

CHAPTER 2012-151

Committee Substitute for Committee Substitute for House Bill No. 1101

An act relating to insurance; amending s. 320.27, F.S.; exempting salvage motor vehicle dealers from having to carry certain types of insurance coverage under certain circumstances; amending s. 624.4625, F.S.; authorizing corporation not for profit self-insurance funds that are required to maintain a continuing program of excess insurance coverage and reserve evaluation to purchase excess insurance from eligible surplus lines insurers or reinsurers; authorizing certain corporation not for profit self-insurance funds to purchase certain group insurance coverage for its members; providing requirements and conditions relating to such purchases; amending s. 624.501, F.S.; conforming a cross-reference; amending s. 624.402, F.S.; revising provisions relating to determining whether the domicile of an insurer is outside the United States for certain purposes; providing that life insurance policies or annuity contracts may be solicited, sold, or issued in this state by insurers domiciled outside the United States in certain circumstances; amending s. 624.610, F.S.; revising provisions specifying which insurers are not subject to certain filing requirements relating to reinsurance; amending s. 626.261, F.S.; authorizing the Department of Financial Services to provide examinations in Spanish; providing for costs to be paid by applicants who request examinations in Spanish; providing a requirement with respect to whether an examination in Spanish should be allowed; amending s. 626.321, F.S.; revising provisions relating to limited licenses for travel insurance; providing that a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services may be issued such license under certain circumstances; creating s. 626.8685, F.S.; exempting certain employees who conduct data entry from licensure as insurance adjusters under certain circumstances; defining the term “automated claims adjudication system” with respect to application of such exemption; prohibiting residents of Canada from licensure as nonresident independent adjusters under certain circumstances; amending s. 626.9201, F.S.; providing specified exemptions from the requirement that an insurer provide notification of nonrenewal to an insured; amending s. 626.9541, F.S.; providing an additional action that is a misrepresentation and false advertising of insurance policies; amending s. 627.351, F.S.; increasing the amount of surplus as to policyholders that certain insurers who are members of a plan to equitably apportion or share windstorm coverage may have in order to petition the Department of Financial Services to qualify as a limited apportionment company; requiring the Citizens Property Insurance Corporation to offer certain policies; specifying acceptable valuations for replacement costs; creating s. 627.6011, F.S.; providing legislative intent relating to the application of certain mandatory health benefits regulated under ch. 627, F.S.; defining the term “mandatory health benefits”; amending s. 627.6699, F.S.; revising the

definition of the term “carrier” for purposes of the Employee Health Care Access Act; amending s. 627.7015, F.S.; revising provisions relating to alternative procedures for the resolution of disputed property insurance claims; amending s. 627.707, F.S.; providing a definition; amending s. 627.7295, F.S.; clarifying provisions relating to cancellation for nonpayment of premiums for motor vehicle insurance; allowing the cancellation of such policies under certain circumstances; amending s. 627.736, F.S.; specifying the interest rate applicable to the accrual of interest on overdue payments of personal injury protection benefits; amending s. 627.7405, F.S.; providing an exception for liability for right of reimbursement; amending s. 628.901, F.S.; providing definitions; amending s. 628.905, F.S.; expanding the kinds of insurance for which a captive insurer may seek licensure; limiting the risks that certain captive insurers may insure; specifying requirements and conditions relating to a captive insurer’s authority to conduct business; requiring that before licensure certain captive insurers must file or submit to the Office of Insurance Regulation specified information, documents, and statements; requiring a captive insurance company to file specific evidence with the office relating to the financial condition and quality of management and operations of the company; specifying certain fees to be paid by captive insurance companies; authorizing a foreign or alien captive insurance company to become a domestic captive insurance company by complying with specified requirements; authorizing the office to waive any requirements for public hearings relating to the redomestication of an alien captive insurance company; creating s. 628.906, F.S.; requiring biographical affidavits, background investigations, and fingerprint cards for all officers and directors; providing restrictions on officers and directors involved with insolvent insurers under certain conditions; providing restrictions on officers and directors that are found guilty of, or have pleaded guilty or nolo contendere to, any felony or crime involving moral turpitude, including a crime of dishonesty or breach of trust; amending s. 628.907, F.S.; revising capitalization requirements for specified captive insurance companies; requiring capital of specified captive insurance companies to be held in certain forms; requiring contributions to captive insurance companies that are stock insurer corporations to be in a certain form; authorizing the office to issue a captive insurance company license conditioned upon certain evidence relating to possession of specified capital; authorizing revocation of a conditional license under certain circumstances; authorizing the office to prescribe certain additional capital and net asset requirements; requiring such additional requirements relating to capital and net assets to be held in specified forms; requiring dividends or distributions of capital or surplus to meet certain conditions and be approved by the office; requiring certain irrevocable letters of credit to meet certain standards; creating s. 628.908, F.S.; prohibiting the issuance of a license to specified captive insurance companies unless such companies possess and maintain certain levels of unimpaired surplus; authorizing the office to condition issuance of a captive insurance company license upon the provision of certain evidence relating to the possession of a minimum amount of unimpaired surplus; authorizing revocation of a conditional license under

certain circumstances; requiring dividends or distributions of capital or surplus to meet certain conditions and be approved by the office; requiring certain irrevocable letters of credit to meet certain standards; amending s. 628.909, F.S.; providing for applicability of certain statutory provisions to specified captive insurers; creating s. 628.910, F.S.; providing requirements, options, and conditions relating to how a captive insurance company may be incorporated or organized as a business; amending s. 628.911, F.S.; providing reporting requirements for specified captive insurance companies and captive reinsurance companies; creating s. 628.912, F.S.; authorizing a captive reinsurance company to discount specified losses subject to certain conditions; amending s. 628.913, F.S.; authorizing a captive reinsurance company to apply to the office for licensure to write reinsurance covering property and casualty insurance or reinsurance contracts; authorizing the office to allow a captive reinsurance company to write reinsurance contracts covering risks in any state; specifying that a captive reinsurance company is subject to specified requirements and must meet specified conditions in order to conduct business in this state; creating s. 628.914, F.S.; specifying requirements and conditions relating to the capitalization or maintenance of reserves by a captive reinsurance company; creating s. 628.9141, F.S.; specifying requirements and conditions relating to the incorporation of a captive reinsurance company; creating s. 628.9142, F.S.; providing for the effect on reserves of certain actions taken by a captive insurance company relating to providing reinsurance for specified risks; creating s. 628.918, F.S.; requiring a specified percentage of a captive reinsurance company's assets to be managed by an asset manager domiciled in this state; creating s. 628.919, F.S.; authorizing the Financial Services Commission to adopt rules establishing certain standards for control of an unaffiliated business by a parent or affiliated company relating to coverage by a pure captive insurance company; creating s. 628.920, F.S.; requiring that a licensed captive insurance company must be considered for issuance of a certificate of authority as an insurer under certain circumstances; amending s. 626.7491, F.S.; conforming a cross-reference; repealing s. 628.903, F.S., relating to the definition of the term "industrial insured captive insurer," to conform to changes made by the act; amending s. 631.271, F.S.; providing for priority of interest on allowed claims; providing that if this act and certain legislation become law in the same legislative session or an extension thereof, a surplus lines insurer removing policies from the Citizens Property Insurance Corporation must maintain a specified financial rating; providing effective dates.

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

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

320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which will be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location. Such application shall contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer. Such application shall contain such other relevant information as may be required by the department, including evidence that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, \$25,000 combined single-limit liability coverage including bodily injury and property damage protection and \$10,000 personal injury protection. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. Upon making initial application, the applicant shall pay to the department a fee of \$300 in addition to any other fees now required by law; upon making a subsequent renewal application, the applicant shall pay to the department a fee of \$75 in addition to any other fees now required by law. Upon making an application for a change of location, the person shall pay a fee of \$50 in addition to any other fees now required by law. The department shall, in the case of every application for

initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

Section 2. Paragraph (e) of subsection (1) of section 624.4625, Florida Statutes, is amended, subsection (5) of that section is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

624.4625 Corporation not for profit self-insurance funds.—

(1) Notwithstanding any other provision of law, any two or more corporations not for profit located in and organized under the laws of this state may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any one or combination of property or casualty risk, provided the corporation not for profit self-insurance fund that is created:

(e) Maintains a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified actuary. At a minimum, this program must:

1. Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers or reinsurers.

2. Retain a per-loss occurrence that does not exceed \$350,000.

(5) A corporation not for profit self-insurance fund formed under this section, which is hereby deemed to be an association in compliance with s. 627.654, may purchase for its members, on a group basis, any one or more policies of health, accident, or hospitalization coverage, provided:

(a) Insurance policies purchased to provide coverage under this subsection are purchased only from authorized insurance companies that participate in the Florida Life and Health Insurance Guaranty Association and such policy forms have been filed with and approved by the office;

(b) The corporation not for profit self-insurance fund retains no risk related to coverage provided under this subsection;

(c) An insurance policy purchased to provide coverage under this subsection shall not be subject to the restrictions relating to the premium rates for small employer groups under chapter 627;

(d) The premiums paid for insurance policies purchased pursuant to paragraph (a) shall not count toward the \$5 million requirement in paragraph (1)(a); and

(e) Any individual not-for-profit entity participating as a member of the association for the purchase of a master health, accident, or hospitalization policy by the association under this subsection may retain its individual insurance agent and such agent shall be deemed an additional agent of record for the master policy issued to the association.

Section 3. Subsection (8) of section 624.402, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

624.402 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer with respect to:

(8)(a) An insurer domiciled outside the United States covering only persons who, at the time of issuance or renewal, are nonresidents of the United States if:

1. ~~The insurer or any affiliated person as defined in s. 624.04 under common ownership or control with the insurer~~ does not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued for delivery to any person in any state;

2. The insurer registers with the office via a letter of notification upon commencing business from this state;

3. The insurer provides the following information, in English, to the office annually by March 1:

a. The name of the insurer; the country of domicile; the address of the insurer's principal office and office in this state; the names of the owners of the insurer and their percentage of ownership; the names of the officers and directors of the insurer; the name, e-mail, and telephone number of a contact person for the insurer; and the number of individuals who are employed by the insurer or its affiliates in this state;

b. The lines of insurance and types of products offered by the insurer;

c. A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered for those lines of insurance and types of products in that domicile; and

d. A copy of the filings required by the applicable regulatory body of the insurer's country of domicile in that country's official language or in English, if available;

4. All certificates, policies, or contracts issued in this state showing coverage under the insurer's policy include the following statement in a contrasting color and at least 10-point type: "The policy providing your coverage and the insurer providing this policy have not been approved by the Florida Office of Insurance Regulation"; and

5. ~~If in the event~~ the insurer ceases to do business from this state, the insurer will provide written notification to the office within 30 days after cessation.

(b) For purposes of this subsection, "nonresident" means a trust or other entity organized and domiciled under the laws of a country other than the United States or a person who resides in and maintains a physical place of domicile in a country other than the United States, which he or she recognizes as and intends to maintain as his or her permanent home. A nonresident does not include an unauthorized immigrant present in the United States. Notwithstanding any other provision of law, it is conclusively presumed, for purposes of this subsection, that a person is a resident of the United States if such person has:

1. Had his or her principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;
2. Registered to vote in any state;
3. Made a statement of domicile in any state; or
4. Filed for homestead tax exemption on property in any state.

(c) Subject to the limitations provided in this subsection, services, including those listed in s. 624.10, may be provided by the insurer or an affiliated person as defined in s. 624.04 under common ownership or control with the insurer.

(d) An alien insurer transacting insurance in this state without complying with this subsection shall be in violation of this chapter and subject to the penalties provided in s. 624.15.

(9)(a) Life insurance policies or annuity contracts may be solicited, sold, or issued in this state by an insurer domiciled outside the United States, covering only persons who, at the time of issuance are nonresidents of the United States, provided that:

1. The insurer is currently an authorized insurer in his or her country of domicile as to the kind or kinds of insurance proposed to be offered and must have been such an insurer for not fewer than the immediately preceding 3 years, or must be the wholly owned subsidiary of such authorized insurer or must be the wholly owned subsidiary of an already eligible authorized insurer as to the kind or kinds of insurance proposed for a period of not fewer than the immediately preceding 3 years. However, the office may waive the 3-year requirement if the insurer has operated successfully for a period of at

least the immediately preceding year and has capital and surplus of not less than \$25 million.

2. Before the office may grant eligibility, the requesting insurer furnishes the office with a duly authenticated copy of its current annual financial statement, in English, and with all monetary values therein expressed in United States dollars, at an exchange rate then-current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.

3. The insurer has and maintains surplus as to policyholders of not less than \$15 million. Any such surplus as to policyholders shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625; however, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625.

4. The insurer has of good reputation as to providing service to its policyholders and the payment of losses and claims.

5. To maintain eligibility, the insurer furnishes the office within the time period specified in s. 624.424(1), a duly authenticated copy of its current annual and quarterly financial statements, in English, and with all monetary values therein expressed in United States dollars, at an exchange rate then-current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.

6. An insurer receiving eligibility under this subsection agrees to make its books and records pertaining to its operations in this state available for inspection during normal business hours upon request of the office.

7. The insurer notifies the applicant in clear and conspicuous language:

a. The date of organization of the insurer.

b. The identity of and rating assigned by each recognized insurance company rating organization that has rated the insurer or, if applicable, that the insurer is unrated.

c. That the insurer does not hold a certificate of authority issued in this state and that the office does not exercise regulatory oversight over the insurer.

d. The identity and address of the regulatory authority exercising oversight of the insurer. This paragraph does not impose upon the office any duty or responsibility to determine the actual financial condition or

claims practices of any unauthorized insurer, and the status of eligibility, if granted by the office, indicates only that the insurer appears to be financially sound and to have satisfactory claims practices and that the office has no credible evidence to the contrary.

(b) If the office has reason to believe that an insurer issuing policies or contracts pursuant to this subsection is insolvent or is in unsound financial condition, does not make reasonable prompt payment of benefits, or is no longer eligible under the conditions specified in this subsection, the office may conduct an examination or investigation in accordance with s. 624.316, s. 624.3161, or s. 624.320 and, if the findings of the examination or investigation warrant, may withdraw the eligibility of the insurer to issue policies or contracts pursuant to this subsection without having a certificate of authority issued by the office.

(c) This subsection does not provide an exception to the agent licensure requirements of chapter 626. A insurer issuing policies or contracts pursuant to this subsection shall appoint the agents that the insurer uses to sell such policies or contracts as provided in chapter 626.

(d) An insurer issuing policies or contracts pursuant to this subsection is subject to part IX of chapter 626, the Unfair Insurance Trade Practices Act, and the office may take such actions against the insurer for a violation as are provided in that part.

(e) Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509.

(f) Applications for life insurance coverage offered under this subsection must contain, in contrasting color and not less than 12-point type, the following statement on the same page as the applicant's signature:

This policy is primarily governed by the laws of a foreign country. As a result, all of the rating and underwriting laws applicable to policies filed in this state do not apply to this coverage, which may result in your premiums being higher than would be permissible under a Florida-approved policy. A purchase of individual life insurance should be considered carefully, as future medical conditions may make it impossible to qualify for another individual life policy. If the insurer issuing your policy becomes insolvent, this policy is not covered by the Florida Life and Health Insurance Guaranty Association. For information concerning individual life coverage under a Florida-approved policy, consult your agent or the Florida Department of Financial Services.

(g) All life insurance policies and annuity contracts issued pursuant to this subsection must contain on the first page of the policy or contract, in contrasting color and not less than 10-point type, the following statement:

The benefits of the policy providing your coverage are governed primarily by the law of a country other than the United States.

(h) All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States pursuant to this subsection are subject to chapter 896.

(i) For purposes of this subsection, the term “nonresident” means a trust or other entity or person as defined in subsection 624.402(8).

(j) An alien insurer transacting insurance in this state without complying with this subsection is in violation of this chapter and subject to the penalties provided in s. 624.15, and must also pay the fine required for each violation as prescribed by s. 626.910.

Section 4. Paragraph (b) of subsection (9) of section 624.501, Florida Statutes, is amended to read:

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

(9)

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

Section 5. Paragraph (c) of subsection (11) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(11)

(c) This subsection applies to cessions of directly written risk or loss. This subsection does not apply to contracts of facultative reinsurance or to any ceding insurer that has a with surplus as to policyholders which ~~that exceeds \$100 million as of the immediately preceding December 31. A~~ Additionally, any ceding insurer otherwise subject to this section which had with less than \$500,000 in direct premiums written in this state during the preceding calendar year and no more than \$250,000 in direct premiums written in this state during the preceding calendar quarter, and which had fewer or with less than 1,000 policyholders at the end of the preceding calendar year, is exempt from the requirements of this subsection. However, any ceding insurer otherwise subject to this section with more than \$250,000 in direct premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection.

Section 6. Subsection (5) is added to section 626.261, Florida Statutes, to read:

626.261 Conduct of examination.—

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

Section 7. Paragraph (c) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

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

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

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

2. To an entity or individual that is:

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

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

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

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

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

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

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

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

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

A licensee shall require each individual employee who offers policies or certificates under ~~this subparagraph 2. or subparagraph 3.~~ to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section applies only to the president, secretary, and treasurer and to any other officer or person who directs or controls the travel insurance operations of the entity.

Section 8. Effective January 1, 2013, section 626.8685, Florida Statutes, is created to read:

626.8685 Portable electronics insurance claims; exemption; licensure restriction.—

(1) This part does not apply to any individual who collects claims information from, or furnishes claims information to, insureds or claimants, and who conducts data entry, including entering data into an automated claims adjudication system, provided that the individual is an employee of a business entity licensed under this chapter, or its affiliate, and no more than 25 such persons are under the supervision of one licensed independent adjuster or licensed agent who is exempt from licensure pursuant to s. 626.862. For purposes of this subsection, the term “automated claims adjudication system” means a preprogrammed computer system designed for the collection, data entry, calculation, and final resolution of portable electronics insurance claims that:

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

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

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

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

Section 9. Section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(1) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must ~~shall~~ give the first named insured at least 45 days’ advance written notice of nonrenewal. If the policy is not to be renewed, the written notice shall state the ~~reason or~~ reasons as to why the policy is not to be renewed. This subsection does not apply:

(a) If the insurer has manifested its willingness to renew, and the offer is not rescinded prior to expiration of the policy; or

(b) If a notice of cancellation for nonpayment of premium is provided under subsection (2).

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must ~~shall~~ give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before ~~prior to~~ the effective date of the cancellation or termination, including in the written notice the ~~reason or~~ reasons for the cancellation or termination, except that:

(a) ~~If~~ When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must ~~therefor shall~~ be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and, if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; and

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

(3) If an insurer fails to provide the ~~45-day or 20-day~~ written notice as required under this section, the coverage provided to the named insured remains ~~shall remain~~ in effect until 45 days after the notice is given or until the effective date of replacement coverage obtained by the named insured, whichever occurs first. The premium for the coverage remains ~~shall remain~~ the same during any such extension period.

Section 10. Paragraphs (a) and (h) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(a) Misrepresentations and false advertising of insurance policies.—Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation,

omission, or comparison, or property and casualty certificate of insurance altered after being issued, which:

1. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.
2. Misrepresents the dividends or share of the surplus to be received on any insurance policy.
3. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.
4. Is misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.
5. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.
6. Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.
7. Is a misrepresentation for the purpose of effecting a pledge or assignment of, or effecting a loan against, any insurance policy.
8. Misrepresents any insurance policy as being shares of stock or misrepresents ownership interest in the company.
9. Uses any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the state or the Federal Government is responsible for the insurance sales activities of any person or stands behind any person's credit or that any person, the state, or the Federal Government guarantees any returns on insurance products or is a source of payment of any insurance obligation of or sold by any person.

(h) Unlawful rebates.—

1. Except as otherwise expressly provided by law, or in an applicable filing with the office, knowingly:
 - a. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;
 - b. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;

c. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

2. Nothing in paragraph (g) or subparagraph 1. of this paragraph shall be construed as including within the definition of discrimination or unlawful rebates:

a. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

b. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

c. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

d. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

e. Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

3.a. No title insurer, or any member, employee, attorney, agent, or agency thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of an attorney ~~attorney's~~ fee charged for professional services, or that portion of the

premium that is not required to be retained by the insurer pursuant to s. 627.782(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the title insurance premium or of any other charge or fee or any monetary consideration or inducement whatsoever, except as set forth in sub-subparagraph b.; provided, in no event shall any portion of the attorney attorney's fee, any portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

Section 11. Paragraph (b) of subsection (2) and paragraph (c) of subsection (6) of section 627.351, Florida Statutes, are amended, and paragraph (ff) is added to subsection (6) of that section, to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a direct basis in this state, other than joint underwriting associations and other entities formed pursuant to this section, to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage, which may include formation of an association for this purpose. As used in this subsection, the term “property insurance” means insurance on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners' multiperil, commercial multiperil, and mobile homes, and including liability coverages on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1)(a) other than insurance on mobile homes used as permanent dwellings. The department shall adopt rules that provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325,

and the contents of all such properties. An applicant or policyholder is eligible for coverage only if an offer of coverage cannot be obtained by or for the applicant or policyholder from an admitted insurer at approved rates.

2.a.(I) All insurers required to be members of such association shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer written for property insurance in this state during the preceding calendar year bear to the aggregate net direct premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, in this state during the preceding calendar year. For the purposes of this subsection, the term "net direct premiums" means direct written premiums for property insurance, reduced by premium for liability coverage and for the following if included in allied lines: rain and hail on growing crops; livestock; association direct premiums booked; National Flood Insurance Program direct premiums; and similar deductions specifically authorized by the plan of operation and approved by the department. A member's participation shall begin on the first day of the calendar year following the year in which it is issued a certificate of authority to transact property insurance in the state and shall terminate 1 year after the end of the calendar year during which it no longer holds a certificate of authority to transact property insurance in the state. The commissioner, after review of annual statements, other reports, and any other statistics that the commissioner deems necessary, shall certify to the association the aggregate direct premiums written for property insurance in this state by all member insurers.

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

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

(IV) A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

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

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking

policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Miami-Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Miami-Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or 15 percent of the total number of Residential Property and Casualty Joint Underwriting Association policies, provided the governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

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

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

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

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

direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance policy premiums, as annually determined by the board and verified by the department. The department shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may pledge the proceeds of the emergency assessments under this sub-sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

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

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

e. The governing body of any unit of local government, any residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 to fund an assistance program, in conjunction with the association, for the purpose of defraying deficits of the association. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the association, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may enter into such contracts with the association and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this subparagraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be

required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

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

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

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

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

January 1, 1999, the rates charged by the association for each line of business are reflective of approved rates in the voluntary market for hurricane coverage for each line of business in the various areas eligible for association coverage.

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

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

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

(II) Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

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

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

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

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

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I). Subject to the provisions of s. 627.3517, the policies issued by the association must provide that if the association obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy must be canceled as of 60 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this sub-subparagraph.

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

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

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

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

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

b. Any entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued, may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or

incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (6)(q)2., in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. Any such entity may accumulate reserves and retain surpluses as of the end of any association year to provide for the payment of losses incurred by the association during that year or any future year. The association shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

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

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

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

9. Notwithstanding any other provision of law:

a. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the association created or purported to be

created pursuant to any financing documents to secure any bonds or other indebtedness of the association shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the association under the laws of this state or any other applicable laws.

b. No such proceeding shall relieve the association of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or any other rights, revenues, or other assets of the association pledged.

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

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

e. Any such pledge or sale of assessments, revenues, contract rights or other rights or assets of the association shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, contract, or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, contract, or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

f. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees,

agents or employees of the association, members of the board of directors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

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

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

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

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

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

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

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s.

627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) “Quota share primary insurance” means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

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

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

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation’s quota share primary insurance coverage level may not exceed 90 percent.

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

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

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

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

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

3.a. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, market equalization and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations

of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

b. To ensure that the corporation is operating in an efficient and economic manner while providing quality service to policyholders, applicants, and agents, the board shall commission an independent third-party consultant having expertise in insurance company management or insurance company management consulting to prepare a report and make recommendations on the relative costs and benefits of outsourcing various policy issuance and service functions to private servicing carriers or entities performing similar functions in the private market for a fee, rather than performing such functions in-house. In making such recommendations, the consultant shall consider how other residual markets, both in this state and around the country, outsource appropriate functions or use servicing carriers to better match expenses with revenues that fluctuate based on a widely varying policy count. The report must be completed by July 1, 2012. Upon receiving the report, the board shall develop a plan to implement the report and submit the plan for review, modification, and approval to the Financial Services Commission. Upon the commission's approval of the plan, the board shall begin implementing the plan by January 1, 2013.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from different geographical areas of this state.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and is deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer

and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

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

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation before a policy is

issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

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

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

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

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

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

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

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

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of an offer of coverage from an authorized insurer or surplus lines insurer.

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

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

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

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

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

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

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

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

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the

corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

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

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

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

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

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

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

longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

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

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

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of \$25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds pursuant to s. 627.3512, but the regular assessment must be paid in full within 12 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

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

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

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

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

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

19. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

20. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgement signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgement and provide a copy of the

statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgement form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(ff) In establishing replacement costs for coverage on a dwelling insured by the corporation, the corporation must accept a valuation from any of the following sources and must use the lowest valuation as the insured value of the dwelling, excluding land value, provided the valuation was completed within the 12 months before the application or renewal date of coverage:

1. A replacement cost valuation software that is specifically designed for use in establishing insurance replacement costs and that includes an itemized calculation of the cost of reconstruction;

2. A replacement cost valuation prepared by a certified or licensed real estate appraiser under part II of chapter 475 that is specifically formulated to establish insurance replacement cost, rather than market value, and which includes an itemized calculation of the cost of reconstruction; or

3. A replacement cost valuation prepared by a general, building, or residential contractor licensed under s. 489.113, or a professional engineer licensed under s. 471.015, which includes an itemized calculation of the total price of reconstruction.

Section 12. Section 627.6011, Florida Statutes, is created to read:

627.6011 Mandated coverages.—Mandatory health benefits regulated under this chapter are not intended to apply to the types of health benefit plans listed in s. 627.6561(5)(b)-(e), issued in any market, unless specifically designated otherwise. For purposes of this section, the term “mandatory health benefits” means those benefits set forth in ss. 627.6401-627.64193, and any other mandatory treatment or health coverages or benefits enacted on or after July 1, 2012.

Section 13. Paragraph (d) of subsection (3) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(3) DEFINITIONS.—As used in this section, the term:

(d) “Carrier” means a person who provides health benefit plans in this state, including an authorized insurer, a health maintenance organization, a multiple-employer welfare arrangement, or any other person providing a health benefit plan that is subject to insurance regulation in this state. However, the term does not include a multiple-employer welfare arrangement or voluntary employees’ beneficiary association, as defined under 26 U.S.C. s. 501(c)(9), which multiple-employer welfare arrangement or

voluntary employees' beneficiary association operates solely for the benefit of the members or the members and the employees of such members, is located in this state, and was in existence on January 1, 1992. The term also does not include any authorized insurer or health maintenance organization to the extent that it insures the members or the members and the employees of such members of such multiple-employer welfare arrangement or voluntary employees' beneficiary association in existence on January 1, 1992.

Section 14. Subsections (1), (2), (7), and (9) of section 627.7015, Florida Statutes, are amended to read:

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

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

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

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

action for breach of contract against the insurer for its failure to pay the policyholder's claims covered by the policy.

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

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

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

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

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

(e) With respect to a windstorm or hurricane loss that does not comply with s. 627.70132.

Section 15. Paragraph (e) of subsection (5) of section 627.707, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

627.707 Investigation of sinkhole claims; insurer payment; nonrenewals. Upon receipt of a claim for a sinkhole loss to a covered building, an insurer must meet the following standards in investigating a claim:

(5) If a sinkhole loss is verified, the insurer shall pay to stabilize the land and building and repair the foundation in accordance with the recommendations of the professional engineer retained pursuant to subsection (2), with notice to the policyholder, subject to the coverage and terms of the policy. The insurer shall pay for other repairs to the structure and contents in accordance with the terms of the policy. If a covered building suffers a sinkhole loss or a catastrophic ground cover collapse, the insured must repair such damage or loss in accordance with the insurer's professional engineer's recommended repairs. However, if the insurer's professional engineer determines that the repair cannot be completed within policy limits, the insurer must pay to complete the repairs recommended by the insurer's professional engineer or tender the policy limits to the policyholder.

(e) Upon the insurer's obtaining the written approval of any lienholder, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed. ~~The policyholder may not accept a rebate from any person performing the repairs specified in this~~

section. If a policyholder does receive a rebate, coverage is void and the policyholder must refund the amount of the rebate to the insurer. Any person making the repairs specified in this section who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) The policyholder may not accept a rebate from any person performing the repairs specified in this section. If a policyholder receives a rebate, coverage is void and the policyholder must refund the amount of the rebate to the insurer. Any person performing the repairs specified in this section who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term “rebate” means a remuneration, payment, gift, discount, or transfer of any item of value to the policyholder by or on behalf of a person performing the repairs specified in this section as an incentive or inducement to obtain repairs performed by that person.

Section 16. Effective upon this act becoming a law, subsection (4) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

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

Section 17. Effective upon this act becoming a law, paragraph (d) of subsection (4) of section 627.736, Florida Statutes, is amended to read:

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

(4) BENEFITS; WHEN DUE.—Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the Agency for Health Care Administration provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of the Medicaid program.

(d) All overdue payments shall bear simple interest at the rate established under s. 55.03 or the rate established in the insurance contract,

whichever is greater, for the quarteryear—in which the payment became overdue, calculated from the date the insurer was furnished with written notice of the amount of covered loss. Interest shall be due at the time payment of the overdue claim is made.

Section 18. Section 627.7405, Florida Statutes, is amended to read:

627.7405 Insurers' right of reimbursement.—

(1) Notwithstanding any other provisions of ss. 627.730-627.7405, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

(2) For purposes of this section, no owner or registrant identified in s. 627.733(1)(b) shall be liable for right of reimbursement.

Section 19. Effective upon this act becoming a law, section 628.901, Florida Statutes, is amended to read:

628.901 Definitions “~~Captive insurer~~”—~~defined.—As used in For the purposes of this part, the term:~~ except as provided in s. 628.903, a “captive insurer” is a domestic insurer established under part I to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from which it accepts risk under a contract of insurance.

(1) “Affiliated company” means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) “Captive insurance company” means a domestic insurer established under this part. A captive insurance company includes a pure captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed and licensed under this part.

(3) “Captive reinsurance company” means a reinsurance company that is formed and licensed under this part and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation and may not directly insure risks. A captive reinsurance company may reinsure only risks.

(4) “Consolidated debt to total capital ratio” means the ratio of the sum of all debts and hybrid capital instruments as described in paragraph (a) to total capital as described in paragraph (b).

(a) Debts and hybrid capital instruments include, but are not limited to, all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.

(b) Total capital consists of all debts and hybrid capital instruments as described in paragraph (a) plus owners' equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(5) "Consolidated GAAP net worth" means the consolidated owners' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(6) "Controlled unaffiliated business" means a company:

(a) That is not in the corporate system of a parent and affiliated companies;

(b) That has an existing contractual relationship with a parent or affiliated company; and

(c) Whose risks are managed by a captive insurance company in accordance with s. 628.919.

(7) "GAAP" means generally accepted accounting principles.

(8) "Industrial insured" means an insured that:

(a) Has gross assets in excess of \$50 million;

(b) Procures insurance through the use of a full-time employee of the insured who acts as an insurance manager or buyer or through the services of a person licensed as a property and casualty insurance agent, broker, or consultant in such person's state of domicile;

(c) Has at least 100 full-time employees; and

(d) Pays annual premiums of at least \$200,000 for each line of insurance purchased from the industrial insured captive insurer or at least \$75,000 for any line of coverage in excess of at least \$25 million in the annual aggregate. The purchase of umbrella or general liability coverage in excess of \$25 million in the annual aggregate shall be deemed to be the purchase of a single line of insurance.

(9) "Industrial insured captive insurance company" means a captive insurance company that provides insurance only to the industrial insureds that are its stockholders or members, and affiliates thereof, or to the stockholders, and affiliates thereof, of its parent corporation. An industrial

insured captive insurance company can also provide reinsurance to insurers only on risks written by such insurers for the industrial insureds that are the stockholders or members, and affiliates thereof, of the industrial insured captive insurer, or the stockholders, and affiliates thereof, of the parent corporation of the industrial insured captive insurer.

(10) “Office” means the Office of Insurance Regulation.

(11) “Parent” means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting interests of a captive insurance company.

(12) “Pure captive insurance company” means a company that insures risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(13) “Qualifying reinsurer parent company” means a reinsurer which currently holds a certificate of authority, letter of eligibility or is an accredited or a satisfactory non-approved reinsurer in this state possessing a consolidated GAAP net worth of at least \$500 million and a consolidated debt to total capital ratio of not greater than 0.50.

(14) “Special purpose captive insurance company” means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.

(15) “Treasury rates” means the United States Treasury STRIPS asked yield as published in the Wall Street Journal as of a balance sheet date.

Section 20. Effective upon this act becoming a law, section 628.905, Florida Statutes, is amended to read:

628.905 Licensing; authority.—

(1) A ~~Any~~ captive insurer, if ~~when~~ permitted by its charter or articles of incorporation, may apply to the office for a license to do any and all insurance authorized under the insurance code, provide commercial property, commercial casualty, and commercial marine insurance coverage other than workers’ compensation and employer’s liability, life, health, personal motor vehicle, and personal residential property insurance coverage, except that: an industrial insured captive insurer may apply for a license to provide workers’ compensation and employer’s liability insurance as set forth in subsection (6):

(a) A pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(b) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(c) A special purpose captive insurance company may insure only the risks of its parent.

(d) A captive insurance company may not accept or cede reinsurance except as provided in this part.

(2) To conduct insurance business in this state, a ~~No captive insurer, other than an industrial insured captive insurer must;~~ shall insure or accept reinsurance on any risks other than those of its parent and affiliated companies.

(a) Obtain from the office a license authorizing it to conduct insurance business in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. In the case of a captive insurance company formed as a corporation or a nonprofit corporation, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Chief Financial Officer of this state must be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

(3) Before receiving a license, a captive insurance company formed as a corporation or a nonprofit corporation must file with the office a certified copy of its articles of incorporation and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the office. In addition, an applicant captive insurance company must file with the office evidence of:

(a) The amount and liquidity of the proposed captive insurance company's assets relative to the risks to be assumed;

(b) The adequacy of the expertise, experience, and character of the person or persons who will manage the company;

(c) The overall soundness of the company's plan of operation;

(d) The adequacy of the loss prevention programs of the company's parent, member organizations, or industrial insureds, as applicable; and

(e) Any other factors considered relevant by the office in ascertaining whether the company will be able to meet its policy obligations. In addition to information otherwise required by this code, each applicant captive insurer

~~shall file with the office evidence of the adequacy of the loss prevention program of its insureds.~~

(4) A captive insurance company or captive reinsurance company must pay to the office a nonrefundable fee of \$1,500 for processing its application for license.

(a) A captive insurance company or captive reinsurance company must also pay an annual renewal fee of \$1,000.

(b) The office may charge a fee of \$5 for any document requiring certification of authenticity or the signature of the commissioner or his or her designee. An industrial insured captive insurer need not be incorporated in this state if it has been validly incorporated under the laws of another jurisdiction.

(5) If the commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this chapter, the commissioner may grant a license authorizing the company to conduct insurance business in this state until the next succeeding March 1, at which time the license may be renewed. An industrial insured captive insurer is subject to all provisions of this part except as otherwise indicated.

(6) Upon approval of the office, a foreign or alien captive insurance company may become a domestic captive insurance company by complying with all of the requirements of law relative to the organization and licensing of a domestic captive insurance company of the same or equivalent type in this state and by filing with the Secretary of State its charter or other organizational documents, together with any appropriate amendments that have been adopted in accordance with the laws of this state to bring the charter or other organizational documents into compliance with the laws of this state, along with a certificate of good standing issued by the office. The captive insurance company is then entitled to the necessary or appropriate certificates and licenses to continue transacting business in this state and is subject to the authority and jurisdiction of this state. In connection with this redomestication, the office may waive any requirements for public hearings. It is not necessary for a captive insurance company redomesticating into this state to merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section. An industrial insured captive insurer may not provide workers' compensation and employer's liability insurance except in excess of at least \$25 million in the annual aggregate.

(7) An industrial insured captive insurance company need not be incorporated in this state if it has been validly incorporated under the laws of another jurisdiction.

Section 21. Effective upon this act becoming a law, section 628.906, Florida Statutes, is created to read:

628.906 Application requirements; restrictions on eligibility of officers and directors.—

(1) To evidence competence and trustworthiness of its officers and directors, the application for a license to act as a captive insurance company or captive reinsurance company shall include, but not be limited to, background investigations, biographical affidavits, and fingerprint cards for all officers and directors. Fingerprints must be taken by a law enforcement agency or other entity approved by the office, be accompanied by the fingerprint processing fee specified in s. 624.501, and processed in accordance with s. 624.34.

(2) The office may deny, suspend, or revoke the license to transact captive insurance or captive reinsurance in this state if any person who was an officer or director of an insurer, reinsurer, captive insurance company, captive reinsurance company, financial institution, or financial services business doing business in the United States, any state, or under the law of any other country and who served in that capacity within the 2-year period prior to the date the insurer, reinsurer, captive insurance company, captive reinsurance company, financial institution, or financial services business became insolvent, serves as an officer or director of a captive insurance company or officer or director of a captive reinsurance company licensed in this state unless the officer or director demonstrates that his or her personal actions or omissions were not a contributing cause to the insolvency or unless the officer or director is immediately removed from the captive insurance company or captive reinsurance company.

(3) The office may deny, suspend, or revoke the license to transact insurance or reinsurance in this state of a captive insurance company or captive reinsurance company if any officer or director, any stockholder that owns 10 percent or more of the outstanding voting securities of the captive insurance company or captive reinsurance company, or incorporator has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime involving moral turpitude, including a crime of dishonesty or breach of trust, punishable by imprisonment of 1 year or more under the law of the United States or any state thereof or under the law of any other country without regard to whether a judgment of conviction has been entered by the court having jurisdiction in such case. However, in the case of a captive insurance company or captive reinsurance company operating under a subsisting license, the captive insurance company or captive reinsurance company shall remove any such person immediately upon discovery of the conditions set forth in this subsection when applicable to such person or upon the order of the office, and the failure to so act shall be grounds for revocation or suspension of the captive insurance company's or captive reinsurance company's license.

Section 22. Effective upon this act becoming a law, section 628.907, Florida Statutes, is amended to read:

628.907 Minimum capital and net assets requirements; restriction on payment of dividends surplus.—

(1) ~~A No~~ captive insurer may not ~~shall~~ be issued a license unless it possesses and thereafter maintains:

(1) unimpaired paid-in capital of:

(a) In the case of a pure captive insurance company, at least \$100,000. \$500,000; and

(b) In the case of an industrial insured captive insurance company incorporated as a stock insurer, at least \$200,000.

(c) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

(2) The office may not issue a license to a captive insurance company incorporated as a nonprofit corporation unless the company possesses and maintains unrestricted net assets of:

(a) In the case of a pure captive insurance company, Unimpaired surplus of at least \$250,000.

(b) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

(3) Contributions to a captive insurance company incorporated as a nonprofit corporation must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System with a branch office in this state, or as approved by the office.

(4) For purposes of this section, the office may issue a license expressly conditioned upon the captive insurance company providing to the office satisfactory evidence of possession of the minimum required unimpaired paid-in capital. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The office may revoke the conditional license if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed 1 year, to be established by the office at the time the conditional license is issued.

(5) The office may prescribe additional capital or net assets based upon the type, volume, and nature of insurance business transacted. Contributions in connection with these prescribed additional net assets or capital must be in the form of:

(a) Cash;

(b) Cash equivalent;

(c) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System with a branch office in this state, or as approved by the office; or

(d) Securities invested as provided in part II of chapter 625.

(6) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in this chapter without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the office.

(7) An irrevocable letter of credit that is issued by a financial institution other than a bank chartered by this state or a member bank of the Federal Reserve System must meet the same standards as an irrevocable letter of credit that has been issued by a bank chartered by this state or a member bank of the Federal Reserve System.

Section 23. Effective upon this act becoming a law, section 628.908, Florida Statutes, is created to read:

628.908 Surplus requirements; restriction on payment of dividends.—

(1) The office may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

(a) In the case of a pure captive insurance company, at least \$150,000.

(b) In the case of an industrial insured captive insurance company incorporated as a stock insurer, at least \$300,000.

(c) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, at least \$500,000.

(d) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

(2) For purposes of this section, the office may issue a license expressly conditioned upon the captive insurance company providing to the office satisfactory evidence of possession of the minimum required unimpaired surplus. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The office may revoke the conditional license if satisfactory evidence of the

required surplus is not provided within a maximum period of time, not to exceed 1 year, to be established by the office at the time the conditional license is issued.

(3) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in this chapter without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distribution must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the office.

(4) An irrevocable letter of credit that is issued by a financial institution other than a bank chartered by this state or a member bank of the Federal Reserve System must meet the same standards as an irrevocable letter of credit that has been issued by a bank chartered by this state or a member bank of the Federal Reserve System.

Section 24. Effective upon this act becoming a law, section 628.909, Florida Statutes, is amended to read:

628.909 Applicability of other laws.—

(1) The Florida Insurance Code ~~does~~ shall not apply to captive insurers or industrial insured captive insurers except as provided in this part and subsections (2) and (3).

(2) The following provisions of the Florida Insurance Code shall apply to captive insurers who are not industrial insured captive insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405, when no-fault coverage is provided.

(e) Chapter 628.

(3) The following provisions of the Florida Insurance Code shall apply to industrial insured captive insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurer is incorporated in this state.

- (c) Chapter 626, part IX.
- (d) Sections 627.730-627.7405 when no-fault coverage is provided.
- (e) Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 25. Effective upon this act becoming a law, section 628.910, Florida Statutes, is created to read:

628.910 Incorporation options and requirements.—

(1) A pure captive insurance company may be:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or

(b) Incorporated as a public benefit, mutual benefit, or religious nonprofit corporation with members in accordance with the Florida Not For Profit Corporation Act.

(2) An industrial insured captive insurance company may be:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or

(b) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by its members.

(3) A captive insurance company may not have fewer than three incorporators of whom not fewer than two must be residents of this state.

(4) In the case of a captive insurance company formed as a corporation or a nonprofit corporation, before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall file the articles of incorporation in triplicate with the office. The office shall promptly examine the articles of incorporation. If it finds that the articles of incorporation conform to law, it shall endorse its approval on each of the triplicate originals of the articles of incorporation, retain one copy for its files, and return the remaining copies to the incorporators for filing with the Department of State.

(5) The articles of incorporation, the certificate issued pursuant to this section, and the organization fees required by the Florida Business Corporation Act or the Florida Not For Profit Corporation Act, as applicable, must be transmitted to the Secretary of State, who must record the articles of incorporation and the certificate.

(6) The capital stock of a captive insurance company incorporated as a stock insurer must be issued at par value of not less than \$1 or more than \$100 per share.

(7) In the case of a captive insurance company formed as a corporation or a nonprofit corporation, at least one of the members of the board of directors of a captive insurance company incorporated in this state must be a resident of this state.

(8) A captive insurance company formed as a corporation or a nonprofit corporation, pursuant to the provisions of this chapter, has the privileges and is subject to the provisions of the general corporation law, including the Florida Not For Profit Corporation Act for nonprofit corporations, as applicable, as well as the applicable provisions contained in this chapter. If a conflict occurs between a provision of the general corporation law, including the Florida Not For Profit Corporation Act for nonprofit corporations, as applicable, and a provision of this chapter, the latter controls. The provisions of this title pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in such provisions, except that the office may waive or modify the requirements for public notice and hearing in accordance with rules the office may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, the office may cancel the hearing.

(9) The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors as provided for by the Florida Business Corporation Act or the Florida Not For Profit Corporation Act.

Section 26. Effective upon this act becoming a law, section 628.911, Florida Statutes, is amended to read:

628.911 Reports and statements.—

(1) A captive insurance company may insurer shall not be required to make any annual report except as provided in this part section.

(2) Annually no later than March 1, a captive insurance company or a captive reinsurance company insurer shall, within 60 days after the end of its fiscal year and as often as the office may deem necessary, submit to the office a report of its financial condition verified by oath of two of its executive officers. Except as provided in this part, a captive insurance company or a captive reinsurance company must report using generally accepted accounting principles, unless the office approves the use of statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the office for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the office. The Financial Services Commission may adopt by rule the form in which captive insurance companies insurers shall report.

(3) A captive insurance company may make written application for filing the required report on a fiscal year end that is consistent with the parent company's fiscal year. If an alternative reporting date is granted, the annual report is due 60 days after the fiscal year end.

Section 27. Effective upon this act becoming a law, section 628.912, Florida Statutes, is created to read:

628.912 Discounting of loss and loss adjustment expense reserves.—

(1) A captive reinsurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.

(2) A captive reinsurance company must file annually an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive reinsurance company or its affiliates.

(3) The office may disallow the discounting of reserves if a captive reinsurance company violates a provision of this part.

Section 28. Effective upon this act becoming a law, section 628.913, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 628.913, F.S., for present text.)

628.913 Captive reinsurance companies.—

(1) A captive reinsurance company, if permitted by its articles of incorporation or charter, may apply to the office for a license to write reinsurance covering property and casualty insurance or reinsurance contracts. A captive reinsurance company authorized by the office may write reinsurance contracts covering risks in any state; however, a captive reinsurance company authorized by the office may not directly insure risks.

(2) To conduct business in this state, a captive reinsurance company must:

(a) Obtain from the office a license authorizing it to conduct business as a captive reinsurance company in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a registered agent to accept service of process and act otherwise on its behalf in this state.

(3) Before receiving a license, a captive reinsurance company must file with the office:

- (a) A certified copy of its charter and bylaws;
 - (b) A statement under oath of its president and secretary showing its financial condition; and
 - (c) Other documents required by the office.
- (4) In addition to the information required by this section, the captive reinsurance company must file with the office evidence of:
- (a) The amount and liquidity of the captive reinsurance company's assets relative to the risks to be assumed;
 - (b) The adequacy of the expertise, experience, and character of the person who manages the company;
 - (c) The overall soundness of the company's plan of operation; and
 - (d) Other overall factors considered relevant by the office in ascertaining if the company would be able to meet its policy obligations.

Section 29. Effective upon this act becoming a law, section 628.914, Florida Statutes, is created to read:

628.914 Minimum capitalization or reserves for captive reinsurance companies.—

(1) The office may not issue a license to a captive reinsurance company unless the company possesses and maintains capital or unimpaired surplus of at least the greater of \$300 million or 10 percent of reserves. The surplus may be in the form of cash or securities as permitted by part II of chapter 625.

(2) The office may prescribe additional capital or surplus based upon the type, volume, and nature of the insurance business transacted.

(3) A captive reinsurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the office.

Section 30. Effective upon this act becoming a law, section 628.9141, Florida Statutes, is created to read:

628.9141 Incorporation of a captive reinsurance company.—

(1) A captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders.

(2) A captive reinsurance company may not have fewer than three incorporators of whom at least two must be residents of this state.

(3) Before the articles of incorporation are transmitted to the Secretary of State, the incorporators must comply with all the requirements of s. 628.091.

(4) The capital stock of a captive reinsurance company must be issued at par value of not less than \$1 or more than \$100 per share.

(5) At least one of the members of the board of directors of a captive reinsurance company incorporated in this state must be a resident of this state.

Section 31. Effective upon this act becoming a law, section 628.9142, Florida Statutes, is created to read:

628.9142 Reinsurance; effect on reserves.—

(1) A captive insurance company may provide reinsurance, as authorized in this part, on risks ceded by any other insurer.

(2) A captive insurance company may take credit for reserves on risks or portions of risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with s. 624.610. A captive insurer may not take credit for reserves on risks or portions of risks ceded to an unauthorized insurer or reinsurer if the insurer or reinsurer is not in compliance with s. 624.610.

Section 32. Effective upon this act becoming a law, section 628.918, Florida Statutes, is created to read:

628.918 Management of assets of captive reinsurance company.—At least 35 percent of the assets of a captive reinsurance company must be managed by an asset manager domiciled in this state.

Section 33. Effective upon this act becoming a law, section 628.919, Florida Statutes, is created to read:

628.919 Standards to ensure risk management control by parent company.—The Financial Services Commission shall adopt rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

Section 34. Effective upon this act becoming a law, section 628.920, Florida Statutes, is created to read:

628.920 Eligibility of licensed captive insurance company for certificate of authority to act as insurer.—A licensed captive insurance company that

meets the necessary requirements of this part imposed upon an insurer must be considered for issuance of a certificate of authority to act as an insurer in this state.

Section 35. Effective upon this act becoming a law, paragraph (e) of subsection (2) of section 626.7491, Florida Statutes, is amended to read:

626.7491 Business transacted with producer controlled property and casualty insurer.—

(2) DEFINITIONS.—As used in this section:

(e) “Licensed insurer” or “insurer” means any person, firm, association, or corporation licensed to transact a property or casualty insurance business in this state. The following are not licensed insurers for the purposes of this section:

1. Any risk retention group as defined in:

a. The Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq. (1982 and Supp. 1986); or

c. Section 627.942(9).

2. Any residual market pool or joint underwriting authority or association; and

3. Any captive insurance company ~~insurer~~ as defined in s. 628.901.

Section 36. Effective upon this act becoming a law, section 628.903, Florida Statutes, is repealed.

Section 37. Section 631.271, Florida Statutes, is amended to read:

631.271 Priority of claims.—

(1) The priority of distribution of claims from the insurer’s estate shall be in accordance with the order in which each class of claims is set forth in this subsection. Every claim in each class shall be paid in full or adequate funds shall be retained for such payment before the members of the next class may receive any payment. No subclasses may be established within any class. The order of distribution of claims shall be:

(a) Class 1.—

1. All of the receiver’s costs and expenses of administration.

2. All of the expenses of a guaranty association or foreign guaranty association in handling claims.

(b) Class 2.—All claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which claims are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to her or his employee may be treated as a gratuity.

(c) Class 3.—Claims under nonassessable policies for unearned premiums or premium refunds.

(d) Class 4.—Claims of the Federal Government.

(e) Class 5.—Debts due to employees for services performed, to the extent that the debts do not exceed \$2,000 for each employee and represent payment for services performed within 6 months before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. This priority is in lieu of any other similar priority that is authorized by law as to wages or compensation of employees.

(f) Class 6.—Claims of general creditors.

(g) Class 7.—Claims of any state or local government. Claims, including those of any state or local government for a penalty or forfeiture, shall be allowed in this class, but only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under paragraph (k)(j).

(h) Class 8.—Claims filed after the time specified in s. 631.181(3), except when ordered otherwise by the court to prevent manifest injustice, or any claims other than claims under paragraph (i) or under paragraph (k)(j).

(i) Class 9.—Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(j) Class 10.—Interest on allowed claims of Classes 1 through 9, according to the terms of a plan to pay interest on allowed claims proposed by the liquidator and approved by the receivership court.

(k) Class 11.—The claims of shareholders or other owners.

(2) In a liquidation proceeding involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal

states shall be given equal priority of payment from general assets regardless of where such assets are located.

Section 38. If this act and CS for CS for HB 245 or similar legislation are adopted in the same legislative session or an extension thereof and become law, a surplus lines insurer removing policies from the Citizens Property Insurance Corporation must, pursuant to s. 627.351(6)(q)3.d.(II)(B), Florida Statutes, maintain an A.M. Best Financial Strength Rating of A- or better or, in the alternative, a Demotech Financial Stability Rating of A or better.

Section 39. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012.

Approved by the Governor April 24, 2012.

Filed in Office Secretary of State April 24, 2012.