

Committee Substitute for
Committee Substitute for Senate Bill No. 2038

An act relating to insurance; amending s. 20.121, F.S.; requiring the Division of Consumer Services of the Department of Financial Services to designate an employee as primary contact for consumers on issues involving sinkholes; authorizing the department to issue an order of conditional release from a stop-work order if an employer complies with coverage requirements and a penalty payment agreement; amending s. 501.137, F.S.; requiring an insurer to reinstate, under certain circumstances, an insurance policy that is cancelled due to failure of the lender to pay a premium for which sufficient escrow funds are on deposit; requiring that the lender reimburse the property owner for any penalties or fees paid for purposes of reinstating the policy; requiring the lender to pay the increased cost of insurance premiums for a specified period of time under certain conditions; amending s. 624.4622, F.S.; providing that a local government self-insurance fund must initially be organized as a commercial self-insurance fund or a group self-insurance fund and, for a specified period, must comply with the requirements for such a fund; providing that a local government self-insurance fund comply with specified provisions relating to financial statements; amending s. 624.610, F.S.; revising the requirements of a trust fund for a single assuming insurer; amending s. 625.081, F.S.; providing an exception for credit disability insurance from a health insurance active life reserve requirement; amending s. 625.121, F.S.; providing for valuation of life insurance policies; amending s. 626.321, F.S.; limiting the types of business that may be transacted by personal lines agents; creating s. 626.9743, F.S., relating to claim settlement practices for motor vehicle insurance; prescribing standards to be followed by insurers; creating s. 626.9744, F.S., relating to claim settlement practices for homeowners' insurance; prescribing standards to be followed by insurers; amending s. 627.311, F.S.; allowing the automobile insurance joint underwriting plan to require additional proof from insureds regarding cancellation of coverage; allowing additional time for the investigation of claims against the plan; providing for expiration of the provision; amending s. 627.4091, F.S.; providing additional disclosure requirements with respect to a refusal to insure; amending s. 627.4133, F.S.; requiring property insurers to reinstate a canceled policy as required by s. 501.137, F.S.; restricting the use of certain claims as a cause for cancellation or nonrenewal; amending s. 627.476, F.S.; authorizing the use of certain mortality tables for purposes of the Standard Nonforfeiture Law for Life Insurance; creating s. 627.7077, F.S.; providing for a feasibility study for a proposed Florida Sinkhole Insurance Facility; amending s. 627.838, F.S.; deleting a filing fee; amending s. 627.848, F.S.; specifying provisions for cancellation of insurance contracts; amending s. 627.849, F.S., to conform to the elimination of a filing fee; providing for a study and report by the Florida State University College of

Business on personal lines property and casualty insurance; repealing s. 625.131, F.S., relating to credit life and disability policies; providing for construction of the act; providing effective dates.

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

Section 1. Paragraph (h) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions:

(h) The Division of Consumer Services, which shall include a Bureau of Funeral and Cemetery Services.

1. The Division of Consumer Services shall perform the following functions concerning products or services regulated by the Department of Financial Services or by either office of the Financial Services Commission:

- a. Receive inquiries and complaints from consumers.;
- b. Prepare and disseminate such information as the department deems appropriate to inform or assist consumers.;
- c. Provide direct assistance and advocacy for consumers who request such assistance or advocacy.;
- d. With respect to apparent or potential violations of law or applicable rules by a person or entity licensed by the department or by either office of the commission, report such apparent or potential violation to the appropriate division of the department or office of the commission, which may take such further action as it deems appropriate.

e. Designate an employee of the division as primary contact for consumers on issues relating to sinkholes.

2. Any person licensed or issued a certificate of authority by the department or by the Office of Insurance Regulation shall respond, in writing, to the Division of Consumer Services within 20 days after receipt of a written request for information from the division concerning a consumer complaint. The response must address the issues and allegations raised in this complaint. The division may, in its discretion, impose an administrative penalty for failure to comply with this subparagraph in an amount up to \$2,500 per violation upon any entity licensed by the department or the Office of Insurance Regulation and \$250 for the first violation, \$500 for the second violation and up to \$1,000 per violation thereafter upon any individual licensed by the department or the Office of Insurance Regulation.

3. The department may adopt rules to implement the provisions of this paragraph.

4. The powers, duties, and responsibilities expressed or granted in this paragraph shall not limit the powers, duties, and responsibilities of the Department of Financial Services, the Financial Services Commission, the Office of Insurance Regulation, or the Office of Financial Regulation set forth elsewhere in the Florida Statutes.

Section 2. Paragraph (a) of subsection (7) of section 440.107, Florida Statutes, is amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 5 business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer work site, when served at that work site. In addition to serving a stop-work order at a particular work site which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer work sites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's work site by posting a copy of the stop-work order in a conspicuous location at the work site. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with coverage requirements of this chapter and has agreed to remit periodic payments of the penalty pursuant to a payment agreement schedule with the department. If an order of conditional release is issued, failure by the employer to meet any term or condition of such penalty payment agreement shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. The department may require an employer who is found to have failed to comply with the coverage requirements of s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.

Section 3. Section 501.137, Florida Statutes, is amended to read:

501.137 Mortgage lenders; tax and insurance payments from escrow accounts; duties.—

(1) Every lender of money, whether a natural person or an artificial entity, whose loans are secured by a mortgage on real estate located within the state and who receives funds incidental thereto or in connection therewith for the payment of property taxes or hazard insurance premiums when the such funds are held in escrow by or on behalf of the lender, shall promptly pay the such taxes or insurance premiums when the such taxes or premiums become due and adequate escrow funds are deposited, so that the maximum tax discount available may be obtained with regard to the taxable property and so that insurance coverage on the property does not lapse.

(2) If an escrow account for the such taxes or insurance premiums is deficient, the lender shall notify the property owner within 15 days after the lender receives the notification of taxes due from the county tax collector or receives the notification from the insurer that a premium is due.

(3)(a) If the lender, as a result of neglect, fails to pay any tax or insurance premium when the tax or premium is due and there are sufficient escrow funds on deposit to pay the tax or premium, and if the property owner suffers a loss as a result of this such failure, then the lender ~~is~~ will be liable for the such loss; except, however, that with respect to any loss which would otherwise have been insured, the extent of the such liability shall not exceed the coverage limits of any insurance policy which has lapsed.

(b) If the lender violates paragraph (a) and the premium payment is not more than 90 days overdue, the insurer shall reinstate the insurance policy, retroactive to the date of cancellation, and the lender shall reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner for purposes of reinstating the policy.

(c) If the lender violates paragraph (a) and the premium payment is more than 90 days overdue or if the insurer refuses to reinstate the insurance policy, the lender shall pay the difference between the cost of the previous insurance policy and a new, comparable insurance policy for a period of 2 years.

(4) At the expiration of the annual accounting period, the lender shall issue to the property owner an annual statement of the escrow account.

Section 4. Subsections (3) and (4) are added to section 624.4622, Florida Statutes, to read:

624.4622 Local government self-insurance funds.—

(3) Notwithstanding subsection (2), a local government self-insurance fund created under this section after October 1, 2004, shall initially be subject to the requirements of a commercial fund under s. 624.4621 and, for the first 5 years of its existence, shall be subject to all the requirements applied to commercial self-insurance funds or to group self-insurance funds, respectively.

(4)(a) A local government self-insurance fund formed after January 1, 2005, shall, for its first 5 fiscal years, file with the office full and true statements of its financial condition, transactions, and affairs. An annual

statement covering the preceding fiscal year shall be filed within 60 days after the end of the fund's fiscal year and quarterly statements shall be filed within 45 days after each such date. The office may, for good cause, grant an extension of time for filing an annual or quarterly statement. The statements shall contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally used by insurers for financial statements, sworn to by at least two executive officers of the self-insurance fund. The form for financial statements shall be the form currently approved by the National Association of Insurance Commissioners for use by property and casualty insurers.

(b) Each annual statement shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries. Workpapers in support of the statement of opinion must be provided to the office upon request.

Section 5. Paragraph (c) of subsection (3) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (5)(b), for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the office to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the office information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers. The assuming insurer shall submit to examination of its books and records by the office and bear the expense of examination.

2.a. Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(I) The insurance regulator of the state in which the trust is domiciled; or

(II) The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

b. The form of the trust and any trust amendments must be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers and their assigns and successors in interest. The

trust and the assuming insurer are subject to examination as determined by the insurance regulator.

c. The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the insurance regulator in writing the balance of the trust and list the trust's investments at the preceding year end, and shall certify that the trust will not expire prior to the following December 31.

3. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20 million. Not less than 50 percent of the funds in the trust covering the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and trustee surplus shall consist of assets of a quality substantially similar to that required in part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (5)(a), effective no later than December 31 of the year for which the filing is made and in the possession of the trust on or before the filing date of its annual statement, may be used to fund the remainder of the trust and trustee surplus.

b.(I) In the case of a group including incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust consists of a trustee account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trustee surplus of which \$100 million must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(II) The incorporated members of the group must not be engaged in any business other than underwriting of a member of the group, and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the insurance regulator an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

Section 6. Section 625.081, Florida Statutes, is amended to read:

625.081 Reserve for health insurance.—For all health insurance policies, the insurer shall maintain an active life reserve which places a sound value on the insurer's liabilities under such policies; is not less than the reserve according to appropriate standards set forth in rules issued by the commission; and, with the exception of credit disability insurance, in no event, is less in the aggregate than the pro rata gross unearned premiums for such policies.

Section 7. Paragraphs (a), (e), and (f) of subsection (5) and subsection (13) of section 625.121, Florida Statutes, are amended, and paragraphs (k) and (l) are added to subsection (5) of that section, to read:

625.121 Standard Valuation Law; life insurance.—

(5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD NONFORFEITURE LAW.—Except as otherwise provided in paragraph (h) and subsections (6), (11), and (14), the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of s. 627.476 (Standard Nonforfeiture Law for Life Insurance) shall be the commissioners' reserve valuation method defined in subsections (7), (11), and (14); 5 percent interest for group annuity and pure endowment contracts and 3.5 percent interest for all other such policies and contracts, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, 4 percent interest for such policies issued prior to October 1, 1979, and 4.5 percent interest for such policies issued on or after October 1, 1979; and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies:

1. For policies issued prior to the operative date of s. 627.476(9), the commissioners' 1958 Standard Ordinary Mortality Table; except that, for any category of such policies issued on female risks, modified net premiums and present values, referred to in subsection (7), may be calculated according to an age not more than 6 years younger than the actual age of the insured; ~~and~~

2. For policies issued on or after the operative date of s. 627.476(9), the commissioners' 1980 Standard Ordinary Mortality Table or, at the election of the insurer for any one or more specified plans of life insurance, the commissioners' 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors.

3. For policies issued on or after July 1, 2004, ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for such policies.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts:

1. For policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit;

2. For policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the insurer, the class three disability table (1926); ~~and~~

3. For policies issued prior to January 1, 1961, the class three disability table (1926); ~~and.~~

4. For policies or contracts issued on or after July 1, 2004, tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies or contracts.

Any such table for active lives shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies:

1. For policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table;

2. For policies issued on or after January 1, 1961, and prior to January 1, 1966, either that table or, at the option of the insurer, the Intercompany Double Indemnity Mortality Table; ~~and~~

3. For policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table; ~~and.~~

4. For policies issued on or after July 1, 2004, tables of accidental death benefits adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies.

Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(k) For individual annuity and pure endowment contracts issued on or after July 1, 2004, excluding any disability and accidental death benefits purchased under those contracts, individual annuity mortality tables adopted after 1980 by the National Association of Insurance Commissioners,

adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

(1) For all annuities and pure endowments purchased on or after July 1, 2004, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts, group annuity mortality tables adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

~~(13) APPLICABILITY TO CREDIT LIFE AND DISABILITY INSURANCE POLICIES.—~~

(a) For policies issued prior to January 1, 2004:

1. The minimum reserve for single-premium credit disability insurance, monthly premium credit life insurance and monthly premium credit disability insurance shall be the unearned gross premium.

2. As to single-premium credit life insurance policies, the insurer shall establish and maintain reserves that are not less than the value, at the valuation date, of the risk for the unexpired portion of the period for which the premium has been paid as computed on the basis of the commissioners' 1980 Standard Ordinary Mortality Table and 3.5 percent interest. At the discretion of the office, the insurer may make a reasonable assumption as to the ages at which net premiums are to be determined. In lieu of the foregoing basis, reserves based upon unearned gross premiums may be used at the option of the insurer.

(b) For policies issued on or after January 1, 2004:

1. The minimum reserve for single-premium credit disability insurance shall be either:

a. The unearned gross premium, or

b. Based upon a morbidity table that is adopted by the National Association of Insurance Commissioners and is specified in a rule the commission adopts pursuant to subsection (14).

2. The minimum reserve for monthly premium credit disability insurance shall be the unearned gross premium.

3. The minimum reserve for monthly premium credit life insurance shall be the unearned gross premium.

4. As to single-premium credit life insurance policies, the insurer shall establish and maintain reserves that are not less than the value, at the valuation date, of the risk for the unexpired portion of the period for which the premium has been paid as computed on the basis of the commissioners' 1980 Standard Ordinary Mortality Table or any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule adopted by the commission for use in determining the minimum standard of valuation for such policies; and an interest rate

~~determined in accordance with subsection (6). At the discretion of the office, the insurer may make a reasonable assumption as to the ages at which net premiums are to be determined. In lieu of the foregoing basis, reserves based upon unearned gross premiums may be used at the option of the insurer. This section does not apply as to those credit life insurance policies for which reserves are computed and maintained as required under s. 625.131.~~

Section 8. Paragraphs (c) and (d) of subsection (1) of section 626.321, Florida Statutes, are amended to read:

626.321 Limited licenses.—

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

(c) Personal accident insurance.—License covering only policies of personal accident insurance covering the risks of travel, except as provided in subparagraph 2. The license may be issued only:

1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. No such policy shall be for a duration of more than 48 hours or for the duration of a specified one-way trip or round trip.

2. To a full-time salaried employee of a business which offers motor vehicles for rent or lease, or to a business entity office ~~office of a business~~ which offers motor vehicles for rent or lease ~~if insurance sales activities authorized by the license are limited to full-time salaried employees~~. A business office licensed or a person licensed pursuant to this subparagraph may, as an agent of an insurer, transact insurance that provides coverage for accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the rental motor vehicle if the lease or rental agreement is for not more than 30 days, or if the lessee is not provided coverage for more than 30 consecutive days per lease period; however, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days.

(d) Baggage and motor vehicle excess liability insurance.—

1. License covering only insurance of personal effects except as provided in subparagraph 2. The license may be issued only:

a. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in the sale or handling of transportation of baggage and personal effects of travelers, and may authorize the sale of such insurance only in connection with such transportation; or

b. To the full-time salaried employee of a licensed general lines agent, ~~a full-time salaried employee of a business which offers motor vehicles for rent~~

~~or lease, or to a business office of a business entity that which offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental of a motor vehicle limited to full-time salaried employees. An entity applying for a license under this sub-subparagraph:~~

(I) Is required to submit only one application for a license under s. 626.171. The requirements of s. 626.171(5) shall apply only to the officers and directors of the entity submitting the application.

(II) Is required to obtain a license for each office, branch office, or place of business making use of the entity's business name by applying to the department for the license on a simplified application form developed by rule of the department for this purpose.

(III) Is required to pay the applicable fees for a license as prescribed in s. 624.501, be appointed under s. 626.112, and pay the prescribed appointment fee under s. 624.501. A licensed and appointed entity shall be directly responsible and accountable for all acts of the licensee's employees.

The purchaser of baggage insurance shall be provided written information disclosing that the insured's homeowner's policy may provide coverage for loss of personal effects and that the purchase of such insurance is not required in connection with the purchase of tickets or in connection with the lease or rental of a motor vehicle.

2. ~~A business entity that office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may include lessees under a master contract providing coverage to the lessor or may transact excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in its lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle, provided that the lease or rental agreement is for not more than 30 days; that the lessee is not provided coverage for more than 30 consecutive days per lease period, and, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days; that the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide additional excess coverage; and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. The excess liability insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.~~

3. ~~A business entity that office licensed pursuant to subparagraph 1., or a person licensed pursuant to subparagraph 1. who is a full-time salaried employee of a business which offers motor vehicles for rent or lease, may, as an agent of an insurer, transact insurance that provides coverage for the liability of the lessee to the lessor for damage to the leased or rented motor vehicle if:~~

a. The lease or rental agreement is for not more than 30 days; or the lessee is not provided coverage for more than 30 consecutive days per lease period, but, if the lease is extended beyond 30 days, the coverage may be extended one time only for a period not to exceed an additional 30 days;

b. The lessee is given written notice that his or her personal insurance policy that provides coverage on an owned motor vehicle may provide such coverage with or without a deductible; and

c. The purchase of the insurance is not required in connection with the lease or rental of a motor vehicle.

Section 9. Section 626.9743, Florida Statutes, is created to read:

626.9743 Claim settlement practices relating to motor vehicle insurance.—

(1) This section shall apply to the adjustment and settlement of personal and commercial motor vehicle insurance claims.

(2) An insurer may not, when liability and damages owed under the policy are reasonably clear, recommend that a third-party claimant make a claim under his or her own policy solely to avoid paying the claim under the policy issued by that insurer. However, the insurer may identify options to a third-party claimant relative to the repair of his or her vehicle.

(3) An insurer that elects to repair a motor vehicle and specifically requires a particular repair shop for vehicle repairs shall cause the damaged vehicle to be restored to its physical condition as to performance and appearance immediately prior to the loss at no additional cost to the insured or third-party claimant other than as stated in the policy.

(4) An insurer may not require the use of replacement parts in the repair of a motor vehicle which are not at least equivalent in kind and quality to the damaged parts prior to the loss in terms of fit, appearance, and performance.

(5) When the insurance policy provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, the insurer shall use one of the following methods:

(a) The insurer may elect a cash settlement based upon the actual cost to purchase a comparable motor vehicle, including sales tax, if applicable pursuant to subsection (9). Such cost may be derived from:

1. When comparable motor vehicles are available in the local market area, the cost of two or more such comparable motor vehicles available within the preceding 90 days;

2. The retail cost as determined from a generally recognized used motor vehicle industry source such as:

a. An electronic database if the pertinent portions of the valuation documents generated by the database are provided by the insurer to the first-party insured upon request; or

b. A guidebook that is generally available to the general public if the insurer identifies the guidebook used as the basis for the retail cost to the first-party insured upon request; or

3. The retail cost using two or more quotations obtained by the insurer from two or more licensed dealers in the local market area.

(b) The insurer may elect to offer a replacement motor vehicle that is a specified comparable motor vehicle available to the insured, including sales tax if applicable pursuant to subsection (9), paid for by the insurer at no cost other than any deductible provided in the policy and betterment as provided in subsection (6). The offer must be documented in the insurer's claim file. For purposes of this subsection, a comparable motor vehicle is one that is made by the same manufacturer, of the same or newer model year, and of similar body type and that has similar options and mileage as the insured vehicle. Additionally, a comparable motor vehicle must be in as good or better overall condition than the insured vehicle and available for inspection within a reasonable distance of the insured's residence.

(c) When a motor vehicle total loss is adjusted or settled on a basis that varies from the methods described in paragraph (a) or paragraph (b), the determination of value must be supported by documentation, and any deductions from value must be itemized and specified in appropriate dollar amounts. The basis for such settlement shall be explained to the claimant in writing, if requested, and a copy of the explanation shall be retained in the insurer's claim file.

(d) Any other method agreed to by the claimant.

(6) When the amount offered in settlement reflects a reduction by the insurer because of betterment or depreciation, information pertaining to the reduction shall be maintained with the insurer's claim file. Deductions shall be itemized and specific as to dollar amount and shall accurately reflect the value assigned to the betterment or depreciation. The basis for any deduction shall be explained to the claimant in writing, if requested, and a copy of the explanation shall be maintained with the insurer's claim file.

(7) Every insurer shall, if partial losses are settled on the basis of a written estimate prepared by or for the insurer, supply the insured a copy of the estimate upon which the settlement is based.

(8) Every insurer shall provide notice to an insured before termination of payment for previously authorized storage charges, and the notice shall provide 72 hours for the insured to remove the vehicle from storage before terminating payment of the storage charges.

(9) If sales tax will necessarily be incurred by a claimant upon replacement of a total loss or upon repair of a partial loss, the insurer may defer payment of the sales tax unless and until the obligation has actually been incurred.

(10) Nothing in this section shall be construed to authorize or preclude enforcement of policy provisions relating to settlement disputes.

Section 10. Section 626.9744, Florida Statutes, is created to read:

626.9744 Claim settlement practices relating to property insurance.— Unless otherwise provided by the policy, when a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or replacement cost, the following requirements apply:

(1) When a loss requires repair or replacement of an item or part, any physical damage incurred in making such repair or replacement which is covered and not otherwise excluded by the policy shall be included in the loss to the extent of any applicable limits. The insured may not be required to pay for betterment required by ordinance or code except for the applicable deductible, unless specifically excluded or limited by the policy.

(2) When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall make reasonable repairs or replacement of items in adjoining areas. In determining the extent of the repairs or replacement of items in adjoining areas, the insurer may consider the cost of repairing or replacing the undamaged portions of the property, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors.

(3) This section shall not be construed to make the insurer a warrantor of the repairs made pursuant to this section.

(4) Nothing in this section shall be construed to authorize or preclude enforcement of policy provisions relating to settlement disputes.

Section 11. Effective July 1, 2004, and applicable to cancellation requests and notices received on or after that date, subsection (3) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(3) The office may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the office which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the office shall be subject to the provisions of chapter 120. The Florida Automobile Joint Underwriting Association is created under the plan. The plan and the association:

(a) Must be subject to all provisions of s. 627.351(1), except apportionment of applicants.

(b) May provide for one or more designated insurers, able and willing to provide policy and claims service, to act on behalf of all other insurers to provide insurance for applicants who are in good faith entitled to, but unable to, procure insurance through the voluntary insurance market at standard rates.

(c) Must provide that designated insurers will issue policies of insurance and provide policyholder and claims service on behalf of all insurers for the joint underwriting association.

(d) Must provide for the equitable apportionment among insurers of losses and expenses incurred.

(e) Must provide that the joint underwriting association will operate subject to the supervision and approval of a board of governors consisting of 11 individuals, including 1 who will be elected as chair. Five members of the board must be appointed by the Chief Financial Officer. Two of the Chief Financial Officer's appointees must be chosen from the insurance industry. Any board member appointed by the Chief Financial Officer may be removed and replaced by her or him at any time without cause. Six members of the board must be appointed by the participating insurers, two of whom must be from the insurance agents' associations. All board members, including the chair, must be appointed to serve for 2-year terms beginning annually on a date designated by the plan.

(f) Must provide that an agent appointed to a servicing carrier must be a licensed general lines agent of an insurer which is authorized to write automobile liability and physical damage insurance in the state and which is actively writing such coverage in the county in which the agent is located, or the immediately adjoining counties, or an agent who places a volume of other property and casualty insurance in an amount equal to the premium volume placed with the Florida Joint Underwriting Association. The office may, however, determine that an agent may be appointed to a servicing carrier if, after public hearing, the office finds that consumers in the agent's operating area would not have adequate and reasonable access to the purchase of automobile insurance if the agent were not appointed to a servicing carrier.

(g) Must make available noncancelable coverage as provided in s. 627.7275(2).

(h) Must provide for the furnishing of a list of insureds and their mailing addresses upon the request of a member of the association or an insurance agent licensed to place business with an association member. The list must indicate whether the insured is currently receiving a good driver discount from the association. The plan may charge a reasonable fee to cover the cost incurred in providing the list.

(i) Must not provide a renewal credit or discount or any other inducement designed to retain a risk.

(j) Must not provide any other good driver credit or discount that is not actuarially sound. In addition to other criteria that the plan may specify, to be eligible for a good driver credit, an insured must not have any criminal traffic violations within the most recent 36-month period preceding the date the discount is received.

(k)1. Shall have no liability, and no cause of action of any nature shall arise against any member insurer or its agents or employees, agents or employees of the association, members of the board of governors of the association, the Chief Financial Officer, or the office or its representatives for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for or arising out of breach of any contract or agreement pertaining to insurance, or any willful tort.

2. Notwithstanding the requirements of s. 624.155(3)(a), as a condition precedent to bringing an action against the plan under s. 624.155, the department and the plan must have been given 90 days' written notice of the violation. If the department returns a notice for lack of specificity, the 90-day time period shall not begin until a proper notice is filed. This notice must comply with the information requirements of s. 624.155(3)(b). Effective October 1, 2007, this subparagraph shall expire unless reenacted by the Legislature prior to that date.

(l) May require from the insured proof that he or she has obtained the mandatory types and amounts of insurance from another admitted carrier prior to the cancellation of a policy the insured obtained from the plan and prior to the return of any unearned premium the insured paid for such coverage from the plan. This paragraph does not apply to any person who provides proof of sale or inoperability of the vehicle covered under the policy purchased from the plan or relocation outside the state.

Section 12. Subsection (5) is added to section 627.4091, Florida Statutes, to read:

627.4091 Specific reasons for denial, cancellation, or nonrenewal.—

(5) When an insurer refuses to provide private passenger automobile insurance or personal lines residential property insurance, including, but not limited to, homeowner's, mobile home owner's, condominium unit owner's, or other insurance covering a personal residential structure, to an applicant due to adverse underwriting information, the insurer shall:

(a) Provide to the applicant specific information regarding the reasons for the refusal to insure.

(b) If the reason for the refusal to insure is based on a loss underwriting history or report from a consumer reporting agency, to the extent applicable identify the loss underwriting history and notify the applicant of his or her right under the federal Fair and Accurate Credit Transactions Act to obtain a copy of the report from the consumer reporting agency.

Section 13. Effective upon this act becoming a law, subsections (4) and (5) are added to section 627.4133, Florida Statutes, to read:

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

(4) An insurer that cancels a property insurance policy on property secured by a mortgage due to the failure of the lender to timely pay the premium when due shall reinstate the policy as required by s. 501.137.

(5) A single claim on a property insurance policy which is the result of water damage may not be used as the sole cause for cancellation or nonrenewal unless the insurer can demonstrate that the insured has failed to take action reasonably requested by the insurer to prevent a future similar occurrence of damage to the insured property.

Section 14. Paragraph (h) of subsection (9) of section 627.476, Florida Statutes, is amended to read:

627.476 Standard Nonforfeiture Law for Life Insurance.—

(9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT VALUES FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS SUBSECTION.—

(h) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners' 1980 Standard Ordinary Mortality Table or, at the election of the insurer for any one or more specified plans of life insurance, the Commissioners' 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners' 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year. However:

1. At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

2. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

3. An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

4. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners' 1980 Extended Term Insurance Table for policies of ordi-

nary insurance and not more than the Commissioners' 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

5. In lieu of the mortality tables specified in this section, at the option of the insurance company and subject to rules adopted by the commission, the insurance company may substitute:

a. The 1958 CSO or CET Smoker and Nonsmoker Mortality Tables, whichever is applicable, for policies issued on or after the operative date of this subsection and before January 1, 1989;

b. The 1980 CSO or CET Smoker and Nonsmoker Mortality Tables, whichever is applicable, for policies issued on or after the operative date of this subsection;

c. A mortality table that is a blend of the sex-distinct 1980 CSO or CET mortality table standard, whichever is applicable, or a mortality table that is a blend of the sex-distinct 1980 CSO or CET smoker and nonsmoker mortality table standards, whichever is applicable, for policies that are subject to the United States Supreme Court decision in *Arizona Governing Committee v. Norris* to prevent unfair discrimination in employment situations.

6. Ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, adopted by rule by the commission for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners' 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners' 1980 Extended Term Insurance Table.

7.6. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

Section 15. Section 627.7077, Florida Statutes, is created to read:

627.7077 Florida Sinkhole Insurance Facility and other matters related to affordability and availability of sinkhole insurance; feasibility study.—

(1) The Florida State University College of Business Department of Risk Management and Insurance shall, under the direction of the office, conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and of other matters related to affordability and availability of sinkhole insurance. The study shall be conducted in consultation with the State Board of Administration and the Florida Geological Survey. The university shall provide a preliminary report of its analysis, findings, and recommendations to the Financial Services Commission and the presiding officers of the Legislature no later than February 1, 2005, and shall provide a final report no later than April 1, 2005.

(2) The potential functions of the facility to be analyzed include:

(a) Serving as the direct insurer or the reinsurer for all or some sinkhole losses.

(b) Providing training, communication, and other educational services to the public, engineers, the construction industry, insurance professionals, or others.

(c) Providing uniform standards for use by insurers in evaluating sinkhole loss claims.

(d) Providing consulting services for insurers.

(e) Maintaining a public database of all confirmed sinkholes and paid sinkhole loss claims, for use by consumers and by the insurance, building construction, banking, and real estate industries.

(3) The feasibility study shall, at a minimum, address the following issues:

(a) Where the facility should be housed, including, but not limited to, the options of creating a separate facility or using the Citizens Property Insurance Corporation or the Florida Hurricane Catastrophe Fund.

(b) Federal income taxation implications.

(c) Funding options and costs associated with operating the facility, including means of funding sinkhole insurance through premiums that are adequate to fund covered losses.

(d) Applicability of the experience of similar facilities of other states.

(e) Other economic impact considerations pertinent to a facility.

(f) Alternative dispute resolution mechanisms.

(g) The impact of all present requirements in the Florida Insurance Code on affordability and availability of sinkhole insurance and recommendations to address such impacts.

(4) The study shall be funded from a budget of no more than \$300,000, which will be funded by assessments on insurers issuing property insurance in this state. Such assessments shall be collected by the office and shall be prorated among such insurers according to a formula whereby each insurer shall pay a fraction of such budget, the numerator of which shall be such insurer's direct earned premiums for property insurance in this state and the denominator of which shall be the total direct earned premiums for property insurance in this state for calendar year 2003.

Section 16. Section 627.838, Florida Statutes, is amended to read:

627.838 Filing and approval of forms; service charges.—

(1) No premium finance agreement form or related form shall be used in this state by a premium finance company unless it has been filed with and approved by the office. Every filing shall be made within 30 days of issuance or use.

(2) Each premium finance company shall file with the office the service charge and interest rate plan, including all modifications thereto, for informational purposes only. Every filing shall be made within 30 days of its effective date.

~~(3) Each filing shall be accompanied by the filing fee specified in s. 627.849.~~

Section 17. Paragraph (e) of subsection (1) of section 627.848, Florida Statutes, is amended to read:

627.848 Cancellation of insurance contract upon default.—

(1) When a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract listed in the agreement, the insurance contract shall not be canceled unless cancellation is in accordance with the following provisions:

(e) ~~Whenever a financed an insurance contract is canceled in accordance with this section, the insurer shall, within 30 days of the cancellation date, promptly return the unpaid balance due under the finance contract, up to the gross amount available upon the cancellation of the policy, to the premium finance company and any remaining unearned premium to the agent or the insured, or both, for the benefit of the insured or insureds. The insurer shall, within 30 days of the cancellation date, notify the insured and the agent of the amount of unearned premium returned to the premium finance company and the amount of unearned commission held by the agent. The premium finance company shall, within 15 days after the account has been overpaid, either refund to the insured for the insured's benefit any refund due on his or her account or, if the refund is sent or credited to the agent, return or credit to the agent the amount of the overpayment and notify the insured of the refunded amount. The premium finance company within 15 days shall notify the insured and the agent of the amount of unearned premium.~~ Within 15 days of receipt of notification from the premium finance company, the agent shall return such amount including any unearned commission to the insured or with the written approval of the insured apply such amount to the purchase of other insurance products regulated by the office. The commission may adopt rules necessary to implement the provisions of this subsection.

Section 18. Subsection (1) of section 627.849, Florida Statutes, is amended to read:

627.849 Fees.—

(1) The office shall collect in advance, and the persons so served shall pay to it in advance, the following fees:

- (a) Annual license fee \$250
- (b) Investigation fee 100
- (c) Annual report filing fee 25

(d) ~~Form filing fee~~ 10

Section 19. Analysis of factors affecting premium levels and availability of personal lines property and casualty insurance to consumers in Florida.—

(1) The Legislative Auditing Committee shall enter into a contract with the Florida State University College of Business Department of Risk Management and Insurance to provide, no later than February 1, 2005, a detailed analysis of factors affecting costs and potential assessments on consumers, and availability, of personal lines property and casualty insurance in Florida generally and in those areas in which coverage is underwritten by the Citizens Property and Casualty Insurance Company. The analysis shall include an evaluation of such factors and recommendations appropriate to moderate or enhance their impact on premiums potential assessments and availability of such insurance. Such factors shall include, but are not limited to:

(a) The factors affecting the level of competition and premium levels specifically, including the impact of rate regulation and possible rating law reforms, and including reforms that have succeeded or failed in other states.

(b) The cost and benefits of required coverages and of restrictions on optional coverages that could otherwise be made available to consumers.

(c) Such other information as may be useful to the Legislature in determining how to increase availability and, over the short and long term, to moderate costs and potential consumer assessments.

(2) The study shall be funded from a budget of no more than \$250,000, which shall be funded by assessments on insurers issuing personal lines property and casualty insurance in the state. Such assessments shall be collected by the Office of Insurance Regulation and shall be prorated among such insurers according to a formula whereby each insurer shall pay a fraction of such budget, the numerator of which shall be such insurer’s direct earned premiums for personal lines property and casualty insurance in the state and the denominator of which shall be the total direct earned premiums for personal lines property and casualty insurance in the state for calendar year 2003.

(3) The Department of Financial Services, the Office of Insurance Regulation, and insurers shall cooperate with the Florida State University College of Business Department of Risk Management and Insurance conducting the analysis and shall provide such information as the Florida State University College of Business Department of Risk Management and Insurance may request in the format requested by the university.

Section 20. Section 625.131, Florida Statutes, is repealed.

Section 21. Nothing in this act shall be construed to create or be the basis of a civil action. Nothing in this act shall be construed as limiting settlement or adjustment of claims by methods that are otherwise permissible under Florida law.

Section 22. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2004.

Approved by the Governor June 24, 2004.

Filed in Office Secretary of State June 24, 2004.