 Section 7. Section 626.8685, Florida Statutes, is created
 286 to read:

287 626.8685 Portable electronics insurance claims; exemption;
 288 licensure restriction.-

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

302 (a) May be used only by a licensed independent adjuster,
 303 licensed agent, or supervised individual operating pursuant to
 304 this subsection;

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

307 (c) Must be certified as compliant with this subsection by
 308 a licensed independent adjuster that is an officer of a licensed

309 business entity under this chapter.

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

315 Section 8. Paragraph (b) of subsection (3) of section
 316 626.916, Florida Statutes, is amended to read:

317 626.916 Eligibility for export.—

318 (3)

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

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

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

325 3. The insured must sign a disclosure that substantially
 326 provides the following: "You are agreeing to place coverage in
 327 the surplus lines market. ~~Superior~~ Coverage may be available in
 328 the admitted market ~~and at a lesser cost~~. Persons insured by
 329 surplus lines carriers are not protected under the Florida
 330 Insurance Guaranty Act with respect to any right of recovery for
 331 the obligation of an insolvent unlicensed insurer." If the
 332 notice is signed by the insured, the insured is presumed to have
 333 been informed and to know that other coverage may be available,
 334 and, with respect to the diligent-effort requirement under
 335 subsection (1), there is no liability on the part of, and no
 336 cause of action arises against, the retail agent presenting the

337 form.

338 Section 9. Paragraph (h) of subsection (1) of section
 339 626.9541, Florida Statutes, is amended to read:

340 626.9541 Unfair methods of competition and unfair or
 341 deceptive acts or practices defined.—

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

345 (h) Unlawful rebates.—

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

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

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

357 c. Giving, selling, or purchasing, or offering to give,
 358 sell, or purchase, as inducement to such insurance contract or
 359 in connection therewith, any stocks, bonds, or other securities
 360 of any insurance company or other corporation, association, or
 361 partnership, or any dividends or profits accrued thereon, or
 362 anything of value whatsoever not specified in the insurance
 363 contract.

364 2. Nothing in paragraph (g) or subparagraph 1. of this

365 paragraph shall be construed as including within the definition
366 of discrimination or unlawful rebates:

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

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

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

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

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

392 3.a. No title insurer, or any member, employee, attorney,

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393 agent, or agency thereof, shall pay, allow, or give, or offer to
394 pay, allow, or give, directly or indirectly, as inducement to
395 title insurance, or after such insurance has been effected, any
396 rebate or abatement of the premium or any other charge or fee,
397 or provide any special favor or advantage, or any monetary
398 consideration or inducement whatever.

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

411 c. No insured named in a policy, or any other person
412 directly or indirectly connected with the transaction involving
413 the issuance of such policy, including, but not limited to, any
414 mortgage broker, real estate broker, builder, or attorney, any
415 employee, agent, agency, or representative thereof, or any other
416 person whatsoever, shall knowingly receive or accept, directly
417 or indirectly, any rebate or abatement of any portion of the
418 title insurance premium or of any other charge or fee or any
419 monetary consideration or inducement whatsoever, except as set
420 forth in sub-subparagraph b.; provided, in no event shall any

421 portion of the attorney's fee, any portion of the premium that
 422 is not required to be retained by the insurer pursuant to s.
 423 627.782(1), any agent charge or fee, or any other monetary
 424 consideration or inducement be paid directly or indirectly for
 425 the referral of title insurance business.

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

434 Section 10. Paragraph (b) of subsection (2) of section
 435 627.351, Florida Statutes, is amended to read:

436 627.351 Insurance risk apportionment plans.—

437 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

438 (b) The department shall require all insurers holding a
 439 certificate of authority to transact property insurance on a
 440 direct basis in this state, other than joint underwriting
 441 associations and other entities formed pursuant to this section,
 442 to provide windstorm coverage to applicants from areas
 443 determined to be eligible pursuant to paragraph (c) who in good
 444 faith are entitled to, but are unable to procure, such coverage
 445 through ordinary means; or it shall adopt a reasonable plan or
 446 plans for the equitable apportionment or sharing among such
 447 insurers of windstorm coverage, which may include formation of
 448 an association for this purpose. As used in this subsection, the

449 term "property insurance" means insurance on real or personal
 450 property, as defined in s. 624.604, including insurance for
 451 fire, industrial fire, allied lines, farmowners multiperil,
 452 homeowners' multiperil, commercial multiperil, and mobile homes,
 453 and including liability coverages on all such insurance, but
 454 excluding inland marine as defined in s. 624.607(3) and
 455 excluding vehicle insurance as defined in s. 624.605(1)(a) other
 456 than insurance on mobile homes used as permanent dwellings. The
 457 department shall adopt rules that provide a formula for the
 458 recovery and repayment of any deferred assessments.

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

469 2.a.(I) All insurers required to be members of such
 470 association shall participate in its writings, expenses, and
 471 losses. Surplus of the association shall be retained for the
 472 payment of claims and shall not be distributed to the member
 473 insurers. Such participation by member insurers shall be in the
 474 proportion that the net direct premiums of each member insurer
 475 written for property insurance in this state during the
 476 preceding calendar year bear to the aggregate net direct

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

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

502 (III) The plan of operation shall provide a formula
 503 whereby a company voluntarily providing windstorm coverage in
 504 affected areas will be relieved wholly or partially from

505 | apportionment of a regular assessment pursuant to sub-sub-
 506 | subparagraph d.(I) or sub-sub-subparagraph d.(II).

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

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

514 | (VI) The plan of operation may also provide for the award
 515 | of credits, for a period not to exceed 3 years, from a regular
 516 | assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
 517 | subparagraph d.(II) as an incentive for taking policies out of
 518 | the Residential Property and Casualty Joint Underwriting
 519 | Association. In order to qualify for the exemption under this
 520 | sub-sub-subparagraph, the take-out plan must provide that at
 521 | least 40 percent of the policies removed from the Residential
 522 | Property and Casualty Joint Underwriting Association cover risks
 523 | located in Miami-Dade, Broward, and Palm Beach Counties or at
 524 | least 30 percent of the policies so removed cover risks located
 525 | in Miami-Dade, Broward, and Palm Beach Counties and an
 526 | additional 50 percent of the policies so removed cover risks
 527 | located in other coastal counties, and must also provide that no
 528 | more than 15 percent of the policies so removed may exclude
 529 | windstorm coverage. With the approval of the department, the
 530 | association may waive these geographic criteria for a take-out
 531 | plan that removes at least the lesser of 100,000 Residential
 532 | Property and Casualty Joint Underwriting Association policies or

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

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

550 c. The Legislature finds that the potential for unlimited
 551 deficit assessments under this subparagraph may induce insurers
 552 to attempt to reduce their writings in the voluntary market, and
 553 that such actions would worsen the availability problems that
 554 the association was created to remedy. It is the intent of the
 555 Legislature that insurers remain fully responsible for paying
 556 regular assessments and collecting emergency assessments for any
 557 deficits of the association; however, it is also the intent of
 558 the Legislature to provide a means by which assessment
 559 liabilities may be amortized over a period of years.

560 d.(I) When the deficit incurred in a particular calendar

561 year is 10 percent or less of the aggregate statewide direct
 562 written premium for property insurance for the prior calendar
 563 year for all member insurers, the association shall levy an
 564 assessment on member insurers in an amount equal to the deficit.

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

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

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

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

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

634 | (V) If regular deficit assessments are made under sub-sub-
 635 | subparagraph (I) or sub-sub-subparagraph (II), or by the
 636 | Residential Property and Casualty Joint Underwriting Association
 637 | under sub-subparagraph (6) (b) 3.a. or sub-subparagraph
 638 | (6) (b) 3.b., the association shall levy upon the association's
 639 | policyholders, as part of its next rate filing, or by a separate
 640 | rate filing solely for this purpose, a market equalization
 641 | surcharge in a percentage equal to the total amount of such
 642 | regular assessments divided by the aggregate statewide direct
 643 | written premium for property insurance for member insurers for
 644 | the prior calendar year. Market equalization surcharges under

645 | this sub-sub-subparagraph are not considered premium and are not
 646 | subject to commissions, fees, or premium taxes; however, failure
 647 | to pay a market equalization surcharge shall be treated as
 648 | failure to pay premium.

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

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

693 3. The plan shall also provide that any member with a
 694 surplus as to policyholders of \$25 ~~\$20~~ million or less writing
 695 25 percent or more of its total countrywide property insurance
 696 premiums in this state may petition the department, within the
 697 first 90 days of each calendar year, to qualify as a limited
 698 apportionment company. The apportionment of such a member
 699 company in any calendar year for which it is qualified shall not
 700 exceed its gross participation, which shall not be affected by

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701 the formula for voluntary writings. In no event shall a limited
702 apportionment company be required to participate in any
703 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
704 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
705 \$50 million after payment of available plan funds in any
706 calendar year. However, a limited apportionment company shall
707 collect from its policyholders any emergency assessment imposed
708 under sub-sub-subparagraph 2.d.(III). The plan shall provide
709 that, if the department determines that any regular assessment
710 will result in an impairment of the surplus of a limited
711 apportionment company, the department may direct that all or
712 part of such assessment be deferred. However, there shall be no
713 limitation or deferment of an emergency assessment to be
714 collected from policyholders under sub-sub-subparagraph
715 2.d.(III).

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

728 5.a. The plan of operation may include deductibles and

729 rules for classification of risks and rate modifications
 730 consistent with the objective of providing and maintaining funds
 731 sufficient to pay catastrophe losses.

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

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

757 | this subparagraph with or without facultative or other
 758 | reinsurance coverage, as the association determines appropriate.

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

765 | (I) Whether the likelihood of a loss for the individual
 766 | risk is substantially higher than for other risks of the same
 767 | class; and

768 | (II) Whether the uncertainty associated with the
 769 | individual risk is such that an appropriate premium cannot be
 770 | determined.

771 |
 772 | The acceptance or rejection of a risk by the association
 773 | pursuant to such criteria and procedures must be construed as
 774 | the private placement of insurance, and the provisions of
 775 | chapter 120 do not apply.

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

783 | (I) Pay to the producing agent of record of the policy,
 784 | for the first year, an amount that is the greater of the

785 insurer's usual and customary commission for the type of policy
 786 written or a fee equal to the usual and customary commission of
 787 the association; or

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

793
 794 If the producing agent is unwilling or unable to accept
 795 appointment, the new insurer shall pay the agent in accordance
 796 with sub-sub-subparagraph (I). Subject to the provisions of s.
 797 627.3517, the policies issued by the association must provide
 798 that if the association obtains an offer from an authorized
 799 insurer to cover the risk at its approved rates under either a
 800 standard policy including wind coverage or, if consistent with
 801 the insurer's underwriting rules as filed with the department, a
 802 basic policy including wind coverage, the risk is no longer
 803 eligible for coverage through the association. Upon termination
 804 of eligibility, the association shall provide written notice to
 805 the policyholder and agent of record stating that the
 806 association policy must be canceled as of 60 days after the date
 807 of the notice because of the offer of coverage from an
 808 authorized insurer. Other provisions of the insurance code
 809 relating to cancellation and notice of cancellation do not apply
 810 to actions under this sub-subparagraph.

811 f. When the association enters into a contractual
 812 agreement for a take-out plan, the producing agent of record of

813 the association policy is entitled to retain any unearned
 814 commission on the policy, and the insurer shall:

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

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

825

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

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

839 b. Any entity created under this subsection, or any entity
 840 formed for the purposes of this subsection, may sue and be sued,

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

869 to the effective date of chapter 76-96 shall be construed to be
 870 the assets and obligations of the successor plan created herein.

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

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

884 8. Subject to approval by the department, the association
 885 may establish different eligibility requirements and operational
 886 procedures for any line or type of coverage for any specified
 887 eligible area or portion of an eligible area if the board
 888 determines that such changes to the eligibility requirements and
 889 operational procedures are justified due to the voluntary market
 890 being sufficiently stable and competitive in such area or for
 891 such line or type of coverage and that consumers who, in good
 892 faith, are unable to obtain insurance through the voluntary
 893 market through ordinary methods would continue to have access to
 894 coverage from the association. When coverage is sought in
 895 connection with a real property transfer, such requirements and
 896 procedures shall not provide for an effective date of coverage

897 | later than the date of the closing of the transfer as
 898 | established by the transferor, the transferee, and, if
 899 | applicable, the lender.

900 | 9. Notwithstanding any other provision of law:

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

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

918 | c. Each such pledge or sale of, lien upon, and security
 919 | interest in, including the priority of such pledge, lien, or
 920 | security interest, any such assessments, emergency assessments,
 921 | market equalization or renewal surcharges, projected recoveries
 922 | from the Florida Hurricane Catastrophe Fund, reinsurance
 923 | recoverables, or other rights, revenues, or other assets which
 924 | are collected, or levied and collected, after the commencement

925 of and during the pendency of or after any such proceeding shall
 926 continue unaffected by such proceeding.

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

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

953 or entity has notice of such pledge or sale and without the need
 954 for any physical delivery, recordation, filing, or other action.

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

964 Section 11. Subsection (2) of section 627.43141, Florida
 965 Statutes, is amended to read:

966 627.43141 Notice of change in policy terms.—

967 (2) Notwithstanding any other provision of law, a renewal
 968 policy may contain a change in policy terms. If a renewal policy
 969 contains ~~does contain~~ such change, the insurer must give the
 970 named insured written notice of the change, which must be
 971 enclosed along with the written notice of renewal premium
 972 required under ~~by~~ ss. 627.4133 and 627.728. Such notice shall be
 973 entitled "Notice of Change in Policy Terms."

974 Section 12. Subsections (1), (2), (7), and (9) of section
 975 627.7015, Florida Statutes, are amended to read:

976 627.7015 Alternative procedure for resolution of disputed
 977 property insurance claims.—

978 (1) ~~PURPOSE AND SCOPE.~~—This section sets forth a
 979 nonadversarial alternative dispute resolution procedure for a
 980 mediated claim resolution conference prompted by the need for

981 effective, fair, and timely handling of property insurance
 982 claims. There is a particular need for an informal,
 983 nonthreatening forum for helping parties who elect this
 984 procedure to resolve their claims disputes because most
 985 homeowner's and commercial residential insurance policies
 986 obligate policyholders ~~insureds~~ to participate in a potentially
 987 expensive and time-consuming adversarial appraisal process
 988 before ~~prior to~~ litigation. The procedure set forth in this
 989 section is designed to bring the parties together for a mediated
 990 claims settlement conference without any of the trappings or
 991 drawbacks of an adversarial process. Before resorting to these
 992 procedures, policyholders ~~insureds~~ and insurers are encouraged
 993 to resolve claims as quickly and fairly as possible. This
 994 section is available with respect to claims under personal lines
 995 and commercial residential policies before ~~for all claimants and~~
 996 ~~insurers prior to~~ commencing the appraisal process, or before
 997 commencing litigation. Mediation may be requested only by the
 998 policyholder, as a first-party claimant, or the insurer. If
 999 requested by the policyholder ~~insured~~, participation by legal
 1000 counsel is ~~shall be~~ permitted. Mediation under this section is
 1001 also available to litigants referred to the department by a
 1002 county court or circuit court. This section does not apply to
 1003 commercial coverages, to private passenger motor vehicle
 1004 insurance coverages, or to disputes relating to liability
 1005 coverages in policies of property insurance.

1006 (2) At the time a first-party claim within the scope of
 1007 this section is filed by the policyholder, the insurer shall
 1008 notify the policyholder ~~all first-party claimants~~ of its ~~their~~

1009 right to participate in the mediation program under this
 1010 section. The department shall prepare a consumer information
 1011 pamphlet for distribution to persons participating in mediation
 1012 ~~under this section.~~

1013 (7) If the insurer fails to comply with subsection (2) by
 1014 failing to notify a policyholder ~~first-party claimant~~ of its
 1015 right to participate in the mediation program under this section
 1016 or if the insurer requests the mediation, and the mediation
 1017 results are rejected by either party, the policyholder is
 1018 ~~insured shall~~ not be required to submit to or participate in any
 1019 contractual loss appraisal process of the property loss damage
 1020 as a precondition to legal action for breach of contract against
 1021 the insurer for its failure to pay the policyholder's claims
 1022 covered by the policy.

1023 (9) For purposes of this section, the term "claim" refers
 1024 to any dispute between an insurer and a policyholder ~~an insured~~
 1025 relating to a material issue of fact other than a dispute:

1026 (a) With respect to which the insurer has a reasonable
 1027 basis to suspect fraud;

1028 (b) Where, based on agreed-upon facts as to the cause of
 1029 loss, there is no coverage under the policy;

1030 (c) With respect to which the insurer has a reasonable
 1031 basis to believe that the policyholder ~~claimant~~ has
 1032 intentionally made a material misrepresentation of fact which is
 1033 relevant to the claim, and the entire request for payment of a
 1034 loss has been denied on the basis of the material
 1035 misrepresentation; ~~or~~

1036 (d) With respect to which the amount in controversy is

1037 less than \$500, unless the parties agree to mediate a dispute
 1038 involving a lesser amount; ~~or-~~

1039 (e) Where the notice of loss is reported to the insurer
 1040 more than 36 months after the declaration of a state of
 1041 emergency by the Governor in response to a hurricane that makes
 1042 landfall in this state.

1043 Section 13. Effective upon becoming a law, subsection (4)
 1044 of section 627.7295, Florida Statutes, is amended to read:

1045 627.7295 Motor vehicle insurance contracts.-

1046 (4) ~~If subsection (7) does not apply,~~ The insurer may
 1047 cancel the policy in accordance with this code except that,
 1048 notwithstanding s. 627.728, an insurer may not cancel a new
 1049 policy or binder during the first 60 days immediately following
 1050 the effective date of the policy or binder ~~except~~ for nonpayment
 1051 of premium unless the reason for the cancellation is the
 1052 issuance of a check for the premium that is dishonored for any
 1053 reason or any other type of premium payment that was
 1054 subsequently determined to be rejected or invalid.

1055 Section 14. Effective upon becoming a law, paragraph (d)
 1056 of subsection (4) of section 627.736, Florida Statutes, is
 1057 amended to read:

1058 627.736 Required personal injury protection benefits;
 1059 exclusions; priority; claims.-

1060 (4) BENEFITS; WHEN DUE.-Benefits due from an insurer under
 1061 ss. 627.730-627.7405 shall be primary, except that benefits
 1062 received under any workers' compensation law shall be credited
 1063 against the benefits provided by subsection (1) and shall be due
 1064 and payable as loss accrues, upon receipt of reasonable proof of

1065 such loss and the amount of expenses and loss incurred which are
 1066 covered by the policy issued under ss. 627.730-627.7405. When
 1067 the Agency for Health Care Administration provides, pays, or
 1068 becomes liable for medical assistance under the Medicaid program
 1069 related to injury, sickness, disease, or death arising out of
 1070 the ownership, maintenance, or use of a motor vehicle, benefits
 1071 under ss. 627.730-627.7405 shall be subject to the provisions of
 1072 the Medicaid program.

1073 (d) All overdue payments shall bear simple interest at the
 1074 rate established under s. 55.03 or the rate established in the
 1075 insurance contract, whichever is greater, for the quarter ~~year~~
 1076 in which the payment became overdue, calculated from the date
 1077 the insurer was furnished with written notice of the amount of
 1078 covered loss. Interest shall be due at the time payment of the
 1079 overdue claim is made.

1080 Section 15. Except as otherwise provided in this act, this
 1081 act shall take effect July 1, 2012.