CHAPTER 98-173

Committee Substitute for Senate Bill No. 1108

An act relating to insurance; amending s. 627.021, F.S.; providing that the provisions of ch. 627, F.S., do not apply to commercial inland marine insurance; amending ss. 627.0651, 627.410, F.S.; making conforming changes to requirements for filing underwriting rules and forms; amending s. 627.311, F.S.; revising the composition of the workers' compensation joint underwriting plan; prohibiting insurers from providing workers' compensation to certain employers; amending ss. 627.7013 and 627.7014, F.S.; providing findings relating to the moratorium on hurricane-related cancellations and nonrenewals of personal lines residential policies and condominium association policies, respectively; deleting provisions relating to accelerated exposure reduction plans; providing circumstances under which the sections are inoperative; delaying the future repeal date of the sections; amending s. 627.7295, F.S., relating to minimum down payments for motor vehicle insurance; amending s. 627.351, F.S.; prohibiting further geographical expansion of Florida Windstorm Underwriting Association eligibility; creating s. 626.9543, F.S.; providing a short title; providing legislative intent and purpose; requiring the Department of Insurance to provide certain assistance to Holocaust victims; providing requirements for insurers relating to insurance claims from beneficiaries, descendants, or heirs of Holocaust victims; limiting certain statutes of limitation under certain circumstances; requiring insurers to report certain information to the department; requiring the department to report to the Legislature; providing penalties; providing requirements for bringing certain causes of action; providing severability; providing an effective date.

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

Section 1. Subsection (2) of section 627.021, Florida Statutes, is amended to read:

627.021 Scope of this part.—

(2) This chapter does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311.

(b) Insurance against loss of or damage to aircraft, their hulls, accessories, or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine~~, as distinguished from inland marine,~~ insurance policies.

(d) Commercial inland marine insurance.

(e)~~(d)~~ Surplus lines insurance placed under the provisions of ss. 626.913-626.937.

Section 2. Subsection (13) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(13)(a) Underwriting rules not contained in rating manuals shall be filed for private passenger automobile insurance and homeowners' insurance.

(b) The submission of rates, rating schedules, and rating manuals to the department by a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this subsection for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating schedules, and rating manuals of such organization. All such information shall be available for public inspection, upon receipt by the department, during usual business hours.

~~(c) The filing requirements of this subsection do not apply to commercial inland marine risks.~~

Section 3. Subsection (4) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers.—

(4)(a) Effective upon this act becoming a law, the department shall, after consultation with insurers, approve a joint underwriting plan of insurers which shall operate as a nonprofit entity. For the purposes of this subsection, the term "insurer" includes group self-insurance funds authorized by s. 624.4621, commercial self-insurance funds authorized by s. 624.462, assessable mutual insurers authorized under s. 628.6011, and insurers licensed to write workers' compensation and employer's liability insurance in this state. The purpose of the plan is to provide workers' compensation and employer's liability insurance to applicants who are required by law to maintain workers' compensation and employer's liability insurance and who are in good faith entitled to but who are unable to purchase such insurance through the voluntary market. The joint underwriting plan shall issue policies beginning January 1, 1994. The plan must have actuarially sound rates that assure that the plan is self-supporting.

(b) The operation of the plan is subject to the supervision of a 13-member board of governors. The board of governors shall be comprised of:

1. Five of the 20 domestic insurers, as defined in s. 624.06(1), having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 domestic insurers;

2. Five of the 20 foreign insurers as defined in s. 624.06(2) having the largest voluntary direct premiums written in this state for workers' compensation and employer's liability insurance, which shall be elected by those 20 foreign insurers;

3. One person, who shall serve as the chair, appointed by the Insurance Commissioner;

4. One person appointed by the largest property and casualty insurance agents' association in this state; and

5. The consumer advocate appointed under s. 627.0613 or the consumer advocate's designee. ~~5 domestic insurers, 1 of whom shall be the assessable mutual insurer or other domestic insurer which has the largest voluntary written premium for workers' compensation and employer's liability insurance as of December 31, 1993, 1 of whom shall be the commercial self-insurance fund which has the largest voluntary written premium for workers' compensation and employer's liability insurance, as of December 31, 1993, and 3 of whom shall be the 3 of the 5 group self-insurers' funds, authorized by s. 440.57, which have the largest voluntary written premium for workers' compensation and employer's liability insurance, as of December 31, 1993; and 5 of the 20 foreign insurers which are defined in s. 624.06(2) with the largest voluntary written premium in this state for workers' compensation and employer's liability insurance, for the latest year for which data are available, as selected by those 20 foreign insurers. If the assessable mutual insurer or the commercial self-insurance fund, described in this paragraph, decline to serve on, or resign from, the board of governors, such position on the board of governors shall be filled by appointment by a committee comprised of the 10 assessable mutual insurers, commercial self-insurance funds, and group self-insurers' funds, authorized by s. 440.57, which have the largest voluntary written premium for workers' compensation and employer's liability insurance, as of December 31, 1993.~~

Each board member shall serve 4-year terms and may serve consecutive terms. No board member shall be an insurer which provides service to the plan or which has an affiliate which provides services to the plan or which is serviced by a service company or third-party administrator which provides services to the plan or which has an affiliate which provides services to the plan. ~~The board of governors shall have a chair, who shall be named by the Insurance Commissioner. The board of governors shall include one representative appointed by the largest property and casualty insurance agents' association in this state. The consumer advocate appointed under s. 627.0613 shall be a member of the board of governors.~~ The minutes, audits, and procedures of the board of governors are subject to chapter 119.

(c)~~(b)~~ The operation of the plan shall be governed by a plan of operation that is prepared at the direction of the board of governors. The plan of operation may be changed at any time by the board of governors or upon request of the department. The plan of operation and all changes thereto are subject to the approval of the department. The plan of operation shall:

1. Authorize the board to engage in the activities necessary to implement this subsection, including, but not limited to, borrowing money.

2. Develop criteria for eligibility for coverage by the plan, including, but not limited to, documented rejection by at least two insurers which reasonably assures that insureds covered under the plan are unable to acquire coverage in the voluntary market. Any insured may voluntarily elect to accept coverage from an insurer for a premium equal to or greater than the plan premium if the insurer writing the coverage adheres to the provisions of s. 627.171.

3. Require notice from the agent to the insured at the time of the application for coverage that the application is for coverage with the plan and that coverage may be available through an insurer, group self-insurers' fund, commercial self-insurance fund, or assessable mutual insurer through another agent at a lower cost.

4. Establish programs to encourage insurers to provide coverage to applicants of the plan in the voluntary market and to insureds of the plan, including, but not limited to:

a. Establishing procedures for an insurer to use in notifying the plan of the insurer's desire to provide coverage to applicants to the plan or existing insureds of the plan and in describing the types of risks in which the insurer is interested. The description of the desired risks must be on a form developed by the plan.

b. Developing forms and procedures that provide an insurer with the information necessary to determine whether the insurer wants to write particular applicants to the plan or insureds of the plan.

c. Developing procedures for notice to the plan and the applicant to the plan or insured of the plan that an insurer will insure the applicant or the insured of the plan, and notice of the cost of the coverage offered; and developing procedures for the selection of an insuring entity by the applicant or insured of the plan.

d. Provide for a market-assistance plan to assist in the placement of employers. All applications for coverage in the plan received 45 days before the effective date for coverage shall be processed through the market-assistance plan. A market-assistance plan specifically designed to serve the needs of small good policyholders as defined by the board must be finalized by January 1, 1994.

5. Provide for policy and claims services to the insureds of the plan of the nature and quality provided for insureds in the voluntary market.

6. Provide for the review of applications for coverage with the plan for reasonableness and accuracy, using any available historic information regarding the insured.

7. Provide for procedures for auditing insureds of the plan which are based on reasonable business judgment and are designed to maximize the likelihood that the plan will collect the appropriate premiums.

8. Authorize the plan to terminate the coverage of and refuse future coverage for any insured that submits a fraudulent application to the plan

or provides fraudulent or grossly erroneous records to the plan or to any service provider of the plan in conjunction with the activities of the plan.

9. Establish service standards for agents who submit business to the plan.

10. Establish criteria and procedures to prohibit any agent who does not adhere to the established service standards from placing business with the plan or receiving, directly or indirectly, any commissions for business placed with the plan.

11. Provide for the establishment of reasonable safety programs for all insureds in the plan. At the direction of the board, the Division of Safety shall provide inspection to insureds and applicants for coverage in the plan identified as high-risk insureds by the board or its designee.

12. Authorize the plan to terminate the coverage of and refuse future coverage to any insured who fails to pay premiums or surcharges when due; who, at the time of application, is delinquent in payments of workers' compensation or employer's liability insurance premiums or surcharges owed to an insurer, group self-insurers' fund, commercial self-insurance fund, or assessable mutual insurer licensed to write such coverage in this state; or who refuses to substantially comply with any safety programs recommended by the plan.

13. Authorize the board of governors to provide the services required by the plan through staff employed by the plan, through reasonably compensated service providers who contract with the plan to provide services as specified by the board of governors, or through a combination of employees and service providers.

14. Provide for service standards for service providers, methods of determining adherence to those service standards, incentives and disincentives for service, and procedures for terminating contracts for service providers that fail to adhere to service standards.

15. Provide procedures for selecting service providers and standards for qualification as a service provider that reasonably assure that any service provider selected will continue to operate as an ongoing concern and is capable of providing the specified services in the manner required.

16. Provide for reasonable accounting and data-reporting practices.

17. Provide for annual review of costs associated with the administration and servicing of the policies issued by the plan to determine alternatives by which costs can be reduced.

18. Authorize the acquisition of such excess insurance or reinsurance as is consistent with the purposes of the plan.

19. Provide for an annual report to the department on a date specified by the department and containing such information as the department reasonably requires.

20. Establish multiple rating plans for various classifications of risk which reflect risk of loss, hazard grade, actual losses, size of premium, and compliance with loss control. At least one of such plans must be a preferred-rating plan to accommodate small-premium policyholders with good experience as defined in sub-subparagraph 22.a.

21. Establish agent commission schedules.

22. Establish three subplans as follows:

a. Subplan "A" must include those insureds whose annual premium does not exceed $2,500 and who have neither incurred any lost-time claims nor incurred medical-only claims exceeding 50 percent of their premium for the immediate 2 years.

b. Subplan "B" must include insureds that are employers identified by the board of governors as high-risk employers due solely to the nature of the operations being performed by those insureds and for whom no market exists in the voluntary market, and whose experience modifications are less than 1.00.

c. Subplan "C" must include all other insureds within the plan.

(d)~~(c)~~ The plan must be funded through actuarially sound premiums charged to insureds of the plan. The plan may issue assessable policies only to those insureds in subplan "C." Those assessable policies must be clearly identified as assessable by containing, in contrasting color and in not less than 10-point type, the following statements: "This is an assessable policy. If the plan is unable to pay its obligations, policyholders will be required to contribute on a pro rata earned premium basis the money necessary to meet any assessment levied." The plan may issue assessable policies with differing terms and conditions to different groups within the plan when a reasonable basis exists for the differentiation. The plan may offer rating, dividend plans, and other plans to encourage loss prevention programs.

(e)~~(d)~~ The plan shall establish and use its rates and rating plans, and the plan may establish and use changes in rating plans at any time, but no more frequently than two times per any rating class for any calendar year. By December 1, 1993, and December 1 of each year thereafter, the board shall establish and use actuarially sound rates for use by the plan to assure that the plan is self-funding while those rates are in effect. Such rates and rating plans must be filed with the department within 30 calendar days after their effective dates, and shall be considered a "use and file" filing. Any disapproval by the department must have an effective date that is at least 60 days from the date of disapproval of the rates and rating plan and must have prospective effect only. The plan may not be subject to any order by the department to return to policyholders any portion of the rates disapproved by the department. The department may not disapprove any rates or rating plans unless it demonstrates that such rates and rating plans are excessive, inadequate, or unfairly discriminatory.

(f)~~(e)~~ No later than June 1 of each year, the plan shall obtain an independent actuarial certification of the results of the operations of the

plan for prior years, and shall furnish a copy of the certification to the department. If, after the effective date of the plan, the projected ultimate incurred losses and expenses and dividends for prior years exceed collected premiums, accrued net investment income, and prior assessments for prior years, the certification is subject to review and approval by the department before it becomes final.

(g)~~(f)~~ Whenever a deficit exists, the plan shall, within 90 days, provide the department with a program to eliminate the deficit within a reasonable time. The deficit may be funded both through increased premiums charged to insureds of the plan for subsequent years and through assessments on insureds in the plan if the plan uses assessable policies.

(h)~~(g)~~ Any premium or assessments collected by the plan in excess of the amount necessary to fund projected ultimate incurred losses and expenses of the plan and not paid to insureds of the plan in conjunction with loss prevention or dividend programs shall be retained by the plan for future use.

(i)~~(h)~~ The decisions of the board of governors do not constitute final agency action and are not subject to chapter 120.

(j)~~(i)~~ Policies for insureds shall be issued by the plan.

(k)~~(j)~~ The plan created under this subsection is liable only for payment for losses arising under policies issued by the plan with dates of accidents occurring on or after January 1, 1994.

(l)~~(k)~~ Plan losses are the sole and exclusive responsibility of the plan, and payment for such losses must be funded in accordance with this subsection and must not come, directly or indirectly, from insurers or any guaranty association for such insurers.

(m)~~(l)~~ Each joint underwriting plan or association created under this section is not a state agency, board, or commission. However, for the purposes of s. 199.183(1) only, the joint underwriting plan is a political subdivision of the state and is exempt from the corporate income tax.

(n)~~(m)~~ Each joint underwriting plan or association may elect to pay premium taxes on the premiums received on its behalf or may elect to have the member insurers to whom the premiums are allocated pay the premium taxes if the member insurer had written the policy. The joint underwriting plan or association shall notify the member insurers and the Department of Revenue by January 15 of each year of its election for the same year. As used in this paragraph, the term “premiums received” means the consideration for insurance, by whatever name called, but does not include any policy assessment or surcharge received by the joint underwriting association as a result of apportioning losses or deficits of the association pursuant to this section.

(o)~~(n)~~ Effective midnight, December 31, 1993, the Florida Workers’ Compensation Insurance Plan, administered by the National Council on Compensation Insurance, shall terminate, except with respect to workers’ compensation policies issued pursuant to such Florida Workers’ Compensation Insurance Plan with inception dates on or before December 31, 1993.

(p)~~(o)~~ Neither the plan nor any member of the board of governors is liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policies of the plan, unless:

1. The member breached or failed to perform her or his duties as a member; and

2. The member's breach of, or failure to perform, duties constitutes:

a. A violation of the criminal law, unless the member had reasonable cause to believe her or his conduct was unlawful. A judgment or other final adjudication against a member in any criminal proceeding for violation of the criminal law estops that member from contesting the fact that her or his breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the member from establishing that she or he had reasonable cause to believe that her or his conduct was lawful or had no reasonable cause to believe that her or his conduct was unlawful;

b. A transaction from which the member derived an improper personal benefit, either directly or indirectly; or

c. Recklessness or any act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. For purposes of this sub-subparagraph, the term "recklessness" means the acting, or omission to act, in conscious disregard of a risk:

(I) Known, or so obvious that it should have been known, to the member; and

(II) Known to the member, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such act or omission.

(q)~~(p)~~ The provisions of this subsection shall be reviewed by the Legislature before July 1, 1996.

(r) No insurer shall provide workers' compensation and employer's liability insurance to any person who is delinquent in the payment of premiums, assessments, penalties, or surcharges owed to the plan.

Section 4. Subsection (1) of section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or group certificates issued under a master contract delivered in this state, or printed rider or endorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with the department at its offices in Tallahassee by or in behalf of the insurer which proposes to use such form and has been approved by the department. This provision does not apply to surety bonds

or to ~~specially rated~~ ~~inland marine risks, nor to~~ policies, riders, endorsements, or forms of unique character which are designed for and used with relation to insurance upon a particular subject (other than as to health insurance), or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificateholder. As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed with the department for information purposes only.

Section 5. Paragraph (c) is added to subsection (1) of section 627.7013, Florida Statutes, and subsection (2) of said section is amended, to read:

627.7013 Orderly markets for personal lines residential property insurance.—

(1) FINDINGS AND PURPOSE.—

(a) The Legislature finds that personal lines residential property insurers, as a condition of doing business in this state, have a responsibility to contribute to an orderly market for personal lines residential property insurance and that there is a compelling state interest in maintaining an orderly market for personal lines residential property insurance. The Legislature further finds that Hurricane Andrew, which caused over $15 billion of insured losses in South Florida, has reinforced the need of consumers to have reliable homeowner's insurance coverage; however, the enormous monetary impact to insurers of Hurricane Andrew claims has prompted insurers to propose substantial cancellation or nonrenewal of their homeowner's insurance policyholders. The Legislature further finds that the massive cancellations and nonrenewals announced, proposed, or contemplated by certain insurers constitute a significant danger to the public health, safety, and welfare, and destabilize the insurance market. In furtherance of the overwhelming public necessity for an orderly market for property insurance, the Legislature, in chapter 93-401, Laws of Florida, imposed, for a limited time, a moratorium on cancellation or nonrenewal of personal lines residential property insurance policies. The Legislature further finds that upon expiration of the moratorium, additional actions are required to maintain an orderly market for personal lines residential property insurance in this state. The purposes of this section are to provide for a phaseout of the moratorium and to require advance planning and approval for programs of exposure reduction.

(b) The Legislature finds, as of the beginning of the 1996 Regular Session of the Legislature, that:

1. The conditions described in paragraph (a) remain applicable to the property insurance market in this state in 1996 and are likely to remain applicable for several years thereafter.

2. The Residential Property and Casualty Joint Underwriting Association, a residual market mechanism created to alleviate temporary unavailability of property insurance coverage, remains the primary or exclusive

source of new property insurance coverage in significant portions of the state.

3. Recent enactments intended to restore a competitive, private sector property insurance market, including creation and enhancement of the Florida Hurricane Catastrophe Fund, incentives for depopulation of the Residential Property and Casualty Joint Underwriting Association, incentives for hurricane loss mitigation and prevention, creation of the Florida Commission on Hurricane Loss Projection Methodology, and revisions of laws relating to rates and coverages, are beginning to have their intended effects; however, the market instability that persists could frustrate these efforts to restore the market.

4. The moratorium completion provided in this section is the least intrusive method for maintaining an orderly market, insofar as it applies only to hurricane-related cancellations and nonrenewals of personal lines residential policies that were in force on the effective date, and insofar as it allows an insurer annually to nonrenew up to 5 percent of the total number of such policies as of the effective date.

(c) The Legislature finds, as of January 1, 1998, that:

1. The conditions described in paragraphs (a) and (b) remain applicable to the property insurance market in this state in 1998 and are likely to remain applicable for several years thereafter.

2. The general instability of the market is reflected by the following facts:

a. In spite of depopulation efforts under which approximately 600,000 policies have been transferred from the Residential Property and Casualty Joint Underwriting Association to the voluntary market, the joint underwriting association, with approximately 500,000 policies in force, remains the primary or exclusive source of new property insurance coverage in significant portions of the state.

b. The Florida Windstorm Underwriting Association is growing rapidly, with more than 400,000 policies in force, approximately half of which were initially issued in 1997.

3. A further extension of the operation of this section until June 1, 2001, will provide an opportunity for the market to stabilize and for continuation of residual market depopulation efforts.

(2) MORATORIUM COMPLETION.—

(a) As used in this subsection, the term "total number of policies" means the number of an insurer's policies of a specified type that were in force on June 1, 1996, or the date on which this section became law, whichever was later.

(b) The following restrictions apply only to cancellation or nonrenewal of personal lines residential property insurance policies that were in force on June 1, 1996, or the date on which this section became law, whichever was later.

1. In any 12-month period, an insurer may not cancel or nonrenew more than 5 percent of such insurer's total number of homeowner's policies, 5 percent of such insurer's total number of mobile home owner's policies, or 5 percent of such insurer's total number of personal lines residential policies of all types and classes in the state for the purpose of reducing the insurer's exposure to hurricane claims and may not, with respect to any county, cancel or nonrenew more than 10 percent of its total number of homeowner's policies, 10 percent of its total number of mobile home owner's policies, or 10 percent of its total number of personal lines residential policies of all types and classes in the county for the purpose of reducing the insurer's exposure to hurricane claims. This subparagraph does not prohibit any cancellations or nonrenewals of such policies for any other lawful reason unrelated to the risk of loss from hurricane exposure.

2.a. If, for any 12-month period, an insurer proposes to cancel or nonrenew personal lines residential policies to an extent not authorized by subparagraph 1. for the purpose of reducing exposure to hurricane claims, the insurer must file a phaseout plan with the department at least 90 days prior to the effective date of the plan. In the plan, the insurer must demonstrate to the department that the insurer is protecting market stability and the interests of its policyholders. The plan may not be implemented unless it is approved by the department. In developing the plan, the insurer must consider policyholder longevity, the use of voluntary incentives to accomplish the reduction, and geographic distribution. The insurer must demonstrate that under the plan the insurer will not cancel or nonrenew more policies in the 12-month period than the largest number of similar policies the insurer canceled or nonrenewed for any reason in any 12-month period between August 24, 1989, and August 24, 1992.

b. If the insurer considers the number of cancellations and nonrenewals under sub-subparagraph a. to be insufficient, the insurer may apply for approval of additional cancellations or nonrenewals on the basis of an unreasonable risk of insolvency. In evaluating a request under this sub-subparagraph, the department shall consider and shall require the insurer to provide information relevant to: the insurer's size, market concentration, and general financial condition; the portion of the insurer's business in this state represented by personal lines residential property insurance; the reasonableness of assumptions with respect to size, frequency, severity, and path of hurricanes; the reinsurance available to the insurer and potential recoveries from the Florida Hurricane Catastrophe Fund; and the extent to which the insurer's assets have been voluntarily transferred by dividend or otherwise from the insurer to its stockholders, parent companies, or affiliated companies since June 1, 1996, or the date on which this section became law, whichever was later. In the implementation of exposure reductions under this sub-subparagraph, the department and the insurer shall consider such factors as policyholder longevity, the use of voluntary incentives to accomplish the exposure reduction, and geographic distribution.

c. A policy shall not be counted as having been canceled or nonrenewed for purposes of this subsection if any of the following apply:

(I) The policy was canceled or nonrenewed for an underwriting reason unrelated to the risk of loss from hurricane exposure, nonpayment of pre-

mium, or any other lawful reason that is unrelated to the risk of loss from hurricane exposure. The department shall consider the reason specified in the notice of cancellation or nonrenewal to be the reason for the cancellation or nonrenewal unless the department finds by a preponderance of the evidence that the stated reason was not the insurer's actual reason for the cancellation or nonrenewal.

(II) The cancellation or nonrenewal was initiated by the insured.

(III) The insurer has offered the policyholder replacement or alternative coverage at approved rates, which coverage meets the requirements of the secondary mortgage market.

d. In addition to any other cancellations or nonrenewals subject to the limitations in this subsection, a policy shall be considered as having been canceled or nonrenewed for purposes of this subsection if:

(I) The insurer implements a rate increase under the use-and-file provisions of s. 627.062(2)(a)2., which rate increase exceeds 150 percent of the increase ultimately approved by the department, and, while the rate filing was pending, the policyholder voluntarily canceled or nonrenewed the policy and obtained replacement coverage from another insurer, including the Residential Property and Casualty Joint Underwriting Association; or

(II) The insurer reduces the commission to an agent by more than 25 percent and the agent thereafter places the risk with another insurer, including the Residential Property and Casualty Joint Underwriting Association, or the Florida Windstorm Underwriting Association~~, or the Coastal Zone Insurance Plan~~.

e. The department must approve or disapprove an application for a waiver within 90 days after the department receives the application for waiver.

3. In addition to the cancellations or nonrenewals authorized under this section, an insurer may cancel or nonrenew policies to the extent authorized by an exemption from or waiver of either the moratorium created by chapter 93-401, Laws of Florida, or the moratorium phaseout under former s. 627.7013(2).

4. Notwithstanding any provisions of this section to the contrary, this section does not apply to any insurer that, prior to August 24, 1992, filed notice of such insurer's intent to discontinue writing insurance in this state under s. 624.430, and for which a finding has been made by the department, the Division of Administrative Hearings of the Department of Management Services, or a court that such notice satisfied all requirements of s. 624.430. Nothing in this section shall be construed to authorize an insurer to withdraw from any line of property insurance business for the purpose of reducing exposure to risk of hurricane loss if such withdrawal commenced at any time that the moratorium under chapter 93-401, Laws of Florida, or the moratorium phaseout under this section is in effect.

5. The following actions by an insurer do not constitute cancellations or nonrenewals for purposes of this subsection:

a. The transfer of a risk from one admitted insurer to another admitted insurer, unless the terms of the new or replacement policy place the policyholder in default of a mortgage obligation.

b. An increase in the hurricane deductible applicable to the policy, unless the new deductible places the policyholder in default of a mortgage obligation or the deductible exceeds the limits specified in s. 627.701.

c. Any other lawful change in coverage that does not place the policyholder in default of a mortgage obligation.

d. A cancellation or nonrenewal that is part of the same action as the removal of a policy including windstorm or hurricane coverage from the Residential Property and Casualty Joint Underwriting Association.

6. In order to assure fair and effective enforcement of this subsection, each insurer shall, no later than October 1, 1996, report to the department the policy number of each policy subject to this subsection, arranged by county. The report shall include the policy number for each personal lines residential policy that was in force on June 1, 1996, or the date this section became law, whichever was later. Beginning October 1, 1996, each insurer shall also report, on a monthly basis, all cancellations and nonrenewals of policies included in such policy list and the reasons for the cancellations and nonrenewals.

~~7. An insurer that has an overconcentration of wind risk in areas eligible for coverage under the Florida Windstorm Underwriting Association may submit to the department for approval an accelerated exposure reduction plan. The plan, if approved, shall allow the insurer to nonrenew additional policies for reasons of reducing hurricane loss, beyond the amounts authorized elsewhere in this paragraph, subject to the following conditions:~~

~~a. All additional nonrenewals under this subparagraph shall consist of nonrenewals of only the windstorm portion of a policy, and shall be allowed only if the Florida Windstorm Underwriting Association provides windstorm coverage to replace the nonrenewed windstorm coverage.~~

~~b. At the conclusion of the accelerated exposure reduction plan, which shall be no later than 12 months after the date of the first nonrenewal under such plan, the insurer is prohibited from any further nonrenewals for purposes of reducing hurricane loss until the expiration of this subsection.~~

~~c. The total number of nonrenewals statewide for purposes of reduction of hurricane loss, under this subparagraph taken together with the other provisions of this paragraph, shall not exceed the total number of nonrenewals that would have been allowed statewide under subparagraph 1. between June 1, 1996, and the expiration of this subsection.~~

~~d. Notwithstanding the provisions of s. 627.4133, the insurer must give the policyholder 45 days' advance notice of the nonrenewal of windstorm coverage under this subparagraph and the availability of such coverage through the Florida Windstorm Underwriting Association.~~

~~e. The first nonrenewal under an accelerated exposure reduction program under this subparagraph may not take effect earlier than February 1, 1997.~~

~~f. In reviewing the proposed accelerated exposure reduction plan, the department shall consider:~~

~~(I) The degree to which the exposure reduction plan is necessary to address the insurer's overconcentration.~~

~~(II) Prior levels of participation in writing voluntary wind coverage in areas eligible for coverage through the Florida Windstorm Underwriting Association.~~

~~(III) The availability of wind coverage in the voluntary market for the subject risks.~~

~~(IV) The capacity of the Florida Windstorm Underwriting Association to absorb the risks proposed to be covered by the association.~~

(c) The department may adopt rules to implement this subsection.

(d) This section shall cease to operate at such time as the department determines that the insured value of all residential properties insured by the Florida Windstorm Underwriting Association and all properties insured by the Residential Property and Casualty Joint Underwriting Association under policies providing wind coverage, combined, has remained below $25 billion for 3 consecutive months, based on exposure data reported to the department by the associations.

(e)~~(d)~~ This subsection is repealed on June 1, 2001 ~~1999~~.

Section 6. Section 627.7014, Florida Statutes, is amended to read:

627.7014 Orderly markets for condominium association residential property insurance.—

(1) FINDINGS AND PURPOSE.—

(a) The Legislature finds:

1. That residential property insurers providing condominium association coverage, as a condition of doing business in this state, have a responsibility to contribute to an orderly market for condominium association residential property insurance and that there is a compelling state interest in maintaining an orderly market for condominium association residential property insurance.

2. That Hurricane Andrew, which caused over $15 billion of insured losses in South Florida, has reinforced the need of consumers to have reliable condominium association insurance coverage; however, even more than 3 years after Hurricane Andrew, the hurricane's enormous monetary impact is causing insurers to propose substantial cancellation or nonrenewal of their condominium association insurance policyholders.

3. That the massive cancellations and nonrenewals announced, proposed, or contemplated by certain insurers constitute a significant danger to the public health, safety, and welfare and destabilize the insurance market.

4. That the Residential Property and Casualty Joint Underwriting Association, a residual market mechanism created to alleviate temporary unavailability of property insurance coverage, remains the primary or exclusive source of new property insurance in significant portions of the state.

5. That recent enactments intended to restore a competitive, private sector property insurance market, including creation and enhancement of the Florida Hurricane Catastrophe Fund, incentives for depopulation of the Residential Property and Casualty Joint Underwriting Association, incentives for hurricane loss mitigation and prevention, creation of the Florida Commission on Hurricane Loss Projection Methodology, and revisions of laws relating to rates and coverages, are beginning to have their intended effects; however, the market remains unstable.

6. That the moratorium created by this section is the least intrusive method for maintaining an orderly market for condominium association insurance, insofar as it applies only to hurricane-related cancellations and nonrenewals of personal lines residential policies that were in force on the effective date of this section, and insofar as it allows an insurer annually to nonrenew up to 5 percent of the total number of such policies as of the effective date of this section.

(b) The Legislature finds, as of January 1, 1998, that:

1. The conditions described in paragraph (a) remain applicable to the commercial residential property insurance market in this state in 1998 and are likely to remain applicable for several years thereafter.

2. The general instability of the market is reflected by the recent rapid growth of the Florida Windstorm Underwriting Association, which had more than 9,500 commercial residential policies in force as of December 31, 1997, representing a 58 percent increase over the number of commercial residential policies in force on December 31, 1996.

3. An extension of the operation of this section until June 1, 2001, will provide an opportunity for the market to stabilize and for continuation of residual market depopulation efforts.

~~(c)~~(b) The purposes of this section are to provide for a temporary moratorium on hurricane-related cancellations and nonrenewals of condominium association coverage and to require advance planning and approval for programs of condominium association exposure reduction.

(2) MORATORIUM.—

(a) As used in this subsection, the term "total number of policies" means the number of an insurer's condominium association policies providing windstorm or hurricane coverage that were in force on the effective date of

this section. The following restrictions apply to the cancellation or nonrenewal of condominium association residential property insurance policies that were in force on the effective date of this section:

1. In any 12-month period, an insurer may not cancel or nonrenew more than 5 percent of its total number of condominium association policies in the state for the purpose of reducing the insurer's exposure to hurricane claims and may not, with respect to any county, cancel or nonrenew more than 10 percent of its total number of condominium association policies in the county for the purpose of reducing the insurer's exposure to hurricane claims. This subparagraph does not prohibit any cancellations or nonrenewals of such policies for any other lawful reason unrelated to the risk of loss from hurricane exposure.

2.a. If, for any 12-month period, an insurer proposes to cancel or nonrenew condominium association policies to an extent not authorized by subparagraph 1. for the purpose of reducing exposure to hurricane claims, the insurer must file a phaseout plan with the department at least 90 days prior to the effective date of the plan. In the plan, the insurer must demonstrate to the department that the insurer is protecting market stability and the interests of its policyholders. The plan may not be implemented unless it is approved by the department. In developing the plan, the insurer must consider policyholder longevity, the use of voluntary incentives to accomplish the reduction, and geographic distribution. The insurer must demonstrate that under the plan the insurer will not cancel or nonrenew more policies in the 12-month period than the largest number of similar policies the insurer canceled or nonrenewed for any reason in any 12-month period between August 24, 1989, and August 24, 1992.

b. If the insurer considers the number of cancellations and nonrenewals under sub-subparagraph a. to be insufficient, the insurer may apply for approval of additional cancellations or nonrenewals on the basis of an unreasonable risk of insolvency. In evaluating a request under this sub-subparagraph, the department shall consider, and shall require the insurer to provide information relevant to: the insurer's size, market concentration, and general financial condition; the portion of the insurer's business in this state represented by condominium association residential property insurance; the reasonableness of assumptions with respect to size, frequency, severity, and path of hurricanes; and the reinsurance available to the insurer and potential recoveries from the Florida Hurricane Catastrophe Fund. In the implementation of exposure reductions under this sub-subparagraph, the department and the insurer shall consider such factors as policyholder longevity, the use of voluntary incentives to accomplish the exposure reduction, and geographic distribution.

c. A policy shall not be counted as having been canceled or nonrenewed for purposes of this subsection if any of the following apply:

(I) The policy was canceled or nonrenewed for an underwriting reason unrelated to the risk of loss from hurricane exposure, nonpayment of premium, or any other lawful reason that is unrelated to the risk of loss from hurricane exposure. The department shall consider the reason specified in

the notice of cancellation or nonrenewal to be the reason for the cancellation or nonrenewal unless the department finds by a preponderance of the evidence that the stated reason was not the insurer's actual reason for the cancellation or nonrenewal.

(II) The cancellation or nonrenewal was initiated by the insured.

(III) The insurer has offered the policyholder replacement or alternative coverage at approved rates.

(IV) The risk is transferred from one admitted insurer to another admitted insurer, unless the terms of the new or replacement policy place the policyholder in default of a mortgage obligation.

(V) The hurricane deductible applicable to the policy is increased unless the new deductible exceeds statutory limits or places the policyholder in default of a mortgage obligation.

(VI) Any other lawful change in coverage that does not place the policyholder in default of a mortgage obligation is made.

d. In addition to any other cancellations or nonrenewals subject to the limitations in this subsection, a policy shall be considered as having been canceled or nonrenewed for purposes of this subsection if:

(I) The insurer implements a rate increase under the use-and-file provisions of s. 627.062(2)(a)2., which rate increase exceeds 150 percent of the increase ultimately approved by the department, and, while the rate filing was pending, the policyholder voluntarily canceled or nonrenewed the policy and obtained replacement coverage from another insurer, including the Residential Property and Casualty Joint Underwriting Association; or

(II) The insurer reduces the commission to an agent by more than 25 percent and the agent thereafter places the risk with another insurer, including the Residential Property and Casualty Joint Underwriting Association.

e. The department must approve or disapprove an application for a waiver within 90 days after the department receives the application for waiver.

3. Notwithstanding any provisions of this section to the contrary, this section does not apply to any insurer that, prior to August 24, 1992, filed notice of such insurer's intent to discontinue writing insurance in this state under s. 624.430, and for which a finding has been made by the department, the Division of Administrative Hearings of the Department of Management Services, or a court that such notice satisfied all requirements of s. 624.430. This section also does not apply to any insurer that:

a. Collects at least 75 percent of its Florida premiums from policies that include hurricane coverage provided to condominium associations in coastal counties.

b. Collects at least 80 percent of its Florida premiums from policies that include hurricane coverage provided to condominium associations in Broward, Dade, and Palm Beach Counties.

c. Has, annually since 1992:

(I) Increased its aggregate Florida premium volume from policies that include hurricane coverage provided to condominium associations in coastal counties.

(II) Increased its aggregate Florida premium volume from policies that include hurricane coverage provided to condominium associations in Broward, Dade, and Palm Beach Counties.

(III) Increased its aggregate Florida exposure from policies that include hurricane coverage provided to condominium associations in coastal counties.

(IV) Increased its aggregate Florida exposure from policies that include hurricane coverage provided to condominium associations in Broward, Dade, and Palm Beach Counties.

d. Has surplus as to policyholders of no more than $200 million as reflected in its annual statement for 1995.

4. In order to assure fair and effective enforcement of this subsection, each insurer shall, no later than October 1, 1996, report to the department the policy number of each policy subject to this subsection, arranged by county. The report shall include the policy number for each condominium association policy that was in force on the effective date of this section. Beginning October 1, 1996, each insurer shall also report, on a monthly basis, all cancellations and nonrenewals of policies included in such policy list and the reasons for the cancellations and nonrenewals.

~~5. An insurer that has an overconcentration of wind risk in areas eligible for coverage under the Florida Windstorm Underwriting Association may submit to the department for approval an accelerated exposure reduction plan. The plan, if approved, shall allow the insurer to nonrenew additional policies for reasons of reducing hurricane loss, beyond the amounts authorized elsewhere in this paragraph, subject to the following conditions:~~

~~a. All additional nonrenewals under this subparagraph shall consist of nonrenewals of only the windstorm portion of a policy, and shall be allowed only if the Florida Windstorm Underwriting Association provides windstorm coverage to replace the nonrenewed windstorm coverage.~~

~~b. At the conclusion of the accelerated exposure reduction plan, which shall be no later than 12 months after the date of the first nonrenewal under such plan, the insurer is prohibited from any further nonrenewals for purposes of reducing hurricane loss until the expiration of this subsection.~~

~~c. The total number of nonrenewals statewide for purposes of reduction of hurricane loss, under this subparagraph taken together with the other~~

~~provisions of this paragraph, shall not exceed the total number of nonrenewals that would have been allowed statewide under subparagraph 1. between June 1, 1996, and the expiration of this subsection.~~

~~d. Notwithstanding the provisions of s. 627.4133, the insurer must give the policyholder 45 days' advance notice of the nonrenewal of windstorm coverage under this subparagraph and the availability of such coverage through the Florida Windstorm Underwriting Association.~~

~~e. The first nonrenewal under an accelerated exposure reduction program under this subparagraph may not take effect earlier than February 1, 1997.~~

~~f. In reviewing the proposed accelerated exposure reduction plan, the department shall consider:~~

~~(I) The degree to which the exposure reduction plan is necessary to address the insurer's overconcentration.~~

~~(II) Prior levels of participation in writing voluntary wind coverage in areas eligible for coverage through the Florida Windstorm Underwriting Association.~~

~~(III) The availability of wind coverage in the voluntary market for the subject risks.~~

~~(IV) The capacity of the Florida Windstorm Underwriting Association to absorb the risks proposed to be covered by the association.~~

(b) The department may adopt rules to implement this subsection.

(c) This section shall cease to operate at such time as the department determines that the insured value of all residential properties insured by the Florida Windstorm Underwriting Association and all properties insured by the Residential Property and Casualty Joint Underwriting Association under policies providing wind coverage, combined, has remained below $25 billion for 3 consecutive months, based on exposure data reported to the department by the associations.

~~(d)~~(c) This subsection is repealed on June 1, 2001 ~~1999~~.

Section 7. Subsection (7) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(7) A policy of private passenger motor vehicle insurance or a binder for such a policy may be initially issued in this state only if the insurer or agent has collected from the insured an amount equal to 2 months' premium. An insurer, agent, or premium finance company may not directly or indirectly take any action resulting in the insured having paid from the insured's own funds an amount less than the 2 months' premium required by this subsection. This subsection applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic

payment plan of an insurer or an insurance agent. This subsection does not apply if an insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group. This subsection does not apply to an insurer that issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents. This subsection does not apply if the policy is paid pursuant to a payroll deduction plan or an automatic electronic funds transfer payment plan. This subsection and subsection (4) do not apply if an insured has had a policy in effect for at least 6 months, the insured's agent is terminated by the insurer that issued the policy, and the insured obtains coverage on the policy's renewal date with a new company through the terminated agent.

Section 8. Paragraph (e) of subsection (2) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(e) Notwithstanding the provisions of subparagraph (c)2. or paragraph (d), eligibility shall not be extended to any area that was not eligible on March 1, 1997, except that the department may act with respect to any petition on which a hearing was held prior to May 9, 1997 ~~the effective date of this act. This paragraph is repealed on October 1, 1998~~.

Section 9. Section 626.9543, Florida Statutes, is created to read:

626.9543 Holocaust victims.—

(1) SHORT TITLE.—This section may be cited as the "Holocaust Victims Insurance Act."

(2) INTENT; PURPOSE.—It is the Legislature's intent that the potential and actual insurance claims of Holocaust victims and their heirs and beneficiaries be expeditiously identified and properly paid and that Holocaust victims and their families receive appropriate assistance in the filing and payment of their rightful claims.

(3) DEFINITIONS.—For the purpose of this section:

(a) "Department" means the Department of Insurance.

(b) "Holocaust victim" means any person who lost his or her life or property as a result of discriminatory laws, policies, or actions targeted against discrete groups of persons between 1920 and 1945, inclusive, in Nazi Germany, areas occupied by Nazi German, or countries allied with Nazi Germany.

(c) "Insurance policy" means, but is not limited to, life insurance, property insurance, or education policies.

(d) "Legal relationship" means any parent, subsidiary, or affiliated company with an insurer doing business in this state.

(e) "Proceeds" means the face or other payout value of policies and annuities plus reasonable interest to date of payments without diminution for wartime or immediate postwar currency devaluation.

(4) ASSISTANCE TO HOLOCAUST VICTIMS.—The department shall establish a toll-free telephone number, available in appropriate languages, to assist any person seeking to recover proceeds from an insurance policy issued to a Holocaust victim.

(5) PROOF OF A CLAIM.—Any insurer doing business in this state, in receipt of a claim from a Holocaust victim or from a beneficiary, descendent or heir of a Holocaust victim, shall:

(a) Diligently and expeditiously investigate all such claims.

(b) Allow such claimants to meet a reasonable, not unduly restrictive, standard of proof to substantiate a claim, pursuant to standards established by the department.

(c) Permit claims irrespective of any statute of limitations or notice requirements imposed by any insurance policy issued, provided the claim is submitted within 10 years after effective date of this section.

(6) STATUTE OF LIMITATIONS.—Notwithstanding any law or agreement among the parties to an insurance policy to the contrary, any action brought by Holocaust victims or by a beneficiary, heir, or descendent of a Holocaust victim seeking proceeds of an insurance policy issued or in effect between 1920 and 1945, inclusive, shall not be dismissed for failure to comply with the applicable statute of limitations or laches provided the action is commenced within 10 years after the effective date of this section.

(7) REPORTS FROM INSURERS.—Any insurer doing business in this state shall have an affirmative duty to ascertain to the extent possible and report to the department within 90 days after the effective date of this section and annually thereafter all efforts made and results of such efforts to ascertain:

(a) Any legal relationship with an international insurer that issued an insurance policy to a Holocaust victim between 1920 and 1945, inclusive.

(b) The number and total value of such policies.

(c) Any claim filed by a Holocaust victim, his or her beneficiary, heir, or descendent that has been paid, denied payment, or is pending.

(d) Attempts made by the insurer to locate the beneficiaries of any such policies for which no claim of benefits has been made.

(e) An explanation of any denial or pending payment of a claim to a Holocaust victim, his or her beneficiary, heir, or descendent.

(8) REPORTS TO THE LEGISLATURE.—The department shall report to the Legislature one year after the effective date of this section and annually thereafter:

(a) The number of insurers doing business in this state which have a legal relationship with an international insurer that could have issued a policy to a Holocaust victim between 1920 and 1945, inclusive.

(b) A list of all claims paid, denied, or pending to a Holocaust victim, his or her beneficiary, heir, or descendent.

(c) A summary of the length of time for the processing and disposition of a claim by the insurer.

(9) PENALTIES.—In addition to any other penalty provided under this chapter, any insurer or person who violates the provisions of this section is subject to an administrative penalty of $1,000 per day for each day such violation continues.

(10) PRIVATE RIGHT OF ACTION.—An action to recover damages caused by a violation of this section must be commenced within 5 years after the cause of action has accrued. Any person who shall sustain damages by the reason of a violation of this section shall recover threefold the actual damages sustained thereby, as well as costs not exceeding $50,000, and reasonable attorneys' fees. At or before the commencement of any civil action by a party, notice thereof shall be served upon the department.

(11) RULES.—The department, by rule, shall provide for the implementation of the provisions of this section by establishing procedures and related forms for facilitating, monitoring, and verifying compliance with this section and for the establishment for a restitution program for Holocaust victims, survivors, and their heirs and beneficiaries.

(12) SEVERABILITY.—If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared severable.

Section 10. This act shall take effect July 1, 1998.

Approved by the Governor May 22, 1998.

Filed in Office Secretary of State May 22, 1998.