By Senator Richter

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A bill to be entitled

An act relating to insurance; amending s. 320.27, F.S.; providing that a salvage motor vehicle dealer is not required to carry certain insurance on vehicles that have been issued a certificate of destruction; amending s. 624.501, F.S.; conforming a cross-reference; amending s. 624.610, F.S.; revising provisions specifying which insurers are not subject to certain filing requirements relating to reinsurance; amending s. 626.261, F.S.; authorizing the Department of Financial Services to provide examinations in Spanish; amending s. 626.321, F.S.; revising provisions relating to limited licenses for travel insurance; providing that a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services may be issued such license under certain circumstances; creating s. 626.8675, F.S.; providing that provisions relating to insurance adjusters do not apply to individuals who conduct data entry into an automated claims adjustment system for portable electronics insurance claims; amending s. 627.351, F.S.; increasing the amount of surplus required for an association to qualify as a limited apportionment company; amending s. 627.4133, F.S.; revising provisions relating to the notice that an insurer must provide to an insured regarding the nonrenewal, cancellation, or termination of a commercial residential property insurance policy; creating s.

627.6011, F.S.; providing that mandatory health benefits apply only to certain health benefit plans; amending s. 627.7015, F.S.; revising provisions relating to alternative procedures for the resolution of disputed property insurance claims; amending s. 627.7295, F.S.; revising provisions relating to cancellation for nonpayment of premiums for motor vehicle insurance; amending s. 627.736, F.S.; clarifying provisions relating to the amount of interest on overdue payments for personal injury protection benefits; providing an effective date.

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

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

320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or

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

$10,000 personal injury protection. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads, highways, or streets. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. Upon making initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees now required by law; upon making a subsequent renewal application, the applicant shall pay to the department a fee of $75 in addition to any other fees now required by law. Upon making an application for a change of location, the person shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost

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

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

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

(9)

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

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

624.610 Reinsurance.—

(11)

(c) This subsection applies to cessions of directly written risk or loss. This subsection does not apply to contracts of facultative reinsurance or to any ceding insurer that has a ~~with~~ surplus as to policyholders which ~~that~~ exceeds $100 million as of the immediately preceding December 31. A ~~Additionally, any~~

ceding insurer otherwise subject to this section which had ~~with~~ less than $500,000 in direct premiums written in this state during the preceding calendar year and no more than $250,000 in direct premiums written in this state during the preceding calendar quarter, or which had ~~with~~ less than 1,000 policyholders at the end of the preceding calendar year, is exempt from ~~the requirements of~~ this subsection. ~~However, any ceding insurer otherwise subject to this section with more than $250,000 in direct premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection.~~

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

626.261 Conduct of examination.—

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

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

626.321 Limited licenses.—

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

(c) *Travel insurance.*—License covering only policies and certificates of travel insurance, which are subject to review by the office ~~under s. 624.605(1)(q)~~. Policies and certificates of travel insurance may provide coverage for risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. ~~Any~~ Such policy or certificate may be issued for terms longer than 90 ~~60~~ days, but ~~each policy or certificate~~, other than a policy or certificate providing coverage for air ambulatory services only, each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 ~~60~~ days. The license may be issued only:

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

2. To an entity or individual that is:

a. The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721;

b. An exchange company operating an exchange program approved under chapter 721;

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

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

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

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

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

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

b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The

licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee shall notify the department within 30 days after the closing or terminating of an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

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

Section 6. Section 626.8675, Florida Statutes, is created to read:

626.8675 Portable electronics insurance claims employee exemption.—

(1) This part does not apply to individuals who collect claims information from, or furnish claims information to, insureds or claimants, and who conduct data entry, including entering data into an automated claims adjudication system, if such individuals are employees of a business entity licensed under this chapter, or its affiliate, where up to 25 such individuals are under the supervision of a licensed independent adjuster or licensed agent who is exempt from licensure pursuant to s. 626.862. For purposes of this section, "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and final resolution of portable electronics insurance claims that:

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

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

(c) Must be certified as compliant with this section by a licensed independent adjuster who is an officer of a licensed business entity under this chapter.

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

Section 7. Paragraph (b) of subsection (2) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

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

property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners' multiperil, commercial multiperil, and mobile homes, and including liability coverages on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1)(a) other than insurance on mobile homes used as permanent dwellings. The department shall adopt rules that provide a formula for the recovery and repayment of any deferred assessments.

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

2.a.(I) All insurers required to be members of such association shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer written for property insurance in this state during the preceding calendar year bear to the aggregate net direct premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, in this state

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

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

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

(IV) A company which is a member of a group of companies

under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

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

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Miami-Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Miami-Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or 15 percent of the total number of Residential Property and Casualty Joint Underwriting Association policies, provided the governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will

materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

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

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

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

(II) When the deficit incurred in a particular calendar

year exceeds 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance policy premiums, as annually determined by the board and verified by the department. The department shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association

created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may pledge the proceeds of the emergency assessments under this sub-sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph are not part of an insurer’s rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay

the emergency assessment shall be treated as failure to pay premium.

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

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

e. The governing body of any unit of local government, any residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 to fund an assistance program, in conjunction with the association, for the purpose of

defraying deficits of the association. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the association, 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 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 the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may enter into such contracts with the association and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this subparagraph, 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. If any of the bonds remain unsold

60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of $25 ~~$20~~ million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a member company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds $50 million after payment of available plan funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-sub-subparagraph 2.d.(III). The plan shall provide that, if the department determines that any regular assessment will result in an impairment of the surplus of a limited

apportionment company, the department may direct that all or part of such assessment be deferred. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-sub-subparagraph 2.d.(III).

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

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

b. It is the intent of the Legislature that the rates for coverage provided by the association be actuarially sound and not competitive with approved rates charged in the admitted voluntary market such that the association functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. The plan of operation shall provide a mechanism to assure that, beginning no later than January 1, 1999, the rates charged by the

association for each line of business are reflective of approved rates in the voluntary market for hurricane coverage for each line of business in the various areas eligible for association coverage.

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

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

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

(II) Whether the uncertainty associated with the individual

risk is such that an appropriate premium cannot be determined.

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

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

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

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

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I). Subject to the provisions of s. 627.3517, the policies issued by the association must provide that if the association obtains an offer from an authorized

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

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

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

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

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

with sub-sub-subparagraph (I).

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

b. Any entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued, may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (6)(q)2., in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the

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

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

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

8. Subject to approval by the department, the association may establish different eligibility requirements and operational

procedures for any line or type of coverage for any specified eligible area or portion of an eligible area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the association. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

9. Notwithstanding any other provision of law:

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

b. No such proceeding shall relieve the association of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges, projected

recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or any other rights, revenues, or other assets of the association pledged.

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

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

e. Any such pledge or sale of assessments, revenues, contract rights or other rights or assets of the association shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, contract, or other rights or assets, whether or not imposed or collected at the time the pledge or

sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, contract, or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

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

Section 8. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner’s, mobile home owner’s, farmowner’s, condominium association, condominium unit owner’s, apartment building, or other policy covering a residential structure or

its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 ~~100~~ days before the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30.~~ The notice must include the ~~reason or~~ reasons for the nonrenewal, cancellation, or termination, except that:

1. The insurer must ~~shall~~ give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days before ~~prior to~~ the effective date of the nonrenewal, cancellation, or termination for a first-named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least the 5 years before ~~a 5-year period immediately prior to~~ the date of the written notice.

2. If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for ~~in connection with~~ the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a

financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail.~~, and~~ If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

3. If ~~such~~ cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

4. After the policy has been in effect for 90 days, it may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or unless the cancellation applies to all insureds for a given class of insureds under such policies. This subparagraph does not apply to individually rated risks having a policy term of less than 90 days.

~~4. The requirement for providing written notice by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706.~~

5.~~b.~~ A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

~~After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.~~

6.~~5.~~ Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at

least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7.~~6.~~ A policy covering both a home and motor vehicle may be nonrenewed for any reason applicable to ~~either~~ the property or motor vehicle insurance after providing 90 days' notice.

Section 9. Section 627.6011, Florida Statutes, is created to read:

627.6011 Mandated coverages.—Mandatory health benefits regulated under this chapter which must be covered by an insurer are intended to apply only to the type of health benefit plan defined in s. 627.6699(3), issued in any market, unless specifically designated otherwise. For purposes of this section, the term "mandatory health benefits" means those benefits set forth in ss. 627.6401-627.64193 and any cross-references to these sections, and any other mandatory treatment or health coverages or benefits enacted on or after July 1, 2012.

Section 10. Subsections (1), (2), (7), and (9) of section 627.7015, Florida Statutes, are amended to read:

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

(1) ~~PURPOSE AND SCOPE.—~~This section sets forth a nonadversarial alternative dispute resolution procedure for a mediated claim resolution conference prompted by the need for effective, fair, and timely handling of property insurance claims. There is a particular need for an informal, nonthreatening forum for helping parties who elect this procedure to resolve their claims disputes because most homeowner's and commercial residential insurance policies obligate policyholders ~~insureds~~ to participate in a potentially expensive and time-consuming adversarial appraisal process before ~~prior to~~ litigation. The procedure set forth in this section is designed to bring the parties together for a mediated claims settlement conference without any of the trappings or drawbacks of an adversarial process. Before resorting to these procedures, policyholders ~~insureds~~ and insurers are encouraged to resolve claims as quickly and fairly as possible. This section is available with respect to claims under personal lines and commercial residential policies before ~~for all claimants and insurers prior to~~ commencing the appraisal process, or before commencing litigation. Mediation may be requested only by the policyholder, as a first-party claimant, or the insurer. If requested by the policyholder ~~insured~~, participation by legal counsel is ~~shall be~~ permitted. Mediation under this section is also available to litigants referred to the department by a county court or circuit court. This section does not apply to commercial coverages, to private passenger motor vehicle insurance coverages, or to disputes relating to liability coverages in policies of property insurance.

(2) At the time a first-party claim within the scope of

this section is filed by the policyholder, the insurer shall notify the policyholder ~~all first-party claimants~~ of its ~~their~~ right to participate in the mediation program under this section. The department shall prepare a consumer information pamphlet for distribution to persons participating in mediation ~~under this section~~.

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

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

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

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

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

(d) With respect to which the amount in controversy is less than $500, unless the parties agree to mediate a dispute involving a lesser amount; or~~.~~

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

Section 11. Subsection (4) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

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

Section 12. Paragraph (d) of subsection (4) of section 627.736, Florida Statutes, is amended to read:

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

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

covered by the policy issued under ss. 627.730-627.7405. When the Agency for Health Care Administration provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of the Medicaid program.

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

Section 13. This act shall take effect July 1, 2012.