

By Senator Richter

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

22
23 Be It Enacted by the Legislature of the State of Florida:

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

27 627.351 Insurance risk apportionment plans.—

28 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

29 (q)1. The corporation shall certify to the office its needs

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

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

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

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed

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

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

116 (II) Offer to allow the producing agent of record of the

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

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

132 c. There shall be no credit, limitation, exemption, or
133 deferment from emergency assessments to be collected from
134 policyholders pursuant to sub-subparagraph (b)3.c. ~~(b)3.d.~~

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

143 (I) To qualify for participation, the surplus lines insurer
144 must first obtain approval from the office for its depopulation,
145 take-out, or keep-out plan and then comply with all of the

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corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

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

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

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

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

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

(E) Provides similar policy coverage.

This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).

(III) Within 10 days after the date of assumption, the

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surplus lines insurer assuming policies from the corporation
must remit a special deposit equal to the unearned premium net
of unearned commissions on the assumed block of business to the
Department of Financial Services, Bureau of Collateral
Securities. The surplus lines insurer must submit to the office
with the initial deposit an accounting of the policies assumed
and the amount of unearned premium for such policies along with
a sworn affidavit attesting to its accuracy by an officer of the
surplus lines insurer. Thereafter, the surplus lines insurer
must make a filing within 10 days after each calendar quarter,
attesting to the unearned premium in force for the previous
quarter on policies assumed from the corporation, and must
submit additional funds if the special deposit is insufficient
to cover the unearned premium on assumed policies, or must
receive a return of funds within 60 days if the special deposit
exceeds the amount of unearned premium required for assumed
policies. The special deposit is an asset of the surplus lines
insurer which is held by the department for the benefit of state
policyholders of the surplus lines insurer in the event of the
insolvency of the surplus lines insurer. If an order of
liquidation is entered in any state against the surplus lines
insurer, the department may use the special deposit for payment
of unearned premium or policy claims, return all or part of the
deposit to the domiciliary receiver, or use the funds in
accordance with any action authorized under part I of chapter
631 or in compliance with any order of a court with jurisdiction
over the insolvency.

(IV) Surplus lines brokers representing a surplus lines
insurer on a take-out program must obtain confirmation, in

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204 written or e-mail form, from each producing agent in advance
205 stating that the agent is willing to participate in the take-out
206 program with the surplus lines insurer engaging in the take-out
207 program. The take-out program is also subject to s. 627.3517. If
208 a policyholder is selected for removal from the corporation by a
209 surplus lines insurer and an admitted carrier, the offer of
210 coverage from the admitted carrier shall be given priority by
211 the corporation.

212 4. The plan shall provide for the deferment, in whole or in
213 part, of the assessment of an assessable insurer, other than an
214 emergency assessment collected from policyholders pursuant to
215 sub-subparagraph (b)3.c. ~~(b)3.d.~~, if the office finds that
216 payment of the assessment would endanger or impair the solvency
217 of the insurer. In the event an assessment against an assessable
218 insurer is deferred in whole or in part, the amount by which
219 such assessment is deferred may be assessed against the other
220 assessable insurers in a manner consistent with the basis for
221 assessments set forth in paragraph (b).

222 5. Effective July 1, 2007, in order to evaluate the costs
223 and benefits of approved take-out plans, if the corporation pays
224 a bonus or other payment to an insurer for an approved take-out
225 plan, it shall maintain a record of the address or such other
226 identifying information on the property or risk removed in order
227 to track if and when the property or risk is later insured by
228 the corporation.

229 6. Any policy taken out, assumed, or removed from the
230 corporation is, as of the effective date of the take-out,
231 assumption, or removal, direct insurance issued by the insurer
232 and not by the corporation, even if the corporation continues to

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233 service the policies. This subparagraph applies to policies of
234 the corporation and not policies taken out, assumed, or removed
235 from any other entity.

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

239 a. Underwriting files, except that a policyholder or an
240 applicant shall have access to his or her own underwriting
241 files. Confidential and exempt underwriting file records may
242 also be released to other governmental agencies upon written
243 request and demonstration of need; such records held by the
244 receiving agency remain confidential and exempt as provided
245 herein.

246 b. Claims files, until termination of all litigation and
247 settlement of all claims arising out of the same incident,
248 although portions of the claims files may remain exempt, as
249 otherwise provided by law. Confidential and exempt claims file
250 records may be released to other governmental agencies upon
251 written request and demonstration of need; such records held by
252 the receiving agency remain confidential and exempt as provided
253 herein.

254 c. Records obtained or generated by an internal auditor
255 pursuant to a routine audit, until the audit is completed, or if
256 the audit is conducted as part of an investigation, until the
257 investigation is closed or ceases to be active. An investigation
258 is considered "active" while the investigation is being
259 conducted with a reasonable, good faith belief that it could
260 lead to the filing of administrative, civil, or criminal
261 proceedings.

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

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

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

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

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

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

2. If an authorized insurer, reinsurance intermediary,

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291 eligible surplus lines insurer, or entity that has been created
292 to seek authority to write property insurance in this state is
293 considering writing or assisting in the underwriting of a risk
294 insured by the corporation, relevant information from both the
295 underwriting files and confidential claims files may be released
296 to the insurer, reinsurance intermediary, eligible surplus lines
297 insurer, or entity that has been created to seek authority to
298 write property insurance in this state provided the recipient
299 ~~insurer~~ agrees in writing, notarized and under oath, to maintain
300 the confidentiality of such files. If a policy file is
301 transferred to an insurer, that policy file is no longer a
302 public record because it is not held by an agency subject to the
303 provisions of the public records law. Underwriting files and
304 confidential claims files may also be released to staff and the
305 board of governors of the market assistance plan established
306 pursuant to s. 627.3515, who must retain the confidentiality of
307 such files, except such files may be released to authorized
308 insurers that are considering assuming the risks to which the
309 files apply, provided the insurer agrees in writing, notarized
310 and under oath, to maintain the confidentiality of such files.
311 Finally, the corporation or the board or staff of the market
312 assistance plan may make the following information obtained from
313 underwriting files and confidential claims files available to
314 licensed general lines insurance agents: name, address, and
315 telephone number of the residential property owner or insured;
316 location of the risk; rating information; loss history; and
317 policy type. The receiving licensed general lines insurance
318 agent must retain the confidentiality of the information
319 received.

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320 3. A policyholder who has filed suit against the
321 corporation has the right to discover the contents of his or her
322 own claims file to the same extent that discovery of such
323 contents would be available from a private insurer in litigation
324 as provided by the Florida Rules of Civil Procedure, the Florida
325 Evidence Code, and other applicable law. Pursuant to subpoena, a
326 third party has the right to discover the contents of an
327 insured's or applicant's underwriting or claims file to the same
328 extent that discovery of such contents would be available from a
329 private insurer by subpoena as provided by the Florida Rules of
330 Civil Procedure, the Florida Evidence Code, and other applicable
331 law, and subject to any confidentiality protections requested by
332 the corporation and agreed to by the seeking party or ordered by
333 the court. The corporation may release confidential underwriting
334 and claims file contents and information as it deems necessary
335 and appropriate to underwrite or service insurance policies and
336 claims, subject to any confidentiality protections deemed
337 necessary and appropriate by the corporation.

338 4. Portions of meetings of the corporation are exempt from
339 the provisions of s. 286.011 and s. 24(b), Art. I of the State
340 Constitution wherein confidential underwriting files or
341 confidential open claims files are discussed. All portions of
342 corporation meetings which are closed to the public shall be
343 recorded by a court reporter. The court reporter shall record
344 the times of commencement and termination of the meeting, all
345 discussion and proceedings, the names of all persons present at
346 any time, and the names of all persons speaking. No portion of
347 any closed meeting shall be off the record. Subject to the
348 provisions hereof and s. 119.07(1)(d)-(f), the court reporter's

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349 notes of any closed meeting shall be retained by the corporation
350 for a minimum of 5 years. A copy of the transcript, less any
351 exempt matters, of any closed meeting wherein claims are
352 discussed shall become public as to individual claims after
353 settlement of the claim.

354 Section 2. This act shall take effect July 1, 2012.