

20102044er

1  
2 An act relating to insurance; amending s. 215.555,  
3 F.S.; delaying the repeal of a provision exempting  
4 medical malpractice insurance premiums from emergency  
5 assessments to the Hurricane Catastrophe Fund;  
6 delaying the date on and after which medical  
7 malpractice insurance premiums become subject to  
8 emergency assessments; amending s. 624.408, F.S.;  
9 revising the minimum surplus as to policyholders which  
10 must be maintained by certain insurers; authorizing  
11 the Office of Insurance Regulation to reduce the  
12 surplus requirement under specified circumstances;  
13 amending s. 624.4085, F.S.; defining the term "surplus  
14 action level"; expanding the list of items that must  
15 be included in an insurer's risk-based capital plan;  
16 specifying actions constituting a surplus action level  
17 event; requiring that an insurer submit to the office  
18 a risk-based capital plan upon the occurrence of such  
19 event; providing requirements for such plan;  
20 preserving the existing authority of the office;  
21 amending s. 624.4095, F.S.; excluding certain premiums  
22 for federal multiple-peril crop insurance from  
23 calculations for an insurer's gross writing ratio;  
24 requiring insurers to disclose the gross written  
25 premiums for federal multiple-peril crop insurance in  
26 a financial statement; amending s. 626.221, F.S.;  
27 exempting certain individuals from the requirement to  
28 pass an examination before being issued a license as  
29 an agent, customer representative, or adjuster;

20102044er

30 amending s. 624.424, F.S.; revising the frequency that  
31 an insurer may use the same accountant or partner to  
32 prepare an annual audited financial report; amending  
33 s. 626.7452, F.S.; removing an exception relating to  
34 the examination of managing general agents; amending  
35 s. 626.854, F.S.; providing statements that may be  
36 considered deceptive or misleading if made in any  
37 public adjuster's advertisement or solicitation;  
38 providing a definition for the term "written  
39 advertisement"; requiring that a disclaimer be  
40 included in any public adjuster's written  
41 advertisement; providing requirements for such  
42 disclaimer; providing limitations on the amount of  
43 compensation that may be received for a reopened or  
44 supplemental claim; requiring certain persons who act  
45 on behalf of an insurer to provide notice to the  
46 insurer, claimant, public adjuster, or legal  
47 representative for an onsite inspection of the insured  
48 property; authorizing the insured or claimant to deny  
49 access to the property if notice is not provided;  
50 requiring the public adjuster to ensure prompt notice  
51 of certain property loss claims; providing that an  
52 insurer be allowed to interview the insured directly  
53 about the loss claim; prohibiting the insurer from  
54 obstructing or preventing the public adjuster from  
55 communicating with the insured; requiring that the  
56 insurer communicate with the public adjuster in an  
57 effort to reach agreement as to the scope of the  
58 covered loss under the insurance policy; prohibiting a

20102044er

59 public adjuster from restricting or preventing persons  
60 acting on behalf of the insured from having reasonable  
61 access to the insured or the insured's property;  
62 prohibiting a public adjuster from restricting or  
63 preventing the insured's adjuster from having  
64 reasonable access to or inspecting the insured's  
65 property; authorizing the insured's adjuster to be  
66 present for the inspection; prohibiting a licensed  
67 contractor or subcontractor from adjusting a claim on  
68 behalf of an insured if such contractor or  
69 subcontractor is not a licensed public adjuster;  
70 providing an exception; amending s. 626.8651, F.S.;  
71 requiring that a public adjuster apprentice complete a  
72 minimum number of hours of continuing education to  
73 qualify for licensure; amending s. 626.8796, F.S.;  
74 providing requirements for a public adjuster contract;  
75 creating s. 626.70132, F.S.; requiring that notice of  
76 a claim, supplemental claim, or reopened claim be  
77 given to the insurer within a specified period after a  
78 windstorm or hurricane occurs; providing a definition  
79 for the terms "supplemental claim" or "reopened  
80 claim"; providing applicability; amending s. 627.0613,  
81 F.S.; requiring the office of the consumer advocate to  
82 objectively grade insurers annually based on the  
83 number of valid consumer complaints and other  
84 measurable and objective factors; defining the term  
85 "valid consumer complaint"; amending s. 627.062, F.S.;  
86 requiring that the office issue an approval rather  
87 than a notice of intent to approve following its

20102044er

88 approval of a file and use filing; prohibiting the  
89 Office of Insurance Regulation from, directly or  
90 indirectly, prohibiting an insurer from paying  
91 acquisition costs based on the full amount of the  
92 premium; prohibiting the Office of Insurance  
93 Regulation from, directly or indirectly, impeding the  
94 right of an insurer to acquire policyholders,  
95 advertise or appoint agents, or regulate agent  
96 commissions; authorizing an insurer to make a rate  
97 filing limited to changes in the cost of reinsurance,  
98 the cost of financing products used as a replacement  
99 for reinsurance, or changes in an inflation trend  
100 factor published annually by the Office of Insurance  
101 Regulation; providing that an insurer may use this  
102 provision only if the increase from such filing and  
103 any other rate filing does not exceed 10 percent for  
104 any policyholder in a policy year; deleting provisions  
105 relating to a rate filing for financing products  
106 relating to the Temporary Increase in Coverage Limits;  
107 revising the information that must be included in a  
108 rate filing relating to certain reinsurance or  
109 financing products; deleting a provision that  
110 prohibited an insurer from making certain rate filings  
111 within a certain period of time after a rate increase;  
112 deleting a provision prohibiting an insurer from  
113 filing for a rate increase within 6 months after it  
114 makes certain rate filings; specifying the information  
115 that an insurer must include in a rate filing based on  
116 the change in an inflation trend factor published by

20102044er

117 the Office of Insurance Regulation; requiring that the  
118 office annually publish one or more inflation trend  
119 factors; exempting the inflation trend factors from  
120 rulemaking; providing that an insurer is not required  
121 to adopt an inflation trend factor; requiring the  
122 Office of Insurance Regulation to propose a plan for  
123 developing a website, contingent upon an  
124 appropriation, which provides consumers with  
125 information necessary to make an informed decision  
126 when purchasing homeowners' insurance; requiring that  
127 the Financial Services Commission review the proposed  
128 plan to implement the website; specifying matters that  
129 the Office of Insurance Regulation must consider in  
130 developing the website; deleting obsolete provisions  
131 relating to legislation enacted during the 2003  
132 Special Session D of the Legislature; amending s.  
133 627.0629, F.S.; providing legislative intent that  
134 insurers provide consumers with accurate pricing  
135 signals for alterations in order to minimize losses,  
136 but that mitigation discounts not result in a loss of  
137 income for the insurer; requiring rate filings for  
138 residential property insurance to include actuarially  
139 reasonable debits that provide proper pricing;  
140 deleting provisions that require the office to develop  
141 certain rate differentials for hurricane mitigation  
142 measures; providing for an increase in base rates if  
143 mitigation discounts exceed the aggregate reduction in  
144 expected losses; requiring the Office of Insurance  
145 Regulation to reevaluate discounts, debits, credits,

20102044er

146 and other rate differentials by a certain date;  
147 requiring the Office of Insurance Regulation, in  
148 consultation with the Department of Financial Services  
149 and the Department of Community Affairs, to develop a  
150 method for insurers to establish debits for certain  
151 hurricane mitigation measures by a certain date;  
152 requiring the Financial Services Commission to adopt  
153 rules relating to such debits by a certain date;  
154 deleting a provision that prohibits an insurer from  
155 including an expense or profit load in the cost of  
156 reinsurance to replace the Temporary Increase in  
157 Coverage Limits; amending s. 627.351, F.S.; renaming  
158 the "high-risk account" as the "coastal account";  
159 revising the conditions under which the Citizens  
160 policyholder surcharge may be imposed; providing that  
161 members of the Citizens Property Insurance Corporation  
162 Board of Governors are not prohibited from practicing  
163 in a certain profession if not prohibited by law or  
164 ordinance; prohibiting board members from voting on  
165 certain measures; changing the date on which the  
166 boundaries of high-risk areas eligible for certain  
167 wind-only coverages will be reduced if certain  
168 circumstances exist; providing a directive to the  
169 Division of Statutory Revision; amending s. 627.4133,  
170 F.S.; authorizing an insurer to cancel policies after  
171 45 days' notice if the Office of Insurance Regulation  
172 determines that the cancellation of policies is  
173 necessary to protect the interests of the public or  
174 policyholders; authorizing the Office of Insurance

20102044er

175 Regulation to place an insurer under administrative  
176 supervision or appoint a receiver upon the consent of  
177 the insurer under certain circumstances; creating s.  
178 627.41341, F.S.; providing definitions; requiring the  
179 delivery of a "Notice of Change in Policy Terms" under  
180 certain circumstances; specifying requirements for  
181 such notice; specifying actions constituting proof of  
182 notice; authorizing policy renewals to contain a  
183 change in policy terms; providing that receipt of  
184 payment by an insurer is deemed acceptance of new  
185 policy terms by an insured; providing that the  
186 original policy remains in effect until the occurrence  
187 of specified events if an insurer fails to provide  
188 notice; providing intent; amending s. 627.7011, F.S.;  
189 requiring that an insurer pay the actual cash value of  
190 an insured loss, less any applicable deductible, under  
191 certain circumstances; requiring that a policyholder  
192 enter into a contract for the performance of building  
193 and structural repairs; requiring that an insurer pay  
194 certain remaining amounts; restricting insurers and  
195 contractors from requiring advance payments for  
196 certain repairs and expenses; authorizing an insured  
197 to make a claim for replacement costs within a certain  
198 period after the insurer pays actual cash value to  
199 make a claim for replacement costs; requiring an  
200 insurer to pay the replacement costs if a total loss  
201 occurs; amending s. 627.70131, F.S.; specifying  
202 application of certain time periods to initial or  
203 supplemental property insurance claim notices and

20102044er

204 payments; amending s. 627.711, F.S.; revising the list  
205 of persons qualified to sign certain mitigation  
206 verification forms for certain purposes; authorizing  
207 insurers to accept forms from certain other persons;  
208 providing requirements for persons authorized to sign  
209 mitigation forms; prohibiting misconduct in performing  
210 hurricane mitigation inspection or completing uniform  
211 mitigation forms causing certain harm; specifying what  
212 constitutes misconduct; authorizing certain licensing  
213 boards to commence disciplinary proceedings and impose  
214 administrative fines and sanctions; providing for  
215 liability of mitigation inspectors; requiring certain  
216 entities to file reports of evidence of fraud;  
217 providing for immunity from liability for reporting  
218 fraud; providing for investigative reports from the  
219 Division of Insurance Fraud; providing penalties;  
220 authorizing insurers to require independent  
221 verification of uniform mitigation verification forms;  
222 creating s. 628.252, F.S.; requiring that every  
223 domestic property insurer notify the office of its  
224 intention to enter into certain agreements, contracts,  
225 and arrangements; prohibiting a domestic property  
226 insurer from entering into such agreements, contracts,  
227 or arrangements unless specified criteria are met;  
228 preserving the existing authority of the office;  
229 providing an appropriation to the Office of Insurance  
230 Regulation and authorizing an additional position;  
231 providing effective dates.  
232

20102044er

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

234

235 Section 1. Paragraph (b) of subsection (6) of section  
236 215.555, Florida Statutes, is amended to read:

237 215.555 Florida Hurricane Catastrophe Fund.—

238 (6) REVENUE BONDS.—

239 (b) *Emergency assessments*.—

240 1. If the board determines that the amount of revenue  
241 produced under subsection (5) is insufficient to fund the  
242 obligations, costs, and expenses of the fund and the  
243 corporation, including repayment of revenue bonds and that  
244 portion of the debt service coverage not met by reimbursement  
245 premiums, the board shall direct the Office of Insurance  
246 Regulation to levy, by order, an emergency assessment on direct  
247 premiums for all property and casualty lines of business in this  
248 state, including property and casualty business of surplus lines  
249 insurers regulated under part VIII of chapter 626, but not  
250 including any workers' compensation premiums or medical  
251 malpractice premiums. As used in this subsection, the term  
252 "property and casualty business" includes all lines of business  
253 identified on Form 2, Exhibit of Premiums and Losses, in the  
254 annual statement required of authorized insurers by s. 624.424  
255 and any rule adopted under this section, except for those lines  
256 identified as accident and health insurance and except for  
257 policies written under the National Flood Insurance Program. The  
258 assessment shall be specified as a percentage of direct written  
259 premium and is subject to annual adjustments by the board in  
260 order to meet debt obligations. The same percentage shall apply  
261 to all policies in lines of business subject to the assessment

20102044er

262 issued or renewed during the 12-month period beginning on the  
263 effective date of the assessment.

264       2. A premium is not subject to an annual assessment under  
265 this paragraph in excess of 6 percent of premium with respect to  
266 obligations arising out of losses attributable to any one  
267 contract year, and a premium is not subject to an aggregate  
268 annual assessment under this paragraph in excess of 10 percent  
269 of premium. An annual assessment under this paragraph shall  
270 continue as long as the revenue bonds issued with respect to  
271 which the assessment was imposed are outstanding, including any  
272 bonds the proceeds of which were used to refund the revenue  
273 bonds, unless adequate provision has been made for the payment  
274 of the bonds under the documents authorizing issuance of the  
275 bonds.

276       3. Emergency assessments shall be collected from  
277 policyholders. Emergency assessments shall be remitted by  
278 insurers as a percentage of direct written premium for the  
279 preceding calendar quarter as specified in the order from the  
280 Office of Insurance Regulation. The office shall verify the  
281 accurate and timely collection and remittance of emergency  
282 assessments and shall report the information to the board in a  
283 form and at a time specified by the board. Each insurer  
284 collecting assessments shall provide the information with  
285 respect to premiums and collections as may be required by the  
286 office to enable the office to monitor and verify compliance  
287 with this paragraph.

288       4. With respect to assessments of surplus lines premiums,  
289 each surplus lines agent shall collect the assessment at the  
290 same time as the agent collects the surplus lines tax required

20102044er

291 by s. 626.932, and the surplus lines agent shall remit the  
292 assessment to the Florida Surplus Lines Service Office created  
293 by s. 626.921 at the same time as the agent remits the surplus  
294 lines tax to the Florida Surplus Lines Service Office. The  
295 emergency assessment on each insured procuring coverage and  
296 filing under s. 626.938 shall be remitted by the insured to the  
297 Florida Surplus Lines Service Office at the time the insured  
298 pays the surplus lines tax to the Florida Surplus Lines Service  
299 Office. The Florida Surplus Lines Service Office shall remit the  
300 collected assessments to the fund or corporation as provided in  
301 the order levied by the Office of Insurance Regulation. The  
302 Florida Surplus Lines Service Office shall verify the proper  
303 application of such emergency assessments and shall assist the  
304 board in ensuring the accurate and timely collection and  
305 remittance of assessments as required by the board. The Florida  
306 Surplus Lines Service Office shall annually calculate the  
307 aggregate written premium on property and casualty business,  
308 other than workers' compensation and medical malpractice,  
309 procured through surplus lines agents and insureds procuring  
310 coverage and filing under s. 626.938 and shall report the  
311 information to the board in a form and at a time specified by  
312 the board.

313 5. Any assessment authority not used for a particular  
314 contract year may be used for a subsequent contract year. If,  
315 for a subsequent contract year, the board determines that the  
316 amount of revenue produced under subsection (5) is insufficient  
317 to fund the obligations, costs, and expenses of the fund and the  
318 corporation, including repayment of revenue bonds and that  
319 portion of the debt service coverage not met by reimbursement

20102044er

320 premiums, the board shall direct the Office of Insurance  
321 Regulation to levy an emergency assessment up to an amount not  
322 exceeding the amount of unused assessment authority from a  
323 previous contract year or years, plus an additional 4 percent  
324 provided that the assessments in the aggregate do not exceed the  
325 limits specified in subparagraph 2.

326 6. The assessments otherwise payable to the corporation  
327 under this paragraph shall be paid to the fund unless and until  
328 the Office of Insurance Regulation and the Florida Surplus Lines  
329 Service Office have received from the corporation and the fund a  
330 notice, which shall be conclusive and upon which they may rely  
331 without further inquiry, that the corporation has issued bonds  
332 and the fund has no agreements in effect with local governments  
333 under paragraph (c). On or after the date of the notice and  
334 until the date the corporation has no bonds outstanding, the  
335 fund shall have no right, title, or interest in or to the  
336 assessments, except as provided in the fund's agreement with the  
337 corporation.

338 7. Emergency assessments are not premium and are not  
339 subject to the premium tax, to the surplus lines tax, to any  
340 fees, or to any commissions. An insurer is liable for all  
341 assessments that it collects and must treat the failure of an  
342 insured to pay an assessment as a failure to pay the premium. An  
343 insurer is not liable for uncollectible assessments.

344 8. When an insurer is required to return an unearned  
345 premium, it shall also return any collected assessment  
346 attributable to the unearned premium. A credit adjustment to the  
347 collected assessment may be made by the insurer with regard to  
348 future remittances that are payable to the fund or corporation,

20102044er

349 but the insurer is not entitled to a refund.

350 9. When a surplus lines insured or an insured who has  
351 procured coverage and filed under s. 626.938 is entitled to the  
352 return of an unearned premium, the Florida Surplus Lines Service  
353 Office shall provide a credit or refund to the agent or such  
354 insured for the collected assessment attributable to the  
355 unearned premium prior to remitting the emergency assessment  
356 collected to the fund or corporation.

357 10. The exemption of medical malpractice insurance premiums  
358 from emergency assessments under this paragraph is repealed May  
359 31, 2013 ~~2010~~, and medical malpractice insurance premiums shall  
360 be subject to emergency assessments attributable to loss events  
361 occurring in the contract years commencing on June 1, 2013 ~~2010~~.

362 Section 2. Section 624.408, Florida Statutes, is amended to  
363 read:

364 624.408 Surplus as to policyholders required; new and  
365 existing insurers.—

366 (1) ~~(a)~~ To maintain a certificate of authority to transact  
367 any one kind or combinations of kinds of insurance, as defined  
368 in part V of this chapter, an insurer in this state shall at all  
369 times maintain surplus as to policyholders at least ~~not less~~  
370 ~~than~~ the greater of:

371 (a)1. Except as provided in paragraphs (e), (f), and (g)  
372 ~~subparagraph 5. and paragraph (b)~~, \$1.5 million;

373 (b)2. For life insurers, 4 percent of the insurer's total  
374 liabilities;

375 (c)3. For life and health insurers, 4 percent of the  
376 insurer's total liabilities plus 6 percent of the insurer's  
377 liabilities relative to health insurance; or

20102044er

378 (d)4. For all insurers other than mortgage guaranty  
379 insurers, life insurers, and life and health insurers, 10  
380 percent of the insurer's total liabilities.

381 (e)5. For property and casualty insurers, \$4 million,  
382 except property and casualty insurers authorized to underwrite  
383 any line of residential property insurance.

384 (f)(b) For a residential any property and casualty insurer  
385 not holding a certificate of authority before July 1, 2010 on  
386 December 1, 1993, \$15 million. the

387 (g) For a residential property insurer having a certificate  
388 of authority before July 1, 2010, \$5 million until July 1, 2015,  
389 \$10 million after July 1, 2015, and \$15 million after July 1,  
390 2020. The office may reduce this surplus requirement if the  
391 insurer is not writing new business, has premiums in force of  
392 less than \$1 million per year in residential property insurance,  
393 or is a mutual insurance company. following amounts apply  
394 instead of the \$4 million required by subparagraph (a)5.:

395 1. On December 31, 2001, and until December 30, 2002, \$3  
396 million.

397 2. On December 31, 2002, and until December 30, 2003, \$3.25  
398 million.

399 3. On December 31, 2003, and until December 30, 2004, \$3.6  
400 million.

401 4. On December 31, 2004, and thereafter, \$4 million.

402 (2) For purposes of this section, liabilities do shall not  
403 include liabilities required under s. 625.041(4). For purposes  
404 of computing minimum surplus as to policyholders pursuant to s.  
405 625.305(1), liabilities shall include liabilities required under  
406 s. 625.041(4).

20102044er

407           (3) This section does not require any ~~No insurer shall be~~  
408 ~~required under this section~~ to have surplus as to policyholders  
409 greater than \$100 million.

410           (4) A mortgage guaranty insurer shall maintain a minimum  
411 surplus as required by s. 635.042.

412           Section 3. Present paragraph (q) of subsection (1) of  
413 section 624.4085, Florida Statutes, is redesignated as paragraph  
414 (r), and a new paragraph (q) is added to that subsection,  
415 paragraph (b) of subsection (3) of that section is amended, and  
416 subsections (7) through (13) of that section are redesignated as  
417 subsections (9) through (15), respectively, and new subsections  
418 (7) and (8) are added to that section, to read:

419           624.4085 Risk-based capital requirements for insurers.—

420           (1) As used in this section, the term:

421           (q) "Surplus action level" means a loss of surplus on any  
422 quarterly or annual financial report which exceeds 15 percent,  
423 or which cumulatively for the calendar year exceeds 15 percent  
424 as of the most recent filed quarterly or annual report.

425           (3)

426           (b) If a company action level event occurs, the insurer  
427 shall prepare and submit to the office a risk-based capital  
428 plan, which must:

429           1. Identify the conditions that contribute to the company  
430 action level event;

431           2. Contain proposals of corrective actions that the insurer  
432 intends to take and that are reasonably expected to result in  
433 the elimination of the company action level event;

434           3. Provide projections of the insurer's financial results  
435 in the current year and at least the 4 succeeding years, both in

20102044er

436 the absence of proposed corrective actions and giving effect to  
437 the proposed corrective actions, including projections of  
438 statutory operating income, net income, capital, and surplus.  
439 The projections for both new and renewal business may include  
440 separate projections for each major line of business and, if  
441 separate projections are provided, must separately identify each  
442 significant income, expense, and benefit component;

443 4. Identify the key assumptions affecting the insurer's  
444 projections and the sensitivity of the projections to the  
445 assumptions; ~~and~~

446 5. Identify the quality of, and problems associated with,  
447 the insurer's business, including, but not limited to, its  
448 assets, anticipated business growth and associated surplus  
449 strain, extraordinary exposure to risk, mix of business, and any  
450 use of reinsurance; ~~and~~

451 6. Include, at the request of the office, for a residential  
452 property insurer that conducts any business with affiliates, a  
453 columnar worksheet, which shall include all affiliates who have  
454 contracted with, done business with, or otherwise received  
455 remuneration from the insurer and shall list the following  
456 financial information from the immediately preceding calendar  
457 year, listed separately for each affiliate:

458 a. Total assets;

459 b. Total liabilities;

460 c. Surplus or shareholders equity;

461 d. Net income after taxes or distributions made solely for  
462 satisfying tax liabilities;

463 e. Total amounts received or receivable from parents,  
464 subsidiaries, and affiliates;

20102044er

465 f. Total amounts paid or payable to any parent,  
466 subsidiaries, and affiliates;

467 g. Dividends paid or payable to shareholders of common  
468 stock;

469 h. Debt service, including principle and interest, paid on  
470 debt incurred to capitalize or recapitalize insurance companies  
471 or fund other insurance-related activities; and

472 i. Payments made for other contractual obligations to  
473 support insurance-related activities.

474 (7) (a) A surplus action level event includes:

475 1. The filing of a quarterly or annual statutory financial  
476 statement by an insurer, which indicates that the insurer's  
477 total surplus has declined by more than 15 percent from the  
478 previous year's annual statement, or cumulatively for the  
479 current year through the most recent quarterly financial  
480 statement;

481 2. The notification by the office to the insurer of an  
482 adjusted quarterly or annual financial statement that indicates  
483 an event in subparagraph 1., unless the insurer challenges the  
484 adjusted quarterly or annual financial statement under  
485 subsection (9); or

486 3. The notification by the office to the insurer that the  
487 office has, after a hearing, rejected the insurer's challenge if  
488 an insurer challenges, under subsection (9), an adjusted  
489 quarterly or annual financial statement that indicates an event  
490 in subparagraph 1.

491 (b) If a surplus action level event occurs, the insurer  
492 must prepare and submit to the office a risk-based capital plan,  
493 which must:

20102044er

494 1. Identify the conditions that contribute to the surplus  
495 action level event;

496 2. Contain proposals of corrective actions that the insurer  
497 intends to take and that are reasonably expected to ultimately  
498 result in the elimination of additional surplus losses;

499 3. Provide projections of the insurer's financial results  
500 in the current year and at least the 2 succeeding years, both in  
501 the absence of proposed corrective actions and giving effect to  
502 the proposed corrective actions, including projections of  
503 statutory operating income, net income, capital, and surplus.  
504 The projections for both new and renewal business may include  
505 separate projections for each major line of business and, if  
506 separate projections are provided, must separately identify each  
507 significant income, expense, and benefit component;

508 4. Identify the key assumptions affecting the insurer's  
509 projections and the sensitivity of the projections to the  
510 assumptions;

511 5. Identify the quality of, and problems associated with,  
512 the insurer's business, including, but not limited to, its  
513 assets, anticipated business growth and associated surplus  
514 strain, extraordinary exposure to risk, mix of business, and any  
515 use of reinsurance;

516 6. Include, at the request of the office, for a residential  
517 property insurer that conducts any business with affiliates, a  
518 columnar worksheet, which shall include all affiliates who have  
519 received remuneration from the insurer and shall list the  
520 following financial information from the immediately preceding  
521 calendar year listed separately for each affiliate:

522 a. Total assets;

20102044er

523       b. Total liabilities;  
524       c. Surplus or shareholders equity;  
525       d. Net income after taxes or distributions made solely for  
526 satisfying tax liabilities;  
527       e. Total amounts received or receivable from parents,  
528 subsidiaries, and affiliates;  
529       f. Total amounts paid or payable to any parent,  
530 subsidiaries, and affiliates;  
531       g. Dividends paid or payable to shareholders of common  
532 stock;  
533       h. Debt service, including principle and interest, paid on  
534 debt incurred to capitalize or recapitalize insurance companies  
535 or fund other insurance-related activities; and  
536       i. Payments made for other contractual obligations to  
537 support insurance-related activities.  
538       7. Contain, at the request of the office, a recertification  
539 of reserves for the insurer prepared by an actuary.  
540       (c) The risk-based capital plan must be submitted:  
541       1. Within 45 days after the surplus action level event; or  
542       2. If the insurer challenges an adjusted quarterly or  
543 annual financial statement under subsection (9), within 45 days  
544 after notification to the insurer that the office has, after a  
545 hearing, rejected the insurer's challenge.  
546       (8) This section does not limit any existing authority of  
547 the office.  
548       Section 4. Subsection (7) is added to section 624.4095,  
549 Florida Statutes, to read:  
550       624.4095 Premiums written; restrictions.—  
551       (7) For purposes of this section, s. 624.407, and s.

20102044er

552 624.408, with regard to capital and surplus requirements, gross  
553 written premiums for federal multiple-peril crop insurance which  
554 are ceded to the Federal Crop Insurance Corporation or  
555 authorized reinsurers may not be included in the calculation of  
556 an insurer's gross writing ratio. The liabilities for ceded  
557 reinsurance premiums payable for federal multiple-peril crop  
558 insurance ceded to the Federal Crop Insurance Corporation and  
559 authorized reinsurers shall be netted against the asset for  
560 amounts recoverable from reinsurers. Each insurer that writes  
561 other insurance products together with federal multiple-peril  
562 crop insurance shall disclose in the notes to its annual and  
563 quarterly financial statements, or in a supplement to those  
564 statements, the gross written premiums for federal multiple-  
565 peril crop insurance.

566 Section 5. Paragraph (n) is added to subsection (2) of  
567 section 626.221, Florida Statutes, to read:

568 626.221 Examination requirement; exemptions.—

569 (2) However, no such examination shall be necessary in any  
570 of the following cases:

571 (n) An applicant for license as a customer representative  
572 with respect to property insurance who has earned the  
573 designation of Certified Insurance Representative (CIR) from the  
574 National Association of Christian Catastrophe Insurance  
575 Adjusters.

576 Section 6. Subsection (8) of section 624.424, Florida  
577 Statutes, is amended to read:

578 624.424 Annual statement and other information.—

579 (8) (a) All authorized insurers must have conducted an  
580 annual audit by an independent certified public accountant and

20102044er

581 must file an audited financial report with the office on or  
582 before June 1 for the preceding year ending December 31. The  
583 office may require an insurer to file an audited financial  
584 report earlier than June 1 upon 90 days' advance notice to the  
585 insurer. The office may immediately suspend an insurer's  
586 certificate of authority by order if an insurer's failure to  
587 file required reports, financial statements, or information  
588 required by this subsection or rule adopted pursuant thereto  
589 creates a significant uncertainty as to the insurer's continuing  
590 eligibility for a certificate of authority.

591 (b) Any authorized insurer otherwise subject to this  
592 section having direct premiums written in this state of less  
593 than \$1 million in any calendar year and fewer than 1,000  
594 policyholders or certificateholders of directly written policies  
595 nationwide at the end of such calendar year is exempt from this  
596 section for such year unless the office makes a specific finding  
597 that compliance is necessary in order for the office to carry  
598 out its statutory responsibilities. However, any insurer having  
599 assumed premiums pursuant to contracts or treaties or  
600 reinsurance of \$1 million or more is not exempt. Any insurer  
601 subject to an exemption must submit by March 1 following the  
602 year to which the exemption applies an affidavit sworn to by a  
603 responsible officer of the insurer specifying the amount of  
604 direct premiums written in this state and number of  
605 policyholders or certificateholders.

606 (c) The board of directors of an insurer shall hire the  
607 certified public accountant that prepares the audit required by  
608 this subsection and the board shall establish an audit committee  
609 of three or more directors of the insurer or an affiliated

20102044er

610 company. The audit committee shall be responsible for discussing  
611 audit findings and interacting with the certified public  
612 accountant with regard to her or his findings. The audit  
613 committee shall be comprised solely of members who are free from  
614 any relationship that, in the opinion of its board of directors,  
615 would interfere with the exercise of independent judgment as a  
616 committee member. The audit committee shall report to the board  
617 any findings of adverse financial conditions or significant  
618 deficiencies in internal controls that have been noted by the  
619 accountant. The insurer may request the office to waive this  
620 requirement of the audit committee membership based upon unusual  
621 hardship to the insurer.

622 (d) An insurer may not use the same accountant or partner  
623 of an accounting firm responsible for preparing the report  
624 required by this subsection for more than 5 ~~7~~ consecutive years.  
625 Following this period, the insurer may not use such accountant  
626 or partner for a period of 5 ~~2~~ years, but may use another  
627 accountant or partner of the same firm. An insurer may request  
628 the office to waive this prohibition based upon an unusual  
629 hardship to the insurer and a determination that the accountant  
630 is exercising independent judgment that is not unduly influenced  
631 by the insurer considering such factors as the number of  
632 partners, expertise of the partners or the number of insurance  
633 clients of the accounting firm; the premium volume of the  
634 insurer; and the number of jurisdictions in which the insurer  
635 transacts business.

636 (e) The commission shall adopt rules to implement this  
637 subsection, which rules must be in substantial conformity with  
638 the 1998 Model Rule Requiring Annual Audited Financial Reports

20102044er

639 adopted by the National Association of Insurance Commissioners  
640 or subsequent amendments, except where inconsistent with the  
641 requirements of this subsection. Any exception to, waiver of, or  
642 interpretation of accounting requirements of the commission must  
643 be in writing and signed by an authorized representative of the  
644 office. No insurer may raise as a defense in any action, any  
645 exception to, waiver of, or interpretation of accounting  
646 requirements, unless previously issued in writing by an  
647 authorized representative of the office.

648 Section 7. Section 626.7452, Florida Statutes, is amended  
649 to read:

650 626.7452 Managing general agents; examination authority.—  
651 The acts of the managing general agent are considered to be the  
652 acts of the insurer on whose behalf it is acting. A managing  
653 general agent may be examined as if it were the insurer ~~except~~  
654 ~~in the case where the managing general agent solely represents a~~  
655 ~~single domestic insurer.~~

656 Section 8. Effective June 1, 2010, subsection (11) of  
657 section 626.854, Florida Statutes, is amended to read:

658 626.854 "Public adjuster" defined; prohibitions.—The  
659 Legislature finds that it is necessary for the protection of the  
660 public to regulate public insurance adjusters and to prevent the  
661 unauthorized practice of law.

662 (11) (a) If a public adjuster enters into a contract with an  
663 insured or claimant to reopen a claim or to file a supplemental  
664 claim that seeks additional payments for a claim that has been  
665 previously paid in part or in full or settled by the insurer,  
666 the public adjuster may not charge, agree to, or accept any  
667 compensation, payment, commission, fee, or other thing of value

20102044er

668 based on a previous settlement or previous claim payments by the  
669 insurer for the same cause of loss. The charge, compensation,  
670 payment, commission, fee, or other thing of value may be based  
671 only on the claim payments or settlement obtained through the  
672 work of the public adjuster after entering into the contract  
673 with the insured or claimant. Compensation for a reopened or  
674 supplemental claim may not exceed 20 percent of the reopened or  
675 supplemental claim payment. The contracts described in this  
676 paragraph are not subject to the limitations in paragraph (b).

677 (b) A public adjuster may not charge, agree to, or accept  
678 any compensation, payment, commission, fee, or other thing of  
679 value in excess of:

680 1. Ten percent of the amount of insurance claim payments by  
681 the insurer for claims based on events that are the subject of a  
682 declaration of a state of emergency by the Governor. This  
683 provision applies to claims made during the period of 1 year  
684 after the declaration of emergency. After the period of 1 year,  
685 the limitations in subparagraph 2. apply.

686 2. Twenty percent of the amount of ~~all other~~ insurance  
687 claim payments by the insurer for claims that are not based on  
688 events that are the subject of a declaration of a state of  
689 emergency by the Governor.

690  
691 The provisions of subsections (5)-(13) apply only to residential  
692 property insurance policies and condominium association policies  
693 as defined in s. 718.111(11).

694 Section 9. Effective January 1, 2011, section 626.854,  
695 Florida Statutes, as amended by this act, is amended to read:

696 626.854 "Public adjuster" defined; prohibitions.—The

20102044er

697 Legislature finds that it is necessary for the protection of the  
698 public to regulate public insurance adjusters and to prevent the  
699 unauthorized practice of law.

700 (1) A "public adjuster" is any person, except a duly  
701 licensed attorney at law as hereinafter in s. 626.860 provided,  
702 who, for money, commission, or any other thing of value,  
703 prepares, completes, or files an insurance claim form for an  
704 insured or third-party claimant or who, for money, commission,  
705 or any other thing of value, acts or aids in any manner on  
706 behalf of an insured or third-party claimant in negotiating for  
707 or effecting the settlement of a claim or claims for loss or  
708 damage covered by an insurance contract or who advertises for  
709 employment as an adjuster of such claims, and also includes any  
710 person who, for money, commission, or any other thing of value,  
711 solicits, investigates, or adjusts such claims on behalf of any  
712 such public adjuster.

713 (2) This definition does not apply to:

714 (a) A licensed health care provider or employee thereof who  
715 prepares or files a health insurance claim form on behalf of a  
716 patient.

717 (b) A person who files a health claim on behalf of another  
718 and does so without compensation.

719 (3) A public adjuster may not give legal advice. A public  
720 adjuster may not act on behalf of or aid any person in  
721 negotiating or settling a claim relating to bodily injury,  
722 death, or noneconomic damages.

723 (4) For purposes of this section, the term "insured"  
724 includes only the policyholder and any beneficiaries named or  
725 similarly identified in the policy.

20102044er

726 (5) A public adjuster may not directly or indirectly  
727 through any other person or entity solicit an insured or  
728 claimant by any means except on Monday through Saturday of each  
729 week and only between the hours of 8 a.m. and 8 p.m. on those  
730 days.

731 (6) A public adjuster may not directly or indirectly  
732 through any other person or entity initiate contact or engage in  
733 face-to-face or telephonic solicitation or enter into a contract  
734 with any insured or claimant under an insurance policy until at  
735 least 48 hours after the occurrence of an event that may be the  
736 subject of a claim under the insurance policy unless contact is  
737 initiated by the insured or claimant.

738 (7) An insured or claimant may cancel a public adjuster's  
739 contract to adjust a claim without penalty or obligation within  
740 3 business days after the date on which the contract is executed  
741 or within 3 business days after the date on which the insured or  
742 claimant has notified the insurer of the claim, by phone or in  
743 writing, whichever is later. The public adjuster's contract  
744 shall disclose to the insured or claimant his or her right to  
745 cancel the contract and advise the insured or claimant that  
746 notice of cancellation must be submitted in writing and sent by  
747 certified mail, return receipt requested, or other form of  
748 mailing which provides proof thereof, to the public adjuster at  
749 the address specified in the contract; provided, during any  
750 state of emergency as declared by the Governor and for a period  
751 of 1 year after the date of loss, the insured or claimant shall  
752 have 5 business days after the date on which the contract is  
753 executed to cancel a public adjuster's contract.

754 (8) It is an unfair and deceptive insurance trade practice

20102044er

755 pursuant to s. 626.9541 for a public adjuster or any other  
756 person to circulate or disseminate any advertisement,  
757 announcement, or statement containing any assertion,  
758 representation, or statement with respect to the business of  
759 insurance which is untrue, deceptive, or misleading.

760 (a) For purposes of this section, the following statements,  
761 if made in any public adjuster's advertisement or solicitation,  
762 shall be considered deceptive or misleading:

763 1. A statement or representation that invites an insured  
764 policyholder to submit a claim when the policyholder does not  
765 have covered damage to insured property.

766 2. Any statement or representation that invites an insured  
767 policyholder to submit a claim by offering monetary or other  
768 valuable inducement.

769 3. A statement or representation that invites an insured  
770 policyholder to submit a claim by stating that there is "no  
771 risk" to the policyholder by submitting such claim.

772 4. Any statement or representation, or use of a logo or  
773 shield, that would imply or could be mistakenly construed that  
774 the solicitation was issued or distributed by a governmental  
775 agency or is sanctioned or endorsed by a governmental agency.

776 (b) For purposes of this paragraph, the term "written  
777 advertisement" includes only newspapers, magazines, flyers, and  
778 bulk mailers. The following disclaimer, which is not required to  
779 be printed on standard size business cards, shall be added in  
780 bold print and capital letters in typeface no smaller than the  
781 typeface of the body of the text to all written advertisements  
782 by any public adjuster:

783 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD

20102044er

784       A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU  
785       ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU  
786       MAY DISREGARD THIS ADVERTISEMENT."

787       (9) A public adjuster, a public adjuster apprentice, or any  
788 person or entity acting on behalf of a public adjuster or public  
789 adjuster apprentice may not give or offer to give a monetary  
790 loan or advance to a client or prospective client.

791       (10) A public adjuster, public adjuster apprentice, or any  
792 individual or entity acting on behalf of a public adjuster or  
793 public adjuster apprentice may not give or offer to give,  
794 directly or indirectly, any article of merchandise having a  
795 value in excess of \$25 to any individual for the purpose of  
796 advertising or as an inducement to entering into a contract with  
797 a public adjuster.

798       (11) (a) If a public adjuster enters into a contract with an  
799 insured or claimant to reopen a claim or to file a supplemental  
800 claim that seeks additional payments for a claim that has been  
801 previously paid in part or in full or settled by the insurer,  
802 the public adjuster may not charge, agree to, or accept any  
803 compensation, payment, commission, fee, or other thing of value  
804 based on a previous settlement or previous claim payments by the  
805 insurer for the same cause of loss. The charge, compensation,  
806 payment, commission, fee, or other thing of value may be based  
807 only on the claim payments or settlement obtained through the  
808 work of the public adjuster after entering into the contract  
809 with the insured or claimant. Compensation for a reopened or  
810 supplemental claim may not exceed 20 percent of the reopened or  
811 supplemental claim payment. The contracts described in this  
812 paragraph are not subject to the limitations in paragraph (b).

20102044er

813 (b) A public adjuster may not charge, agree to, or accept  
814 any compensation, payment, commission, fee, or other thing of  
815 value in excess of:

816 1. Ten percent of the amount of insurance claim payments by  
817 the insurer for claims based on events that are the subject of a  
818 declaration of a state of emergency by the Governor. This  
819 provision applies to claims made during the period of 1 year  
820 after the declaration of emergency. After the period of 1 year,  
821 the limitations in subparagraph 2. apply.

822 2. Twenty percent of the amount of insurance claim payments  
823 by the insurer for claims that are not based on events that are  
824 the subject of a declaration of a state of emergency by the  
825 Governor.

826 (12) Each public adjuster shall provide to the claimant or  
827 insured a written estimate of the loss to assist in the  
828 submission of a proof of loss or any other claim for payment of  
829 insurance proceeds. The public adjuster shall retain such  
830 written estimate for at least 5 years and shall make such  
831 estimate available to the claimant or insured and the department  
832 upon request.

833 (13) A public adjuster, public adjuster apprentice, or any  
834 person acting on behalf of a public adjuster or apprentice may  
835 not accept referrals of business from any person with whom the  
836 public adjuster conducts business if there is any form or manner  
837 of agreement to compensate the person, whether directly or  
838 indirectly, for referring business to the public adjuster. A  
839 public adjuster may not compensate any person, except for  
840 another public adjuster, whether directly or indirectly, for the  
841 principal purpose of referring business to the public adjuster.

20102044er

842       (14) A company employee adjuster, independent adjuster,  
843 attorney, investigator, or other persons acting on behalf of an  
844 insurer that needs access to an insured or claimant or to the  
845 insured property that is the subject of a claim shall provide at  
846 least 48 hours' notice to the insured or claimant, public  
847 adjuster, or legal representative before scheduling a meeting  
848 with the claimant or an onsite inspection of the insured  
849 property. The insured or claimant may deny access to the  
850 property if this notice has not been provided. The insured or  
851 claimant may waive this 48-hour notice.

852       (15) (a) A public adjuster shall ensure prompt notice of any  
853 property loss claim submitted to an insurer by or through a  
854 public adjuster or on which a public adjuster represents the  
855 insured at the time the claim or notice of loss is submitted to  
856 the insurer. The public adjuster shall ensure that notice is  
857 given to the insurer, the public adjuster's contract is provided  
858 to the insurer, the property is made available for inspection of  
859 the loss or damage by the insurer, and the insurer is given an  
860 opportunity to interview the insured directly about the loss and  
861 claim. The insurer shall be allowed to obtain necessary  
862 information to investigate and respond to the claim. The insurer  
863 may not exclude the public adjuster from its in-person meetings  
864 with the insured. The insurer shall meet or communicate with the  
865 public adjuster in an effort to reach agreement as to the scope  
866 of the covered loss under the insurance policy. This section  
867 does not impair the terms and conditions of the insurance policy  
868 in effect at the time the claim is filed.

869       (b) A public adjuster may not restrict or prevent an  
870 insurer, company employee adjuster, independent adjuster,

20102044er

871 attorney, investigator, or other person acting on behalf of the  
872 insurer from having reasonable access at reasonable times to any  
873 insured or claimant or to the insured property that is the  
874 subject of a claim.

875 (c) A public adjuster may not act or fail to reasonably act  
876 in any manner that would obstruct or prevent an insurer or  
877 insurer's adjuster from timely gaining access to conduct an  
878 inspection of any part of the insured property for which there  
879 is a claim for loss or damage to the property. The public  
880 adjuster that represents the insured may be present for the  
881 insurer's inspection of the property loss or damage but, if the  
882 lack of availability of the public adjuster would otherwise  
883 delay the access to or the inspection of the insured property by  
884 the insurer, the public adjuster or the insured must allow the  
885 insurer to gain access to the insured property to facilitate the  
886 insurer's prompt inspection of the loss or damage without the  
887 participation or presence of the public adjuster or insured.

888 (16) A licensed contractor under part I of chapter 489, or  
889 a subcontractor, may not adjust a claim on behalf of an insured  
890 without being licensed and compliant as a public adjuster under  
891 this chapter. However, if asked by the residential property  
892 owner who has suffered loss or damage covered by a property  
893 insurance policy, or the insurer of such property, a licensed  
894 contractor may discuss or explain a bid for construction or  
895 repair of covered property if the contractor is doing so for  
896 usual and customary fees applicable to the work to be performed  
897 as stated in the contract between the contractor and the  
898 insured.

899

20102044er

900 The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to  
901 residential property insurance policies and condominium unit  
902 owner association policies as defined in s. 718.111(11).

903 Section 10. Effective January 1, 2011, present subsections  
904 (7) through (11) of section 626.8651, Florida Statutes, are  
905 redesignated as subsections (8) through (12), respectively, and  
906 a new subsection (7) is added to that section, to read:

907 626.8651 Public adjuster apprentice license;  
908 qualifications.—

909 (7) A public adjuster apprentice shall complete a minimum  
910 of 8 hours of continuing education specific to the practice of a  
911 public adjuster, 2 hours of which must relate to ethics, in  
912 order to qualify for licensure as a public adjuster. The  
913 continuing education must be in subjects designed to inform the  
914 licensee regarding the current insurance laws of this state for  
915 the purpose of enabling him or her to engage in business as an  
916 insurance adjuster fairly and without injury to the public and  
917 to adjust all claims in accordance with the insurance contract  
918 and the laws of this state.

919 Section 11. Effective January 1, 2011, section 626.8796,  
920 Florida Statutes, is amended to read:

921 626.8796 Public adjuster contracts; fraud statement.—

922 (1) All contracts for public adjuster services must be in  
923 writing and must prominently display the following statement on  
924 the contract: "Pursuant to s. 817.234, Florida Statutes, any  
925 person who, with the intent to injure, defraud, or deceive any  
926 insurer or insured, prepares, presents, or causes to be  
927 presented a proof of loss or estimate of cost or repair of  
928 damaged property in support of a claim under an insurance policy

20102044er

929 knowing that the proof of loss or estimate of claim or repairs  
930 contains any false, incomplete, or misleading information  
931 concerning any fact or thing material to the claim commits a  
932 felony of the third degree, punishable as provided in s.  
933 775.082, s. 775.083, or s. 775.084, Florida Statutes.”

934 (2) A public adjuster contract must contain the following  
935 information: full name, permanent business address, and license  
936 number of the public adjuster, the full name of the public  
937 adjusting firm, and the insured’s full name and street address,  
938 together with a brief description of the loss. The contract must  
939 state the percentage of compensation for the public adjuster’s  
940 services, the type of claim, including an emergency claim,  
941 nonemergency claim, or supplemental claim, the signatures of the  
942 public adjuster and all named insureds, and the signature date.  
943 If all named insureds signatures are not available, the public  
944 adjuster shall submit an affidavit signed by the available named  
945 insureds attesting that they have authority to enter into the  
946 contract and to settle all claim issues on behalf of all named  
947 insureds. An unaltered copy of the executed contract must be  
948 remitted to the insurer within 30 days after execution.

949 Section 12. Effective June 1, 2010, section 626.70132,  
950 Florida Statutes, is created to read:

951 626.70132 Duty to file windstorm or hurricane claim.—A  
952 claim, supplemental claim, or reopened claim under an insurance  
953 policy that provides personal lines residential coverage, as  
954 defined in s. 627.4025, for loss or damage caused by the peril  
955 of windstorm or hurricane is barred unless notice of the claim,  
956 supplemental claim, or reopened claim was given to the insurer  
957 in accordance with the terms of the policy within 3 years after

20102044er

958 the hurricane first made landfall or the windstorm caused the  
959 covered damage. For purposes of this section, the term  
960 "supplemental claim" or "reopened claim" means any additional  
961 claim for recovery from the insurer for losses from the same  
962 hurricane or windstorm for which the insurer has previously  
963 adjusted pursuant to the initial claim. This section may not be  
964 interpreted to affect any applicable limitation on civil actions  
965 provided in s. 95.11 for claims, supplemental claims, or  
966 reopened claims timely filed under this section.

967 Section 13. Section 627.0613, Florida Statutes, is amended  
968 to read:

969 627.0613 Consumer advocate.—The Chief Financial Officer  
970 must appoint a consumer advocate who must represent the general  
971 public of the state before the department and the office. The  
972 consumer advocate must report directly to the Chief Financial  
973 Officer, but is not otherwise under the authority of the  
974 department or of any employee of the department. The consumer  
975 advocate has such powers as are necessary to carry out the  
976 duties of the office of consumer advocate, including, but not  
977 limited to, the powers to:

978 (1) Recommend to the department or office, by petition, the  
979 commencement of any proceeding or action; appear in any  
980 proceeding or action before the department or office; or appear  
981 in any proceeding before the Division of Administrative Hearings  
982 relating to subject matter under the jurisdiction of the  
983 department or office.

984 (2) Have access to and use of all files, records, and data  
985 of the department or office.

986 (3) Examine rate and form filings submitted to the office,

20102044er

987 hire consultants as necessary to aid in the review process, and  
988 recommend to the department or office any position deemed by the  
989 consumer advocate to be in the public interest.

990 (4) By June 1, 2012, and each June 1 thereafter, prepare an  
991 annual report card for each authorized personal residential  
992 property insurer, on a form and using a letter-grade scale  
993 developed by the commission by rule, which objectively grades  
994 each insurer based on the following factors:

995 (a) The number and nature of valid consumer complaints, as  
996 a market share ratio, received by the department against the  
997 insurer.

998 (b) The disposition of all valid consumer complaints  
999 received by the department.

1000 (c) The average length of time for payment of claims by the  
1001 insurer.

1002 (d) Any other measurable and objective factors the  
1003 commission identifies as capable of assisting policyholders in  
1004 making informed choices about homeowner's insurance.

1005  
1006 For purposes of this subsection, the term "valid consumer  
1007 complaint" means a written communication, or oral communication  
1008 that is subsequently converted to a written form, from a  
1009 consumer that expresses dissatisfaction involving a personal  
1010 residential insurance policy with a specific personal  
1011 residential property insurer. However, a valid complaint does  
1012 not arise if in the disposition thereof by the department the  
1013 insurer or agent position is upheld, the policy provision is  
1014 upheld, the coverage is explained, additional information is  
1015 provided, the complaint is withdrawn, the complaint is referred

20102044er

1016 outside the department, or if an inquiry has missing or  
1017 insufficient information, is not within the jurisdiction of the  
1018 department or requests mediation of a claim that is not eligible  
1019 for mediation.

1020 (5) Prepare an annual budget for presentation to the  
1021 Legislature by the department, which budget must be adequate to  
1022 carry out the duties of the office of consumer advocate.

1023 Section 14. Section 627.062, Florida Statutes, is amended  
1024 to read:

1025 627.062 Rate standards.—

1026 (1) The rates for all classes of insurance to which the  
1027 provisions of this part are applicable shall not be excessive,  
1028 inadequate, or unfairly discriminatory.

1029 (2) As to all such classes of insurance:

1030 (a) Insurers or rating organizations shall establish and  
1031 use rates, rating schedules, or rating manuals to allow the  
1032 insurer a reasonable rate of return on such classes of insurance  
1033 written in this state. A copy of rates, rating schedules, rating  
1034 manuals, premium credits or discount schedules, and surcharge  
1035 schedules, and changes thereto, shall be filed with the office  
1036 under one of the following procedures except as provided in  
1037 subparagraph 3.:

1038 1. If the filing is made at least 90 days before the  
1039 proposed effective date and the filing is not implemented during  
1040 the office's review of the filing and any proceeding and  
1041 judicial review, then such filing shall be considered a "file  
1042 and use" filing. In such case, the office shall finalize its  
1043 review by issuance of an approval ~~a notice of intent to approve~~  
1044 or a notice of intent to disapprove within 90 days after receipt

20102044er

1045 of the filing. The approval ~~notice of intent to approve~~ and the  
1046 notice of intent to disapprove constitute agency action for  
1047 purposes of the Administrative Procedure Act. Requests for  
1048 supporting information, requests for mathematical or mechanical  
1049 corrections, or notification to the insurer by the office of its  
1050 preliminary findings shall not toll the 90-day period during any  
1051 such proceedings and subsequent judicial review. The rate shall  
1052 be deemed approved if the office does not issue an approval ~~a~~  
1053 ~~notice of intent to approve~~ or a notice of intent to disapprove  
1054 within 90 days after receipt of the filing.

1055 2. If the filing is not made in accordance with the  
1056 provisions of subparagraph 1., such filing shall be made as soon  
1057 as practicable, but no later than 30 days after the effective  
1058 date, and shall be considered a "use and file" filing. An  
1059 insurer making a "use and file" filing is potentially subject to  
1060 an order by the office to return to policyholders portions of  
1061 rates found to be excessive, as provided in paragraph (h).

1062 3. For all property insurance filings made or submitted  
1063 after January 25, 2007, but before December 31, 2011 ~~2010~~, an  
1064 insurer seeking a rate that is greater than the rate most  
1065 recently approved by the office shall make a "file and use"  
1066 filing. For purposes of this subparagraph, motor vehicle  
1067 collision and comprehensive coverages are not considered to be  
1068 property coverages.

1069 (b) Upon receiving a rate filing, the office shall review  
1070 the rate filing to determine if a rate is excessive, inadequate,  
1071 or unfairly discriminatory. In making that determination, the  
1072 office shall, in accordance with generally accepted and  
1073 reasonable actuarial techniques, consider the following factors:

20102044er

- 1074           1. Past and prospective loss experience within and without  
1075 this state.
- 1076           2. Past and prospective expenses.
- 1077           3. The degree of competition among insurers for the risk  
1078 insured.
- 1079           4. Investment income reasonably expected by the insurer,  
1080 consistent with the insurer's investment practices, from  
1081 investable premiums anticipated in the filing, plus any other  
1082 expected income from currently invested assets representing the  
1083 amount expected on unearned premium reserves and loss reserves.  
1084 The commission may adopt rules using reasonable techniques of  
1085 actuarial science and economics to specify the manner in which  
1086 insurers shall calculate investment income attributable to such  
1087 classes of insurance written in this state and the manner in  
1088 which such investment income shall be used to calculate  
1089 insurance rates. Such manner shall contemplate allowances for an  
1090 underwriting profit factor and full consideration of investment  
1091 income which produce a reasonable rate of return; however,  
1092 investment income from invested surplus may not be considered.
- 1093           5. The reasonableness of the judgment reflected in the  
1094 filing.
- 1095           6. Dividends, savings, or unabsorbed premium deposits  
1096 allowed or returned to Florida policyholders, members, or  
1097 subscribers.
- 1098           7. The adequacy of loss reserves.
- 1099           8. The cost of reinsurance. The office shall not disapprove  
1100 a rate as excessive solely due to the insurer having obtained  
1101 catastrophic reinsurance to cover the insurer's estimated 250-  
1102 year probable maximum loss or any lower level of loss.

20102044er

1103 9. Trend factors, including trends in actual losses per  
1104 insured unit for the insurer making the filing.

1105 10. Conflagration and catastrophe hazards, if applicable.

1106 11. Projected hurricane losses, if applicable, which must  
1107 be estimated using a model or method found to be acceptable or  
1108 reliable by the Florida Commission on Hurricane Loss Projection  
1109 Methodology, and as further provided in s. 627.0628.

1110 12. A reasonable margin for underwriting profit and  
1111 contingencies.

1112 13. The cost of medical services, if applicable.

1113 14. Other relevant factors which impact upon the frequency  
1114 or severity of claims or upon expenses.

1115 (c) In the case of fire insurance rates, consideration  
1116 shall be given to the availability of water supplies and the  
1117 experience of the fire insurance business during a period of not  
1118 less than the most recent 5-year period for which such  
1119 experience is available.

1120 (d) If conflagration or catastrophe hazards are given  
1121 consideration by an insurer in its rates or rating plan,  
1122 including surcharges and discounts, the insurer shall establish  
1123 a reserve for that portion of the premium allocated to such  
1124 hazard and shall maintain the premium in a catastrophe reserve.  
1125 Any removal of such premiums from the reserve for purposes other  
1126 than paying claims associated with a catastrophe or purchasing  
1127 reinsurance for catastrophes shall be subject to approval of the  
1128 office. Any ceding commission received by an insurer purchasing  
1129 reinsurance for catastrophes shall be placed in the catastrophe  
1130 reserve.

1131 (e) After consideration of the rate factors provided in

20102044er

1132 paragraphs (b), (c), and (d), a rate may be found by the office  
1133 to be excessive, inadequate, or unfairly discriminatory based  
1134 upon the following standards:

1135 1. Rates shall be deemed excessive if they are likely to  
1136 produce a profit from Florida business that is unreasonably high  
1137 in relation to the risk involved in the class of business or if  
1138 expenses are unreasonably high in relation to services rendered.

1139 2. Rates shall be deemed excessive if, among other things,  
1140 the rate structure established by a stock insurance company  
1141 provides for replenishment of surpluses from premiums, when the  
1142 replenishment is attributable to investment losses.

1143 3. Rates shall be deemed inadequate if they are clearly  
1144 insufficient, together with the investment income attributable  
1145 to them, to sustain projected losses and expenses in the class  
1146 of business to which they apply.

1147 4. A rating plan, including discounts, credits, or  
1148 surcharges, shall be deemed unfairly discriminatory if it fails  
1149 to clearly and equitably reflect consideration of the  
1150 policyholder's participation in a risk management program  
1151 adopted pursuant to s. 627.0625.

1152 5. A rate shall be deemed inadequate as to the premium  
1153 charged to a risk or group of risks if discounts or credits are  
1154 allowed which exceed a reasonable reflection of expense savings  
1155 and reasonably expected loss experience from the risk or group  
1156 of risks.

1157 6. A rate shall be deemed unfairly discriminatory as to a  
1158 risk or group of risks if the application of premium discounts,  
1159 credits, or surcharges among such risks does not bear a  
1160 reasonable relationship to the expected loss and expense

20102044er

1161 experience among the various risks.

1162 (f) In reviewing a rate filing, the office may require the  
1163 insurer to provide at the insurer's expense all information  
1164 necessary to evaluate the condition of the company and the  
1165 reasonableness of the filing according to the criteria  
1166 enumerated in this section.

1167 (g) The office may at any time review a rate, rating  
1168 schedule, rating manual, or rate change; the pertinent records  
1169 of the insurer; and market conditions. If the office finds on a  
1170 preliminary basis that a rate may be excessive, inadequate, or  
1171 unfairly discriminatory, the office shall initiate proceedings  
1172 to disapprove the rate and shall so notify the insurer. However,  
1173 the office may not disapprove as excessive any rate for which it  
1174 has given final approval or which has been deemed approved for a  
1175 period of 1 year after the effective date of the filing unless  
1176 the office finds that a material misrepresentation or material  
1177 error was made by the insurer or was contained in the filing.  
1178 Upon being so notified, the insurer or rating organization  
1179 shall, within 60 days, file with the office all information  
1180 which, in the belief of the insurer or organization, proves the  
1181 reasonableness, adequacy, and fairness of the rate or rate  
1182 change. The office shall issue a notice of intent to approve or  
1183 a notice of intent to disapprove pursuant to the procedures of  
1184 paragraph (a) within 90 days after receipt of the insurer's  
1185 initial response. In such instances and in any administrative  
1186 proceeding relating to the legality of the rate, the insurer or  
1187 rating organization shall carry the burden of proof by a  
1188 preponderance of the evidence to show that the rate is not  
1189 excessive, inadequate, or unfairly discriminatory. After the

20102044er

1190 office notifies an insurer that a rate may be excessive,  
1191 inadequate, or unfairly discriminatory, unless the office  
1192 withdraws the notification, the insurer shall not alter the rate  
1193 except to conform with the office's notice until the earlier of  
1194 120 days after the date the notification was provided or 180  
1195 days after the date of the implementation of the rate. The  
1196 office may, subject to chapter 120, disapprove without the 60-  
1197 day notification any rate increase filed by an insurer within  
1198 the prohibited time period or during the time that the legality  
1199 of the increased rate is being contested.

1200 (h) ~~If in the event~~ the office finds that a rate or rate  
1201 change is excessive, inadequate, or unfairly discriminatory, the  
1202 office shall issue an order of disapproval specifying that a new  
1203 rate or rate schedule which responds to the findings of the  
1204 office be filed by the insurer. The office shall further order,  
1205 for any "use and file" filing made in accordance with  
1206 subparagraph (a)2., that premiums charged each policyholder  
1207 constituting the portion of the rate above that which was  
1208 actuarially justified be returned to such policyholder in the  
1209 form of a credit or refund. If the office finds that an  
1210 insurer's rate or rate change is inadequate, the new rate or  
1211 rate schedule filed with the office in response to such a  
1212 finding shall be applicable only to new or renewal business of  
1213 the insurer written on or after the effective date of the  
1214 responsive filing.

1215 (i) 1. Except as otherwise specifically provided in this  
1216 chapter, the office shall not, directly or indirectly, prohibit  
1217 any insurer, including any residual market plan or joint  
1218 underwriting association, from paying acquisition costs based on

20102044er

1219 the full amount of premium, as defined in s. 627.403, applicable  
1220 to any policy, or directly or indirectly prohibit any such  
1221 insurer from including the full amount of acquisition costs in a  
1222 rate filing.

1223 2. The office shall not, directly or indirectly, impede,  
1224 abridge, or otherwise compromise an insurer's right to acquire  
1225 policyholders, advertise, or appoint agents, including the  
1226 calculation, manner, or amount of such agent commissions, if  
1227 any.

1228 (j) With respect to residential property insurance rate  
1229 filings, the rate filing must account for mitigation measures  
1230 undertaken by policyholders to reduce hurricane losses.

1231 (k)1.a. An insurer may make a separate filing limited  
1232 solely to an adjustment of its rates for reinsurance, the cost  
1233 of financing products used as a replacement for reinsurance, or  
1234 financing costs incurred in the purchase of reinsurance, and an  
1235 inflation trend factor published by the office pursuant to  
1236 subparagraph 4. If an insurer chooses to make a separate filing  
1237 under this paragraph, it must implement the rate in such a  
1238 manner that all rate increases implemented as a result of the  
1239 separate filing, together with rate increases associated with  
1240 any other rate filing, do or financing products to replace or  
1241 finance the payment of the amount covered by the Temporary  
1242 Increase in Coverage Limits (TICL) portion of the Florida  
1243 Hurricane Catastrophe Fund including replacement reinsurance for  
1244 the TICL reductions made pursuant to s. 215.555(17) (e); the  
1245 actual cost paid due to the application of the TICL premium  
1246 factor pursuant to s. 215.555(17) (f); and the actual cost paid  
1247 due to the application of the cash build-up factor pursuant to

20102044er

1248 ~~s. 215.555(5)(b) if the insurer:~~  
1249     ~~a. Elects to purchase financing products such as a~~  
1250 ~~liquidity instrument or line of credit, in which case the cost~~  
1251 ~~included in the filing for the liquidity instrument or line of~~  
1252 ~~credit may not result in a premium increase exceeding 3 percent~~  
1253 ~~for any individual policyholder. All costs contained in the~~  
1254 ~~filing may not result in an overall premium increase of more~~  
1255 ~~than 10 percent for any individual policyholder, excluding~~  
1256 ~~coverage changes and surcharges, within the same policy year.~~  
1257     ~~b. An insurer that makes a filing relating to reinsurance~~  
1258 ~~or financing products must include the following ~~includes~~ in the~~  
1259 ~~filing: a copy of all of its reinsurance, liquidity instrument,~~  
1260 ~~or line of credit contracts; proof of the billing or payment for~~  
1261 ~~the contracts; and the calculation upon which the proposed rate~~  
1262 ~~change is based demonstrating ~~demonstrates~~ that the costs meet~~  
1263 ~~the criteria of this section and are not loaded for expenses or~~  
1264 ~~profit for the insurer making the filing.~~  
1265     ~~c. Any filing made pursuant this paragraph may include only~~  
1266 ~~the ~~includes no other~~ changes to its rates which are expressly~~  
1267 ~~authorized by this paragraph in the filing.~~  
1268     ~~d. Has not implemented a rate increase within the 6 months~~  
1269 ~~immediately preceding the filing.~~  
1270     ~~e. Does not file for a rate increase under any other~~  
1271 ~~paragraph within 6 months after making a filing under this~~  
1272 ~~paragraph.~~  
1273     ~~d.f. An insurer that purchases reinsurance or financing~~  
1274 ~~products from an affiliated company may make a filing pursuant~~  
1275 ~~to in compliance with this paragraph ~~does so~~ only if the costs~~  
1276 ~~for such reinsurance or financing products are charged at or~~

20102044er

1277 below charges made for comparable coverage by nonaffiliated  
1278 reinsurers or financial entities making such coverage or  
1279 financing products available in this state.

1280 e. An insurer that makes a filing as the result of a change  
1281 in an inflation trend factor published by the office need  
1282 support that filing only with rates and rating examples and an  
1283 explanation demonstrating the insurer's eligibility to adopt the  
1284 inflation trend factor.

1285 2. An insurer may ~~only~~ make only one filing in any 12-month  
1286 period under this paragraph.

1287 3. An insurer that elects to implement a rate change under  
1288 this paragraph must file its rate filing with the office at  
1289 least 45 days before the effective date of the rate change.  
1290 After an insurer submits a complete filing that meets all of the  
1291 requirements of this paragraph, the office has 45 days after the  
1292 date of the filing to review the rate filing and determine if  
1293 the rate is excessive, inadequate, or unfairly discriminatory.

1294 4. Beginning January 1, 2011, the office shall publish an  
1295 annual informational memorandum to establish one or more  
1296 inflation trend factors that may be stated separately for  
1297 personal and residential property and for building coverage,  
1298 contents coverage, additional living expense coverage, and  
1299 liability coverage, if applicable. These factors shall represent  
1300 an estimate of cost increases or decreases based upon publicly  
1301 available relevant data and economic indices that are identified  
1302 in the memorandum. Such factors are exempt from the rulemaking  
1303 requirements of chapter 120, and insurers are not required to  
1304 adopt the factors. The office may publish factors for any line  
1305 of insurance, but is required to publish a factor only for

20102044er

1306 residential property insurance.

1307

1308 The provisions of this subsection do ~~shall~~ not apply to workers'  
1309 compensation and employer's liability insurance and to motor  
1310 vehicle insurance.

1311 (3) (a) For individual risks that are not rated in  
1312 accordance with the insurer's rates, rating schedules, rating  
1313 manuals, and underwriting rules filed with the office and which  
1314 have been submitted to the insurer for individual rating, the  
1315 insurer must maintain documentation on each risk subject to  
1316 individual risk rating. The documentation must identify the  
1317 named insured and specify the characteristics and classification  
1318 of the risk supporting the reason for the risk being  
1319 individually risk rated, including any modifications to existing  
1320 approved forms to be used on the risk. The insurer must maintain  
1321 these records for a period of at least 5 years after the  
1322 effective date of the policy.

1323 (b) Individual risk rates and modifications to existing  
1324 approved forms are not subject to this part or part II, except  
1325 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,  
1326 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,  
1327 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,  
1328 627.4265, 627.427, and 627.428, but are subject to all other  
1329 applicable provisions of this code and rules adopted thereunder.

1330 (c) This subsection does not apply to private passenger  
1331 motor vehicle insurance.

1332 (4) (a) Contingent on specific appropriations made to  
1333 implement this subsection, in order to enhance the ability of  
1334 consumers to compare premiums and to increase the accuracy and

20102044er

1335 usefulness of rate and product comparison information for  
1336 homeowners' insurance, the office shall develop or contract with  
1337 a private entity to develop a comprehensive program for  
1338 providing the consumer with all available information necessary  
1339 to make an informed purchase of the insurance product that best  
1340 serves the needs of the individual.

1341 (b) In developing the comprehensive program, the office  
1342 shall rely as much as is practical on information that is  
1343 currently available and shall consider:

1344 1. The most efficient means for developing, hosting, and  
1345 operating a separate website that consolidates all consumer  
1346 information for price comparisons, filed complaints, financial  
1347 strength, underwriting, and receivership information and other  
1348 data useful to consumers;

1349 2. Whether all admitted insurers should be required to  
1350 submit additional information to populate the composite website  
1351 and how often such submissions must be made;

1352 3. Whether all admitted insurers should be required to  
1353 provide links from the website into each individual insurer's  
1354 website in order to enable consumers to access product rate  
1355 information and apply for quotations;

1356 4. Developing a plan to publicize the existence,  
1357 availability, and value of the website; and

1358 5. Any other provision that would make relevant homeowners'  
1359 insurance information more readily available so that consumers  
1360 can make informed product comparisons and purchasing decisions.

1361 (c) Before establishing the program or website, the office  
1362 shall conduct a cost-benefit analysis to determine the most  
1363 effective approach for establishing and operating the program

20102044er

1364 and website. Based on the results of the analysis, the office  
1365 shall submit a proposed implementation plan for review and  
1366 approval by the Financial Services Commission. The  
1367 implementation plan shall include an estimated timeline for  
1368 establishing the program and website; a description of the data  
1369 and functionality to be provided by the site, a strategy for  
1370 publicizing the website to consumers; a recommended approach for  
1371 developing, hosting, and operating the website; and an estimate  
1372 of all major nonrecurring and recurring costs required to  
1373 establish and operate the website. Upon approval of the plan,  
1374 the office may initiate the establishment of the program.

1375 (5)-(4) The establishment of any rate, rating  
1376 classification, rating plan or schedule, or variation thereof in  
1377 violation of part IX of chapter 626 is also in violation of this  
1378 section. In order to enhance the ability of consumers to compare  
1379 premiums and to increase the accuracy and usefulness of rate-  
1380 comparison information provided by the office to the public, the  
1381 office shall develop a proposed standard rating territory plan  
1382 to be used by all authorized property and casualty insurers for  
1383 residential property insurance. In adopting the proposed plan,  
1384 the office may consider geographical characteristics relevant to  
1385 risk, county lines, major roadways, existing rating territories  
1386 used by a significant segment of the market, and other relevant  
1387 factors. Such plan shall be submitted to the President of the  
1388 Senate and the Speaker of the House of Representatives by  
1389 January 15, 2006. The plan may not be implemented unless  
1390 authorized by further act of the Legislature.

1391 (6)-(5) With respect to a rate filing involving coverage of  
1392 the type for which the insurer is required to pay a

20102044er

1393 reimbursement premium to the Florida Hurricane Catastrophe Fund,  
1394 the insurer may fully recoup in its property insurance premiums  
1395 any reimbursement premiums paid to the Florida Hurricane  
1396 Catastrophe Fund, together with reasonable costs of other  
1397 reinsurance, but except as otherwise provided in this section,  
1398 may not recoup reinsurance costs that duplicate coverage  
1399 provided by the Florida Hurricane Catastrophe Fund. An insurer  
1400 may not recoup more than 1 year of reimbursement premium at a  
1401 time. Any under-recoupment from the prior year may be added to  
1402 the following year's reimbursement premium, and any over-  
1403 recoupment shall be subtracted from the following year's  
1404 reimbursement premium.

1405 (7)~~(6)~~(a) If an insurer requests an administrative hearing  
1406 pursuant to s. 120.57 related to a rate filing under this  
1407 section, the director of the Division of Administrative Hearings  
1408 shall expedite the hearing and assign an administrative law  
1409 judge who shall commence the hearing within 30 days after the  
1410 receipt of the formal request and shall enter a recommended  
1411 order within 30 days after the hearing or within 30 days after  
1412 receipt of the hearing transcript by the administrative law  
1413 judge, whichever is later. Each party shall be allowed 10 days  
1414 in which to submit written exceptions to the recommended order.  
1415 The office shall enter a final order within 30 days after the  
1416 entry of the recommended order. The provisions of this paragraph  
1417 may be waived upon stipulation of all parties.

1418 (b) Upon entry of a final order, the insurer may request a  
1419 expedited appellate review pursuant to the Florida Rules of  
1420 Appellate Procedure. It is the intent of the Legislature that  
1421 the First District Court of Appeal grant an insurer's request

20102044er

1422 for an expedited appellate review.

1423 (8)~~(7)~~(a) The provisions of this subsection apply only with  
1424 respect to rates for medical malpractice insurance and shall  
1425 control to the extent of any conflict with other provisions of  
1426 this section.

1427 (b) Any portion of a judgment entered or settlement paid as  
1428 a result of a statutory or common-law bad faith action and any  
1429 portion of a judgment entered which awards punitive damages  
1430 against an insurer may not be included in the insurer's rate  
1431 base, and shall not be used to justify a rate or rate change.  
1432 Any common-law bad faith action identified as such, any portion  
1433 of a settlement entered as a result of a statutory or common-law  
1434 action, or any portion of a settlement wherein an insurer agrees  
1435 to pay specific punitive damages may not be used to justify a  
1436 rate or rate change. The portion of the taxable costs and  
1437 attorney's fees which is identified as being related to the bad  
1438 faith and punitive damages in these judgments and settlements  
1439 may not be included in the insurer's rate base and may not be  
1440 used ~~utilized~~ to justify a rate or rate change.

1441 (c) Upon reviewing a rate filing and determining whether  
1442 the rate is excessive, inadequate, or unfairly discriminatory,  
1443 the office shall consider, in accordance with generally accepted  
1444 and reasonable actuarial techniques, past and present  
1445 prospective loss experience, either using loss experience solely  
1446 for this state or giving greater credibility to this state's  
1447 loss data after applying actuarially sound methods of assigning  
1448 credibility to such data.

1449 (d) Rates shall be deemed excessive if, among other  
1450 standards established by this section, the rate structure

20102044er

1451 provides for replenishment of reserves or surpluses from  
1452 premiums when the replenishment is attributable to investment  
1453 losses.

1454 (e) The insurer must apply a discount or surcharge based on  
1455 the health care provider's loss experience or shall establish an  
1456 alternative method giving due consideration to the provider's  
1457 loss experience. The insurer must include in the filing a copy  
1458 of the surcharge or discount schedule or a description of the  
1459 alternative method used, and must provide a copy of such  
1460 schedule or description, as approved by the office, to  
1461 policyholders at the time of renewal and to prospective  
1462 policyholders at the time of application for coverage.

1463 (f) Each medical malpractice insurer must make a rate  
1464 filing under this section, sworn to by at least two executive  
1465 officers of the insurer, at least once each calendar year.

1466 ~~(8)(a)1. No later than 60 days after the effective date of~~  
1467 ~~medical malpractice legislation enacted during the 2003 Special~~  
1468 ~~Session D of the Florida Legislature, the office shall calculate~~  
1469 ~~a presumed factor that reflects the impact that the changes~~  
1470 ~~contained in such legislation will have on rates for medical~~  
1471 ~~malpractice insurance and shall issue a notice informing all~~  
1472 ~~insurers writing medical malpractice coverage of such presumed~~  
1473 ~~factor. In determining the presumed factor, the office shall use~~  
1474 ~~generally accepted actuarial techniques and standards provided~~  
1475 ~~in this section in determining the expected impact on losses,~~  
1476 ~~expenses, and investment income of the insurer. To the extent~~  
1477 ~~that the operation of a provision of medical malpractice~~  
1478 ~~legislation enacted during the 2003 Special Session D of the~~  
1479 ~~Florida Legislature is stayed pending a constitutional~~

20102044er

1480 ~~challenge, the impact of that provision shall not be included in~~  
1481 ~~the calculation of a presumed factor under this subparagraph.~~

1482 ~~2. No later than 60 days after the office issues its notice~~  
1483 ~~of the presumed rate change factor under subparagraph 1., each~~  
1484 ~~insurer writing medical malpractice coverage in this state shall~~  
1485 ~~submit to the office a rate filing for medical malpractice~~  
1486 ~~insurance, which will take effect no later than January 1, 2004,~~  
1487 ~~and apply retroactively to policies issued or renewed on or~~  
1488 ~~after the effective date of medical malpractice legislation~~  
1489 ~~enacted during the 2003 Special Session D of the Florida~~  
1490 ~~Legislature. Except as authorized under paragraph (b), the~~  
1491 ~~filing shall reflect an overall rate reduction at least as great~~  
1492 ~~as the presumed factor determined under subparagraph 1. With~~  
1493 ~~respect to policies issued on or after the effective date of~~  
1494 ~~such legislation and prior to the effective date of the rate~~  
1495 ~~filing required by this subsection, the office shall order the~~  
1496 ~~insurer to make a refund of the amount that was charged in~~  
1497 ~~excess of the rate that is approved.~~

1498 ~~(b) Any insurer or rating organization that contends that~~  
1499 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~  
1500 ~~or unfairly discriminatory shall separately state in its filing~~  
1501 ~~the rate it contends is appropriate and shall state with~~  
1502 ~~specificity the factors or data that it contends should be~~  
1503 ~~considered in order to produce such appropriate rate. The~~  
1504 ~~insurer or rating organization shall be permitted to use all of~~  
1505 ~~the generally accepted actuarial techniques provided in this~~  
1506 ~~section in making any filing pursuant to this subsection. The~~  
1507 ~~office shall review each such exception and approve or~~  
1508 ~~disapprove it prior to use. It shall be the insurer's burden to~~

20102044er

1509 ~~actuarially justify any deviations from the rates required to be~~  
1510 ~~filed under paragraph (a). The insurer making a filing under~~  
1511 ~~this paragraph shall include in the filing the expected impact~~  
1512 ~~of medical malpractice legislation enacted during the 2003~~  
1513 ~~Special Session D of the Florida Legislature on losses,~~  
1514 ~~expenses, and rates.~~

1515 ~~(c) If any provision of medical malpractice legislation~~  
1516 ~~enacted during the 2003 Special Session D of the Florida~~  
1517 ~~Legislature is held invalid by a court of competent~~  
1518 ~~jurisdiction, the office shall permit an adjustment of all~~  
1519 ~~medical malpractice rates filed under this section to reflect~~  
1520 ~~the impact of such holding on such rates so as to ensure that~~  
1521 ~~the rates are not excessive, inadequate, or unfairly~~  
1522 ~~discriminatory.~~

1523 ~~(d) Rates approved on or before July 1, 2003, for medical~~  
1524 ~~malpractice insurance shall remain in effect until the effective~~  
1525 ~~date of a new rate filing approved under this subsection.~~

1526 ~~(e) The calculation and notice by the office of the~~  
1527 ~~presumed factor pursuant to paragraph (a) is not an order or~~  
1528 ~~rule that is subject to chapter 120. If the office enters into a~~  
1529 ~~contract with an independent consultant to assist the office in~~  
1530 ~~calculating the presumed factor, such contract shall not be~~  
1531 ~~subject to the competitive solicitation requirements of s.~~  
1532 ~~287.057.~~

1533 (9) (a) The chief executive officer or chief financial  
1534 officer of a property insurer and the chief actuary of a  
1535 property insurer must certify under oath and subject to the  
1536 penalty of perjury, on a form approved by the commission, the  
1537 following information, which must accompany a rate filing:

20102044er

1538 1. The signing officer and actuary have reviewed the rate  
1539 filing;

1540 2. Based on the signing officer's and actuary's knowledge,  
1541 the rate filing does not contain any untrue statement of a  
1542 material fact or omit to state a material fact necessary in  
1543 order to make the statements made, in light of the circumstances  
1544 under which such statements were made, not misleading;

1545 3. Based on the signing officer's and actuary's knowledge,  
1546 the information and other factors described in paragraph (2) (b),  
1547 including, but not limited to, investment income, fairly present  
1548 in all material respects the basis of the rate filing for the  
1549 periods presented in the filing; and

1550 4. Based on the signing officer's and actuary's knowledge,  
1551 the rate filing reflects all premium savings that are reasonably  
1552 expected to result from legislative enactments and are in  
1553 accordance with generally accepted and reasonable actuarial  
1554 techniques.

1555 (b) A signing officer or actuary knowingly making a false  
1556 certification under this subsection commits a violation of s.  
1557 626.9541(1)(e) and is subject to the penalties under s.  
1558 626.9521.

1559 (c) Failure to provide such certification by the officer  
1560 and actuary shall result in the rate filing being disapproved  
1561 without prejudice to be refiled.

1562 (d) A certification made pursuant to paragraph (a) is not  
1563 rendered false if, after making the subject rate filing, the  
1564 insurer provides the office with additional or supplementary  
1565 information pursuant to a formal or informal request from the  
1566 office.

20102044er

1567        ~~(e)-(d)~~ The commission may adopt rules and forms pursuant to  
1568 ss. 120.536(1) and 120.54 to administer this subsection.

1569        (10) The burden is on the office to establish that rates  
1570 are excessive for personal lines residential coverage with a  
1571 dwelling replacement cost of \$1 million or more or for a single  
1572 condominium unit with a combined dwelling and contents  
1573 replacement cost of \$1 million or more. Upon request of the  
1574 office, the insurer shall provide to the office such loss and  
1575 expense information as the office reasonably needs to meet this  
1576 burden.

1577        (11) Any interest paid pursuant to s. 627.70131(5) may not  
1578 be included in the insurer's rate base and may not be used to  
1579 justify a rate or rate change.

1580        Section 15. Section 627.0629, Florida Statutes, is amended  
1581 to read:

1582        627.0629 Residential property insurance; rate filings.—

1583        (1) ~~(a)~~ It is the intent of the Legislature that insurers  
1584 ~~must~~ provide the most accurate pricing signals available ~~savings~~  
1585 to encourage consumers to ~~who~~ install or implement windstorm  
1586 damage mitigation techniques, alterations, or solutions to their  
1587 properties to prevent windstorm losses. It is also the intent of  
1588 the Legislature that implementation of mitigation discounts not  
1589 result in a loss of income to the insurers granting the  
1590 discounts, so that the aggregate of mitigation discounts should  
1591 not exceed the aggregate of the expected reduction in loss that  
1592 is attributable to the mitigation efforts for which discounts  
1593 are granted. A rate filing for residential property insurance  
1594 must include actuarially reasonable discounts, credits, debits,  
1595 or other rate differentials, or appropriate reductions in

20102044er

1596 deductibles, which provide the proper pricing for all  
1597 properties. The rate filing must take into account the presence  
1598 or absence of ~~en which~~ fixtures or construction techniques  
1599 demonstrated to reduce the amount of loss in a windstorm have  
1600 been installed or implemented. The fixtures or construction  
1601 techniques shall include, but not be limited to, fixtures or  
1602 construction techniques that ~~which~~ enhance roof strength, roof  
1603 covering performance, roof-to-wall strength, wall-to-floor-to-  
1604 foundation strength, opening protection, and window, door, and  
1605 skylight strength. Credits, debits, discounts, or other rate  
1606 differentials, or appropriate reductions or increases in  
1607 deductibles, which recognize the presence or absence of ~~for~~  
1608 fixtures and construction techniques that ~~which~~ meet the minimum  
1609 requirements of the Florida Building Code must be included in  
1610 the rate filing. If an insurer demonstrates that the aggregate  
1611 of its mitigation discounts results in a reduction to revenue  
1612 which exceeds the reduction of the aggregate loss that is  
1613 expected to result from the mitigation, that insurer may recover  
1614 the lost revenue through an increase in its base rates. All  
1615 ~~insurance companies must make a rate filing which includes the~~  
1616 ~~credits, discounts, or other rate differentials or reductions in~~  
1617 ~~deductibles by February 28, 2003.~~ By July 1, 2007, the office  
1618 shall reevaluate the discounts, credits, other rate  
1619 differentials, and appropriate reductions in deductibles for  
1620 fixtures and construction techniques that meet the minimum  
1621 requirements of the Florida Building Code, based upon actual  
1622 experience or any other loss relativity studies available to the  
1623 office. The office shall determine the discounts, credits,  
1624 debits, other rate differentials, and appropriate reductions or

20102044er

1625 increases in deductibles that reflect the full actuarial value  
1626 of such revaluation, which may be used by insurers in rate  
1627 filings.

1628 ~~(b) By February 1, 2011, the Office of Insurance~~  
1629 ~~Regulation, in consultation with the Department of Financial~~  
1630 ~~Services and the Department of Community Affairs, shall develop~~  
1631 ~~and make publicly available a proposed method for insurers to~~  
1632 ~~establish discounts, credits, or other rate differentials for~~  
1633 ~~hurricane mitigation measures which directly correlate to the~~  
1634 ~~numerical rating assigned to a structure pursuant to the uniform~~  
1635 ~~home grading scale adopted by the Financial Services Commission~~  
1636 ~~pursuant to s. 215.55865, including any proposed changes to the~~  
1637 ~~uniform home grading scale. By October 1, 2011, the commission~~  
1638 ~~shall adopt rules requiring insurers to make rate filings for~~  
1639 ~~residential property insurance which revise insurers' discounts,~~  
1640 ~~credits, or other rate differentials for hurricane mitigation~~  
1641 ~~measures so that such rate differentials correlate directly to~~  
1642 ~~the uniform home grading scale. The rules may include such~~  
1643 ~~changes to the uniform home grading scale as the commission~~  
1644 ~~determines are necessary, and may specify the minimum required~~  
1645 ~~discounts, credits, or other rate differentials. Such rate~~  
1646 ~~differentials must be consistent with generally accepted~~  
1647 ~~actuarial principles and wind loss mitigation studies. The rules~~  
1648 ~~shall allow a period of at least 2 years after the effective~~  
1649 ~~date of the revised mitigation discounts, credits, or other rate~~  
1650 ~~differentials for a property owner to obtain an inspection or~~  
1651 ~~otherwise qualify for the revised credit, during which time the~~  
1652 ~~insurer shall continue to apply the mitigation credit that was~~  
1653 ~~applied immediately prior to the effective date of the revised~~

20102044er

1654 ~~credit. Discounts, credits, and other rate differentials~~  
1655 ~~established for rate filings under this paragraph shall~~  
1656 ~~supersede, after adoption, the discounts, credits, and other~~  
1657 ~~rate differentials included in rate filings under paragraph (a).~~

1658 (2) (a) A rate filing for residential property insurance  
1659 made on or before the implementation of paragraph (b) may  
1660 include rate factors that reflect the manner in which building  
1661 code enforcement in a particular jurisdiction addresses the risk  
1662 of wind damage. + However, such a rate filing must also provide  
1663 for variations from such rate factors on an individual basis  
1664 based on an inspection of a particular structure by a licensed  
1665 home inspector, which inspection may be at the cost of the  
1666 insured.

1667 (b) A rate filing for residential property insurance made  
1668 more than 150 days after approval by the office of a building  
1669 code rating factor plan submitted by a statewide rating  
1670 organization shall include positive and negative rate factors  
1671 that reflect the manner in which building code enforcement in a  
1672 particular jurisdiction addresses risk of wind damage. The rate  
1673 filing shall include variations from standard rate factors on an  
1674 individual basis based on inspection of a particular structure  
1675 by a licensed home inspector. If an inspection is requested by  
1676 the insured, the insurer may require the insured to pay the  
1677 reasonable cost of the inspection. This paragraph applies to  
1678 structures constructed or renovated after the implementation of  
1679 this paragraph.

1680 (c) The premium notice shall specify the amount by which  
1681 the rate has been adjusted as a result of this subsection and  
1682 shall also specify the maximum possible positive and negative

20102044er

1683 adjustments that are approved for use by the insurer under this  
1684 subsection.

1685 (3) A rate filing ~~made on or after July 1, 1995,~~ for mobile  
1686 home owner's insurance must include appropriate discounts,  
1687 credits, or other rate differentials for mobile homes  
1688 constructed to comply with American Society of Civil Engineers  
1689 Standard ANSI/ASCE 7-88, adopted by the United States Department  
1690 of Housing and Urban Development on July 13, 1994, and that also  
1691 comply with all applicable tie-down requirements provided by  
1692 state law.

1693 (4) The Legislature finds that separate consideration and  
1694 notice of hurricane insurance premiums will assist consumers by  
1695 providing greater assurance that hurricane premiums are lawful  
1696 and by providing more complete information regarding the  
1697 components of property insurance premiums. ~~Effective January 1,~~  
1698 ~~1997,~~ A rate filing for residential property insurance shall be  
1699 separated into two components, rates for hurricane coverage and  
1700 rates for all other coverages. A premium notice reflecting a  
1701 rate implemented on the basis of such a filing shall separately  
1702 indicate the premium for hurricane coverage and the premium for  
1703 all other coverages.

1704 (5) In order to provide an appropriate transition period,  
1705 an insurer may, in its sole discretion, implement an approved  
1706 rate filing for residential property insurance over a period of  
1707 years. An insurer electing to phase in its rate filing must  
1708 provide an informational notice to the office setting out its  
1709 schedule for implementation of the phased-in rate filing. An  
1710 insurer may include in its rate the actual cost of private  
1711 market reinsurance that corresponds to available coverage of the

20102044er

1712 Temporary Increase in Coverage Limits, TICL, from the Florida  
1713 Hurricane Catastrophe Fund. The insurer may also include the  
1714 cost of reinsurance to replace the TICL reduction implemented  
1715 pursuant to s. 215.555(17)(d)9. However, this cost for  
1716 reinsurance may not ~~include any expense or profit load or~~ result  
1717 in a total annual base rate increase in excess of 10 percent.

1718 (6) Any rate filing that is based in whole or part on data  
1719 from a computer model may not exceed 15 percent unless there is  
1720 a public hearing.

1721 (7) An insurer may implement appropriate discounts or other  
1722 rate differentials of up to 10 percent of the annual premium to  
1723 mobile home owners who provide to the insurer evidence of a  
1724 current inspection of tie-downs for the mobile home, certifying  
1725 that the tie-downs have been properly installed and are in good  
1726 condition.

1727 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL  
1728 SOUNDNESS.—

1729 (a) It is the intent of the Legislature to provide a  
1730 program whereby homeowners may obtain an evaluation of the wind  
1731 resistance of their homes with respect to preventing damage from  
1732 hurricanes, together with a recommendation of reasonable steps  
1733 that may be taken to upgrade their homes to better withstand  
1734 hurricane force winds.

1735 (b) To the extent that funds are provided for this purpose  
1736 in the General Appropriations Act, the Legislature hereby  
1737 authorizes the establishment of a program to be administered by  
1738 the Citizens Property Insurance Corporation for homeowners  
1739 insured in the high-risk account.

1740 (c) The program shall provide grants to homeowners, for the

20102044er

1741 purpose of providing homeowner applicants with funds to conduct  
1742 an evaluation of the integrity of their homes with respect to  
1743 withstanding hurricane force winds, recommendations to retrofit  
1744 the homes to better withstand damage from such winds, and the  
1745 estimated cost to make the recommended retrofits.

1746 (d) The Department of Community Affairs shall establish by  
1747 rule standards to govern the quality of the evaluation, the  
1748 quality of the recommendations for retrofitting, the eligibility  
1749 of the persons conducting the evaluation, and the selection of  
1750 applicants under the program. In establishing the rule, the  
1751 Department of Community Affairs shall consult with the advisory  
1752 committee to minimize the possibility of fraud or abuse in the  
1753 evaluation and retrofitting process, and to ensure that funds  
1754 spent by homeowners acting on the recommendations achieve  
1755 positive results.

1756 (e) The Citizens Property Insurance Corporation shall  
1757 identify areas of this state with the greatest wind risk to  
1758 residential properties and recommend annually to the Department  
1759 of Community Affairs priority target areas for such evaluations  
1760 and inclusion with the associated residential construction  
1761 mitigation program.

1762 (9) A property insurance rate filing that includes any  
1763 adjustments related to premiums paid to the Florida Hurricane  
1764 Catastrophe Fund must include a complete calculation of the  
1765 insurer's catastrophe load, and the information in the filing  
1766 may not be limited solely to recovery of moneys paid to the  
1767 fund.

1768 Section 16. Paragraphs (b), (c), (d), and (y) of subsection  
1769 (6) of section 627.351, Florida Statutes, are amended to read:

20102044er

1770           627.351 Insurance risk apportionment plans.—  
1771           (6) CITIZENS PROPERTY INSURANCE CORPORATION.—  
1772           (b)1. All insurers authorized to write one or more subject  
1773 lines of business in this state are subject to assessment by the  
1774 corporation and, for the purposes of this subsection, are  
1775 referred to collectively as “assessable insurers.” Insurers  
1776 writing one or more subject lines of business in this state  
1777 pursuant to part VIII of chapter 626 are not assessable  
1778 insurers, but insureds who procure one or more subject lines of  
1779 business in this state pursuant to part VIII of chapter 626 are  
1780 subject to assessment by the corporation and are referred to  
1781 collectively as “assessable insureds.” An authorized insurer’s  
1782 assessment liability begins ~~shall begin~~ on the first day of the  
1783 calendar year following the year in which the insurer was issued  
1784 a certificate of authority to transact insurance for subject  
1785 lines of business in this state and terminates ~~shall terminate~~ 1  
1786 year after the end of the first calendar year during which the  
1787 insurer no longer holds a certificate of authority to transact  
1788 insurance for subject lines of business in this state.  
1789           2.a. All revenues, assets, liabilities, losses, and  
1790 expenses of the corporation are ~~shall be~~ divided into three  
1791 separate accounts as follows:  
1792           (I) A personal lines account for personal residential  
1793 policies issued by the corporation or issued by the Residential  
1794 Property and Casualty Joint Underwriting Association and renewed  
1795 by the corporation which provides ~~that provide~~ comprehensive,  
1796 multiperil coverage on risks that are not located in areas  
1797 eligible for coverage in the Florida Windstorm Underwriting  
1798 Association as those areas were defined on January 1, 2002, and

20102044er

1799 for ~~such~~ policies that do not provide coverage for the peril of  
1800 wind on risks that are located in such areas;

1801 (II) A commercial lines account for commercial residential  
1802 and commercial nonresidential policies issued by the corporation  
1803 or issued by the Residential Property and Casualty Joint  
1804 Underwriting Association and renewed by the corporation which  
1805 ~~that~~ provide coverage for basic property perils on risks which  
1806 ~~that~~ are not located in areas eligible for coverage in the  
1807 Florida Windstorm Underwriting Association as those areas were  
1808 defined on January 1, 2002, and for ~~such~~ policies that do not  
1809 provide coverage for the peril of wind on risks that are located  
1810 in such areas; and

1811 (III) A coastal ~~high-risk~~ account for personal residential  
1812 policies and commercial residential and commercial  
1813 nonresidential property policies issued by the corporation or  
1814 transferred to the corporation which provides ~~that provide~~  
1815 coverage for the peril of wind on risks that are located in  
1816 areas eligible for coverage in the Florida Windstorm  
1817 Underwriting Association as those areas were defined on January  
1818 1, 2002. The corporation may offer policies that provide  
1819 multiperil coverage and the corporation shall continue to offer  
1820 policies that provide coverage only for the peril of wind for  
1821 risks located in areas eligible for coverage in the coastal  
1822 ~~high-risk~~ account. In issuing multiperil coverage, the  
1823 corporation may use its approved policy forms and rates for the  
1824 personal lines account. An applicant or insured who is eligible  
1825 to purchase a multiperil policy from the corporation may  
1826 purchase a multiperil policy from an authorized insurer without  
1827 prejudice to the applicant's or insured's eligibility to

20102044er

1828 prospectively purchase a policy that provides coverage only for  
1829 the peril of wind from the corporation. An applicant or insured  
1830 who is eligible for a corporation policy that provides coverage  
1831 only for the peril of wind may elect to purchase or retain such  
1832 policy and also purchase or retain coverage excluding wind from  
1833 an authorized insurer without prejudice to the applicant's or  
1834 insured's eligibility to prospectively purchase a policy that  
1835 provides multiperil coverage from the corporation. It is the  
1836 goal of the Legislature that there ~~would~~ be an overall average  
1837 savings of 10 percent or more for a policyholder who currently  
1838 has a wind-only policy with the corporation, and an ex-wind  
1839 policy with a voluntary insurer or the corporation, and who ~~then~~  
1840 obtains a multiperil policy from the corporation. It is the  
1841 intent of the Legislature that the offer of multiperil coverage  
1842 in the coastal ~~high-risk~~ account be made and implemented in a  
1843 manner that does not adversely affect the tax-exempt status of  
1844 the corporation or creditworthiness of or security for currently  
1845 outstanding financing obligations or credit facilities of the  
1846 coastal ~~high-risk~~ account, the personal lines account, or the  
1847 commercial lines account. The coastal ~~high-risk~~ account must  
1848 also include quota share primary insurance under subparagraph  
1849 (c)2. The area eligible for coverage under the coastal ~~high-risk~~  
1850 account also includes the area within Port Canaveral, which is  
1851 bordered on the south by the City of Cape Canaveral, bordered on  
1852 the west by the Banana River, and bordered on the north by  
1853 Federal Government property.

1854       b. The three separate accounts must be maintained as long  
1855 as financing obligations entered into by the Florida Windstorm  
1856 Underwriting Association or Residential Property and Casualty

20102044er

1857 Joint Underwriting Association are outstanding, in accordance  
1858 with the terms of the corresponding financing documents. If ~~When~~  
1859 the financing obligations are no longer outstanding, in  
1860 accordance with the terms of the corresponding financing  
1861 documents, the corporation may use a single account for all  
1862 revenues, assets, liabilities, losses, and expenses of the  
1863 corporation. Consistent with ~~the requirement of~~ this  
1864 subparagraph and prudent investment policies that minimize the  
1865 cost of carrying debt, the board shall exercise its best efforts  
1866 to retire existing debt or to obtain approval of necessary  
1867 parties to amend the terms of existing debt, so as to structure  
1868 the most efficient plan to consolidate the three separate  
1869 accounts into a single account. ~~By February 1, 2007, the board~~  
1870 ~~shall submit a report to the Financial Services Commission, the~~  
1871 ~~President of the Senate, and the Speaker of the House of~~  
1872 ~~Representatives which includes an analysis of consolidating the~~  
1873 ~~accounts, the actions the board has taken to minimize the cost~~  
1874 ~~of carrying debt, and its recommendations for executing the most~~  
1875 ~~efficient plan.~~

1876 c. Creditors of the Residential Property and Casualty Joint  
1877 Underwriting Association and ~~of~~ the accounts specified in sub-  
1878 sub-subparagraphs a.(I) and (II) may have a claim against, and  
1879 recourse to, the accounts referred to in sub-sub-subparagraphs  
1880 a.(I) and (II) and ~~shall~~ have no claim against, or recourse to,  
1881 the account referred to in sub-sub-subparagraph a.(III).  
1882 Creditors of the Florida Windstorm Underwriting Association  
1883 ~~shall~~ have a claim against, and recourse to, the account  
1884 referred to in sub-sub-subparagraph a.(III) and ~~shall~~ have no  
1885 claim against, or recourse to, the accounts referred to in sub-

20102044er

1886 sub-subparagraphs a.(I) and (II).

1887 d. Revenues, assets, liabilities, losses, and expenses not  
1888 attributable to particular accounts shall be prorated among the  
1889 accounts.

1890 e. The Legislature finds that the revenues of the  
1891 corporation are revenues that are necessary to meet the  
1892 requirements set forth in documents authorizing the issuance of  
1893 bonds under this subsection.

1894 f. No part of the income of the corporation may inure to  
1895 the benefit of any private person.

1896 3. With respect to a deficit in an account:

1897 a. After accounting for the Citizens policyholder surcharge  
1898 imposed under sub-subparagraph i., if ~~when~~ the remaining  
1899 projected deficit incurred in a particular calendar year is not  
1900 greater than 6 percent of the aggregate statewide direct written  
1901 premium for the subject lines of business for the prior calendar  
1902 year, the entire deficit shall be recovered through regular  
1903 assessments of assessable insurers under paragraph (p) and  
1904 assessable insureds.

1905 b. After accounting for the Citizens policyholder surcharge  
1906 imposed under sub-subparagraph i., when the remaining projected  
1907 deficit incurred in a particular calendar year exceeds 6 percent  
1908 of the aggregate statewide direct written premium for the  
1909 subject lines of business for the prior calendar year, the  
1910 corporation shall levy regular assessments on assessable  
1911 insurers under paragraph (q) ~~(p)~~ and on assessable insureds in  
1912 an amount equal to the greater of 6 percent of the deficit or 6  
1913 percent of the aggregate statewide direct written premium for  
1914 the subject lines of business for the prior calendar year. Any

20102044er

1915 remaining deficit shall be recovered through emergency  
1916 assessments under sub-subparagraph d.

1917 c. Each assessable insurer's share of the amount being  
1918 assessed under sub-subparagraph a. or sub-subparagraph b. must  
1919 ~~shall~~ be in the proportion that the assessable insurer's direct  
1920 written premium for the subject lines of business for the year  
1921 preceding the assessment bears to the aggregate statewide direct  
1922 written premium for the subject lines of business for that year.  
1923 The assessment percentage applicable to each assessable insured  
1924 is the ratio of the amount being assessed under sub-subparagraph  
1925 a. or sub-subparagraph b. to the aggregate statewide direct  
1926 written premium for the subject lines of business for the prior  
1927 year. Assessments levied by the corporation on assessable  
1928 insurers under sub-subparagraphs a. and b. shall be paid as  
1929 required by the corporation's plan of operation and paragraph  
1930 (q) ~~(p)~~. Assessments levied by the corporation on assessable  
1931 insureds under sub-subparagraphs a. and b. shall be collected by  
1932 the surplus lines agent at the time the surplus lines agent  
1933 collects the surplus lines tax required by s. 626.932 and ~~shall~~  
1934 ~~be~~ paid to the Florida Surplus Lines Service Office at the time  
1935 the surplus lines agent pays the surplus lines tax to the  
1936 Florida Surplus Lines Service Office. Upon receipt of regular  
1937 assessments from surplus lines agents, the Florida Surplus Lines  
1938 Service Office shall transfer the assessments directly to the  
1939 corporation as determined by the corporation.

1940 d. Upon a determination by the board of governors that a  
1941 deficit in an account exceeds the amount that will be recovered  
1942 through regular assessments under sub-subparagraph a. or sub-  
1943 subparagraph b., plus the amount that is expected to be

20102044er

1944 recovered through surcharges under sub-subparagraph i., ~~as to~~  
1945 ~~the remaining projected deficit~~ the board shall levy, after  
1946 verification by the office, emergency assessments, for as many  
1947 years as necessary to cover the deficits, to be collected by  
1948 assessable insurers and the corporation and collected from  
1949 assessable insureds upon issuance or renewal of policies for  
1950 subject lines of business, excluding National Flood Insurance  
1951 policies. The amount of the emergency assessment collected in a  
1952 particular year shall be a uniform percentage of that year's  
1953 direct written premium for subject lines of business and all  
1954 accounts of the corporation, excluding National Flood Insurance  
1955 Program policy premiums, as annually determined by the board and  
1956 verified by the office. The office shall verify the arithmetic  
1957 calculations involved in the board's determination within 30  
1958 days after receipt of the information on which the determination  
1959 was based. Notwithstanding any other provision of law, the  
1960 corporation and each assessable insurer that writes subject  
1961 lines of business shall collect emergency assessments from its  
1962 policyholders without such obligation being affected by any  
1963 credit, limitation, exemption, or deferment. Emergency  
1964 assessments levied by the corporation on assessable insureds  
1965 shall be collected by the surplus lines agent at the time the  
1966 surplus lines agent collects the surplus lines tax required by  
1967 s. 626.932 and shall be paid to the Florida Surplus Lines  
1968 Service Office at the time the surplus lines agent pays the  
1969 surplus lines tax to the Florida Surplus Lines Service Office.  
1970 The emergency assessments ~~so~~ collected shall be transferred  
1971 directly to the corporation on a periodic basis as determined by  
1972 the corporation and ~~shall be~~ held by the corporation solely in

20102044er

1973 the applicable account. The aggregate amount of emergency  
1974 assessments levied for an account under this sub-subparagraph in  
1975 any calendar year may, at the discretion of the board of  
1976 governors, be less than but may not exceed the greater of 10  
1977 percent of the amount needed to cover the deficit, plus  
1978 interest, fees, commissions, required reserves, and other costs  
1979 associated with financing of the original deficit, or 10 percent  
1980 of the aggregate statewide direct written premium for subject  
1981 lines of business and for all accounts of the corporation for  
1982 the prior year, plus interest, fees, commissions, required  
1983 reserves, and other costs associated with financing the deficit.

1984 e. The corporation may pledge the proceeds of assessments,  
1985 projected recoveries from the Florida Hurricane Catastrophe  
1986 Fund, other insurance and reinsurance recoverables, policyholder  
1987 surcharges and other surcharges, and other funds available to  
1988 the corporation as the source of revenue for and to secure bonds  
1989 issued under paragraph (p), bonds or other indebtedness issued  
1990 under subparagraph (c)3., or lines of credit or other financing  
1991 mechanisms issued or created under this subsection, or to retire  
1992 any other debt incurred as a result of deficits or events giving  
1993 rise to deficits, or in any other way that the board determines  
1994 will efficiently recover such deficits. The purpose of the lines  
1995 of credit or other financing mechanisms is to provide additional  
1996 resources to assist the corporation in covering claims and  
1997 expenses attributable to a catastrophe. As used in this  
1998 subsection, the term "assessments" includes regular assessments  
1999 under sub-subparagraph a., sub-subparagraph b., or subparagraph  
2000 (p)1. and emergency assessments under sub-subparagraph d.  
2001 Emergency assessments collected under sub-subparagraph d. are

20102044er

2002 not part of an insurer's rates, are not premium, and are not  
2003 subject to premium tax, fees, or commissions; however, failure  
2004 to pay the emergency assessment shall be treated as failure to  
2005 pay premium. The emergency assessments under sub-subparagraph d.  
2006 shall continue as long as any bonds issued or other indebtedness  
2007 incurred with respect to a deficit for which the assessment was  
2008 imposed remain outstanding, unless adequate provision has been  
2009 made for the payment of such bonds or other indebtedness  
2010 pursuant to the documents governing such bonds or other  
2011 indebtedness.

2012 f. As used in this subsection for purposes of any deficit  
2013 incurred on or after January 25, 2007, the term "subject lines  
2014 of business" means insurance written by assessable insurers or  
2015 procured by assessable insureds for all property and casualty  
2016 lines of business in this state, but not including workers'  
2017 compensation or medical malpractice. As used in the sub-  
2018 subparagraph, the term "property and casualty lines of business"  
2019 includes all lines of business identified on Form 2, Exhibit of  
2020 Premiums and Losses, in the annual statement required of  
2021 authorized insurers by s. 624.424 and any rule adopted under  
2022 this section, except for those lines identified as accident and  
2023 health insurance and except for policies written under the  
2024 National Flood Insurance Program or the Federal Crop Insurance  
2025 Program. For purposes of this sub-subparagraph, the term  
2026 "workers' compensation" includes both workers' compensation  
2027 insurance and excess workers' compensation insurance.

2028 g. The Florida Surplus Lines Service Office shall determine  
2029 annually the aggregate statewide written premium in subject  
2030 lines of business procured by assessable insureds and shall

20102044er

2031 report that information to the corporation in a form and at a  
2032 time the corporation specifies to ensure that the corporation  
2033 can meet the requirements of this subsection and the  
2034 corporation's financing obligations.

2035 h. The Florida Surplus Lines Service Office shall verify  
2036 the proper application by surplus lines agents of assessment  
2037 percentages for regular assessments and emergency assessments  
2038 levied under this subparagraph on assessable insureds and shall  
2039 assist the corporation in ensuring the accurate, timely  
2040 collection and payment of assessments by surplus lines agents as  
2041 required by the corporation.

2042 i. (I) If a deficit is incurred in any account in 2008 or  
2043 thereafter, the board of governors shall levy a Citizens  
2044 policyholder surcharge against all policyholders of the  
2045 corporation. ~~for a 12-month period, which~~

2046 (II) The Citizens policyholder surcharge shall be levied  
2047 ~~collected at the time of issuance or renewal of a policy,~~ as a  
2048 uniform percentage of the premium for the policy of up to 15  
2049 percent of such premium, which funds shall be used to offset the  
2050 deficit.

2051 (III) The Citizens policyholder surcharge is payable upon  
2052 cancellation or termination of the policy, upon renewal of the  
2053 policy, or upon issuance of a new policy by Citizens within the  
2054 first 12 months after the date of the levy or the period of time  
2055 necessary to fully collect the Citizens policyholder surcharge  
2056 amount.

2057 (IV) The corporation may not levy any regular assessments  
2058 under paragraph (q) pursuant to sub-subparagraph a. or sub-  
2059 subparagraph b. with respect to a particular year's deficit

20102044er

2060 until the corporation has first levied a Citizens policyholder  
2061 surcharge under this sub-subparagraph in the full amount  
2062 authorized by this sub-subparagraph.

2063 (V) Citizens policyholder surcharges under this sub-  
2064 subparagraph are not considered premium and are not subject to  
2065 commissions, fees, or premium taxes. However, failure to pay  
2066 such surcharges shall be treated as failure to pay premium.

2067 j. If the amount of any assessments or surcharges collected  
2068 from corporation policyholders, assessable insurers or their  
2069 policyholders, or assessable insureds exceeds the amount of the  
2070 deficits, such excess amounts shall be remitted to and retained  
2071 by the corporation in a reserve to be used by the corporation,  
2072 as determined by the board of governors and approved by the  
2073 office, to pay claims or reduce any past, present, or future  
2074 plan-year deficits or to reduce outstanding debt.

2075 (c) The plan of operation of the corporation:

2076 1. Must provide for adoption of residential property and  
2077 casualty insurance policy forms and commercial residential and  
2078 nonresidential property insurance forms, which forms must be  
2079 approved by the office prior to use. The corporation shall adopt  
2080 the following policy forms:

2081 a. Standard personal lines policy forms that are  
2082 comprehensive multiperil policies providing full coverage of a  
2083 residential property equivalent to the coverage provided in the  
2084 private insurance market under an HO-3, HO-4, or HO-6 policy.

2085 b. Basic personal lines policy forms that are policies  
2086 similar to an HO-8 policy or a dwelling fire policy that provide  
2087 coverage meeting the requirements of the secondary mortgage  
2088 market, but which coverage is more limited than the coverage

20102044er

2089 under a standard policy.

2090 c. Commercial lines residential and nonresidential policy  
2091 forms that are generally similar to the basic perils of full  
2092 coverage obtainable for commercial residential structures and  
2093 commercial nonresidential structures in the admitted voluntary  
2094 market.

2095 d. Personal lines and commercial lines residential property  
2096 insurance forms that cover the peril of wind only. The forms are  
2097 applicable only to residential properties located in areas  
2098 eligible for coverage under the coastal ~~high-risk~~ account  
2099 referred to in sub-subparagraph (b)2.a.

2100 e. Commercial lines nonresidential property insurance forms  
2101 that cover the peril of wind only. The forms are applicable only  
2102 to nonresidential properties located in areas eligible for  
2103 coverage under the coastal ~~high-risk~~ account referred to in sub-  
2104 subparagraph (b)2.a.

2105 f. The corporation may adopt variations of the policy forms  
2106 listed in sub-subparagraphs a.-e. that contain more restrictive  
2107 coverage.

2108 2.a. Must provide that the corporation adopt a program in  
2109 which the corporation and authorized insurers enter into quota  
2110 share primary insurance agreements for hurricane coverage, as  
2111 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
2112 property insurance forms for eligible risks which cover the  
2113 peril of wind only. As used in this subsection, the term:

2114 (I) "Quota share primary insurance" means an arrangement in  
2115 which the primary hurricane coverage of an eligible risk is  
2116 provided in specified percentages by the corporation and an  
2117 authorized insurer. The corporation and authorized insurer are

20102044er

2118 each solely responsible for a specified percentage of hurricane  
2119 coverage of an eligible risk as set forth in a quota share  
2120 primary insurance agreement between the corporation and an  
2121 authorized insurer and the insurance contract. The  
2122 responsibility of the corporation or authorized insurer to pay  
2123 its specified percentage of hurricane losses of an eligible  
2124 risk, as set forth in the quota share primary insurance  
2125 agreement, may not be altered by the inability of the other  
2126 party to the agreement to pay its specified percentage of  
2127 hurricane losses. Eligible risks that are provided hurricane  
2128 coverage through a quota share primary insurance arrangement  
2129 must be provided policy forms that set forth the obligations of  
2130 the corporation and authorized insurer under the arrangement,  
2131 clearly specify the percentages of quota share primary insurance  
2132 provided by the corporation and authorized insurer, and  
2133 conspicuously and clearly state that neither the authorized  
2134 insurer nor the corporation may be held responsible beyond its  
2135 specified percentage of coverage of hurricane losses.

2136 (II) "Eligible risks" means personal lines residential and  
2137 commercial lines residential risks that meet the underwriting  
2138 criteria of the corporation and are located in areas that were  
2139 eligible for coverage by the Florida Windstorm Underwriting  
2140 Association on January 1, 2002.

2141 b. The corporation may enter into quota share primary  
2142 insurance agreements with authorized insurers at corporation  
2143 coverage levels of 90 percent and 50 percent.

2144 c. If the corporation determines that additional coverage  
2145 levels are necessary to maximize participation in quota share  
2146 primary insurance agreements by authorized insurers, the

20102044er

2147 corporation may establish additional coverage levels. However,  
2148 the corporation's quota share primary insurance coverage level  
2149 may not exceed 90 percent.

2150 d. Any quota share primary insurance agreement entered into  
2151 between an authorized insurer and the corporation must provide  
2152 for a uniform specified percentage of coverage of hurricane  
2153 losses, by county or territory as set forth by the corporation  
2154 board, for all eligible risks of the authorized insurer covered  
2155 under the quota share primary insurance agreement.

2156 e. Any quota share primary insurance agreement entered into  
2157 between an authorized insurer and the corporation is subject to  
2158 review and approval by the office. However, such agreement shall  
2159 be authorized only as to insurance contracts entered into  
2160 between an authorized insurer and an insured who is already  
2161 insured by the corporation for wind coverage.

2162 f. For all eligible risks covered under quota share primary  
2163 insurance agreements, the exposure and coverage levels for both  
2164 the corporation and authorized insurers shall be reported by the  
2165 corporation to the Florida Hurricane Catastrophe Fund. For all  
2166 policies of eligible risks covered under quota share primary  
2167 insurance agreements, the corporation and the authorized insurer  
2168 shall maintain complete and accurate records for the purpose of  
2169 exposure and loss reimbursement audits as required by Florida  
2170 Hurricane Catastrophe Fund rules. The corporation and the  
2171 authorized insurer shall each maintain duplicate copies of  
2172 policy declaration pages and supporting claims documents.

2173 g. The corporation board shall establish in its plan of  
2174 operation standards for quota share agreements which ensure that  
2175 there is no discriminatory application among insurers as to the

20102044er

2176 terms of quota share agreements, pricing of quota share  
2177 agreements, incentive provisions if any, and consideration paid  
2178 for servicing policies or adjusting claims.

2179 h. The quota share primary insurance agreement between the  
2180 corporation and an authorized insurer must set forth the  
2181 specific terms under which coverage is provided, including, but  
2182 not limited to, the sale and servicing of policies issued under  
2183 the agreement by the insurance agent of the authorized insurer  
2184 producing the business, the reporting of information concerning  
2185 eligible risks, the payment of premium to the corporation, and  
2186 arrangements for the adjustment and payment of hurricane claims  
2187 incurred on eligible risks by the claims adjuster and personnel  
2188 of the authorized insurer. Entering into a quota sharing  
2189 insurance agreement between the corporation and an authorized  
2190 insurer shall be voluntary and at the discretion of the  
2191 authorized insurer.

2192 3. May provide that the corporation may employ or otherwise  
2193 contract with individuals or other entities to provide  
2194 administrative or professional services that may be appropriate  
2195 to effectuate the plan. The corporation shall have the power to  
2196 borrow funds, by issuing bonds or by incurring other  
2197 indebtedness, and shall have other powers reasonably necessary  
2198 to effectuate the requirements of this subsection, including,  
2199 without limitation, the power to issue bonds and incur other  
2200 indebtedness in order to refinance outstanding bonds or other  
2201 indebtedness. The corporation may, but is not required to, seek  
2202 judicial validation of its bonds or other indebtedness under  
2203 chapter 75. The corporation may issue bonds or incur other  
2204 indebtedness, or have bonds issued on its behalf by a unit of

20102044er

2205 local government pursuant to subparagraph (p)2., in the absence  
2206 of a hurricane or other weather-related event, upon a  
2207 determination by the corporation, subject to approval by the  
2208 office, that such action would enable it to efficiently meet the  
2209 financial obligations of the corporation and that such  
2210 financings are reasonably necessary to effectuate the  
2211 requirements of this subsection. The corporation is authorized  
2212 to take all actions needed to facilitate tax-free status for any  
2213 such bonds or indebtedness, including formation of trusts or  
2214 other affiliated entities. The corporation shall have the  
2215 authority to pledge assessments, projected recoveries from the  
2216 Florida Hurricane Catastrophe Fund, other reinsurance  
2217 recoverables, market equalization and other surcharges, and  
2218 other funds available to the corporation as security for bonds  
2219 or other indebtedness. In recognition of s. 10, Art. I of the  
2220 State Constitution, prohibiting the impairment of obligations of  
2221 contracts, it is the intent of the Legislature that no action be  
2222 taken whose purpose is to impair any bond indenture or financing  
2223 agreement or any revenue source committed by contract to such  
2224 bond or other indebtedness.

2225 4.a. Must require that the corporation operate subject to  
2226 the supervision and approval of a board of governors consisting  
2227 of eight individuals who are residents of this state, from  
2228 different geographical areas of this state. The Governor, the  
2229 Chief Financial Officer, the President of the Senate, and the  
2230 Speaker of the House of Representatives shall each appoint two  
2231 members of the board. At least one of the two members appointed  
2232 by each appointing officer must have demonstrated expertise in  
2233 insurance, and is deemed to be within the scope of the exemption

20102044er

2234 provided in s. 112.313(7)(b). The Chief Financial Officer shall  
2235 designate one of the appointees as chair. All board members  
2236 serve at the pleasure of the appointing officer. All members of  
2237 the board of governors are subject to removal at will by the  
2238 officers who appointed them. All board members, including the  
2239 chair, must be appointed to serve for 3-year terms beginning  
2240 annually on a date designated by the plan. However, for the  
2241 first term beginning on or after July 1, 2009, each appointing  
2242 officer shall appoint one member of the board for a 2-year term  
2243 and one member for a 3-year term. Any board vacancy shall be  
2244 filled for the unexpired term by the appointing officer. The  
2245 Chief Financial Officer shall appoint a technical advisory group  
2246 to provide information and advice to the board of governors in  
2247 connection with the board's duties under this subsection. The  
2248 executive director and senior managers of the corporation shall  
2249 be engaged by the board and serve at the pleasure of the board.  
2250 Any executive director appointed on or after July 1, 2006, is  
2251 subject to confirmation by the Senate. The executive director is  
2252 responsible for employing other staff as the corporation may  
2253 require, subject to review and concurrence by the board.

2254       b. The board shall create a Market Accountability Advisory  
2255 Committee to assist the corporation in developing awareness of  
2256 its rates and its customer and agent service levels in  
2257 relationship to the voluntary market insurers writing similar  
2258 coverage. The members of the advisory committee shall consist of  
2259 the following 11 persons, one of whom must be elected chair by  
2260 the members of the committee: four representatives, one  
2261 appointed by the Florida Association of Insurance Agents, one by  
2262 the Florida Association of Insurance and Financial Advisors, one

20102044er

2263 by the Professional Insurance Agents of Florida, and one by the  
2264 Latin American Association of Insurance Agencies; three  
2265 representatives appointed by the insurers with the three highest  
2266 voluntary market share of residential property insurance  
2267 business in the state; one representative from the Office of  
2268 Insurance Regulation; one consumer appointed by the board who is  
2269 insured by the corporation at the time of appointment to the  
2270 committee; one representative appointed by the Florida  
2271 Association of Realtors; and one representative appointed by the  
2272 Florida Bankers Association. All members must serve for 3-year  
2273 terms and may serve for consecutive terms. The committee shall  
2274 report to the corporation at each board meeting on insurance  
2275 market issues which may include rates and rate competition with  
2276 the voluntary market; service, including policy issuance, claims  
2277 processing, and general responsiveness to policyholders,  
2278 applicants, and agents; and matters relating to depopulation.

2279 5. Must provide a procedure for determining the eligibility  
2280 of a risk for coverage, as follows:

2281 a. Subject to the provisions of s. 627.3517, with respect  
2282 to personal lines residential risks, if the risk is offered  
2283 coverage from an authorized insurer at the insurer's approved  
2284 rate under either a standard policy including wind coverage or,  
2285 if consistent with the insurer's underwriting rules as filed  
2286 with the office, a basic policy including wind coverage, for a  
2287 new application to the corporation for coverage, the risk is not  
2288 eligible for any policy issued by the corporation unless the  
2289 premium for coverage from the authorized insurer is more than 15  
2290 percent greater than the premium for comparable coverage from  
2291 the corporation. If the risk is not able to obtain any such

20102044er

2292 offer, the risk is eligible for either a standard policy  
2293 including wind coverage or a basic policy including wind  
2294 coverage issued by the corporation; however, if the risk could  
2295 not be insured under a standard policy including wind coverage  
2296 regardless of market conditions, the risk shall be eligible for  
2297 a basic policy including wind coverage unless rejected under  
2298 subparagraph 8. However, with regard to a policyholder of the  
2299 corporation or a policyholder removed from the corporation  
2300 through an assumption agreement until the end of the assumption  
2301 period, the policyholder remains eligible for coverage from the  
2302 corporation regardless of any offer of coverage from an  
2303 authorized insurer or surplus lines insurer. The corporation  
2304 shall determine the type of policy to be provided on the basis  
2305 of objective standards specified in the underwriting manual and  
2306 based on generally accepted underwriting practices.

2307 (I) If the risk accepts an offer of coverage through the  
2308 market assistance plan or an offer of coverage through a  
2309 mechanism established by the corporation before a policy is  
2310 issued to the risk by the corporation or during the first 30  
2311 days of coverage by the corporation, and the producing agent who  
2312 submitted the application to the plan or to the corporation is  
2313 not currently appointed by the insurer, the insurer shall:

2314 (A) Pay to the producing agent of record of the policy, for  
2315 the first year, an amount that is the greater of the insurer's  
2316 usual and customary commission for the type of policy written or  
2317 a fee equal to the usual and customary commission of the  
2318 corporation; or

2319 (B) Offer to allow the producing agent of record of the  
2320 policy to continue servicing the policy for a period of not less

20102044er

2321 than 1 year and offer to pay the agent the greater of the  
2322 insurer's or the corporation's usual and customary commission  
2323 for the type of policy written.

2324

2325 If the producing agent is unwilling or unable to accept  
2326 appointment, the new insurer shall pay the agent in accordance  
2327 with sub-sub-sub-subparagraph (A).

2328 (II) When the corporation enters into a contractual  
2329 agreement for a take-out plan, the producing agent of record of  
2330 the corporation policy is entitled to retain any unearned  
2331 commission on the policy, and the insurer shall:

2332 (A) Pay to the producing agent of record of the corporation  
2333 policy, for the first year, an amount that is the greater of the  
2334 insurer's usual and customary commission for the type of policy  
2335 written or a fee equal to the usual and customary commission of  
2336 the corporation; or

2337 (B) Offer to allow the producing agent of record of the  
2338 corporation policy to continue servicing the policy for a period  
2339 of not less than 1 year and offer to pay the agent the greater  
2340 of the insurer's or the corporation's usual and customary  
2341 commission for the type of policy written.

2342

2343 If the producing agent is unwilling or unable to accept  
2344 appointment, the new insurer shall pay the agent in accordance  
2345 with sub-sub-sub-subparagraph (A).

2346 b. With respect to commercial lines residential risks, for  
2347 a new application to the corporation for coverage, if the risk  
2348 is offered coverage under a policy including wind coverage from  
2349 an authorized insurer at its approved rate, the risk is not

20102044er

2350 eligible for any policy issued by the corporation unless the  
2351 premium for coverage from the authorized insurer is more than 15  
2352 percent greater than the premium for comparable coverage from  
2353 the corporation. If the risk is not able to obtain any such  
2354 offer, the risk is eligible for a policy including wind coverage  
2355 issued by the corporation. However, with regard to a  
2356 policyholder of the corporation or a policyholder removed from  
2357 the corporation through an assumption agreement until the end of  
2358 the assumption period, the policyholder remains eligible for  
2359 coverage from the corporation regardless of any offer of  
2360 coverage from an authorized insurer or surplus lines insurer.

2361 (I) If the risk accepts an offer of coverage through the  
2362 market assistance plan or an offer of coverage through a  
2363 mechanism established by the corporation before a policy is  
2364 issued to the risk by the corporation or during the first 30  
2365 days of coverage by the corporation, and the producing agent who  
2366 submitted the application to the plan or the corporation is not  
2367 currently appointed by the insurer, the insurer shall:

2368 (A) Pay to the producing agent of record of the policy, for  
2369 the first year, an amount that is the greater of the insurer's  
2370 usual and customary commission for the type of policy written or  
2371 a fee equal to the usual and customary commission of the  
2372 corporation; or

2373 (B) Offer to allow the producing agent of record of the  
2374 policy to continue servicing the policy for a period of not less  
2375 than 1 year and offer to pay the agent the greater of the  
2376 insurer's or the corporation's usual and customary commission  
2377 for the type of policy written.

2378

20102044er

2379 If the producing agent is unwilling or unable to accept  
2380 appointment, the new insurer shall pay the agent in accordance  
2381 with sub-sub-sub-subparagraph (A).

2382 (II) When the corporation enters into a contractual  
2383 agreement for a take-out plan, the producing agent of record of  
2384 the corporation policy is entitled to retain any unearned  
2385 commission on the policy, and the insurer shall:

2386 (A) Pay to the producing agent of record of the corporation  
2387 policy, for the first year, an amount that is the greater of the  
2388 insurer's usual and customary commission for the type of policy  
2389 written or a fee equal to the usual and customary commission of  
2390 the corporation; or

2391 (B) Offer to allow the producing agent of record of the  
2392 corporation policy to continue servicing the policy for a period  
2393 of not less than 1 year and offer to pay the agent the greater  
2394 of the insurer's or the corporation's usual and customary  
2395 commission for the type of policy written.

2396  
2397 If the producing agent is unwilling or unable to accept  
2398 appointment, the new insurer shall pay the agent in accordance  
2399 with sub-sub-sub-subparagraph (A).

2400 c. For purposes of determining comparable coverage under  
2401 sub-subparagraphs a. and b., the comparison shall be based on  
2402 those forms and coverages that are reasonably comparable. The  
2403 corporation may rely on a determination of comparable coverage  
2404 and premium made by the producing agent who submits the  
2405 application to the corporation, made in the agent's capacity as  
2406 the corporation's agent. A comparison may be made solely of the  
2407 premium with respect to the main building or structure only on

20102044er

2408 the following basis: the same coverage A or other building  
2409 limits; the same percentage hurricane deductible that applies on  
2410 an annual basis or that applies to each hurricane for commercial  
2411 residential property; the same percentage of ordinance and law  
2412 coverage, if the same limit is offered by both the corporation  
2413 and the authorized insurer; the same mitigation credits, to the  
2414 extent the same types of credits are offered both by the  
2415 corporation and the authorized insurer; the same method for loss  
2416 payment, such as replacement cost or actual cash value, if the  
2417 same method is offered both by the corporation and the  
2418 authorized insurer in accordance with underwriting rules; and  
2419 any other form or coverage that is reasonably comparable as  
2420 determined by the board. If an application is submitted to the  
2421 corporation for wind-only coverage in the coastal ~~high-risk~~  
2422 account, the premium for the corporation's wind-only policy plus  
2423 the premium for the ex-wind policy that is offered by an  
2424 authorized insurer to the applicant shall be compared to the  
2425 premium for multiperil coverage offered by an authorized  
2426 insurer, subject to the standards for comparison specified in  
2427 this subparagraph. If the corporation or the applicant requests  
2428 from the authorized insurer a breakdown of the premium of the  
2429 offer by types of coverage so that a comparison may be made by  
2430 the corporation or its agent and the authorized insurer refuses  
2431 or is unable to provide such information, the corporation may  
2432 treat the offer as not being an offer of coverage from an  
2433 authorized insurer at the insurer's approved rate.

2434 6. Must include rules for classifications of risks and  
2435 rates therefor.

2436 7. Must provide that if premium and investment income for

20102044er

2437 an account attributable to a particular calendar year are in  
2438 excess of projected losses and expenses for the account  
2439 attributable to that year, such excess shall be held in surplus  
2440 in the account. Such surplus shall be available to defray  
2441 deficits in that account as to future years and shall be used  
2442 for that purpose prior to assessing assessable insurers and  
2443 assessable insureds as to any calendar year.

2444 8. Must provide objective criteria and procedures to be  
2445 uniformly applied for all applicants in determining whether an  
2446 individual risk is so hazardous as to be uninsurable. In making  
2447 this determination and in establishing the criteria and  
2448 procedures, the following shall be considered:

2449 a. Whether the likelihood of a loss for the individual risk  
2450 is substantially higher than for other risks of the same class;  
2451 and

2452 b. Whether the uncertainty associated with the individual  
2453 risk is such that an appropriate premium cannot be determined.

2454

2455 The acceptance or rejection of a risk by the corporation shall  
2456 be construed as the private placement of insurance, and the  
2457 provisions of chapter 120 shall not apply.

2458 9. Must provide that the corporation shall make its best  
2459 efforts to procure catastrophe reinsurance at reasonable rates,  
2460 to cover its projected 100-year probable maximum loss as  
2461 determined by the board of governors.

2462 10. The policies issued by the corporation must provide  
2463 that, if the corporation or the market assistance plan obtains  
2464 an offer from an authorized insurer to cover the risk at its  
2465 approved rates, the risk is no longer eligible for renewal

20102044er

2466 through the corporation, except as otherwise provided in this  
2467 subsection.

2468 11. Corporation policies and applications must include a  
2469 notice that the corporation policy could, under this section, be  
2470 replaced with a policy issued by an authorized insurer that does  
2471 not provide coverage identical to the coverage provided by the  
2472 corporation. The notice shall also specify that acceptance of  
2473 corporation coverage creates a conclusive presumption that the  
2474 applicant or policyholder is aware of this potential.

2475 12. May establish, subject to approval by the office,  
2476 different eligibility requirements and operational procedures  
2477 for any line or type of coverage for any specified county or  
2478 area if the board determines that such changes to the  
2479 eligibility requirements and operational procedures are  
2480 justified due to the voluntary market being sufficiently stable  
2481 and competitive in such area or for such line or type of  
2482 coverage and that consumers who, in good faith, are unable to  
2483 obtain insurance through the voluntary market through ordinary  
2484 methods would continue to have access to coverage from the  
2485 corporation. When coverage is sought in connection with a real  
2486 property transfer, such requirements and procedures shall not  
2487 provide for an effective date of coverage later than the date of  
2488 the closing of the transfer as established by the transferor,  
2489 the transferee, and, if applicable, the lender.

2490 13. Must provide that, with respect to the coastal high-  
2491 ~~risk~~ account, any assessable insurer with a surplus as to  
2492 policyholders of \$25 million or less writing 25 percent or more  
2493 of its total countrywide property insurance premiums in this  
2494 state may petition the office, within the first 90 days of each

20102044er

2495 calendar year, to qualify as a limited apportionment company. A  
2496 regular assessment levied by the corporation on a limited  
2497 apportionment company for a deficit incurred by the corporation  
2498 for the coastal ~~high-risk~~ account in 2006 or thereafter may be  
2499 paid to the corporation on a monthly basis as the assessments  
2500 are collected by the limited apportionment company from its  
2501 insureds pursuant to s. 627.3512, but the regular assessment  
2502 must be paid in full within 12 months after being levied by the  
2503 corporation. A limited apportionment company shall collect from  
2504 its policyholders any emergency assessment imposed under sub-  
2505 subparagraph (b)3.d. The plan shall provide that, if the office  
2506 determines that any regular assessment will result in an  
2507 impairment of the surplus of a limited apportionment company,  
2508 the office may direct that all or part of such assessment be  
2509 deferred as provided in subparagraph (p)4. However, there shall  
2510 be no limitation or deferment of an emergency assessment to be  
2511 collected from policyholders under sub-subparagraph (b)3.d.

2512 14. Must provide that the corporation appoint as its  
2513 licensed agents only those agents who also hold an appointment  
2514 as defined in s. 626.015(3) with an insurer who at the time of  
2515 the agent's initial appointment by the corporation is authorized  
2516 to write and is actually writing personal lines residential  
2517 property coverage, commercial residential property coverage, or  
2518 commercial nonresidential property coverage within the state.

2519 15. Must provide, by July 1, 2007, a premium payment plan  
2520 option to its policyholders which allows at a minimum for  
2521 quarterly and semiannual payment of premiums. A monthly payment  
2522 plan may, but is not required to, be offered.

2523 16. Must limit coverage on mobile homes or manufactured

20102044er

2524 homes built prior to 1994 to actual cash value of the dwelling  
2525 rather than replacement costs of the dwelling.

2526 17. May provide such limits of coverage as the board  
2527 determines, consistent with the requirements of this subsection.

2528 18. May require commercial property to meet specified  
2529 hurricane mitigation construction features as a condition of  
2530 eligibility for coverage.

2531 (d)1. All prospective employees for senior management  
2532 positions, as defined by the plan of operation, are subject to  
2533 background checks as a prerequisite for employment. The office  
2534 shall conduct background checks on such prospective employees  
2535 pursuant to ss. 624.34, 624.404(3), and 628.261.

2536 2. On or before July 1 of each year, employees of the  
2537 corporation are required to sign and submit a statement  
2538 attesting that they do not have a conflict of interest, as  
2539 defined in part III of chapter 112. As a condition of  
2540 employment, all prospective employees are required to sign and  
2541 submit to the corporation a conflict-of-interest statement.

2542 3. Senior managers and members of the board of governors  
2543 are subject to ~~the provisions of~~ part III of chapter 112,  
2544 including, but not limited to, the code of ethics and public  
2545 disclosure and reporting of financial interests, pursuant to s.  
2546 112.3145. Notwithstanding s. 112.3143(2), a board member may not  
2547 vote on any measure that would inure to his or her special  
2548 private gain or loss; that he or she knows would inure to the  
2549 special private gain or loss of any principal by whom he or she  
2550 is retained or to the parent organization or subsidiary of a  
2551 corporate principal by which he or she is retained, other than  
2552 an agency as defined in s. 112.312; or that he or she knows

20102044er

2553 would inure to the special private gain or loss of a relative or  
2554 business associate of the public officer. Before the vote is  
2555 taken, such member shall publicly state to the assembly the  
2556 nature of the his or her interest in the matter from which he or  
2557 she is abstaining from voting and, within 15 days after the vote  
2558 occurs, disclose the nature of his or her interest as a public  
2559 record in a memorandum filed with the person responsible for  
2560 recording the minutes of the meeting, who shall incorporate the  
2561 memorandum in the minutes. Senior managers and board members are  
2562 also required to file such disclosures with the Commission on  
2563 Ethics and the Office of Insurance Regulation. The executive  
2564 director of the corporation or ~~his or her~~ designee shall notify  
2565 each existing and newly appointed and ~~existing appointed~~ member  
2566 of the board of governors and senior managers of their duty to  
2567 comply with the reporting requirements of part III of chapter  
2568 112. At least quarterly, the executive director or ~~his or her~~  
2569 designee shall submit to the Commission on Ethics a list of  
2570 names of the senior managers and members of the board of  
2571 governors who are subject to the public disclosure requirements  
2572 under s. 112.3145.

2573 4. Notwithstanding s. 112.3148 or s. 112.3149, or any other  
2574 provision of law, an employee or board member may not knowingly  
2575 accept, directly or indirectly, any gift or expenditure from a  
2576 person or entity, or an employee or representative of such  
2577 person or entity, that has a contractual relationship with the  
2578 corporation or who is under consideration for a contract. An  
2579 employee or board member who fails to comply with subparagraph  
2580 3. or this subparagraph is subject to penalties provided under  
2581 ss. 112.317 and 112.3173.

20102044er

2582           5. Any senior manager of the corporation who is employed on  
2583 or after January 1, 2007, regardless of the date of hire, who  
2584 subsequently retires or terminates employment is prohibited from  
2585 representing another person or entity before the corporation for  
2586 2 years after retirement or termination of employment from the  
2587 corporation.

2588           6. Any senior manager of the corporation who is employed on  
2589 or after January 1, 2007, regardless of the date of hire, who  
2590 subsequently retires or terminates employment is prohibited from  
2591 having any employment or contractual relationship for 2 years  
2592 with an insurer that has entered into a take-out bonus agreement  
2593 with the corporation.

2594           (y) It is the intent of the Legislature that the amendments  
2595 to this subsection enacted in 2002 should, over time, reduce the  
2596 probable maximum windstorm losses in the residual markets and  
2597 should reduce the potential assessments to be levied on property  
2598 insurers and policyholders statewide. In furtherance of this  
2599 intent:

2600           1. The board shall, on or before February 1 of each year,  
2601 provide a report to the President of the Senate and the Speaker  
2602 of the House of Representatives showing the reduction or  
2603 increase in the 100-year probable maximum loss attributable to  
2604 wind-only coverages and the quota share program under this  
2605 subsection combined, as compared to the benchmark 100-year  
2606 probable maximum loss of the Florida Windstorm Underwriting  
2607 Association. For purposes of this paragraph, the benchmark 100-  
2608 year probable maximum loss of the Florida Windstorm Underwriting  
2609 Association shall be the calculation dated February 2001 and  
2610 based on November 30, 2000, exposures. In order to ensure

20102044er

2611 comparability of data, the board shall use the same methods for  
2612 calculating its probable maximum loss as were used to calculate  
2613 the benchmark probable maximum loss.

2614 2. Beginning December 1, 2012 ~~2010~~, if the report under  
2615 subparagraph 1. for any year indicates that the 100-year  
2616 probable maximum loss attributable to wind-only coverages and  
2617 the quota share program combined does not reflect a reduction of  
2618 at least 25 percent from the benchmark, the board shall reduce  
2619 the boundaries of the high-risk area eligible for wind-only  
2620 coverages under this subsection in a manner calculated to reduce  
2621 such probable maximum loss to an amount at least 25 percent  
2622 below the benchmark.

2623 3. Beginning February 1, 2015, if the report under  
2624 subparagraph 1. for any year indicates that the 100-year  
2625 probable maximum loss attributable to wind-only coverages and  
2626 the quota share program combined does not reflect a reduction of  
2627 at least 50 percent from the benchmark, the boundaries of the  
2628 high-risk area eligible for wind-only coverages under this  
2629 subsection shall be reduced by the elimination of any area that  
2630 is not seaward of a line 1,000 feet inland from the Intracoastal  
2631 Waterway.

2632 Section 17. The Division of Statutory Revision is directed  
2633 to prepare a reviser's bill for introduction at the next regular  
2634 session of the Legislature to change the term "high-risk  
2635 account" to "coastal account" to conform the Florida Statutes to  
2636 the amendment to s. 627.351(6)(b)2.a.(III), Florida Statutes,  
2637 made by this act.

2638 Section 18. Subsection (2) of section 627.4133, Florida  
2639 Statutes, is amended to read:

20102044er

2640           627.4133 Notice of cancellation, nonrenewal, or renewal  
2641 premium.—

2642           (2) With respect to any personal lines or commercial  
2643 residential property insurance policy, including, but not  
2644 limited to, any homeowner's, mobile home owner's, farmowner's,  
2645 condominium association, condominium unit owner's, apartment  
2646 building, or other policy covering a residential structure or  
2647 its contents:

2648           (a) The insurer shall give the named insured at least 45  
2649 days' advance written notice of the renewal premium.

2650           (b) The insurer shall give the named insured written notice  
2651 of nonrenewal, cancellation, or termination at least 100 days  
2652 before ~~prior to~~ the effective date of the nonrenewal,  
2653 cancellation, or termination. However, the insurer shall give at  
2654 least 100 days' written notice, or written notice by June 1,  
2655 whichever is earlier, for any nonrenewal, cancellation, or  
2656 termination that would be effective between June 1 and November  
2657 30. The notice must include the reason or reasons for the  
2658 nonrenewal, cancellation, or termination, except that:

2659           1. The insurer must ~~shall~~ give the named insured written  
2660 notice of nonrenewal, cancellation, or termination at least 180  
2661 days before ~~prior to~~ the effective date of the nonrenewal,  
2662 cancellation, or termination for a named insured whose  
2663 residential structure has been insured by that insurer or an  
2664 affiliated insurer for at least a 5-year period immediately  
2665 prior to the date of the written notice.

2666           2. When cancellation is for nonpayment of premium, at least  
2667 10 days' written notice of cancellation accompanied by the  
2668 reason therefor must ~~shall~~ be given. As used in this

20102044er

2669 subparagraph, the term "nonpayment of premium" means failure of  
2670 the named insured to discharge when due any of her or his  
2671 obligations in connection with the payment of premiums on a  
2672 policy or any installment of such premium, whether the premium  
2673 is payable directly to the insurer or its agent or indirectly  
2674 under any premium finance plan or extension of credit, or  
2675 failure to maintain membership in an organization if such  
2676 membership is a condition precedent to insurance coverage.  
2677 "Nonpayment of premium" also means the failure of a financial  
2678 institution to honor an insurance applicant's check after  
2679 delivery to a licensed agent for payment of a premium, even if  
2680 the agent has previously delivered or transferred the premium to  
2681 the insurer. If a dishonored check represents the initial  
2682 premium payment, the contract and all contractual obligations  
2683 are ~~shall be~~ void ab initio unless the nonpayment is cured  
2684 within the earlier of 5 days after actual notice by certified  
2685 mail is received by the applicant or 15 days after notice is  
2686 sent to the applicant by certified mail or registered mail, and  
2687 if the contract is void, any premium received by the insurer  
2688 from a third party must ~~shall~~ be refunded to that party in full.

2689 3. When such cancellation or termination occurs during the  
2690 first 90 days during which the insurance is in force and the  
2691 insurance is canceled or terminated for reasons other than  
2692 nonpayment of premium, at least 20 days' written notice of  
2693 cancellation or termination accompanied by the reason therefor  
2694 must ~~shall~~ be given except if ~~where~~ there has been a material  
2695 misstatement or misrepresentation or failure to comply with the  
2696 underwriting requirements established by the insurer.

2697 4. The requirement for providing written notice of

20102044er

2698 nonrenewal by June 1 of any nonrenewal that would be effective  
2699 between June 1 and November 30 does not apply to the following  
2700 situations, but the insurer remains subject to the requirement  
2701 to provide such notice at least 100 days before ~~prior to~~ the  
2702 effective date of nonrenewal:

2703 a. A policy that is nonrenewed due to a revision in the  
2704 coverage for sinkhole losses and catastrophic ground cover  
2705 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~  
2706 ~~2007-1, Laws of Florida.~~

2707 b. A policy that is nonrenewed by Citizens Property  
2708 Insurance Corporation, pursuant to s. 627.351(6), for a policy  
2709 that has been assumed by an authorized insurer offering  
2710 replacement ~~or renewal~~ coverage to the policyholder is exempt  
2711 from the notice requirements of paragraph (a) and this  
2712 paragraph. In such cases, Citizens Property Insurance  
2713 Corporation shall give the named insured written notice of  
2714 nonrenewal at least 45 days before the effective date of the  
2715 nonrenewal.

2716  
2717 After the policy has been in effect for 90 days, the policy may  
2718 ~~shall~~ not be canceled by the insurer except if ~~when~~ there has  
2719 been a material misstatement, a nonpayment of premium, a failure  
2720 to comply with underwriting requirements established by the  
2721 insurer within 90 days of the date of effectuation of coverage,  
2722 or a substantial change in the risk covered by the policy or if  
2723 ~~when~~ the cancellation is for all insureds under such policies  
2724 for a given class of insureds. This paragraph does not apply to  
2725 individually rated risks having a policy term of less than 90  
2726 days.

20102044er

2727           5. Notwithstanding any other provision of law, an insurer  
2728 may cancel or nonrenew a property insurance policy upon a  
2729 minimum of 45 days' notice if the office finds that the early  
2730 cancellation of some or all of the insurer's policies is  
2731 necessary to protect the best interests of the public or  
2732 policyholders and the office approves the insurer's plan for  
2733 early cancellation or nonrenewal of some or all of its policies.  
2734 The office may base such a finding upon the financial condition  
2735 of the insurer, lack of adequate reinsurance coverage for  
2736 hurricane risk, or other relevant factors. The office may  
2737 condition its finding on the consent of the insurer to be placed  
2738 in administrative supervision pursuant to s. 624.81 or consent  
2739 to the appointment of a receiver under chapter 631.

2740           (c) If the insurer fails to provide the notice required by  
2741 this subsection, other than the 10-day notice, the coverage  
2742 provided to the named insured shall remain in effect until the  
2743 effective date of replacement coverage or until the expiration  
2744 of a period of days after the notice is given equal to the  
2745 required notice period, whichever occurs first. The premium for  
2746 the coverage shall remain the same during any such extension  
2747 period except that, in the event of failure to provide notice of  
2748 nonrenewal, if the rate filing then in effect would have  
2749 resulted in a premium reduction, the premium during such  
2750 extension must ~~shall~~ be calculated based on the later rate  
2751 filing.

2752           (d)1. Upon a declaration of an emergency pursuant to s.  
2753 252.36 and the filing of an order by the Commissioner of  
2754 Insurance Regulation, an insurer may not cancel or nonrenew a  
2755 personal residential or commercial residential property

20102044er

2756 insurance policy covering a dwelling or residential property  
2757 located in this state which has been damaged as a result of a  
2758 hurricane or wind loss that is the subject of the declaration of  
2759 emergency for a period of 90 days after the dwelling or  
2760 residential property has been repaired. A structure is deemed to  
2761 be repaired when substantially completed and restored to the  
2762 extent that it is insurable by another authorized insurer that  
2763 is writing policies in this state.

2764 2. However, an insurer or agent may cancel or nonrenew such  
2765 a policy before ~~prior to~~ the repair of the dwelling or  
2766 residential property:

2767 a. Upon 10 days' notice for nonpayment of premium; or

2768 b. Upon 45 days' notice:

2769 (I) For a material misstatement or fraud related to the  
2770 claim;

2771 (II) If the insurer determines that the insured has  
2772 unreasonably caused a delay in the repair of the dwelling; or

2773 (III) If the insurer has paid policy limits.

2774 3. If the insurer elects to nonrenew a policy covering a  
2775 property that has been damaged, the insurer shall provide at  
2776 least 90 days' notice to the insured that the insurer intends to  
2777 nonrenew the policy 90 days after the dwelling or residential  
2778 property has been repaired. Nothing in this paragraph shall  
2779 prevent the insurer from canceling or nonrenewing the policy 90  
2780 days after the repairs are complete for the same reasons the  
2781 insurer would otherwise have canceled or nonrenewed the policy  
2782 but for the limitations of subparagraph 1. The Financial  
2783 Services Commission may adopt rules, and the Commissioner of  
2784 Insurance Regulation may issue orders, necessary to implement

20102044er

2785 this paragraph.

2786 4. This paragraph ~~shall~~ also applies ~~apply~~ to personal  
2787 residential and commercial residential policies covering  
2788 property that was damaged as the result of Tropical Storm  
2789 Bonnie, Hurricane Charley, Hurricane Frances, Hurricane Ivan, or  
2790 Hurricane Jeanne.

2791 (e) If any cancellation or nonrenewal of a policy subject  
2792 to this subsection is to take effect during the duration of a  
2793 hurricane as defined in s. 627.4025(2)(c), the effective date of  
2794 such cancellation or nonrenewal is extended until the end of the  
2795 duration of such hurricane. The insurer may collect premium at  
2796 the prior rates or the rates then in effect for the period of  
2797 time for which coverage is extended. This paragraph does not  
2798 apply to any property with respect to which replacement coverage  
2799 has been obtained and which is in effect for a claim occurring  
2800 during the duration of the hurricane.

2801 Section 19. Section 627.43141, Florida Statutes, is created  
2802 to read:

2803 627.43141 Notice of change in policy terms.—

2804 (1) As used in this section, the term:

2805 (a) "Change in policy terms" means the modification,  
2806 addition, or deletion of any term, coverage, duty, or condition  
2807 from the previous policy. The correction of typographical or  
2808 scrivener's errors or the application of mandated legislative  
2809 changes is not a change in policy terms.

2810 (b) "Policy" means a written contract of personal lines  
2811 property insurance or a written agreement for insurance, or the  
2812 certificate of such insurance, by whatever name called, and  
2813 includes all clauses, riders, endorsements, and papers that are

20102044er

2814 a part of such policy. The term does not include a binder as  
2815 defined in s. 627.420 unless the duration of the binder period  
2816 exceeds 60 days.

2817 (c) "Renewal" means the issuance and delivery by an insurer  
2818 of a policy superseding at the end of the policy period a policy  
2819 previously issued and delivered by the same insurer or the  
2820 issuance and delivery of a certificate or notice extending the  
2821 term of a policy beyond its policy period or term. Any policy  
2822 that has a policy period or term of less than 6 months or any  
2823 policy that does not have a fixed expiration date shall, for  
2824 purposes of this section, be considered as written for  
2825 successive policy periods or terms of 6 months.

2826 (2) A renewal policy may contain a change in policy terms.  
2827 If a renewal policy contains a change in policy terms, the  
2828 insurer shall give the named insured a written notice of the  
2829 change in policy terms, which must be enclosed along with the  
2830 written notice of renewal premium required by ss. 627.4133 and  
2831 627.728. Such notice should be entitled "Notice of Change in  
2832 Policy Terms."

2833 (3) Although not required, proof of mailing or registered  
2834 mailing through the United States Postal Service of the Notice  
2835 of Change in Policy Terms to the named insured at the address  
2836 shown in the policy is sufficient proof of notice.

2837 (4) Receipt of payment of the premium for the renewal  
2838 policy by the insurer is deemed to be acceptance of the new  
2839 policy terms by the named insured.

2840 (5) If an insurer fails to provide the notice required in  
2841 subsection (2), the original policy terms shall remain in effect  
2842 until the next renewal and the proper service of the notice or

20102044er

2843 until the effective date of replacement coverage obtained by the  
2844 named insured, whichever occurs first.

2845 (6) The intent of this section is to:

2846 (a) Allow an insurer to make a change in policy terms  
2847 without nonrenewing policyholders that the insurer wishes to  
2848 continue insuring.

2849 (b) Alleviate concern and confusion to the policyholder  
2850 caused by the required policy nonrenewal for the limited issue  
2851 when an insurer intends to renew the insurance policy but the  
2852 new policy contains a change in policy terms.

2853 (c) Encourage policyholders to discuss their coverages with  
2854 their insurance agents.

2855 Section 20. Section 627.7011, Florida Statutes, is amended  
2856 to read:

2857 627.7011 Homeowners' policies; offer of replacement cost  
2858 coverage and law and ordinance coverage.—

2859 (1) Before ~~Prior to~~ issuing or renewing a homeowner's  
2860 insurance policy ~~on or after October 1, 2005, or prior to the~~  
2861 ~~first renewal of a homeowner's insurance policy on or after~~  
2862 ~~October 1, 2005,~~ the insurer must offer each of the following:

2863 (a) A policy or endorsement providing that any loss which  
2864 is repaired or replaced will be adjusted on the basis of  
2865 replacement costs not exceeding policy limits as to the  
2866 dwelling, rather than actual cash value, but not including costs  
2867 necessary to meet applicable laws and ordinances regulating the  
2868 construction, use, or repair of any property or requiring the  
2869 tearing down of any property, including the costs of removing  
2870 debris.

2871 (b) A policy or endorsement providing that, subject to

20102044er

2872 other policy provisions, any loss which is repaired or replaced  
2873 at any location will be adjusted on the basis of replacement  
2874 costs not exceeding policy limits as to the dwelling, rather  
2875 than actual cash value, and also including costs necessary to  
2876 meet applicable laws and ordinances regulating the construction,  
2877 use, or repair of any property or requiring the tearing down of  
2878 any property, including the costs of removing debris.7 However,  
2879 such additional costs necessary to meet applicable laws and  
2880 ordinances may be limited to either 25 percent or 50 percent of  
2881 the dwelling limit, as selected by the policyholder, and such  
2882 coverage shall apply only to repairs of the damaged portion of  
2883 the structure unless the total damage to the structure exceeds  
2884 50 percent of the replacement cost of the structure.

2885  
2886 An insurer is not required to make the offers required by this  
2887 subsection with respect to the issuance or renewal of a  
2888 homeowner's policy that contains the provisions specified in  
2889 paragraph (b) for law and ordinance coverage limited to 25  
2890 percent of the dwelling limit, except that the insurer must  
2891 offer the law and ordinance coverage limited to 50 percent of  
2892 the dwelling limit. This subsection does not prohibit the offer  
2893 of a guaranteed replacement cost policy.

2894 (2) Unless the insurer obtains the policyholder's written  
2895 refusal of the policies or endorsements specified in subsection  
2896 (1), any policy covering the dwelling is deemed to include the  
2897 law and ordinance coverage limited to 25 percent of the dwelling  
2898 limit. The rejection or selection of alternative coverage shall  
2899 be made on a form approved by the office. The form shall fully  
2900 advise the applicant of the nature of the coverage being

20102044er

2901 rejected. If this form is signed by a named insured, it will be  
2902 conclusively presumed that there was an informed, knowing  
2903 rejection of the coverage or election of the alternative  
2904 coverage on behalf of all insureds. Unless the policyholder  
2905 requests in writing the coverage specified in this section, it  
2906 need not be provided in or supplemental to any other policy that  
2907 renews, insures, extends, changes, supersedes, or replaces an  
2908 existing policy when the policyholder has rejected the coverage  
2909 specified in this section or has selected alternative coverage.  
2910 The insurer must provide such policyholder with notice of the  
2911 availability of such coverage in a form approved by the office  
2912 at least once every 3 years. The failure to provide such notice  
2913 constitutes a violation of this code, but does not affect the  
2914 coverage provided under the policy.

2915 (3)(a) In the event of a loss for which a dwelling is  
2916 insured on the basis of replacement costs, the insurer initially  
2917 must pay at least the actual cash value of the insured loss,  
2918 less any applicable deductible. An insured shall subsequently  
2919 enter into a contract for the performance of building and  
2920 structural repairs. The insurer shall pay any remaining amounts  
2921 incurred to perform such repairs as the work is performed. With  
2922 the exception of incidental expenses to mitigate further damage,  
2923 the insurer or any contractor or subcontractor may not require  
2924 the policyholder to advance payment for such repairs or  
2925 expenses. The insurer may waive the requirement for a contract  
2926 as provided in this paragraph. An insured shall have a period of  
2927 one 1 year after the date the insurer pays actual cash value to  
2928 make a claim for replacement cost. If a total loss of a dwelling  
2929 occurs, the insurer shall pay the replacement cost coverage

20102044er

2930 without reservation or holdback of any depreciation in value,  
2931 pursuant to s. 627.702.

2932 (b) In the event of a loss for which ~~a dwelling or~~ personal  
2933 property is insured on the basis of replacement costs, the  
2934 insurer shall pay the replacement cost without reservation or  
2935 holdback of any depreciation in value, whether or not the  
2936 insured replaces or repairs the ~~dwelling or~~ property.

2937 (4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed on~~  
2938 ~~or after October 1, 2005,~~ must include in bold type no smaller  
2939 than 18 points the following statement:

2940

2941 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE  
2942 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO  
2943 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE  
2944 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS  
2945 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE  
2946 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

2947 The intent of this subsection is to encourage policyholders to  
2948 purchase sufficient coverage to protect them in case events  
2949 excluded from the standard homeowners policy, such as law and  
2950 ordinance enforcement and flood, combine with covered events to  
2951 produce damage or loss to the insured property. The intent is  
2952 also to encourage policyholders to discuss these issues with  
2953 their insurance agent.

2954 (5) ~~Nothing in~~ This section does not ~~shall be construed to~~  
2955 apply to policies not considered to be "homeowners' policies,"  
2956 as that term is commonly understood in the insurance industry.  
2957 This section specifically does not apply to mobile home  
2958 policies. ~~Nothing in~~ This section does not limit ~~shall be~~

20102044er

2959 ~~construed as limiting~~ the ability of any insurer to reject or  
2960 nonrenew any insured or applicant on the grounds that the  
2961 structure does not meet underwriting criteria applicable to  
2962 replacement cost or law and ordinance policies or for other  
2963 lawful reasons.

2964 (6) This section does not prohibit an insurer from limiting  
2965 its liability under a policy or endorsement providing that loss  
2966 will be adjusted on the basis of replacement costs to the lesser  
2967 of:

2968 (a) The limit of liability shown on the policy declarations  
2969 page;

2970 (b) The reasonable and necessary cost to repair the  
2971 damaged, destroyed, or stolen covered property; or

2972 (c) The reasonable and necessary cost to replace the  
2973 damaged, destroyed, or stolen covered property.

2974 (7) This section does not prohibit an insurer from  
2975 exercising its right to repair damaged property in compliance  
2976 with its policy and s. 627.702(7).

2977 Section 21. Paragraph (a) of subsection (5) of section  
2978 627.70131, Florida Statutes, is amended to read:

2979 627.70131 Insurer's duty to acknowledge communications  
2980 regarding claims; investigation.-

2981 (5) (a) Within 90 days after an insurer receives notice of  
2982 an initial or supplemental ~~a~~ property insurance claim from a  
2983 policyholder, the insurer shall pay or deny such claim or a  
2984 portion of the claim unless the failure to pay such claim or a  
2985 portion of the claim is caused by factors beyond the control of  
2986 the insurer which reasonably prevent such payment. Any payment  
2987 of an initial or supplemental ~~a~~ claim or portion of such ~~a~~ claim

20102044er

2988 made ~~paid~~ 90 days after the insurer receives notice of the  
2989 claim, or made ~~paid~~ more than 15 days after there are no longer  
2990 factors beyond the control of the insurer which reasonably  
2991 prevented such payment, whichever is later, shall bear interest  
2992 at the rate set forth in s. 55.03. Interest begins to accrue  
2993 from the date the insurer receives notice of the claim. The  
2994 provisions of this subsection may not be waived, voided, or  
2995 nullified by the terms of the insurance policy. If there is a  
2996 right to prejudgment interest, the insured shall select whether  
2997 to receive prejudgment interest or interest under this  
2998 subsection. Interest is payable when the claim or portion of the  
2999 claim is paid. Failure to comply with this subsection  
3000 constitutes a violation of this code. However, failure to comply  
3001 with this subsection shall not form the sole basis for a private  
3002 cause of action.

3003 Section 22. Section 627.711, Florida Statutes, is amended  
3004 to read:

3005 627.711 Notice of premium discounts for hurricane loss  
3006 mitigation; uniform mitigation verification inspection form.—

3007 (1) Using a form prescribed by the Office of Insurance  
3008 Regulation, the insurer shall clearly notify the applicant or  
3009 policyholder of any personal lines residential property  
3010 insurance policy, at the time of the issuance of the policy and  
3011 at each renewal, of the availability and the range of each  
3012 premium discount, credit, other rate differential, or reduction  
3013 in deductibles, and combinations of discounts, credits, rate  
3014 differentials, or reductions in deductibles, for properties on  
3015 which fixtures or construction techniques demonstrated to reduce  
3016 the amount of loss in a windstorm can be or have been installed

20102044er

3017 or implemented. The prescribed form shall describe generally  
3018 what actions the policyholders may be able to take to reduce  
3019 their windstorm premium. The prescribed form and a list of such  
3020 ranges approved by the office for each insurer licensed in the  
3021 state and providing such discounts, credits, other rate  
3022 differentials, or reductions in deductibles for properties  
3023 described in this subsection shall be available for electronic  
3024 viewing and download from the Department of Financial Services'  
3025 or the Office of Insurance Regulation's Internet website. The  
3026 Financial Services Commission may adopt rules to implement this  
3027 subsection.

3028 (2) (a) ~~By July 1, 2007,~~ The Financial Services Commission  
3029 shall develop by rule a uniform mitigation verification  
3030 inspection form that shall be used by all insurers when  
3031 submitted by policyholders for the purpose of factoring  
3032 discounts for wind insurance. In developing the form, the  
3033 commission shall seek input from insurance, construction, and  
3034 building code representatives. Further, the commission shall  
3035 provide guidance as to the length of time the inspection results  
3036 are valid. An insurer shall accept as valid a uniform mitigation  
3037 verification form ~~certified by the Department of Financial~~  
3038 ~~Services~~ or signed by the following authorized mitigation  
3039 inspectors:

3040 1.(a) A home inspector licensed under s. 468.8314 who has  
3041 completed at least 3 hours of hurricane mitigation training  
3042 which includes hurricane mitigation techniques and compliance  
3043 with the uniform mitigation verification form and completion of  
3044 a proficiency exam. Thereafter, home inspectors licensed under  
3045 s. 468.8314, must complete at least 2 hours of continuing

20102044er

3046 education, as part of the existing licensure renewal  
3047 requirements each year, related to mitigation inspection and the  
3048 uniform mitigation form ~~hurricane mitigation inspector certified~~  
3049 ~~by the My Safe Florida Home program;~~

3050 2.~~(b)~~ A building code inspector certified under s. 468.607;

3051 3.~~(e)~~ A general, building, or residential contractor  
3052 licensed under s. 489.111;

3053 4.~~(d)~~ A professional engineer licensed under s. 471.015 ~~who~~  
3054 ~~has passed the appropriate equivalency test of the building code~~  
3055 ~~training program as required by s. 553.841;~~

3056 5.~~(e)~~ A professional architect licensed under s. 481.213;  
3057 or

3058 6.~~(f)~~ Any other individual or entity recognized by the  
3059 insurer as possessing the necessary qualifications to properly  
3060 complete a uniform mitigation verification form.

3061 (b) An insurer may, but is not required to, accept a form  
3062 from any other person possessing qualifications and experience  
3063 acceptable to the insurer.

3064 (3) A person who is authorized to sign a mitigation  
3065 verification form must inspect the structures referenced by the  
3066 form personally, not through employees or other persons, and  
3067 must certify or attest to personal inspection of the structures  
3068 referenced by the form. However, licensees under s. 489.111, may  
3069 authorize a direct employee, who is not an independent  
3070 contractor, and who possesses the requisite skill, knowledge and  
3071 experience to conduct a mitigation verification inspection.

3072 Insurers shall have the right to request and obtain information  
3073 from the authorized mitigation inspector under s. 489.111,  
3074 regarding any authorized employee's qualifications prior to

20102044er

3075 accepting a mitigation verification form performed by an  
3076 employee that is not licensed under s. 489.111.

3077 (4) An authorized mitigation inspector that signs a uniform  
3078 mitigation form, and a direct employee authorized to conduct  
3079 mitigation verification inspections under paragraph (3), may not  
3080 commit misconduct in performing hurricane mitigation inspections  
3081 or in completing a uniform mitigation form that causes financial  
3082 harm to a customer or their insurer; or that jeopardizes a  
3083 customer's health and safety. Misconduct occurs when an  
3084 authorized mitigation inspector signs a uniform mitigation  
3085 verification form that:

3086 (a) Falsely indicates that he or she personally inspected  
3087 the structures referenced by the form;

3088 (b) Falsely indicates the existence of a feature which  
3089 entitles an insured to a mitigation discount which the inspector  
3090 knows does not exist or did not personally inspect;

3091 (c) Contains erroneous information due to the gross  
3092 negligence of the inspector; or

3093 (d) Contains a pattern of demonstrably false information  
3094 regarding the existence of mitigation features that could give  
3095 an insured a false evaluation of the ability of the structure to  
3096 withstand major damage from a hurricane endangering the safety  
3097 of the insured's life and property.

3098 (5) The licensing board of an authorized mitigation  
3099 inspector that violates subsection (4) may commence disciplinary  
3100 proceedings and impose administrative fines and other sanctions  
3101 authorized under the authorized mitigation inspector's licensing  
3102 act. Authorized mitigation inspectors licensed under s. 489.111,  
3103 shall be directly liable for the acts of employees that violate

20102044er

3104 subsection (4) as if the authorized mitigation inspector  
3105 personally performed the inspection.

3106 (6) An insurer, person, or other entity that obtains  
3107 evidence of fraud or evidence that an authorized mitigation  
3108 inspector or an employee authorized to conduct mitigation  
3109 verification inspections under paragraph (3), has made false  
3110 statements in the completion of a mitigation inspection form  
3111 shall file a report with the Division of Insurance Fraud, along  
3112 with all of the evidence in its possession that supports the  
3113 allegation of fraud or falsity. An insurer, person, or other  
3114 entity making the report shall be immune from liability in  
3115 accordance with s. 626.989(4), for any statements made in the  
3116 report, during the investigation, or in connection with the  
3117 report. The Division of Insurance Fraud shall issue an  
3118 investigative report if it finds that probable cause exists to  
3119 believe that the authorized mitigation inspector, or an employee  
3120 authorized to conduct mitigation verification inspections under  
3121 paragraph (3), made intentionally false or fraudulent statements  
3122 in the inspection form. Upon conclusion of the investigation and  
3123 a finding of probable cause that a violation has occurred, the  
3124 Division of Insurance Fraud shall send a copy of the  
3125 investigative report to the office and a copy to the agency  
3126 responsible for the professional licensure of the authorized  
3127 mitigation inspector, whether or not a prosecutor takes action  
3128 based upon the report.

3129 (7)~~(3)~~ An individual or entity who knowingly provides or  
3130 utters a false or fraudulent mitigation verification form with  
3131 the intent to obtain or receive a discount on an insurance  
3132 premium to which the individual or entity is not entitled

20102044er

3133 commits a misdemeanor of the first degree, punishable as  
3134 provided in s. 775.082 or s. 775.083.

3135 (8) At its expense, the insurer may require that any  
3136 uniform mitigation verification form provided by an authorized  
3137 mitigation inspector or inspection company be independently  
3138 verified by an inspector, inspection company or an independent  
3139 third-party quality assurance provider which does possess a  
3140 quality assurance program prior to accepting the uniform  
3141 mitigation verification form as valid.

3142 Section 23. Section 628.252, Florida Statutes, is created  
3143 to read:

3144 628.252 Servicing affiliates of domestic property  
3145 insurers.—Every domestic property insurer shall notify the  
3146 office of its intention to enter into with affiliates all  
3147 management agreements, service contracts, and cost-sharing  
3148 arrangements. A domestic property insurer may not enter into  
3149 such an agreement, contract, or arrangement unless the insurer  
3150 has it has provided the office with at least 30 days' written  
3151 notice of its intention to enter into such agreement, contract,  
3152 or arrangement, or such shorter period as the office, in its  
3153 discretion, may permit and the office has not disapproved such  
3154 agreement, contract, or arrangement within such period. This  
3155 section does not limit any existing authority of the office.

3156 Section 24. The sums of \$263,200 in nonrecurring funds and  
3157 \$47,500 in recurring funds from the Insurance Regulatory Trust  
3158 Fund are appropriated and one full-time equivalent position and  
3159 associated salary rate is authorized to the Office of Insurance  
3160 Regulation to implement the provisions of the act relating to  
3161 the design, development, and operation of a comprehensive

20102044er

3162 website for consumers which provides comparisons of homeowners'  
3163 insurance rates and products.

3164 Section 25. Except as otherwise expressly provided in this  
3165 act and except for this section, which shall take effect June 1,  
3166 2010, this act shall take effect July 1, 2010.