

By the Committee on Budget Subcommittee on General Government
Appropriations; and Senator Richter

601-01879-12

2012578c1

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

601-01879-12

2012578c1

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

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

601-01879-12

2012578c1

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

601-01879-12

2012578c1

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

601-01879-12

2012578c1

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

601-01879-12

2012578c1

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

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

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

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

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

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

167 (E) Provides similar policy coverage.

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

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

601-01879-12

2012578c1

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

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

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

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

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

191
192 This sub-sub-subparagraph does not subject any surplus lines
193 insurer to requirements in addition to part VIII of chapter 626.
194 Surplus lines brokers making an offer of coverage under this
195 sub-subparagraph are not required to comply with s.
196 626.916(1)(a), (b), (c), and (e).

197 (IV) Within 10 days after the date of assumption, the
198 surplus lines insurer assuming policies from the corporation
199 must remit a special deposit equal to the unearned premium net
200 of unearned commissions on the assumed block of business to the
201 Bureau of Collateral Securities within the Department of
202 Financial Services. The surplus lines insurer must submit to the
203 office, along with the initial deposit, an accounting of the

601-01879-12

2012578c1

204 policies assumed and the amount of unearned premium for such
205 policies and a sworn affidavit attesting to its accuracy by an
206 officer of the surplus lines insurer. Thereafter, the surplus
207 lines insurer must make a filing within 10 days after each
208 calendar quarter attesting to the unearned premium in force for
209 the previous quarter on policies assumed from the corporation,
210 and must submit additional funds with that filing if the special
211 deposit is insufficient to cover the unearned premium on assumed
212 policies, or must receive a return of funds within 60 days if
213 the special deposit exceeds the amount of unearned premium
214 required for assumed policies. The special deposit is an asset
215 of the surplus lines insurer which is held by the department for
216 the benefit of state policyholders of the surplus lines insurer
217 in the event of the insolvency of the surplus lines insurer. If
218 an order of liquidation is entered in any state against the
219 surplus lines insurer, the department may use the special
220 deposit for payment of unearned premium or policy claims, return
221 all or part of the deposit to the domiciliary receiver, or use
222 the funds in accordance with any action authorized under part I
223 of chapter 631 or in compliance with any order of a court having
224 jurisdiction over the insolvency.

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

601-01879-12

2012578c1

233 coverage from the authorized insurer shall be given priority by
234 the corporation.

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

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

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

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

601-01879-12

2012578c1

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

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

277 c. Records obtained or generated by an internal auditor
278 pursuant to a routine audit, until the audit is completed, or if
279 the audit is conducted as part of an investigation, until the
280 investigation is closed or ceases to be active. An investigation
281 is considered "active" while the investigation is being
282 conducted with a reasonable, good faith belief that it could
283 lead to the filing of administrative, civil, or criminal
284 proceedings.

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

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

290 f. All information relating to the medical condition or

601-01879-12

2012578c1

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

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

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

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

313 2. If an authorized insurer, reinsurance intermediary,
314 eligible surplus lines insurer, or entity that has filed an
315 application with the office for licensure as a property and
316 casualty insurer in this state is considering writing or
317 assisting in the underwriting of a risk insured by the
318 corporation, relevant information from both the underwriting
319 files and confidential claims files may be released to the

601-01879-12

2012578c1

insurer, reinsurance intermediary, eligible surplus lines
insurer, or entity that has been created to seek authority to
write property insurance in this state provided the recipient
~~insurer~~ agrees in writing, notarized and under oath, to maintain
the confidentiality of such files. If a policy file is
transferred to an insurer, that policy file is no longer a
public record because it is not held by an agency subject to the
provisions of the public records law. Underwriting files and
confidential claims files may also be released to staff and the
board of governors of the market assistance plan established
pursuant to s. 627.3515, who must retain the confidentiality of
such files, except such files may be released to authorized
insurers that are considering assuming the risks to which the
files apply, provided the insurer agrees in writing, notarized
and under oath, to maintain the confidentiality of such files.
Finally, the corporation or the board or staff of the market
assistance plan may make the following information obtained from
underwriting files and confidential claims files available to
licensed general lines insurance agents: name, address, and
telephone number of the residential property owner or insured;
location of the risk; rating information; loss history; and
policy type. The receiving licensed general lines insurance
agent must retain the confidentiality of the information
received.

3. A policyholder who has filed suit against the
corporation has the right to discover the contents of his or her
own claims file to the same extent that discovery of such
contents would be available from a private insurer in litigation
as provided by the Florida Rules of Civil Procedure, the Florida

601-01879-12

2012578c1

Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

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

601-01879-12

2012578c1

378

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